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NATIONAL HUMAN RIGHTS COMMISSION

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ANNUAL REPORT 1998-99

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NATIONAL HUMAN RIGHTS COMMISSION

ANNUAL REPORT FOR THE YEAR 1998-99

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NATIONAL HUMAN RIGHTS COMMISSION

ANNUAL REPORT FOR THE YEAR 1998-99

I INTRODUCTION

1.1 This report of the National Human Rights Commission (NHRC) covers the period 1 April 1998 to 31 March 1999. It is the sixth such report of the Commission. The preceding report, dealing with the period 1 April 1997 to 31 March 1998 was, for the reasons set out in that report, submitted to the Central Government on 8 March 1999.

1.2 Under the terms of Section 20(2) of the Protection of Human Rights Act, 1993 the Central Government "shall cause the annual report of the Commission to be laid before each House of Parliament along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and for the non-acceptance of the recommendations, if any." While the first three annual reports of the Commission were laid before each House of Parliament, along with the memoranda of action taken, in the course of the Session immediately following the submission of the report to Government, there was a delay of 9 months in the tabling of the annual report for 1996-97. The annual report for 1997-98 has yet to be tabled before Parliament, in part because of the dissolution of the Lok Sabha. Because of that, and the lack thus far of a memorandum of action taken on that report, the present report is - in order to be self-contained - reiterating certain of the key observations and recommendations of the preceding report.

1.3 As the annual reports of the Commission are essential sources of information on the human rights situation in the country, the Commission is of the view that they should normally be placed before Parliament, together with the required action taken memoranda, not later than the Session immediately following submission of the report.

1.4 The Commission was privileged to continue to have Justice Shri M.N.Venkatachaliah as its Chairperson and Justice Shri V.S.Malimath as a Member. Shri Sudarshan Agarwal and Dr. Justice K.Ramaswamy joined the Commission as Members on 30 October and 16 November 1998 respectively. On the latter date Shri Virendra Dayal, whose 5-year term as a Member had expired in October 1998, was re-appointed to another such term. Thus, after a gap of nearly two years, the Commission regained its full strength. In accordance with Section 3(3) of the Statute of the Commission, Prof. (Dr.) Tahir Mahmood continued to serve as a Member of the Commission in his capacity as Chairperson of the National Commission for Minorities. Shri Dileep Singh Bhuria and Smt. Vibha Parthasarathy, who assumed office as Chairpersons



of the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women on 16 December 1998 and 18 January 1999 respectively, became Members of the National Human Rights Commission as of those dates.

1.5 Shri N.Gopalaswami joined as the Secretary General and Chief Executive Officer of the Commission in September 1998, taking over from Shri R.V.Pillai while Shri D.R.Karthikeyan joined as Director General (Investigation) in June 1998, in place of Shri Sankar Sen. Shri R.C.Jain continued as Registrar General.



II LOOKING BACK AND FORGING AHEAD

2.1 During the course of the year under report, on 12 October 1998, the Commission completed five years since its establishment. A brief review of the challenges it has faced, its responses to those challenges, and its concerns for the period immediately ahead, would be appropriate at this stage.

Challenge of credibility

2.2 The establishment of a National Human Rights Commission in 1993, based on an Act of Parliament, was a step without precedent in the building of institutions of governance in independent India. As with other National Institutions established in other countries, there was a degree of scepticism as to whether such a body would indeed function with independence and integrity. Questions were also raised as to whether the Protection of Human Rights Act, 1993, which contained the Statute of the Commission provided an adequate enough basis for bona fide efforts to promote and protect human rights in the country.

2.3 The Commission decided that the only way to deal with this dual challenge was to face it frontally and unequivocally. The very first case on which it took suo motu action related to the tragic incident in Bijbehara, in Jammu & Kashmir, involving elements of the security forces. Further, despite the grave threat posed to the country by terrorism, a danger that persists, the Commission urged the non-renewal of the Terrorist and Disruptive Activities (Prevention) Act, 1987 because it came to the conclusion, after extensive hearings and analysis, that the Act lent itself to serious abuses in its implementation, damaging the civil and political rights of the people of India.

2.4 As to the Statute itself, the Commission proceeded, after six months in existence, to make certain recommendations for amendments to the Protection of Human Rights Act, 1993. However, in the light of further experience, the Commission itself came to the conclusion that there was need for an independent and more comprehensive examination of the Act. It accordingly requested Justice A.M.Ahmadi, former Chief Justice of the Supreme Court of India, to chair a high-level Advisory Committee to make an in-depth study of the Act and suggest possible amendments. The report of the Ahmadi Committee is awaited. Upon it being received, it will be studied by the Commission and brought before the Central Government. In the meantime, the Commission has not waited upon events: it has constantly sought to use and interpret its powers and functions under the Act as expansively and responsibly as it could, keeping in mind its over-arching responsibility to promote and protect human rights in the country and to create a culture in which such rights would be nurtured and respected. Further, it has sought to act with utmost transparency. Its decisions are made public; its proceedings are often in open Court; and it has sought to ensure the easiest accessibility: no



fees are charged on the complaints addressed to it and these can be sent by any available means to the Commission, in any of the languages of the Republic.

Challenge of scale & expectation

2.5 No institution or nation genuinely striving to serve the cause of human rights can ever do enough. The Commission is no exception; it is functioning in a country of one billion people, unparalleled pluralism and sub-continental proportions. In such circumstances, the Commission cannot but be acutely aware of its own short-comings and inadequacies, given the immensity of the hopes now reposed in it and the dimensions of the problems it must confront.

2.6 Growing faith in the Commission, and the yearning for redressal of grievances, is best illustrated in the number of complaints received by the Commission. Starting with 496 in the first six months after it was established, the Commission received 40,723 in the twelve months under review, namely 1 April 1998 - 31 March 1999. While complaints from the State of Uttar Pradesh - the most populous in the nation and still without a State-level Human Rights Commission - accounted for 54% of these complaints, the Commission received complaints from all twenty five States of the Union and all but one of the Union Territories, Lakshwadeep being the sole exception. The Commission recalls that, in its earlier years, various militant groups had forbidden the submission of complaints to the Commission, even under the threat of violence. That situation has changed. In the past months, the Commission has received complaints from all segments of society and political persuasion, including militant groups and some of those who lead them. It has sought to deal with complaints from the latter with the same degree of rectitude and swiftness that it has tried to bring to bear to the handling of all other complaints.

2.7 The challenge that the Commission now faces is no longer that of scepticism but of scale and expectation. In five and a half years it has already received a total of 1,15,706 complaints and has dealt with or initiated action in respect of all but 7,175 of them by the end of March 1999. This has required prodigious effort and the setting-up of systems to deal with the immense case-load, which is far in excess of that handled by any other National Institution for human rights any where else in the world.

2.8 It is often asked, in this connection, whether the decisions and recommendations of the Commission are, in fact, acted upon by those to whom they are addressed. An answer can, illustratively, be provided by referring to the 176 cases in which the Commission has, over the past five years, specifically directed the payment of interim compensation of an amount totaling Rs.1,33,84,500/-. In all but one case, the concerned authorities complied with the Commission's directions, sometimes after questioning them or seeking clarifications. In the solitary case where the State Government sought to reverse the decision of the Commission



by approaching a competent High Court, the latter not only chastised the State authorities, but increased the compensation and ordered costs to the Commission.

2.9 But the challenge of scale and the follow-up of cases and decisions requires that a great deal be done to establish an efficient and decentralized system across the country to meet the growing expectation for the swift and just redressal of human rights grievances.

2.10 One obvious answer lies in the early setting-up of State Human Rights Commissions, as envisaged in the Protection of Human Rights Act itself. As yet, only 9 States have done so and 3 more have announced their intention to do so. This leaves the majority of States without such Commissions, including those like Uttar Pradesh and Bihar, which flood the National Human Rights Commission with complaints. The Chairperson has written to all concerned Chief Ministers in respect of this matter and reminded many of them frequently. But greater political will is required at the State-level, combined with encouragement from the Central Government and the major political parties, to proceed conclusively in this direction. The Commission recommends that this should be a matter of the highest priority for all concerned in the period ahead. For its part, it would be ready to share its experience and expertise, particularly in respect of complaints-handling procedures, with any State-level Commission that may so desire. The capacity-building of the human rights mechanisms in the country is of utmost importance.

2.11 Till such time as State-level Commissions are set-up, the National Commission must, itself, establish a limited number of regional offices that can function as extensions of its Headquarters. This would expedite the initial processing of complaints received by the Commission, especially in those States which contribute heavily to the work-load of the Commission. In addition, the Commission is already establishing Special Rapporteurs, Representatives and Consultants, for clearly defined purposes, to assist it in its out-reach across the country. The value of its partnership with a growing circle of non-governmental organisations cannot be over-estimated, or the contribution made by such groups to the cause of human rights. Clearly, this too, is an area of work that needs to be improved, systematized and strengthened. Good governance, and the full engagement of civil society, are essential to the cause of human rights. The Commission needs to do much to encourage the efforts of non-governmental organisations working in this field, as envisaged in Section 12(i) of its Statute.

Challenge of variety

2.12 Cruel and interlocking disparities persist, in all parts of the world - as recent United Nations Human Development Reports have made clear - in respect of five areas: in income and wealth distribution between individuals; between urban and rural areas; between regions, both within countries and globally; in gender inequalities; in ethnic and group inequalities which,



in the case of our country, means the inequalities afflicting, in particular, Dalits and Scheduled Tribes.

2.13 A look at the map of India points unquestionably to a clear and evident conclusion: where the social development indicators are low, the violations of human rights are high. There is a clear correlation between a lack of literacy, especially of the girl child, and infant mortality rates, malnutrition, and an adverse sex ratio between women and men. In Uttar Pradesh, Bihar, Orissa and Madhya Pradesh, some 35% of the population live below the poverty line; literacy rates are barely 50% - and in various parts of these States, far less for women; and infant mortality rates vary between 75 and 96 per thousand. These are areas from which the Commission receives vast numbers of complaints, not only in respect of civil and political rights, but the entire range of economic, social and cultural rights. They need to be contrasted with Kerala where, with over 90% literacy, the infant mortality rate, for instance, is only 16 per thousand - comparable to certain countries in Western Europe - and where an alert civil society is, more readily, capable of attending to human rights violations locally.

2.14 Not surprisingly, therefore, the Commission has, with increasing stridency, been urging policies in the economic and social sector that are truly responsive to the needs of the most vulnerable in our society: free and compulsory education upto the age of 14 years, as article 45 of our Constitution requires and as our Supreme Court has determined to be a Fundamental Right; primary health facilities to provide the potable drinking water and levels of maternal and child welfare essential to a life in dignity; food and nutritional standards essential to fulfilling the potential of a human being. The Commission is gratified that, in recent months, there is a greater realization among the major political parties that there is no easy road to national salvation that avoids these issues. For its part, the Commission has felt the need to be increasingly pro-active in respect of issues that raise fundamental questions of equity and justice in our country: the rights of Dalits and the atrocities perpetrated against them, the displacement of populations, especially tribals, by mega-projects; issues of food scarcity and allegations of deaths by starvation; the unconscionable cruelty of child-labour, especially in hazardous industries and child prostitution; the rights of women subjected to violence and discrimination; the rights of minorities and issues of religious tolerance, to mention but a few of its principal concerns. It is also evident that, for the Commission, the right to development, in all of its ramifications, is becoming central to its concerns, for it is this right that provides the integral link between civil and political rights, on the one hand, and economic, social and cultural rights, on the other, between the Universal Declaration of Human Rights of 1948 and the Vienna Declaration of 1993.

Challenge of good governance

2.15 If there is a correlation between the Human Development Index and respect for human



rights, so is there an infallible correlation between the quality of governance and the promotion and protection of such rights. This is why the Commission has repeatedly drawn attention to the need to keep the institutions of governance in good repair and stressed the importance of probity, civility and tolerance as being essential to sound political conduct and the attitudes of those in authority. This is also why the Commission has felt it essential to press for systemic reform: of the police, of the custodial justice system; and, indeed, of the criminal justice system itself.

2.16 The deep and abiding concern of the Supreme Court of the country for issues of good governance, and its understanding and support of the Commission, has been of inestimable value to the cause of human rights. Indeed, the Apex Court has entrusted the Commission with the discharge of five major responsibilities on its behalf:

- An inquiry into allegations of police encounters and mass cremations by the police in Punjab;
- Food scarcity and starvation in the Koraput-Bolangir-Kalahandi districts of Orissa;
- Monitoring the administration of laws against bonded labour;
- Monitoring the functioning of mental hospitals in Ranchi, Agra and Gwalior;
- Overseeing the Agra Protective Home for Women.

2.17 The Commission is itself an institution of good governance. It must therefore surpass the standards that it expects of others. In order to pursue these mandates of the Supreme Court vigorously, the Commission has set down procedures for holding regular sittings in its Court-room, with pre-fixed dates for hearings, in respect of the first two of these matters. Further, under Practice Direction No.12 of the Chairperson (see Annexure I), the Commission has designated its Secretary-General to serve as Chief Coordinator in respect of the other three matters, with a view to ensuring the periodic submission of progress reports to the Supreme Court. In addition, individual Members have, as needed, been designated to oversee these projects and Special Rapporteurs appointed to lend operational and supervisory strength to the effort.

2.18 The creating of a jurisprudence of human rights has also been of growing interest to the Commission. In addition to the landmark decisions of the Superior Courts of the country, which are setting standards of conduct and behaviour for the nation, the proceedings of the Commission and the opinions and decisions it has recorded are gradually acquiring considerable value of their own.



2.19 The symbiosis between the Superior Courts and the Commission is reflected in the involvement of the Commission in some 20 cases before the courts. They range from matters of police reform and the payment of wages to prisoners, to the treatment of refugees, custodial death and torture, "disappearances" and killings in "encounters" involving the police, and even the setting-up of a State-level Human Rights Commission, all of these issues being related to questions of good governance and reform in the deepest sense. While these 20 cases were summarized in the report of the Commission for 1997-98, for purposes of ease of reference and to make this report self-contained, they are listed below:

Before the Supreme Court:

- Writ Petition (C) No.310/96 on questions relating to Police Reforms :
- Writ Petition (C) No. 42/97 concerning deaths by starvation in Orissa;
- Writ Petition (Crl) No. 13/98 concerning harassment of Chakma refugees in Arunachal Pradesh;
- Writ Petition No.335/99 concerning non-production of records by the Ministry of Home Affairs in Bijbehara Case.

Before the High Courts :

- Habeas Corpus Petition No.32/96 concerning the alleged killing of Jalil Andrabi by the Security Forces, before the High Court of Jammu & Kashmir;
- Criminal Miscellaneous Application No.2558/96 concerning the custodial death of A.B Mishra, a student of Banaras Hindu University, before the High Court of Allahabad;
- Writ Petition (Crl) No.651/92 concerning the disappearance of Harjit Singh, before the High Court of Punjab and Haryana;
- Writ Petition Nos. 6829 and 5945/97, concerning activities of the People's War Group in Andhra Pradesh, before the High Court of Andhra Pradesh.
- Writ Petition (Crl) No.1146/97, 1064/97 and 1032/97 concerning 'encounter' deaths involving the Mumbai police, before the High Court of Bombay.
- Writ Petition (Crl) Miscellaneous No.12078/98 concerning the harassment and torture of one Sheodan Singh before the Punjab and Haryana High Court.



- Writ Petition (Crl) Miscellaneous No.24962/98 concerning the setting up of a State Human Rights Commission in Uttar Pradesh.

In addition, the Commission is involved in a case before the District Court, Delhi in respect of a complaint under Section 193 IPC against S/Shri Harbhajan Singh, Dayanand and Vipin Kumar who made false statements before an Inquiry Officer appointed by the Commission to probe into the death in custody of Shri Madan Lal.

Challenge of entrenched attitudes

2.20 The struggle for the promotion and protection of human rights inevitably requires, in some measure, a challenging of entrenched attitudes that are inimicable to the proper respect of such rights.

2.21 In civilizational terms, this means the shedding and denouncing of accretions and aberrations that, over time, have wounded and fractured our society, leaving some more equal than others, in grievous violation of human rights norms and of acceptable standards of equity and justice. It is not necessary, at this stage, to expound on the deep societal injustices inflicted on Dalits and Scheduled Tribes, or the patriarchal biases that, too often, have victimized the girl child and women in our country. These are only too well known. The Commission must deal frontally with these prejudices and encourage others to do so.

2.22 In political terms, we must act with greater fidelity to the vision of the Founding Fathers of our Republic, who gave the nation a Constitution that would guarantee the Fundamental Rights of all - regardless of caste, creed, gender, place of birth or any other such invidious distinction - and who made these rights non-derogable and justiciable. There is great need to uphold this brave and compelling vision with consistency and not waiver for reasons of political expediency.

2.23 In administrative terms, there is need for the diligence, will and stamina to reform and restructure those instruments of governance that are in danger of atrophy and that daily outrage the dignity and worth of those who come in contact with them.

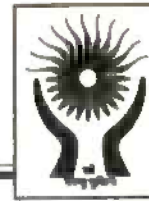
2.24 In economic, social and cultural terms, there is need for equal courage, in order to deal with the challenges of our richly pluralistic society which is, at once, a source of delight and uniqueness but which, if abused or manipulated, can no less be a cause of violence and despair.

2.25 Human rights education, in its broadest sense, holds the key to attitudinal change. This is why the Commission has been seeking, with the Ministry of Human Resource



Development, the National Council for Educational Research and Training (NCERT) and the National Council for Teacher Education (NCTE) to prepare materials for the education of our children from their earliest days in schooling till the highest classes. It is also why the Commission has pursued contacts with the University Grants Commission to devise appropriate courses for the University level and why, in addition, it has endowed a Chair for Rs.30 lakhs in the National Law School of India University in Bangalore for an Institute for Human Rights Education. In this entire effort, the Commission is convinced that it can benefit greatly from the advice and experience of leading non-governmental organisations and academics, many of whom have given considerable thought to such matters and many of whom have put into practice their ideas on human rights education. Nor does human rights education cease with academic institutions. All elements of civil society need to be brought into the fold: the bench and the bar, administrators and defence personnel, doctors and scholars, politicians and trade unionists, public and private sector employees and members of the fourth estate, to mention but a few.

2.26 These then, have been some of the major activities of the Commission over the past five years and a few of its key concerns as it looks to the future. The succeeding chapters of this report will expand on these themes and elaborate on yet others.



III CIVIL LIBERTIES

(A) HUMAN RIGHTS IN AREAS OF TERRORISM AND INSURGENCY

3.1 India's often lonely fight against terrorism has grown less lonely as the realization has gradually spread, since the 1993 World Conference on Human Rights and as a result of more recent events, that "The acts, methods and practices of terrorism in all its forms and manifestations.... are activities aimed at the destruction of human rights."

3.2 The 1994 United Nations Declaration on Measures to Eliminate International Terrorism marked a further advance in clearing the intellectual and conceptual confusion that so often attended discussion of this matter in human rights circles. That Declaration affirmed, in its paragraph 3, that "Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them."

3.3 Successive resolutions of the United Nations General Assembly and of the United Nations Commission on Human Rights have, since then, asserted that "terrorism, in all its forms and manifestations, whenever and by whomever committed, can never be justified in any instance, including as a means to promote and protect human rights." Further, these same resolutions, adopted under the title, "Human Rights and Terrorism" have now also repeatedly contained an "unequivocal condemnation of all acts, methods and practices of terrorism, regardless of their motivation, in all its forms and manifestations, wherever and by whomever committed as acts of aggression aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences on the economic and social development of States." It is, in addition, now quite clear that the international community must "enhance cooperation at regional and international levels in the fight against terrorism in accordance with the relevant international instruments, including those relating to human rights, with the aim of its eradication," as the United Nations General Assembly has repeatedly urged in recent years.

3.4 The eradication of terrorism, however, is no easy task and its relationship with human rights is complex, particularly since those engaged in acts of terror are quick to seek the protection of precisely those rights that they violate without compunction and hold in contempt. Not surprisingly, human rights are most readily invoked when those engaged in acts of violence are themselves under siege. Regrettably, the invocation of such rights is now also an intrinsic part of the psychological and political undercurrents of what, euphemistically, is called "low-intensity conflict" but which is, in reality, often war-by-proxy.



3.5 The views of the Commission on the protection of human rights in areas subjected to terrorism and insurgency are well known and have been recorded in detail in earlier reports. The Commission is of the view that all elements of civil society must combine to fight the menace of terrorism. It is not a fight to be conducted by the armed forces and police alone. Instead, it must be fought at the political level, at the economic and social level, at the level of ideas. But, above all, it must be fought in a manner that respects human rights, whatever the difficulties this may entail for the State and to those who are engaged in this task. The Commission believes that there must be full and uncompromising adherence to the provisions of the Constitution of our Republic, the laws of our land, and the treaty commitments to which our State is a party. The Commission has made clear that it will not countenance departures from this exacting standard. The security of the State can never be assured at the expense of the human dignity of those for whom the State exists. To the contrary, it is evident that respect for human rights must be an essential component in formulating any worthwhile policy of national security.

3.6 The Commission is therefore deeply disturbed when, in its view, there is a lack of transparency in dealing with those who may have been guilty of human rights violations. For instance, the Commission is yet to satisfy itself that justice has fully been done in regard to the tragic loss of life that occurred in Bijbehara, in the State of Jammu & Kashmir, on 22 October 1993 in respect of which incident it had made specific recommendations. After receiving a report of the Ministry of Home Affairs dated 12 February 1998 informing it of the outcome of the proceedings of the Staff Court of Inquiry (SCOI) and the proceedings of the trial held by the General Security Force Court (GSFC), the Commission considered it essential to call for the records of those proceedings before taking a final view on the matter. The Commission is determined to see this case through to its logical conclusion. At the end of the year under reporting, it was awaiting the records of those proceedings and was contemplating moving a Writ Petition before the Supreme Court if it were denied full access to the records that it had sought.

3.7 The Commission is also deeply concerned that those responsible for the March 1996 abduction of Shri Jalil Andrabi, a prominent advocate of Srinagar and his subsequent killing, are yet to be brought to trial. The Commission itself filed an application in respect of this case before the High Court of Jammu & Kashmir urging that an in-depth, transparent and honest investigation was necessary. It also sought the permission of the Court to intervene and assist in this matter and presented the results of its own investigation to the Court. It is a matter of deep regret that the perpetrators have still not been brought to justice. The Commission considers this to be unacceptable. It urges greater seriousness of purpose in the effort to track down and bring to book the abductors and killers of Jalil Andrabi.

3.8 The Commission visited Jammu & Kashmir in November 1998 for discussions with the



highest echelons of the State Government and with the State Human Rights Commission. It also received a number of delegations, including leaders of all political parties, some belonging to militant groups that had in earlier years boycotted the Commission. It met with members of the public who gave vent without hindrance or fear to their grievances, many of whom handed over written complaints to the Commission.

3.9 The State of Jammu & Kashmir has paid a heavy price for the violence of the past decade. The Commission accordingly discussed all aspects of the situation in the State with those whom it met, stressing in particular the need to implement detailed plans to heal the physical and psychic wounds of those who had suffered - especially the women and children, and the orphans, whose lives have been blighted by violence. It also reviewed the progress made in the investigation of complaints brought before it, keeping the petitioners informed of its efforts to the greatest extent possible. But apart from issues arising from the insurgency, the Commission also raised more general human rights issues: the prevalence of child labour, including the employment of children below the age of 14 years by Government servants; the persistence of manual scavenging despite the existing legislation on this subject; the occurrence of deaths and mal-practices in juvenile homes; the improvement of dietary and other conditions in prisons and police lock-ups; the introduction of model autopsy forms and other means to improve the existing criminal justice system. These matters are being followed up with the State authorities; the Commission being gratified to learn that, as far as the employment of children under 14 years by Government servants is concerned, the Home Department has already amended the Conduct Rules to prohibit such a practice.

3.10 The Commission also had occasion to discuss in detail the poignant circumstances of the Kashmiri Pandits who have been forced to leave the Valley and live in large numbers in camps in Jammu, Delhi and elsewhere. It visited Jammu and interacted with representatives of this group. Many of the issues concerning them, including the school and university education of their children, their health care, social security, salaries and employment options have been the subject of proceedings before the Commission. Further, two key issues relating to them were, in the course of the year, the subject of particular attention by the Commission: the grave claim that the Kashmiri Pandits were the victims of genocide, and the complex issue that arose in the course of the hearings, which related to the degree and nature of the Commission's jurisdiction in respect of human rights issues in the State of Jammu & Kashmir. On both of these matters, the Commission was due to deliver major opinions as the reporting year 1998-99 drew to a close.

3.11 Suffice it to say, at this stage, that the data presented to the Commission in the course of the hearings was profoundly disturbing and tragic. The Central Government indicated that the number of those killed because of terrorism and insurgency in the State between 1988-97 was 16,850, including 6,219 Muslim civilians and 710 Hindu civilians. Though there were



minor differences in the figures provided by the parties appearing before the Commission, there was a general view that some 300,000 Kashmiri Pandits had been forced to leave the Valley for reasons of the terror unleashed in their home State. Representatives of the Pandits asserted that some 1000 members of their community had been killed in the Valley, and the names were mentioned of those who had succumbed to torture at the hands of terrorist groups. The State and Central Governments did not dispute the numbers of those who had had to leave the Valley. They asserted, however, that in addition to the Kashmiri Pandits, a number of Sikh families and some 1500 Muslim families had also registered for relief assistance, while many other Muslim families had left but were afraid to register for fear of reprisals against their relatives.

3.12 The Commission has noted the efforts of Government to create conditions for the restoration of peace and security in Jammu & Kashmir, despite grave provocations and setbacks. It urges that such efforts continue, so that all of the people of the State can resume lives of normalcy, tranquility and productivity. In this process, it also trusts that those who have been forced to leave their homes in the Valley will be enabled to return in safety and dignity.

3.13 Over the five years of its existence, the Commission has observed a distinct improvement in the sensitivity of the armed forces to human rights issues. The training at all levels is beginning to have a beneficial effect and the standard operating procedures have been refined and improved. This is reflected in a decline, in the year under review, of complaints received by the Commission from areas of insurgency when compared to the preceding year.

3.14 Further, both the Army and the Border Security Force have continued to keep the Commission informed of the facts relating to their personnel who have been charged/punished for violating human rights in Jammu & Kashmir and in the North Eastern States. As in the past, reports from the Army indicate the details of the place of the incident, names of accused, the allegation made, the gist of the charges framed, the outcome of the inquiry/ trial and the details of the punishment awarded. Data received from the Army indicates that, whereas it was necessary for it to investigate 942 allegations of human rights violations by its personnel in Jammu & Kashmir and the North Eastern States during the year 1997-98, during the year 1998-99 it needed to investigate 144 such allegations. While 109 Army personnel of various ranks received punishments ranging from reprimands to dismissal in the preceding year, in the current year 3 members of the Army were sentenced to rigorous imprisonment, of whom one was also subsequently dismissed.

3.15 The Commission continues to believe that cases of custodial death or rape involving the army and para-military forces should be reported to the Commission immediately, as is done by the State Governments in respect of such cases when the police are involved. It



regrets, in this connection, that the memorandum of action taken on its preceding reports have, in respect of this matter, essentially recalled the provisions of the Protection of Human Rights Act, 1993 in regard to complaints brought against the armed forces, without dealing with the specific recommendation of the Commission on this matter. The Commission therefore considers it essential to reiterate its recommendation which, it feels, will add to the credibility and transparency of the armed forces in the conduct of their operations and also discourage unwarranted and propagandist charges against them.

3.16 The Commission would also like to reiterate its view that the security forces, when called upon to act in aid of civil authority, must continue do so in close co-ordination with the civil administration. This view is based on the accumulated experience of the Commission, borne out of its visits to Jammu & Kashmir and certain of the North-Eastern States, that violations of human rights are far less likely to occur when the role and the responsibilities of the civil authorities under the law are fully respected, not least in respect of cordon and search operations, arrest, interrogation and detention. The Commission is happy to note the effectiveness of the Screening-cum-Co-ordination Committees that have been set-up in almost every district of J&K and the North-Eastern States, under the Deputy Commissioner, to address, inter alia, issues relating to security operations. The Commission would like to repeat its recommendation that the proceedings of such Committees should be given the widest possible publicity by the State Governments concerned as the dissemination of information relating to such activities can, in itself, have a beneficial impact on the observance of human rights in areas affected by insurgency and terrorism.

(B) CUSTODIAL DEATH, RAPE AND TORTURE

3.17 A systematic effort to curb custodial violence has been a major priority of the Commission over the past five years. As early as 14 December 1993 the Commission issued instructions to all States asking them to direct all District Magistrates and Superintendents of Police to report directly to the Commission any instance of death or rape in police custody within 24 hours of its occurrence, failing which there would be a presumption that efforts were being made to suppress the facts. Subsequent instructions extended this directive to cover deaths in judicial custody as well. The Commission is gratified to note that the States have continued to comply with these instructions. In the year 1998-99, the figures reported to the Commission were 183 deaths in police custody and 1114 deaths in judicial custody, compared with the 193 deaths in police custody and 819 deaths in judicial custody reported in 1997-98. A State-wise list giving details of such deaths in 1998-99 may be seen at Annexure II. It will be observed that there has been a decrease in the deaths reported to the Commission in police custody and an increase in deaths in judicial custody, the latter providing an unfortunate commentary on health conditions prevailing in the prisons of the country.



3.18 The Commission notes that there has not been a marked increase in the overall number of custodial deaths reported to it in 1998-99 when compared to the previous year. It further notes that the number of deaths in police custody as reported to it has shown a decline in a number of states, with Gujarat, Kerala, Meghalaya, Rajasthan, West Bengal and Delhi being exceptions and a marginal increase also being reported in Andhra Pradesh, Arunachal Pradesh, Assam, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Pondicherry. The Commission is of the view that the increase in the reports of deaths in judicial custody is the result of a more rigorous and better response to its repeated instructions that information regarding such tragic occurrences must not be suppressed, but must be reported promptly, and investigated and acted upon thereafter.

3.19 The Commission would like to recapitulate and reiterate certain of the recommendations made in its earlier reports on the issue of custodial violence as these are still relevant and are yet to be implemented.

- Early action needs to be taken on the suggestion of the Indian Law Commission (ILC) to the effect that a Section 114(B) be inserted in the Indian Evidence Act 1872 to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by a police officer.
- Section 197 of the Code of Criminal Procedure needs to be amended, on the basis of ILC's recommendation, to obviate the necessity for governmental sanction for the prosecution of a police officer, where a prima facie case has been established, in an inquiry conducted by a Sessions Judge of the commission of a custodial offence.
- As suggested by the National Police Commission, there should be a mandatory inquiry by a Sessions Judge in each case of custodial death, rape or grievous hurt.

3.20 The memorandum of action taken, submitted by the Central Government on the 1996-97 annual report, indicated that these recommendations were still being processed. In the absence of any further indication of progress, the Commission strongly urges the Government to give priority to the implementation of these recommendations.

3.21 In earlier reports, the Commission has drawn attention to the detailed instructions of the Supreme Court in the cases of *Joginder Singh vs the State of Uttar Pradesh* and *D.K. Basu vs. the State of West Bengal*. Meticulous attention needs to be paid both by the Central as well as the State Governments to the directions of the Supreme Court in both of these cases. The Commission accordingly urges fullest compliance with the instructions contained in these landmark decisions.



(C) ACCESSION TO THE CONVENTION AGAINST TORTURE

3.22 The efforts of the Commission to ensure that India become a party to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are recounted in full in its preceding annual report. While the Commission was deeply gratified by the decision of the Government of India to ratify the Convention, it is distressing to note that, even though the Permanent Representative of India to the United Nations signed the Convention on 14 October 1997, the formalities for ratification are yet to be completed. The Commission urges the earliest ratification of this important Convention and the fulfillment of the promise made at the time of signature, 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."

(D) VIDEO FILMING OF POST-MORTEM EXAMINATION AND REVISION OF AUTOPSY FORMS

3.23 The Commission has long been concerned with the uneven quality of post mortem reports on custodial death cases. In the absence of any credible independent evidence, the fate of custodial death cases depends entirely on the observations recorded and the opinions given by the doctor in post mortem reports. There can therefore be a total miscarriage of justice if the reports are manipulated and the doctors suborned or intimidated.. The Commission accordingly recommended the video-filming of post-mortem examinations and the sending of tapes to the Commission for scrutiny, with a view to preventing such unacceptable and unethical acts. Twenty-two States and Union Territories have now accepted this recommendation while four others have stated that they are examining the matter. The Commission once again recommends to the States of Arunachal Pradesh, Maharashtra, Manipur, Mizoram, Uttar Pradesh, the National Capital Territory of Delhi and the Union Territories of Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli and Lakshadweep that they accept this recommendation without any further delay. The protection of human rights and the bringing to book of those who are complicit in the brutal practice of custodial violence requires no less.

3.24 It will be recalled that the Commission had also evolved, and circulated for adoption, a Model Autopsy Form that took into account the work done by the United Nations on this subject and also the special circumstances prevailing in our country. Seventeen States and Union Territories have now accepted the Commission's recommendation to adopt the Model Autopsy Form. The Commission, however, once again urges the following States/Union Territories, namely, Arunachal Pradesh, Andhra Pradesh, Bihar, Chandigarh, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Kerala, Lakshadweep, Manipur, Mizoram, Maharashtra, Nagaland to adopt the new form and the concomitant procedures without further delay.



3.25 As indicated in the report of the previous year, the Commission set up a Group of Forensic Experts to prepare a set of instructions to guide the doctors conducting post-mortem examinations. The panel of forensic experts has prepared the guidelines for video-filming of post-mortem examinations titled 'Instructions for Doctors Conducting the Post-Mortem' and a format for scrutiny of the video cassettes of custodial deaths. These are being circulated.

(E) VISITS TO POLICE LOCK-UPS

3.26 The Commission has the powers, under section 12(c) of the Protection of Human Rights Act, 1993, to visit any jail or institution where persons are detained. In exercise of its powers the Commission directed the Secretary General to inform all the States of its decision to undertake surprise visits to police lock-ups in various States through officers designated by it. The Secretary General's letter of 1 August 1997 on this matter requested the States to issue suitable directions to the competent police authorities to facilitate such surprise visits. So far, 29 States/Union Territories have acted on this proposal. Jammu & Kashmir, Manipur and Daman & Diu are yet to respond and it is recommended that they do so at an early date. During the past year, officers of the Commission have visited a number of lock-ups in Andhra Pradesh and Bihar and made a series of observations which are being attended to in consultation with the competent State authorities.

(F) SYSTEMIC REFORMS: POLICE

3.27 Persistent efforts by the Commission, since its inception, have helped to highlight police reforms as a major area needing national attention, as such reforms are central to issues of good governance and a better respect for human rights. As a result of interaction between the Commission and Ministry of Home Affairs, the then Minister of Home Affairs addressed a letter to all Chief Ministers in April 1997, suggesting early action to implement certain key recommendations of the Second Police Commission and the National Human Rights Commission. He had in his letter stated, inter alia, that the Central Government was "engaged in the implementation of some of the basic recommendations which lie within our jurisdiction; viz., in the Union Territories and other centrally administered areas."

3.28 The question of police reform is also being pursued in a case pending before the Supreme Court, in which the Commission has been impleaded as a party. The comprehensive affidavit and other submissions that the Commission filed before the Supreme Court may be seen in an annex to the annual report of the Commission for 1997-98.

3.29 Following a directive of the Supreme Court in this case, the Ministry of Home Affairs appointed a Committee under the Chairmanship of Mr. J.F.Ribeiro, a distinguished former member of the Indian Police Service, to review and suggest ways and means for the



implementation of the recommendations of the National Police Commission and the National Human Rights Commission. This Committee has since submitted its report to the Apex Court. The decision of the Court, which will be critical to the future of police reform in the country, is now awaited by all those who feel that, failing major reforms, both good governance and respect for human rights will continue to be casualties.

3.30 In the meantime, the Commission strongly urges that, without prejudice to such mechanisms as may be put in position to reform the police on the basis of the final verdict of the Supreme Court, the Central Government proceed with the implementation of those other recommendations to which it has committed itself and which are not the subject of consideration by the Apex Court.

3.31 The Commission also took up for dialogue with the Police Administration the setting up of a Police Complaints Authority in the office of the Director General of Police in each State so as to have a general oversight of the conduct of the police in that jurisdiction. This in itself could do much to reassure the public that their complaints against police conduct and insensitivity would receive attention at the highest administrative level.

(G) SYSTEMIC REFORMS: PRISONS

3.32 The Commission continued to give high priority to improving conditions prevailing in the jails in our country.

3.33 With 95 central prisons, 270 district jails, 240 prisons for women and 547 sub-jails having an estimated population of 2,46,700, prison administration clearly calls for special attention of the Commission. Of the prison population, 1,80,000 were under-trial prisoners, who constituted over 70% of the total prison population. The majority of the under-trial prisoners came from disadvantaged sections of society, having a rural background. In frequent instances, the jails were forced to accommodate far higher numbers than their capacity. This led to congestion, the straining of available services, and other undesirable consequences.

3.34 The Commission has, therefore, been insisting that State Governments effectively implement the Supreme Court's judgement in the Common Cause vs. Union of India and Others case, which laid down guidelines and gave directions in regard to the release of under-trial prisoners on bail. However, reports from the Commission's Special Rapporteurs and Representatives appointed to visit prisons indicate that, in many cases, the bail orders passed by courts have not been given effect as many prisoners could not provide sureties and have therefore had to continue languishing in jail.

3.35 To deal with the situation in Delhi, and at the request of the Commission, the Delhi



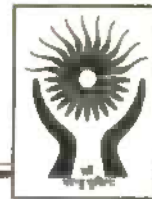
State Legal Board agreed to depute lawyers to Tihar jail to assist in respect of prisoners who could be released on bail. Further, the Commission is systematically urging other States to follow through on the Supreme Court's vitally important ruling. It recommends that action in this respect be taken promptly as serious issues of justice and rights are involved.

3.36 The Commission is gratified that certain State Human Rights Commissions are also pursuing matters relating to prison reform with great earnestness. For its part, the Commission has continued to organise visits to a number of jails in the context of complaints of mismanagement and custodial violence. It has, further, drafted a set of guidelines for the 33 jail visitors appointed by the Commission for the State of Maharashtra, pursuant to a decision of the Bombay High Court in the case of *Muktaram Sitaram Shinde vs. the State of Maharashtra*. The Commission has, in addition, circulated a set of guidelines with a view to better safeguarding the human rights of persons under detention, and it has continued to follow-up on a report that had been prepared for it which analyzed the causes of death in jail custody. The Commission is increasingly seeking to associate concerned sections of civil society with its work to improve conditions in jail. A particularly fruitful partnership is being developed with the Rotary Clubs in India as a result of initiatives taken by its Member, Shri Sudarshan Agarwal.

(H) HUMAN RIGHTS AND ADMINISTRATION OF CRIMINAL JUSTICE

3.37 The Commission has, in its preceding reports, expressed deep concern at the state of Administration of Criminal Justice in India. The phenomena of docket-clogging; inefficient, unscientific police investigations; the innate vulnerability of prosecutions which depend mainly on fragile oral evidence; inept discharge of prosecutorial functions performed by prosecutors not adequately trained and certain other systemic and logistic inadequacies characterize the present scenario. While the alarming failure of prosecutions holds grim portents for the future safety of society, the delays in criminal trials have produced an unacceptable level of under-trial prisoners who now comprise, as noted earlier in this report, over 70% of the total prison population. Their waiting period sometimes lingers distressingly to eight to ten long years. The criminal justice system is increasingly becoming a teasing illusion.

3.38 The Commission feels that there is a general lack of perception of the importance of an efficient system of criminal justice to the economic development of the country. That is the reason why reforms in the criminal justice system are not a high priority with Governments. It is an illusion to think that sustainable development can either be possible or enduring without the recognition of inter-institutional complementarities. A sound social infrastructure, the Commission perceives, is as indispensable for economic development as economic infrastructure. Efficient administration of criminal justice is necessary as much to provide the primordial need for maintenance of order in society and the protection of human rights, as for economic development. The sound administration of justice, both civil and criminal, is an



indispensable foundation for economic activity, particularly at a time when far-reaching scientific and technological advances in the industrialized world, and the rapid pace of change that they are ushering in, are serious challenges to developing countries.

3.39 Efficiency of police investigation is fundamental to criminal justice. A basic factor today is that there is a loss of public confidence in police investigations and the criminal justice delivery system. Public confidence is the sheet-anchor of any police system. Information and intelligence can come only through public cooperation. The police, by its archaic methods, insensitivity and unprovoked incivility towards members of society, has alienated the public. Restoration of public confidence can be effective only if there are credible, transparent and effective in-house mechanisms for dealing with police misbehaviour. The Commission has dealt with this aspect elsewhere in the report.

3.40 As far as the administration of criminal justice in the Courts is concerned, there is a wide variety of problems bedeviling the system. There is a great degree of disparity, and varying degrees of complexity, in the problems facing individual States and regions. Any strategy effective in, and appropriate to, any particular State or area may not necessarily be appropriate and effective in other areas of the country.

3.41 The Commission, therefore, recommends that a time-bound programme be embarked upon for the speedy clearance of criminal cases in the Courts, through the High Courts of the respective States which alone have exclusive control over the subordinate judiciary. The programme of action, the Commission recommends, should include the following factors:

- Strategies for control of arrears should be designed on a district to district basis, having regard to the particular requirements and pattern of criminal litigation in the district.
- The programme should be in charge of High Courts which will nominate a sitting Judge or a Committee of Judges to be in charge of the programme in the district. The Judge or the Committee, as the case may be, shall be advised and assisted by a computer-expert in Court management matters. The programme must be funded by the State, by an adequate one-time monetary grant, sufficient to see through the programme. A generous measure of financial autonomy is absolutely necessary for the Courts for a little play at the judicial joints. The National Judicial Academy be requested to develop these packages of programmes.
- The target must be that within a time-frame, say a period of three years, no Court in that district should have any criminal case pending for over eight months. For purposes of tackling the arrears in Courts, long pending cases should be bifurcated



into a separate class and dealt with separately under an adhoc dispensation by re-employing, if necessary, retired judicial officers and judicial staff.

- The pendency of cases in each Criminal Court should be fed into and analysed on computers. The progress in the disposal of cases is to be monitored on the computer. Initially, a spread-sheet be prepared to indicate the different types of criminal cases pending in the particular Court and the length of the pendency so as to evolve appropriate bench-marks for fast track procedures.

3.42 In terms of changes in the substantive law, the Commission recommends that:

- There be a process of progressive and massive decriminalisation of offences now recognised and made culpable as penal offences. They should be treated as merely actionable wrongs for which compensation and not punitive action is the appropriate remedy.
- The class of compoundable offences under the IPC and other laws should be widened.
- In the disposal of arrears of criminal cases, experienced criminal lawyers be requested to work as part-time Judges on a particular stipulated number of days on the pattern of 'Recorders' and 'Assistant-Recorders' in the United Kingdom. There is existing provision in the Criminal Procedure Code for honorary Judicial Magistrates, which has not been imaginatively utilised or its potential realised even in part.
- The system of "plea bargaining" be introduced on the pattern of recommendations already made by the Law Commission of India.
- Magistrates and Sessions Judges while remanding persons under trial to judicial custody should clearly indicate in the very order of remand itself the terminus a quay. In other words, the judicial remands should be self-limiting and should indicate the date on which the under-trial prisoner would automatically be entitled to go to bail in terms of the conditions prescribed by the Supreme Court.
- There should be a comprehensive training package for programmes of training of all judicial personnel and all Court administrators.
- In the proportion of population-judge ratio, India is today amongst lowest in the world; this needs to be rectified.



(I) STUDY OF HEALTH CONDITIONS OF PRISONERS

3.43 As indicated earlier, analysis by the Commission of deaths of prisoners reported from various States revealed that many lives could have been saved if proper medical examinations had been carried out at the time of the admission of a prisoner and if this had been followed-up with periodical medical checks. Acting with the help of an Expert Group, the Commission devised a proforma for the health screening of prisoners and directed the Chief Secretaries of all States, on 11 February 1999, to ensure that medical examinations of all prisoners were conducted in accordance with that proforma. The Commission also directed that monthly progress reports should be communicated to the Commission in this connection. (Annexure III).

3.44 To bring a higher degree of coherence to its work in regard to prisons, the Commission has, further, appointed Shri Sankar Sen, former Director General (Investigation) to serve as Special Rapporteur and Chief Coordinator for its Custodial Justice Programme. This will ensure an improved monitoring of the efforts of all concerned and assist in the guidance of prison administrators in the States.

(J) VISITS TO JAILS

3.45 In the light of complaints received from prisoners, and also acting suo motu, officers of the Commission continued to visit jails notably in Agra, Aurangabad, Bareilly, Bikaner, Coimbatore, Cuddalore, Delhi, Mirzapur, Pondicherry and Rampur. Serious deficiencies were noticed in many instances and these are being pursued with the competent State authorities.

(K) CONDITIONS OF REMAND HOMES

3.46 Because of the distressing conditions and the often inhuman treatment of inmates in various remand homes in the country, the Commission had issued instructions to the Secretaries of Welfare Departments of the States to undertake measures to improve the maintenance and upkeep of these homes and to ensure the better treatment of their inmates. The Commission had also sent a set of questionnaires in respect of Borstal institutions, probation homes, protective homes, etc. that had been set up under different statutes and had asked the States to provide information relating to the functioning of these homes/institutions.

3.47 By the end of the period under review, information had been received from Goa, Gujarat, Meghalaya, Tripura and the Union Territories of Chandigarh and Pondicherry. The Union Territories of Dadra and Nagar Haveli, Daman and Diu and Lakshadweep have indicated that they do not have such institutions. The States of Andhra Pradesh, Assam, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Tamil



Nadu, West Bengal and NCT of Delhi have furnished partial information. The Commission is following up on this matter and requests the remaining States/UTs to expedite their reports.

(L) IMPROVEMENT OF FORENSIC SCIENCE LABORATORIES

3.48 The Commission has received a number of reports to the effect that criminal cases delayed for a variety of reasons, are also often further delayed because matters remain pending in Forensic Science Laboratories. This has added yet another impediment to the speedy dispensation of justice. Realising the critical importance of improving the functioning of the Forensic Science Laboratories, as this is essential to the proper administration of the criminal justice system, the Commission felt it was necessary to look into the problems bedeviling these laboratories with a view to evolving guidelines for their better working. The Commission accordingly convened a meeting on 3 February 1998 to discuss the issue. It was then decided that a Core Group should be formed to go into the problems of Forensic Science Laboratories and to suggest measures to resolve them. A Core Group was thereafter constituted, comprising Dr. R.K. Tewari, Chief Forensic Scientist, Bureau of Police Research and Development, New Delhi as convenor with the Directors of the Forensic Sciences Laboratories of Haryana and Rajasthan as Members together with the Director in-charge of the Central Forensic Science Laboratory of the Central Bureau of Investigation. A copy of the Memorandum setting up this Core Group is at Annexure IV. The Group has since completed its work and it was due to be submitted to the Commission shortly after the end of the period covered by this report.



IV. REVIEW OF LAWS, IMPLEMENTATION OF TREATIES AND OTHER INTERNATIONAL INSTRUMENTS OF HUMAN RIGHTS

(A) CHILD MARRIAGE RESTRAINT ACT, 1929

4.1 The Commission has remained seized of the problem of the widespread prevalence of child marriage in certain parts of the country, especially in Rajasthan, despite the existence of the Child Marriage Restraint Act, 1929. It has been interacting with the National Commission for Women and the Department of Women and Child Development to evolve suitable measures to combat this problem. On a perusal of the Draft Marriage Bill jointly prepared by the National Commission for Women and Department of Women and Child Development, Government of India, the Commission had recommended that early action should be taken on it as it believed that the provisions contained in it could have a substantial impact on reducing the incidence of child marriage. The Central Government, however, took the view that major social and economic efforts were required to bring an end to the practice of child marriage amongst those sections of society and communities where such marriages have long been conducted and, further, that the Act was administered by the States. The Commission could not accept the view that the responsibility of the Central Government ceased because the present Act is administered by the State Governments. It is convinced that all components of Government and civil society have a role to play in bringing about an end to child marriage and that effective laws are an essential instrument to achieve this end.

4.2 As the Draft Marriage Bill did not make headway, the Commission has decided to revive its original idea of itself working on an amendment to the Child Marriage Restraint Act, 1929. The Commission intends to pursue this matter at all levels, legislative, social, educational and political and urges the Central and State Governments to give greater attention to this issue.

(B) PROTECTION OF HUMAN RIGHTS ACT (1993):

4.3 On the basis of experience in the first months of its functioning, the Commission had made certain recommendations in its annual report for 1993-94, proposing amendments to its Statute in order to remove what it considered to be ambiguities and impediments concerning its competence and autonomy. In the light of further experience, however, the Commission itself came to the conclusion that a more in-depth, comprehensive and independent examination of the Act was required. The Commission accordingly requested Justice A.M.Ahmadi, former Chief Justice of India to head a high-level Advisory Committee consisting of human rights activists and legal experts to study the Act and suggest amendments.

4.4 The main issues proposed by the Commission for consideration by the Ahmadi Committee were:



- Whether the philosophy of National Institutions; their creative and constructive role in promoting human rights and the key requisites for their effective functioning, particularly in the context of the administrative system in India, are captured and incorporated in the Act?
- Whether, in consideration of the fact that most of the complaints received by the Commission concern the Home Ministry, the Commission's administrative link should be with that Ministry or with the Cabinet Secretariat?
- Whether the proviso to Section 1(2) of the Act is appropriate, as the Commission is of the view that any legislation to provide for an additional mechanism to protect and promote human rights is referable to entries 13 and 14 of List I to the Seventh Schedule to the Constitution?
- Whether the definition of "human rights" in Section 2(d) of the Act is adequate and happily worded?
- Whether, in consideration of the resource constraints of small States, a five Member Commission is necessary?
- Whether Section 14(1) of Act is comprehensive enough to enable a procedure of inquiry into complaints by "Human Rights Complaints Authorities" to be set-up under the Director-General of Police in the States?
- Whether it is necessary to provide for a power to commit in contempt of the Commission, in cases where there is inordinate delay on the part of the authorities concerned in responding to notices issued by the Commission?
- What procedure could be evolved for timely response, by the authorities concerned, to the recommendations of the Commission?
- Whether Section 16 of the Act should be retained in its present form?
- In the context of a very large number of cases handled by the Commission, whether specific provisions in the Act are necessary to enable conduct of inquiry by a level below the Commission?
- Whether it is necessary to clarify and lay down the precise scope and purpose of the provisions of Section 30 of the Act relating to the constitution of Human Rights Courts?



- In view of the delay that has been observed in laying the annual report of the Commission before each House of Parliament, whether a short time limit could be set for the completion of this procedure?
- How could an appropriate scheme be built into the Statute for an effective inquiry by the Commission into allegations of violations of human rights by personnel of the armed forces and para-military forces?
- How could the Commission be enabled to take up consideration of cases which are more than one year old, against the background of the provisions of Section 36(2)?

4.5 The Commission proposes to pursue these issues, which are vital to its effective functioning, on receipt of the report of the Ahmadi Committee.

(C) IMPLEMENTATION OF TREATIES AND OTHER INTERNATIONAL INSTRUMENTS

4.6 Under Section 12 (f) of the Protection of Human Rights Act 1993, the Commission has a statutory responsibility to “study treaties and other international instruments on human rights and make recommendations for their effective implementation.”

4.7 The efforts of the Commission to secure the accession of India to the Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment or Treatment are recounted in Chapter III(c) of this report. It is to be noted that India is already party to sixteen other international treaties drawn-up under the auspices of the United Nations and that these are:

- International Covenant on Economic, Social and Cultural Rights,
- International Covenant on Civil and Political Rights,
- International Convention on the Elimination of All Forms of Racial Discrimination,
- International Convention on the Suppression and Punishment of the Crime of Apartheid,
- International Convention against Apartheid in Sports,
- Convention on the Prevention and Punishment of the Crime of Genocide,
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,



- Convention on the Rights of the Child,
- Convention on the Elimination of All Forms of Discrimination against Women,
- Convention on the Political Rights of Women,
- Convention on the Nationality of Married Women,
- Slavery Convention of 1926,
- 1953 Protocol amending the 1926 Convention,
- Slavery Convention of 1926 as amended,
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and the
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

4.8 The Commission has daily been relying on these treaties and other international instruments in examining issues before it and the analysis of illustrative cases that are featured in this report trace the influence of some of these treaties and instruments on the Commission's opinions and decisions.

4.9 In this area, as in others relating to human rights law, the views of the Supreme Court have been of stellar importance to the country. While Article 51(c) of the Constitution enjoins the State to endeavour to "foster respect for international law and treaty obligations", the Supreme Court of India has endeavoured to interpret Indian Statutes in consonance with international treaties and other instruments. Thus, in the case of *Visakha vs. State of Rajasthan* (1997(6)SCC 241) the Supreme Court held:

"..... Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit for Article 51(c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List of the Seventh Schedule of the Constitution."



The Court further held that:

“The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for constructing domestic law when there is no inconsistency between them and there is a void in the domestic laws.”

4.10 Further, in the case *Apparel Export Promotion Council vs. A.K.Chopra* (1999(1)SCC 759), the Supreme Court held:

“The Courts are under an obligation to give due regard to international conventions and norms for construing domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law;”

and

“.....In cases involving violation of human rights, the country must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.”

4.11 In the light of the above, the Commission intends, in the period ahead, to focus in greater detail on the effective implementation of treaties and international instruments on human rights. Further, as indicated earlier, research in this respect will be undertaken for the Commission by the newly established National Institute for Human Rights in the National Law School of India University in Bangalore.

4.12 The Commission has observed that the United Nations Treaty Bodies are themselves keen on the fuller association of National Institutions for the Promotion and Protection of Human Rights with their work. Indeed, certain of them have expressed this view either in their hearings or in their written General Comments, for instance the Committee on Economic, Social and Cultural Rights, set-up under the 1966 International Covenant on that subject, has in its General Comment No.10, expressly recognized the potentially crucial role that National Institutions have in promoting and ensuring the indivisibility and interdependence of all human rights and has urged the fullest involvement of National Institutions in this endeavour.

4.13 For its part, the Commission recommends, at this stage, that reports to the Treaty Bodies be submitted in a more timely manner than hitherto and that the recommendations of these Bodies be taken fully into account in determining the policies and laws of the country.



V. RIGHTS OF THE CHILD: PREVENTION OF CONGENITAL MENTAL DISABILITIES

5.1 Serious developmental disabilities are caused to children born in this country due to inadequate attention to certain essential nutritional requirements of expectant mothers, belonging largely to disadvantaged sections of society. The number of those born with neurological disadvantages, permanently affecting their intellectual future, is alarmingly large. The Commission accordingly constituted a Core Group under the leadership of its Chairperson to seek advice in tackling this important health related human rights issue. The Core Group suggested, inter-alia, the identification of specific Blocks and Districts in the country where the problems are acute and initiation of four pilot projects.

5.2 The Commission has, in this connection, been interacting with other national institutions like the National Institute of Nutrition, Hyderabad, Pushpawati Singhania Research Institute for Liver, Renal and Digestive Diseases, New Delhi, and the All India Institute of Medical Sciences, New Delhi. The Commission considers the problem of nutritional anaemia affecting the mental development of the foetus and the infant child to be an important human rights issue. It therefore desires that the Central and State Governments undertake systemic measures to tackle this problem effectively. The Commission has also been considering the possibility of encouraging a pilot project to deal with the question of nutritional anaemia, especially in respect of pregnant women. The National Institute of Nutrition, Hyderabad has prepared a pilot project entitled 'Operational Research on Prevention and Control of Iron Deficiency Anemia – An Outline' for consideration of the Commission. This is likely to be the subject of a Seminar on Health and Human Rights, with special emphasis on Iron Deficiency, to be organized by the Commission.



VI REHABILITATION OF PEOPLE DISPLACED BY MEGA PROJECTS

6.1 After undertaking a detailed inquiry into a complaint filed by the National Alliance of People's Movements in respect of the rehabilitation of persons affected by the submergence of their lands because of the construction of the Bargi Dam across the river Narmada in Madhya Pradesh, a team of the Commission observed in a report dated 26 September 1996:

“The State has a responsibility, in the interest of the nation, to undertake appropriate projects for its economic development. The question, however, arises whether the national interest is best served when the interests of the most vulnerable sections of society, namely the Scheduled Tribes and Scheduled Castes, are seriously abridged without adequate regard to their rights. In the view of the team, it is essential to balance with greater justice and equity the national interest with the interests and dignity of those who are required to yield their land and, indeed, the very basis of their individual and communal personality, for the interests of the nation. In this connection, the team also believes that it is appropriate to recall the concerns of the Supreme Court of India as expressed in 1986 (Suppl.) S.C.C. 350 *Karjan Jalasay Yojna Assargrath Sahkar Ane Sangarsh Samiti vs. State of Gujarat and Others*; and 1986 (Suppl.) Supreme Court Cases 578 *between Gramin Sewa Sanstha Vs. State of Madhya Pradesh and Others*, which dealt with similar issues.”

6.2 Thereafter, in its annual report for the year 1996-97, the Commission, while referring to this case, expressed concern over the fate of those who were displaced as a result of mega-projects implemented by the State, and recommended that a comprehensive examination be undertaken of prevailing rehabilitation policies. It suggested, specifically, that the Central and State Governments examine and appropriately amend their laws, regulations and practices in order to ensure that when it comes to the acquisition of land for purposes related to national economic development, the provisions of the Constitution as expounded by the Supreme Court and as contained in the international instruments to which India is a party, notably ILO Convention 107 are respected. The Commission would like to note with appreciation, in this connection, that the Central Government has initiated steps to draft a national policy for resettlement and rehabilitation, adopting a more holistic approach, rather than one that was essentially oriented towards cash-compensation. The Commission intends to participate in the formulation of the new policy.

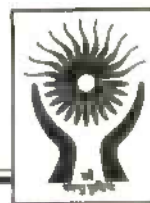
6.3 In the meantime, the Commission has continued to receive complaints from different areas of the country alleging inadequacies or indifference in the rehabilitation of communities, more particularly members of disadvantaged groups, when they have been displaced or otherwise adversely affected by mega projects. Some of the major cases brought before the



Commission relate to:

- the rehabilitation and resettlement of tribals affected by the construction of the Kabini reservoir in Karnataka;
- the rehabilitation and resettlement of tribals affected by the Bandipur Project Tiger National Park in Karnataka;
- the rehabilitation of persons affected by the Maheswar Dam in Madhya Pradesh;
- the rehabilitation of persons displaced in consequence of a Defense Ministry project in Karnataka.

6.4 These cases are being examined individually. While the Commission would be making specific recommendations in respect of each of them, it nevertheless urges that a comprehensive national policy on rehabilitation and resettlement be finalized at the earliest. Further, in view the vast and recurrent dimensions of this problem, the Commission on its part intends to appoint a Special Rapporteur to help it promote and protect the human rights of those who are displaced in large numbers by mega-projects, or who face such a prospect because of reasons that originate in State policy or acts of governance.



VII CHILD LABOUR

(A) CHILD LABOUR IN CARPET INDUSTRY

7.1 In the course of the year under review, the Commission held detailed discussions with the Government of Uttar Pradesh in respect of child labour in the carpet industry. As a result of these discussions and visits to the carpet manufacturing area on behalf of the Commission, a major project was launched, on 30 March 1999, in Varanasi to deal with the serious human rights problem. Justice V.S.Malimath, a Member of the Commission, released the project and the action plan in the presence of the Minister for Labour of the Government of Uttar Pradesh. The Carpet Export Promotion Council and the Carpet Manufacturers Association offered their fullest support to the Government of Uttar Pradesh in their effort to eliminate the problem of child labour in that industry.

7.2 The project and action plan were prepared by the Labour Commissioner of Uttar Pradesh under the guidance of the National Human Rights Commission following initiatives taken by the Commission. The project envisages making an inventory of all the looms located in the carpet-belt of U.P., consisting of the Districts of Mirzapur, Badohi and Varanasi. The statutory authorities would, after visiting each loom, collect the relevant information in regard to each loom, the employer, the labourers employed, their age, the terms and conditions of their employment, including wages. If any children or bonded labourers are found, they would be rescued and steps taken for their rehabilitation. Children would be admitted in special schools established specifically for the purpose in the locality. Steps would also be taken to grant relief in accordance with the judgement of the Supreme Court in the case of M.C.Mehta vs. State of Tamil Nadu (JT 1996(11) S.C.685). All the particulars would be entered on a form to which the employer would affix his signature accepting the correctness of the information furnished therein. He would also undertake not to employ any child below the age of 14 years. Any change in employment is to be communicated to the concerned officers by the employer. Further, new employment will be provided only on production of a certificate of age. Vigilance teams are to be constituted consisting of prominent persons in the village/town to keep a watch over the situation and to inform the concerned officers about the employment of any child or bonded labourer in any of the looms in their village/town. The teams will cover all of the places where looms are located in all the districts in the carpet-belt. The National Human Rights Commission will monitor the entire work through its Special Rapporteur for Uttar Pradesh, Shri Chaman Lal. The process would continue until the Labour Commissioner of Uttar Pradesh is in a position to certify that there is no longer any child/bonded labour in the carpet industry of Uttar Pradesh.

7.3 Given the great care that has gone into the preparation of this project and action plan, the Commission earnestly trusts that the Government of Uttar Pradesh will implement this



project fully and also pursue the wider project which it has devised, namely the Child Labour Abolition Programme (CLAP), aimed at dealing comprehensively with child labour in hazardous industries in that State.

**(B) PREVENTING EMPLOYMENT OF CHILDREN BY GOVERNMENT SERVANTS:
AMENDMENT OF SERVICE RULES**

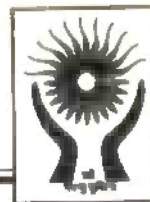
7.4 Following reports of employment of children below the age of 14 years by Government servants and distressing information about the mistreatment of such children, the Commission recommended that this practice should be prohibited through the addition of an appropriate Conduct Rule expressly for this purpose. The amendment suggested to Government of India was as follows:

Central Civil Services (Conduct) Rules, 1964 shall be amended by adding the following as Rule 22-A:

- "22-A: (i) No Government Servant shall employ to work any child below the age of 14 years;
- (ii) breach of sub-rule (i) shall be misconduct attracting a major penalty".

7.5 The Commission thereafter requested the Ministry of Personnel, Public Grievances and Pensions, Government of India in February 1997 and the Chief Ministers of all the States in March 1997, to enact amendments in the Service Rules of the Central Government and State Government employees respectively. The State Governments of Andhra Pradesh, Assam, Jammu and Kashmir, Karnataka, Maharashtra, Tamil Nadu, Tripura and West Bengal accepted the recommendation of the Commission and issued notifications. The State Governments of Gujarat, Goa, Himachal Pradesh, Haryana and Mizoram informed the Commission that, as and when the required amendment would be made by the Central Government, the same would become applicable to them. The remaining States indicated that they were considering adopting the recommendation of the Commission. The Commission takes this opportunity to call upon them to adopt the recommendation without further delay.

7.6 As the Ministry of Personnel, Public Grievances and Pensions expressed certain reservations in regard to the recommendation of the Commission, the matter was pursued with it in January and February 1999. The Ministry of Personnel thereafter agreed in a discussion to review its earlier stand in the matter. The Commission trusts that its recommendation will be accepted and that the necessary amendments in the CCS (Conduct) Rules will soon be made.



VIII CHILD PROSTITUTION

8.1 The grave issue of child prostitution has been a major concern of the Commission over a number of years. The Commission has, accordingly, been interacting with the Department of Women and Child Development (WCD), Government of India, the National Commission for Women and UNICEF to evolve measures to deal with this problem.

8.2 In order to better coordinate efforts, the Commission constituted a Core-Group on Child Prostitution under the Co-Chairmanship of Justice Sri V.S.Malimath and Sri Virendra Dayal, Members of the Commission. The other members of the Core Group include the Chairperson, National Commission for Women (NCW), the Secretary, Department of Women and Child Development, representatives from UNICEF and the Director General (Investigation) of the Commission. To start with, the Commission selected Delhi and Karnataka State (Belgaum and Dharwar Districts) to launch a major media campaign on the subject.

8.3 The campaign in Delhi commenced on 10 September 1998, with the release of posters prepared by UNICEF. These were displayed in a number of prominent sites and locations around the city. Numerous NGOs cooperated enthusiastically with the effort.

8.4 In a meeting held on 22 February 1999, a number of additional decisions were taken with a view to spreading awareness among the public. These included:

- To convene a meeting with all private television channels to persuade them to take up the awareness spreading campaign against child prostitution.
- UNICEF would examine how best the poster campaign in Delhi could be extended to other areas.
- The Delhi Administration would take measures to ensure that cinema halls displayed appropriate slides to increase awareness on the subject.
- The Poster campaign would also focus on tourist resorts, which were regrettably often involved in child prostitution. It was considered essential that tourists should be aware that child prostitution was a crime punishable under the law.

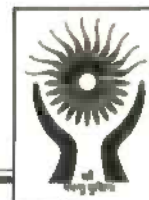
8.5 The Commission also held a meeting of the Core Group on 11 March 1999. Participants in this meeting included the Chairperson, NCW, the Chief Secretary, Delhi Government, and representatives from the Department of Women and Child Development, Government of India, UNICEF, All-India Radio, Doordarshan and the Delhi Police. The decisions included the following:



- The Government of Delhi undertook to initiate steps to exhibit slides in cinema halls covering the sexual abuse of children. Ration shops, major hospitals and Government buildings frequented by the public will also exhibit posters.
- Doordarshan agreed to screen a spot/short film already prepared by UNICEF.
- The Department of Women and Child Development, Government of India agreed to allocate Rs.12 lakhs to cover the charges of displaying posters on the Delhi Transport Corporation buses for one year.
- The Delhi Police agreed that posters on the sexual abuse of children would be displayed at all police stations.
- UNICEF would assist the Commission in a poster campaign in Karnataka, as was done in Delhi.

8.6 In addition, Justice Shri V.S.Malimath held detailed discussions with the Deputy Commissioner, Belgaum and the Chief Executive Officer, Zilla Panchayat, Belgaum on 28 March, 1999 during his visit to that district. The Devdasi system prevailing in Belgaum was also the focus of concern. The Director, Doordarshan Kendra, Bangalore and the Director, All India Radio, Bangalore were associated with the campaign.

8.7 The evil of child prostitution is, regrettably, a vast and growing human rights problem. It has the most serious consequences for the country as, indeed, for South Asia and well beyond. The Commission therefore urges the Central Government to make a major effort to bring this cruel practice under control before it grows even more wide-spread than it has. This is a matter which must receive a higher level of political attention, for it is the most demeaning and humiliating form of violating the rights of the child and the Convention on this subject to which India is a party.



IX ABOLITION OF BONDED LABOUR

9.1 Article 23(1) of the Constitution prohibits 'begar' and other similar forms of forced labour and adds that any contravention of this provision shall be an offence punishable in accordance with law. The Bonded Labour System (Abolition) Act, 1976 traces its origin to this provision of the Constitution, its Statements of Objects and Reasons acknowledging that "there still exists in different parts of the country a system of usury under which the debtor or his descendents or dependents have to work with no wages in order to extinguish the debt." The Statement adds "The system implies the infringement of the basic human rights and the destruction of the dignity of human labour."

9.2 Regrettably, the system persists, and implementation of the Bonded Labour System (Abolition) Act, 1976 has been less than whole-hearted. The problem of bonded labour has, therefore, been receiving the attention of the Supreme Court of India since 1982, in the form of Public Interest Litigation petitions. The Court has, in several of its judgements and orders, pronounced upon the inviolability of the Fundamental Rights of those exploited under the system of bonded labour and it has suggested several remedial measures to deal with this odious system. The various States have also been associated by the Supreme Court in this task.

9.3 By its order of 11 November 1997, the Supreme Court requested the Commission to be involved in the supervision of work relating to the abolition of Bonded Labour. The Court made available to the Commission a sum of Rs. 10 lakhs as an initial amount to defray the expenses that may be involved in undertaking this task. A Central Action Group was immediately constituted by the Commission under the leadership of its Chairperson, with the Secretary, Ministry of Labour as its Member Convenor (Annexure V). The Commission has been interacting regularly with the Ministry of Labour in respect of this matter. Further, this issue is reviewed and monitored by the Commission every fortnight, in its Special Agenda for Cases and Projects under the Supreme Court's mandate.

9.4 To strengthen its capacity to deal with this issue, the Commission has appointed a Special Rapporteur to work for it in the four Southern States, namely Andhra Pradesh, Karnataka, Kerala and Tamil Nadu. The Commission is also contemplating appointing Special Rapporteurs for other States where the problem is acute. A leading advocate of the Supreme Court, Shri Muralidhar, is providing his services pro bono to the Commission in this matter.

9.5 The Commission has initiated action in the following matters in order to tackle the problem in a sustained way:

- Preparation of a proforma for periodical reporting by the State Governments.



- Identification of sensitive districts in the country where the problem of bonded labour is acute.
- Appointment of Special Rapporteurs in different States and regions of the country.
- Short-listing of reputed and dedicated NGOs for the States/sensitive districts.
- Laying down the modalities and issues/subjects, resource persons, format etc, for organising one-day workshops for sensitizing District Magistrates in the most critical regions.

9.6 The Commission has noticed with regret that, in almost all the States, the Vigilance Committees that were established earlier are non-functional and that no serious effect has been taken to identity bonded labour even though the existence of such labour in as many as 100 districts and in specified industries has been well documented by various studies. The Commission calls upon all the State Governments to bring fresh energy to this serious matter and to vigorously implement the provisions of the Bonded Labour System (Abolition) Act.



X QUALITY ASSURANCE IN MENTAL HOSPITALS

10.1 The Commission has been deeply concerned at the unsatisfactory conditions prevailing in mental hospitals in the country, many of which function as custodial rather than therapeutic institutions. In the light of such problems as overcrowding, lack of basic amenities, poor medical facilities, little or no effort at improving the awareness of family members about the nature of mental illness, or of the possibilities of medication and rehabilitation, the Commission came to the view that there was great need for it to take up this issue which, if not redressed, would result in the continuing violation of the rights of those greatly in need of understanding and support.

10.2 In order to tackle this issue in a systematic way, the National Human Rights Commission entrusted a research project on "Quality Assurance of Mental Hospitals" to the National Institute of Mental Health & Neuro Sciences, (NIMHANS) Bangalore. One of the Members of the Commission has been supervising and monitoring this project. The Commission has sanctioned an amount of Rs.6.60 lakhs to the Institute for this project, which is due to be completed shortly after the period covered by this report. The Director of the project is Dr. S.M. Channabasavanna, formerly Director of NIMHANS.

10.3 Once the report is completed, it will be recommended to the Central Government for implementation. NIMHANS has also proposed that a workshop (an orientation programme for the staff of the mental hospitals) be held between 5-10 April 1999 in Bangalore to cover the mental hospitals in the States of Kerala (Trivandrum, Trichur, Calicut), Karnataka (Dharwar), Tamil Nadu (Chennai), Andhra Pradesh (Hyderabad, Vishakhapatnam), Maharashtra (Thane, Pune, Ratnagiri, Nagpur), Goa (Panaji), Gujarat (Ahmedabad, Baroda, Kutch, Valsad, Rajkot, Jamnagar). It has further proposed that three similar workshops be held in the months of June, July and August 1999 at NIMHANS, Bangalore to cover other regions.

10.4 The completion of the report and its subsequent implementation could be a contribution of singular importance by the Commission to the protection of the rights of a group that is, too often and readily, neglected.



XI. MANUAL SCAVENGING

11.1 The Commission has increasingly expressed its dismay about the inhuman and degrading practice of manual handling of night soil, which is prevalent even today in many parts of the country. The Commission views this as a grave affront to human dignity and a major social evil. It finds acquiescence in this practice totally abhorrent. Indeed, despite the launching of a national scheme in March 1992 to liberate and rehabilitate those engaged in this demeaning work, the Commission has observed that the implementation of the scheme is appalling, except in a few States. This speaks of an apathy, bordering on the unforgivable, in respect of a deep societal wrong.

11.2 The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 prohibits the employment of manual scavengers as well as construction or continuance of dry latrines. The Central Government, pursuant to the Act, issued a notification on 24 January 1997 bringing the Act into force from 26 January 1997 in all the Union Territories and six states viz. Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal.

11.3 But implementation in these States and elsewhere has been abysmal. The Commission has therefore pursued this matter through letters addressed to the Union Ministers of Social Justice and Empowerment, Urban Affairs and Employment and the Chief Ministers of all States/ Administrators of UTs on 24 January 1997 and 8 February 1997 respectively. It has also brought up this matter in the course of discussions with the State Governments.

11.4 The Commission has, in addition, been in regular touch with the National Commission for Safai Karamcharis, the Ministry of Social Justice and Empowerment, the Ministry of Urban Affairs, the Ministry of Rural Areas and Employment, in order to evolve suitable measures to eradicate this social evil and to give impetus to this effort.

11.5 The Commission continues to pursue this matter. It takes this opportunity to remind the political, administrative and civic leadership of the country that the practice of manual scavenging is a standing indictment of our society and that the nation has a compelling duty to give to this problem the attention that it deserves.

11.6 As of the end of the reporting period, the position in terms of the applicability of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was as follows:

- The Central Act was applicable in:
Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura, West Bengal and all UTs.



- The Central Act has been adopted in:
Assam, Haryana, Orissa, Punjab, Gujarat, Bihar and Madhya Pradesh.
- The adoption of the Central Act is under consideration in:
Rajasthan, Tamil Nadu and Uttar Pradesh.
- No decision has yet been taken in:
Arunachal Pradesh, Kerala, Jammu & Kashmir, Himachal Pradesh, Meghalaya,
Manipur, Mizoram, Nagaland and Sikkim.



XII PROBLEMS OF DENOTIFIED AND NOMADIC TRIBES ADVISORY GROUP ON DENOTIFIED NOMADIC TRIBES

12.1 The Commission constituted an Advisory Group on Denotified and Nomadic Tribes in the month of May, 1998 to advise the Commission as to the nature of the enquiries that the Commission may undertake as well as the recommendations that it could make to deal with the issues raised in a petition made by the Denotified and Nomadic Tribal Rights Action Group highlighting the problems being faced by the denotified tribes. The Advisory Group comprised of Shri B.D. Sharma, former Commissioner of Scheduled Castes and Scheduled Tribes as Chairman and Smt. Mahasveta Devi, Prof. G.N.Devy, Shri Laxman Gaikwad and Smt. Ananya Chatterjee as Members. Dr. Rajeev Dhavan, Sr. Advocate, Supreme Court of India was requested to be the legal adviser of the Group. (Annexure VI).

12.2 The Commission had earlier received a petition from the Denotified and Nomadic Tribal Rights Action Group highlighting the problems faced by the Denotified Tribes. The petition stated that the Denotified Tribes constituted almost 2.5 percent of the population of the country and many of these Tribes were still being treated, for all practical purposes, as habitual offenders. The group expressed its anguish at the many instances of mob-lynching, arson and police brutality against members of the erstwhile Denotified Tribes. The Commission, after consideration of the petition, felt that it was necessary to set up an Advisory Group to examine all aspects of the problems of the Denotified Tribes in order to enable the Commission to make a purposeful intervention with appropriate recommendations to the Governments, both State and Central.

12.3 The Advisory Group has since submitted its report to the Commission. The Commission will be now be seeking the views of the concerned Government authorities and a cross section of society on the various important issues contained in the report.



XIII PROMOTION OF HUMAN RIGHTS LITERACY AND AWARENESS

13.1 A key statutory function assigned to the Commission relates to the spread of human rights literacy among various sections of society and the promotion of awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.

13.2 In furtherance of this complex responsibility, the Commission took a number of steps during the period under review to spread the message of human rights through the country. A summary of these efforts is provided below.

(A) OBSERVANCE OF THE 50TH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

13.3 The observance of the 50th Anniversary of the Universal Declaration on Human Rights (UDHR) commenced from 10 December, 1997. The Government of India constituted a national committee for the purpose, headed by the Union Home Minister. The committee, which received ideas from the Commission, drew up a plan of action for enhancing human rights awareness and promoting human rights education. The year-long programme culminated in a function organized by the Commission on 10 December, 1998. To mark the occasion, the Commission published the Declaration in 14 Indian languages and printed two specially designed posters. A painting competition was also held in which some 150 children participated. The Central themes were the Rights of Children, the Duties of Children and the Prevention of Cruelty to Animals.

(B) MOBILISING THE EDUCATIONAL SYSTEM

13.4 In order to promote a deeper understanding of human rights among school-going children in the country, the Commission has been deeply involved with efforts that it has encouraged of the Human Resource Development Ministry, the NCERT, NCTE. A full account of these efforts is contained in earlier annual reports of the Commission. In addition, the Commission has sought every occasion to benefit from and encourage the efforts of many non-governmental organizations that have been doing remarkable work in this field.

13.5 During the year under review, there were significant gains in respect of human rights education at the university level as well. The University Grants Commission, at the instance of the National Human Rights Commission, constituted a Standing Committee on human rights education at the university level. By March 1999, the Universities of Bombay, Burdwan, Cochin, Dumka, Guwahati, Lucknow, Pune, Punjab, Tirupati, Utkal, Varanasi, Andhra University at Waltair, Punjab University (Chandigarh), Jammu University, Banaras Hindu University, Delhi University, Rajasthan University (Jaipur), Karnataka University, Kurukshetra University, Manipur



University (Manipur), Jamia Millia Islamia University, Saurashtra University, Rajkot, Jawaharlal Nehru University, B.R. Ambedkar University, Lucknow, Hyderabad University and Aligarh Muslim University had started a variety of courses offering certificates, diplomas, under-graduate and post-graduate degrees. The Commission urges the University Grant Commission to widen such efforts to other universities as well.

13.6 In the context of a large number of universities in the country introducing human rights teaching, the Commission felt the need to strive towards a certain degree of uniformity in the standard of teaching. With a view to compiling relevant information on a pilot basis, the Commission entrusted the undertaking of a study on this subject to the Centre for Research and Training in Human Rights in Bangalore. An amount of Rs.10,000/- was sanctioned to the Centre for this proposal and a report has since been submitted by it to the Commission. The study related to institutions of higher education in Karnataka State, including universities, affiliated colleges, independent institutions, administrative and management institutions, etc. Dr. N.R. Madhava Menon, Member, Law Commission, coordinated the work relating to the preparation of the report.

13.7 In a major effort to establish a centre of excellence for human rights education, the Commission is setting-up an "Institute for Human Rights Education, Research and Documentation" at the National Law School of India University (NLSIU), Bangalore. A Chair on Human Rights was created with the assistance of the Commission. A Memorandum of Understanding to this effect was signed by Mr. N.Gopalaswami, Secretary General of the Commission and Dr.N.L.Mitra, Director, National Law School of India University, Bangalore in the premises of the Commission on 25 September 1998.

13.8 The Institute will be assisting the Commission in the discharge of certain of its key statutory functions. It would undertake the following activities:

- Promote research in the field of human rights.
- Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- Spread human rights literacy among various sections of society.
- Promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- Study treaties and other international instruments on human rights and make recommendations for their effective implementation.



13.9 For these purposes, the Institute will offer regular undergraduate and postgraduate courses on human rights, fundamental duties, national/international human rights issues, orientation courses for NGOs, law teachers, academic functionaries, motivational courses for functionaries of political parties, Panchayati Raj institutions, trade unions, media persons and a package of programmes for training civil service entrants.

13.10 The Documentation Wing will have a library and a link up with depositories through website/internet facilities. A special link will be established with the Commission for facilitating access to lectures and research papers. The Institute will also offer courses and facilities for research work in other important areas related to human rights, such as "Issues of Pluralism".

13.11 The Chairperson of the Institute for Human Rights Education, Research and Documentation shall be of the level of a very senior professor or a retired High Court Judge, who would be appointed for a period of three years. He will be selected by a Committee headed by the Chairperson, NHRC or his nominee, with the Director of NLSIU, Bangalore or his nominee and the Secretary General, NHRC as Members. He will be directly responsible to the University for the day-to-day running of the Institute.

13.12 The NHRC has created an endowment, with an one time contribution of Rs. 30 lakhs, in order to meet expenses relating to the Chair. The other recurring and non-recurring expenses will be met by NLSIU.

(C) HUMAN RIGHTS EDUCATION FOR POLICE PERSONNEL

13.13 During the course of the year 1998-99, the Chairperson, Members of the Commission and officers of the Investigation Division, led by the Director General (Investigation), continued their efforts to sensitize all levels of the police to human rights issues. In particular, during their visits to the various States, discussions were held with the Directors General of Police as also the Heads of Police Training Institutions to encourage them to adopt and effectively use the human rights training materials prepared by the Commission for police personnel at the basic and refresher course level. The Commission is convinced that training programmes, when properly structured and conducted, can have a most valuable effect on police personnel and improve their responses even in provocative situations.

(D) HUMAN RIGHTS EDUCATION FOR PARAMILITARY AND ARMED FORCES PERSONNEL

13.14 The Commission sustained its efforts to ensure that the para-military forces of the country continued to improve the quality of their training in human rights matters. Towards this end, the Director General (Investigation) held a meeting with senior officers of the rank of I.G.



in-charge of training of various states to design a common training syllabus. The Core Group set up for this purpose prepared a training syllabus for the para-military forces which was approved by the Commission and was then circulated to the Heads of the Paramilitary Forces on 24 September 1998 for implementation. Six out of the seven Central Police Organizations reported that they have included this training syllabus on human rights in their curriculum.

13.15 As a part of the effort of the Commission to spread an awareness of human rights amongst the para-military forces, the tradition was maintained of holding a national-level debate competition on human rights. This year, it was organised at CRPF Headquarters in New Delhi on 24 March 1999, the subject being "Is the duty of Paramilitary Forces restricted to the observance of Human Rights or does it extend to the protection of Human Rights of others?" Twenty-two participants from the Border Security Force, National Security Guards, Railway Protection Force, Central Industrial Security Force, Assam Rifles and Central Reserve Police Force took part in the debate. The team trophy was won by the CISF.

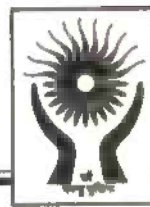
(E) INTERNSHIP SCHEME

13.16 The management consultants, M/s Mckinsey & Co., in a study undertaken for the Commission, had, inter alia, recommended that the Commission should evolve a system of internships to expose talented students, both from India and abroad, to the work of the Commission. It was suggested that these interns could be pursuing graduate or post-graduate studies in law, political science, sociology or criminology.

13.17 The Commission accepted this recommendation and the Chairperson issued Practice Direction No.11 as a guideline for "The summer internship programme" (Annexure VII). The first Summer Internship Programme was thus held for university students from 16 June 1998 to 15 July 1998. Seven students from the Law Faculty of Delhi University and Jamia Milia Islamia University were selected for participation in the programme. The interns were paid a stipend of Rs.2,000/- per month. They were attached to the different divisions of the Commission and also were familiarized with important cases considered by the Commission.

13.18 The Commission has also been giving placement, from time to time, to students from various universities on consideration of the applications from the students/universities. In this regard, students from the Tata Institute of Social Sciences, Mumbai and the National Law School of India University, Bangalore were also given placement during the year 1998-99.

13.19 The Commission accepted an offer of the Danish Centre for Human Rights, Copenhagen to make the services of a Human Rights Officer available to the Commission to work on a research project on "The Conditions of Juvenile Homes and other Institutions/Homes set up under different Statutes". The project was to study the administration and conditions of the



different homes as well as how to improve the human rights of the inmates of these different homes.

(F) INDO-BRITISH TRAINING PROJECT ON HUMAN RIGHTS AND PRISON MANAGEMENT

13.20 The Commission, in collaboration with the British Council in India, the Bureau of Police Research & Development, and two non-governmental organisations, viz., PRAJA and ICPS organised a training project on "Human Rights and Prisons Management". The aim of the project was to bring together prison officials and improve prison management systems with special reference to promoting good practices and gender sensitivity in jail management.

13.21 Sixteen senior officials associated with prison affairs were selected as trainees for a study tour of UK prisons for two weeks in January 1999. The trainees are to serve as a national resource for further training of trainees in India. The project was designed to help Indian prison officials learn from the experience of the United Kingdom in areas of prison management and to help bring about attitudinal and behavioural changes in management practices. Issues such as sentence planning, inmate development, pre-release initiatives, promoting appropriate values in prison staff, the care of prisoners and help to them to become self-supporting after release, were the focus of attention during the training. The trainees designed a 3-day human rights training module along with appropriate training materials and were expected to organise sixteen, 3-day human rights training courses from April 1999 to train 320 prison officials. The Commission is continuing its follow up of the project to inculcate human rights values in penal administration.

(G) SEMINARS AND WORKSHOPS

13.22 The Commission continued to organise seminars and workshops to enhance an understanding of human rights and to support the activities of non-governmental organisations and academic institutions to this effect.

13.23 A Workshop was organised in association with UN High Commissioner for Refugees (UNHCR) in New Delhi on 30 May 1998 on the subject of refugees and displaced persons. It was the view of the Workshop that the growing number of such persons represented a failure to resolve conflicts and their underlying causes such as intolerance and poverty. Further, incorrect and insensitive development models had also contributed to a new population of displaced persons within and between countries, who required proper rehabilitation. The Workshop stressed the need for good governance and humane management of refugee situations. The need was also stressed for domestic laws which reduced the areas of official administrative discretion and made for expeditious handling of asylum requests. It was also



emphasized that restraint must be exercised in dealing with matters of repatriation so as to avoid forced repatriation.

13.24 A South Asia Workshop on Human Rights Education in Schools in India was jointly organised by the Commission with HURIGHTS, OSAKA an NGO from Japan, in New Delhi, between 15-18 October 1998. Representatives from Japan, Sri Lanka, Bangladesh, Nepal, Pakistan and India participated. They shared their experiences and concentrated their discussions principally on the development of human rights education in schools.

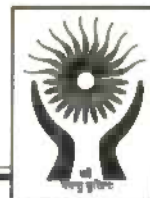
13.25 A Seminar on "Protection of Human Rights: A Critique" was organised on the occasion of the golden jubilee of the Universal Declaration of Human Rights in Collaboration with National Human Rights Commission, National Commission for Women and Indian Social Institute on 13-14 November 1998 in New Delhi to mark the 50th Anniversary of the Declaration. The seminar gave special attention to the rights of Scheduled Castes and Scheduled Tribes, in particular the girl child and women belonging to these communities, the problems of marginalized sections of society and minorities.

13.26 Human Rights Day was observed on 10 December 1998. The day also marked the culmination of the observances relating to the fiftieth anniversary of the Universal Declaration, which was adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948. Dr. Justice A.S. Anand, Chief Justice of India, was the Chief Guest at the function. The message of the UN Secretary General Mr. Kofi Annan, was also read out on the occasion. Amongst the speakers at the function were Dr. Najma Heptulla, Deputy Chairperson of the Rajya Sabha, who spoke on the subject 'Women's rights are human rights' and Dr. L.M. Singhvi, MP, who spoke on the theme 'Human rights and implications for social and economic policy'. Dr. Justice A.S. Anand, released two special posters on the Universal Declaration and fourteen booklets containing that Declaration in different languages of India.

13.27 In the framework of UNESCO's activities relating to the commemoration of the Fiftieth Anniversary of the Universal Declaration of Human Rights, and in accordance with a Plan of Action for the United Nations Decade for Human Rights Education (1995-2004), an Asia-Pacific Regional Conference on "Education for Human Rights in Asia and the Pacific" was held from 3-6 February 1999 at the World Peace Centre, Maharashtra Institute of Technology, Pune. The conference was jointly organised by the National Human Rights Commission, the World Peace Centre of MAEER's MIT, Pune, the Indian National Commission for Co-operation with UNESCO, New Delhi and UNESCO's Division of Human Rights, Democracy and Peace (Paris) with the support of UNESCO Headquarters.

13.28 The objectives of the conference were to:

- carry out a general overview of the situation concerning human rights education



in Asia and the Pacific, in particular to evaluate the state of education for human rights in schools and institutions of higher education;

- review methods and materials in the field of human rights education, including innovative methods as well as relevant courses and curricula in different educational establishments;
- contribute to the promotion of non-formal education in the field by elaborating concrete recommendations on the subject;
- determine the tasks and obligations of States related to the promotion of human rights education, and to encourage them to elaborate national plans in the field;
- evaluate the role of human rights education in preventing conflicts and ensuring better protection of human rights of women, children and representatives of various vulnerable groups (persons belonging to minorities, backward classes, migrant workers, disabled persons, etc.);
- discuss the role of national bodies for the protection of human rights, research and training institutions in the field, non-governmental organisations and other actors of civil society in the promotion of better knowledge on human rights and their protection;
- elaborate, discuss and adopt an Asia-Pacific implementation strategy aimed at the promotion of human rights education.

13.29 The Conference brought together representatives of governmental structures dealing with human rights education, as well as representatives of intergovernmental and non-governmental organisations, human rights research and training institutions, UNESCO Chairs in the field and institutions of higher education, among others.

13.30 The Conference led to the adoption of the "Pune declaration on education for human rights in Asia and the Pacific region". The declaration notes the diversity of problems in the Asia-Pacific region and defines the principal aims of Education for Human Rights. It also categorizes the contents of Education for Human Rights, its purpose and its aims. It makes a number of recommendations to accelerate the process of promoting Education for Human Rights in this region. The declaration recognised the role of national human rights institutions, non-governmental organizations and their regional associations in the implementation of national and regional plans and strategies in the field of Education for Human Rights. It called upon national human rights institutions, individually and jointly through their regional forum in



Asia and the Pacific, to support the efforts of governments, academic institutions, NGOs, and other players for the implementation of national programmes in line with the aims of the UN Decade for Human Rights Education (1995-2004).

13.31 The seventh Asia-Pacific Workshop on Human Rights was held in New Delhi between 16-18 February 1999. It was organised by the Ministry of External Affairs in consultation and cooperation with the United Nations High Commissioner for Human Rights, who visited Delhi on that occasion and held most valuable discussions with the Commission.

(H) PUBLICATIONS AND THE MEDIA

13.32 The monthly Newsletters of the Commission continued to be a valuable source of information on the Commission's work, programmes and concerns. It has also been providing the gist of important decisions of the Commission in respect of individual complaints addressed to it. The Newsletter continues to be widely appreciated by human rights activists, members of the legal fraternity, administrators, representatives of NGOs, research scholars and students. The Commission receives a regular flow of letters concerning the Newsletter, variously expressing appreciation and making suggestions for its improvement.

13.33 The demand to be added to the Commission's mailing list is large and growing. The number of addresses in the mailing list has now risen to 4,000 with more requests coming in. The Newsletter is also much in demand at symposiums, seminars and workshops on human rights, whether organized by the Commission itself or by others.

13.34 The Newsletter is now available on the Commission's web-page: 'www.nhrc.nic.in'. This will help the Commission to reach a much wider audience.

13.35 The Commission has been maintaining its clipping information service in the form of a computerised database. Newspaper clippings can thus be retrieved newspaper-wise, data-wise and topic-wise. This service has provided a very useful source of information not only to the Commission, but also to a number of research scholars, students and media-persons, who have easy access to it.

13.36 The Commission would once again like to express its thanks to the media for the increasing coverage of human rights issues. There has been constant interaction with the Commission. Interviews with the Chairperson and Members on varied human rights issues have appeared regularly on television channels. Further, there have been regular briefings of the media, both through press-releases and on a one-to-one basis. Indeed, the media has been a key ally of the Commission in promoting and protecting human rights. As in the past, the Commission has frequently taken cognizance of human rights violations on the basis of media reports.



13.37 Encouraged by the range and manner of cases considered by the Commission, and the report of the cases in the media, a number of film makers have taken-up projects on human rights issues and included in their footage cases that have been handled by the Commission.

(I) RESEARCH PROGRAMMES & PROJECTS

13.38 In pursuance of the statutory responsibility entrusted to the Commission to undertake and promote research in the field of human rights (Section 12(g) of the Act), a variety of programmes and projects continued to receive the attention of the Commission. Amongst those that came before the Commission on each Friday, when the Programme Agenda of the Commission is discussed or before meetings of the Full Commission, which are attended in addition by the Chairpersons of the National Commission for Minorities, the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women, were issues relating to conditions in juvenile homes, the application of forensic science in the administration of justice, the elimination of bonded and child labour, the prevalence and deleterious consequences of iron deficiency, child prostitution and quality assurance in mental hospitals. In each instance, the Commission interacted with the concerned governmental agencies and non-governmental organizations involved with the issue and with experts known for their knowledge and competence in respect of these matters.

13.39 By the end of the year under review, reports on three major projects undertaken on behalf of the Commission were nearing completion. They were entitled: State of the Art Forensic Sciences - for Better Criminal Justice; Large-Volume Parenterals - Towards Zero Defect; and Quality Assurance in Mental Health.

13.40 Further, as indicated elsewhere in this report, the Commission also set up a Chair on Human Rights at the National Institute for Human Rights Research and Documentation (IHRERD), in the premises of National Law School of India University, Bangalore. In the course of the year, it had referred the following Research Projects to the IHRERD:

- The study of treaties and other international instruments on human rights and the making of recommendations for their effective implementation,
- Imminent problems connected with the spread of HIV infection and Human Rights concerns of privacy and the dignity of HIV positive persons,
- The question of jurisdiction of Human Rights Courts under section 30 of the provisions of the Protection of Human Rights Act, 1993.
- The National Police Commission's observations about the misuse of the power of



arrest by the police and the collection of statistics, under the Pilot Project, as to the reasonableness of the exercise of the power of arrest by the police.

- Sexual abuse of women and children.



XIV. NON-GOVERNMENTAL ORGANISATIONS

14.1 The Protection of Human Rights Act 1993 requires the Commission to "encourage the efforts of non-governmental organisations working in the field of human rights." No duty is more essential for the Commission if it is to fulfil its responsibilities, for NGOs are its natural allies, sternest critics and indispensable partners. Just as the Commission needs to turn to NGOs in every aspect of its work, so it has had to intercede on behalf of NGOs - human rights defenders - when they have experienced harassment or difficulties.

14.2 No field of activity of the Commission now remains insulated from NGOs, whose advice has also been sought on ways to make the Commission more effective. The Commission receives numbers of public-interest complaints from NGOs. They have often been associated with aspects of the investigations undertaken by the Commission. Further, in respect of projects and programmes, the list grows of NGOs working closely with the Commission, particularly in respect of serious societal issues relating, inter alia, to matters such as child and bonded labour, child prostitution, literacy and human rights education, health care and malnutrition, the rights of women, the rights of vulnerable and marginalized groups, the problems of Dalits and Tribals.

14.3 The Commission is aware that it still has a long way to go before it can say that it has established a truly satisfactory and systematic method of drawing on the vast potential and talents of NGOs. It is therefore constantly seeking to improve its ways of interacting with them and is frequently reminded by them of the need to do so. The list of NGOs maintained by the Commission is growing steadily in size and it has proven of great value to the Commission in seeking partners, in different parts of the country, to work with in specific instances and situations. The list has also facilitated net-working amongst like-minded NGOs, strengthening their capacities in the process.

14.4 As in the past years, the Commission continued to make modest financial contributions to NGOs for seminars or like functions organised by them in respect of human rights matters. In particular, the Commission sought to ensure that such functions were related to practical follow-up measures that would contribute towards the betterment of the human rights situation in the country. Amongst those financially assisted in the course of the year were SEVAK, which received a grant for a seminar held in Calcutta in September 1998, on "Strategy Development for the Promotion of Human Right of the Mentally Ill," and the Asia-Pacific Conference on "Education for Human Rights" held in Pune in February 1999.



XV. STATE HUMAN RIGHTS COMMISSIONS AND HUMAN RIGHTS COURTS

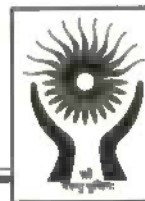
15.1 In its report of the previous year, the Commission had emphasized the need for human rights mechanisms at the State level and at levels even below the State, in order to ensure quick redressal of complaints. The Commission had focussed, in this connection, on the necessity for the early constitution of State Human Rights Commissions in all of the States.

15.2 By the end of the year 1997-98, State Commissions had been set up in West Bengal, Himachal Pradesh, Madhya Pradesh, Assam, Tamil Nadu, Punjab and Jammu & Kashmir. During the year under review, Manipur and Kerala also established State Commissions, the Chairperson and Members of the former being appointed on 31 July 1998 and of the latter on 11 December 1998.

15.3 In response to the Chairperson's letter dated 5 October 1998 to all States which have not yet constituted State Human Rights Commissions, Gujarat and Rajasthan have announced their intention of setting up such Commissions in the near future. The States of Andhra Pradesh, Karnataka and Sikkim have, additionally, reported that they are actively considering the issue. The Government of Bihar, on 26 February 1999, informed the Commission that they had taken the initial steps to setup a State Human Rights Commission.

15.4 A communication has, however, been received from the Government of Haryana in which it has been stated that the State Government has, after careful consideration, decided that there was no need to set up a Human Rights Commission in that State. In a similar communication, the Government of the National Capital Territory of Delhi has expressed the view that a separate State Human Rights Commission for Delhi has not been considered necessary as the National Human Rights Commission is already carrying out the functions that would be performed by a state-level Commission and it might not be obligatory, in legal terms, to set up such a Commission. It was further stated that a Human Rights Cell for Delhi has already been established wherein matters pertaining to the establishment of Human Rights Courts are under consideration.

15.5 While noting the stand taken by the Delhi Government, the Commission has asked it to reconsider its position. In doing so, the Commission has brought to the attention of the Delhi Government the fact that, while the Commission received 1485 complaints of human rights violations from Delhi in 1996-97, the number rose to 2190 in 1997-98, and to 2410 in 1998-99. This makes Delhi the third highest amongst the States in respect of complaints received. Though Delhi constitutes just about one per cent of the population of the country, it accounted for nearly six percent of the total complaints received by the Commission during the year.



15.6 The State of Uttar Pradesh, with the maximum number of custodial deaths and other human rights violations in the past years, has withdrawn its earlier decision to constitute a State Human Rights Commission. In a recent notification, the State Government said that "the desirability of constituting a State Human Rights Commission was considered extensively by the State Government and it has been decided that the constitution of an Uttar Pradesh State Human Rights Commission is not necessary". It will be recalled that the State had earlier decided to set up such a Commission, based on suggestions made by the then Chairperson of the NHRC and the views expressed by the Allahabad High Court. Indeed, a notification had even been issued in this regard on 4 April 1996 under Section 219(1) of the Protection of Human Rights Act, 1993.

15.7 The decision of the UP Government to rescind the notification has been contested in the courts, and the matter is at present pending before the High Court of Allahabad. The Commission appeals to the Government of Uttar Pradesh to restore the status quo ante and constitute a State Human Rights Commission at the earliest.

15.8 The Commission believes that, in considering whether or not to set-up State Human Rights Commissions, the concerned Governments should be guided by the view that individuals in a democracy should be helped to realize in full measure the rights conferred on them by the Constitution and have speedy recourse to justice when their rights are violated. The Commission therefore once again urges State Governments to establish Human Rights Commissions where they do not yet exist. For its part, the Commission will render its fullest support to such institutions once they are established. The Commission intends to pursue this matter with the State Governments. It also recommends, however, that this issue receive the attention of the Central Government and the leadership of political parties at the highest level.

15.9 The Chief Minister of Meghalaya has informed Commission that instances of violations in his State have been very few. He has also referred to the serious financial constraints being faced by small States in the North Eastern region and stated that the additional financial burden to set up State Human Rights Commissions is more than what such States can bear individually. He has therefore, concluded that it is not viable to set up a separate Human Rights Commission for each State alone. Instead, he had requested that the possibility be examined of setting up a joint Human Rights Commission for all the States of North-East India, including Assam, on the pattern of the Guwahati High Court. The Chairperson has requested the Chief Minister, Meghalaya to explore the possibility of utilising the services of the Chairperson of the Assam Human Rights Commission to function also as the Chairperson of a Meghalaya Human Rights Commission, as has been done in the case of the Manipur Human Rights Commission.

15.10 The Commission held a meeting with the Chairpersons and Members of the State

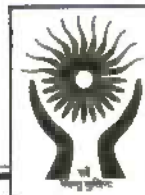


Human Rights Commissions on 9 December 1998. The Chairperson, NHRC called for an exchange of ideas on the building up of appropriate traditions in the administration of the institutions as well as in respect of matters relating to financial discipline and other issues. The following conclusions were arrived at on certain issues of mutual interest :

- In matters of changes in the Jail Manuals, the State Commissions may have discussions with the respective State Governments.
- On jurisdictional issues, the January 1996 order made by the then Chairperson Justice Ranganath Misra and Justice V.S. Malimath may be followed.
- The transfer of cases from the National Commission to the State Commission and vice-versa may not be possible, as specific statutory provision is needed to enable this.
- In respect of custodial death cases, the present instructions of the National Human Rights Commission could be changed to the effect that the State authorities could be instructed to also inform the concerned State Human Rights Commission of custodial deaths in respect of that particular State.
- Guidelines need to be framed for videotaping of post-mortems, in order to make the videotape effective and useful in processing custodial death cases.
- Two meetings between the NHRC and SHRCs may be held every year for the exchange of views and ideas, one in Delhi and the other, preferably by rotation, in a State.
- The National Human Rights Commission may arrange to share information on research with all the State Commissions.
- Important decisions and rulings of the National Commission may be circulated by it to all State Commissions.

15.11 The meeting also discussed the possibility of creating Human Rights Cells, similar to the Legal Aid Cells, in the Bar Associations.

15.12 The State Human Rights Commissions were informed that the powers, jurisdiction and procedures of Human Rights Courts and amendments to the Protection of Human Rights Act had been referred to the Justice Ahmadi Committee and State Commissions would be welcome to present their views to that Committee.



15.13 Issues regarding inadequacy of finances, non-framing of rules, filling-up of vacant posts etc. were also discussed. The National Commission would also be taking up some of these issues with the respective State Governments.

15.14 Regarding the implementation of the recommendations of the Commissions, some of the Chairpersons and Members of the State Commissions commented on a general reluctance on the part of State Governments promptly to implement the recommendations of the State Commissions. Some of them urged the desirability of a suitable amendment to the law, so as to enable an effective machinery for execution. Some Members, however, expressed the view that as the powers and jurisdiction of the Commissions are inquisitorial in nature and exercisable even suo-motu, any additional change in the Statute to make the Commission's recommendations binding and per-se enforceable may not concur with the spirit and philosophy on which the Commissions are based. That apart, any such provision, it was urged, might make the Commission another adjudicatory body carrying with it a litigative disposition to its deliberations attracting Court's interventions.

15.15 It was further pointed out that, unlike the provisions in the Commission of Inquiry Act, 1952, the Protection of Human Rights Act, 1993 has two distinct features whose significance has not come to be appreciated and whose potential is not properly utilised. The first is the provision in Section 18(5), which provides:

"The Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission".

15.16 Unlike the case of Commissions of Inquiry, the recommendations of the National and State Human Rights Commissions have to be dealt with by the Governments, not as some recommendations amenable to their discretion whether to accept or reject them. Rather, the State Governments, under the Protection of Human Rights Act, 1993, are bound, within the time frame prescribed by Section 18(5), to forward to the Commission their comments "including the action taken or proposed to be taken thereon". This obligation has significant relationship to and requires to be read with Sub-section (2) of Section 18, under which the Commission has the right, and in appropriate cases the duty, to approach the Supreme Court or the High Courts. The provisions in Section 18(2) and (5), read together and properly construed, impose "reporting obligations" on the Central and State Governments.

15.17 It would, indeed, be appropriate for National and State Commissions, wherever they consider that the responses of the State Governments do not accord with justice and fail to



protect and promote human rights, to hold if necessary public sittings, in which the appropriateness, reasonableness, propriety and the legality of the responses of the State Governments would be heard and discussed so as to enable the Commissions to decide whether further steps under Sub-sections (2) of Section 18 would be necessary to be adopted.

15.18 Thus understood, the existing provisions in the 'Act' could be seen to be adequate, provided they are imaginatively implemented for the promotion and protection of Human Rights.

15.19 The Commission has drawn attention to the ambiguity as to the precise nature of offences that could be tried and the procedural issues governing the conduct of the business in the Human Rights Courts as envisaged in Sec.30 of the Protection of Human Rights Act 1993. The Commission recognises that substantive amendments to Sec.30 of the Protection of Human Rights Act, 1993 and other laws are necessary in order to enable the courts designated as human rights courts to fulfil the expectation that they would provide speedy trial of offences arising out of violation of human rights. The Commission, therefore, calls upon the Central Government to undertake the necessary legislation for this purpose at an early date.



XVI. COMPLAINTS BEFORE THE COMMISSION

(A) NUMBER AND NATURE

16.1 During the year under report, there has been an increase of nearly 9.6 per cent in cases including custodial death cases, registered by the Commission in comparison with the preceding year. This increase continues to reflect both a heightened awareness of human rights in the country as well as the hope and belief that the Commission will act promptly and impartially to secure the redressal of grievances. The number of complaints, which includes reports sent by State agencies on custodial deaths and rapes, registered in 1997-98 was 36,791 as against 40,724 registered during the year ending 31 March 1999. Including the 13,512 cases which were pending consideration at the beginning of the year, the Commission had a total of 54,236 cases that required its consideration in 1998-99. Uttar Pradesh continued to account for the largest number of fresh cases, with 22,043, followed by Bihar with 4040 such cases. These two States together accounted for 64.1 per cent of the fresh cases received during 1998-99.

16.2 While, on the one hand, the Commission had to deal with an increased inflow of complaints, the Commission unfortunately remained short of two Members until October 1998. The pressures of work were therefore considerable. During the year under review, 53,711 cases were taken up for consideration. Of them, 32,277 cases were disposed of in limini and 11,389 cases were disposed of with directions to the appropriate authorities. Three thousand three hundred and ninety five cases were concluded after considering the reports received from the concerned authorities, or the reports submitted after inquiry by the Investigation Division of the Commission. To sum-up, a total of 47,061 cases were disposed of during 1998-99, as against 18,801 cases that were disposed of during 1997-98. The disposal of cases was thus 150 per cent more than that in the previous year. The Commission believes that the disposal of cases could have been even better had there been prompter and fuller responses to the notices of the Commission by the State authorities and, of course, had the Membership of the Commission been complete. The Commission has noted with regret that, from certain States, there was considerable delay in responses. The Commission calls upon all the States to streamline their procedures and improve their responsiveness to the Commission's notices.

16.3 A State-wise list of the number of cases registered/considered by the Commission and pending consideration is at Annexure VIII. A State-wise list of cases dismissed in limini, disposed of with directions and concluded after consideration of reports and inquiries by various agencies is at Annexure IX. A statement showing an analysis of the cases in which the Commission called for reports and inquiries, including those which were concluded on the basis of such reports and inquiries, is at Annexure X. In accordance with the standing



instructions of the Commission, States and Union Territories reported a total of 1297 cases of custodial death in the course of 1998-99, of which 1114 occurred in jail custody. The large number of deaths reported in jail custody emphasises, once again, the urgent need for prison reform including arrangements for better health care of prisoners which are matters of the highest concern to the Commission and on which it has, both in the past and in this report, made a number of specific recommendations.

16.4 The increase in the number of complaints received by the Commission has confirmed the necessity of constituting Single-Member Benches to deal with the complaints of the Commission. Important cases, as in the past, continued to receive the attention of the Full Commission. The Practice Directions of the Chairperson, to which detailed reference was made in the preceding report, continued to guide the Commission in the handling of its heavy work-load. It is increasingly evident, however, that there is need to handle certain categories of matters at a level below that of the Members of the Commission, so as to release the capacity of the Members to deal more fully with the totality and variety of functions entrusted to the Commission under Section 12 of the Protection of Human Rights Act, 1993. As pointed out earlier in this report, this is one of the matters that is receiving the attention of the Ahmadi Committee.

(B) INVESTIGATION OF CASES

16.5 During the year 1998-99, the Commission directed its Investigation Division to look into 2,269 complaints, of which 2,114 cases called for the 'collection of facts & monitoring' and 155 called for field investigations. Of these complaints, 1,946 cases of fact collection and 140 case of spot enquiries were disposed of. As hitherto, as and when necessary and desirable, officers of the Investigation Division associated NGOs and the petitioners in the work of investigation. NGO representatives continued to furnish most useful information and help to the officers of the Investigation Division in examining victims, particularly those who were from vulnerable or disadvantaged sections of society.

16.6 Despite continuing shortage of staff and an increasing workload, the Commission's investigating officers discharged these responsibilities within the time limits set for them by the Commission. On the basis of reports given expressly by officers of the Investigation Division during the year 1998-99, criminal prosecutions have been launched against 39 persons. Departmental action has been taken against 40 officials and compensation awarded in 8 cases.

16.7 As hitherto, when the Commission has been dissatisfied with the initial reports of agencies of the State Government, it has asked that the State CID or the Central Bureau of Investigation (CBI) take up investigation of such cases, with the Investigation Division being asked to monitor progress.



(C) ILLUSTRATIVE CASES

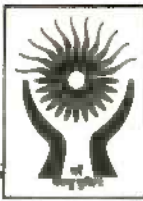
16.8 The substantial increase in the number of cases considered by the Commission is reflected in the range of human rights violations brought before it. As in the previous years, a large number of cases related to custodial deaths and torture, illegal arrests and detention, negligence in the performance of duties by public servants leading to violation of human rights. The Commission has also considered cases which affect human dignity, rights of children, women, minority groups and disadvantaged communities particularly Dalits and Tribals.

RATIONALE FOR GRANT OF IMMEDIATE INTERIM RELIEF/ COMPENSATORY JURISPRUDENCE

1. **Policemen turn robbers and kill innocent citizens** **(Case No. 144/93-94/NHRC)**

The Commission received a complaint from one Rita Dhawan that the Maruti van of her husband, while returning from Varanasi, was surrounded by six policemen, near the Police Station Civil Lines, Ranchi, who demanded Rs. one lakh and, on being refused, shot at the petitioner's husband and others in the van from point blank range and killed him. They also removed the gold chain, rings and wrist watch from the body of the deceased. On notice from the Commission, the Under Secretary, Govt. of Bihar submitted a report stating that the SHO of the police station on 5 December 1993, on receiving information that some criminals were absconding in the said van, followed the van alongwith other police staff and as the persons in the van were firing recklessly, police returned the fire and as a result three of those in the van were killed. A report was lodged about the incident, the police officers were suspended and a case under Section 302/379/201/31 IPC was registered against the SHO and others. The accused persons were arrested and the case was under trial in the Court of the Session Judge, Gaya. The trial ended in a conviction and several persons were sentenced to the extreme penalty of law. But the Commission decided not to close the case and issued notice to the Chief Secretary, Govt. of Bihar, as to why, in the circumstances of the case, Smt. Rita Dhawan should not be awarded an "immediate interim relief of Rs. 10 lakhs without prejudice to her private law rights for damages. The State Government responded contending that as the accused persons had already been convicted and sentenced to death, the Government found no justification for paying a sum of Rs.10 Lakhs as compensation and that it would cause unnecessary financial burden on the State.

In the Commission's analysis, the stand taken by the State Government seemed to have proceeded on the assumption that the establishment of culpability of public servants at a criminal trial and their conviction and sentence puts at rest even the claim for compensation or immediate interim relief' to the dependents of the victim envisaged in Section 18 (3) of the



Protection of Human Rights Act, 1993. In the Commission's view the assumption was not only wrong but the position was diametrically opposite. The case for award of interim-relief really became a fortiori. The 'immediate interim relief' envisaged under Section 18 (3) of the Act has to be granted for the injury/loss which the victims or the members of the family have suffered owing to the violation of human rights by public servants and the establishment of culpability of the involved public servants cannot absolve the State of its liability for compensation. The Commission noticed that a welfare State, recognising its obligation to relieve its citizens in distress, particularly those who are victims of violations of their rights by public servants, had enacted the Protection of Human Rights Act, 1993 under which the State sought advice from the Commission as to what, in the Commission's view, was the right thing to do and what immediate interim relief be given in a particular case so that the State could act on that recommendation. Thus, according to the Commission, any State professing to be a welfare State is expected to give a meaning to Section 18(3) of the Act, ensuring liberal construction to promote the philosophy of the Statute and advance its beneficent and benevolent purposes.

Seen in this context, the Commission felt that the stand of the Government of Bihar would only expose it to avoidable legal hassles and investigations. The Commission, accordingly, considered the stand of the State Government wholly untenable and recommended that the State Government pay immediate interim relief of Rs. 10 Lakhs to Smt. Dhawan without prejudice to her private law rights damages. The State Government complied with the recommendations by making payment to Smt. Dhawan.

**2. Death by torture of Pinya Hari Kale in police custody: Maharashtra
(Case No.294/13/98-99/CD)**

The Supdt. of Police (Rural), Pune reported to the Commission that on 9 June 1998 the police officials performing night duty noticed the suspect Pinya Hari Kale. On seeing the police officials, Kale, according to the report, ran away and fell down sustaining injuries and became unconscious. The police officials, it is further claimed, got him admitted in the Govt. Hospital, Baramati where he was declared dead.

The Commission also received another petition on the same subject from Prof. G.N. Devy alleging that Kale was taken into police custody on 8 June 1998 and was tortured, resulting in his death in custody. The petitioner apprehended that the post-mortem report may not reflect the real cause of death.

In response to the Commission's directions, the Joint Secretary, Government of Maharashtra, in his letter dated 2 November 1998 sent the report submitted by the Additional Director General of Police, CID (Crime), Maharashtra State. From the report it was revealed that after Kale was declared dead by the hospital, it was P.C. Hinge (Constable) who gave a



report to the police station and AD No.37/98 u/s 174 Cr.P.C. was registered at the Baramati Town Police Station which was inquired into by the Circle Police Inspector. The inquest panchnama of the dead body was performed by Shri S.B. More, Tehsildar Taluka Executive Magistrate, Baramati on 9 June 1998 and he claimed that he did not notice any injury on the dead body. The post-mortem was carried out by Dr. Suresh, Medical Officer, Government Hospital, Baramati on 9 June 1998 who gave his opinion that the cause of the death was due to the injuries over the body. He found seven injuries. The wife of the deceased made allegations on 12 June 1998 before the District Administration that Kale died in police custody owing to police torture. She also demanded the exhumation of the dead body and re-post-mortem. Accordingly, on 18 June 1998, the dead body was exhumed and sent to the Sassoon General Hospital, Pune for a second post-mortem which was performed on the same day. According to Dr. R.S. Bangali, who performed the second post-mortem on the dead body, death was due to multiple blunt injuries with evidence of head injury.

Shri B.N. Mane, Police Inspector, CID (Crime), Pune took over the case for investigation on 11 June 1998. The re-investigation established that on 8 June 1998 at about 17.00 hrs Kale was picked up from the flour mill at Tandulwadi Village on suspicion and brought to Baramati Town Police Station by Police Constables Hinge, Marne and Gire on suspicion about his involvement in the Baramati Town PS CR No. 28/98 u/s 395 IPC. Without showing Kale's formal arrest he was illegally detained at the Police Station and was administered a beating on the intervening night of 8 June 1998 and 9 June 1998 with sticks and a belt, to which he succumbed. In the investigation, the I.O. Shri Mane found that the information given by P.C. Hinge about Kale's death being accidental in AD No.37/98 u/s 174 Cr.P.C. was a false and concocted story. I.O. Mane Pi CID (Crime) on behalf of the State lodged a complaint at Baramati Town Police Station vide CR No. 74/98 u/s 302,330, 348,201, 34 IPC on 14.7.98 against accused PSI Shashikant Madhukar Patel, PC Suresh Dinkar Hinge, PC Bandu Baban Marre and PC Subhash Gire. All the aforesaid accused were arrested on 30 July 1998. The arrested policemen had been placed under suspension by Supdt. of Police, Pune (Rural) and the investigation in the matter was pending.

What was crucial at this stage was the stand taken by the Government of Maharashtra. The Government stated that it would pay the compensation only upon the establishment of the guilt of the policemen. The stand taken by the Maharashtra Govt. raised a serious question about the scope of provisions contained in Section 18(3) of the Protection of Human Rights Act, 1993 enabling the Commission to recommend to the concerned Government or Authority for the grant of such 'immediate interim relief' to the victim or the members of victim's family as the Commission may consider necessary. In a nutshell, the suggestion implicit in the stand taken by the Maharashtra Govt. was that the proof of the charges in the Court was a condition precedent for grant of monetary relief. The Commission explaining the meaning of 'Interim Relief' and the import of Section 18(3) of the Act observed: "It is true that a criminal charge

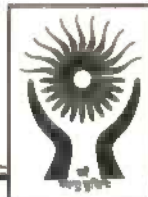


has to be sustained on a standard of proof which is beyond reasonable doubt. However, for purpose of award of compensation, substantiation on mere preponderance of probability, on the standard of evidence in civil cases is sufficient. Even where a criminal charge may fail for want of evidence sufficient by standards requisite in criminal cases, yet a case of compensation can be sustained on a mere preponderance of probability". The Commission further explaining the import and purpose of provisions contained in section 18(3) observed, "But apart from these standards in civil and criminal cases, for the limited purpose of award of immediate interim relief, the jurisdiction for its grant under section 18(3) of the Act, the matter need not wait till the charge is proved in a criminal Court ...". The Commission took the view that for grant of immediate interim relief, a strong prima-facie case was sufficient. It also took the view that the very nature of the concept of immediate interim relief and the purpose for which it was intended would be defeated if this remedy was inextricably linked with the outcome of a criminal trial. Thus, considering the case to be a fit one for grant of immediate interim relief, the Commission made the following recommendations:

- (a) That immediate interim relief of Rs.2 lakhs be paid by the State of Maharashtra to the dependents of the deceased Pinya Hari Kale. Out of the amount of Rs.2 lakhs, a sum of Rs.25,000/- shall be paid in cash to the widow of the deceased and the rest of the amount of Rs.1,75,000/- shall be deposited in the names of wife and children, if any, of the deceased in any of the nationalised banks of the choice of the beneficiaries in fixed deposit for a period of three years, with the condition that the fixed deposit shall not be withdrawn nor any loan permitted on the security of the fixed deposit. The interest accruing on the deposit periodically shall, however, be payable to the widow and the children for their upkeep and maintenance, and
- (b) That Government of Maharashtra do consider appropriate action against Shri S.B. More, Tehsildar and Taluka Executive Magistrate, Baramati for the palpably false entries in the Panchnama and ignoring the injuries on the person of the deceased and for doctoring the inquest report to suit the offenders, and against the then Medical Officer, Government Hospital, Baramati who, on 9 June 1998 conducted the post-mortem, after affording to both an opportunity to show cause why such action should not be initiated against them.

**3. Death of Sanabhai Bhulabhai Machhar due to negligence of Police officials:
Gujarat (Case No. 3177/96-97/NHRC)**

The District Supdt of Police, Godhra in his fax message dated 6 July 1996 reported to the Commission the death in police custody of Shri Sanabhai Bhulabhai Machhar on 4 July 1996. The brother of the deceased made a complaint and on that basis a FIR was lodged.



However, the Magistrate who held the inquiry held no one guilty and stated that the cause of death was due to a fall from a moving tempo and no action was taken against the policemen named in the FIR. According to the magisterial inquiry, the deceased was taken into custody by Shri U.R. Rathod, SI and his staff of the Ditwas Police Station in a case no.33/96 under sections 447,504 506(2) and 323 of IPC on 4 July 1996. While being taken to the police station in a tempo from his village the deceased jumped out from the tempo and sustained head injuries and eventually died on the same day in the hospital. The Magistrate, after listing the injuries sustained, noted that the final cause of death as 'Intracranial haemorrhage shock due to head injury'. The Magistrate in his inquiry found the conduct of the officials in the matter and the facts surrounding the death of the prisoner raised reasonable doubt that the death could not have been caused by the alleged attempt to escape by the prisoner.

The Commission, on careful consideration of the evidence on record and the findings in the magisterial enquiry, formed the view that the death of the prisoner occurred under suspicious circumstances and that the police personnel on duty did not exercise the due diligence expected of them in the performance of their duties. The Commission, relying on provisions contained in sections 18(1) and 18(3) of the Protection of Human Rights Act, 1993, recommended that a compensation of Rs.1 lakh be paid to the dependants of the deceased.

COMMENT

The NHRC is empowered u/s 18 (3) of the Protection of Human Rights Act, 1993, to recommend to the concerned Govt. or authority the grant of 'immediate interim relief' to the victim or to the members of his family. This provision has been generously operated and the power conferred under it is widely exercised by the Commission in deserving cases. The Commission has in this connection kept itself alive to the spirit of various United Nations instruments. Article 9 of the International Covenant on Civil and Political Rights makes it explicit that everyone has the right to liberty and security of person and nobody shall be subjected to arbitrary arrest or detention. It further mandates that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1985 makes it an obligation of the State to ensure that in its legal system, the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. Principle 35 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), also prescribes for remedy of compensation, in case of any damage incurred because of acts of omission by public officials contrary to the rights contained in the Body of Principles.



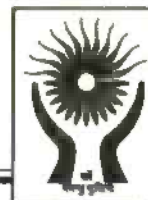
Thus, in the case of Sanabhai Bhulabhai Machhar, the Commission considered that the death occurred in suspicious circumstances and the police officials on duty did not exercise the due diligence expected of them. This case is a significant illustration of the widened scope of the meaning which the Commission has given to the concept of immediate interim relief. The Commission took the position that it is not required in a case to establish that the public servant was negligent in preventing the violation of human rights. It is sufficient to bring the case within the doctrine of *res ipsa loquitur* if the concerned public servant has not exercised due diligence. The Commission has thus enhanced the meaning of Section 18(1) and has broadened the horizons of S.18(3) of the Act.

POLICE BRUTALITY

4. Death of Punjabhai Somabhai Thakor due to Police beating: Gujarat (Case No.6123/95-96/NHRC)

The deceased, Shri Punjabhai Thakor aged 55, was a suspect in a case of theft of an article worth Rs.14,695/- from the house of a resident of Napa. An offence was registered under sections 457, 380 of IPC on 18 September 1995. The deceased and two other suspects were alleged to have voluntarily presented themselves on 13 November 1995 for interrogation. During the course of investigation, the deceased suddenly complained of giddiness and lay down. The PSO instructed that he be admitted in the hospital. Head Constable Juwar Singh and another Constable, Balwant Singh, took him to the Municipal Hospital. The doctor was not available. The Head Constable checked his pulse and found him dead. They left the body there and returned to the police station to report the death. The death took place around 18.00 hrs on 13 November 1995. The inquest Panchanama was held on 14 November 1995 at 08.00 hrs. In the meantime, rodents had bitten the body.

The inquest Panchnama report stated that there were dark spots of beating on the back, buttocks and the back of the thighs and legs. The Magisterial enquiry found that the interrogation was conducted without arrest warrant and proper remand; no doctor was present in the hospital. In spite of no doctor being available, the body was left in the 'dead body room' without proper care; the body was not kept safely and rats had bitten the body. Earlier, the police had not immediately attended to the deceased when he had complained of giddiness. Overall, according to the enquiry, the police had acted negligently and had not performed their duty according to law. The SDM, on the basis of the report, had recommended that the complaint be handed over to the Vigilance Department. He also registered a case u/s 302, 114 of IPC against the police officials. The post-mortem report found the cause of death due to cardio-respiratory failure. The Home Department of the State Government reported that the Human Rights Cell of the State Government accepted the view expressed in the inquiry report of the SDM that the death of Shri Punjabhai Thakor did not occur due to police atrocities while in custody but due to cardio-respiratory failure.



Taking a serious view of the totality of the circumstances and the negligent behaviour and non-performance of duty by the police officials, the Commission refused to accept the Home Department's observations that death was due to cardio-respiratory failure and not due to police atrocities. To the contrary, the Commission took the view that the beating by police officials and the overall effect of interrogation could have resulted in a cardiac failure resulting in death. The Commission, in this context, pointed to the post-mortem report which mentioned congestion and oedema of the brain, to buttress its view. The Commission accordingly directed the State Government to pay a compensation of Rs.2 lakhs to the dependant of the deceased without prejudice to the criminal action initiated against the guilty officials.

**5. Brutal Killing of Santosh Kumar Singh by Police: Bihar
(Case No.2968/4/98-99/ACD)**

The Commission took cognizance of a complaint received from one Dharendra Prasad Singh of the village Joitali from the state of Bihar. A police party led by SI Mukhal Paswan visited the village Joitali on 12 December 1998 after receiving information about the activities of the gang of Tolwa Singh in the area. The SI suspected the father of the deceased, Shri Dharendra Prasad Singh, (complainant before the Commission), who was also the uncle-in-law of Tolwa Singh, to be harbouring the said criminal. Shri Santosh Kumar, the complainant's son, a totally innocent young man, with no previous criminal record, was stopped near the house of Jagdish Jha and was asked for his identity in harsh and abusive language. A verbal altercation ensued between Santosh Kumar and SI Mukhlal, after Santosh objected to the SI's behaviour. The SI thereupon shot at Santosh and injured him. The SI also took a sample of blood stained earth from the place where Santosh Kumar had fallen upon being injured. Santosh Kumar, who was still alive, was put in a jeep and taken towards Purnea along with four others. One of the four was allowed to get down in the village itself. Santosh Kumar died on the way to Purnea. SI Paswan did not permit water to be given to the injured Santosh despite his repeated pleas. Also at Purnea, the jeep was kept standing near the bungalow of the SP for one hour for consultation and guidance before Santosh's body was taken for post-mortem. The dead body of Santosh Kumar was handed over to persons from the village Jotaili, after autopsy, late in the evening on 13 December 1998. Sensing the intensity of public anger over the incident which had caused protests and demonstrations, the police compelled the villagers to cremate the dead body at Purnea itself, at about 11.00 PM on 13 December 1998, without giving the next of kin of the deceased a chance to have a last glimpse of him.

The foregoing chain of events relating to the killing of Santosh Kumar, as contained in the report of Shri S.V.M. Tripathi, former DGP, UP who was entrusted by the Commission to make an on-the-spot inquiry, were found to be convincing by the Commission. Shri Tripathi who visited the spot obtained from SI Mukhlal and other police personnel their version of the



case which was described in the FIR of cases registered at 18.00 hrs on 12 December 1998 by SI Mukhlal under sections 399/402/353/307/34 IPC and 26(2b)/27 Arms Act. The FIR, written in first person by SI Mukhlal, briefly stated that information was received by him at 22.10 hrs on 11 December 1998 that the accused, Tolwa Singh, wanted in a number cases, fully armed, was staying with his gang near Chai Tola, village Bhatsara, and was planning a heinous crime. On the basis of this information and a request to senior officers, SI Mukhlal was provided a special force and he alongwith one SI and 2 ASIs from his police station left for verification of the information received. When the SI alongwith his colleagues reached Chai Tola at 05.00 hrs there was a heavy fog. The police party, hearing same voices, asked them to stop. The gang at this stage started firing and did not surrender as asked by the police. The miscreants tried to escape on motorcycles firing intermittently, and were followed with difficulty by the police due to the thick fog. When the police reached a village and started looking for them, the criminals again opened fire indiscriminately. In self defence, SI Sanjay Kumar fired one round and Constable Ram Prakash fired two rounds from their rifles and the criminals ran away in the thick fog. The police party received the information that one criminal was lying injured in the village. On enquiry, he disclosed his name to be Santosh Kumar and provided other particulars. He was immediately sent, with some police personnel, in a jeep for treatment to Purnea Sadar Hospital. According to the police version, a country-made pistol with a fired cartridge was recovered from Santosh Kumar. A recovery memorandum was prepared and signed by three independent witnesses. Blood stained earth was also recovered. Shri Tripathi visited the spot of the initial encounter (Chai Tola) mentioned in the FIR and talked to a number of villagers in connection with this incident.

While Shri Tripathi did not doubt that SI Mukhlal must have received information about the movement of a gang, he considered the story of the near-encounter of the police with the gang somewhat improbable. It is worth noting that Shri Tripathi was not shown the case diaries relating to the case in spite of his asking for them.

After carefully considering the original complaint of Shri Dharendra Prasad, father of Shri Santosh Kumar, the assessment of Shri N.K. Singh, former CBI Director, who had visited the village after the incident, and the report of Shri Tripathi which was found to be convincing, the Commission made the following observations :

1. There is substantial evidence to prove that Shri Santosh Kumar was killed by SI Mukhlal Paswan, officer-in-charge of PS Barhara because he had expressed his resentment and objected to the use of harsh and abusive language by the SI.
2. The story of a police encounter in the village Chai Tola was a clever fabrication and concoction of evidence to cover up the totally unjustified killing of Shri Santosh Kumar. SI Mukhlal Paswan had, by collecting the blood stained earth from the place where



Santosh was injured and was still alive, revealed his intention to fabricate the story of an encounter, which he subsequently carried out.

3. Shri Santosh Kumar had no previous criminal record whatsoever. FIR of case crime No.130/98 u/s 399/ 402/ 353/ 307/ 34 IPC and 26 (2b) / 27 registered by the officer in charge Mukhlal Paswan at his PS Barhara on 12 December 1998 was based on facts found unverified by the report of Shri S.V.M. Tripathi. The recovery of a country-made pistol with blank and live cartridges from Santosh Kumar was found to be false from the statement of the witnesses of the recovery memorandum, namely V.N. Jha, Deepak Kumar Thakur and Ravinder Kumar Thakur made before Shri Tripathi. They flatly denied any such recovery. It was thus reasonable to suspect that the story of the recovery of the pistol was a planted one.
4. Shri Vivekanand Jha, Deepak Kumar Thakur and Ravinder Kumar Thakur were forcibly taken to Purnea by the police party and kept in illegal custody at PS Krityanand. Their statement that they were forced to sign some blank papers while they were in custody, appeared credible enough considering all the facts and circumstances of this case.
5. The conduct of the Purnea police lacked humanity in withholding from the next of kin of the deceased the information about the condition and whereabouts of Santosh Kumar. It was also proved with sufficient clarity that the deceased was not provided immediate medical aid after he was injured. The denial of water to him despite his repeated pleas was a disturbing instance of police insensitivity as was their decision to get the body cremated at Purnea itself, denying his mother, wife and grandfather the solace of having a last glimpse of the deceased.
6. Keeping the PS Bihariganj in the dark about the raid on a village in its area of jurisdiction was a violation of a well-established police procedure by the police of district Purnea, which deserved to be viewed with seriousness.
7. Shri Tripathi's report offered sufficient material to suspect the connivance of Shri R.S. Bhati, Supdt. of Police, Purnea in the concoction of evidence to cover up the killing of Santosh Kumar. The Special Report meant for the DiG Range and other superior officers, which was required to be sent at the earliest after the registration of the case, was sent after a lapse of 14 days on 26 December 1998. It contained just a copy of the FIR with the remark that the DSP, Mohd Asghar Imam, would supervise this case. The Supdt. of Police did not mention whether Shri Imam had, by then, even visited the spot and supervised the investigation of this case, which had been registered a fortnight earlier. In fact, he was expected to report on the quality and usefulness of the DSP's supervision, which he totally ignored. The Supdt. of Police admitted that he himself



had not visited the village Joitali, even though he was aware that a case of murder was registered against the police personnel in respect of the main action which took place in that village. The fact of Shri Santosh Kumar's death in police custody was not disputed. It was the responsibility of the district Supdt., of Police to get the mandatory Magisterial inquiry conducted in respect of the incident. The blame for no such inquiry having been held rested primarily with him. The conduct of Shri R.S. Bhati revealed a number of professional lapses compounded by a certain degree of callousness.

The Commission, thus convinced of the serious violation of human rights of the deceased, Shri Santosh Kumar, and also of the rights of his relatives, made the following recommendations:

- a) The Commission feels that the case of murder registered against the police personnel of Purnea at PS Bihariganj of Madhepura district is a fit case for transfer to the CBI. The other false case of a police encounter registered at PS Barhara (FIR case Crime No. 130/98 dated 12 December 1998) has also to be covered by the same investigation team.
- b) The Commission further recommends that the Government should immediately consider placing SI Mukhlal Paswan, who is the main accused in the murder case, under suspension pending the final outcome of the case of murder of Shri Santosh Kumar Singh. He should also be moved out from district Purnea and Madhepura.
- c) Shri R.S. Bhati, Supdt. of Police, Purnea about whom there are serious suspicions of connivance in the cover-up of the murder of Santosh Kumar, should immediately be transferred away from Purnea in the interest of a prompt and impartial investigation by the CBI.
- d) The deceased, Santosh Kumar, was supporting the entire family. He has left behind his young widow and a small child. The Commission recommends that an immediate interim relief of Rs.5.00 lakhs should be given to the widow without prejudice to her other rights at law.

6. Alleged abduction and killing of a Journalist, Shri Avtar Singh Mander: Punjab. (Case No. 172/93-94/NHRC)

In two complaints, one filed by the International PEN Writers in Prison committee and the other filed by the General Manager of the daily 'Ajit' (Punjab), Jalandhar, it was alleged that on 23 September 1992 at about 06.30 - 07.00 PM, Shri Avtar Singh Mander was forcibly



picked up from his rented house by some unidentified policemen, who had come in two Gypsy vehicles and since then his whereabouts had remained unknown.

On the Commission's notice to the Government of Punjab, the Department of Home Affairs, Govt. of Punjab filed a report that Shri Avtar Singh was neither called to the Police Station nor was he taken into custody. The report also mentioned that a Civil Writ Petition was filed by the daily 'Ajit' group in the High Court of Punjab and Haryana alleging the kidnapping and illegal detention of Shri Avtar Singh and that this was dismissed by the High Court. In the report, the Commission was assured that the State Government was conducting a secret investigation regarding the whereabouts of Shri Avtar Singh and as and when the Government came to any conclusion the Commission would be informed.

On the direction of the Commission, a case under Section 364 IPC was registered at Sadar Police Station regarding the abduction of Shri Avtar Singh. After conducting the investigation, SP Jalandhar informed the Commission that as many as 23 persons were examined as witnesses but the police remained clueless. The Commission, not satisfied, directed the Director General (Investigation) of the Commission to carry out an assessment of the police investigation. On investigation, the Investigation Wing of the Commission noted that an Advocate by the name Shri Jogwinder was staying in the same house where Shri Avtar Singh was residing and he was also abducted by the police and nothing was heard of him. The CBI had undertaken the investigation regarding disappearance/abduction of the said Advocate under the direction of the Supreme Court and the CBI report submitted to the Supreme Court established that the Advocate, Shri Jogwinder Singh, was detained at the Criminal Investigation Agency (CIA) Bahadur Singhwala between 25-27 September 1992 and his whereabouts were not known ever since and, further, that the DSP Shri Gurdip Singh Pannu and SI Shri Harpeet Singh, IO CIA staff, Bahadur Singhwala, were responsible for his illegal detention and disappearance. Accordingly, after obtaining the required sanction, the CBI had filed a chargesheet under Sections 364, 342 and 343 IPC against the above-named police officers and they were facing trial in a court of law. The investigation team of the Commission also learnt that one of the witnesses, Shri Kuldeep Singh Jhanwan, was also detained by CIA along with Shri Avtar Singh Mander and Shri Jogwinder Singh, Advocate. Shri Kuldeep Singh Jhanwan, when examined, had confirmed the detention of Shri Avtar Singh and Shri Jogwinder Singh, and their torture by the police and the CIA staff headed by Dy.SP Shri Gurdip Singh Pannu. Shri Kuldeep Singh had also made a similar statement before the CBI when they were investigating the case relating to the abduction of Shri Jogwinder Singh.

On consideration of the report of the Commission's investigation team and having regard to the statement that Shri Kuldeep Singh made before the CBI, as also before the Commission's investigation team, confirming his personal knowledge of the detention of Shri Avtar Singh and Shri Jogwinder Singh at CIA, Sangrur during the relevant period when Shri



Avtar Singh was alleged to have been abducted, the Commission formed the view that the stand taken by the Government of Punjab that Shri Avtar Singh was neither arrested nor detained at the police station, could not be accepted on its face value. Further, the report of the SP Jalandhar that, despite the examination of a large number of witnesses, no clue was available, was also found unacceptable by the Commission. In these circumstances, the Commission took the view that a full and independent investigation was called for in the matter relating to the abduction/disappearance of Shri Avtar Singh Mander. It also felt that the apprehension of Shri Sohan Singh, father of Shri Avtar Singh about the possibility of his son having been eliminated at the hands of the police could not be considered unjustified. The Commission took the view that since the CBI had already investigated and worked out the case relating to the abduction of Shri Jogwinder Singh, it would be appropriate that investigation into the alleged abduction/disappearance of Shri Avtar Singh was also conducted by the CBI.

Further, the Commission felt that as it had already prima-facie been brought on record that Shri Avtar Singh was removed from his house by the police party, detained and tortured by CIA, and last seen alive by Shri Kuldeep Singh Jhanwan while under the detention of CIA staff, and as Shri Avtar Singh's whereabouts were not known since then, the police owed a responsibility to explain its inability to account for the disappearance. If the police failed to do so, it might be presumed that Shri Avtar Singh died as a result of torture meted out to him. The Commission also found that the import of the High Court's order referred to by the Police was not correct. In this regard, the stand of the police was that the High Court had found no merit in the writ petition, which was dismissed. But the copy of the order forwarded by the police showed that the writ petition was held to have become 'infructuous'. Thus the Commission, after careful consideration and taking a serious view in the matter, recommended that -

- (a) The Government of Punjab would entrust the case to the CBI, for expeditious investigation. The CBI would endeavour to conclude the investigation within three months and would inform the outcome to the Commission. The Director General(Investigation) of the Commission would keep in touch with the progress of the investigation by the CBI; and
- (b) The Government of Punjab would pay a sum of Rs. 5 Lakhs to Shri Sohan Singh, father of Shri Avtar Singh Mander, by way of immediate interim relief within a period of one month.

**7. A college lecturer becomes a victim of police brutality: Kerala
(Case 166/11/98-99)**

The Commission took suo-motu cognizance of an instance of police brutality, published in the Hindustan Times on 3 September 1998, under the heading "Police brutality again in



Kerala". The report stated that a college lecturer was beaten mercilessly by the police as he had dared to question the fare demanded by the driver of an autorickshaw he had taken while visiting Kozhikode. When the lecturer became unconscious, his legs and hands were tied and he was shifted to a mental hospital, and a case was made out that he was a violent mental patient. The mental hospital did not admit him because of his serious condition and he was taken to the Medical College. The reporters and photographers, who tried to obtain a first hand account of the torture inflicted upon the victim, were also assaulted by the police.

The Commission issued notices to the Chief Secretary and DGP, Government of Kerala. According to the report submitted by the Commissioner of Police, the deeds of the concerned police officials were confirmed. On the basis of this factual confirmation, the Government had suspended the culprits (2 sub-inspectors, 1 ASI, 1 Head Constable, 3 Police Constables) and an enquiry was ordered against them.

Convinced that appropriate steps were being taken against the culprits, the case was closed by the Commission. The Govt. was directed to report the result of the disciplinary action taken against the delinquent officials with utmost expedition.

8. Torture of a child by the police in the Police Station: Rajasthan (Case No.1313/20/97)

In a news item published in 'Dainik Bhaskar' it was reported that one Pardeep Sharma was arrested in a case of theft and subsequently when his wife, Smt. Sunita, came to the police station to enquire about her husband, she was asked to bring Rs.2500/- towards the cost of the stolen goods. She returned home. At night, two constables came to her residence and she was summoned to the Police Station. There the policemen misbehaved with her, snatched Rs.500/- from her purse and when her son, Rahul, aged 10 years, who had accompanied her, became emotional and started arguing, he was mercilessly beaten at the police station. On medical examination, 14 injuries were found on the body of the boy. The Commission took cognizance of the news item and gave notice to the S.P. Ajmer. According to the report received by the Commission from the SP Ajmer, Smt. Sunita had refused to accept the written information from the police in the police station and had threatened S.I. Dinesh that she would falsely implicate him for thrashing her son. It was also reported that the young boy was not brought to the police station nor was Smt. Sunita called to the police station and that the boy was beaten by his mother to manipulate a case against the police.

On consideration, the Commission found the report self-contradictory as it was mentioned, on the one hand, that the mother had thrashed her son at the police station making him unconscious, with the intention of falsely implicating the policemen and, on the other hand, it was stated in the report that the son was not present at the police station. The



Commission felt that it was improbable that a mother could have caused such grievous injuries to her own son, especially in the circumstances that her husband was already in a lock-up and she herself was in distress. The Commission noted that, as the injuries were examined under the orders of the District Magistrate through the S.P. Ajmer, there was no probability that the injuries were self-inflicted. The Commission thus found the report unacceptable and directed the Government of Rajasthan to pay compensation of Rs.15,000/- to the injured boy through his mother, and to take suitable action against the guilty police officials.

COMMENT

Custodial violence is an unacceptable abuse of power and the an abhorrent violation of human rights by the protectors of the law themselves. It not only violates Article 21 of the Constitution of India which guarantees the fundamental right to life and liberty, but also infringes upon Article 3 of Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights, that every person has the right to life, liberty and security and no one shall be arbitrarily deprived of life. Further, Article 5 of UDHR and Article 7 of the Covenant on Civil and Political Rights lay down explicitly that no one shall be subjected to torture, or cruel, inhuman or degrading treatment or punishment. Article 9 of Universal Declaration of Human Rights and Article 9 of the Covenant emphasise that no one shall be subjected to arbitrary arrest, detention or exile. These provisions also lay down that anyone who is arrested shall be informed of the reasons of his arrest and shall be promptly informed of the charges against him. Article 22 of the Constitution protects the rights of the individual in case of arrest and detention and in essence incorporates the principles of these United Nations documents. It is a fundamental right under this Article, that the arrested person must be produced before the nearest magistrate within twenty-four hours.

The Commission has played an active role in redressing the grievances of the victims of custodial violence. In accordance with a circular dated 14 December 1993 issued by the Commission to all State authorities, all cases of custodial deaths either in police or in judicial custody, are required to be brought to the notice of the Commission within twenty four hours. The illustrative cases on custodial death reveal that the interventions of the Commission are increasingly securing better investigation of such cases and resulting in the providing of immediate interim relief to the survivors of the deceased victims of custodial violence.

In this connection, the Commission would like to recall the Judgement of the Supreme Court in the case of D.K. Basu Vs State of West Bengal (AIR 1997 SC 610), which dealt with the principle *Ubi jus, ibi remedium* i.e., there is no wrong without a remedy. The law wills that in every case where a man is wronged and damaged, he must have a remedy.

A mere declaration of the invalidity of an action, or the finding of custodial violence or



death in a lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done. While there is no express provision in the Constitution of India for grant of compensation for violation of the fundamental right to life, the Supreme Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life.

The claim in public law for compensation for unconstitutional deprivation of the fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for torturous acts of public servants. Public law proceedings serve a purpose different from private law proceedings. Award of compensation for established infringement of the indivisible rights guaranteed under Art. 21 is a remedy available in public law, since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. The grant of compensation in proceedings under Art. 32 or Art. 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Art. 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

The quantum of compensation will, of course, depend upon the particular facts of each case. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the court and paid by the state to redress the wrong done may, in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit. Some important judgements on compensation are:

Nilabati Behera Vs State of Orissa (1993)2 S.C.C. 746

Saheli, A Women's Resources Centre Vs. Commr. Of Police (1990) 1 S.C.C. 422.

Bhim Singh Vs State of J&K (1985) 4 S.C.C. 677.

Sebastian M. Hongray Vs UOI & Others (1984) 1 S.C.C. 339.

Rudul Shah Vs State of Bihar (1983) 4 S.C.C. 141.

The judgements have had great bearing on the work of the Commission.



HUMAN RIGHTS VIOLATIONS: JAIL CUSTODY

**9. Harassment of the prisoner, Shri Harbhajan Singh by Superintendent, Bikaner Jail in granting Parole.
(Case No. 8572/95-96/NHRC)**

In a complaint made to the Commission, one Shri Harbhajan Singh, a convict undergoing life imprisonment in Central Jail, Bikaner levelled corruption charges against the Superintendent of the Central Jail. When the complainant had requested the grant of parole to make arrangements for medical treatment of his wife, it was alleged in the complaint that a false and intentionally wrong report was made to the effect that the complainant had planned to leave the country. According to complainant, the Superintendent of the jail had misused a letter which related to another prisoner with an identical name and who had already been released from the jail on completion of his sentence. In a report submitted to the Commission, Deputy Secretary(Home), Government of Rajasthan, admitted that there had been a mix-up of the papers of the two prisoners. The Superintendent of the jail, while admitting the mistake, called it a clerical error and informed that, after the mistake was noticed, he reported further to the District Magistrate, recommending the granting of parole.

However, according to the complainant's son, the mixing up of the papers was deliberate with a view to harassing the complainant, as it had a history to it. It was asserted that parole was granted to the complainant only after his son met the District Magistrate and explained the role played by the Jail Administration.

The Commission, not being satisfied with the report of the Government, directed its investigation team to ascertain from the complainant whether a) he was really satisfied with the steps taken; and b) whether there were any surviving grievances. The Commission also directed its investigation team to find out the genuineness of the claim of mixing-up of papers. The findings of the investigation team corroborated the complainant's version. The mixing-up of the papers of the two prisoners seemed more than a mistake. The investigation team reported that, on 28 August 1994, the day when the complainant was lodged in the Central Jail, Bikaner, the Jail Superintendent had told the complainant's son to arrange for Rs. 20,000/- or else his father would have a bad time inside the jail. A deal was struck for Rs. 14,000/-, out of which Rs. 10,000/- was paid by the son through a warder. Later, after a few months, when the complainant's mother expired, he was able to get 7 days emergency parole by paying Rs. 3,000/- to the Superintendent as illegal gratification. He was also reminded to bring the balance of Rs. 4,000/- when he returned from home. Since he could not pay this money, he was subjected to all forms of harassment/torture by the Jail Superintendent. Again, at the time of his son's marriage (27 January 1995), the prisoner was granted 7 days emergency parole and, while leaving the Jail, he was once again reminded of the remaining amount of



Rs. 4,000/-. This time, out of fear and with considerable difficulty, the complainant collected the money and paid the amount to the Jail Superintendent. The investigation also confirmed that there was another prisoner serving a life sentence in the same jail with an identical name, who was released in June 1995 and a letter received in his name was conveniently placed in the file of the complainant. It was a copy of that letter, which referred to arrangements for securing a passport, that was supplied by the Jail Superintendent to the District Magistrate when the complainant requested the grant of parole to attend to his wife's treatment. The Jail Superintendent, in his forwarding letter to the District Magistrate, had stated that, in view of the disclosure made in the letter, it would not be advisable to grant parole to Shri Harbhajan Singh. It was only when the son of the complainant, learning of the matter, brought this to the notice of the District Magistrate, that the parole to Shri Harbhajan Singh was granted.

The Commission noted that according to the complainant, the mixing-up of papers was not a mistake, but done with malafide intent. The further allegation of the complainant was that even on the occasion when his case was cleared for parole, he was threatened that if the money demanded was not paid, he would not be able to visit his ailing wife. Taking the allegation of mischievous conduct with malafide intent seriously, the Commission recommended to the State Government that a thorough inquiry be ordered in the matter and appropriate actions initiated against the guilty officials. In addition, noting that the complainant was victimised and harassed by the Jail Officials, the Commission also recommended immediate interim relief of Rs. 20,000/- for the suffering, deprivation, humiliation and the harassment suffered by the complainant at the hands of these officials.

**10. Death of an infant child in judicial custody: Haryana
(Case No.9421/95-96/NHRC)**

The Commission received an intimation from Jail Superintendent, Rohtak, about the death of an infant female child aged about 2 months who, alongwith another female child aged about two years, were lodged with their mother in the Rohtak District Jail. The Commission issued notice and called for a report in the matter from the Government of Haryana. The report received from the Financial Commissioner and Secretary to Government of Haryana, Jail Department stated that a post-mortem examination had been conducted on the body of the infant child and that the City Magistrate, Rohtak had made a magisterial inquiry under section 176 CrPC into the circumstances leading to the death of the infant and recorded the statement of number of witnesses including the mother of the deceased child. He had concluded that the child had died of natural causes and that the family members of the child had no suspicion or grievance against anybody and nobody could be held responsible for the death of the child.



The Commission considered this report, the post mortem examination report and the statements of witnesses examined by the City Magistrate during the course of inquiry. In the post mortem report, the doctor concerned had given the cause of death as malnutrition (starvation). The witnesses examined by the City Magistrate included the mother of the child, sister-in-law, matron of the women's ward of the jail, the Deputy Supdt. of the jail and others. None of these witnesses put any blame on anyone. However, the mother of the deceased child categorically deposed that she did not get the diet to which she was entitled immediately after the delivery and that, in turn, she was unable to provide the requisite nourishment to the sucking child. The Commission noted that this, coupled with the opinion of the doctor conducting the post-mortem, would point a finger on the question of adequacy and quality of the diet which was given to the mother of the deceased child during her stay in the jail. The Commission arrived at the view that the death of the infant child could not be said to be 'natural', but was attributable to malnutrition (starvation) which, the Commission believed, must have occurred due to inadequacies in the quality and quantity of food served to the mother and, hence the child. The Commission thus held the jail authorities guilty of violating their duties and obligations, as they were under an obligation to take special care of the infant child which was only 10 days old when brought to the jail alongwith the mother. The Commission thus deemed appropriate to recommend that State of Haryana pay the mother a sum of Rs.20,000/- by way of 'immediate interim relief'.

POLICE HARASSMENT, INACTION AND NEGLIGENCE

11. Police Harassment of Shri Shakuni Choudhary, MLA, Bihar (Case No.641/95-96/NHRC)

The Commission received a complaint from Shri Shakuni Choudhary and Shri George Fernandes of the Samata Party alleging harassment by police of Shri Shakuni Choudhary and members of his family. The Commission called for reports from the DGP Bihar as well as from its own investigation team.

On considering the investigation reports, the Commission recommended that immediate departmental action be taken against the erring police officers, including a Dy. S.P. and SHO, for harassing Shri Shakuni Choudhary, and attaching his property without justification. The Commission directed the DGP Bihar to report within four months on the results of the departmental inquiry. The Commission, convinced that Shri Shakuni Choudhary and members of his family had been tortured and their dignity lowered, recommended a consolidated sum of Rs.25,000/- by way of compensation and directed the Government of Bihar to make the payment to the complainant. The Government complied with the direction, upon further interventions by the Commission, and paid the sum of Rs.25,000/- to Shri Choudhary. Departmental proceedings against the erring police officers were also initiated.



12. Death of a kidnapped child and also two others due to excessive use of force by Police: Uttar Pradesh (Case No.139/20/98-99)

One Shri Jitender Singh, a resident of Shalimar Garden, UP filed a complaint before the Commission alleging that his son, Gaurav, aged 6 years was kidnapped by four persons from his house on 30 March 1998 and that the kidnappers had made a demand of Rs.20 lakhs as ransom for the release of Gaurav. On being informed, the police reached the spot and transmitted a message on wireless to the police control rooms of Haryana and Rajasthan to intercept the kidnappers. Subsequently, due to negligence of the police, the complainant's son got injured during an exchange of fire between the police and the culprits and later Gaurav succumbed to a bullet injury. The complainant prayed for an inquiry in the matter through CBI and also for an award of compensation of Rs.30 lakhs.

On the Commission's notice, a report was received from the SP, CID (CB) Rajasthan, Jaipur which stated that the child sustained the bullet injury during an encounter, which took place between the police and the culprits, as the latter had fired from inside a car upon the police party. The report added that the police party was unaware of the actual number of the persons inside the car and of the fire power available with them and hence the police had resorted to retaliatory fire. It was also reported that the encounter was spontaneous. The Commission, on considering the report, did not accept the police version of a sudden and spontaneous encounter. Instead it drew the inference that the police officials concerned, including the Additional S.P., had acted in a rash and negligent manner by using excessive force. The Commission, noted that the Addl. SP., instead of exercising restraint on the police personnel present, had personally resorted to the firing of six bullets in quick succession from his own revolver and had allowed his gun-men to fire 11 rounds from an automatic weapon. The Commission accordingly formed the view that inadequate efforts were made by the police to deal with the kidnappers by means other than a recourse to indiscriminate firing. In the Commission's view, intelligent handling of the situation could well have resulted in the child being rescued, and quite possibly the culprits being caught alive. The Commission recommended that a further inquiry by an officer not below the rank of IG was necessary in this matter, in order to ascertain the full facts as to what transpired and to fix the responsibility for the apparently rash, negligent and unskilled handling of the situation that had resulted in the death of the child and two others. The Commission also recommended that the State Government of Rajasthan pay a sum of Rs.2.5 lakhs to the father of deceased child by way of 'immediate interim relief' within a period of one month.

13. Inaction of Police on the death of a railway gateman due to political influence: Haryana (Case No.1090/7/97-98)

The National Commission for Minorities forwarded a complaint that it had received to the NHRC for inquiry and disposal. The complainant had stated that her husband was a gateman



on duty at a railway-gate in Haryana. He had closed the gate, as goods train was approaching. An MLA and his gunman, however arrived at the gate in a Maruti vehicle and asked the gateman to open the gate. On his refusal, he was assaulted severely and his body was thrown on the railway track. He died due to a collision with the train. The complainant alleged that, though a case had been registered, no action was taken by the local police owing to political influence and pressure.

The Commission sought a report from the DIG Railways, Haryana. The report disclosed that there were three eyewitnesses in the case and they gave almost the same version as given by the complainant. The report further revealed that, according to the post-mortem report, shock and haemorrhage due to multiple injuries caused the death. The Commission, thereafter, directed its own Investigation Wing to conduct an independent enquiry. The report disclosed that the life of the deceased was tragically cut short, as maintained by his widow. The gunman of the MLA was arrested, but released on bail and the sections invoked in his case were 332 (voluntarily causing hurt to deter public servant from his duty), 352 (Punishment for assault or criminal force otherwise than on grave provocation), and 304-A (causing death by negligence) of the Indian Penal Code. The Investigation Wing found that the police had deliberately left loopholes in the case against the MLA and only implicated his gunman. Serious lapses, indicating political pressure on the police, were disclosed. The police did not get the accused identified by the witnesses and they were not approached for six months despite the fact that the police had known the car number right from the very beginning. The MLA deposed before the investigation team that he came to know about the incident only from the newspapers, whereas before the police he had attributed the whole occurrence to his gunman. During the period of six months before the arrest of the gunman and examination of the MLA, it appears that political pressure was brought to bear on the witnesses, as one eyewitness changed his statement substantially. Another witness deposed that he was pressurised to change his version, or he would receive the same treatment as the deceased; this witness, however, maintained his stand firmly.

The photographs of the deceased reveal that his belongings were scattered over the place of the incident, confirming that he was actually dragged to the railway track.

The Commission stressed the need for a fresh, fair and impartial investigation. The Commission observed that it was surprising that though a case of 302 IPC (murder) was initially booked, no investigation was carried through to its logical conclusion.

The Commission directed the Government of Haryana to entrust the investigation to CBI.



**14. Death of a Deputy Superintendent of Police due to Police inertia: Bihar
(Case No. 3017/4/98-99)**

Shri N.K. Singh, Member, National Executive, Samata Party in his complaint to the Commission alleged that the death on 8 December 1998 of Shri Satyapal Singh, DSP and a Hawaldar, in an encounter with a gang of criminals allegedly having links with one Mohammed Jaffar Alam, an office bearer of the Rashtriya Janta Dal, was attributable to the deliberate delay in the arrival of the police reinforcements from the District Headquarters. It was further alleged that the reason for the hesitation in sending additional help was because of the political influence of Mohammad Jaffar Alam. The complainant further stated that, subsequent to the killing of the DSP, the police did not make any serious effort to arrest the five accused, two of whom were reported to have been killed subsequently in gang rivalries and that the main accused, Mohammed Jaffar Alam, was dealt with very leniently, time being given to him to surrender in the Court on 15 December 1998. Action taken under Section 82/83 Cr. P.C. was also reported to be half-hearted, in that no simultaneous proceedings were initiated for the attachment of the accused's property at Bakhtiarpur.

After examining the report of Shri S.V.M. Tripathi, former DGP, UP who was requested by the Commission to investigate the case, the Commission came to the prima-facie conclusion that the response from the District Headquarters to the request of DSP Satyapal Singh for additional reinforcements did not reflect the importance that the matter demanded. The action of the Supdt. of Police, in leaving the matter to the ASP, who reached the place of encounter with just 4-5 persons, four and a half hours after the receipt of the message, showed that the Supdt of Police had failed to realise the gravity of the situation. Shri Tripathi, in his report, had ascribed the delay in the arrival of the reinforcements to a lack of planning and urgency. However, the Commission thought that only a thorough inquiry could disclose whether the delay was deliberately caused, or had resulted from the negligence on the part of Supdt of Police and that, either way, it was a case of serious dereliction of duty in the least. Noticing that none of the five assailants involved in the case was arrested and the half-hearted action taken under Section 82/83 Cr.P.C., and considering the political influence of the main accused, the Commission felt that it could reasonably be assumed that the police deliberately did not take the job seriously. Taking a serious view of the matter, the Commission noted that the death of a young DSP, in an encounter with a gang of criminals known for its alleged political links had a bearing on the morale of the police force. Looking into the poor account that the Supdt. of Police had given of his professional abilities and leadership qualities, the latter deserved to be dealt with suitably after obtaining and evaluating his reply to a show cause issued to him by the Commission on the following points:

- (i) His failure to realise the gravity and urgency of the request for reinforcements received from the police party engaged in a daring encounter with a gang of criminals equipped with sophisticated weaponry;



- (ii) His decision to leave the matter to his ASP instead of himself rushing to the scene of encounter with adequate force himself; and
- (iii) His failure to ensure prompt arrests and proper investigation of the case registered against the assailants, particularly Mohammed Jaffer Alam.

Considering that there was a strong prima facie material to hold that the young DSP lost his life owing to the negligence of the police, the Commission recommended that the widow of the DSP should be paid an immediate interim relief of Rs. 5 lakhs by the Government of Bihar without prejudice to her claims under the law of the land. The Commission also recommended that the widow should be given a suitable job in accordance with her academic and other qualifications in the service of the Government.

PROTECTION OF RIGHTS OF CHILDREN/WOMEN

15. Torture of a child labourer: Uttar Pradesh (Case No. 5897/24/98-99)

The Commission took suo-motu cognizance of a report appearing in Nav Bharat Times of 3 July 1998 in which it was stated that two drunken police constables allegedly tortured a young boy, working in a road side Dhaba. The news item further alleged that the two constables ordered him to fetch his mother to entertain them and when the boy refused, they stripped him and branded him with a hot iron rod used for making "tandoori roti".

On instructions of the Commission, the case was investigated by the Commission's own investigating team and it was found that the boy was beaten with footwear and, later, with a walking stick, by the police constables.

The two constables involved in the incident had been placed under suspension and a criminal case started against them.

In view of the sufferings of the boy, the Commission recommended to the Chief Secretary, Government of Uttar Pradesh, the payment of a sum of Rs.5,000/- to the parents by way of immediate interim relief to be spent on the welfare and education of the boy. At the instance of the Commission, the District Magistrate has initiated action against the Dhaba owner under the Child Labour (Prevention) Act for employing a child in his Dhaba.

COMMENT

The Convention on the Rights of the Child' (CRC) sets the standards that should prevail



for the protection of children. It emphasises in particular, the rights to life, survival and development of the child. Art. 6(2) of the CRC makes it obligatory for the State to ensure the survival and development of the child to the maximum possible extent. This spirit prevails in the Directive Principles of the Indian Constitution, e.g., Art. 39 (e) & (f), which require that the State should direct its policy towards securing for children the opportunities and facilities to develop in a healthy manner, in conditions of freedom and dignity, that childhood is protected against exploitation and the tender age of children is not abused.

The efforts of the Commission seek to give expression to the spirit of Art. 32 of the CRC, the provisions of Constitution of India and judicial pronouncements of the Supreme Court. These provisions recognise that the child has a right against economic exploitation and the performing of any work which is likely to be hazardous or interfere with the child's education or be harmful to the child's health or development.

The Indian Constitution, in its Art. 24, prohibits employment of children in factories and other hazardous enterprises and Art. 45 mandates that the State shall endeavour to provide free and compulsory education for children upto the age of 14 years of age.

**16. Sexual exploitation of woman: Rajasthan
(Case No.685/20/97-98)**

The Commission received an anonymous complaint alleging that a 24 year old woman had been forcibly detained and was being sexually abused by certain persons at Jaipur for the last 2-3 years. According to the complaint, the woman had a young child and was in a pitiable condition and the culprits were planning to force her into prostitution. The Commission took cognizance of the anonymous complaint. A report submitted by S.P. (Rural) Jaipur on notice from the Commission stated that both the suspected persons had been contacted and that, as they belonged to a respected family, their involvement was ruled out. The report also stated that no such woman as mentioned in the complaint could be located. Not satisfied with the report, the Commission deputed its investigation team for an on-the-spot inquiry. The Commission's team, alongwith local police, rescued the woman on 13 April 1998. According to the report of the investigation team, she was recovered from the house of one Manohar Lal Sharma, a criminal, and was found to be undernourished, in ill health and in traumatized condition. She was sent for medical examination and was found to be pregnant. According to the report, a case under relevant provisions of the IPC was registered and 6 persons, including a police constable, were identified as being responsible for her desperate condition; two of them had already been arrested. The Commission considered the report of its investigation team and noted that the law had been set in motion. Further, taking note of the travails of the victimized woman as well as the trauma that she had undergone, the Commission recommended that the Government of Rajasthan accord her appropriate assistance, inter alia by providing her suitable employment.



**17. Attempt to rape by a Policeman: Andhra Pradesh
(Case No.44/1/97-98)**

The Commission took suo-motu cognizance of a news item published in the Pioneer on 30 April 1997. According to the news item, a policeman (security guard) posted at the residence of the Inspector General of Police (Co-ordination) attempted to rape a woman labourer. When her husband tried to rescue her, severe injuries were inflicted on him by the policeman and two of his colleagues.

The Commission directed the Director General of Police, Andhra Pradesh, to submit a report on the incident. The report disclosed that the woman labourer was caught hold of by the police constable, Srinivas, and was threatened by him with a gun. On hearing her scream, her husband intervened to rescue her. At this, PC Srinivas called three of his colleagues who were on duty with him. PC Srinivas and two other policemen administered a beating to the husband, using their hands, lathis and belts. The woman got an FIR registered against the policemen under Section 354 IPC (outraging the modesty of a woman) and 324 IPC (voluntarily causing hurt by dangerous weapons or means). All the three policemen were arrested and suspended from service. Later, they were released on bail and PC Srinivas was removed from service as per Rule 25(II) of APCS Classification, Control and Appeal Rules, 1991.

The Commission remarked that it was a matter of deep regret that the personnel of law enforcing agencies whose duty was to protect the rights of the citizens, themselves became perpetrators of such heinous acts. Considering the indignity and humiliation suffered by the woman and the injuries received by her husband, the Commission recommended to the Government of Andhra Pradesh to pay immediate interim relief of Rs.5,000/- to the victim within one month from the receipt of the proceedings.

**18. Girl rescued from captivity: Rajasthan
(Case No.496/20/97-98)**

The Commission received an anonymous petition stating that a young girl had been kept in captivity in a house in Dholpur, Rajasthan for about 5 years and, as a result of that, she had become mentally ill and her condition was serious. The Commission, taking cognizance of the matter, directed its investigation team to submit a report after making an on-the-spot inquiry. It also directed the investigation team to take up the matter with the members of the family in case the facts alleged were found to be true. The investigation team, on finding that allegations made in the petition were true, undertook a rescue operation. The team reported to the Commission that, after the Commission's intervention, the victim had been given appropriate care and had been receiving proper medical attention. Noting the report of the investigating team, the Commission further directed the Rajasthan Police to vigorously pursue their efforts



to apprehend the culprit, the brother of the victim, and to monitor the progress of treatment of the victim. The Commission also directed the SMS hospital to continue to provide medical assistance to the victim and report to the Commission.

19. Disparities in Maternity Leave to the Employees of Private Schools: West Bengal (Case No.16295/96-97)

A complaint was received by the Commission alleging that management of certain private schools in West Bengal had not been providing maternity leave benefits to the teaching and non-teaching women employees. The Secretary, Department of Education, Govt. of West Bengal on notice from the Commission submitted a report based on inquiries made by the Department with regard to the three specific categories of private schools, where the provisions of maternity leave allegedly were not enforced. The report said that different provisions were made for different categories of schools and that the schools were strictly following the rules which were applicable to each of these categories. On consideration of the report from the Secretary, Department of Education and examining the report of the Ministry of Labour on the subject of maternity leave, the Commission observed that there was no uniformity in the rules/code framed by different boards like the ICSE and the West Bengal Board of Secondary Education with regard to maternity leave and that they were at variance with the maternity leave rules framed by the Government. It was noted that, in some cases, the existing rules/codes had not been followed. The Commission directed the Government of West Bengal to undertake a review of the existing rules / codes and to bring about uniformity and also to incorporate the provision of grant of 120 days maternity leave to the teaching and non-teaching women employees of various educational institutions. The Commission further stated that it was up to the authorities of the State Government to restrict the facility of maternity leave to two child births, if it thought necessary and appropriate.

COMMENT

Though women constitute half the world's population, there is still no society in which they enjoy full equality with men. Patriarchal attitudes and consequent power imbalances have adversely affected women culturally, socially, politically and economically. The Universal Declaration of Human Rights, reaffirming faith in the dignity and worth of the human person and in the equal rights of men and women, envisaged the enjoyment of such rights without any distinction of any kind, including discrimination on the basis of sex (Preamble, Article 2). However, gender discrimination constitutes one of the most pervasive forms of violation of human rights. In the light of this fact, the Vienna Declaration of 1993, explicitly asserted that the human rights of women are an inalienable, integral and indivisible part of universal human rights and eradication of all discrimination on grounds of sex are priority objectives of the international community. State Parties have thus undertaken to eradicate this evil under various



articles of the Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW). The Indian Constitution propagates the spirit of equality before law through Art. 14 and mandates the State, through Art. 15, not to discriminate between citizens on certain grounds, including the sex of the person. Art. 15(3) is an ameliorative provision which authorises the State to make special provision for women and children. The Commission thus strives to fulfil the obligation of the State under various human rights instruments and the Indian Constitution to protect and promote the rights of women.

Among these instruments is the UN Declaration on the Elimination of Violence Against Women 1993, which defines 'violence against women' as any act of gender based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. As regards the latter, further violence against women includes the physical, sexual and psychological violence occurring in the family, including battering, other traditional practices harmful to women, non-spousal violence and violence related to exploitation. For long, due to public and private dichotomy in human rights jurisprudence, violence perpetrated against woman within the four walls of her home remained ignored and could not be brought under the purview of UN instruments and local legislations. However, the international human rights discourse has identified and recognised the 'private sphere' violations of the human rights of women. The Commission's intervention in one of the cases mentioned above is a reflection of this recognition.

The Platform for Action and Beijing Declaration (1995) defines health as a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. The health of women involves their emotional, social, and physical well being and is determined by the social, political and economic context of their lives, as well as by biology. Expecting mothers are therefore entitled to special care and protection and their motherhood should not become a hindrance to their right to favourable conditions of work. Art. 10 of the International Covenant on Economic, Social and Cultural Rights 1966, recognises that special protection should be accorded to mothers during a reasonable period before and after child birth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits. It is pertinent to note that by virtue of its being a signatory to CEDAW, India is under an obligation, under Art. 11, to protect the right of health and safeguard the function of reproduction in case of working women. Further, the State is under a duty to prevent discrimination on grounds of maternity and to ensure that effective right of women to work is protected by introducing maternity leave with pay, or with comparable social benefits, without loss of employment, seniority or social benefits. The Commission, in fulfilment of Article 11 of CEDAW, directed the State of West Bengal, in one of the above-mentioned cases, to undertake a review of the existing rules/codes and to bring about uniformity by ensuring appropriate provision for the grant of 120 days maternity leave to teaching and non-teaching



employees in the schools of that State.

**20. Escape of Inmates from Juvenile Homes, etc
(Case No.497/13/97-98 & other 86 cases)**

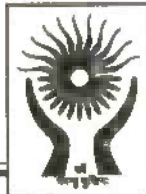
In this groups of 87 cases, the attention of the Commission was drawn to the escape of several inmates from the Beggars' Homes/Juvenile Homes/ Remand Homes situated in different parts of Maharashtra. The Commission pointed out that it was the State Government's duty to take appropriate measures for the safe custody of the inmates. The escape of such a large number of inmates was indicative of the fact that there were either serious infrastructural deficiencies or that security arrangements were faulty.

The Commission directed that the Chief Secretary, Government of Maharashtra should review the functioning of the Beggars' Home/Juvenile Homes/Remand Homes with a view to ensuring better care in these institutions and avoiding the recurrence of circumstances leading to such instance.

COMMENT

Progressive criminology propagates the use of non-institutional treatment of offenders. The loss of liberty, separation from the family and the social environment in institutions often results in unwanted consequences. Considering this, Rule 19 of the UN Standard Minimum Rules for the administration of Juvenile Justice (1980) aims at restricting institutionalization in quantity and in time. Rule 19 lays down that the placement of juveniles in an institution shall always be a disposition of last resort and for the minimum necessary period. Art. 3 of the Convention on the Rights of the Child (CRC) mandates the State to ensure that the institutions responsible for care or protection of children shall conform with the standards established by competent authorities. Art. 19 of that Convention further mandates that the State shall take all appropriate legislative, administrative, social and educational measures to protect the child in all respects, while in the care of parents etc. or any other person. Art 40 of that Convention recognises the state's duty to treat the child offender in a manner consistent with the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others. Rule 26 of the Beijing Declaration says that the juveniles shall receive care, protection and all necessary assistance, e.g. social, educational, vocational, psychological, medical and physical, which they require due to their age, sex, personality and in the interest of their wholesome development.

The order of the Commission sought to review of conditions in the institutions for children, in order to bring them into conformity with acceptable standards.



PROTECTION OF OTHER RIGHTS

21. Protection of right of victims in cases of industrial hazards: Uttar Pradesh (Case No.19900/24/97-98)

The petitioner, Ms. Subhashini Ali, drew the attention of the Commission to the occurrence of a ghastly incident in the factory premises of Jyoti capsules on 4 January 1998 in Kanpur, in which 8 workers had lost their lives. The accident occurred due to an explosion caused by the leakage of an inflammable chemical, hexane. The petitioner alleged that the factory had resumed production without taking due care of safety conditions.

The Special Rapporteur of the Commission investigated the case and stated that the accident was the result of criminal negligence by the factory owner in handling and storing explosive chemicals and that he had failed to maintain safe working conditions in the factory. A major contributory factor was supervisory lapse on the part of the Inspectorate of Factories. The Commission directed the Government of Uttar Pradesh to finalise criminal cases registered against the owner and also ordered that the factory should not be permitted to resume production without complying with all safety requirements. The Labour Department of the Government was directed to investigate the reasons for the supervisory lapse and to penalise the culprits. The District Magistrate, Kanpur was directed to ensure early payment of all financial benefits in case of death and injuries. The intervention of the Commission brought about the award of immediate relief of Rs. 5000/- each to the victims apart from the compensation which was sanctioned to them by the State.

COMMENT

The Directive Principles contained in Art. 48A of the Constitution direct the State to endeavour to protect and improve the environment.

Principle 13 of the UN Declaration on Environment and Development (Rio Declaration, 1992) proclaims that States shall develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Public Liability Insurance Act 1991 is in consonance with the spirit of principle 13 of the Rio Declaration, in as much as it aims at providing for public liability insurance for the purpose of providing immediate relief to persons affected by accident occurring while handling any hazardous substance or matters connected therewith or incidental thereto. Under the Act, any person handling any hazardous substance is required to take out insurance policies so that he is insured against liability to give relief in case of death or injury to a person, or damage to any property, arising from an accident occurring while handling any hazardous substance. This Act has been enacted subsequent to the Bhopal Gas leak disaster where MIC leaked from the plant of Union Carbide India Ltd. and caused the death of over 3000 persons and serious injuries to a large number of others.



It is important to mention here that in the case brought before the Commission by Ms. Subhashini Ali, negligence was involved on the part of the factory owner. In such cases, exemplary compensation and damages are to be awarded to the victims. The Supreme Court of India has modified the English rule of strict liability in *M.C. Mehta vs. UOI* (AIR 1987 S.C. 1087) and has laid down the concept of 'absolute liability' in the case of industrial hazards, even though there might not have been any negligence on the part of the enterprise owner. By providing additional relief and ordering the expeditious criminal trial of the culprits, the Commission has kept in mind the constitutional obligations of the State and also the UN Declaration on the Environment and Developments.

**22. Healthy Environment and Traditional Rights of Tribals : Harassment and Torture of Tribals by Forest Officials: Uttar Pradesh
(Case No.14971/24/97-98)**

A complaint received by the Commission alleged that the Van gujjars living in the forest area which fell under the proposed Rajaji National Park, Dehradun were being harassed and tortured by the directors and staff members of the park. The complainant maintained that the tribals were not allowed to fetch fodder for their animals, sell the milk or have access to medical aid as an ambulance was not being allowed into the area and that this had resulted in loss of human life. The complainant further alleged that the notification for the establishment of the National Park was issued in contravention of the provisions of the Wild Life Protection Act, 1972. The efforts of forest officials were directed to seek forcible eviction of gujjars and, in a few cases, they were cheated in order to obtain declarations that, in exchange for two acres of land, they were ready to leave the forest.

In another complaint received from the counsel of the complainant, similar facts about the ambulance not being allowed entry into the forest and the denial of medical facilities were alleged. The Commission issued a notice to the Chief Secretary, U.P. A report by the Chief Conservator of Forests was submitted in which all allegations were denied and a copy of rehabilitation policy for gujjars was enclosed. It was stated in the report that gujjars were, in fact, disturbing the system by indiscriminate felling of trees in the forest. A reference was made to writ petition 79/89 filed in the Supreme Court. The Supreme Court had directed speedy settlement of gujjars outside the Rajaji National Park. The settlement process had already started and 62 families were resettled in Pathri region of Haridwar. In accordance with the salient features of that project, each gujjar family was entitled to be given two acres of land and Rs. 10,000/- for transporting the building materials. Road construction, drinking water, schools, ambulances transport and other facilities were envisaged in the rehabilitation project. It was also brought to the notice of the Commission that Writ Petition No. 202/95 was pending before the Supreme Court in which different acts relating to the conservation of forests were to be examined. The Commission sent a copy of the report of the Chief Conservator of



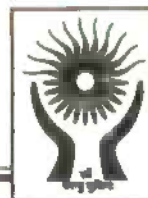
Forests, the order of the Supreme Court and the order of rehabilitation project to the complainant, for his response. The complainant reiterated his allegations and, thereafter, the Commission directed a Special Rapporteur to examine the matter.

The Special Rapporteur met the complainant and several officers of the Government of Uttar Pradesh. He learnt from them that 62 families were happy with their resettlement and others were ready to move out if 2 acres of land was given to each of them. The report disclosed that the number of families to be resettled had increased from 512 to 1390 and that the final notification, as required by law, notifying the Rajaji National Park, had not been issued. The gujjars could not, therefore, be deprived of their traditional rights. The Commission convened a meeting of the concerned parties to find a satisfactory solution of this human problem. The claims of the State and the gujjars were in conflict with each other. The State was concerned about the denudation of forests and wanted to protect the forests and the wild life. The gujjars asserted their traditional rights to sustain their livelihood.

The Commission accordingly made certain recommendations to protect the interests of the gujjars. For ascertaining whether the gujjar families were willing to leave the land or not, the setting up of an impartial body by the Government of UP was recommended. Until gujjar families did not leave, their traditional rights were to be protected and they should not be subjected to any harassment by the forest officials.

The Commission brought together the complainant and the authorities so that they may understand each others' problem. For instance, regarding the grazing and lopping, the forest authorities conceded that these rights of gujjars needed to be protected. The Commission directed that the areas where gujjars could take their animals for grazing, outside the National Park, could be ascertained by the authorities. But in any case, no coercive steps were to be taken. It was also pointed out that the gujjars should not claim unfettered rights to lop the trees; rather, areas should be specified, chosen on the basis of the age and growth of trees, by the authorities. Considering the very important aspect of entry of vehicles, including the ambulance, the Commission directed that the permission to enter should not be declined and, in rare cases when this is done, the reasons must be recorded in writing, immediately. The Commission was assured by the forest officials that the entry of the ambulance will be allowed, subject to the condition that one forest official nominated for this purpose should be taken inside the ambulance. The Commission was further assured that proper arrangements for giving permission for entry of vehicles would be made at the entry point itself.

The complainant had submitted that several gujjars had died due to lack of medical attention as the ambulance was not allowed to enter the forest. These allegations were refuted by the authorities completely. The Commission preferred that the parties should work out their rights in accordance with the law applicable to them and decided not to intervene in this matter.



**23. Measures to prevent deaths due to starvation: Orissa
(Case No.37/3/97-LD)**

This case finds mention in the previous annual reports of the Commission. The Commission took cognizance of the matter relating to alleged starvation deaths in KBK districts of Orissa on a communication received from the then Union Agriculture Minister Shri Chaturanan Mishra in November 1996. Later, the Supreme Court of India, in its order dated 26 July 1997, directed petitioners before it, namely the Indian Council of Legal Aid and Advice and others (Writ Petition Civil No.42/97) to approach the National Human Rights Commission for seeking interim measures for preventing deaths by starvation in the KBK districts of Orissa. The Commission has been reviewing the implementation of various measures taken by the Government of Orissa. During the course of the year, Shri Chaman Lal, Special Rapporteur, had visited the districts of Koraput, Malkangiri, Sonepur, Raigada, Kalahandi, Naupara and Bolangir and submitted his observations on the progress of work. The reports submitted by the Special Rapporteur were considered by the Commission in sittings held on 27 April 1998, 13 July 1998, 15 September 1998, 3 November 1998 and 28 January 1999.

While appreciating the initiatives taken by the State Government for action on various aspects of relief work, the Commission observed that the extent and pace of the relief programme ought to have been better. It directed the Chief Secretary, Government of Orissa, who was present in one of the hearings, to sensitize the administration at all levels so as to achieve the desired performance level. The Commission asked the State Government to bestow particular attention to the strengthening of the emergency feeding and mid-day meal programme through maintaining an adequate stock of food grains and requisite staff. It also called for a review of entitlements under the Public Distribution System and a review of the existing scale of one tube well per 150 person, in order to reduce the distance traversed for water from 1½ to ½ km. The Commission further emphasised the need to maintain existing tube wells, the prompt filling-up of vacancies of doctors and para-medical staff in the hospitals, and also the payment/distribution of pensions on a regular basis under various schemes. The Commission was of the view that the State Government needed to speed up programmes relating to land reforms, afforestation, soil conservation and literacy.

The Commission expressed its concern and disappointment at the lack of progress in regard to soil conservation work in some parts of the KBK districts and emphasized the need to initiate steps on an urgent basis to curb the menace of ghost ration cards.

The Commission will continue to monitor this case.



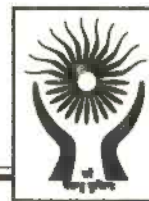
24. Mass cremation of unclaimed/unidentified bodies by Punjab Police: Punjab (Case No.1/97/NHRC)

A reference to this case was made in the Annual Reports of the Commission for the years 1996-97 and 1997-98. During the year under review, the Supreme Court heard a petition filed by the Ministry of Home Affairs seeking clarification of the Supreme Court's order dated 12 December 1996, in the light of the Commission's order dated 04 August 1997 in which the latter had laid down the modalities which it intended to follow in pursuing the enquiry into this case. On 10 September 1998, the Supreme Court disposed of the said petition, upholding the stand of the Commission that it was a body sui-generis, in addition to it being a body sui-juris created under the Act of Parliament. The Supreme Court criticised the Union Home Ministry for the various objections raised by it before the Commission, and for later approaching the Court for clarifications which had led to delay in providing relief to the affected families.

Thereafter, the Commission proceeded to examine the scope of the enquiry which it was required to undertake under the remit of the Supreme Court's order dated 12 December 1996. While it was contended on behalf of the petitioners that the Commission was required to inquire into all incidents of what were referred to as 'extra-judicial eliminations', or involuntary disappearances, 'fake encounters', 'abductions' and 'killings' etc., alleged against the Punjab Police during the decade 1984-1994, the Union Government and the State of Punjab contended that the inquiry should be restricted only to the 2097 cases of cremation of bodies - 585 fully identified, 274 partially identified and 1238 un-identified - in the police districts of Amritsar, Tarn Taran and Majitha.

After hearing the Counsel for the parties, the Commission in its order dated 13 January 1999 settled the scope of inquiry under the Supreme Court's direction, by holding that it was limited only to those illegal killings/ disappearances that culminated in the cremation of 2097 bodies (585 bodies fully identified, 275 bodies partially identified and 1238 bodies unidentified) in the crematoria located at Durgyana Mandir, Patti Municipal Committee Crematorium and Tara Taran which were also the subject matter of inquiry by the CBI in pursuance of the order of Supreme Court dated 15 November 1995. The contention that the Commission should undertake the investigation of all the alleged police killings in the State of Punjab was not found to square or reconcile with the express terms of the Court's remit.

As a sequel to the order on the scope of the inquiry, the Commission in a separate order of 13 January 1999, laid down the modalities for the conduct of further proceedings. The Commission directed that a public notice be published in the newspapers having circulation in and around the District of Amritsar for inviting applications/claims, by 10 March 1999. The Commission clarified that the initial burden was on the State Government to establish that the cremations, undertaken by the police were in accordance with the procedure prescribed by



law. The Commission directed the State Government to file on or before 10 March 1999 a list of all the cremations done by the police in respect of un-claimed/ un-identified bodies in the crematoria of the police districts of Amrtisar/Majitha/Tarn Taran between June 1994 - December 1994. The order also provided for the setting up of a separate cell for dealing with this inquiry, and directed the Government of Punjab to deposit initially a sum of Rs.25 lakhs with the Commission before 15 February 1999. This was complied with by the Government of Punjab.

The petitioners moved a petition for a review of Commission's order dated 13 January 1999 seeking enlargement of the scope of the inquiry so as to cover the extra judicial killings and disappearance in whole of the State of Punjab. The Commission, vide its order dated 24 March 1999, declined any such extension of the scope of the inquiry.

Pursuant to the public notice issued by the Commission, 88 claims were received which have been processed. The State of Punjab sought extension of time to file the information sought from them.

**25. Non-release of travel document to Shri Abdul Gani Lone, Ex Member of A.P.H.C., Kashmir for his medical treatment in a foreign country.
(Case No. 174/9/98-99)**

Shri Abdul Gani Lone, Chairperson of the J&K People's Conference and an Executive Member of the All Parties Hurriyat Conference (APHC), in a petition to the Commission made various allegations including those of violation of his civil and political rights, threat to his life, illegal detention and destruction of his property, and the withholding of a travel document to him since 1994, depriving him of the opportunity to go on Haj and the denial of medical treatment of his choice.

On notice to the Union Home Secretary and Chief Secretary, Government of Jammu & Kashmir, reports were received by the Commission. The report from Government of Jammu & Kashmir dealt with various matters including that of a bomb blast that destroyed Shri Lone's house on 7/8 June 1998, and the detention of Shri Lone alongwith his associates on various occasions. On the issue of withholding of travel document and denial of medical treatment of his choice, the Home Department took the view that, as the treatment needed by Shri Lone was available at Escorts Hospital in New Delhi, there was no need for him to travel abroad. The report also added that Shri Lone was deeply involved in the secessionist movement in J&K. The report from the Union Home Ministry, focusing more on the alleged withholding of the travel document, stated that leaders of the APHC had tried to internationalise the Kashmir issue during their visits abroad. Ostensibly going to participate in various conferences, these leaders had been presenting a wrong picture of the human rights situation in the State of J&K. The report of the Union Home Ministry also stated that, during his last visit to the USA in 1993,



on the pretext of getting medical treatment, Shri Lone had indulged in anti-Indian activities/propaganda. A passport had therefore been denied to him under Section 601 of the Passport Act, 1967. The Union Home Ministry also emphasised in its report that withholding Shri Lone's travel document and hindering his going on Haj would not constitute a violation or infringement of his rights under Article 25 of the Constitution, as these rights were subjected to public order, morality, health and other provisions of Part-III of the Constitution.

The Commission, after giving careful consideration to both the reports, took the view that the issue regarding Article 25 guaranteeing right to freedom of religion was of relevance earlier in 1994 when Shri Lone's request for a travel document for the purpose of going on Haj was considered and rejected. But in present consideration, it felt that the issue that the petition of Shri Lone really raised was concerning the provisions of Article 21 of the Constitution relating to the right to life. The Commission, in this context, further noted that despite Shri Lone having been repeatedly treated at Escorts, an institution of the highest calibre by any standard, his health was failing. Indeed, an angioplasty and stenting in June, 1998, followed by a by-pass operation in November, 1998 and a further angioplasty in February, 1999 had not succeeded in arresting the decline in his health. While taking full account of the serious views expressed by the Home Ministry in regard to Shri Lone's antecedents and the past reasons for the denial of a travel document, the Commission thought that it was under a duty at this stage of the case to recognize that the matter now related to the Right to Life itself. The Commission felt that, in the circumstances that Shri Lone was facing, respect for his Right to Life would necessarily imply that he be allowed to travel abroad to seek such further medical advice and treatment as he considered essential to his survival. The Commission recommended that the Govt. of India urgently issue the appropriate travel documents to Shri Lone. However, the Commission added that it was open to the Govt. to make such restrictions as it considered appropriate in respect of such matters as duration and the countries for which they would be valid.

26. Atrocities against minorities: Killing of Australian missionary and sons: Orissa (Case No.422/18/98-99)

Acting suo-motu on 25 January 1999, the Commission expressed its deep shock and pain at the recent attacks on the members of the Christian community in Madhya Pradesh, Gujarat and Orissa which had been extensively reported in the Press. The Commission further observed that, in each of the States, the investigating machinery of the respective States was said to have been set in motion to go into the tragic events that had occurred. The Commission added, however, that given the recurrent character of these grievous occurrences, a pattern transcending any single State appeared to be emerging, threatening the pluralistic character of the country and constitutionally guaranteed human rights. Stating that it was greatly concerned by these developments, the Commission was of the view that the spreading menace



must be firmly and promptly checked and adequate measures taken, both by the State and Central Governments, to prevent the recurrence of such tragic events.

At the same time, and in the light of these considerations, the Commission issued notice to the Chief Secretaries of the States of Madhya Pradesh, Gujarat and Orissa, and also to the Union Home Secretary, to take immediate steps to ensure that effective measures were undertaken to control and prevent such events, to scrupulously investigate and bring to book those who have been responsible for the events occurring in these States, to provide immediate relief and assistance to the victims and the next of kin of those who had died, to take all necessary measures to accord protection to and to restore confidence amongst the affected communities, and to report to the Commission on the steps taken, including the progress of investigations, within two weeks.

Without prejudice to the investigations under way, the Commission further instructed its Director-General (Investigation) to visit Orissa forthwith to make an on-the spot study of the situation and to report back to the Commission at the earliest.

Further, in response to its requests for reports from the State and Central Governments, the Commission received a reply from the Under Secretary, Home Department, Government of Madhya Pradesh dated 5 February 1999, from the Chief Secretary, Government of Gujarat dated 6 February 1999, from the Principal Secretary, Government of Orissa dated 6 February 1999 and from the Joint Secretary, Ministry of Home Affairs, Government of India dated 12 February 1999.

The reply of the Ministry of Home Affairs indicated, inter alia, that the Government of India had on 29 January 1999, appointed a Commission of Inquiry, consisting of Sri Justice D.P.Wadhwa, a sitting Judge of the Supreme Court of India, to make "an inquiry into the facts and circumstances relating to the killing of Mr.Graham Stewart Staines, an Australian national, and his two sons on 22/23 January 1999 in village Manoharpur, District Keonjhar, Orissa." A copy of the Notification issued on 29 January 1999 in this regard was enclosed. The Notification indicated that the Commission of Inquiry shall also inquire into "the role, if any, played by any authority, organisation or individual in or in connection with the aforesaid killings"; and "any other matter connected with or incidental thereto as the Commission may consider appropriate." The Notification added that the said Commission "shall submit its report to the Central Government as soon as possible but not later than two months from the date of publication of this Notification.

The Commission considered the report that it received from its Director-General (Investigation) with great care and also the responses that it received from the State Governments of Madhya Pradesh, Gujarat and Orissa and from the Union Ministry of Home Affairs. In particular, it took careful note of the contents of the Notification issued by the



Central Government, in exercise of the powers conferred on it by Section 3 of the Commission of Inquiries Act, 1952 (60 of 1952), appointing the Commission of Inquiry consisting of Sri Justice D.P.Wadhwa.

In the light of these developments, the National Human Rights Commission made the following observations and recommendations on 23 March 1999:

- (i) Under Section 36(1) of the Protection of Human Rights Act, 1993, this Commission “shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.” The constitution of the Justice Wadhwa Commission therefore requires that the National Human Rights Commission should not inquire into the matters pending before that Commission.
- (ii) This being said, the Commission would like to recall that, in its Proceedings of 25 January 1999, it had observed that, given the “recurrent character” of the attacks on members of the Christian community in Madhya Pradesh, Gujarat and Orissa, a “pattern transcending any single State appeared to be emerging, threatening the pluralistic character of the country and constitutionally guaranteed human rights.” It had, accordingly, expressed the view that this spreading menace “must be firmly and promptly checked and adequate measures taken, both by the State and Central Governments, to prevent the recurrence of such tragic events.” Regrettably, since that date, other incidents have been reported, in Orissa and elsewhere, of attacks against members of the Christian community, reinforcing the view of the Commission that there is need for a firm and comprehensive response to deal with the situation.
- (iii) The Commission is therefore of the view that, given the provisions of Section 36(1) of its Statute, it would now best serve the interests of preserving the pluralistic character of the country, and of constitutionally guaranteed human rights, if the terms of reference of the Justice Wadhwa Commission could be so amended as to bring within its purview the making of recommendations on measures that should be taken, on a nation-wide basis, to firmly and promptly check the recurrence of tragic events of the kind that have recently occurred in a number of States in the country, including notably in Madhya Pradesh, Gujarat and Orissa.
- (iv) For its part, the National Human Rights Commission would most readily extend its fullest cooperation and assistance to the Justice Wadhwa Commission in the discharge of its onerous responsibilities, including in respect of such additional responsibilities as may be entrusted to it on the recommendations of this



Commission. In this connexion, the Commission has already furnished to the Justice Wadhwa Commission, at the latter's request, a copy of the report that it received from its Director-General (Investigation).

- (v) In concluding, the Commission instructs its Director-General (Investigation) to continue to monitor all relevant developments in respect of the grievous events that have occurred in Madhya Pradesh, Gujarat and Orissa and to keep the Commission fully and regularly informed of the situation."

The Commission intends to pursue this matter.

**27. Atrocities on Dalits: Bihar
(Case No.3116/4/98-99)**

The Commission took suo-motu cognizance of a matter reported in the newspaper 'Indian Express' dated 27 January 1999 captioned "Bihar: old script, new victims, and upper caste Ranbir Sena kills 21 Dalits in Jehanabad". According to the report, the Ranbir Sena, a private army of upper caste landlords in Bihar, armed with sophisticated weapons, had killed at least 21 people including 6 children and 5 women on 25 January 1999 in Rukhsagar Bigha village under the Mehandia Police Station in Jehanabad district of Bihar. The victims were all from the backward castes and included several Dalits.

The Commission, while taking cognizance of the matter on 27 January 1999 expressed shock at the news of the killing of 21 Dalits in Jehanabad and directed issue of notice to the Chief Secretary and DGP, Government of Bihar. The Commission further directed that immediate steps be taken to effectively investigate and bring to book the guilty persons, and to ensure that there was no recurrence of such incidents. It further directed the State Government to grant relief and succour to the members of the families of the deceased and to the injured victims.

After discussing the law and order situation in the context of incidents like that which had occurred in Jehanabad, the Commission felt that this was a serious matter, requiring an in-depth study, with a view to finding a proper and timely solution. In this connection, the Chairperson made an appeal to all political parties to give their suggestions on the precise measures which, in the view of their party, could be taken to redress the situation and to ensure a climate of peace, justice and progress in Jehanabad district for all of its people.

The reports from the DGP and Chief Secretary, Bihar and the suggestions from the political parties are, at the end of the reporting period, awaited and the matter was under active consideration of the Commission.



XVII. INTERACTION WITH EXTERNAL GROUPS AND ORGANISATIONS

17.1 The work of the Commission continued to evince considerable interest both in the diplomatic corps stationed in Delhi and in political and human rights circles abroad. Numerous delegations visited the Commission for discussions with it. The Commission trusts that these led to a better understanding of human rights issues both within the country and internationally. Among those whom the Commission welcomed to its headquarters were the Heads of Mission of the European Troika stationed in New Delhi, (the United Kingdom, Austria and the Netherlands) and a number of other Heads of Mission based in the capital. A Finnish Parliamentary delegation led by the Deputy Speaker of the Finnish Parliament visited the Commission, as did various Congressional delegations from the United States of America. Among other distinguished visitors were the Minister of Justice of Mongolia, the Chief Justice of the Supreme Court of South Africa and Namibia and heads of the National Institutions for the Promotion and Protection of Human Rights of Australia, Philippines, New Zealand and senior representatives of the National Institutions of Indonesia and Sri Lanka. Numerous scholars and activists from abroad called on the Commission, including Ms. Bianca Jagger.

17.2 The Commission was particularly happy to receive and have an exchange of views with Ms. Mary Robinson, United Nations High Commissioner for Human Rights. Her Special Adviser for National Institutions, Mr. Brian Burdekin also visited the Commission once again.

17.3 The National Human Rights Commission of India continued to Chair the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, in response to the unanimous request of the members of that Committee. Shri Virendra Dayal, Member and Shri R.V.Pillai, the then Secretary-General represented the Commission in meetings of the 54th Session of United Nations Human Rights Commission and a meeting of the Co-ordination Committee of National Human Rights Institutions was held in Geneva from 31 March to 7 April 1998. Justice Sri V.S.Malimath, Member, represented the Commission in the Ethiopian Human Rights Commission and Ombudsman Conference, organised by the House of Peoples' Representatives of Ethiopia from 18 to 22 May, 1998. Justice Sri V.S.Malimath, Member also attended a workshop on Equality/Anti-discrimination legislation for South Africa held in Johannesburg, South Africa from 19-21 August 1998. Shri D.R.Karthikeyan, DG(I) represented the Commission in a Conference on International Co-operation in Criminal Matters: Balancing the Protection of Human Rights with the needs of Law Enforcement, organised in London by the Commonwealth Secretariat, London from 25-28 August. Shri Virendra Dayal, Member attended the Third Annual meeting of Asia Pacific Forum of National Human Rights Institutions which was held in Jakarta, Indonesia from 7-10 September, 1998. Justice Sri V.S.Malimath, Member participated in the meeting of the Organizing Committee for the VIII International Symposium on "Torture as a Challenge to the Health, Legal and Other Professions" held in Copenhagen, Denmark from 26-30 October, 1998. Justice Sri M.N. Venkatachaliah,



Chairperson, held meetings with the Canadian Minister for Foreign Affairs and the Chief Commissioner, Canadian Human Rights Commission in Ottawa on 23 and 24 November, 1998. Thereafter, he attended an International Human Rights Conference on Universal Rights and Human Values at Edmonton, Alberta from 26 to 28 November, 1998, where he presented a paper titled "Effective Remedies for Violations of Fundamental Rights: The Responsibilities of the State". The Chairperson subsequently held discussions at the Institute of Commonwealth Studies and with Members of Parliament in London. He then presided over a meeting of National Institutions for the Promotion and Protection of Human Rights, held in Paris on 4 and 5 December 1998. Shri N.Gopaldaswami, Secretary General, attended a symposium on "Best Practices for National Institutions for Human Rights: Common Action for NGOs and National Institutions" held in Jakarta, from 9-12 February 1999. He also represented the Commission at an International Consultative Conference on Food Security, Nutrition & Human Rights held in Johannesburg, South Africa from 25-27 March, 1999.



XVIII. ADMINISTRATION AND LOGISTIC SUPPORT

STAFF

18.1 As on 31 March 1999, 218 persons were in position against the total sanctioned strength of 297.

18.2 During the year 1998-99, five posts have been created for Presenting Officers, with supporting staff. One post of a Presenting Officer has been filled and action has been initiated to fill the remaining posts.

18.3 Because of the considerable increase in the work of the Commission, proposals were made to augment the staff strength in different divisions of the Commission. A Staff Inspection Unit of the Ministry of Finance conducted a special study of the staff requirements during the year 1998-99. At the close of the reporting period, the assessment of staff strength made by SIU was in the final stages of consideration with the Ministry of Finance. The SIU has assessed an additional requirement of 55 posts (including 24 leave reserve posts.)

18.4 In order to keep abreast of the demands on it, the Commission has had to engage Consultants to cope with its work. Special dispensation has been obtained from Government to engage 20 Consultants in the Commission.

18.5 The process of absorption of employees in the Commission has been initiated. Options have been obtained from the employees presently on deputation with the Commission for permanent absorption. Fifty-eight deputationists have given their option for permanent absorption and action has been initiated for collecting their service records to assess their suitability for absorption in the Commission. Until such time as the Commission builds its own cadre through the absorption of deputationists, as well as by direct recruitment, the personnel requirements of the Commission will continue to be met through deputation, re-employment, consultancies, etc.

SPECIAL RAPORTEURS

18.6 The scheme for appointing Special Rapporteurs to assist the Commission in its more demanding and sensitive responsibilities continued during the year 1998-99. There were four Special Rapporteurs working for the Commission during the period under review. They were requested to help in respect to critically important issues such as bonded labour, child labour, problems of scarcity in Orissa and matters remitted to the Commission by the Supreme Court such as the monitoring of the Agra Protective Home and the three mental hospitals of Agra, Gwalior and Ranchi. The Commission also availed of the services of retired senior officers as



Special Representatives assigning to them specific responsibilities in each case. The strengthening of the capacity of the Commission through the efforts of these Special Rapporteurs and Representatives has been of utmost value to the Commission in the discharge of its onerous responsibilities.

USE OF OFFICIAL LANGUAGES

18.7 Ever since its establishment, the Commission has been receiving complaints and reports in Hindi as well as in various regional languages. During the year 1998-99 the Commission received nearly 9454 complaints in Hindi and various regional languages. The Hindi Section is responsible for the translation of reports into Hindi, as well as complaints received in regional and foreign languages. The Hindi Section is also attending to the translation of the monthly Newsletter and the Annual Report into Hindi. The scheme for giving cash awards for original writing in Hindi, as well as undertaking the translation of books on literature relating to human rights into Hindi, has been continued during the year 1998-99.

LIBRARY

18.8 During the year 1998-99, the Library added 234 new titles on human rights matters to its stock of books. As of 31 March 1999, there were 3382 titles in the Library, which is becoming increasingly useful to the Commission, interns and others interested in human rights. The Commission also subscribes to 32 periodicals having relevance to human rights issues.

FUNDS

18.9 During 1998-99, the Commission received Rs.6.50 crores (Rs.65 million) as grants-in-aid from the Govt. of India.

18.10 In terms of Section 34 of the Protection of Human Rights Act, 1993 the annual accounts of the Commission for the years 1994-95 and 1995-96, duly certified by the Comptroller of Auditor General of India, were laid on the Table of the Lok Sabha on 28 July 1998 and the Rajya Sabha on 29 July 1998.

18.11 The annual account for the year 1996-97 has also been certified by the Comptroller and Auditor General of India. The account has been forwarded to the Central Government to be laid before each House of Parliament.



XIX. CONCLUDING OBSERVATIONS

19.1 As this report is being written, the Thirteenth Lok Sabha is being constituted. Once again, the people of India have demonstrated their profound attachment to the processes of democracy and to the exercise of their civil and political rights. Once again, the casting of their ballots has been on a scale larger than ever before in recorded history, dwarfing the experience of any other country.

19.2 Deeply impressive and moving as this is, it is now time to move on from the processes of democracy to giving form and substance to its content. In terms of the promotion and protection of human rights, the challenge now is to make democracy work better for all of the people of India, especially those who are disadvantaged or otherwise vulnerable.

19.3 In his recent writings on "Development as Freedom," Professor Amartya Sen has observed that the achievements of democracy depend not only on the rules and procedures that are adopted and safeguarded but also on the ways in which the opportunities that it opens are used. They have to be "positively grabbed in order to achieve the desired effect," for "democracy does not serve as an automatic remedy of ailments as quinine works to remedy malaria." Professor Sen adds that "this is, of course, the basic feature of freedoms in general - much depends on how freedoms are actually exercised."

19.4 There is no doubt that the people of India have repeatedly exercised their civil and political rights, especially their freedom to vote, with vigour and telling effect. But the question arises whether our democracy and developmental efforts have worked as well as they should have worked to remove the major sources of what Professor Sen has termed "unfreedom" - a condition characterized by the denial of elementary freedoms to vast number of persons. Amplifying this thought, Professor Sen has observed:

"Sometimes the lack of substantive freedoms relates directly to economic poverty, which robs people of the freedom to satisfy hunger, or to achieve sufficient nutrition, or to obtain remedies for treatable illness, or the opportunity to be adequately clothed or sheltered or to enjoy clean water or sanitary facilities. In other cases, the unfreedom links closely to the lack of public facilities and social care such as the absence of organized arrangements for health care or educational facilities, or of the effective institutions for the maintenance of local peace and order. In still other cases, the violation of freedom results directly from a denial of political and civil liberties to participate in the social, political and economic life of the community."



19.5 Transposed to the lexicon of human rights, these are precisely the freedoms that are central to the enjoyment of what the Supreme Court of our country has described as the right to "a life with human dignity", when commenting on the scope of Article 21 of the Constitution. It is precisely the promotion and protection of a life with human dignity that constitutes the *raison d'être* of the Commission and the heart and soul of its responsibility.

19.6 Indeed, the enjoyment of human rights is intrinsically related to the expansion of real freedoms. It must be the purpose of our democracy and development effort to ensure that freedom from hunger, illiteracy and early death - all essential to the right to a life with human dignity - are given true form and substance in the period ahead.

19.7 That would indeed be a challenge worthy of the nation. It would unite the people of India in an undertaking worthy of their immense talents and common aspiration. This has been the core message of the Commission over the past five years. Far more than its individual recommendations, this message has underlined the imperative to act and govern appropriately.

19.8 The Annual Reports of the Commission over the past five years have outlined the Commission's preoccupation with this theme and, as far as this report is concerned, for ease of reference, its principal observations and recommendations may be seen in summary form at Annexure XI. The reports, which should be read as a continuum, have also sought to illustrate some of the ways in which Commission has endeavoured to promote the concept of the indivisibility of rights, and the inter-dependent and inter-related character of civil and political rights and of economic, social and cultural rights. The Commission sees no dichotomy between these rights. Everything, in the experience of the Commission and in the objective circumstances of our country, points to this reality. The Commission's recommendations must be seen in this context, whether in respect of the protection of human rights in areas of insurgency and terrorism, or in respect of custodial violence, the systemic reforms of the police, jails and the criminal justice system, or the review of laws and treaty obligations. It must also be seen in this context in respect of the great societal issues of our times, child and bonded labour, the need for free and compulsory primary education, adequate health and nutrition, the rights of women, the imperative of justice and equity for Dalits and Tribals and even in the need for human rights commissions at the State level and properly established human rights courts at the district level.

19.9 In the final analysis, the Commission is of the view that the promotion and protection of human rights - the expansion of essential freedoms - must be the central purpose of governance. And this can only be assured by probity and honesty, by diligence and a sense of direction that places the concerns of the disadvantaged and vulnerable foremost in the considerations of policy and action. This is the ultimate challenge of democracy in our Republic.



It is the challenge, in essence, of upholding the dignity and worth of every man, woman and child in our country. It is to this end that the recommendations of the Commission have been made, in this and earlier reports.

Sd/-
(M.N.Venkatachaliah)
Chairperson

Sd/-
(K.Ramaswamy)
Member

Sd/-
(Sudarshan Agarwal)
Member

Sd/-
(Virendra Dayal)
Member

New Delhi,
22 October 1999



ANNEXURE-I

NATIONAL HUMAN RIGHTS COMMISSION

PRACTICE DIRECTION NO.12

**On the BI-MONTHLY AGENDA ON
'Cases and Projects under the Supreme Court's mandate'**

I. There are, as of now, five assignments undertaken by the National Human Rights Commission on the orders passed by the Hon'ble Supreme Court of India. They are the following:-

- (I) Inquiry into allegations of fake encounters and mass cremations by the Police in Punjab.
- (II) Food Scarcity and starvation in the KBK Districts of Orissa
- (III) Monitoring the administration of laws against bonded labour
- (IV) Monitoring the functioning of Mental Hospitals at Ranchi Agra and Gwalior
- (V) Overseeing the Agra Protecting Home for Women

II. So far as items 1 and 2 are concerned, the matters are being listed before the sittings of the Full Commission for open court hearings directly and orders are being issued from time to time.

However, it is necessary that in the aforesaid two cases, the registry should ensure that when the matters come up before the Commission in its sittings in the Court-Room, they are not adjourned sine-die but definite dates are pre-fixed for the hearings. This shall be ensured by the Registrar, Law Division.

III. So far as the other three assignments (at sl.no.3, 4 and 5 are concerned, the pace of progress of the matters in the Commission require to be hastened. The Commission should ensure that the trust reposed by the Apex Court in the Commission is justified and fulfilled in the fullest measure by prompt follow up action by the Commission. Accordingly, the following procedural requirements and safeguards are to be built in:



- (A) The Secretary General shall be the Chief Coordinator of the three projects set out in items 3,4 & 5 at para I and shall directly handle the matters
- (B) The Action Groups constituted in respect of programmes of Bonded Labour, Mental Hospitals and the Agra Protective Home may have:
- (a) to identify and formulate responsibilities and functions that the NHRC has to undertake and discharge under the mandate of the Apex Court;
 - (b) to categories and specify in a model list of details and programmes that need to be initiated to fulfil and carry out effectively and efficiently the objectives of the Apex Court's remit as identified under (a) supra;
 - (c) to list the powers and the specific functions to be exercised by the NHRC and its instrumentalities such as Special Rapporteurs etc. in relation to the work of overseeing in so far as the project of Bonded Labour is concerned, the work of the Statutory Authorities under the Bonded Labour System (ABOLITION) ACT 1976, and the State-wise NGOs and Advocates/Counselors appointed by the Supreme Court;
 - (d) to device the machinery and clear procedures by which these tasks are to be accomplished;
 - (e) to advise on the administrative logistic support required to sustain the system;
 - (f) more importantly to device the mode of assessing, evaluating and monitoring the progress achieved in these projects and programmes;
 - (g) to formulate guidelines for financial management of the programmes; and
 - (h) to suggest efficient systems of computer-monitoring of the programmes.

IV. Periodic reports should be submitted to the Supreme Court as to the progress of these projects.

V. For all these purposes the Commission should be in close touch with the programmes and for that purpose the matter shall be brought up every fortnight i.e. on the 2nd and 4th Fridays respectively of each month under a separate Agenda called "Cases and Projects under the Supreme Court's Mandate". These cases are not appearing in the cause lists of the Programmes & Projects Division; but it is necessary to list them in a separate cause - list to



distinguish and emphasis their importance. The periodicity of the listing twice a month shall be for the first three months namely, October, November and December, 1998 and thereafter once a month on the 4th Friday of each month. The agenda will contain a brief report of the Chief Coordinator on the progress of the projects.

Sd/-
(Justice M.N.Venkatachaliah)
Chairperson
October 6,1998.

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**ANNEXURE-II****State-wise statement of Custodial Death cases from 1.4.98 to 31.3.99**

| Sl. No. | Name of the State/UT | Custodial deaths | | TOTAL |
|---------|----------------------|------------------|-------------|-------------|
| | | PC | JC | |
| 1 | | 2 | 3 | 4 |
| 1 | Andhra Pradesh | 24 | 98 | 122 |
| 2 | Arunachal Pradesh | 3 | - | 3 |
| 3 | Assam | 16 | 21 | 37 |
| 4 | Bihar | 9 | 184 | 193 |
| 5 | Goa | 1 | - | 1 |
| 6 | Gujarat | 8 | 42 | 50 |
| 7 | Haryana | 3 | 18 | 21 |
| 8 | Himachal Pradesh | 1 | 1 | 2 |
| 9 | Jammu & Kashmir | - | - | - |
| 10 | Karnataka | 8 | 41 | 49 |
| 11 | Kerala | 4 | 26 | 30 |
| 12 | Madhya Pradesh | 20 | 100 | 120 |
| 13 | Maharashtra | 21 | 98 | 119 |
| 14 | Manipur | 3 | - | 3 |
| 15 | Meghalaya | 1 | 6 | 7 |
| 16 | Mizoram | - | - | - |
| 17 | Nagaland | 1 | - | 1 |
| 18 | Orissa | 8 | 60 | 68 |
| 19 | Punjab | 12 | 46 | 58 |
| 20 | Rajasthan | 3 | 49 | 52 |
| 21 | Sikkim | - | - | - |
| 22 | Tamil Nadu | 13 | 42 | 55 |
| 23 | Tripura | 1 | - | 1 |
| 24 | Uttar Pradesh | 16 | 221 | 237 |
| 25 | West Bengal | 6 | 41 | 47 |
| 26 | Union Territories | 1 | 20 | 21 |
| | | 183 | 1114 | 1297 |



ANNEXURE -III

D.O.No.4/3/99-PRP & P

11 February, 1999

Dear

Subject: - Prisoners health care-periodical medical examination of undertrials/ convicted prisoners in various jails in the country.

The Commission has taken note of the disturbing trends in the spread of contagious diseases in the prisons. One of the sample-studies conducted by the Commission indicated that nearly seventy-nine percent of deaths in judicial custody (other than those attributable to custodial violence) were as a result of infection of Tuberculosis . These statistics may not be of universal validity, yet what was poignant and pathetic was that in many cases, even at the very first medical attention afforded to the prisoners the tubercular infection had gone beyond the point of return for the prisoners. The over-crowding in the jails has been an aggravating factor in the spread of contagion.

One of the remedial measures is to measure that all the prison inmates have periodic medical check-up particularly for their susceptibilities to infectious diseases and the first step in that direction would necessarily be the initial medical examination of all the prison inmates either by the prison and Government doctors and in the case of paucity or inadequacy of such services, by enlisting the services of voluntary organizations and professional guilds such as the Indian Medical Association. Whatever be the sources from which such medical help is drawn, it is imperative that the State Governments and the authorities incharge of prison administration in the States should immediately take-up and ensure the medical examination of all the prison inmates; and where health problems are detected to afford timely and effective medical treatment.

Kindly find enclosed proceedings of the meeting of the Commission held on 22.1.99 which also include a proforma for health screening of prisoners on admission to jail. The Commission accordingly requires that all State Governments and prison administrators should ensure medical examination of all the prison inmates in accordance with the attached proforma. The Commission further requires that such medical examination shall be taken-up forthwith and monthly reports of the progress be communicated to the Commission.

With regards,

Yours sincerely,

Sd/-
(Lakshmi Singh)



**PROFORMA FOR HEALTH SCREENING OF PRISONERS ON
ADMISSION TO JAIL**

Case No

Name.....Age.....Sex.....Thumb impression

Father's/Husband 's Name.....Occupation

Date & Time of admission in the prison.....

Identification marks

Previous History of illness

Are you suffering from any disease? Yes/No

If so, the name of the disease...

Are you now taking medicines for the same?

Are you suffering from cough that has lasted for 3 weeks or more Yes/No

History of drug abuse, if any:

Any information the prisoner may volunteer:

Physical examination:

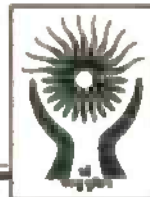
Height..... cms. weight...kg Last menstruation period...

1.Paller : YES/NO 2. Lymph Node enlargement ; YES/NO

3.Clubbing: YES/NO 4.Cyanosis: YES/NO

5.Icterus: YES/NO 6.Injury if any.....

4.Blood test for Hepatitis/STD including HIV, (with the informed consent of the prisoner whenever required by law)



5. Any other

Systemic Examination

1. Nervous System
2. Cardio Vascular System
3. Respiratory System
4. Eye, ENT
5. Gastro Intestinal system abdomen
6. Teeth & Gum
7. Urinal System

The medical examination and investigations were conducted with the consent of the prisoner after explaining to him/her that it was necessary for diagnosis and treatment of the disease from which he/she may be suffering.

Date of commencement of medical investigation

Date of completion of medical investigation

Medical officer



ANNEXURE-IV

NATIONAL HUMAN RIGHTS COMMISSION

SARDAR PATEL BHAVAN

NEW DELHI, THE 9TH JUNE, 1998.

MEMORANDUM

In accordance with the consensus arrived at in the meeting held on 3rd April 1998, with Forensic Science experts, including Directors of Forensic Science Laboratories, under the auspices of the National Human Rights Commission, a Core Group consisting of the following experts is hereby constituted :

1. Dr.R. K. Tiwari,
Convenor
Chief Forensic Scientist,
BPR & D, New Delhi.
2. Dr.M.B.Rao,
Director FSL,
Haryana
3. Dr.B.B.Arora,
Director FSL,
Rajasthan, Jaipur
4. Dr.S.R.Singh,
Director Incharge,
CFSL (CBI), New Delhi.

Dr. Arvind Tiwari, Senior Research Officer, NHRC, shall be the Coordinator.

The Core Group shall make a comprehensive examination of all aspects pertaining to Forensic Science Laboratories in India:

- (i) adequacy of Forensic Science Services.
- (ii) the need to update / incorporate advanced techniques and equipments.



-
- (iii) the need to provide good and adequate infrastructure.
 - (iv) to evolve new procedures and methodology with a view to provide quick and clinching evidence to connect the accused with the crime.
 - (v) to ensure that the laboratories have the services of personnel that possess the requisite qualifications, expertise and experience.
 - (vi) to ensure independence and autonomy including separation from the police department.
 - (vii) to improve the qualifications, method of recruitment and the conditions of service of the employees.
 - (viii) to ensure adequate funding and financial autonomy.
 - (ix) to examine if any additional legislative support is needed.
 - (x) Identify the location for establishing new Forensic Science Laboratories.
 - (xi) to take measures to conform to international standards.

The work shall be completed within four months.

Sd/-
Justice V.S.Malimath
MEMBER, NHRC



ANNEXURE -V

**F.No.2/1/97-PRP&P(Part-III)
National Human Rights Commission
(PRP& P Division)**

**Sardar Patel Bhavan, Sansad Marg
New Delhi-110 001**

Dated 14th August,1998.

PROCEEDINGS

The problem of bonded labour has been engaging the attention of the Hon'ble Supreme Court of India since 1982, in the form of Public Interest Litigation petitions. The Hon'ble Court has, in several of its judgements and orders, pronounced upon the inviolability of the Fundamental Rights of those exploited under the system of bonded labour and has suggested several remedial measures to prevent this malaise. The various States have also been associated by the Supreme Court in this task.

2. On November 11, 1997, the Hon'ble Supreme Court vide an order in W.P. (Civil) 3922 of 1985 (PUCL Vs. State of Tamil Nadu and Ors.) requested the National Human Rights Commission to be involved in dealing with the issue of bonded labour. While directing the record of the Hon'ble Supreme Court to be made over to the Commission, the Hon'ble Supreme Court expected that the Commission would take over the task of supervising the implementation of the laws relating to bonded labour in light of its orders. It further expected that all concerned authorities would promptly comply with such directions as might be given by the Commission. Further, the Hon'ble Supreme Court has made available to the Commission a sum of Rs.10 lakhs, as an initial amount, to defray the expenses that may be involved in undertaking this task. The Commission, pursuant to the order of the Hon'ble Supreme Court, had desired that a detailed plan of action be formulated for the purpose.

3. The Commission has decided to set-up a group to go into the various aspects of implementing the Hon'ble Court's orders. Accordingly in exercise of the powers entrusted to the Commission by the Hon'ble Supreme Court, a Central Action Group on bonded labour, under the Chairmanship of Justice Sri. M.N.Venkatachaliah, Chairperson, National Human Rights Commission and consisting of the following persons is hereby constituted: -

(i) Justice Shri V.S.Malimath, Member, National Human Rights Commission



-
- (ii) Shri S.R. Sankaran, formerly Secretary to the Government of India, Ministry of Rural Development
 - (iii) Shri Anil Bordia, formerly Secretary to the Government of India, Ministry of HRD
 - (iv) Shri K.R.Venugopal, formerly Secretary to PM
 - (v) Dr. N.C.Saxena, Secretary to the Government of India, Ministry of Rural Development
 - (vi) Dr. L.D.Misra, Secretary to the Government of India, Ministry of Labour
 - (vii) Shri D.K. Manavalan, Secretary to the Government of India, Ministry of Social Justice and Empowerment
 - (viii) Shri A.K.Ganguli, Senior Advocate, Supreme Court.
 - (ix) Dr.Rajeev Dhavan , Senior Advocate Supreme Court
 - (x) Shri S.Muralidhar, Advocate, Supreme Court
 - (xi) Shri Babu Mathew, Additional Professor, National Law School of India University, Bangalore
 - (xii) Secretary General, National Human Rights Commission

Dr. L. D. Misra, Secretary, Ministry of Labour, Govt. of India will be the convenor of this Group.

The Attorney General for India may be requested to attend as a Special Invitee.

The Central Action Group may co-opt any member or members, based on the requirement of any particular expertise, to assist it from time to time. The Central Action Group will devise its own procedure for its functioning:

4. The Central Action Group will undertake the following tasks: -
- (i) A clear delineation of the work to be under taken by the National Human Rights Commission in terms of the orders of the Hon'ble Supreme Court of India and the provisions of the Bonded Labour System Abolition Act and other related enactments.



- (ii) Evolution of a mechanism, in terms of a joint team consisting of Government and NGO representatives to undertake the work of identification, and adequate sensitization of personnel of the Government as well as NGOs;
 - (iii) Preparation of a manual for the functionaries involved in the work relating to abolition of bonded labour;
 - (iv) Evolution of a questionnaire for the identification of bonded labour;
 - (v) Evolution of monitoring arrangement at the District level which could be entrusted with monitoring such tasks as:
 - (a) social mobilization of bonded labour.
 - (b) issue of release certificates.
 - (c) provision of relief assistance.
 - (d) making available required inputs-specific to each area- for a truly effective rehabilitation.
 - (e) functioning of the Vigilance Committees.
 - (vi) Creation of a system of documentation which is capable of computerization and regular updating at various levels and generating reports on a regular basis; and
 - (vii) Evolution of a mechanism to be put in position, on behalf of the NHRC, for effective monitoring and the setting-up of statutory machinery both at the Centre and State levels and for the submission of periodic reports to the Hon'ble Supreme Court of India on the progress achieved.
5. The Central Action Group will also formulate appropriate guidelines for the utilization of the fund made available to the Commission by the Hon'ble Supreme Court, for undertaking the above work.
6. The Central Action Group will complete the above within a period of 4 months.

Sd/-
(R.V.Pillai)
Secretary General

Sd/-
Mrs. Lakshmi Singh
Joint Secretary



ANNEXURE-VI

**NO.132/13/97-98
NATIONAL HUMAN RIGHTS COMMISSION
(LAW DIVISION- V)**

**E.I.MALAKER,
ASSTT. REGISTRAR (LAW)
PHONE 336 1671, 336 1611**

**SARDAR PATEL BHAVAN
PARLIAMENT STREET
NEW DELHI-110 001**

DATED: 18.05.99

- TO**
- 1. B.D.Sharma
Ex-Commissioner, National
Commission for SC & ST,
A-37, Magli Razapur,
Nizamuddin East
New Delhi-110 019**
 - 2. Smt. Mahasvetadevi
18 A Ballygunje Station
Calcutta- 700 019.**
 - 3. Dr.G.N.Devy
6, United Avenue,
Near Dinesh Mill
Baroda -390 007.**
 - 4. Shri Laxman Gaikwad
G-304,Padmavati Nagar,
Film City Road
Goregaon (E)
Mumbai- 400 063**
 - 5. Smt. Ananya Chatterjee
B-3/127,Ekta Garden
9,Indra Prastha Extn.,
Delhi - 110 092.**
 - 6. Dr.Rajeev Dhavan
A-131, New Friends Colony
New Delhi- 110 065.**



Subject : Petition from Smt. Mahasvetadevi, President, Denotified & Nomadic Tribals Rights Action Group, Baroda & others.

Sir,

The petition above mentioned was placed before the Commission on 18.5.1998 and as per directions therein, the Commission have constituted an Advisory Group set out below to examine the matter and advise the Commission as to the nature of the enquiries that the Commission could undertake as well as the recommendation that it could make to the Central / State Governments on areas of human rights concerns in respect of the 'Denotified Tribes' and to furnish its advice and suggestions within two months:-

- | | | |
|----|------------------------|--|
| 1. | Shri B.D.Sharma | CHAIRMAN |
| 2. | Smt. Mahasvetadevi | Member |
| 3. | Dr.G.N.Devy | Member |
| 4. | Shri Laxman Gaikwad | Member |
| 5. | Smt. Ananya Chatterjee | Member |
| 6. | Dr. Rajeev Davan | Sr.Advocate,Supreme Court of India as the Legal Advisor of the Advisory Group. |

I am, therefore, to forward, herewith a copy of the Commission's directions dated 18.5.1998 and to request you to submit the report by 17.07.1998 for placing it before the Commission.

Sd/-
(E.I.Malekar)
Asstt. Registrar (Law)

Encl:as above.



ANNEXURE-VII

NATIONAL HUMAN RIGHTS COMMISSION

PRACTICE DIRECTION NO. 11

**GUIDELINES FOR
'THE SUMMER INTERNSHIP PROGRAMME'**

M/s MCKinsey & Company, Inc. in its management study report recommended amongst other things, that the Commission should evolve and put in position and institutionalize a system of internship whereunder talented students, both from India and abroad, pursuing graduate and post-graduate studies in Law, Political Science, Sociology, Criminology etc. be accepted for internship in the Commission during the vacation intervals of the academic sessions. This, it was pointed out, would while providing the requisite exposure to the philosophy and culture of Human Rights to the successive batches of students would also, in a measure augment the personnel resources of the Commission.

The Commission considered this recommendation of M/s MC Kinsey & Company, Inc. and has accepted it in principle. The details of the mechanism of implementing the scheme remains to be worked-out. In the very nature of things, it is neither possible nor advisable to enumerate exhaustively the areas in which the internship programme be developed and the nature of the work the interns are expected to do. Broadly speaking, the interns shall participate in the work of the Commission to the extent to which and in the manner in which the Commission may permit.

There will, accordingly, be a Summer Internship Programme in the Commission.

In the beginning of each calendar year namely, in the month of January of each year, the Commission shall announce the details of that year's "Summer Internship Programme" intended to provide to deserving and qualified students an opportunity of direct experience of working with the Commission's Members and its departments. The announcement will also define the areas of work in which internships are entertained for the year. The areas selected should be such as would not only sustain the interest of the interns and include participation in and review of programmes of the ongoing projects in the Commission, but also enable them to attend or participate in the meetings of Core -groups and Working-groups of the various projects and programmes of the Commission; to follow-up the agenda and the deliberations of the Core-groups or Working-groups; to participate in the preparation of their recommendations; and be engaged in a broad interaction with the upper echelons of the Commission's functionaries during meetings, conferences, dinners, etc.



Notification of the annual Summer Internship Programmes shall be circulated to the Law Universities and Law Colleges in India and faculties of Criminology, Political Science, Sociology etc. When the system of Summer Internship Programme stabilizes intimation may also be sent to the leading universities in the Common Wealth and the United States of America.

The stipends payable to the interns shall also be indicated in the notification. In course of time representatives of the NGO fraternity, both in India and abroad, could also be included in the list of eligible participants. The prospective interns shall be expected to have a strong academic background, a positive interest in human rights issues and good communication skills. The notification will also identify the functionaries who will be responsible for overseeing the programme.

Key factors for the success of this programme would be ensuring

- That it is positioned attractively
- That it is publicized enough
- That interns have interesting work to do
- That interns have enough contact with Members of the Commission

The content of the Summer Internship Programmes for each year shall be placed before the Commission for its approval in January of that year and action as approved be taken-up for implementation.

Sd/-
(Justice M.N.Ventakachaliah)
Chairperson

New Delhi
Dated 26 May 1998.



ANNEXURE - VIII

Statement giving number of cases registered, number of cases considered by the Commission, and number of cases processed but pending consideration by the Commission during the year 1998-99, i.e., 1.04.98 to 31.03.99

| Sl. No. | Name of the State/UT | No. of cases considered as on 1.4.98 | No. of cases registered | | Total (3+4+5) | No. of cases considered | No. of cases processed but pending consideration |
|---------|----------------------|--------------------------------------|-------------------------|------------------------|---------------|-------------------------|--|
| | | | Complaints | Custodial deaths/rapes | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1. | Andhra Pradesh | 200 | 405 | 122 | 727 | 760 | 11 |
| 2. | Arunachal Pradesh | 11 | 18 | 03 | 32 | 27 | 05 |
| 3. | Assam | 81 | 120 | 37 | 238 | 236 | 02 |
| 4. | Bihar | 1251 | 3887 | 193 | 5331 | 5340 | 17 |
| 5. | Goa | 10 | 24 | 01 | 35 | 34 | 01 |
| 6. | Gujarat | 113 | 429 | 15 | 592 | 592 | - |
| 7. | Haryana | 443 | 1261 | 21 | 1725 | 724 | 01 |
| 8. | Himachal Pradesh | 41 | 154 | 02 | 197 | 191 | 06 |
| 9. | Jammu & Kashmir | 263 | 269 | - | 532 | 492 | 40 |
| 10. | Karnataka | 148 | 363 | 49 | 530 | 515 | 15 |
| 11. | Kerala | 212 | 370 | 30 | 612 | 600 | 12 |
| 12. | Madhya Pradesh | 628 | 1945 | 120 | 2693 | 2611 | 82 |
| 13. | Maharashtra | 677 | 1344 | 190 | 2140 | 2113 | 10 |
| 14. | Manipur | 26 | 39 | 03 | 78 | 66 | 12 |
| 15. | Meghalaya | 03 | 15 | 07 | 25 | 25 | - |
| 16. | Mizoram | 07 | 26 | - | 33 | 32 | 01 |
| 17. | Nagaland | 13 | 08 | 01 | 22 | 19 | 03 |
| 18. | Orissa | 340 | 464 | 68 | 872 | 865 | 16 |
| 19. | Punjab | 227 | 499 | 58 | 784 | 766 | 18 |
| 20. | Rajasthan | 879 | 1781 | 52 | 2712 | 2705 | 07 |
| 21. | Sikkim | 04 | 04 | - | 08 | 08 | - |
| 22. | Tamil Nadu | 761 | 907 | 55 | 1723 | 1704 | 19 |
| 23. | Tripura | 13 | 16 | 01 | 30 | 23 | 07 |
| 24. | Uttar Pradesh | 5862 | 21806 | 237 | 27905 | 37744 | 161 |
| 25. | West Bengal | 247 | 604 | 47 | 1098 | 1088 | 10 |
| 26. | Union Territories | 1042 | 2499 | 21 | 3562 | 3493 | 69 |
| | Total | 13512 | 39427 | 1297 | 54236 | 53711 | 525 |



ANNEXURE - IX

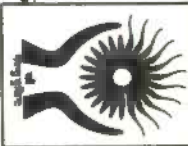
State-wise list of cases disposed of/pending disposal by the Commission during 1998-99.

| Sl. No. | Name of the State/ Union Territories | Dismissed in limini | Disposed of with directions | Cases taken cognizance | | Total |
|---------|---|------------------------|-----------------------------------|---------------------------|-------------|--------------|
| | | | | Concluded | Pending | |
| 1. | Andhra Pradesh | 483 | 18 | 14 | 198 | 716 |
| 2. | Arunachal Pradesh | 17 | 03 | - | 07 | 27 |
| 3. | Assam | 178 | 07 | 07 | 44 | 236 |
| 4. | Bihar | 3640 | 582 | 91 | 1001 | 5314 |
| 5. | Goa | 20 | 03 | 02 | 09 | 34 |
| 6. | Gujarat | 389 | 80 | 25 | 98 | 592 |
| 7. | Haryana | 862 | 468 | 135 | 259 | 1712 |
| 8. | Himachal Pradesh | 166 | 09 | 02 | 14 | 191 |
| 9. | Jammu & Kashmir | 356 | 35 | 08 | 93 | 492 |
| 10. | Karnataka | 350 | 53 | 06 | 106 | 515 |
| 11. | Kerala | 392 | 50 | 08 | 150 | 600 |
| 12. | Madhya Pradesh | 1712 | 320 | 58 | 521 | 2611 |
| 13. | Maharashtra | 1301 | 413 | 184 | 232 | 2130 |
| 14. | Manipur | 47 | 01 | 01 | 17 | 66 |
| 15. | Meghalaya | 07 | 03 | 02 | 13 | 25 |
| 16. | Mizoram | 21 | 03 | 01 | 07 | 32 |
| 17. | Nagaland | 13 | 01 | 02 | 03 | 19 |
| 18. | Orissa | 642 | 35 | 15 | 154 | 856 |
| 19. | Punjab | 412 | 80 | 79 | 195 | 766 |
| 20. | Rajasthan | 848 | 308 | 142 | 407 | 2705 |
| 21. | Sikkim | 07 | 01 | - | - | 08 |
| 22. | Tamil Nadu | 1202 | 162 | 28 | 312 | 1704 |
| 23. | Tripura | 17 | 02 | 01 | 03 | 23 |
| 24. | Uttar Pradesh | 15458 | 7073 | 2447 | 2766 | 27744 |
| 25. | West Bengal | 803 | 66 | 35 | 184 | 1088 |
| 26. | Union Territories | 1826 | 932 | 102 | 633 | 3493 |
| | Total | 32172 | 10718 | 3395 | 7426 | 53711 |

ANNEXURE - X

State-wise statement of category of cases admitted for disposal from 1.4.98 to 31.3.99

| Sl. No. | Name of the State/UT | Custodial deaths | | Custodial rapes | Disappearance | Illegal detention-arrest | False implication | Other Police excess-ess | Failure in taking action | Indignity to women | Terrorist Naxalites violation | Jail condition | Atrocities on SC/ST | Others | Total |
|---------|----------------------|------------------|-------------|-----------------|---------------|--------------------------|-------------------|-------------------------|--------------------------|--------------------|-------------------------------|----------------|---------------------|-------------|--------------|
| | | PC | JC | | | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 1. | Andhra Pradesh | 24 | 98 | - | - | 06 | 03 | 44 | 28 | 01 | - | 03 | 03 | 02 | 212 |
| 2. | Arunachal Pradesh | 03 | - | - | - | - | - | 02 | - | - | - | - | - | 02 | 07 |
| 3. | Assam | 16 | 21 | - | - | 03 | - | 03 | 06 | - | - | - | - | 02 | 51 |
| 4. | Bihar | 09 | 184 | - | 04 | 10 | 70 | 206 | 289 | 05 | - | 64 | 13 | 238 | 1092 |
| 5. | Goa | 01 | - | - | - | - | - | 04 | - | - | - | 03 | - | 03 | 11 |
| 6. | Gujarat | 08 | 42 | - | - | 02 | 03 | 09 | 18 | - | - | 06 | - | 35 | 123 |
| 7. | Harayana | 03 | 18 | - | 02 | 11 | 30 | 91 | 106 | - | - | 20 | - | 113 | 394 |
| 8. | Himachal Pradesh | 01 | 01 | - | - | - | - | 03 | 04 | - | - | 01 | - | 06 | 16 |
| 9. | Jammu & Kashmir | - | - | - | - | - | 02 | 51 | 06 | - | - | - | 01 | 41 | 101 |
| 10. | Karnataka | 08 | 41 | - | - | 06 | 09 | 30 | 11 | - | - | 06 | - | 01 | 112 |
| 11. | Kerala | 04 | 26 | - | 01 | 08 | 11 | 48 | 23 | - | - | 02 | 01 | 34 | 158 |
| 12. | Madhya Pradesh | 20 | 100 | - | 03 | 14 | 54 | 118 | 191 | 04 | - | 10 | 08 | 57 | 579 |
| 13. | Maharashtra | 21 | 98 | - | 04 | 03 | 15 | 48 | 13 | 01 | - | 20 | 01 | 175 | 416 |
| 14. | Manipur | 03 | - | - | - | 01 | - | 06 | - | - | - | - | 01 | 07 | 18 |
| 15. | Meghalaya | 01 | 06 | - | - | - | - | - | 01 | - | - | - | - | 07 | 15 |
| 16. | Mizoram | - | - | - | - | - | - | 04 | - | - | - | - | - | 04 | 08 |
| 17. | Nagaland | 01 | - | - | - | - | - | 01 | - | - | - | - | - | 03 | 05 |
| 18. | Orissa | 08 | 60 | - | 01 | 04 | 05 | 25 | 35 | - | - | 04 | 01 | 26 | 169 |
| 19. | Punjab | 12 | 46 | - | 01 | 10 | 11 | 36 | 43 | 01 | - | 07 | - | 107 | 274 |
| 20. | Rajasthan | 03 | 49 | - | - | 06 | 24 | 106 | 160 | 03 | - | - | 14 | 184 | 549 |
| 21. | Sikkim | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| 22. | Tamil Nadu | 13 | 42 | - | - | 29 | 23 | 69 | 71 | 03 | - | 17 | 09 | 64 | 314 |
| 23. | Tripura | 01 | - | - | - | - | - | - | 01 | - | - | - | - | 02 | 04 |
| 24. | Uttar Pradesh | 16 | 221 | - | 10 | 298 | 297 | 1127 | 992 | 04 | - | 102 | 37 | 2109 | 5213 |
| 25. | West Bengal | 06 | 41 | - | - | 02 | 05 | 19 | 31 | 01 | - | 01 | - | 113 | 219 |
| 26. | Union Territories | 01 | 20 | - | 01 | 23 | 72 | 202 | 165 | 04 | - | 27 | 02 | 218 | 735 |
| | Total | 183 | 1114 | - | 27 | 436 | 634 | 2252 | 2211 | 27 | - | 293 | 91 | 3553 | 10821 |





ANNEXURE XI

SUMMARY OF THE REPORT AND OF THE PRINCIPAL RECOMMENDATIONS

1. The first three annual reports of the Commission were laid before each House of Parliament, along with the memoranda of action taken, in the course of the Session immediately following the submission of the report to Government, but there was a delay of 9 months in the tabling of the annual report for 1996-97. The annual report for 1997-98 has yet to be tabled before Parliament, in part because of the dissolution of the Lok Sabha. Because of that, and the lack thus far of a memorandum of action taken on that report, the present report is - in order to be self-contained - reiterating certain of the key observations and recommendations of the preceding report (Para 1.2)

As the annual reports of the Commission are essential sources of information on the human rights situation in the country, the Commission is of the view that they should normally be placed before Parliament, together with the required action taken memoranda, not later than the Session immediately following submission of the report. (Para 1.3)

2. Starting with 496 complaints in the first six months after it was established, the Commission received 40,723 complaints in the twelve months under review, namely 1 April 1998 - 31 March 1999. While complaints from the State of Uttar Pradesh - the most populous in the nation and still without a State-level Human Rights Commission - accounted for 54% of these complaints, the Commission received complaints from all twenty five States of the Union and all but one of the Union Territories, Lakshwadeep being the sole exception. The Commission recalls that, in its earlier years, various militant groups had forbidden the submission of complaints to the Commission, even under the threat of violence. That situation has changed. In the past months, the Commission has received complaints from all segments of society and political persuasion, including militant groups and some of those who lead them. It has sought to deal with complaints from the latter with the same degree of rectitude and swiftness that it has tried to bring to bear to the handling of all other complaints. In five and a half years it has already received a total of 1,15,706 complaints and has dealt with or initiated action in respect of all but 7,175 of them by the end of March 1999. This has required prodigious effort and the setting-up of systems to deal with the immense case-load, which is far in excess of that handled by any other National Institution for human rights anywhere else in the world. (Paras 2.6 & 2.7)

3. But the challenge of scale and the follow-up of cases and decisions requires that a great deal be done to establish an efficient and decentralized system across the country to meet the growing expectation for the swift and just redressal of human rights grievances. One



obvious answer lies in the early setting-up of State Human Rights Commissions, as envisaged in the Protection of Human Rights Act itself. As yet, only 9 States have done so and 3 more have announced their intention to do so. This leaves the majority of States without such Commissions, including those like Uttar Pradesh and Bihar, which flood the National Human Rights Commission with complaints. The Chairperson has written to all concerned Chief Ministers in respect of this matter and reminded many of them frequently. But greater political will is required at the State-level, combined with encouragement from the Central Government and the major political parties, to proceed conclusively in this direction. The Commission recommends that this should be a matter of the highest priority for all concerned in the period ahead. (Paras 2.9 & 2.10)

4. Till such time as State-level Commissions are set-up, the National Commission must, itself, establish a limited number of regional offices that can function as extensions of its Headquarters. This would expedite the initial processing of complaints received by the Commission, especially in those States which contribute heavily to the work-load of the Commission. In addition, the Commission is already establishing Special Rapporteurs, Representatives and Consultants, for clearly defined purposes, to assist it in its out-reach across the country. The value of its partnership with a growing circle of non-governmental organisations cannot be over-estimated, or the contribution made by such groups to the cause of human rights. Clearly, this too, is an area of work that needs to be improved, systematized and strengthened. Good governance, and the full engagement of civil society, are essential to the cause of human rights. The Commission needs to do much to encourage the efforts of non-governmental organisations working in this field, as envisaged in Section 12(i) of its Statute. (Para 2.11)

5. A look at the map of India points unquestionably to a clear and evident conclusion: where the social development indicators are low, the violations of human rights are high. There is a clear correlation between a lack of literacy, especially of the girl child, and infant mortality rates, malnutrition, and an adverse sex ratio between women and men. (Para 2.13)

6. The Commission has, therefore, with increasing stridency, been urging policies in the economic and social sector that are truly responsive to the needs of the most vulnerable in our society: free and compulsory education upto the age of 14 years, as article 45 of our Constitution requires and as our Supreme Court has determined to be a Fundamental Right; primary health facilities to provide the potable drinking water and levels of maternal and child welfare essential to a life in dignity; food and nutritional standards essential to fulfilling the potential of a human being. The Commission is gratified that, in recent months, there is a greater realization among the major political parties that there is no easy road to national salvation that avoids these issues. For its part, the Commission has felt the need to be increasingly pro-active in respect of issues that raise fundamental questions of equity and justice in our country: the rights of



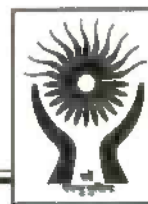
Dalits and the atrocities perpetrated against them, the displacement of populations, especially tribals, by mega-projects; issues of food scarcity and allegations of deaths by starvation; the unconscionable cruelty of child-labour, especially in hazardous industries and child prostitution; the rights of women subjected to violence and discrimination; the rights of minorities and issues of religious tolerance, to mention but a few of its principal concerns. It is also evident that, for the Commission, the right to development, in all of its ramifications, is becoming central to its concerns, for it is this right that provides the integral link between civil and political rights, on the one hand, and economic, social and cultural rights, on the other, between the Universal Declaration of Human Rights of 1948 and the Vienna Declaration of 1993. (Para 2.14)

7. If there is a correlation between the Human Development Index and respect for human rights, so is there an infallible correlation between the quality of governance and the promotion and protection of such rights. This is why the Commission has repeatedly drawn attention to the need to keep the institutions of governance in good repair and stressed the importance of probity, civility and tolerance as being essential to sound political conduct and the attitudes of those in authority. This is also why the Commission has felt it essential to press for systemic reform: of the police, of the custodial justice system; and, indeed, of the criminal justice system itself. (Para 2.15)

8. The creating of a jurisprudence of human rights has also been of growing interest to the Commission. In addition to the landmark decisions of the Superior Courts of the country, which are setting standards of conduct and behaviour for the nation, the proceedings of the Commission and the opinions and decisions it has recorded are gradually acquiring considerable value of their own. (Para 2.18)

The symbiosis between the Superior Courts and the Commission is reflected in the involvement of the Commission in some 20 cases before the courts. They range from matters of police reform and the payment of wages to prisoners, to the treatment of refugees, custodial death and torture, "disappearances" and killings in "encounters" involving the police, and even the setting-up of a State-level Human Rights Commission, all of these issues being related to questions of good governance and reform in the deepest sense. (Para 2.19)

9. The struggle for the promotion and protection of human rights inevitably requires, in some measure, a challenging of entrenched attitudes that are inimicable to the proper respect of such rights. In civilizational terms, this means the shedding and denouncing of accretions and aberrations that, over time, have wounded and fractured our society, leaving some more equal than others, in grievous violation of human rights norms and of acceptable standards of equity and justice. It is not necessary, at this stage, to expound on the deep societal injustices inflicted on Dalits and Scheduled Tribes, or the patriarchal biases that, too often, have victimized



the girl child and women in our country. These are only too well known. The Commission must deal frontally with these prejudices and encourage others to do so. In political terms, we must act with greater fidelity to the vision of the Founding Fathers of our Republic, who gave the nation a Constitution that would guarantee the Fundamental Rights of all - regardless of caste, creed, gender, place of birth or any other such invidious distinction - and who made these rights non-derogable and justiciable. There is great need to uphold this brave and compelling vision with consistency and not waiver for reasons of political expediency. (Paras 2.20, 2.21 & 2.22)

10. Human rights education, in its broadest sense, holds the key to attitudinal change. This is why the Commission has been seeking, with the Ministry of Human Resource Development, and other appropriate governmental agencies to prepare materials for the education of our children from their earliest days in schooling till the highest classes. In this effort, the Commission is convinced that it can benefit greatly from the advice and experience of leading non-governmental organisations and academics, many of whom have given considerable thought to such matters and many of whom have put into practice their ideas on human rights education. Nor does human rights education cease with academic institutions. All elements of civil society need to be brought into the fold: the bench and the bar, administrators and defence personnel, doctors and scholars, politicians and trade unionists, public and private sector employees and members of the fourth estate, to mention but a few. (Para 2.25)

11. The views of the Commission on the protection of human rights in areas subjected to terrorism and insurgency are well known and have been recorded in detail in earlier reports. The Commission is of the view that all elements of civil society must combine to fight the menace of terrorism. It is not a fight to be conducted by the armed forces and police alone. Instead, it must be fought at the political level, at the economic and social level, at the level of ideas. But, above all, it must be fought in a manner that respects human rights, whatever the difficulties this may entail for the State and to those who are engaged in this task. The Commission believes that there must be full and uncompromising adherence to the provisions of the Constitution of our Republic, the laws of our land, and the treaty commitments to which our State is a party. (Para 3.5)

12. The Commission is deeply disturbed when, in its view, there is a lack of transparency in dealing with those who may have been guilty of human rights violations. For instance, the Commission is yet to satisfy itself that justice has fully been done in regard to the tragic loss of life that occurred in Bijbehara, in the State of Jammu & Kashmir, on 22 October 1993 in respect of which incident it had made specific recommendations. After receiving a report of the Ministry of Home Affairs dated 12 February 1998 informing it of the outcome of the proceedings of the Staff Court of Inquiry (SCOS) and the proceedings of the trial held by the General Security Force Court (GSFC), the Commission considered it essential to call for the



records of those proceedings before taking a final view on the matter. The Commission is determined to see this case through to its logical conclusion. At the end of the year under reporting, it was awaiting the records of those proceedings and was contemplating moving a Writ Petition before the Supreme Court if it were denied full access to the records that it had sought. (Para 3.6)

13. The Commission is also deeply concerned that those responsible for the March 1996 abduction of Shri Jalil Andrabi, a prominent advocate of Srinagar and his subsequent killing, are yet to be brought to trial. The Commission itself filed an application in respect of this case before the High Court of Jammu & Kashmir urging that an in-depth, transparent and honest investigation was necessary. It also sought the permission of the Court to intervene and assist in this matter and presented the results of its own investigation to the Court. It is a matter of deep regret that the perpetrators have still not been brought to justice. The Commission considers this to be unacceptable. It urges greater seriousness of purpose in the effort to track down and bring to book the abductors and killers of Jalil Andrabi. (Para 3.7)

14. The Commission also had occasion to discuss in detail the poignant circumstances of the Kashmiri Pandits who have been forced to leave the Valley and live in large numbers in camps in Jammu, Delhi and elsewhere. It visited Jammu and interacted with representatives of this group. Many of the issues concerning them, including the school and university education of their children, their health care, social security, salaries and employment options have been the subject of proceedings before the Commission. Further, two key issues relating to them were, in the course of the year, the subject of particular attention by the Commission: the grave claim that the Kashmiri Pandits were the victims of genocide, and the complex issue that arose in the course of the hearings, which related to the degree and nature of the Commission's jurisdiction in respect of human rights issues in the State of Jammu & Kashmir. The data presented to the Commission in the course of the hearings was profoundly disturbing and tragic. The Central Government indicated that the number of those killed because of terrorism and insurgency in the State between 1988-97 was 16,850, including 6,219 Muslim civilians and 710 Hindu civilians. Though there were minor differences in the figures provided by the parties appearing before the Commission, there was a general view that some 300,000 Kashmiri Pandits had been forced to leave the Valley for reasons of the terror unleashed in their home State. Representatives of the Pandits asserted that some 1000 members of their community had been killed in the Valley, and the names were mentioned of those who had succumbed to torture at the hands of terrorist groups. The State and Central Governments did not dispute the numbers of those who had had to leave the Valley. They asserted, however, that in addition to the Kashmiri Pandits, a number of Sikh families and some 1500 Muslim families had also registered for relief assistance, while many other Muslim families had left but were afraid to register for fear of reprisals against their relatives. (Para 3.10 & 3.11)



The Commission has noted the efforts of Government to create conditions for the restoration of peace and security in Jammu & Kashmir, despite grave provocations and setbacks. It urges that such efforts continue, so that all of the people of the State can resume lives of normalcy, tranquility and productivity. In this process, it also trusts that those who have been forced to leave their homes in the Valley will be enabled to return in safety and dignity. (Para 3.12)

15. The Commission continues to believe that cases of custodial death or rape involving the army and para-military forces should be reported to the Commission immediately, as is done by the State Governments in respect of such cases when the police are involved. It regrets, in this connection, that the memorandum of action taken on its preceding reports have, in respect of this matter, essentially recalled the provisions of the Protection of Human Rights Act, 1993 in regard to complaints brought against the armed forces, without dealing with the specific recommendation of the Commission on this matter. The Commission therefore considers it essential to reiterate its recommendation which, it feels, will add to the credibility and transparency of the armed forces in the conduct of their operations and also discourage unwarranted and propagandist charges against them. (Para 3.15)

16. The Commission would also like to reiterate its view that the security forces, when called upon to act in aid of civil authority, must continue do so in close co-ordination with the civil administration. This view is based on the accumulated experience of the Commission, borne out of its visits to Jammu & Kashmir and certain of the North-Eastern States, that violations of human rights are far less likely to occur when the role and the responsibilities of the civil authorities under the law are fully respected, not least in respect of cordon and search operations, arrest, interrogation and detention. The Commission is happy to note the effectiveness of the Screening-cum-Co-ordination Committees that have been set-up in almost every district of J&K and the North-Eastern States, under the Deputy Commissioner, to address, inter alia, issues relating to security operations. The Commission would like to repeat its recommendation that the proceedings of such Committees should be given the widest possible publicity by the State Governments concerned as the dissemination of information relating to such activities can, in itself, have a beneficial impact on the observance of human rights in areas affected by insurgency and terrorism. (Para 3.16)

17. The Commission would like to recapitulate and reiterate certain of the recommendations made in its earlier reports on the issue of custodial violence as these are still relevant and are yet to be implemented.

- Early action needs be taken on the suggestion of the Indian Law Commission (ILC) to the effect that a Section 114(B) be inserted in the Indian Evidence Act 1872 to introduce a rebuttable presumption that injuries sustained by a person in



police custody may be presumed to have been caused by a police officer.

- Section 197 of the Code of Criminal Procedure needs to be amended, on the basis of ILC's recommendation, to obviate the necessity for governmental sanction for the prosecution of a police officer, where a prima facie case has been established, in an inquiry conducted by a Sessions Judge of the commission of a custodial offence.
- As suggested by the National Police Commission, there should be a mandatory inquiry by a Sessions Judge in each case of custodial death, rape or grievous hurt. (Para 3.19)

The memorandum of action taken, submitted by the Central Government on the 1996-97 annual report, indicated that these recommendations were still being processed. In the absence of any further indication of progress, the Commission strongly urges the Government to give priority to the implementation of these recommendations. (Para 3.20)

18. In earlier reports, the Commission has drawn attention to the detailed instructions of the Supreme Court in the cases of *Joginder Singh vs the State of Uttar Pradesh* and *D.K. Basu vs. the State of West Bengal*. Meticulous attention needs to be paid both by the Central as well as the State Governments to the directions of the Supreme Court in both of these cases. The Commission accordingly urges fullest compliance with the instructions contained in these landmark decisions. (Para 3.21)

19. The efforts of the Commission to ensure that India become a party to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are recounted in full in its preceding annual report. While the Commission was deeply gratified by the decision of the Government of India to ratify the Convention, it is distressing to note that, even though the Permanent Representative of India to the United Nations signed the Convention on 14 October 1997, the formalities for ratification are yet to be completed. The Commission urges the earliest ratification of this important Convention and the fulfillment of the promise made at the time of signature, 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." (Para 3.22)

20. The Commission had earlier recommended the video-filming of post-mortem examinations and the sending of tapes to the Commission for scrutiny, with a view to preventing manipulation of post-mortem reports. Twenty-two States and Union Territories have now accepted this recommendation while four others have stated that they are examining the matter. The Commission once again recommends to the States of Arunachal Pradesh, Maharashtra,



Manipur, Mizoram, Uttar Pradesh, the National Capital Territory of Delhi and the Union Territories of Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli and Lakshadweep that they accept this recommendation without any further delay. (Para 3.23)

21. It will be recalled that the Commission had also evolved, and circulated for adoption, a Model Autopsy Form that took into account the work done by the United Nations on this subject and also the special circumstances prevailing in our country. The Commission, however, once again urges the following States/Union Territories, namely, Arunachal Pradesh, Andhra Pradesh, Bihar, Chandigarh, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Kerala, Lakshadweep, Manipur, Mizoram, Maharashtra, Nagaland, who are yet to respond, to adopt the new form and the concomitant procedures without further delay. (Para 3.24)

22. The Commission has the powers, under section 12(c) of the Protection of Human Rights Act, 1993, to visit any jail or institution where persons are detained. In exercise of its powers the Commission directed the Secretary General to inform all the States of its decision to undertake surprise visits to police lock-ups in various States through officers designated by it. So far, 29 States/Union Territories have acted on this proposal. Jammu & Kashmir, Manipur and Daman & Diu are yet to respond and it is recommended that they do so at an early date. (Para 3.26)

23. Following a directive of the Supreme Court in the case before it on the question of police reforms, the Ministry of Home Affairs appointed a Committee under the Chairmanship of Mr. J.F.Ribeiro, a distinguished former member of the Indian Police Service, to review and suggest ways and means for the implementation of the recommendations of the National Police Commission and the National Human Rights Commission. This Committee has since submitted its report to the Apex Court. The decision of the Court, which will be critical to the future of police reform in the country, is now awaited by all those who feel that, failing major reforms, both good governance and respect for human rights will continue to be casualties. In the meantime, the Commission strongly urges that, without prejudice to such mechanisms as may be put in position to reform the police on the basis of the final verdict of the Supreme Court, the Central Government proceed with the implementation of those other recommendations to which it has committed itself and which are not the subject of consideration by the Apex Court. (Para 3.29 & 3.30)

24. The Commission also took up for dialogue with the Police Administration the setting up of a Police Complaints Authority in the office of the Director General of Police in each State so as to have a general oversight of the conduct of the police in that jurisdiction. This in itself could do much to reassure the public that their complaints against police conduct and insensitivity would receive attention at the highest administrative level. (Para 3.31)



25. The Commission has been insisting that State Governments effectively implement the Supreme Court's judgement in the *Common Cause vs. Union of India and Others* case, which laid down guidelines and gave directions in regard to the release of under-trial prisoners on bail. However, reports from the Commission's Special Rapporteurs and Representatives appointed to visit prisons indicate that, in many cases, the bail orders passed by courts have not been given effect as many prisoners could not provide sureties and have therefore had to continue languishing in jail. To deal with the situation in Delhi, and at the request of the Commission, the Delhi State Legal Board agreed to depute lawyers to Tihar jail to assist in respect of prisoners who could be released on bail. Further, the Commission is systematically urging other States to follow through on the Supreme Court's vitally important ruling. It recommends that action in this respect be taken promptly as serious issues of justice and rights are involved. (Paras 3.34 & 3.35)

26. The Commission has, in its preceding reports, expressed deep concern at the state of Administration of Criminal Justice in India. Efficiency of police investigation is fundamental to criminal justice. A basic factor today is that there is a loss of public confidence in police investigations and the criminal justice delivery system. Public confidence is the sheet-anchor of any police system. Information and intelligence can come only through public cooperation. The police, by its archaic methods, insensitivity and unprovoked incivility towards members of society, has alienated the public. Restoration of public confidence can be effective only if there are credible, transparent and effective in-house mechanisms for dealing with police misbehaviour. The Commission has dealt with this aspect elsewhere in the report. (Para 3.37 & 3.39)

As far as the administration of criminal justice in the Courts is concerned, which is bedevilled by a wide variety of problems, there is a great degree of disparity, and varying degrees of complexity, in the problems facing individual States and regions. Any strategy effective in, and appropriate to, any particular State or area may not necessarily be appropriate and effective in other areas of the country. (Para 3.40)

The Commission, therefore, recommends that a time-bound programme be embarked upon for the speedy clearance of criminal cases in the Courts, through the High Courts of the respective States which alone have exclusive control over the subordinate judiciary. The programme of action, the Commission recommends, should include the following factors:

- Strategies for control of arrears should be designed on a district to district basis, having regard to the particular requirements and pattern of criminal litigation in the district.
- The programme should be in charge of High Courts which will nominate a sitting



Judge or a Committee of Judges to be incharge of the programme in the district. The Judge or the Committee, as the case may be, shall be advised and assisted by a computer-expert in Court management matters. The programme must be funded by the State, by an adequate one-time monetary grant, sufficient to see through the programme. A generous measure of financial autonomy is absolutely necessary for the Courts for a little play at the judicial joints. The National Judicial Academy be requested to develop these packages of programmes.

- The target must be that within a time-frame, say a period of three years, no Court in that district should have any criminal case pending for over eight months. For purposes of tackling the arrears in Courts, long pending cases should be bifurcated into a separate class and dealt with separately under an adhoc dispensation by re-employing, if necessary, retired judicial officers and judicial staff.
- The pendency of cases in each Criminal Court should be fed into and analysed on computers. The progress in the disposal of cases is to be monitored on the computer. Initially, a spread-sheet be prepared to indicate the different types of criminal cases pending in the particular Court and the length of the pendency so as to evolve appropriate bench-marks for fast track procedures. (Para 3.41)

In terms of changes in the substantive law, the Commission recommends that:

- There be a process of progressive and massive decriminalisation of offences now recognised and made culpable as penal offences. They should be treated as merely actionable wrongs for which compensation and not punitive action is the appropriate remedy.
- The class of compoundable offences under the IPC and other laws should be widened.
- In the disposal of arrears of criminal cases, experienced criminal lawyers be requested to work as part-time Judges on a particular stipulated number of days on the pattern of 'Recorders' and 'Assistant-Recorders' in the United Kingdom. There is existing provision in the Criminal Procedure Code for honorary Judicial Magistrates, which has not been imaginatively utilised or its potential realised even in part.
- The system of "plea bargaining" be introduced on the pattern of recommendations already made by the Law Commission of India.



- Magistrates and Sessions Judges while remanding persons under trial to judicial custody should clearly indicate in the very order of remand itself the terminus a quay. In other words, the judicial remands should be self-limiting and should indicate the date on which the under-trial prisoner would automatically be entitled to go to bail in terms of the conditions prescribed by the Supreme Court.
- There should be a comprehensive training package for programmes of training of all judicial personnel and all Court administrators.
- In the proportion of population-judge ratio, India is today amongst lowest in the world; this needs to be rectified. (Para 3.42)

27. As indicated earlier, analysis by the Commission of deaths of prisoners reported from various States revealed that many lives could have been saved if proper medical examinations had been carried out at the time of the admission of a prisoner and if this had been followed-up with periodical medical checks. Acting with the help of an Expert Group, the Commission devised a proforma for the health screening of prisoners and directed the Chief Secretaries of all States, on 11 February 1999, to ensure that medical examinations of all prisoners were conducted in accordance with that proforma. The Commission also directed that monthly progress reports should be communicated to the Commission in this connection. (Para 3.43)

To bring a higher degree of coherence to its work in regard to prisons, the Commission has, further, appointed Shri Sankar Sen, former Director General (Investigation) to serve as Special Rapporteur and Chief Coordinator for its Custodial Justice Programme. This will ensure an improved monitoring of the efforts of all concerned and assist in the guidance of prison administrators in the States. (Para 3.44)

28. The Commission had also sent a set of questionnaires in respect of Borstal institutions, probation homes, protective homes, etc. that had been set up under different statutes and had asked the States to provide information relating to the functioning of these homes/institutions. By the end of the period under review, information had been received from Goa, Gujarat, Meghalaya, Tripura and the Union Territories of Chandigarh and Pondicherry. The Union Territories of Dadra and Nagar Haveli, Daman and Diu and Lakshadweep have indicated that they do not have such institutions. The States of Andhra Pradesh, Assam, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Tamil Nadu, West Bengal and NCT of Delhi have furnished partial information. The Commission is following up on this matter and requests the remaining States/UTs to expedite their reports. (Para 3.46 & 3.47)

29. The Commission has received a number of reports to the effect that criminal cases



delayed for a variety of reasons, are also often further delayed because matters remain pending in Forensic Science Laboratories. This has added yet another impediment to the speedy dispensation of justice. Realising the critical importance of improving the functioning of the Forensic Science Laboratories, as this is essential to the proper administration of the criminal justice system, the Commission felt it was necessary to look into the problems bedeviling these laboratories with a view to evolving guidelines for their better working. The Commission accordingly convened a meeting on 3 February 1998 to discuss the issue. It was then decided that a Core Group should be formed to go into the problems of Forensic Science Laboratories and to suggest measures to resolve them. A Core Group was thereafter constituted, comprising Dr. R.K. Tewari, Chief Forensic Scientist, Bureau of Police Research and Development, New Delhi as convenor with the Directors of the Forensic Sciences Laboratories of Haryana and Rajasthan as Members together with the Director in-charge of the Central Forensic Science Laboratory of the Central Bureau of Investigation. The Group has since completed its work and it was due to be submitted to the Commission shortly after the end of the period covered by this report. (Para 3.48)

30. The Commission has remained seized of the problem of the widespread prevalence of child marriage in certain parts of the country, especially in Rajasthan, despite the existence of the Child Marriage Restraint Act, 1929. It has been interacting with the National Commission for Women and the Department of Women and Child Development to evolve suitable measures to combat this problem. On a perusal of the Draft Marriage Bill jointly prepared by the National Commission for Women and Department of Women and Child Development, Government of India, the Commission had recommended that early action should be taken on it as it believed that the provisions contained in it could have a substantial impact on reducing the incidence of child marriage. The Central Government, however, took the view that major social and economic efforts were required to bring an end to the practice of child marriage amongst those sections of society and communities where such marriages have long been conducted and, further, that the Act was administered by the States. The Commission could not accept the view that the responsibility of the Central Government ceased because the present Act is administered by the State Governments. It is convinced that all components of Government and civil society have a role to play in bringing about an end to child marriage and that effective laws are an essential instrument to achieve this end. (Para 4.1)

As the Draft Marriage Bill did not make headway, the Commission has decided to revive its original idea of itself working on an amendment to the Child Marriage Restraint Act, 1929. The Commission intends to pursue this matter at all levels, legislative, social, educational and political and urges the Central and State Governments to give greater attention to this issue. (Para 4.2)

31. On the basis of experience in the first months of its functioning, the Commission had



made certain recommendations in its annual report for 1993-94, proposing amendments to its Statute in order to remove what it considered to be ambiguities and impediments concerning its competence and autonomy. In the light of further experience, however, the Commission itself came to the conclusion that a more in-depth, comprehensive and independent examination of the Act was required. The Commission accordingly requested Justice A.M.Ahmadi, former Chief Justice of India to head a high-level Advisory Committee consisting of human rights activists and legal experts to study the Act and suggest amendments. The main issues proposed by the Commission for consideration by the Ahmadi Committee were:

- Whether the philosophy of National Institutions; their creative and constructive role in promoting human rights and the key requisites for their effective functioning, particularly in the context of the administrative system in India, are captured and incorporated in the Act?
- Whether, in consideration of the fact that most of the complaints received by the Commission concern the Home Ministry, the Commission's administrative link should be with that Ministry or with the Cabinet Secretariat?
- Whether the proviso to Section 1(2) of the Act is appropriate, as the Commission is of the view that any legislation to provide for an additional mechanism to protect and promote human rights is referable to entries 13 and 14 of List I to the Seventh Schedule to the Constitution?
- Whether the definition of "human rights" in Section 2(d) of the Act is adequate and happily worded?
- Whether, in consideration of the resource constraints of small States, a five Member Commission is necessary?
- Whether Section 14(1) of Act is comprehensive enough to enable a procedure of inquiry into complaints by "Human Rights Complaints Authorities" to be set-up under the Director-General of Police in the States?
- Whether it is necessary to provide for a power to commit in contempt of the Commission, in cases where there is inordinate delay on the part of the authorities concerned in responding to notices issued by the Commission?
- What procedure could be evolved for timely response, by the authorities concerned, to the recommendations of the Commission?



- Whether Section 16 of the Act should be retained in its present form?
- In the context of a very large number of cases handled by the Commission, whether specific provisions in the Act are necessary to enable conduct of inquiry by a level below the Commission?
- Whether it is necessary to clarify and lay down the precise scope and purpose of the provisions of Section 30 of the Act relating to the constitution of Human Rights Courts?
- In view of the delay that has been observed in laying the annual report of the Commission before each House of Parliament, whether a short time limit could be set for the completion of this procedure?
- How could an appropriate scheme be built into the Statute for an effective inquiry by the Commission into allegations of violations of human rights by personnel of the armed forces and para-military forces?
- How could the Commission be enabled to take up consideration of cases which are more than one year old, against the background of the provisions of Section 36(2)?

The Commission proposes to pursue these issues, which are vital to its effective functioning, on receipt of the report of the Ahmadi Committee. (Para 4.3, 4.4 & 4.5)

32. Under Section 12 (f) of the Protection of Human Rights Act 1993, the Commission has a statutory responsibility to "study treaties and other international instruments on human rights and make recommendations for their effective implementation." The efforts of the Commission to secure the accession of India to the Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment or Treatment are recounted in Chapter III(c) of this report. It is to be noted that India is already party to sixteen other international treaties drawn-up under the auspices of the United Nations. (Para 4.6 & 4.7)

The Commission intends, in the period ahead, to focus in greater detail on the effective implementation of treaties and international instruments on human rights. Further, as indicated earlier, research in this respect will be undertaken for the Commission by the newly established National Institute for Human Rights in the National Law School of India University in Bangalore. The Commission has observed that the United Nations Treaty Bodies are themselves keen on the fuller association of National Institutions for the Promotion and Protection of Human Rights with their work. The Commission recommends, at this stage, that reports to the Treaty Bodies



be submitted in a more timely manner than hitherto and that the recommendations of these Bodies be taken fully into account in determining the policies and laws of the country. (Para 4.11, 4.12 & 4.13)

33. Serious developmental disabilities are caused to children born in this country due to inadequate attention to certain essential nutritional requirements of expectant mothers, belonging largely to disadvantaged sections of society. The number of those born with neurological disadvantages, permanently affecting their intellectual future, is alarmingly large. The Commission accordingly constituted a Core Group under the leadership of its Chairperson to seek advice in tackling this important health related human rights issue. The Core Group suggested, inter-alia, the identification of specific Blocks and Districts in the country where the problems are acute and initiation of four pilot projects. The Commission has, in this connection, been interacting with other national institutions like the National Institute of Nutrition, Hyderabad, Pushpawati Singhania Research Institute for Liver, Renal and Digestive Diseases, New Delhi, and the All India Institute of Medical Sciences, New Delhi. The Commission considers the problem of nutritional anaemia affecting the mental development of the foetus and the infant child to be an important human rights issue. It therefore desires that the Central and State Governments undertake systemic measures to tackle this problem effectively. (Para 5.1 & 5.2)

34. The Commission, in its annual report for the year 1996-97, expressed concern over the fate of those who were displaced as a result of mega-projects implemented by the State, and recommended that a comprehensive examination be undertaken of prevailing rehabilitation policies. It suggested, specifically, that the Central and State Governments examine and appropriately amend their laws, regulations and practices in order to ensure that when it comes to the acquisition of land for purposes related to national economic development, the provisions of the Constitution as expounded by the Supreme Court and as contained in the international instruments to which India is a party, notably ILO Convention 107 are respected. The Commission would like to note with appreciation, in this connection, that the Central Government has initiated steps to draft a national policy for resettlement and rehabilitation, adopting a more holistic approach, rather than one that was essentially oriented towards cash-compensation. In view of the vast and recurrent dimensions of this problem, the Commission on its part intends to appoint a Special Rapporteur to help it promote and protect the human rights of those who are displaced in large numbers by mega-projects, or who face such a prospect because of reasons that originate in State policy or acts of governance. (Paras 6.2 & 6.4)

35. The Commission held detailed discussions in the course of the year under review with the Government of Uttar Pradesh in respect of child labour in the carpet industry. As a result of these discussions and visits to the carpet manufacturing area on behalf of the Commission,



a major project was launched, on 30 March 1999, in Varanasi to deal with the serious human rights problem. Justice V.S.Malimath, a Member of the Commission, released the project and the action plan in the presence of the Minister for Labour of the Government of Uttar Pradesh. The Carpet Export Promotion Council and the Carpet Manufacturers Association offered their fullest support to the Government of Uttar Pradesh in their effort to eliminate the problem of child labour in that industry. The project and action plan were prepared by the Labour Commissioner of Uttar Pradesh under the guidance of the National Human Rights Commission following initiatives taken by the Commission. The National Human Rights Commission will monitor the entire work through its Special Rapporteur for Uttar Pradesh, Shri Chaman Lal. The process would continue until the Labour Commissioner of Uttar Pradesh is in a position to certify that there is no longer any child/bonded labour in the carpet industry of Uttar Pradesh. Given the great care that has gone into the preparation of this project and action plan, the Commission earnestly trusts that the Government of Uttar Pradesh will implement this project fully and also pursue the wider project which it has devised, namely the Child Labour Abolition Programme (CLAP), aimed at dealing comprehensively with child labour in hazardous industries in that State. (Para 7.1, 7.2 & 7.3)

36. Following reports of employment of children below the age of 14 years by Government servants and distressing information about the mistreatment of such children, the Commission recommended that this practice should be prohibited through the addition of an appropriate Conduct Rule expressly for this purpose. The amendment suggested to Government of India was as follows:

Central Civil Services (Conduct) Rules, 1964 shall be amended by adding the following as Rule 22-A:

- "22-A: (i) No Government Servant shall employ to work any child below the age of 14 years;
- (ii) breach of sub-rule (i) shall be misconduct attracting a major penalty".
- (Para 7.4)

The Commission thereafter requested the Ministry of Personnel, Public Grievances and Pensions, Government of India in February 1997 and the Chief Ministers of all the States in March 1997, to enact amendments in the Service Rules of the Central Government and State Government employees respectively. The State Governments of Andhra Pradesh, Assam, Jammu and Kashmir, Karnataka, Maharashtra, Tamil Nadu, Tripura and West Bengal accepted the recommendation of the Commission and issued notifications. The State Governments of Gujarat, Goa, Himachal Pradesh, Haryana and Mizoram informed the Commission that, as and when the required amendment would be made by the Central



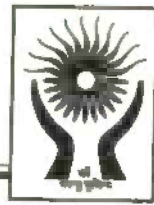
Government, the same would become applicable to them. The remaining States indicated that they were considering adopting the recommendation of the Commission. The Commission takes this opportunity to call upon them to adopt the recommendation without further delay. (Para 7.5)

As the Ministry of Personnel, Public Grievances and Pensions expressed certain reservations in regard to the recommendation of the Commission, the matter was pursued with it in January and February 1999. The Ministry of Personnel thereafter agreed in a discussion to review its earlier stand in the matter. The Commission trusts that its recommendation will be accepted and that the necessary amendments in the CCS (Conduct) Rules will soon be made. (Para 7.6)

37. The grave issue of child prostitution has been a major concern of the Commission over a number of years. The Commission has, accordingly, been interacting with the Department of Women and Child Development (WCD), Government of India, the National Commission for Women and UNICEF to evolve measures to deal with this problem. In order to better coordinate efforts, the Commission constituted a Core-Group on Child Prostitution under the Co-Chairmanship of Justice Sri V.S.Malimath and Sri Virendra Dayal, Members of the Commission. The other members of the Core Group include the Chairperson, National Commission for Women (NCW), the Secretary, Department of Women and Child Development, representatives from UNICEF and the Director General (Investigation) of the Commission. (Para 8.1 & 8.2)

The Commission also held a meeting of the Core Group on 11 March 1999. Participants in this meeting included the Chairperson, NCW, the Chief Secretary, Delhi Government, and representatives from the Department of Women and Child Development, Government of India, UNICEF, All-India Radio, Doordarshan and the Delhi Police. The decisions included the following:

- The Government of Delhi undertook to initiate steps to exhibit slides in cinema halls covering the sexual abuse of children. Ration shops, major hospitals and Government buildings frequented by the public will also exhibit posters.
- Doordarshan agreed to screen a spot/short film already prepared by UNICEF.
- The Department of Women and Child Development, Government of India agreed to allocate Rs.12 lakhs to cover the charges of displaying posters on the Delhi Transport Corporation buses for one year.
- The Delhi Police agreed that posters on the sexual abuse of children would be displayed at all police stations.



- UNICEF would assist the Commission in a poster campaign in Karnataka, as was done in Delhi. (Para 8.5)

In addition, Justice Shri V.S.Malimath held detailed discussions with the Deputy Commissioner, Belgaum and the Chief Executive Officer, Zilla Panchayat, Belgaum on 28 March, 1999 during his visit to that district. The Devdasi system prevailing in Belgaum was also the focus of concern. The Director, Doordarshan Kendra, Bangalore and the Director, All India Radio, Bangalore were associated with the campaign.(Para 8.6)

38. By its order of 11 November 1997, the Supreme Court requested the Commission to be involved in the supervision of work relating to the abolition of Bonded Labour. The Court made available to the Commission a sum of Rs. 10 lakhs as an initial amount to defray the expenses that may be involved in undertaking this task. A Central Action Group was immediately constituted by the Commission under the leadership of its Chairperson, with the Secretary, Ministry of Labour as its Member Convenor. The Commission has been interacting regularly with the Ministry of Labour in respect of this matter. Further, this issue is reviewed and monitored by the Commission every fortnight, in its Special Agenda for Cases and Projects under the Supreme Court's mandate. To strengthen its capacity to deal with this issue, the Commission has appointed a Special Rapporteur to work for it in the four Southern States, namely Andhra Pradesh, Karnataka, Kerala and Tamil Nadu. The Commission is also contemplating appointing Special Rapporteurs for other States where the problem is acute. A leading advocate of the Supreme Court, Shri Muralidhar, is providing his services pro bono to the Commission in this matter. (Para 9.3 & 9.4)

The Commission has initiated action in the following matters in order to tackle the problem in a sustained way:

- Preparation of a proforma for periodical reporting by the State Governments.
- Identification of sensitive districts in the country where the problem of bonded labour is acute.
- Appointment of Special Rapporteurs in different States and regions of the country.
- Short-listing of reputed and dedicated NGOs for the States/sensitive districts.
- Laying down the modalities and issues/subjects, resource persons, format etc, for organising one-day workshops for sensitizing District Magistrates in the most critical regions. (Para 9.5)

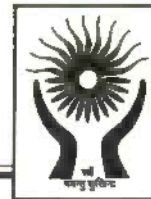
The Commission has noticed with regret that, in almost all the States, the Vigilance



Committees that were established earlier are non-functional and that no serious effect has been taken to identify bonded labour even though the existence of such labour in as many as 100 districts and in specified industries has been well documented by various studies. The Commission calls upon all the State Governments to bring fresh energy to this serious matter and to vigorously implement the provisions of the Bonded Labour System (Abolition) Act. (Para 9.6)

39. The Commission has been deeply concerned at the unsatisfactory conditions prevailing in mental hospitals in the country, many of which function as custodial rather than therapeutic institutions. In the light of such problems as overcrowding, lack of basic amenities, poor medical facilities, little or no effort at improving the awareness of family members about the nature of mental illness, or of the possibilities of medication and rehabilitation, the Commission came to the view that there was great need for it to take up this issue which, if not redressed, would result in the continuing violation of the rights of those greatly in need of understanding and support. In order to tackle this issue in a systematic way, the National Human Rights Commission entrusted a research project on "Quality Assurance of Mental Hospitals" to the National Institute of Mental Health & Neuro Sciences, (NIMHANS) Bangalore. One of the Members of the Commission has been supervising and monitoring this project. The completion of the report and its subsequent implementation could be a contribution of singular importance by the Commission to the protection of the rights of a group that is, too often and readily, neglected. (Paras 10.1, 10.2 & 10.4)

40. The Commission has increasingly expressed its dismay about the inhuman and degrading practice of manual handling of night soil, which is prevalent even today in many parts of the country. The Commission views this as a grave affront to human dignity and a major social evil. It finds acquiescence in this practice totally abhorrent. Indeed, despite the launching of a national scheme in March 1992 to liberate and rehabilitate those engaged in this demeaning work, the Commission has observed that the implementation of the scheme is appalling, except in a few States. This speaks of an apathy, bordering on the unforgivable, in respect of a deep societal wrong. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 prohibits the employment of manual scavengers as well as construction or continuance of dry latrines. The Central Government, pursuant to the Act, issued a notification on 24 January 1997 bringing the Act into force from 26 January 1997 in all the Union Territories and six states viz. Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal. But implementation in these States and elsewhere has been abysmal. The Commission has therefore pursued this matter through letters addressed to the Union Ministers of Social Justice and Empowerment, Urban Affairs and Employment and the Chief Ministers of all States/Administrators of UTs on 24 January 1997 and 8 February 1997 respectively. It has also brought up this matter in the course of discussions with the State Governments. (Para 11.1, 11.2, 11.3)



The Commission continues to pursue this matter. It takes this opportunity to remind the political, administrative and civic leadership of the country that the practice of manual scavenging is a standing indictment of our society and that the nation has a compelling duty to give to this problem the attention that it deserves. As of the end of the reporting period, the position in terms of the applicability of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was as follows:

- The Central Act was applicable in:
Andhra Pradesh, Goa, Karnataka,
Maharashtra, Tripura, West Bengal and all UTs.
- The Central Act has been adopted in:
Assam, Haryana, Orissa, Punjab, Gujarat, Bihar and Madhya Pradesh.
- The adoption of the Central Act is under consideration in:
Rajasthan, Tamil Nadu and Uttar Pradesh.
- No decision has yet been taken in:
Arunachal Pradesh, Kerala, Jammu & Kashmir, Himachal Pradesh, Meghalaya,
Manipur, Mizoram, Nagaland and Sikkim. (Para 11.5, 11.6)

41. The Commission constituted an Advisory Group on Denotified and Nomadic Tribes in the month of May, 1998 to advise the Commission as to the nature of the enquiries that the Commission may undertake as well as the recommendations that it could make to deal with the issues raised in a petition made by the Denotified and Nomadic Tribal Rights Action Group highlighting the problems being faced by the denotified tribes. The Advisory Group comprised of Shri B.D. Sharma, former Commissioner of Scheduled Castes and Scheduled Tribes as Chairman and Smt. Mahasveta Devi, Prof. G.N.Devy, Shri Laxman Gaikwad and Smt. Ananya Chatterjee as Members. Dr. Rajeev Dhavan, Sr. Advocate, Supreme Court of India was requested to be the legal adviser of the Group. The Advisory Group has since submitted its report to the Commission. The Commission will be now be seeking the views of the concerned Government authorities and a cross section of society on the various important issues contained in the report. (Para 12.1 & 12.3)

42. In a major effort to establish a centre of excellence for human rights education, the Commission is setting-up an "Institute for Human Rights Education, Research and Documentation" at the National Law School of India University (NLSIU), Bangalore. A Chair on Human Rights was created with the assistance of the Commission. The Institute will be assisting the Commission in the discharge of certain of its key statutory functions. It would undertake the following activities:



- Promote research in the field of human rights.
- Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- Spread human rights literacy among various sections of society.
- Promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- Study treaties and other international instruments on human rights and make recommendations for their effective implementation. (Para 13.7, 13.8)

For these purposes, the Institute will offer regular undergraduate and postgraduate courses on human rights, fundamental duties, national/international human rights issues, orientation courses for NGOs, law teachers, academic functionaries, motivational courses for functionaries of political parties, Panchayati Raj institutions, trade unions, media persons and a package of programmes for training civil service entrants. The following Research Projects have been referred to the Institute

- The study of treaties and other international instruments on human rights and the making of recommendations for their effective implementation,
- Imminent problems connected with the spread of HIV infection and Human Rights concerns of privacy and the dignity of HIV positive persons,
- The question of jurisdiction of Human Rights Courts under section 30 of the provisions of the Protection of Human Rights Act, 1993.
- The National Police Commission's observations about the misuse of the power of arrest by the police and the collection of statistics, under the Pilot Project, as to the reasonableness of the exercise of the power of arrest by the police.
- Sexual abuse of women and children. (Para 13.9 & 13.40)

43. The Commission sustained its efforts to ensure that the para-military forces of the country continued to improve the quality of their training in human rights matters. Towards this end, the Director General (Investigation) held a meeting with senior officers of the rank of I.G. in-charge of training of various states to design a common training syllabus. The Core Group



set up for this purpose prepared a training syllabus for the para-military forces which was approved by the Commission and was then circulated to the Heads of the Paramilitary Forces on 24 September 1998 for implementation. Six out of the seven Central Police Organizations reported that they have included this training syllabus on human rights in their curriculum. (Para 13.14)

44. The management consultants, M/s McKinsey & Co., in a study undertaken for the Commission, had, inter alia, recommended that the Commission should evolve a system of internships to expose talented students, both from India and abroad, to the work of the Commission. The Commission accepted this recommendation and issued guidelines titled "The summer internship programme". The first Summer Internship Programme was thus held for university students from 16 June 1998 to 15 July 1998. Seven students from the Law Faculty of Delhi University and Jamia Milia Islamia University were selected for participation in the programme. They were attached to the different divisions of the Commission and also were familiarized with important cases considered by the Commission. The Commission has also been giving placement, from time to time, to students from various universities on consideration of the applications from the students/universities. In this regard, students from the Tata Institute of Social Sciences, Mumbai and the National Law School of India University, Bangalore were also given placement during the year 1998-99. (Para 13.16, 13.17 & 13.18)

45. The Commission, in collaboration with the British Council in India, the Bureau of Police Research & Development, and two non-governmental organisations, viz., PRAJA and ICPS organised a training project on "Human Rights and Prisons Management". The aim of the project was to bring together prison officials and improve prison management systems with special reference to promoting good practices and gender sensitivity in jail management. Sixteen senior officials associated with prison affairs were selected as trainees for a study tour of UK prisons for two weeks in January 1999. The trainees are to serve as a national resource for further training of trainees in India. The project was designed to help Indian prison officials learn from the experience of the United Kingdom in areas of prison management and to help bring about attitudinal and behavioural changes in management practices. Issues such as sentence planning, inmate development, pre-release initiatives, promoting appropriate values in prison staff, the care of prisoners and help to them to become self-supporting after release, were the focus of attention during the training. The trainees designed a 3-day human rights training module along with appropriate training materials and were expected to organise sixteen, 3-day human rights training courses from April 1999 to train 320 prison officials. The Commission is continuing its follow up of the project to inculcate human rights values in penal administration. (Para 13.20, 13.21)

46. The Newsletter of the Commission is now available on the Commission's web-page: 'www.nhrc.nic.in'. This will help the Commission to reach a much wider audience. (Para 13.34)

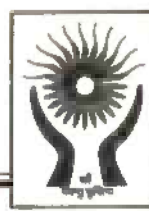


47. The Commission believes that, in considering whether or not to set-up State Human Rights Commissions, the concerned Governments should be guided by the view that individuals in a democracy should be helped to realize in full measure the rights conferred on them by the Constitution and have speedy recourse to justice when their rights are violated. The Commission therefore once again urges State Governments to establish Human Rights Commissions where they do not yet exist. For its part, the Commission will render its fullest support to such institutions once they are established. The Commission intends to pursue this matter with the State Governments. It also recommends, however, that this issue receive the attention of the Central Government and the leadership of political parties at the highest level. (Para 15.8)

48. Unlike the case of Commissions of Inquiry, the recommendations of the National and State Human Rights Commissions have to be dealt with by the Governments, not as some recommendations amenable to their discretion whether to accept or reject them. Rather, the State Governments, under the Protection of Human Rights Act, 1993, are bound, within the time frame prescribed by Section 18(5), to forward to the Commission their comments "including the action taken or proposed to be taken thereon". This obligation has significant relationship to and requires to be read with Sub-section (2) of Section 18, under which the Commission has the right, and in appropriate cases the duty, to approach the Supreme Court or the High Courts. The provisions in Section 18(2) and (5), read together and properly construed, impose "reporting obligations" on the Central and State Governments. It would, indeed, be appropriate for National and State Commissions, wherever they consider that the responses of the State Governments do not accord with justice and fail to protect and promote human rights, to hold if necessary public sittings, in which the appropriateness, reasonableness, propriety and the legality of the responses of the State Governments would be heard and discussed so as to enable the Commissions to decide whether further steps under Sub-sections (2) of Section 18 would be necessary to be adopted. Thus understood, the existing provisions in the 'Act' could be seen to be adequate, provided they are imaginatively implemented for the promotion and protection of Human Rights. (Paras 15.16, 15.17, 15.18)

49. The Commission has drawn attention to the ambiguity as to the precise nature of offences that could be tried and the procedural issues governing the conduct of the business in the Human Rights Courts as envisaged in Sec.30 of the Protection of Human Rights Act 1993. The Commission recognises that substantive amendments to Sec.30 of the Protection of Human Rights Act, 1993 and other laws are necessary in order to enable the courts designated as human rights courts to fulfil the expectation that they would provide speedy trial of offences arising out of violation of human rights. The Commission, therefore, calls upon the Central Government to undertake the necessary legislation for this purpose at an early date. (Para 15.19)

50. During the year under report, there has been an increase of nearly 9.6 per cent in



cases including custodial death cases, registered by the Commission in comparison with the preceding year. This increase continues to reflect both a heightened awareness of human rights in the country as well as the hope and belief that the Commission will act promptly and impartially to secure the redressal of grievances. The number of complaints, which includes reports sent by State agencies on custodial deaths and rapes, registered in 1997-98 was 36,791 as against 40,724 registered during the year ending 31 March 1999. Including the 13,512 cases which were pending consideration at the beginning of the year, the Commission had a total of 54,236 cases that required its consideration in 1998-99. Uttar Pradesh continued to account for the largest number of fresh cases, with 22,043, followed by Bihar with 4040 such cases. These two States together accounted for 64.1 per cent of the fresh cases received during 1998-99. (Para 16.1)

During the year under review, 53,711 cases were taken up for consideration. Of them, 32,277 cases were disposed of in limini and 11,389 cases were disposed of with directions to the appropriate authorities. 3395 cases were concluded after considering the reports received from the concerned authorities, or the reports submitted after inquiry by the Investigation Division of the Commission. To sum-up, a total of 47,061 cases were disposed of during 1998-99, as against 18,801 cases that were disposed of during 1997-98. The disposal of cases was thus 150 per cent more than that in the previous year. The Commission believes that the disposal of cases could have been even better had there been prompter and fuller responses to the notices of the Commission by the State authorities and, of course, had the Membership of the Commission been complete. The Commission has noted with regret that, from certain States, there was considerable delay in responses. The Commission calls upon all the States to streamline their procedures and improve their responsiveness to the Commission's notices. (Para 16.2)

51. The scheme for appointing Special Rapporteurs to assist the Commission in its more demanding and sensitive responsibilities continued during the year 1998-99. There were four Special Rapporteurs working for the Commission during the period under review. They were requested to help in respect to critically important issues such as bonded labour, child labour, problems of scarcity in Orissa and matters remitted to the Commission by the Supreme Court such as the monitoring of the Agra Protective Home and the three mental hospitals of Agra, Gwalior and Ranchi. The Commission also availed of the services of retired senior officers as Special Representatives assigning to them specific responsibilities in each case. The strengthening of the capacity of the Commission through the efforts of these Special Rapporteurs and Representatives has been of utmost value to the Commission in the discharge of its onerous responsibilities. (Para 18.6)

52. The promotion and protection of a life with human dignity constitutes the *raison d'être* of the Commission and the heart and soul of its responsibility. Indeed, the enjoyment of human

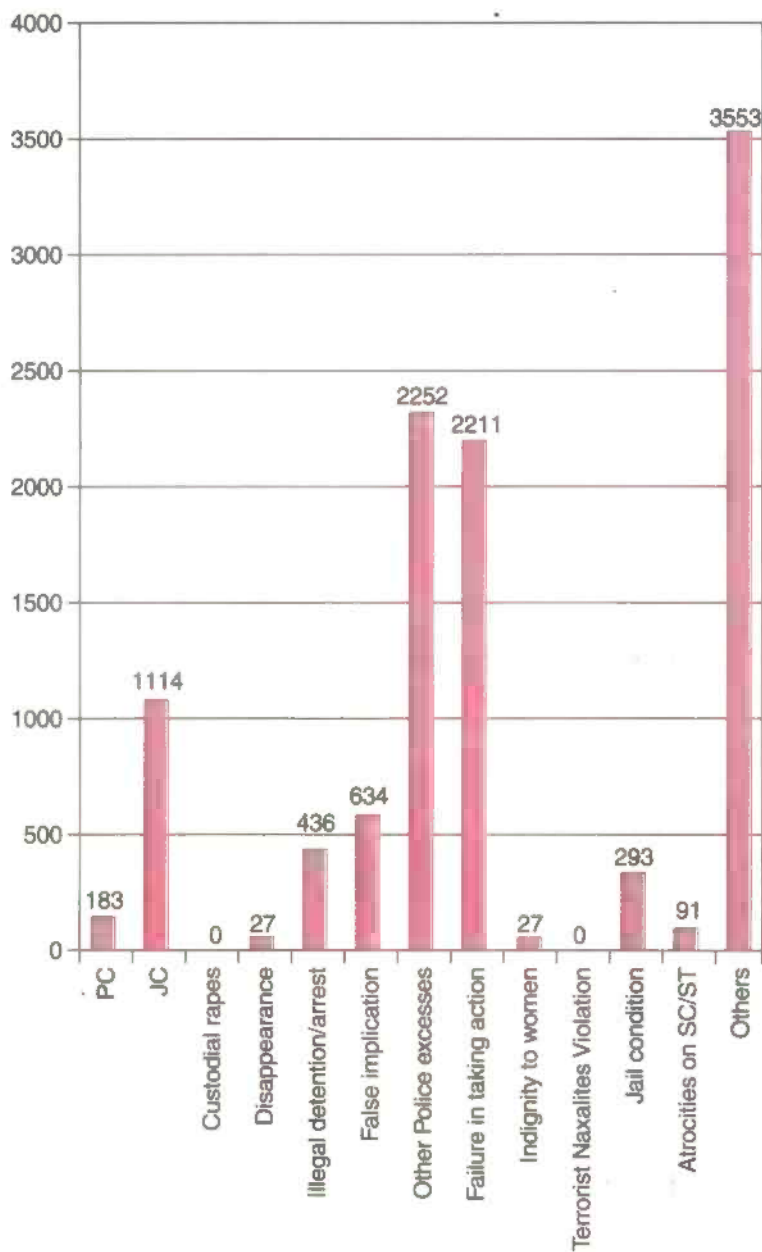


rights is intrinsically related to the expansion of real freedoms. It must be the purpose of our democracy and development effort to ensure that freedom from hunger, illiteracy and early death - all essential to the right to a life with human dignity - are given true form and substance in the period ahead. This has been the core message of the Commission over the past five years. Far more than its individual recommendations, this message has underlined the imperative to act and govern appropriately. In the final analysis, the Commission is of the view that the promotion and protection of human rights - the expansion of essential freedoms - must be the central purpose of governance. And this can only be assured by probity and honesty, by diligence and a sense of direction that places the concerns of the disadvantaged and vulnerable foremost in the considerations of policy and action. (Para 19.5, 19.6, 19.7 & 19.9)



Nature and classification of complaints considered during 1998-99

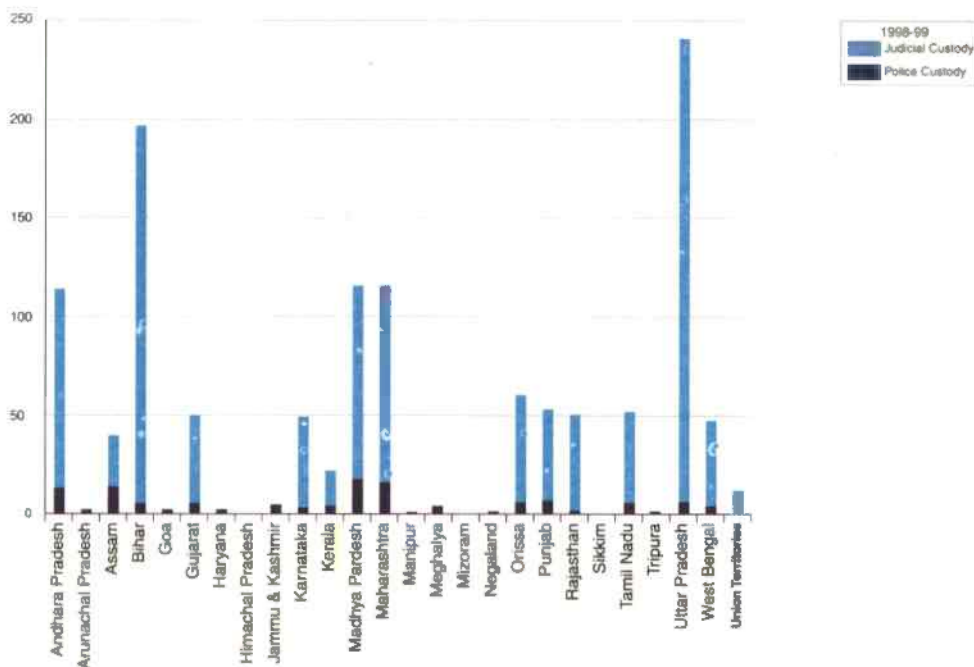
Total No. 10821



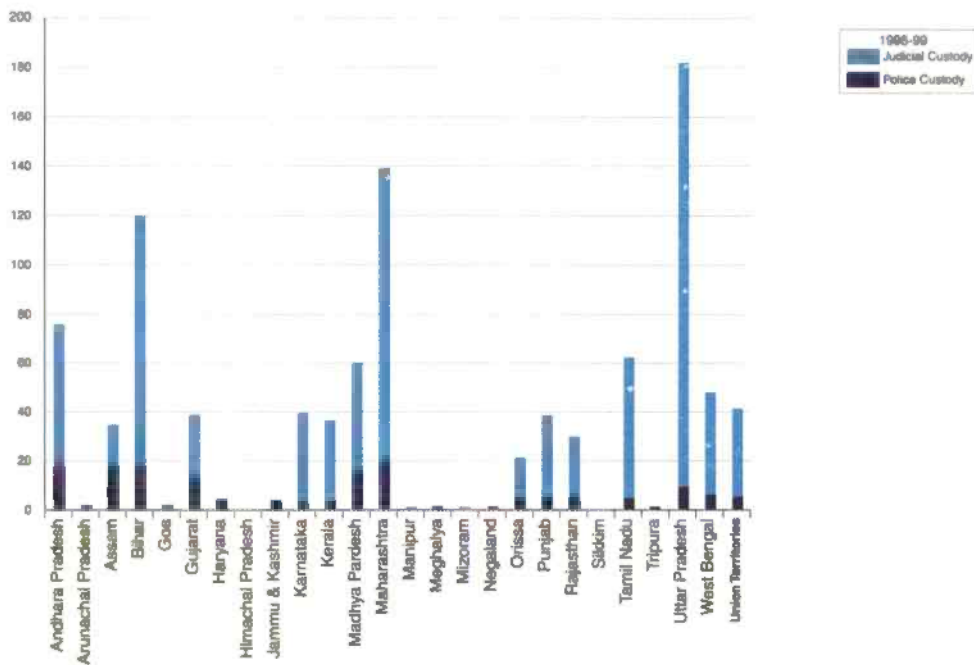
For details see
Annexure-X



Custodial Deaths during the years 1998-99



Custodial Deaths during the years 1997-98

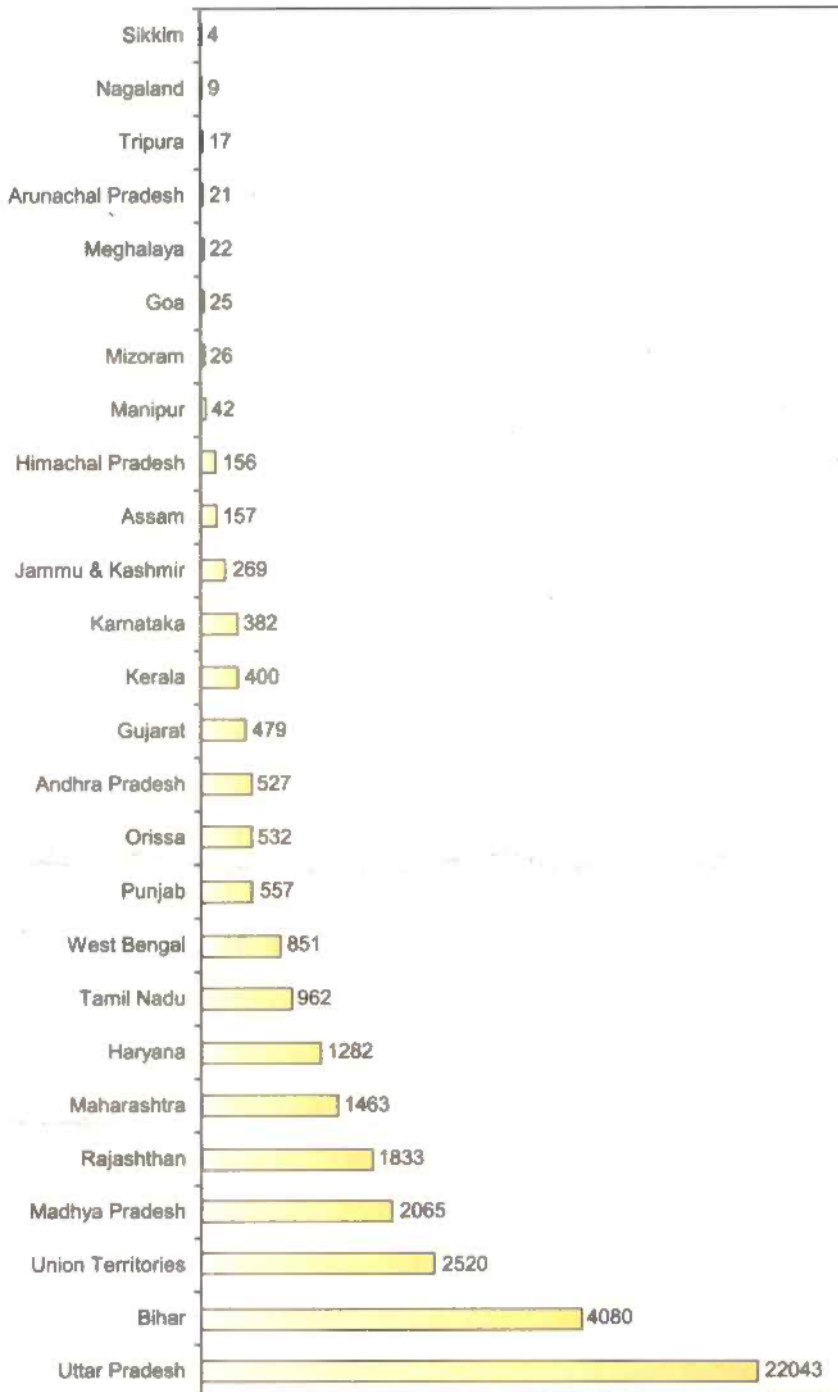


For details for 1998-99
see Annexure-II



State wise break-up of complaints registered during 1998-99

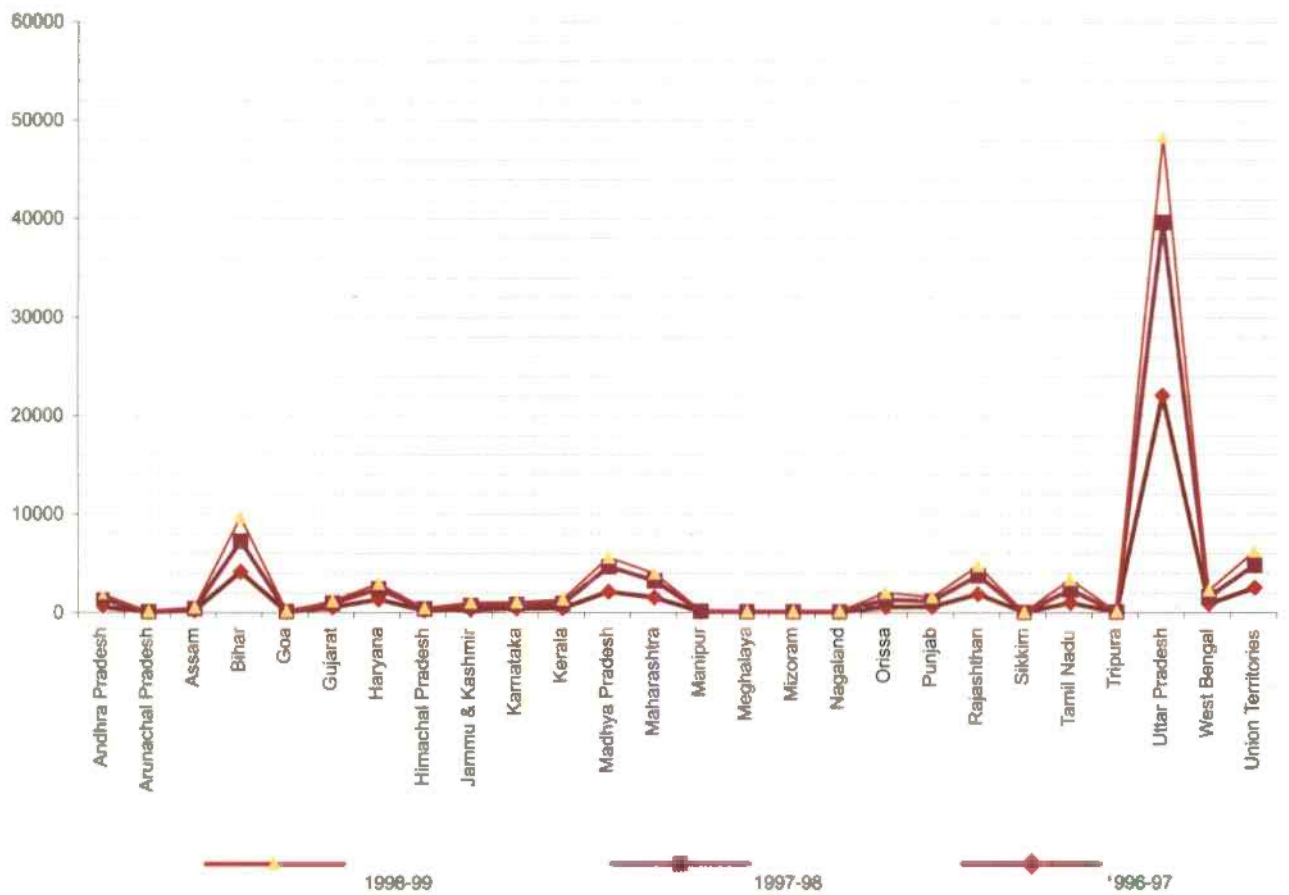
Total No. 40724



For details see
Annexure-VIII



Total Complaints registered during the last three years.

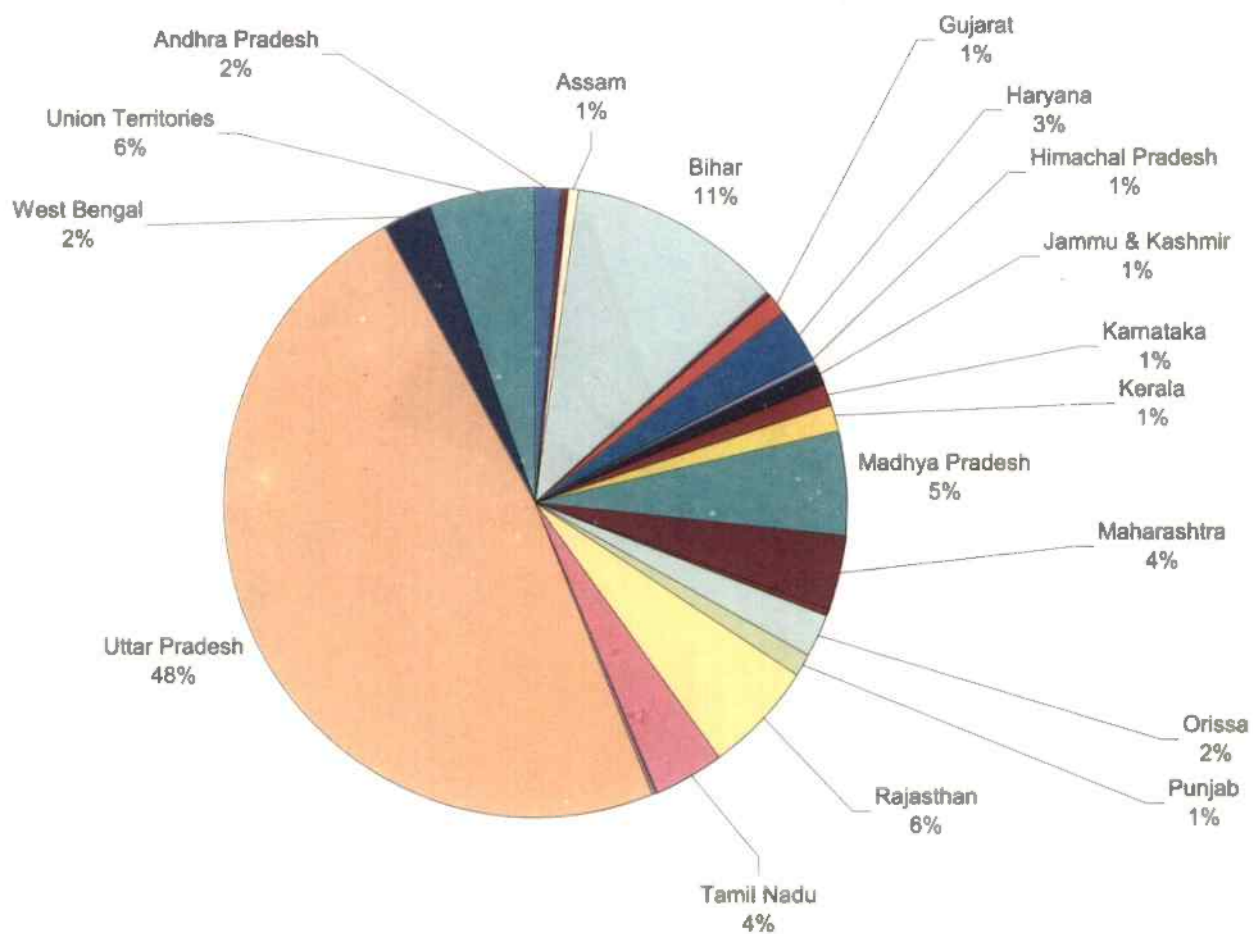


For details for 1998-99
see Annexure-VIII



**No. of Cases dismissed in limini during 1998-99
States/UTs with a dismissal rate of more than 1%**

Total No. 32172

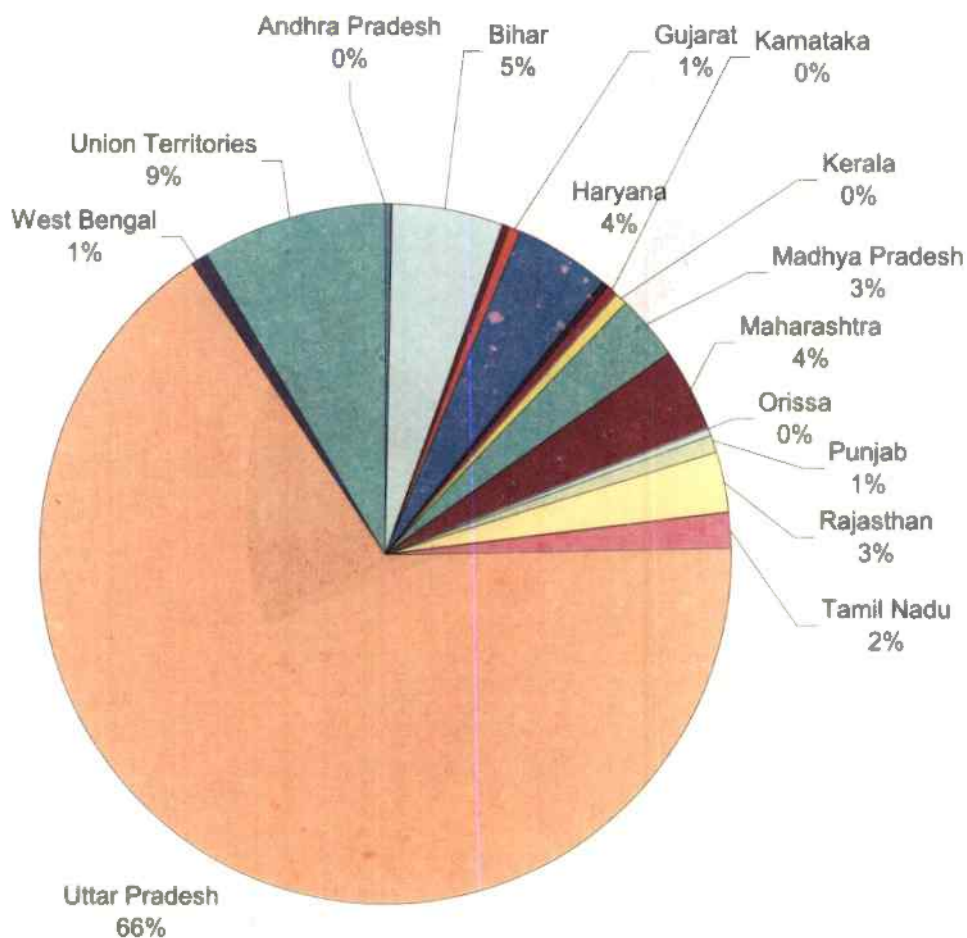


For details see
Annexure-IX



**No. of Cases disposed of with direction during 1998-99
States/UTs with a dismissal rate of more than 1%**

Total No. 10718

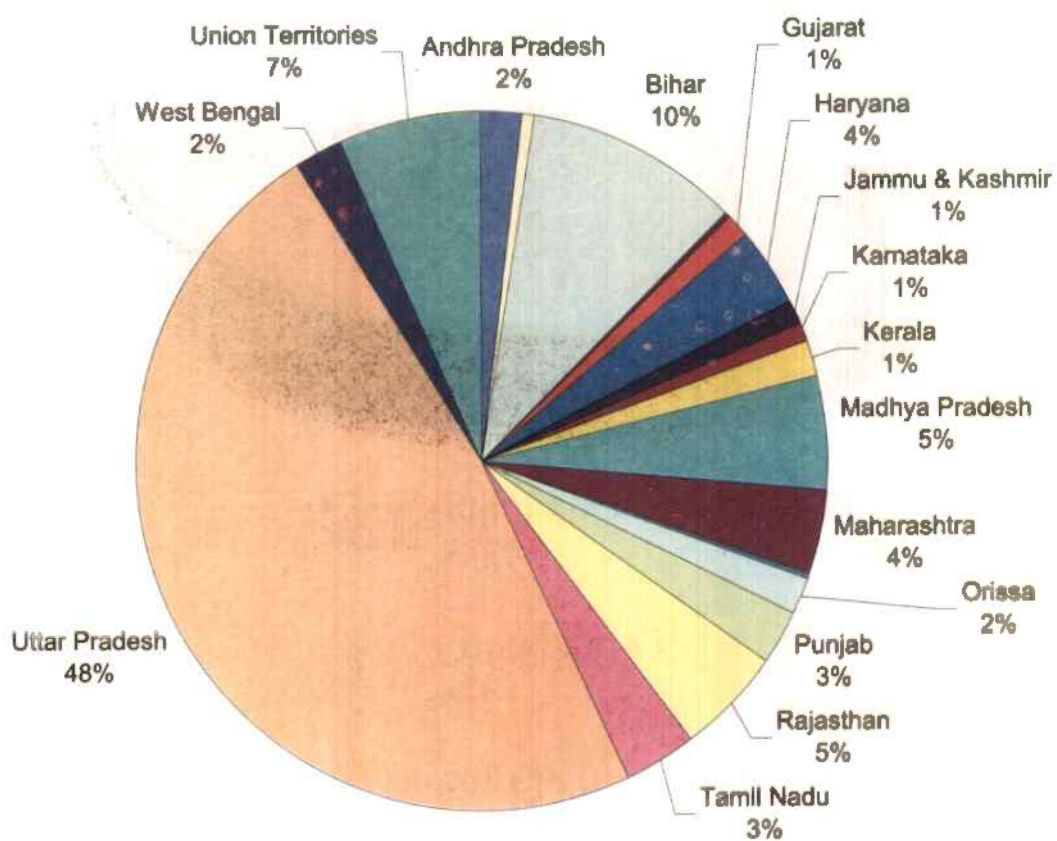


For details see
Annexure-IX



**No. of Cases considered/admitted for disposal during 1998-99
States/UTs with a dismissal rate of more than 1%**

Total No. 10821

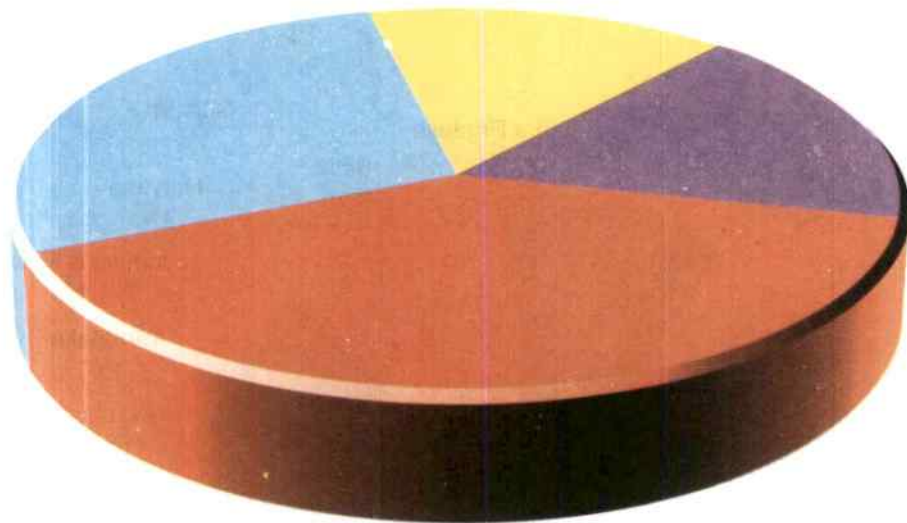


For details see
Annexures-VIII & X



No. of cases registered during 1998-99

Total No. 54236



Dismissed in Limini 48%

Considered* 15%

Disposed of with Directions 17%

Pending Consideration 20%

* Taken cognizance of / Admitted for disposal

For details see Annexures-VIII & IX

ERRATA

| <u>Page No.</u> | <u>Para No.</u> | <u>For</u> | <u>Read</u> |
|-----------------|-------------------------------|----------------------------|------------------------------------|
| 4 | 2.6 | 40,723 | 40,724 |
| 4 | 2.7 | 1,15,706 | 1,15,707 |
| 14 | 3.14 8 th line | during | till |
| 59 | 16.1 10 th line | 4040 | 4080 |
| | 16.2 4 th line | 32,277 | 32,172 |
| | 16.2 5 th line | 11,389 | 10,718 |
| | 16.2 8 th line | 47,061 | 46,285 |
| 121 | heading of col. 3 | No. of Cases consideration | No. of Cases pending consideration |
| | Sl. No. 1 Col. 7 | 760 | 716 |
| | Sl. No. 4 Col. 7 | 5340 | 5314 |
| | Sl. No. 6 Col. 5 | 15 | 50 |
| | Sl. No. 7 Col. 7 | 724 | 1724 |
| | Sl. No. 10 Col. 4 | 363 | 333 |
| | Sl. No. 13 Col. 5 | 190 | 119 |
| | Sl. No. 13 Col. 7 | 2113 | 2130 |
| | Sl. No. 14 Col. 3 | 26 | 36 |
| | Sl. No. 18 Col. 7 | 865 | 856 |
| | Sl. No. 24 Col. 7 | 37744 | 27744 |
| | Sl. No. 25 Col. 4 | 604 | 804 |
| 122 | Sl. No. 1 | 483 | 486 |
| | Sl. No. 7 | 1712 | 1724 |
| | Sl. No. 18 | 35 | 45 |
| | Sl. No. 20 | 848 | 1848 |
| 123 | Heading of Col. 12 | Terrorist | Terrorist |
| | Sl. No. 13 Col. 10 | 13 | 30 |
| | Sl. No. 22 Col. 16 | 314 | 340 |
| 124 | Para 2, 2 nd line | 40,723 | 40,724 |
| | Para 2, 13 th line | 1,15,706 | 1,15,707 |
| 150 | In Box | 1998-99 | 1997-98 |

