

# NATIONAL HUMAN RIGHTS COMMISSION

Annual Report  
1999–2000



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

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## Introduction

**1.1** This is the seventh such Report of the Commission, covering the period 1 April 1999 to 31 March 2000. The preceding report dealing with the period 1 April 1998 to 31 March 1999 was submitted to the Central Government on 9 November 1999. It was placed before Parliament on 20 December 2000 along with the Action Taken Report. The Fifth Annual Report of the Commission dealing with the period 1 April 1997 to 31 March 1998 was submitted to the Central Government on 8 March 1999. It was placed on the table of the Rajya Sabha on 1 March 2000, and of the Lok Sabha on 8 March 2000, by the Central Government together with the Action Taken Report.

**1.2** Section 20(2) of the Protection of Human Rights Act, 1993, specifies that the Central Government 'shall cause the annual report of the Commission to be laid before each House of Parliament along with the 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'. The delay in tabling consecutive annual reports sets back the schedule for the preparation and presentation of the reports of the Commission. The Commission therefore, has per force, to reiterate its recommendation that its annual reports be placed promptly before Parliament, together with the required Action Taken Memoranda. This should normally be done not later, than the Session immediately following submission, of its Report.

**1.3** The year under review witnessed change at the helm of the Commission. Its second Chairperson, Shri Justice Manepalli Narayanarao Venkatachaliah, retired on 24 October 1999 upon attaining the age of 70 years, as envisaged in Section 6(2) of the Statute of the Commission. Shri Justice Jagdish Sharan Verma, who assumed the office of Chairperson on 4 November 1999, succeeded him. The Statute of the Commission, under Section 3(2)(a), requires that the Chairperson should have been a Chief Justice of the Supreme Court of India. Shri Justice Verma served in that illustrious capacity from 25 March 1997 to 18 January 1998. The year also witnessed the departure of Shri Justice V.S. Malimath, Member of the Commission, on 11 June 1999. While the Commission was privileged to continue to have Justice Dr. K. Ramaswamy, Shri Sudarshan Agarwal and Shri Virendra Dayal as members of the Commission, it welcomed as a new member Smt Justice Sujata Vasant Manohar, who assumed charge of office on 21 February 2000. With her joining, the Commission has once again attained its full strength. As regards those deemed to be Members of the Commission

under Section 3(3) of its statute, Shri Dilip Singh Bhuria and Smt Vibha Parthasarathy continued to serve in such capacity, being Chairpersons of the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women respectively. Further, on being appointed Chairperson of the National Commission for Minorities, after the retirement of Prof. (Dr) Tahir Mahmood, Shri Justice Mohammed Shamim was deemed to be a member of the National Human Rights Commission. Shri N. Gopalaswami continued as Secretary General and the Chief Executive Officer of the Commission, and Shri D.R. Karthikeyan and Shri R.C. Jain continued as Director General (Investigation) and Registrar General respectively.



## **Freedom from Discrimination**

**2.1** The demand for Fundamental Rights that would be justiciable and non-derogable, and inscribed in a Constitution written by the representatives of an Independent India, was central to the fight for freedom. Such a Constitution was adopted on 26 November 1949, and the fiftieth anniversary of its commencement was celebrated during the period covered by this report, on 26 January 2000, at the threshold of a new millennium.

**2.2** Parts III and IV of that Constitution, which have been described as its heart and soul, and which comprise the Fundamental Rights and Directive Principles of State Policy, incorporate the major provisions of the Universal Declaration of Human Rights, which was itself adopted on 10 December 1948. The similar vision of both is not surprising. Eminent Indians were closely associated with the writing of the latter, just as the provisions of the future Constitution were being debated and the process of drafting it was beginning.

**2.3** The nation is thus deeply dedicated to the cause of human rights and the promotion and protection of such rights is, and must remain, central to the national purpose. Indeed, in the years since Independence, and acting in a manner that is true to this purpose, India has participated in the drafting and adoption of some 70 international instruments relating to human rights under the aegis of the United Nations, and it is a State party to 17 human rights treaties that have been elaborated by the World Organization.

**2.4** In earlier Annual Reports, this Commission has commented on the special nature of the challenges and difficulties facing the country in protecting civil and political rights, particularly at a time when it is facing insurgency and terrorism. Those reports have also dwelt on the factors inhibiting the proper observance of economic and social rights in a situation in which widespread disparities persist, disparities which themselves often stem from unacceptable and ancient societal attitudes that discriminate between one Indian and another and render some of the people of this country less equal than others.

**2.5** It was sobering to recall this even as the nation observed the Golden Jubilee of the Republic—for the Constitution by which India is to be governed expressly proclaims equality before law in its Article 14, and Article 15 unequivocally prohibits discrimination on grounds of religion, race, caste, sex or place of birth, both provisions being crucial to the furtherance of human rights and to human development itself.

2.6 Indeed, in recent years, the clear and emphatic relationship between the promotion and protection of human rights and human development has increasingly come to be recognized. The United Nations Human Development Report for the year 2000, for instance, expressly observes that human rights and human development 'share a common vision and a common purpose—to secure freedom, well-being and dignity of all people everywhere'. And it goes on to assert that the first and foremost freedom must be 'freedom from discrimination', for without this the other freedoms essential to human development—freedom from want, freedom to develop and realize one's potential, freedom from fear of threats to personal safety, freedom from injustice and violations of the rule of law, freedom of thought and speech, freedom to secure decent work without exploitation—will all remain elusive.

2.7 It is because of the centrality of the concept of freedom from discrimination to the vision of the Constitution and to human development that this section of this report will examine this matter further. While each of the grounds of discrimination mentioned in Article 14 of the Constitution must be combated relentlessly, and the Commission has been engaged in such a task since its establishment; the comments that follow will concentrate on freedom from discrimination on grounds of gender and caste, as both of these matters have also been the subject of observations, during the period under review, by treaty bodies established under international conventions to which India is a party. In making the observations that follow, the Commission would like to note that no country or civilization has been free of discrimination. As the above-cited United Nations report observes, 'Every society has known racism, sexism, authoritarianism, xenophobia—depriving men and women of their dignity and freedom. And in all religions and cultures the struggle against oppression, injustice and discrimination has been common. The struggle continues today in all countries, rich and poor.'<sup>1</sup> It is in this context, that the challenges confronting India must also be faced and overcome.

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## DISCRIMINATION BASED ON GENDER

2.8 Gender discrimination, or the violation of human rights based on sex, has now been meticulously researched and documented. The evidence points to a pattern of discrimination against women and girl children both within the family and outside, limitations being imposed on their access to health care, nutrition, education and other essential rights. The female to male ratio in a country is an important indicator of gender sensitivity. Higher mortality rates for females in India are indicative of discrimination and neglect of women at practically every stage of their lives. In 1999, according to the United Nations Population Fund, the mortality rate for female children under five years of age was 97 per 1000, as against 85 per 1000 for male children. Studies have established that higher female mortality in childhood actually occurs after the age of one and this has been shown to be the result of a

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1 *Human Development Report 2000*, UNDP, Oxford University Press, p. 1.



well-documented practice of preferential treatment of boys and neglect of female children in intra-household allocations. Considerable direct evidence available also shows that the neglect of female children and women in terms of health care, nutrition and related needs is particularly prevalent in certain states of northern India, though the social practices that lead to the excess in female mortality are far more widespread. The broad picture is one of gender disparity with females facing severe handicaps because of social attitudes.

**2.9** The discrimination suffered by women is reflected in the steadily deteriorating female to male sex ratio over the last century, it having declined from 972:1000 in 1901 to 927:1000 in 1991. The reduced access of women to nutrition and health care affects their survival and the higher age-specific mortality rates for females in India is proof of the neglect of girls and women, as compared to women in the Western world. The third world Female-Male Ratios (FMR) is substantially below unity. The FMR in India, which is about 0.93, is one of the lowest in the world. Given the fact that women tend to have lower age-specific mortality rates if given similar care, the poor female to male ratio is unerringly an indicator of the poor fulfillment of health and nutritional needs of women affecting their very survival. Within the country itself, the female to male ratio shows considerable variation with Kerala having a FMR of 1.04, which is similar to Europe and North America. As against this, the rates of Haryana, Punjab, Uttar Pradesh and Rajasthan were 0.87, 0.88, 0.88 and 0.91 respectively, which were all below the national average of 0.93, providing further proof that female deprivation in these northern states has been far more pronounced.<sup>1</sup> Studies have shown that, contrary to the popularly held view, 'The force of excess female mortality, therefore, lies in mortality rates in age groups beyond that of female infanticide. The female disadvantage in these age groups is itself due to a well-documented practice of preferential treatment of boys and neglect of female children in intra-household allocation. There is, indeed, considerable direct evidence of neglect of female children in terms of health care, nutrition and related needs particularly in North India.'<sup>2</sup>

**2.10** An important contributory factor to higher maternal mortality is the high level of maternal anaemia and the lack of effectiveness of the health care system to combat this syndrome. According to the National Family Health Survey (1998-99), maternal anaemia adversely affected 82.4% of pregnant women. Maternal anaemia is also a contributory factor for infants with low birth weight and the consequent problems of survival and development of children.

**2.11** Life expectancy at birth is an indicator of the access to and effectiveness of health care facilities, and therefore, is an indirect measure of discrimination in access to health care. It is also an indicator of poverty, lack of access to education and productive assets. While the all India life expectancy stood at 59.4 years for females (1990-92), the States of Bihar, Madhya

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1 Dreze and Sen, *India, Economic Development and Social Opportunity*, Oxford University Press, 1995, Chapter 7.

2 op. cit., *India, Economic Development and Social Opportunity*, Oxford University Press, 1995, p. 144.

Pradesh, Orissa, Rajasthan and Uttar Pradesh showed female life expectancy below the national average. The States of Orissa, Madhya Pradesh and Uttar Pradesh also showed high rates of infant mortality. The study of the three basic indicators—gender ratio, total fertility and female infant mortality at age two—showed 14 districts located in the States of Madhya Pradesh, Rajasthan and Uttar Pradesh, which are more or less contiguous, as the worst affected areas on all the three counts. These are, not unexpectedly, also pockets of extreme deprivation.<sup>1</sup>

**2.12** In matters of education and literacy too, the facts indicate that girls and women have suffered discrimination. While the literacy rate in India increased from 18.33% in 1951 to 52.2% in 1991, the female literacy also rose during this period from 8.86% to 39.29%. The difference between female and male literacy, however, which was 18.3% in 1951, increased to nearly 25% by 1991, underlining the poorer access of girls and women to education as compared to boys and men. The literacy rate in 1997 was estimated at 62%; 73% for boys and 50% for girls, with the total number of illiterates in the population aged 7+ being around 294 million.<sup>2</sup> Given the difference between the male and female literacy rates, it is clear that the majority of these would be female. At the school level, while the enrolment in primary classes was 92.14% (1998-99 provisional), the enrolment for boys stood at 100.86% and for girls at 82.85% indicating the continuance of gender discrimination and the disadvantage suffered by girls. In the upper primary classes also the enrolment figures indicate a considerable gap with the enrolment of boys at 65.27% and for girls at 49.08%. The drop-out rates are also higher for girls both in primary classes and in elementary school education. It was 44.66% for girls, as against 40.63% for boys in primary classes, and for Classes I to VIII it was 60.09% and 54.4% for girls and boys respectively.<sup>3</sup>

**2.13** The overall figures, whether in regard to the female to male ratio, life expectancy, maternal anaemia, women's literacy or girls' enrolment, when disaggregated further, reveal the existence of yet another level of discrimination within the broad category of women and girls only. This relates to women and girls belonging to scheduled castes and scheduled tribes living in rural areas. The literacy rate for scheduled caste women was a mere 23.76% in 1991, and in respect of women belonging to the scheduled tribe it was 18.1%, far lower than the literacy figures for women as a whole. If rural and urban literacy rates for 1997 (literacy percentage of population of age 7 years and above) showed larger variation, with the urban literacy rate at 80% and the rural literacy rate at 56%, the male-female differential in literacy was pronounced in the rural areas with women's literacy level lower by 25% than that of men.<sup>4</sup>

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1 *Diversity and Disparities in Human Development—Key Challenges for India*, UNDP, New Delhi, January 1999, p. 13.

2 *Year 2000 Assessment Education for All, India*, Ministry of Human Resource Development, Government of India and National Institute of Educational Planning and Administration, New Delhi, pp. 54, 63-65.

3 *Selected Educational Statistics 1998-99*, Ministry of Human Resource Development, Government of India, pp. XXVI-XXVII.

4 *Ibid.*

**2.14** Women and girls are also victims of trafficking for prostitution and cheap labour, with most of the victims of trafficking being adolescent girls. According to a study of the Central Social Welfare Board (1996), 40% of the population of sex workers in six major cities of India were girl children forced into prostitution. Further, the practice of ritual dedication of girl children to prostitution has been reported from some parts of the country, mainly Karnataka and Maharashtra.

**2.15** Crimes against women are another indicator of the status of women in a society. The crime statistics made available by the National Crime Records Bureau reveals that cases of sexual harassment and trafficking in girls have been showing an increasing trend over the years.

**2.16** According to the latest available report (1998) of the National Crime Records Bureau, there was a 40% increase of in cases of sexual harassment, 15.2% in cases of dowry deaths, and 29.9% in respect of incidents reported under dowry prohibition in 1998 over the corresponding figures of 1997. Incidents under offences of trafficking in girls registered a substantial (87.2%) increase in 1998 over 1997. The National Crime Records Bureau report pointed out that, crimes against women in 1998 in all of India worked out to 28.1 incidents per lakh of the female population. The report stated that though this rate of crime did not appear to be alarming at first sight, it should be “viewed with caution, as a sizeable number of crimes against women go unreported due to the social stigma attached to them.”

**2.17** The existence of sexual harassment at the work place has received increasing attention in recent years. In a path-breaking case,<sup>1</sup> the Supreme Court laid down guidelines and norms to curb this social evil. In accordance with the directions of the Supreme Court in this case, a code of conduct has been formulated which requires the setting up of a complaint committee in all organizations, both private and government, for investigating complaints of sexual harassment.

**2.18** As may be concluded from the foregoing, discrimination against women and girls is still a pervasive phenomenon, even though the Constitution has set itself against discrimination based on sex and enjoined the State to act against such discrimination. Despite major initiatives by the State, to end discrimination through legal and policy instruments, to improve the access of women and girls to education, nutrition and health care services, the ground level situation still shows that much remains to be done. The greater empowerment of women and enhanced political participation at all levels of such activity can help to change the scene. While the Constitution of India guarantees equality of opportunity for men and women to participate in the political process and all aspects of governance, the de facto position is that the fulfilment of this promise has this far remained illusory. The 73<sup>rd</sup> and 74<sup>th</sup> Amendments to the Constitution provided for increased participation of women in political institutions

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<sup>1</sup> *Vishakha & Ors v State of Rajasthan*, 1997(6) SCC 241.

at the village, taluka, district level local government institutions and in municipal councils. However, the proposal to provide a 33% reservation for women in the State Legislatures and the Parliament has not yet been successful in obtaining the approval of the Parliament.

**2.19** India is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its first country report became due to be submitted to the Committee established under the treaty in 1994. However, the report was submitted in January 2000, when the Department of Women and Child Development (Ministry of Human Resources Development) presented it to the CEDAW Committee. After critically examining the compliance report, the Committee made the following observations in regard to discrimination against women in India (See Annexure 1 for details):

- ❑ Widespread poverty, social practices such as the caste system and son preference, higher incidents of violence, significant gender disparities and adverse sex ratio are major obstacles to the implementation of the Convention.
- ❑ The Convention and the Beijing Platform for Action have not been integrated into policy, planning and programmes.
- ❑ The proposed gender empowerment policy should integrate the Convention and the Beijing Platform of Action with the rights based approach.
- ❑ There is an urgent need to introduce comprehensive legislative reform to promote equality and the human rights of women.
- ❑ The government should take affirmative action within a time-frame and with provision of adequate resources, to give girls equal access to education and eradicate adult illiteracy, and for this purpose, primary and secondary education should be made compulsory.
- ❑ There is high incidence of gender-based violence against women and discrimination against women belonging to particular castes or ethnic or religious groups; this is also manifest in extreme forms of physical and sexual harassment.
- ❑ Women and girls are exploited in prostitution, and inter-state and trans-border trafficking.

**2.20** The Indian Government was required to place its first report before the Committee to monitor the Convention on the Rights of the Child (CRC) in 1995. However, the report was filed two years later, on 7 July 1997. A four-member team of the CRC Committee visited India in October 1995 to assess at first hand, specific problems of children in India. The CRC Committee considered India's report in January 2000 and its concluding observations were made in the meeting held on 28 January 2000. In the concluding observations of the CRC Committee (Copy at Annexure II) also, there are recommendations relating to the removal of discrimination faced by women and children with special reference to girls:

- ❑ The Committee is concerned at high maternal mortality and very high levels of low birth weight and malnutrition among children, including micronutrient deficiencies, linked to



the lack of access to pre-natal care and, more generally, limited access to quality public health care facilities, insufficient numbers of qualified health workers, poor health education, inadequate access to safe drinking water, and poor environmental sanitation.

- ❑ The Committee recommends the State party to take all necessary steps to adapt, expand and implement the Integrated Management of Child Illness Strategy, and to pay particular attention to the most vulnerable groups of the population.
- ❑ The Committee is concerned that the health of adolescents, particularly girls, is neglected, given for instance a very high percentage of early marriages, which can have a negative impact on their health.
- ❑ The Committee recommends the State party to strengthen the existing National Reproductive and Child Health Programme, targeting the most vulnerable groups of the population.

2.21 For its part, in the light of the foregoing, the Commission has the following recommendations to make at this stage, in regard to the issues of gender discrimination:

- ❑ The Commission would like to reiterate its recommendation, repeatedly made in earlier reports, that there is urgent need to ensure that free and compulsory education is provided as a Fundamental Right to all children until they complete the age of 14 years as required by the Supreme Court, and that the 83<sup>rd</sup> Amendment to the Constitution be passed without further delay. The Commission would also like to emphasize that greater efforts are required to combat discrimination against the girl child in all of its manifestations, and that, in particular, the doors must be opened to better health care and education for the girl child.
- ❑ The Commission is convinced of the efficacy of effective and timely consultation with all concerned groups in civil society before the submission of India's reports before the competent treaty bodies. It, therefore, recommends to the Central Government, that it undertake thorough and extensive consultations with all the appropriate NGOs and other activist groups, in as large a number of centres across the length and breadth of the country as possible, before preparing the country reports.
- ❑ The Commission recommends, in particular, the gender sensitisation of health workers, and a specifically targeted health care campaign to combat discrimination against girls and women in regard to access to nutrition so as to effectively combat maternal anaemia. It further recommends, that a vigorous and comprehensive national campaign be undertaken against female foeticide and female infanticide, as these are matters, which need urgent and utmost concern of the Government of India and the State Governments.
- ❑ The Commission notes with deep concern the prevalence of the *devadasi* system in certain parts of the country and also the persistence of trafficking in women, especially of those belonging to the weaker sections of society, for the purpose of prostitution. It recommends that the Government take effective and vigorous steps to prevent these atrocities on women and prepare a meticulous nationwide programme, with special

emphasis on vulnerable regions/areas, to deal with these deeply troubling practices that constitute gross violations of human rights.

- ❑ The Commission also urges that the training of other key players in the governance of the country including, inter alia, members of the judiciary, administration and police personnel, be reoriented to make them more sensitive to gender related issues and the requirements of the Constitution, and the laws and treaty commitments of the country.
- ❑ The Commission strongly recommends that early action be taken at the political level to provide for better representation for women in the State Legislatures and in the Parliament, either through early enactment of the 85<sup>th</sup> Amendment to the Constitution or other appropriate means.
- ❑ The Commission recommends the strengthening of the National Reproductive and Child Health Programme.
- ❑ The Commission recommends that concerted efforts should be made to bring down the rate of maternal mortality with special reference to the larger northern states of India, where it is much higher than the national average, and through a more focussed National Nutritional Anaemia Control Programme to effectively bring down maternal mortality and low birth weight amongst children.

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## DISCRIMINATION BASED ON CASTE

**2.22** The Constitution provides a powerful array of provisions to end discrimination based on caste. Article 15 lists the grounds on which the State shall not discriminate against any of its citizens; caste being one of these grounds. The framers of the Constitution were deeply aware of the malignant effects of caste-based discrimination on Indian society. They were therefore keen, not only to end discrimination based on caste, but also to enable the taking of affirmative action under Article 15(4), so that special provision could be made for the advancement of any socially and educationally backward classes of citizens and for the Scheduled Castes (hereinafter referred to as SCs) and Scheduled Tribes (hereinafter referred to as STs). Article 23 prohibiting forced labour, and Article 24 prohibiting child labour in any hazardous employment, are also of importance in this connection, as SCs and STs are the major victims of bonded labour and child labour. Article 25(2)(b) providing for social welfare and reform, and the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus, is also most relevant, as the practice of untouchability often denied access to temples. Article 16(4) provided for reservation of appointments to improve the representation of SCs and STs in the services, and Article 16(4)(a) provided for reservation for them for promotion in the services, under the State. Article 46 enjoined the State to promote the educational and economic interests of SCs, STs and other weaker sections of society and to protect them from social injustice and all forms of exploitation.

**2.23** Despite the affirmative action and 'compensatory discrimination' permitted under the Constitution and the range and scope of measures envisaged under those provisions, the

regrettable fact remains that social injustice and the exploitation of SCs, STs and other weaker sections have not as yet been eliminated from our society.

**2.24** The SCs and STs numbered 138 million and 69 million respectively in 1991, accounting for 16.3% and 8.08% of the population in 1991. In 1951, the SCs and STs comprised 14.61% and 5.3% respectively of the population.

**2.25** The literacy trends of SCs and STs in 1961 and 1991 were as follows:<sup>1</sup>

	1961	1991
SC (Total)	10.27	37.41
Male	16.96	49.91
Female	3.29	23.76
ST (Total)	8.54	29.6
Male	13.83	40.65
Female	3.16	18.1
All Population (Total)	24.02	52.21
Male	34.44	64.13
Female	12.95	39.29 <sup>9</sup>

**2.26** While the special programmes and attempts made to improve literacy amongst SCs and STs resulted in dramatic increase in the literacy levels by over three times in the three decades between 1961 and 1991 in the case of SCs, and almost four times in the case of STs, they were still quite low compared to the level of literacy of the population as a whole. The main reason for this can be found in the very high drop out rates at 67.77% for SC children and 78.57% for ST children for Classes I to VIII (1991).

**2.27** The SCs and STs in the rural areas are primarily agriculturists and agricultural labourers, and in the urban areas, construction workers and daily wage earners. In 1991, only 25.44% of SCs were cultivators owning land, as against 39.74% for the entire population. Among SCs, 49.06% were agricultural labourers, as against 19.66% for the total population. Between 1961 and 1991, the percentage of SCs as cultivators declined from 37.76% to 25.44%, while there was an increase of SCs in the category of agricultural labourers from 34.48 to 49.06%.

**2.28** Amongst the STs, the percentage of those who were cultivators was higher than that of SCs, but it has been showing a steady decline from 68.18% in 1961 to 54.40% in 1991. During the same period, the number of agricultural labourers amongst STs increased from 19.71% to 32.69%.

**2.29** Disaggregated analysis of the land owning patterns has, however, revealed that the SCs are very vulnerable as a high proportion own land less than 0.20 hectares. This population

<sup>1</sup> SC/ST Commission, IV Report, 1996-97, 1997-98.

is classified as near landless, as the holding is so small as to be economically insignificant. 51% of the SCs are near landless while 8% are landless (1991-92) and this figure is 18% points higher as compared to the total population. With little access to land and other productive resources, the SCs constitute the major part of the population below the poverty line.<sup>1</sup>

**2.30** Estimates of poverty amongst the SCs and STs based on the 50<sup>th</sup> round of NSS (1993-94), show that the proportion of poverty among SCs is 17% points above the general category, while it is 19% higher among the STs. Thus, both SCs and STs are significantly poorer than the general category of the population, even if the gaps have narrowed somewhat in recent years. Poor access to better means of production and productive assets, usable capital and education have led to persistent poverty amongst a large segment of the SC and ST population.

**2.31** Article 17 of the Constitution abolishes 'untouchability' and makes the enforcement of any disability arising out of 'untouchability' an offence punishable in accordance with law. With a view to ending discrimination based on caste, especially of *Dalits*, over the years certain special legislations have been adopted, notably the Untouchability Offences Act, 1955, subsequently replaced by the Protection of Civil Rights Act, 1976 and the Prevention of Atrocities against SCs and STs Act, 1989. Further, in order to put an end to the degrading and offensive practice of manual clearing of night soil, a special enactment, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was also brought into force in 1997. Since members of the SC and ST community were the principal victims of the pernicious practice of bonded labour and child labour, the enactment of the Bonded Labour Abolition Act, 1976 and the Child Labour Abolition Act, 1986 were also significant steps in the campaign to ameliorate the condition of SCs and STs.

**2.32** Apart from these regulatory steps, many steps were also initiated on the developmental side for the amelioration of the economic conditions of the SCs and STs with special outlays being made, as also the earmarking of funds for special component plans, etc. If, however, the progress has not been up to expectations, the reasons are to be found, inter alia, in the failure to improve access to education and the failure of the land reform movement in certain parts of the country. Progress on these fronts would have provided the SCs and STs access to usable capital and, most of all, helped alter the social environment in which discrimination has otherwise been able to persist.

**2.33** Not surprisingly, in the prevailing circumstances, crimes committed against SCs and STs remain a cause of great concern. While there was an increase in such crimes between 1981 and 1991, there was, according to the National Crime Records Bureau Report (1998), a small reduction in the number of crimes against SCs between 1996 and 1998. The number of complaints of atrocities against SCs and STs received and admitted by this Commission was 552 in 1997-98, 436 in 1998-99 and 736 in 1999-2000. In particular, complaints have been

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1 *India Rural Development Report 1999*, National Institute of Rural Development.



received of violent caste clashes in certain parts of the country, namely Bihar, some areas of Uttar Pradesh, Tamil Nadu and Maharashtra. The clashes have, in particular, taken the shape of violence against *Dalit* women and social boycotts.

**2.34** The Commission has been actively engaged, since its inception, in the protection and promotion of the human rights of SCs and STs. In 1996, a National Workshop was organised in Chennai by the Dalit Liberation Education Trust with the help of the Peoples Union for Civil Liberties (PUCL) and the NHRC. The two day workshop focussed on issues of social, policy and societal changes with reference to *Dalits*, appraisal of legislative measures for the upliftment of *Dalits*, religious and social practices affecting the human rights of *Dalits* and the need for a national movement that would radically alter the circumstances facing *Dalits* of the country. It was the first major dialogue that the NHRC had initiated in respect of societal violations of human rights of an important and particularly vulnerable section of the population of this country. One of the important issues taken up by the NHRC since then has been the campaign to end manual scavenging. The Commission has pursued this issue with the State Governments and with the Centre, seeking to bring this deeply demeaning practice to an early end.

**2.35** From the complaints received by the Commission over the years, however, it is clear that in many parts of the country, discrimination against *Dalits* continues. The Commission has been informed of the violation of their rights through social boycott, as was the case in Devalia village in Amreily district of Gujarat. Other reports include those of physical violence against members of the *Dalit* community by the upper castes from the southern districts of Tamil Nadu in 1997 and later from other parts of Tamil Nadu; retaliatory killings of caste-based illegal outfits owing allegiance to landlords in Bhojpur district of Bihar in 1996, Jehanabad district in 1999, Rohtas district and Nalanda district in the year 2000; exploitation of *Dalits* and STs through forcible occupation of their lands and the carrying out of illegal mining from Mirzapur, Chitrakoot and Allahabad districts of Uttar Pradesh. In addition to the above, numerous individual cases of human rights violations have been reported from many parts of the country.

**2.36** In this respect it would be appropriate to recall here the Commission's observations dated 17 March 1999 in its proceedings in Case No. 1794/30/98-99 where the complainant was Mr. V.T. Hirekar, Director, Ambedkar Centre for Justice and Peace, London:

“The Commission has given Mr. Hirekar's letter the most careful consideration as it raises issues of utmost gravity in respect of the role and responsibility of the State in redressing what the Commission has itself described as ancient societal wrongs perpetrated against the vulnerable sections of society, and most particularly against *Dalits*.”

“The Commission would like to observe that the letter and spirit of the Constitution are clear and unambiguous. Under Article 17, the concept of ‘Untouchability’ is itself abolished and its practice forbidden in any form; further, the enforcement of any

disability arising out of 'Untouchability' has been made punishable in accordance with law. It was precisely in order to implement this salutary provision of the Constitution that the Parliament first adopted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and then the Protection of Civil Rights Act, 1976. In addition, Articles 14, 15 and 16 of the Constitution provide, respectively, for equality before the law and equal protection of the laws; the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; and equality of opportunity in matters of public employment. Taken together, these Fundamental Rights provide a Constitutional bulwark against any discrimination arising, inter alia, from the *varna* or *caste* system. Further, the Fundamental Rights are themselves enforceable and justiciable, through the instrumentality of the Apex Court and the High Courts of the country."

"The Constitution goes further. Article 46 makes it a Directive Principle of State Policy that 'the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation'. In addition, Article 338 of the Constitution makes provision for a National Commission for Scheduled Castes and Scheduled Tribes with extensive duties and powers in respect of investigating and monitoring all matters relating to the safeguards provided for Scheduled Castes and Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of Government."

"It is also worth recalling, in this connection, that a number of State Governments have enacted specific legislation to prevent, or deal with, atrocities that might be committed against *Dalits* or members of the Scheduled Tribes."

"In the years intervening since Independence and the adoption of the Constitution, much has been endeavoured, often with positive results, to promote and protect the rights of *Dalits* and to ensure their empowerment and advancement in all spheres of the life of the nation, whether political, educational, economic, social or occupational, including employment in the higher administrative services of the country. Numerous reports of the Government and studies by academics and others, including *Dalit* scholars, provide the facts, testifying to the significant changes that have resulted."

"Yet despite these efforts, which have included perhaps the most far-reaching programmes of affirmative action ever undertaken in a democratic society anywhere in the world, the Commission remains deeply and painfully aware that atrocities against *Dalits* recur (as sadly against other vulnerable sections of society as well), while serious gaps between policy directives and reality persist. There are many reasons for this: historical and cultural, economic and social, political and administrative, to name but a few."

"While this is not the place to analyse each of these and other reasons, suffice it here to say that atrocities against *Dalits*; or the violation of their rights in any manner or form,

are of the most serious concern to the Commission and have been so since its inception. The Commission believes it has a special and inescapable duty to protect those who are most vulnerable: *Dalits* and Scheduled Tribes; women and children—especially the girl child; the disabled; those victimized for reasons of religion or language; and those weighed down by economic or social tradition, including those who, ironically, have been marginalized by 'growth' and change."

"In all such cases, and more, whether it acts on the basis of individual complaints or under its broad mandate to promote and protect human rights, the Commission has viewed its role as that of an 'equaliser', adding its weight on behalf of the vulnerable, so that the scales of justice and equity may be more evenly balanced for them, and to ensure that those who violate the rights of the vulnerable are brought to justice, as the Constitution of the country, its laws and treaty obligations all require."

"The Commission has, accordingly, acted promptly and resolutely, either on the basis of complaints that have been brought to it, or suo motu, to deal with the violation of human rights of *Dalits*."

**2.37** In this context, it is also necessary to recall that the Committee on the Elimination of All Forms of Racial Discrimination (CERD), established under the Convention on that subject, drew attention to this matter in its concluding observations in 1996, made after considering the 10<sup>th</sup> to 14<sup>th</sup> periodic reports of India. While acknowledging the positive aspects of the efforts made by India and the far reaching measures adopted by the Government to combat discrimination against members of the SCs and STs, the Committee disagreed with the stance of the Government that the situation of the SCs and STs did not fall within the scope of the Convention 'because caste was not equatable to race'.

**2.38** The Committee further noted that although constitutional provisions and legal texts existed to abolish 'untouchability' and to protect the members of the SCs and STs, and although social and educational policies have been adopted to improve the situation of members of the SCs and STs and to protect them from abuses, widespread discrimination against them, and the relative impunity of those who abuse them point to the limited effect of these measures. The Committee was particularly concerned about reports that people belonging to the SCs and STs are often prevented from using public wells or from entering cafes or restaurants and that their children are sometimes separated from other children in schools, in violation of Article 5(f) of the Convention.

**2.39** The important recommendations of the Committee therefore included the following:

- ❑ The State should improve the effectiveness of measures and guarantee to all groups of population, especially to members of the SCs and STs, full enjoyment of their civil, political and economic, social and cultural rights.
- ❑ Special measures should be undertaken by the authorities to prevent acts of discrimination towards persons belonging to the SCs and STs and to punish those guilty of discrimination.

**2.40** For its part, and in the light of the foregoing, the Commission recommends that the Government of India undertake comprehensive steps to root out 'untouchability' and, for this purpose, implement the provisions of the Protection of Civil Rights Act, 1976 and the Prevention of Atrocities against SCs and STs Act, 1989 more vigorously than hitherto. Further, the Government should sensitise the police force to act impartially and fearlessly to give protection to the SCs and STs and to educate the general public against the pernicious practice of 'untouchability' and discrimination directed against the SCs and STs.



## Civil Liberties

### HUMAN RIGHTS IN AREAS OF TERRORISM AND INSURGENCY

**3.1** Human rights flourish in a climate of peace. They are imperilled in situations of conflict. The year 1999 opened with a high promise of peace, the Prime Minister having travelled by bus to Lahore in February. But that prospect was shattered by the full-scale intrusion across the Line of Control in Kargil, and the necessity to reverse and end that unacceptable stratagem designed to create new realities on the ground.

**3.2** The situation of human rights in Jammu & Kashmir thus continued to be gravely affected by the persistence of conflict and terrorism, challenging the efforts and ability of those—including those of this Commission—who sought to promote and protect such rights despite the prevailing difficulties.

**3.3** The relationship between 'human rights and terrorism' is a vexed one. In its persistent effort to deal with this question, the General Assembly of the United Nations has, on behalf of the international community, defined with increasing clarity its position on this matter. The report of this Commission for the year 1998–99 traced the evolution of thinking at the international level on this issue. This report will not, therefore, repeat what is contained therein. However, during the period under review, on 17 December 1999, the General Assembly adopted yet another resolution on this question (A/56/164) in which, *inter alia*, it:

- ❑ expressed its alarm that acts of terrorism in all its forms and manifestations aimed at the destruction of human rights have continued despite national and international efforts;
- ❑ bore in mind that the essential and most basic human right is the right of life;
- ❑ also bore in mind that terrorism creates an environment that destroys the right of people to live in freedom from fear;
- ❑ expressed serious concern about the gross violations of human rights perpetuated by terrorist groups, adding that such acts cannot be justified under any circumstances;
- ❑ emphasized the importance of Member States taking appropriate steps to deny safe havens to those who plan, finance or commit terrorist acts by ensuring their apprehension and prosecution or extradition;

- 1  expressed its solidarity with victims of terrorism;
- reiterated its unequivocal condemnation of the acts, methods and practices of terrorism in all its forms and manifestations, as activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilising legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences for the economic and social development of States;
- condemned the incitement of ethnic hatred, violence and terrorism;
- called upon States to take all necessary and effective measures in accordance with relevant provisions of international law, including international human rights standards, to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomever committed; and
- urged the international community to enhance cooperation at the regional and international levels in the fight against international terrorism, in accordance with relevant international instruments, including those relating to human rights, with the aim of its eradication.

**3.4** Further, the General Assembly also continued to deal with the need to undertake 'measures to eliminate international terrorism' and, in the course of its fifty-fourth session, adopted resolution A/54/110 of 9 December 1999, on this subject.

That resolution, inter alia, reiterated:

- it's view 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;
- it's call upon all States to adopt further measures in accordance with the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen international cooperation in combating terrorism; and
- it's view that international cooperation as well as the actions of States to combat terrorism should be conducted in conformity with the principles of the Charter of the United Nations, international law and relevant international conventions.

The resolution also decided that an ad hoc Committee of the General Assembly would meet, inter alia, with a view to the elaboration of a comprehensive convention on international terrorism within a comprehensive legal framework of conventions dealing with international terrorism.

**3.5** In the view of this Commission, these resolutions of the General Assembly have obvious relevance to the situation being faced in this country, most notably in

Jammu & Kashmir, and in some measure, in the States of the North-East and, on occasion, in other parts of the country as well. The Commission therefore welcomes these developments at the international level, and the efforts of the Central Government to pursue early action on a comprehensive convention to deal with the problem of terrorism. At the same time, the Commission has, during the period under review, persisted firmly in its endeavour to ensure that despite the many dangers and ambiguities confronting the armed forces and police of the country, all concerned with the security of the State abide by the dictates of the Constitution, the laws of our country, and the international instruments to which India is a party.

**3.6** This is also why, when the Commission has examined complaints, or acted *suo motu*, on reports of violations of human rights in areas affected by terrorism and insurgency, it has continued to insist on full accountability in accordance with the demanding standards that the nation has, as a democratic State governed by law, set for itself.

**3.7** The Commission deeply regrets, in this connection, that a lack of transparency persists in respect of certain important cases that it has pursued. Thus, in regard to the tragic incident in Bijbehara, that occurred on 22 October 1993 and that led to a serious loss of life, the Commission has been compelled to move a Writ Petition before the Supreme Court, having thus far been denied the records that it sought from the Home Ministry, of the trial that was held by the General Security Force Court. The Commission is of the view that the withholding of these records brings little credit to the Government and to the security forces, and that it thwarts the purpose of justice and the prime objective leading to the establishment of this Commission, namely the need to ensure the 'better protection' of human rights in the country.

**3.8** Likewise, the Commission notes with deep concern that those responsible for the abduction and subsequent killing of the prominent advocate of Srinagar, Jalil Andrabi, are yet to be brought to trial. It is a matter of despair to the afflicted family, and to those who are interested in the promotion and protection of human rights in the country, that the Commission's insistent call that the killers be tracked down and brought to book has met with little practical response, and a single line comment in the Memorandum of Action Taken was submitted to Parliament in this respect in the Annual Report for 1998–99. The Memorandum stated: 'The matter is sub judice.' A similar situation of opacity persists in regard to the 'disappearance' and probable killing of Jaswant Singh Khalra in Punjab, the perpetrators of the crime remaining at large, to the continuing discredit of the law and order apparatus of the State and the deepening concern of human rights activists.

**3.9** Given such occurrences of enforced disappearances and extra-judicial killings, the Commission has urged the Central Government to direct the armed forces, including the para-military forces, to report to the Commission—as does the police—any cases of

the death of persons while in their custody. Such a system of accountability, as observed earlier by the Commission, would add to the credibility and transparency of the actions of the armed forces and also prevent propagandist and unsubstantiated charges being made against them. The Memorandum of Action Taken, however, reiterates the view that the Government of India is transparent in dealing with all complaints of allegations of custodial death or rape by the armed forces, that all such complaints are enquired into and action taken against persons found guilty and that "it is, therefore, felt that a procedure for dealing with the armed forces different from that provided in the Protection of Human Rights Act, 1993 is not necessary".

**3.10** There is clearly, at present, a difference of opinion between the Commission and the Central Government on this matter, with the Commission believing that there is need for greater transparency and accountability. The Commission has, therefore, proposed an amendment to the Protection of Human Rights Act, 1993, in respect of the armed forces, and urges that the recommendations made by it in respect of this matter and its statute more generally, be acted on without delay. This is an issue of great importance to the credibility of the Government and of its commitment to the proper respect for human rights. It is, therefore, a matter that should speedily come before Parliament, in the form of amendments to the statute as recommended by the Commission.

**3.11** In the meanwhile, it is important to place on record, that during the period under review, the Commission—after considering with care the complaints that it received against the armed forces, including the para-military forces—made specific recommendations in respect of four cases. Two of the cases concerned allegations of rape and two related to deaths resulting from cross-fire between the security forces and militants. Following court-martial proceedings, punishments included dismissal from service and sentences ranging from five to eight years. Further, compensation was paid to those who had suffered or to their next of kin.

**3.12** The army also informed the Commission of the investigations that it had itself undertaken into complaints of human rights violations by its personnel. In respect of each case, as in past years, it indicated the date and place of the incident, the name of the accused, the gist of the charges framed, the outcome of the enquiry/trial and the details of punishment awarded. In contrast, the Border Security Force sent a 'nil' report, while no information was received from other para-military forces, an omission which the Commission cannot ignore. These responses, or the lack of them, lead the Commission to conclude that the army functions with manifestly greater accountability and sensitivity to human rights concerns than do the para-military forces, and that the procedures of the former are, in comparison with those of the latter, swifter, more effective and more transparent. They further confirm the view of the Commission that the definition of 'armed forces' in the Protection of Human Rights Act, 1993, needs to be amended to bring the para-military forces within the ambit of the general investigation procedure



applicable to complaints received by the Commission, rather than the special procedure laid down in Section 19 of the Act.

**3.13** As in earlier years, the Commission remained in touch with the competent authorities at the State level, both in Jammu & Kashmir and in the North-Eastern States, in respect of the broad range of human rights issues facing them. Procedures continued to be recommended for a variety of situations, including cordon-and-search and similar operations, with a view to protecting human rights to the greatest extent possible in the complex circumstances prevailing in these States. All concerned were also reminded to function in accordance with the ruling of the Supreme Court in Writ Petition No. 910 in respect of the Armed Forces (Special Powers) Act, 1958. It will be recalled that the Commission had, itself, made a submission before the Apex Court in that case.

**3.14** The Commission also continued to deal with the representations received from members of the Kashmiri Pandit community who have been forced to leave the Valley and live in the most trying conditions, and in large numbers in camps in Jammu, Delhi and elsewhere. In this connection, an important decision was announced by the Commission on 11 June 1999, in respect of the degree and nature of its jurisdiction for the State of Jammu & Kashmir. It is hoped that this decision, and the many practical recommendations and procedures that the Commission has made, or set in place since then, will be of continuing assistance to this group in alleviating their poignant circumstances.

**3.15** On the same day, namely 11 June 1999, the Commission also announced its opinion on the grave claim brought before it by groups representing Kashmiri Pandits, that members of their community were the victims of genocide. The extensive data presented to the Commission was profoundly disturbing and tragic. The Central Government indicated that the number of those killed because of the insurgency and terrorism in the State between 1988–1997 was 16,850, including 710 Hindu civilians and 6,219 Muslim civilians. A list of 157 'leaders' who had been killed in the Valley over this period was also provided: 37 of them were Hindus and 120 were Muslims. Though there were minor differences in the figures provided by the parties, there was a general view that some 300,000 Kashmiri Pandits had been forced to leave the Valley because 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 of those who had succumbed to torture in the hands of the terrorists were mentioned. 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 been afraid to register for fear of reprisals against their relatives.

**3.16** The Commission carefully considered all of the submissions made before it and examined these in terms of the provisions of the Genocide Convention. It reached the conclusion that the primary 'intent' of the killers of both Hindus and Muslims in the Valley had been to try to achieve the secession of the State and its possible annexation by Pakistan, and that it had been to achieve this purpose, that they had been motivated to murder those whom they viewed as loyal to the Republic of India. In view of this, the Commission expressed the opinion that the killings and 'ethnic cleansing' of the Kashmiri Pandits must be seen in the light of this deeper intent. In that context, the crimes committed against the Kashmiri Pandits were, by any yardstick, deserving of the strongest condemnation, and there could be no gain in saying that the acute suffering and deprivation caused to them fell short against the stern definition of the Genocide Convention. The Commission was constrained to observe that while acts 'akin to genocide' had occurred in respect of the Kashmiri Pandits and that, indeed, in the minds and utterances of some of the militants a 'genocide-type design' may exist, 'the crimes against the Kashmiri Pandits, grave as they undoubtedly were, fell short of the "ultimate" crime: Genocide'. The Commission also considered it important to note that it had not, in the Proceedings in regard to this matter, entered into the killings and deep sufferings that had been borne by the Muslim community in the Valley in the course of the past years, as those were not the subject of the present Proceedings. However, the Commission expressed the belief that the time would come when peace would be restored to the Valley, and that the essence of that peace would be reconciliation and the restoration of that trust and tolerance that characterised the Valley for centuries and that gave to the term *Kashmiriyat* a meaning that was unique in the life of this nation.

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### CUSTODIAL DEATH, RAPE AND TORTURE

**3.17** The Commission had issued instructions in 1993 that in the event of any death occurring in jail or police custody, information has to be sent to the Commission within 24 hours. If this information were not received within the specified period, the Commission would presume that the authorities concerned were trying to suppress the facts on such deaths.

**3.18** There has been a perceptible reduction in the number of deaths in judicial custody in the year 1999-2000. The number of such deaths during the period under review was 916 as compared to 1114 during the previous year, ie 1998-99. The number of deaths in police custody too has declined, but only marginally, from 180 in 1998-99 to 177 in 1999-2000.

**3.19** The Commission notes that the number of deaths in police custody, as reported to it, has shown a decline in a number of States, the exceptions being Arunachal Pradesh, Goa, Gujarat, Kerala, Maharashtra, Orissa, West Bengal, Andaman & Nicobar Islands

and Delhi. In the Commission's view, it is of fundamental importance that instances of custodial death be promptly and honestly reported to it. The Commission therefore seizes every occasion to discuss and follow up on reports on custodial deaths, whether this be through its visits to individual States or in discussions at the Commission's headquarters in New Delhi, when the representatives of the States meet the Commission. While the State Governments have undoubtedly shown more sensitivity to the Commission's instructions that custodial deaths must not only be reported but thoroughly investigated, the Commission recommends that more consistent and determined action be taken in all such instances to bring those responsible to book, as acts of custodial violence leading to such deaths constitute serious violations of human rights, and bring disgrace to the law and order apparatus of our country.

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## // ENCOUNTER DEATHS

**3.20** In response to the Commission's directives to get all cases of 'encounter deaths' investigated by the State CID, the Government of Andhra Pradesh had suggested an alternative arrangement to the Commission. The DG & IGP, Andhra Pradesh, wrote to the Commission on 22 July 1999, suggesting that the encounter death cases of Andhra Pradesh may be investigated by the officers of the rank of Inspectors of other districts, on the ground that nearly 250 encounters take place each year in Andhra Pradesh and that the State CID would not be able to cope with this additional burden with the available staff. The Commission considered this request and directed through its order dated 28 July 1999, that encounter death cases of Andhra Pradesh be investigated by the officers of the rank of Deputy Superintendent of Police (DSP)/Assistant Superintendent of Police (ASP) of other districts.

**3.21** The DGP, Andhra Pradesh, has in compliance with the new directions of the Commission, handed over a total of 325 cases (275 cases of 1998 and 50 cases of 1999) for investigation by DSP/ASP level officers of other districts. The Law Division of the Commission is closely monitoring these cases.

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## VIDEO FILMING OF POST-MORTEM EXAMINATION AND REVISION OF AUTOPSY FORMS

**3.22** In addition to its efforts to ensure prompt and accurate reporting of custodial deaths, the Commission has been deeply concerned that there exists a tendency to doctor post-mortem reports under the influence or pressure of police or jail officials. The Commission has also noted that post-mortem examinations were not always carried out scrupulously, and that, in a number of cases, inordinate delays occurred in the writing and collection of post-mortem reports. Keeping in view that there was hardly any

independent evidence in cases of custodial violence, the Commission had recommended to all the States and Union Territories that post-mortem examination of custodial deaths be video-filmed and placed before the Commission to enable it to assess independently the cause of such deaths. While a number of States have complied with this recommendation of the Commission, it is essential for the Commission to reiterate that this recommendation also be complied with by the States and UTs of Arunachal Pradesh, Maharashtra, Mizoram, Manipur, Uttar Pradesh, Andaman & Nicobar Islands, Chandigarh and Delhi, who have not yet responded positively. Their acceptance of this recommendation is essential to the proper protection of human rights in these States and Union Territories, to the curbing of custodial violence.

**3.23** The Commission also noted that the Autopsy Report forms, which were in use in various States, were not comprehensive, and therefore, did not serve the desired purpose. They left scope for doubt and manipulation. After detailed discussions with experts in this field, and after ascertaining the views of the States and also taking into consideration the UN Model Autopsy Protocol, the Commission prepared a Model Autopsy Form. This was circulated among the States and Union Territories on 27 March 1997, for adoption. So far, 25 States and Union Territories have accepted it. The Commission strongly urges the remaining States of Arunachal Pradesh, Bihar, Gujarat, Jammu & Kashmir, Kerala, Maharashtra, and Nagaland to adopt the Model Autopsy Form.

#### Minimum Kit for Autopsies

**3.24** Pursuant to the letter dated 8 June 1999, received from the Commonwealth Human Rights Initiative (CHRI), New Delhi, regarding the use of a model minimum kit for autopsies, the Commission, on 11 June 1999, constituted a Committee, headed by Justice Dr. K. Ramaswamy, Member of the Commission; along with Shri D.R. Karthikeyan, Director General (Investigation); Shri R.D. Kapoor, Special Secretary (NE), Ministry of Home Affairs; Dr. R.K. Tiwari, Chief Forensic Scientist; Bureau of Police Research and Development; Dr. Bishnu Kumar, Forensic Science Expert; and Dr. Joep Toebosch, Criminologist, to discuss issues relating to autopsy procedures and autopsy forms with the assistance of forensic science experts. The Committee was also requested to assess the utility of a kit presented by Dr. Joep Toebosch of CHRI. Consequent to discussions of this Committee, the following decisions were taken:

- Since the issue of post-mortem falls in the list of State subjects, the Ministry of Home Affairs would need to coordinate this matter with the States and with the Ministry of Health. The Ministry of Health may be made the Nodal Agency for the Development of the Forensic Centres.
- Material relevant to the subject should be collected and an effort made to finalise proper directions as early as possible, which could then be issued in the form of a booklet.

- ❑ Emphasis should be given to the need for proper training to the doctors in the conduct of autopsies.
- ❑ Zonal meeting of experts may be considered after study of the matter at the local level.

The Commission is considering the decisions taken by the Committee.

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## VISITS TO POLICE LOCK-UPS

**3.25** Section 12(c) of the Protection of the Human Rights Act, 1993, confers upon the Commission the power to visit any jail or institution of detention. In this regard, all States and Union Territories have been requested to cooperate with the Commission in surprise visits that it may make to such locations. During the period under review, officers of the Commission visited three lock-ups in Uttar Pradesh and made a number of recommendations based on their observations, to improve conditions in these lock-ups.

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## SYSTEMIC REFORMS: POLICE

### Submission Before the Supreme Court on Police Reforms

**3.26** Participating in a proceeding before the Supreme Court in the matter of *Prakash Singh v Union of India*, the Commission had made a number of recommendations, which it considered to be of crucial importance for improving the quality of policing in the country. The details of these recommendations may be seen in an annexure to the Annual Report of the Commission for 1997-98.

**3.27** Subsequently, the Ribeiro Committee, which had been set up by the Ministry of Home Affairs following the directives of the Supreme Court to review and suggest ways and means to implement the recommendations of the National Police Commission, the Law Commission, the NHRC and the Vohra Committee, endorsed almost all the recommendations of the Commission. The Commission is following the hearings of this case closely and is making submissions before the Apex Court, as and when necessary, with the help of a reputed counsel who is assisting the Commission in this task. The Commission would like to reiterate its firmly held view that reform of the police along the lines that have been suggested by it and by others whose views are before the Apex Court, is of utmost importance to proper policing in this country, and to the promotion and protection of human rights.

**3.28** For its part, during the period under review, the Ministry of Home Affairs constituted a Committee on Police Reforms headed by former Union Home Secretary Shri K. Padmanabhaiah. Its terms of reference, inter alia, required it to examine and specify the challenges that the Indian Police would face in the new millennium, evaluate

the strengths and weaknesses of the organization and structure of the police force, see how the gap between public expectations and police performance can be filled, and envision a new-look, people-friendly and fighting-fit police force, which can win the confidence and trust of the people and at the same time effectively tackle the problems of organized crime, militancy and terrorism.

### **Establishment of Human Rights Cells in State Police Headquarters**

**3.29** With the increase in the number of complaints against members of the police force, the Commission considered it necessary to promote appropriate in-house machinery in the State Police Headquarters to help deal with this problem.

**3.30** On 9 March 1999, the Commission convened a Conference of the Directors General of Police of the various States, which considered the issues involved, and arrived at a consensus to create 'Human Rights Cells' in the Police Headquarters in all the States. These Cells are to be headed by an officer of the rank of an Additional Director General of Police or Inspector General of Police. A panel of names of three selected officers, known for their reputation, integrity, efficiency and impartiality is to be called for from the State DGPs, and on due verification, one of the three officers is to be approved by the Commission and the views communicated to the concerned State DGP to appoint him as Additional DGP/IGP (Human Rights), to be in-charge of the Human Rights Cell at the State Police Headquarters.

**3.31** All the State Governments have now confirmed the constitution of such a Cell in the Office of the Director General of Police.

**3.32** On 2 August 1999, elaborate guidelines were formulated and communicated to the Chief Secretaries and Directors General of Police of all the States to ensure effective functioning of these Human Rights Cells. This was followed by a letter to the Chief Ministers of all States from the Chairperson of the Commission on 1 January 2000 (Annexure III). The purpose of this exercise was to ensure that every State/Police Department had a credible and effective mechanism with which to sensitise the State Police personnel at various levels, to the need to recognise, respect and protect the human rights of the citizenry. These Human Rights Cells are also expected to help deal with complaints made against the police, develop training curricula, organise workshops and spread human rights awareness through publications and the media. The Commission hopes that the establishment of such cells will help to reduce human rights violations by the police personnel, enhance the image of the police and increase the trust of the public in the police.

### **Guidelines to Minimise the Scope of Misuse/Abuse of Power of Arrest by the Police**

**3.33** Arrest involves restriction of liberty of the person arrested, and therefore, infringes the basic human right of liberty. Nevertheless, the Constitution of India as well as



international human rights laws have recognised the power of the State to arrest as a part of its primary responsibility to maintain law and order. The Constitution requires a just, fair and a reasonable procedure established by the law, under which alone, such deprivation of liberty is permissible.

**3.34** Article 22(1) of the Constitution provides that every person placed under arrest shall be informed of the ground of arrest, and shall not be denied the right to be defended by a lawyer of his choice; and Section 50 of the Criminal Procedure Code (Cr.PC), 1973, requires the police officer arresting any person to forthwith communicate to him full particulars of the offence for which he or she has been arrested or any other ground of such arrest. In actual practice, these requirements have been observed more in breach. Likewise, the requirement to produce the arrested person before a Court within 24 hours is primarily a statutory requirement under the Constitution (Article 22(2)) and Cr.PC (Section 57), but this too is not strictly observed.

**3.35** The Commission has continued to receive a large number of complaints pertaining to human rights violations resulting from the abuse of police powers, particularly in respect of 'arrest and detention'. It, therefore, felt that the gap between the law and practice has to be narrowed down by prescribing elaborate and specific guidelines regarding 'arrest'. The objective was to minimise the scope of misuse or abuse of the power of 'arrest' without curtailing the powers of the police in effective prevention and detection of crime and the maintenance of law and order. Accordingly, the Commission, on 22 November 1999, issued detailed guidelines to the Chief Secretaries and Directors General of Police of the States covering the powers of the police in the areas of 'pre-arrest', 'during arrest' and 'post-arrest'. The Chief Secretaries and DGPs of the States were advised by the Commission to get these guidelines translated into the respective local languages and distributed to all police personnel in police stations. They were also advised to incorporate these guidelines in the handbook to be given to all police personnel. The DGPs of the States were requested, in particular, to sensitise the police officials during the course of training and take prompt action against errant police officials. The Commission felt that this would increase credibility and respect for the police, and enable it to gain greater cooperation from the public (Annexure IV).

**3.36** In a letter, dated 1 January 2000, addressed to the Chief Ministers of all the States, the Chairperson, emphasised that the guidelines on 'police arrest' (Annexure III), as circulated by the Commission, would help prevent human rights violations in areas in which the police functions daily. The Commission, he added, hopes that all the instruments of governance would rededicate themselves towards promoting a better human rights culture realising that the dignity of the individual is a part of Constitutional promise, and contributes to the augmentation of human resource development in the nation.

**3.37** As of 31 March 2000, all States except Arunachal Pradesh, Assam, Gujarat, Jammu & Kashmir, Kerala, Manipur, Nagaland, Orissa, Punjab, West Bengal and the Union Territories of Andaman and Nicobar Islands, Chandigarh and Pondicherry had confirmed that these guidelines were being incorporated in their training curriculum and that suitable instructions had been passed to the Police Stations for their implementation. The Commission strongly urges the remaining States and Union Territories to also follow suit and take further action on the guidelines.

### **Constitution of District Complaint Authority**

**3.38** In a further measure to deal with the perception that public authorities abuse and misuse their powers and violate the human rights of innocent citizens, the Commission requested the Chief Justices of the High Courts and Chief Ministers/Administrators of States/Union Territories to consider issuing directions to District Judges to constitute a 'District Complaint Authority' in their respective jurisdictions, with the Principal District Judge as the Chairman and the District Collector/Deputy Commissioner and Senior Superintendent of Police as members of the Committee, to examine the grievances of the public (Annexure V 'A' and 'B').

**3.39** The High Courts which are yet to respond to the Commission's request in this regard are those of Madhya Pradesh, Jammu & Kashmir, Andhra Pradesh, Punjab & Haryana, Himachal Pradesh, Madras, Rajasthan, Bombay, Gawahati, Allahabad, Karnataka, Delhi, Orissa, Calcutta, Gujarat and Patna. The State and Union Territory Governments which have not yet responded are those of Arunachal Pradesh, Assam, Goa, Jammu & Kashmir, Karnataka, Kerala, Manipur, Meghalaya, Nagaland, Punjab, Sikkim, Tamil Nadu, West Bengal, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep and Pondicherry. The matter is being pursued with them.

### **Measures to Improve Police-Community Relationship**

**3.40** The bulk of the complaints received by the Commission concern the conduct of the police. Most of them relate to alleged acts of commission or omission on the part of the police in the course of investigation. The complaints thus relate to the non-registration of complaints, delayed investigations, investigations not being done objectively and impartially, and the inaccessibility of police officers. The Commission is of the view that to be effective and successful, the police must earn the trust, confidence and respect of those living in individual jurisdictions.

**3.41** The Commission has, accordingly, through its Circular (Annexure VI), advised all the States to follow certain specific suggestions designed to improve public confidence in the police and the police-public relationship, in order to effectively prevent the violation of law and to improve crime detection and respect for Human Rights.

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**Providing a toll-free telephone number**

**3.42** Rights to life, liberty and property are amongst the most basic human rights. In recent years, however, the detection of offences has shown a downward trend and, in general, the percentages of both detection and conviction are on the decline. As a result, the commission of crime has increasingly become a high-profit and low-risk business. In the view of the Commission, the situation has taken an alarming turn for the worse.

**3.43** As indicated above, a large number of complaints received from the public concern improper investigation and the non-detection of crime. This is often because of the non-availability of intelligence relating to the crime to the police. Even when members of the public have such information, they are hesitant to share this with the police in order to avoid being called repeatedly to the police station for questioning. Further, there is a deep reluctance to be repeatedly called to the courts later, as witnesses. There is also an apprehension of becoming the target of precisely those criminals about whom information may have been given. In order to lessen such fears on the part of the public, who may otherwise be willing to share information/intelligence with the police, the Commission considered the mechanism adopted by the Kerala Police, viz the establishment of 'toll free telephone' numbers at Police Control Rooms/Police Stations, and recommended this practice to other State Governments. The Commission is of the view that this system should be toll free within the State, even when STD calls are made. To have uniformity all over the country in this respect, the telephone No. 1090 has been suggested for use nation-wide. While recording the information, the callers should not be compelled to give their names and addresses.

**Keeping complainants Informed**

**3.44** In the sphere of police-community relations, the most concerned and least satisfied members of the public, often complain of the lack of transparency in police work, and of delays, indifference and corruption in dealing with complaints and cases.

**3.45** While several steps have been taken to avoid burking of offences and to ensure the free registration of cases whenever cognisable offences are revealed in the complaints, the complainant, very often, is not informed of the steps taken by the police. This results in the complainant/victim becoming suspicious that the police has either not taken any action at all, or that it is under the influence of the rival party, or acting under political pressure or extraneous considerations. This suspicion has led to numerous complaints addressed, inter alia, to this Commission, against the Investigating Officer/Agency.

**3.46** The Commission is of the view that it is the duty of the police to inform complainants of the registration of an FIR or the reasons for non-registration. It has also recommended that if investigations are not completed within three months, the

Investigating Officer should inform the complainant in writing of the reasons for such delay.

3.47 The Commission has written to the Chief Secretaries and DGPs of the States in this regard and has asked them to confirm the actions taken on these recommendations.

#### **Meetings of station house officers and the public**

3.48 The Commission has observed that a fear psychosis often governs the feelings of the general public in their dealings with the police.

3.49 The Commission has appreciated, in this connection, the effort made by the Kerala Police to reduce such anxieties, a system having been established whereby the Station House Officers hold public meetings in various towns/villages in their jurisdictions twice a month. This has enabled the police to inform the public of their efforts, and seek their cooperation in the prevention of crime, maintenance of law and order and the protection of human rights. The programme makes it obligatory on the part of the SHO to visit a town/village in his jurisdiction along with his staff, after giving advance publicity through the press and the concerned Panchayats. The Commission recommends that this practice be followed in other States as well.

#### **Promoting a culture of understanding**

3.50 In a further recommendation aimed to promote better police-community relations and to enable the police to get information, intelligence and public cooperation, the Commission has proposed that the DGPs/Chief Secretaries of the States advise the SPs of Districts to undertake regular meetings with the heads of the District Bar Associations, the Presidents of local Rotary and Lions Clubs, Chief Medical Officers, District Labour Officers, representatives of leading NGOs and such other agencies as the Superintendent of Police may consider appropriate, for formal discussions on ways of improving the relationship of the police with the public. The Commission is convinced that such exchanges can contribute to the better protection of human rights in the country and a greater sensitivity in society towards such rights.

#### **Improving the Reporting System and Procedures to be Adopted by the State Authorities**

3.51 Complaints received by the Commission from victims seeking the intervention of the Commission on the alleged violation of their human rights by the law enforcing agencies, especially the local police are, in the first instance, often sent to the District Collectors/Magistrates/District Superintendents of Police concerned, for enquiry and report. The Commission has observed, however, that there have been instances in which these cases have, in turn, been marked to the very officers against whom the allegations

have been made. This results in a well-founded fear in the minds of the victims/complainants about the impartiality and objectivity in the enquiry and reporting system. With a view to strengthening the credibility of the reporting system, the Commission has therefore made specific recommendations regarding the procedures to be adopted by the State Authorities in responding to notices issued to the concerned District Police/ Heads of Administration (Annexure VII).

**3.52** In a number of instances, the Commission has also considered it essential to call upon officers of comparatively senior levels in the States/Centre to examine sensitive complaints against governmental authorities. The Protection of Human Rights Act, 1993, entitles the Commission to draw upon the time and resources of such Central and State Government agencies. It would negate the very purpose of the Commission's request to senior officers for the benefit of their views, if they were to delegate this responsibility to their juniors and then merely forward the reports received from the latter. The Commission has stated that even when a senior officer delegates his function to a junior and asks an officer of lower rank to examine a matter, the Commission would nevertheless, be entitled to expect that such senior officers would examine the report closely and endorse its veracity before recommending it for acceptance by the Commission.

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## SYSTEMIC REFORMS: PRISONS

### Deaths in Judicial Custody

**3.53** The Commission has consistently held that the death of a prisoner in judicial custody calls for a thorough probe and that both a post-mortem and a magisterial enquiry should be conducted in all such cases. It has also recommended that if there are rules inconsistent with this procedure, they should be modified suitably. Consistent with this view, the Commission had directed the Maharashtra Government to modify its procedures. It had pointed out that the absence of enabling rules by itself was not a ground to exclude the procedures recommended by the Commission.

### Facilities to Prisoners

**3.54** On a complaint from the General Secretary of the Peoples' Union for Civil Liberties, Delhi, the Commission examined the question of the supply of reading material to prisoners. After considering a detailed report on the subject prepared by the National Law School of India University, Bangalore, and an aide-memoir prepared by Dr. Rajeev Dhavan, Senior Advocate, the Commission drafted guidelines, which it recommended for adoption by all State Governments/Union Territories. The latter were also asked to advise the State prison authorities to modify their existing rules and practices whenever they were at variance with the guidelines. The guidelines were as follows:

- ❑ As prisoners have a right to a life with dignity even while in custody, they should be assisted to improve and nurture their skills with a view to promoting their rehabilitation in society and becoming productive citizens. Any restrictions imposed on a prisoner in respect of reading material must be reasonable.
- ❑ All prisoners should have access to such reading materials as are essential for their recreation or the nurturing of their skills and personality, including their capacity to pursue their education while in prison.
- ❑ Every prison should, accordingly, have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners should be encouraged to make full use of it. The materials in the library should be commensurate with the size and nature of the prison population.
- ❑ Further, diversified programmes should be organized by the prison authorities for different groups of inmates, special attention being paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate. The educational and cultural background of the inmates should also be kept in mind while developing such programmes.
- ❑ Prisoners should, in addition, generally be permitted to receive reading materials from outside, provided such material is reasonable in quantity and is not prohibited for reasons of being obscene or tending to create a security risk. Quotas should not be set arbitrarily for reading materials. The quantity and nature of reading material provided to a prisoner should, to the maximum extent possible, take into account the individual needs of the prisoner.
- ❑ In assessing the content of reading materials, the Superintendent of the Jail should be guided by law; he should not exercise his discretion arbitrarily.

### Payment of Wages to Prisoners

3.55 The Supreme Court in the case of *State of Gujarat v Hon'ble High Court of Gujarat* examined the question of minimum wages of prisoners, and in its order dated 24 September 1998, held that it was 'lawful to employ prisoners sentenced to rigorous imprisonment whether he consents to do it or not'. The Apex Court also held:

- ❑ 'It is open to the jail officials to permit other prisoners also to do the work which they chose to do, provided such prisoners make a request for the purpose'.
- ❑ 'It is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners, the State concerned shall constitute a wage fixation body for making recommendations. Each State is directed to do so as early as possible'.
- ❑ 'Until the State Government takes any decision on such recommendations, every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above.'



For this purpose all the State Governments are directed to fix the rate of such interim wages within six weeks (from 24 September 1998) and report to the Court compliance with the direction'.

**3.56** Following the directions of the Supreme Court, most of the State Governments have made upward revision of the paltry wages being paid to prisoners.

### **Premature Release of Life Term Prisoners**

**3.57** The Commission has been receiving complaints from and on behalf of convicts undergoing life imprisonment about the non-consideration of their cases for premature release, even after they have undergone long periods of sentence ranging from 10-20 years, with or without remissions. On a closer study of the issues involved, the Commission noted that this issue impinged upon the human rights of a large number of convicts undergoing life imprisonment in prisons throughout the length and breadth of the country.

**3.58** Scrutiny of the matter by the Commission revealed that although the said power of premature release is to be exercised by the State Governments under the provisions of Section 432 of the Code of Criminal Procedure, 1973, the procedure and practice being followed by various State Governments was not uniform. It was found that the eligibility criteria for consideration for premature release, the composition of the Sentence Review Boards and the guidelines governing the question of premature release differed from State to State, and even those were not meticulously implemented. There were long gaps between the meetings of the Review Boards.

**3.59** This had resulted in a pitiful situation in which prisoners were not being released, even though some of them had undergone a sentence for over 20 years. The Commission felt it was high time to evolve a uniform system, which could be strictly followed in all States.

**3.60** A Committee comprising of Shri R.C. Jain, Registrar General, Shri D.R. Karthikeyan, Director General (Investigation) and Shri Sankar Sen, Special Rapporteur, was accordingly constituted to evolve a set of recommendations to bring uniformity to the procedure.

**3.61** The Committee considered all aspects of the issue and drew up a set of guidelines to be followed by the States. The Commission examined these guidelines and directed that they may be referred to the States and Union Territories for eliciting their views and comments. Some of the States and Union Territories responded with suggestions and comments. After taking these comments and suggestions into account, the guidelines were finalised and circulated to all States and Union Territories for compliance. States and Union Territories were asked to implement the guidelines and to modify their existing rules/provisions, wherever these were inconsistent with the fresh guidelines.

**3.62** The guidelines cover matters related to the composition of the State Sentence Review Board, the periodicity of its meetings, the eligibility/ineligibility criteria for considering premature release, procedure for processing the cases for consideration by the Review Board and the procedure and guidelines for the Review Board. The salient points of the guidelines are as follows:

(A) Eligibility criteria for premature release:

- i. Every convicted prisoner, whether male or female, undergoing sentence of life imprisonment and covered by the provisions of Section 433A Cr.PC, shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment, ie without the remissions.
- ii. All other convicted male prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 14 years of imprisonment, inclusive of remissions, and after completion of 10 years actual imprisonment, ie without remissions.
- iii. All other convicted female prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 10 years of imprisonment, inclusive of remissions, and after completion of 7 years actual imprisonment, ie without remissions.
- iv. Convicted prisoners undergoing the sentence of life imprisonment on attaining the age of 65 years, provided he or she has served at least 7 years of imprisonment including the remissions.
- v. The convicted prisoners undergoing the sentence of imprisonment for life and who are suffering from terminal diseases like cancer, TB, AIDS, irreversible kidney failure, cardio-respiratory disease, leprosy and any other infectious disease as certified by a Board of Doctors on completion of 5 years of actual sentence or 7 years of sentence including remissions.

(B) Ineligibility criteria for premature release:

- i. Prisoners convicted of the offences such as rape, dacoity, terrorist crimes etc.
- ii. Prisoners who have been convicted for organised murders in a premeditated manner and in an organized manner.
- iii. Professional murderers who have been found guilty of murder after having been hired to do so.
- iv. Convicts who commit murder while involved in smuggling operations, or having committed the murder of public servants on duty.

The full text of the guidelines is at Annexure VIII.

**3.63** The Commission hopes that with greater uniformity in proceedings, cases of premature release will be considered in time by all States. It also considers that, with

improved infrastructure and support, it should be possible to maintain computerised records of all life term prisoners in the country, so that the Commission can monitor the manner in which matters relating to their release are considered.

**3.64** By its proceedings dated 20 October 1999, the Commission directed that these guidelines shall be implemented by the States, and wherever existing provisions of the rules are inconsistent with any of the guidelines, the State Government shall make appropriate modifications in the rules and implement the guidelines, so that there is uniformity in this regard throughout the country. In pursuance, responses were received from 25 States and Union Territories. A majority of the States/Union Territories have accepted the Commission's guidelines. A reminder was issued to the States of Andhra Pradesh, Bihar, Himachal Pradesh, Maharashtra, Nagaland, Manipur and the Union Territory of Andaman & Nicobar Islands, which have not yet responded.

### Workshops for Prison Officials

**3.65** During the year under review, the Special Rapporteur of the Commission in-charge of Custodial Justice, held zonal workshops involving Inspectors General of Prisons and senior prison officers in Delhi, Guwahati, Calcutta, Pune and Lucknow. In these workshops, systemic issues relating to prison administration, viz. overcrowding in jails, problems relating to the escorting of prisoners to courts, comprehensive medical screening of prisoners after initial admission, problems of women prisoners, etc were discussed. The Special Rapporteur advocated the need to increase the involvement of competent NGOs in the medical examination of prisoners. At the initiative of a member of the Commission, Shri Sudarshan Agarwal, Rotary International came forward in a big way to extend medical treatment to prisoners, and a large number of prisoners were examined by the specialist doctors belonging to Rotary Clubs in various parts of the country. Further, in regard to the large number of undertrials in prison, Jail Superintendents were instructed to keep in touch with District Sessions Judges and to bring to the latter's notice such cases as needed to be acted upon in accordance with the directions given by the Supreme Court in the *Common Cause v Union of India* case. On the issue of providing escorts for prisoners being sent for treatment to hospital, the Inspectors General of Prisons were advised to use the jail staff as escorts, if police escorts were not provided. The need to upgrade the standards of vocational training given to the prisoners was also emphasised. The Special Rapporteur urged the Inspector General to keep women prisoners in those jails which were located nearer to their homes. Discussions in the workshops revealed that there was no uniform procedure regarding leave granted to the prisoners. The Commission recommended that this problem be resolved through the updating and revision of Jail Manuals.

**3.66** The Special Rapporteur (Custodial Justice) of the Commission also organised a training programme on Human Rights in prisons for the middle level jail officials of the

rank of Jail Superintendents, Deputy Jail Superintendents of the States of Uttar Pradesh, Punjab, Haryana, Delhi, West Bengal and Tamil Nadu. The training syllabus included international standards on the rights of the prisoners, judgments of the Supreme Court on human rights of prisoners, an analysis of complaints received by the NHRC regarding violation of human rights in prisons, problems of the prison staff etc. The Commission intends to organize more such programmes and recommends that all State Governments/ Union Territories cooperate fully with such efforts.

### Improving Prison Administration

**3.67** The Commission is of the opinion that to bring about a qualitative improvement in prison administration, it is imperative that the selection of officers for the post of Inspector General of Prison, the executive head of prison administration, be done more carefully than has generally been the case till now. Only officers of proven integrity and competence should be selected for the post, and they should then be allowed to continue in the post for a minimum period of 3 years. Such continuity could impart the dynamism and efficiency that is required in the leadership of prison administration. The Chairperson of the Commission, in his letter to the Chief Ministers, dated 21 December 1999 (Annexure IX), has therefore, recommended the need for a fixed tenure for Inspectors General of Prisons, as this would go a long way towards improving the quality of prisons and promoting respect for human rights in the conduct of prison staff. Most of the Chief Ministers, in acknowledging the letter of the Chairman, have indicated their willingness to follow the recommendation contained in it.

**3.68** The Commission remains deeply concerned about the predominance of undertrials in the population of prisons. In a letter to the Chief Justices of the High Courts, the Chairperson observed that during the last five years, the Members of the Commission and its senior officers had visited prisons in various parts of the country, and had been appalled by the spectacle of overcrowding, insanitary conditions and mismanagement in prison administration. The Chairperson requested the Chief Justices of all High Courts to issue clear instructions that Sessions Judges should visit prisons regularly and review the conditions of the prisoners. The District Judges, during their visits, could also look into the problems of the prisoners who had committed petty offences, and were languishing in jails because their cases were not being decided quickly for various reasons. The Commission has been heartened at the positive responses to this letter. Pursuant to the instructions of the Chief Justices, the Judicial Magistrates in certain States like Uttar Pradesh have been holding Lok Adalats in prisons. This has resulted in speedy disposal of petty cases. The High Court of Andhra Pradesh, in a circular, has given specific instructions to all District and Sessions Judges to follow the recommendations made by the NHRC in respect of the speedy release of undertrials (Annexure X).

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## Imprisonment of the Mentally Challenged

**3.69** The Commission has also taken a very serious note of the condition of mentally challenged persons wrongly languishing in prisons without proper medical care and attention. The Chairperson of the Commission, in a letter to the Chief Ministers (Annexure XI), expressed deep concern at the sad plight of such persons. He pointed out that the Mental Health Act, 1987, which came into force with effect from 1 April 1993, did not permit the lodging of mentally challenged persons in prisons, as this was a very insensitive and unbecoming manner of dealing with them. As they should be kept only in institutions for the mentally ill and provided proper treatment, the detention of such persons in jails amounted to an egregious violation of human rights. The letter made it unambiguously clear that if officers of the Commission, during jail inspections, found mentally challenged persons in jails, the Commission would award compensation to them, or to the members of their families, and would further direct the State Government to recover the compensation from the jail officers responsible for this lapse. He recommended that the Chief Ministers issue directions to senior prison officers to inspect prisons regularly, in order to ensure that mentally challenged persons were not kept in jails under any circumstances.

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## HUMAN RIGHTS AND ADMINISTRATION OF CRIMINAL JUSTICE

**3.70** The Commission has, in its preceding Reports, made specific proposals concerning the need to improve certain aspects of the administration of criminal justice in India. In the report for 1998-99, the Commission drew attention to the lack of efficiency in police investigation, certain problems bedeviling the administration of criminal justice in the Courts, and recommended a programme of action for speedy clearance of criminal cases. In particular, it proposed that:

- ❑ Strategies should be designed, on a district to district basis, for the control of arrears, having regard to the particular requirements and the pattern of criminal litigation in the district.
- ❑ The programme should be in the 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 the programme through. A generous measure of financial autonomy would be absolutely necessary for the Courts. The National Judicial Academy should 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

the purposes of tackling the arrears in Courts, long-pending cases should be bifurcated into a separate class and dealt with separately under an ad hoc 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 should be monitored on the computer. Initially, a spread-sheet should 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.

**3.71** The Commission had also recommended changes in the substantive law as follows:

- ❑ 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 an 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 quo. In other words, the judicial remands should be self-limiting and should indicate the date on which the undertrial prisoner would automatically be entitled 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 ranks amongst lowest in the world; this needs to be rectified.

**3.72** The Action Taken Report (ATR) for the year 1998-99, lists the steps taken by the Central Government on these recommendations. These included the dispatch of letters to the State Governments stressing the need for financial autonomy to the Courts, and to the National Judicial Academy to develop programmes for speedy clearance of criminal cases in courts, and interaction with the National Informatics Centre (NIC) for the extensive computerisation in the subordinate judiciary. With regard to changes



suggested in the substantive law, the ATR referred to the comprehensive review of the Cr.PC, 1973, undertaken by the Law Commission, and to the recommendations made by the latter for amending the Cr.PC. The ATR indicates that the recommendations of the Law Commission are being processed.

**3.73** The Commission urges the Government to complete the processing of the recommendations of the Law Commission speedily and to take steps to amend the Cr.PC accordingly. As the improvement of the administration of criminal justice is of some importance to the Commission, it intends to pursue this matter further.

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## VISITS TO JAILS

**3.74** One of the important functions of the NHRC under Section 12(c) of the Protection of Human Rights Act, 1993 is: 'To visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon.'

**3.75** During the year 1999-2000, the Members of the Commission and its officers continued to visit prisons and suggest measures to improve conditions in them and to protect the human rights of prisoners. An elaborate format for recording prison inspections was prepared by the Commission and circulated to Special Representatives of the Commission in Bihar, UP, Assam, Orissa, Gujarat and Maharashtra to elicit their views.

**3.76** Shri Sudarshan Agarwal, Member, NHRC, along with Shri R.C. Jain, Registrar General, NHRC, on a visit to the District Jail, Guwahati, on 10 November 1999, found that the overall conditions of the jail were pathetic and that the inmates were living in conditions that gravely affected their dignity and their physical and mental well-being. As against the authorised capacity of 507 prisoners, 780 inmates were lodged in the jail, 90 per cent of whom were undertrials. Toilet facilities were grossly inadequate and in a deplorable condition. There were garbage piles and stagnant water in the jail premises. The kitchens and food containers were unclean and the food served was unhygienic. The prisoners complained that the jail doctors were most unsympathetic, and would not prescribe medicines even from the few that were available in the jail dispensary. The X-ray machines were out of order. Prisoners had scabies and other skin diseases owing to unhygienic living conditions and lack of medical care.

**3.77** The Member, along with the Registrar General, also visited the Central Jail, Shillong, on 12 November 1999. Housed in a small premises, there were 374 inmates against an authorised capacity of 150 inmates. The jail had only three lavatories and faced an acute shortage of water for drinking, bathing and washing purposes. The food

served to the inmates was poor in quality and inadequate in quantity. The supply of medicines was poor and the two blankets provided to each inmate, in the cold climate of Shillong, were in a poor shape.

**3.78** What was most shocking was the presence of a girl child of about 10–11 years of age, who was an 'undertrial prisoner'. Under the provisions of the Juvenile Justice Act, no child can be kept in a regular jail. The jail houses many undertrial prisoners who had been languishing there for periods ranging from 1–9 years. Some of the prisoners had not been produced in court even once over periods ranging from 1–3 years. According to the jail authorities, the undertrials were not being produced in court due to lack of escort facilities.

**3.79** In view of the deficiencies and the appalling conditions of these two jails, the Member made a number of suggestions for the Commission to consider and forward to the State Government.

**3.80** Members of the Investigation Division of the Commission visited and carried out investigations in District/Central Jails at Agra, Lucknow, Jaipur, Tihar (Delhi) and Meerut on the basis of specific complaints received by the Commission. The Director General (Investigation) of the Commission also visited Sabarmati Central Jail, Ahmedabad; Central Jail, Chennai; Central Prison, Thiruvananthapuram; Central Prison, Vasco (Goa); Central Prison, Ranchi; Central Prison and the Jail in Pondicherry. During the course of his visits, he noted in particular, the overcrowding and inadequate staff, and also received individual complaints alleging harassment, torture, poor quality of rations, the non-supply of books/periodicals and the non-existence of grievance redressal systems. The observations of the Director General (Investigation) were duly communicated to the State Governments, which have stated that corrective measures were being taken to improve conditions in the prisons that were inspected.

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## CONDITIONS OF REMAND HOMES

**3.81** The Commission has continued to keep a vigilant eye on conditions in Remand Homes. As a part of the effort to get first hand information on the situation in some of these facilities, members of the Investigation Division of the Commission visited the Remand Homes in Varanasi and Bijnore on specific directions of the Commission. These visits were followed by a further inspection made by Shri Chaman Lal, Special Rapporteur of the Commission. Based on their reports, the Commission directed the State Government of Uttar Pradesh to take a series of measures to rectify and improve conditions of these Remand Homes. The Government of Uttar Pradesh has since reported compliance with these recommendations.

## VISIT TO DETENTION CENTRES AND REFUGEE CAMPS

### Visit to Detention Centre at Lampur Sewa Sadan, Delhi

3.82 The Commission received a number of complaints on the pitiable conditions existing in Lampur Sewa Sadan, Delhi, where foreigners are temporarily detained when arrested for travelling to India on forged passports etc. The Director General (Investigation) of the Commission was requested by the Commission to look into the running of Lampur Sewa Sadan and suggest improvements. Accordingly, he visited the Lampur Sewa Sadan in July 1999 and submitted his report to the Commission, indicating that while the Foreigners Regional Registration Office (FRRO) and the Home Department of the Delhi Governments were responsible for the detention, safety and well-being of the detained foreigners, the Social Welfare Department was in-charge of the Institution. The coordination and supervision at the ground level were found to be far from satisfactory. The detained foreigners made requests for regular visits by the medical officer, they also sought telephone facilities, separate arrangements for food and better accommodation. The Commission considered the report of the Director General (Investigation) and has been pursuing the matter with the Government of the National Capital Territory of Delhi.

### Visit to Special Refugee Camp at Melur (Tamil Nadu)

3.83 The Commission has frequently been receiving complaints from refugees in India, which it takes up with the competent ministries of the Central Government and with the concerned State Government. It also remains in touch with the local office of the United Nations High Commissioner for Refugees. On occasion, Members of the Commission or its senior officers have had to visit refugee camps themselves. During the period under review, for instance, the Commission received a complaint from a Sri Lankan Tamil refugee lodged in Melur Refugee Camp about the conditions prevailing in that camp. The main grievances of the petitioner were that 25 Sri Lankan refugees, including 5 women and 2 children, had been detained in the Melur Camp without any indication being given about their future fate or their release. They also complained of an insufficient allowance, excessive restrictions over their movements even within the compound during the day, and the lack of arrangements for visitors to meet them. They requested that there should be regular visits of a medical officer and medical check-ups, when needed outside the camp.

3.84 Following directions of the Commission, the Director General (Investigation) paid a visit to Melur Refugee Camp in June 1999 and submitted a report. The Commission considered his report and directed the State Government to make immediate arrangements to ensure that inmates at the refugee camp, including women and children, are allowed greater freedom of movement within the premises of the camp, so that they can exercise properly and keep in better health. The Commission also directed

the State Government to increase their daily allowances from Rs. 20/- to Rs. 35/- per adult and Rs. 14/- to Rs. 20/- per child. It recommended that steps be taken for expeditious disposal of various court cases pending against certain inmates, and also directed that regular visits be undertaken by medical and revenue officers so that prompt action can be taken to look into their condition and resolve their difficulties. The Government of Tamil Nadu has complied with the Commission's directions, and submitted a detailed action taken report.

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## IMPROVEMENT OF FORENSIC SCIENCE LABORATORIES

**3.85** Article 21 of the Constitution guarantees the right to personal liberty, which can be curtailed only in accordance with the procedure established by law that is reasonable, fair and just. Speedy trial has been recognised by the Supreme Court as a part of the right to personal liberty. The failure on the part of the prosecution to produce the chemical analyser's report or the serologist's report for lack of adequate capacity in the forensic sciences laboratories, is an important reason for delay in the conduct of criminal cases. The number of such laboratories in the country being grossly inadequate, it sometimes takes years for them to send their reports. This contributes to a grave denial of the human right to speedy trial.

**3.86** A related and equally alarming feature in the present situation is the large number of acquittals in criminal cases. The burden of proof is on the prosecution to prove the case beyond reasonable doubt. However, proof in criminal cases rests mainly on oral testimony, which is often rejected as unreliable. This too leads to a failure to adequately protect human rights. The lacuna can be filled by greater recourse to expert scientific evidence.

**3.87** Forensic science has made revolutionary advances possible in securing evidence that can lead to just and speedy results in criminal cases. Unfortunately, forensic science services in the country are still grossly inadequate and have failed to muster all the latest techniques. In addition, the administrative set-up does not provide independence to forensic scientists and autonomy to the laboratories. This has affected the morale of the scientists and the efficacy of the laboratories, which is hampering the protection and promotion of human rights. To correct these aberrations, the Commission gave deep consideration to the problems of forensic science laboratories and constituted a Core Group of Experts to examine the state of forensic science laboratories and services available in the country and to make appropriate recommendations.

**3.88** The Core Group, after visiting the important laboratories in the country, made an in-depth study of this subject from all possible angles, and submitted its report 'State of the Art Forensic Sciences: For Better Criminal Justice' to the Commission on 23 April 1999. The comprehensive report carries recommendations for improvement and

strengthening of the existing laboratories and has proposed the establishment of new, well-equipped forensic laboratories to meet the growing demand. The seminal recommendations aim at ensuring independence of the forensic scientists and making them free from police control. Implementation of the recommendations contained in the report will fulfill a long felt need and help the criminal justice system by providing reliable scientific evidence expeditiously.

**3.89** The report of the Core Group was released to the public on 11 June 1999 by Shri L.K. Advani, Union Home Minister, in the presence of Shri Dalit Ezhilmalai, then Minister of State for Health. Copies of the report were sent to the Ministry of Home Affairs and the Chief Secretaries of States having forensic science laboratories for taking follow-up action. Copies of the report were also sent to the different States/Central Forensic Science Laboratories.

**3.90** On 23 December 1999, the Commission, wrote to the Ministry of Home Affairs, desiring to know the action taken by the Ministry in regard to the recommendations made in the report. The Ministry is yet to respond on this matter. The Commission would like to reiterate its view that the Ministry of Home Affairs should initiate early action to implement the recommendations made in the report.

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## LARGE VOLUME PARENTERALS: TOWARDS ZERO DEFECT

**3.91** The Commission became seized of an important matter regarding the contamination of life-saving I.V. fluids, which related to the health care of the citizenry of the country, on receipt of a reference from the Himachal Pradesh State Human Rights Commission, Shimla. The Commission noted that this issue had wide implications, as it concerned the public health of the people of India, and indeed, to their right to life.

**3.92** The State Commission had forwarded a copy of the complaint to this Commission, which had also taken suo motu cognizance of a press report to the effect that contaminated life-saving fluids were being administered to patients at the Ram Manohar Lohia Hospital (RML), New Delhi. The Commission had issued a notice to the manufacturer and the Secretary, Union Ministry of Health. Notices were also issued to the Chief Secretary and Drug Controller of the National Capital Territory of Delhi, and the Medical Superintendent of RML.

**3.93** The Commission is of the view that the State has the duty to take all possible measures to ensure the maintenance of the highest standard of quality and purity of drugs at all stages—from manufacture to the point of administration to the patients.

**3.94** To examine the causes of the contamination of the dextrose bottle, ascertain the stages at which the contamination occurred, fix responsibilities for the lapses and find measures to prevent the recurrence of such lapses, the Commission chose two eminent

experts to assist it in its work. They were Dr. Nityanand, Chairman, Indian Pharmacopoeia Committee and former Director, Central Drug Research Institute, Lucknow; and Mr. Praful D. Sheth, President, Indian Pharmaceutical Congress Association, and Chairman, Industrial Pharmaceutical Division, Indian Pharmaceutical Association.

**3.95** After making an in-depth study, the Expert Committee submitted its final report titled 'Large Volume Parenterals: Towards Zero Defect' to the Commission on 12 January 1999. Shri L.K. Advani, Union Minister for Home Affairs, formally released the report on 11 June 1999 in the presence of the then Union Minister of State for Health, Shri Dalit Ezhilmalai.

**3.96** The Commission, in accepting the comprehensive findings of the Expert Committee, has recommended a series of steps to be taken by the Central Drugs Standard Control Organization to improve the infrastructure and manpower required to administer the entire system of licensing, new product approvals, certification and market complaint handling of Large Volume Parenterals (LVPS) and other medicines in hospitals.

**3.97** It has also recommended that a post of Joint Drugs Controller of India (Pharmaceutical Services) be created at the Centre under the Drugs Controller General of India. The Government analyst laboratories and testing laboratories also need upgradation in terms of infrastructure and trained staff. Modern hospital pharmacies should be set up in Government hospitals, under an officer having a minimum qualification of post-graduation in Pharmacy.

**3.98** In its recommendations, the Commission called upon RML Hospital to develop policies and procedures for the procurement of medicines and inventory control, receipt handling, storage, quality control distribution and dispensing. It directed the hospital to develop policies and procedures for handling of complaints relating to quality, medication errors and adverse drug reactions. It also asked the premier Central Government hospital to develop good hospital warehousing practices, including rodent control, and also to frame good warehouse practice guidelines. "It shall impart training to hospital staff in good warehousing practices and ensure maintenance of records of defective stocks at one place", the Commission recommended.

**3.99** In further directions to the hospital, the Commission recommended that a flowchart complaint handling procedure be developed, and that there should be partnership for networking within manufacturers and regulatory agencies for speedy disposal of defective and recalled goods. It called upon the hospital to prepare guidelines on sampling of stocks, including complaint samples, by approved testing laboratories, detailing the exact quantity to be drawn, and fixing responsibility for drawing samples.

**3.100** With regard to the Medical Stores Depot, the Commission called for reviewing the present procedures of procurement of LVPs and other medicines, and the system of



routing the supply to hospitals through the depots, and eliminating wasteful activities of re-routing the goods to hospitals.

**3.101** The Commission also called upon the parties concerned, viz M/s Core Health Care Ltd.; the Central Drug Controller General of India, Government of India; Commissioner, Food and Drug Control Administration, Government of Gujarat; Ram Manohar Lohia Hospital, New Delhi; and the Medical Stores Depot to implement the respective recommendations within one year and report back to it.

**3.102** With a view to monitoring timely compliance, the Commission has asked for quarterly progress reports. It has also directed the authorities concerned to provide the necessary staff and finance for this purpose to facilitate expeditious compliance.

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## **Review of Laws, Implementation of Treaties and Other International Instruments of Human Rights**

### **CHILD MARRIAGE RESTRAINT ACT, 1929**

**4.1** The problem of the widespread prevalence of child marriage in certain parts of the country has been a major concern of the Commission for a number of years. The Commission has been interacting with the National Commission for Women and the Department of Women & Child Development to evolve suitable measures to combat this problem. As the Draft Marriage Bill jointly prepared by the National Commission for Women and Department of Women & Child Development did not find favour with the Government, the Commission decided to work on an amendment to the Child Marriage (Restraint) Act, 1929. It held discussions on 15 December 1999 with the Secretary, Department of Women & Child Development; the Secretary, Legislative Department; and the Member Secretary, National Commission for Women.

**4.2** The Commission is pursuing the matter further along the following lines that emerged during the discussion:

- ❑ It would be more appropriate to provide for a compulsory registration of marriages under the Hindu Marriage Act through appropriate amendments, instead of making such a provision in the Child Marriage (Restraint) Act, 1929.
- ❑ There is a need to amend the Child Marriage (Restraint) Act to provide for higher penalty for the violations of the provisions of this Act, and there is also a need to make the offence cognizable and non-bailable.
- ❑ Provision has to be made in the Child Marriage (Restraint) Act to take action against organizers/associations who organize mass child marriages.
- ❑ Apart from amending the legal provisions appropriately, there is a need to initiate social action by networking with the NGOs in the areas where child marriages are prevalent to sensitize the community leaders against such marriages.

## PROTECTION OF HUMAN RIGHTS ACT, 1993

4.3 A high-level Advisory Committee, which was set up by the National Human Rights Commission under the Chairmanship of Mr. Justice A.M. Ahmadi, former Chief Justice of India, to assess the need for structural changes and amendments to the Protection of Human Rights Act, 1993, submitted its report to the Commission on 18 October 1999.

4.4 The Committee had invited comments and suggestions on that Act, and in response, had received letters, notes and memoranda from the Chief Justices of various High Courts, Chairpersons of State Human Rights Commissions, Chiefs of the Army, Navy and Air Force, Heads of Parliamentary Committees, non-governmental organisations (NGOs) and members of the public, giving their views and suggestions on various provisions of the Act. After careful consideration, the Committee finalised its recommendations and presented these to the Commission in the form of a Draft Amendment Bill.

4.5 The recommendations of the Committee were considered by the Commission in its meetings held in February 2000. The Commission, after a clause by clause discussion, formulated its views on the amendments that are required to be made to the Act, keeping in view the major impediments and structural inadequacies experienced by the Commission during the course of the last six years of the operation of the Act. The report of the Commission was sent to the Government in March 2000. The following are some of the salient recommendations:

- ❑ Commission to be empowered to transfer complaints pending before it to respective State Commissions.
- ❑ To amend definition of 'armed forces' to exclude para-military forces in Section 2 sub-section 1(A).
- ❑ To amend Section 30 in order to empower human rights courts at the district level to award compensation or relief to affected persons.
- ❑ To amend Section 36(2) to provide for enquiry into a complaint of human rights violation by National and State Commissions even after the expiry of one year from the date of its occurrence, subject to there being good and sufficient reasons for the same.
- ❑ To amend Section 18 to enable payment of interim compensation at any stage during the pendency of enquiry.
- ❑ To amend Section 21 to make it mandatory for every State to have a State Human Rights Commission, to reduce the number of members of State Commissions to three and to enable State Commissions to have common members.
- ❑ To prescribe a three month time limit from the date of submission for the reports of the NHRC and State Commissions to be placed before the Parliament and State Legislature and for reports to be made public after three months, even if not placed before the legislative bodies.

## Review of Laws, Implementation of Treaties and Other International Instruments of Human Rights

- ❑ To amend Section 36(1) to provide for the NHRC to take cognizance of and inquire into violations of human rights, notwithstanding the cognizance taken thereof, by a State Human Rights Commission or any other Commission (excluding a Commission appointed under Commission of Inquiries Act), with a view to providing the Commission an overarching ability to oversee the issues of human rights violations and their remedies.
- ❑ To add a proviso to Section 36(1) to provide for the NHRC to entertain, either suo motu, or at the instance of an aggrieved person, any matter already considered and decided by any other Commission except on the question of quantum of compensation, with a view to giving the Commission, a certain power of judicial superintendence and powers similar to those exercised by the Supreme Court vis-à-vis the High Courts under Article 136 of the Constitution, in order to prevent any miscarriage of justice in any case of human rights violation.

4.6 The full text of the recommendations made by NHRC for Amendments to the Protection of Human Rights Act 1993 with the reasons thereof, may be seen in Annexure XII.

## IMPLEMENTATION OF TREATIES AND OTHER INTERNATIONAL INSTRUMENTS

4.7 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.

4.8 During the period under review, the Commission continued to urge the Central Government to proceed with the ratification of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Punishment or Treatment, which was signed by India on 14 October 1997. The Commission was earlier informed by the Government of India that the question of introducing a definition of torture in Indian legislation was being examined in consultation with the concerned ministries and departments. The Commission is of the view that the protracted delay in ratification does no credit to the country, and sends an ambiguous message regarding the commitment of the Government to respect the provisions of this Convention, when Article 21 of the Constitution already covers this area effectively. The Right against Torture has been judicially recognized by the Apex Court as a Fundamental Right, making that right and the corresponding obligation on the State and its agencies a fundamental entrenched right. The Commission, therefore, would like to reiterate, in the clearest terms, that the delay in ratification should end and that the Government should complete the process without further damage to the good faith of the country.

4.9 The Commission's views in regard to the need for India to develop a national policy and possibly a national law, fully in consonance with the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol on the subject have been

recounted in its earlier reports. It's opinion of the Commission that the drafting and adoption of such a law is essential. During the period under review, the Commission continued to take suo motu cognizance of news items highlighting the plight of Sri Lankan refugees in Tamil Nadu, Karnataka and elsewhere. In one such case, based on a report of an NGO, the Peoples Union for Civil Liberties, the Commission examined allegations of human rights violations of 56 refugees held in a Special Camp in Vellore. While concluding its proceedings in this case, the Commission resolved to pursue the general issue relating to the enactment of a national legislation relating to the status of refugees. In response to questions by the Commission, the Government of India indicated that the possibility of enacting relevant legislation was being examined, as also the possibility of signing the 1951 Convention on the Status of Refugees and the 1967 Protocol on this subject. The Commission would like to recommend and reiterate its view that a small expert group, including experts from outside the structure of the Government, should be constituted by the Ministry of External Affairs to go into the matter at an early date. The Commission would invite this expert group, as and when it is constituted, to discuss all aspects relating to a national law needed to protect the rights of refugees. The Commission intends to monitor the treatment of refugees in the country and to pursue its recommendation in regard to this matter.

4.10 During the period under review, India presented its initial report to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) on 24 January 2000. Earlier, on 19 March 1997, India had submitted its first country report to the Committee on the Rights of the Child; the report being taken up for consideration by the Committee on 11-12 January 2000. The discussion of these reports assumed particular significance in the context of the Tenth Anniversary of the Convention on the Rights of the Child and the Beijing plus five Review. The Commission has carefully considered the country reports submitted by India as well as the comments of the concerned treaty bodies. Its own comments in regard to the fulfilment of our country's obligations in respect of these two treaties are covered elsewhere in this report.

4.11 The Commission has established a Chair on Human Rights at the National Institute of Human Rights (NIHR) in the premises of the National Law School of India University, Bangalore. In the course of the year, the Commission sought the views of the Institute on the pros and cons of ratification by India of the following international human rights instruments:

- The First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).
- The Second Optional Protocol to the ICCPR.
- The International Convention on the Protection of the Rights of All Migrant Workers and Their Families.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



## **Rights of the Child: Prevention of Congenital Mental Disabilities**

**5.1** In its preceding report, the Commission had expressed grave concern over the serious developmental disabilities caused to children born in this country as a result of malnutrition and maternal anaemia affecting their mothers, particularly to those belonging to economically disadvantaged sections of society. It viewed the circumstances of these children as constituting a serious violation of their right to a life with dignity, abridging as it did their capacity to develop their full potential intellectually and physically. Indeed, scientific data indicates that maternal anaemia is a major contributor to infant and maternal mortality in India. Despite nearly three decades having elapsed since the start of the National Nutritional Anaemia Control Programme (NNACP), launched by the Government of India in 1972, 87.6% of pregnant women in the country continue to suffer from anaemia. The Commission, for its part, has been particularly concerned about the wide prevalence of health problems, related to iron deficiency which has continued to result in the birth of children with mental disabilities.

**5.2** Keeping in view the gravity of this problem, the Commission has constituted a Core Advisory Group on Health comprising Prof. V. Ramalingaswamy, Dr. Shanti Ghosh, Dr. Prema Ramachandran, Prof. Pravin Visaria, Prof. N. Kochupillai, Prof. K. Srinath Reddy and Prof. L.M. Nath to prepare a blueprint/plan of action for systemic improvements in the health care system after discussions with other experts in the field. The Core Group, headed by the Chairperson of the Commission, held a series of consultations with leading Medical Research Institutions. As a result of these consultations, the Commission scheduled a two-day Workshop on this matter on 26–27 April 2000, in association with UNICEF and the Department of Women & Child Development, Government of India. The broad purpose of the workshop was to evolve legal and programmatic instruments to zero-in on this serious health problem, which has far-reaching human rights implications.



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## Rights of the Vulnerable

### REHABILITATION OF PEOPLE DISPLACED BY MEGA PROJECTS

6.1 A number of complaints were received by the Commission alleging inadequacies or indifference in the rehabilitation of communities, more particularly the members of disadvantaged groups, when they have been displaced or otherwise adversely affected by mega development projects. The Commission is of the view that it is essential to balance development with greater justice and equity, the national interest with the interests and dignity of those who are required to yield their lands, and sometimes, the very basis of their individual and communal personality for the interests of the nation. The Commission accordingly called for a comprehensive examination of the prevailing rehabilitation policies. It urged, in particular, 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 the purpose of national economic development, the provisions of the Constitution as expanded over the years by the Supreme Court, and as contained in international instruments to which India is a party, notably the ILO Convention 107, are respected.

6.2 In pursuance of the Commission's recommendation to formulate a comprehensive national policy on rehabilitation and resettlement, the Central Government has formulated a draft policy, upon which the Commission has itself commented. This is, at present, being considered by a group of ministers for finalisation by the Government.

#### Kabini Reservoir Project, Karnataka

6.3.1 The Commission had initiated action in respect of 108 affected tribal families awaiting rehabilitation in this project. The Commission's Special Rapporteur undertook a visit to the settlements of the affected tribals and held discussions with the State Government officials. Based on that, the Commission directed the verification of the particulars of the persons who had been displaced but had not been compensated for the loss of the land. The Commission also directed the State Government to check details on whether the land released for rehabilitation was actually used for that purpose.

The Commission commented on the slow progress of the implementation of the recommendations and urged the State Government to expedite the compliance.

### **Bandipur National Park—Project Tiger**

**6.3.2** The Commission had, after examining the matter, pointed out that the procedure laid down in the Wild Life Preservation Act, 1972, in regard to the rights of the affected people and their rehabilitation was not followed. It directed the State Government to undertake the statutory exercise for determining the rights of the people, considering both the fact of ownership of land and the continued denial of means of livelihood of those affected. It recommended to the State Government that it consider using some 300 acres of land at Ainpura, which had been inspected by the Special Rapporteur, for the purpose of rehabilitation and resettlement. The Commission also observed that undue delay had occurred in implementation of the Commission's recommendations.

### **Rehabilitation of People Displaced by the Sea Bird Project, Karwar, Karnataka**

**6.3.3** On perusing a complaint received by the Commission concerning the unsatisfactory arrangements made for the rehabilitation and resettlement of persons displaced by the Sea Bird Project in Karwar, the DG(I) was requested by the Commission to pay a visit to the site and submit a report. Accordingly, he visited the areas as well as the three Rehabilitation Centres established for them, heard grievances, received delegations and held discussions with the concerned officers on the implementation of the rehabilitation programme. Most of the displaced families complained that they had been evacuated from the area without proper rehabilitation and resettlement measures having been taken, that they were denied appropriate alternative means of livelihood and that the compensation awarded for their lands and homes had also been inadequate. The rehabilitation/resettlement plans had not taken into consideration the natural growth of the affected families over the past 12 years. The Commission considered the detailed report, along with the recommendations on the subject presented by the DG(I), and gave comprehensive directions to the Government of Karnataka and Ministry of Defence, Government of India, in regard to the steps that had to be taken to redress the grievances of the complainants and to correct the deficiencies in the rehabilitation measures being undertaken. The Commission monitored this matter closely in order to ensure that the rights of the affected people were protected; and subsequently received a report from the authorities concerned, stating that they had complied with its recommendations.

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## **DISPENSATION OF RELIEF TO THE ORISSA CYCLONE-AFFECTED**

**6.4** In order to ensure that the rights of the affected population—particularly the most vulnerable groups—were protected in the aftermath of the widespread destruction caused

by the Super Cyclone that struck the coastal districts of Orissa on 29–30 October 1999, the Commission considered it imperative to take suo motu cognizance of the situation that had developed. It accordingly established immediate contact with its Special Representative, Shri A.B. Tripathi, stationed in Bhubaneswar, and asked its Secretary General, Shri N. Gopaldaswami and Special Rapporteur, Shri Chaman Lal, to visit the area, interact with the officials at various levels and report back to the Commission so as to enable it to decide how best to be of assistance to the State Government in the relief and rehabilitation effort that would be required.

**6.5** Based on their observations and a detailed report submitted by Shri Chaman Lal, who visited all the affected districts to make an on-the-spot assessment of the devastation caused by the cyclone, and the relief, reconstruction and rehabilitation work in progress, the Commission made specific recommendations to the State Government in respect of: (a) a complete enumeration of the casualties in order to ensure that a proper assessment is made of the right to compensation and other assistance to the survivors; (b) an assessment of the Food for Work programme for those below the poverty line, in order to provide them, through a special dispensation, wages in terms of grains, along with special feeding centres for the old and incapable; (c) a district-wise census to secure correct information on all widows and senior citizens who had become destitute as a result of the death of earning members, and to cover them under the National Old Age Pension Scheme and Relief by the State Government and under the State Pension Scheme for the widows; (d) the construction of 40 more shelters in the cyclone prone areas before 30.6.2000, after an assessment of the total number of shelters required; (e) an assessment of the needs of children who had become orphans in the aftermath of the cyclone and the opening of orphanages to provide relief to them; (f) the starting of 12 sanctioned ICDS schemes; (g) proper publicity by the State Government so as to enable the affected people to become aware of their entitlements in the form of relief and compensation; (h) an action plan to be drawn for each district for the rehabilitation work to be undertaken; (i) the establishment of appropriate machinery for monitoring long term rehabilitation, measures, including the monitoring of expenditure relating to relief and rehabilitation, both at district and state levels, and the relief provided for orphaned children, destitute women and children, senior citizens, SC/ST women and children, and other marginalised sections of society.

**6.6** The Commission also directed the State Government to take steps for the restoration of essential services like power, water, telephone communications, road links etc. Taking note of the allegations that certain District Collectors had professionally failed in discharging their duties, for which reason they had been transferred, the Commission recommended departmental action against these officers as may be necessary. The State Government was also requested to order an appropriate inquiry to look into the complaints of negligence on the part of public servants who failed to regulate the sluice

gates at the Ramel Dam and at the Hatgarh Dam, that led to an aggravation of the impact of floods in Keonjhar town and the Bhadrak municipal area. The Commission called for a report on the action taken from the State Government. The Prime Minister was apprised of the action taken by the Commission in order to ensure effective compliance. In taking these steps, the Commission was motivated by its desire to ensure that there was no negligence in the prevention of a human rights violation by any public servant. The Commission was acting in accordance with the provisions of Section 12(a)(ii) of the Protection of Human Rights Act, 1993, which empowers it to enquire into such negligence.

**6.7** Shri Chaman Lal, Special Rapporteur, has been monitoring the compliance of the recommendations of the Commission. He undertook a visit to all the affected districts from 13-19 March 2000, and reported to the Commission on the progress in the implementation of its recommendations: His report revealed that progress had been slow in respect of: (a) disbursement of ex-gratia payments to the families of the deceased; (b) disbursement of house building assistance; (c) relief and rehabilitation measures for widows and senior destitutes; (d) construction of cyclone shelters; (e) payment of compensation to fishermen for the loss of boats and nets; and (f) the strengthening of ICDS cover.

**6.8** The report of the Special Rapporteur, giving a district-wise account of the action completed and pending, was sent by the Commission to the Government of Orissa with directions to expedite the implementation of the Commission's directions. The Special Rapporteur, in his next visit to these districts, found that compliance had been very satisfactory in respect of most of its recommendations, though it lagged behind in respect of the construction of cyclone shelters, the strengthening of ICDS cover and compensation for fishermen. The monitoring is continuing.

**6.9** In the light of the district-wise reports of the Special Rapporteur, the Commission placed on record its appreciation of the sincerity, dedication and commitment displayed by the following District Collectors in organizing and executing relief and rehabilitation work in their respective districts:

- |    |                             |                          |
|----|-----------------------------|--------------------------|
| 1. | Shri P.K. Mohapatra, IAS    | Collector, Puri          |
| 2. | Shri P.K. Jena, IAS         | Collector, Cuttack       |
| 3. | Shri Sarbeswar Mohanty, IAS | Collector, Jagatsinghpur |
| 4. | Shri B.C. Swain, IAS        | Collector, Kendrapara    |
| 5. | Shri Ashwini Kumar, IAS     | Collector, Balasore      |

**6.10** The super cyclone that struck Orissa was of great and unprecedented severity. It was the concern of the Commission that the most vulnerable should not become the least protected in the wake of the tragedy. The Commission also wanted to hold the State and society to a standard of behaviour and action appropriate to the immensity of the challenge that was faced. It is the impression of the Commission that its intervention and



persistent monitoring helped to mobilize the response of the State machinery, encourage a coordinated response from all the other principal groups involved, and ensure that aid reached the victims of the disaster, particularly those who were most defenceless.

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## BASIC FACILITIES TO PLANTATION WORKERS IN TAMIL NADU

**6.11** The Founder President, Pudhiya Tamilagam, met the Commission with a delegation of tea plantation labourers, and submitted a memorandum focussing on the plight of the workers of the Plantation of the Bombay-Burmah Trading Corporation at Ambassamudram Taluk, District Tirunelveli, which is popularly known as the 'Manjolai Tea Estate'. The Commission directed the DG(I) to visit the spot. The five-month old strike was called off upon the mediation of the DG(I), and the management, labour leaders and the Government officers signed an agreement. The workers complained that the management had not fully complied with the assurances given with regard to improving their living and working conditions. The Commission also took suo motu cognizance (Case No. 465/22/99-2000) of a news item that appeared in 'Frontline' on 3 August 1999 captioned 'Tirunelveli Massacre'. It reported that 17 persons had lost their lives following attacks on a procession that had been taken out in support of the labour struggle in the Manjolai Tea Estates. In response to a notice of the NHRC, the State Government indicated that it had set up a Commission of Inquiry to look into the incident, and that it had made a payment of Rs. 2 lakhs to each of the families of those who had lost their lives.

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## EXPLOITATION OF TRIBALS BY LANDLORDS/MAFIA IN THE DISTRICTS OF MIRZAPUR, ALLAHABAD AND CHITRAKOOT IN UTTAR PRADESH

**6.12** Pursuant to the directions of the Commission on a complaint received from Shri Anand Shekhar Giri, President of Vindhya Kisan Parishad, Mirzapur, alleging the exploitation of tribals and schedule castes in the district of Mirzapur, UP, the DG(I) paid a visit to the area and presented a detailed report to the Commission. It was stated in the complaint that though lands had been allotted under the law to landless persons, and the title had been transferred on paper, actual possession had been denied to the beneficiaries. They had also been denied the benefits and grants meant for them. Further, owing to illegal stone quarrying in the forest areas, irreparable damage had been caused to the ecology of the area, threatening the lives and the future of the tribals living in the region.

**6.13** During the course of the visit of the DG(I) to the affected area, a large number of people belonging to the scheduled castes and scheduled tribes asserted that though they had indeed been issued with the title deeds as beneficiary landless labourers, actual possession of the lands allotted to them had been denied. While some claimed that they

had never been shown the lands allotted to them, others complained that powerful persons had dispossessed them. It was further stated that while the closure of stone quarries by the State Government had resulted in large scale unemployment and economic hardship to bona fide workers and traders in Mirzapur district, illegal quarrying was persisting under the protection of a mining mafia.

**6.14** The Commission, after considering the report and approving of detailed recommendations proposed by the DG(I), directed the State Government to look into those recommendations with a view to framing appropriate schemes that would empower the tribals and other landless persons of the district without disturbing the ecology of the area.

**6.15** A similar issue was brought to the notice of the Commission in a complaint received from Swami Agnivesh, who stated that tribals residing in the districts of Chitrakoot, Allahabad, Mirzapur and adjoining areas had not been given the status of STs by the State Government, and that this had deprived them of benefits to which they should have been entitled. The tribals had been living in poor economic conditions, held in bondage and forced to work in slave-like conditions, the wages paid to them being far below the minimum fixed by the Government. On considering the complaint, the Commission was of the view that there was need for a radical change in the way in which the State Government dealt with the problems facing the tribals. There was need to recognise their special relationship with the forests, and for the State to fulfil its mandatory role of enhancing their well-being rather than driving them out of the forest. The Commission also took the view that the existing system of auction of mining rights was totally unjust and led to the exploitation of the tribals. Looking at the gravity of the situation, the Commission has constituted an expert committee to study this matter carefully and to propose specific courses of action. The matter is being monitored closely by the Commission.



# Abolition of Child Labour and Bonded Labour

## CHILD LABOUR IN VARIOUS INDUSTRIES

7.1 Following the directions of the Supreme Court, the Commission has been overseeing the enforcement of the Bonded Labour Act in different parts of the country. During the period under review, it concentrated its efforts principally on the carpet belt in Uttar Pradesh, the silk reeling and twisting industry in Karnataka, and the road-building and construction industry in Gujarat.

7.2 As regards the carpet belt in Uttar Pradesh, Shri Chaman Lal, Special Rapporteur, has been visiting all the districts concerned, along with the Labour Commissioner, Uttar Pradesh, and has held a series of meetings with the District Magistrates (DMs) and senior Labour Officers posted in the area. The Apex Court, in its judgement in respect of Writ Petition No. 456/1986 of *M.C. Mehta v State of Tamil Nadu & ors*, had ordered a State-wise survey to identify child labourers; it had also given the following directions for the rehabilitation of children withdrawn from work in hazardous occupations:

- ❑ Recovery of Rs. 20,000/- per child from the offending employers and creation of Child Labour Rehabilitation-cum-Welfare Fund in each District.
- ❑ Provision of employment to one adult member of each affected family.
- ❑ Deposit of Rs. 5,000/- in the said fund by the State Government in case of its failure to provide employment to the affected family.
- ❑ Provision of education—formal or non-formal—to the children withdrawn from hazardous works.

7.3 A special programme called the Child Labour Abolition Programme, designed by the Labour Commissioner, UP, under the guidance of the NHRC, was inaugurated at Varanasi by Justice V.S. Malimath, the then Member, NHRC, on 30 March 1999. The highlight of the programme was the release of an Enforcement Manual, which provided details of an Integrated Action Plan to eradicate child labour in the carpet belt, with the full involvement of the concerned departments/agencies of the Government and the active participation of non-governmental organizations and Panchayats in the area. The plan provided for mandatory registration of all the looms and the issuance of Child Labour Free Certificates to the units/establishments which did not employ children.

7.4 Fifty-one out of a total of 83 districts of UP have been declared child labour prone districts. The UP Government has provided a corpus of Rs. 1 crore for creating the Child Rehabilitation-cum-Welfare Fund in pursuance of the orders of the Supreme Court. District Societies for the abolition of child labour, with the Collector/DM as Chairperson, Chief Development Officer as Member Secretary and representatives from all departments involved with the enforcement of the Child Labour Act under the directions of the Supreme Court, have been constituted in all the districts. Twenty-one of these societies have already been registered under the Society Registration Act, 1860. They have received an initial grant of Rs. 5 lakh each for the Child Labour Rehabilitation-cum-Welfare Fund.

7.5 The UP Labour Department, on the advice of the NHRC, carried out two surveys to assess the incidence of child labour in the State. The first survey was done from 1 January 1999 to 15 March 1999 and the second from 1 November 1999 to 3 January 2000. The results are shown below:

**Child Labour identified:**

<input type="checkbox"/> Hazardous	10,778
<input type="checkbox"/> Non-hazardous	9676
i. Number of employers	3539
ii. Number of families of identified children	6318
iii. Notices issued	2485
iv. Prosecution launched	1244
v. Recovery certificates issued	1086
vi. Children admitted to schools	3875
vii. Employment provided to affected families	154

7.6 The experience gained during the period under report is that the prosecution of cases instituted against the employers have been slow. The recovery of amounts at the rate of Rs. 20,000/- per child from the offending employers has been affected because of the stays on a number of cases of Recovery Certificates (RC) issued by the UP High Court. Though the follow-up action is found to be slow, the Commission has found that the District Authorities were fully alive to their responsibility. It has therefore noted, that the directions of the Supreme Court would be complied with fully. During the Special Rapporteur's visits to the Districts of the carpet belt in Uttar Pradesh, 3591 children were detected to be in hazardous occupations. Over 1000 of them have already been admitted to non-formal schools. Eighty-four of the 2649 affected families have received the benefit of employment of one member each; and 350 RCs have been issued to recover a total amount of Rs. 12,720 lakhs of which 67 have been stayed by the High Court. Recovery effected so far amounts to only Rs. 60,000/-. The DMs have been given specific targets and time schedules for ensuring compliance of the directions of the Supreme Court.

7.7 Non-formal education of children withdrawn from work received a boost in UP in 1999–2000, because of the involvement of the NHRC in the efforts of the UP Labour Department. The State earlier had only 120 National Child Labour Project (NCLP) schools. The number grew to 370 with the addition of 250 schools sanctioned in 1999–2000. Ninety of these were for the districts of the carpet belt—40 in Allahabad, 20 each in Bhadoi and Mirzapur and 10 in Varanasi. All of them had been sited in child labour prone areas and were running to the full capacity of 50 children each. The Special Rapporteur inspected some of these schools in Bhadoi, Mirzapur and Varanasi to see that all the components of the project—accelerated primary education, vocational training, supplementary nutrition and health-care—were receiving full attention. Irregularities and deficiencies pointed out by him received a positive response from the UP administration.

7.8 The Commission has involved the NGO sector in the non-formal education of child labourers and a number of such schools/training centres are functioning in the districts of the carpet belt. There has also been a distinct improvement in the level of awareness among the general public about child labour issues.

7.9 Further, the Commission has continued to interact with the carpet manufacturers and exporters, urging them to participate fully in the effort to eradicate child labour. The Special Rapporteur has also been in touch with the All India Carpet Manufacturing Association (AICMA) and the Carpet Export Promotion Counsel (CEPC) in order to involve them with the education of the children withdrawn from work.

7.10 The Commission has, in addition, been pointing to the need to substitute child labour with adult labour. A number of women have thus been provided vocational training in carpet weaving in Mirzapur, Bhadoi and Jaunpur districts with the help of NGOs. They are being helped, through various schemes of the Government, to acquire looms and work as individual or collective production units.

7.11 The intensified efforts in the carpet belt, with the growing involvement of the Commission, has increasingly helped to dispel the widespread myth that the economically disadvantaged do not want their children to be educated. The fact that the NCLP schools in the carpet belt are running to full capacity proves the contrary. More and more families whose children were engaged in child labour are approaching the authorities to admit their children in such schools.

7.12 To oversee the implementation of the provisions of the Bonded Labour (Abolition) Act, 1976, in the southern States of Andhra Pradesh, Karnataka, Tamil Nadu and Kerala, the Commission had appointed Shri K.R. Venugopal as its Special Rapporteur. Through his interactions and inquiries, the existence of bonded labour in the silk reeling and twisting units in Magadi and Ramanagaram came to be highlighted, and the Commission brought it to the notice of the State Government. This led to detailed discussions with the State

Government on the methodology required for the identification, release and rehabilitation of bonded labour in Karnataka. It was pointed out to the State Governments that other than assistance being provided under the centrally sponsored schemes for rehabilitation of released bonded labourers, assistance could also be considered under the Poverty Alleviation Programmes like the Indira Awas Yojana, Prime Minister's Rozgar Yojana and Sampurna Gramin Swarozgar Yojana. In addition, Collectors and District Magistrates of sensitive districts were asked to personally oversee the investigation of cases relating to bonded labour.

**7.13** As regards Gujarat, the Commission noted with scepticism the claim of the State Government that there was neither bonded labour nor child labour in that State. The interaction of Justice K. Ramaswamy, member of the Commission, with NGOs working in Gujarat revealed instead, the widespread use of child labour, particularly in the construction of roads and buildings in various municipal areas and also in the ship-breaking and diamond-cutting industries. The Commission accordingly directed its Special Representative in Gujarat, Shri P.G.J. Nampoothiri, to organize meetings of District Collectors in the affected areas, in consultation with the Chief Secretary and Additional Chief Secretary, Labour, Government of Gujarat, to discuss all aspects of this matter and to initiate appropriate remedial action. The Commission intends to pursue this matter.

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#### **PREVENTING EMPLOYMENT OF CHILDREN BY GOVERNMENT SERVANTS: AMENDMENT OF SERVICE RULES**

**7.14** The All India Services (Conduct) Rules, 1968, have been amended by the Central Government to prohibit the employment of children below the age of 14 years as domestic servants by Government servants employed in the All India Services, namely the Indian Administrative Service, Indian Police Service and the Indian Forest Service. This has been done upon the recommendation and insistence of the NHRC.

**7.15** The Commission had observed that employing children below and up to the age of 14 years for work by anyone was reprehensible, more so by any Government servant. It had thus urged that an appropriate change be made in the Conduct Rules of the Government Servants by both the Centre and States, which, while prohibiting such employment, would also make it a misconduct, inviting a major penalty. The Commission had been pursuing this matter with the Centre and the States since February 1997. The then Chairperson of the Commission had written to the Minister of State for Personnel, Public Grievances & Pension on this subject for the first time on 10 February 1997. He had subsequently written to the Chief Ministers of all States on 3 March 1997. On 13 December 1999, the present Chairperson, Justice J.S. Verma, wrote a further letter to the Chief Ministers of all the States that had not amended their Service Conduct Rules

(Annexure XIII). He has appealed to the State Governments to carry out the necessary amendments at the earliest.

**7.16** The Ministry of Personnel, Public Grievances & Pension amended the Central Services (Conduct) Rules, 1964, on 4 October 1999 and the All India Services (Conduct) Rules, 1968, on 1 February 2000. According to the amended rule, 'No Government servant/member of the Service shall employ to work any child below the age of 14 years'. The States of Andhra Pradesh, Assam, Goa, Himachal Pradesh, Jammu & Kashmir, Karnataka, Maharashtra, Madhya Pradesh, Mizoram, Sikkim, Tripura, Tamil Nadu and West Bengal have also amended the Civil Services (Conduct) Rules concerning their employees. The States of Arunachal Pradesh, Bihar, Gujarat, Haryana, Kerala, Meghalaya, Orissa, Punjab and Uttar Pradesh have informed the Commission that they are still in the process of considering the recommendations of the Commission to amend the Rules. The States of Manipur, Nagaland and Rajasthan are yet to respond to the Commission's letters written to them in this regard.

**7.17** The Commission is committed to pursuing this matter to a satisfactory conclusion.

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## **Quality Assurance in Mental Hospitals**

**8.1** The Commission remained seized with the problems of overcrowding, lack of basic amenities and poor medical facilities plaguing the mental hospitals in the country. It had earlier entrusted a research project on 'Quality Assurance in Mental Hospitals' to the National Institute of Mental Health and Neuro Sciences, Bangalore. Following the submission of a report on this subject by the project Director, Dr. S.M. Channabasavanna, the report was released to the public by the Union Home Minister Shri L.K. Advani on 11 June 1999. A copy of the report was handed to the Union Minister of State for Health Shri Dalit Ezhilmalai. Copies of the report were also sent to all the mental hospitals and to the State Health Secretaries for necessary follow up action. They were requested to apprise the Commission periodically on the progress of implementation of the measures recommended in the report, a matter which the Commission is pursuing.

**8.2** The Commission believes that implementation of the measures recommended in the project report would result in the protection of the rights of a group too often neglected. It urges this be done expeditiously.

**8.3** The management of the mental hospitals in Ranchi, Agra and Gwalior came under the scrutiny of the Hon'ble Supreme Court of India through Writ Petition No. 339/86, and Writ Petition Nos. 901/93, 80/94 and 448/94. By its order dated 11 November 1997, the Hon'ble Supreme Court requested the National Human Rights Commission to be involved in the supervision of the functioning of these three mental hospitals, in the same manner as in respect of the Agra Protective Home.

**8.4** Upon being entrusted with this work, the Commission examined the scope and objectives of the remit of the Supreme Court, as also the manner in which the Commission should set about fulfilling the responsibilities assigned to it. The Commission thereafter, constituted a General Advisory Group headed by the Chairperson of the Commission for the purpose of advising the Commission on the nature of the duties and responsibilities envisaged by the order of the Supreme Court; the various steps to be taken to achieve these objectives and to review the progress of work. Shri Sudarshan Agarwal, Member; Shri N. Gopalaswami, Secretary General; Shri R.V. Pillai, former Secretary General,



NHRC; Secretaries in the Ministries of Health and Social Justice and Empowerment; Chief Secretary, Government of Bihar and senior advocates of the Supreme Court are the other members of the Advisory Group. During the period under review, the three mental hospitals were visited by Shri Sudarshan Agarwal and Shri Pillai and comprehensive suggestions were made by them in respect of the better management of these institutions.

## Manual Scavenging

**9.1** The Commission has been deeply concerned about the continuance of the practice of manual handling of night soil in many parts of the country. It had therefore been in touch with the State Governments and the concerned departments of the Central Government on this matter. Further, in co-ordination with the National Commission for *Safai Karamcharis*, on 6 April 1999, the Commission organised a joint meeting with the competent authorities of the Central Government, to chalk out a combined strategy to find ways and means to end this degrading and inhuman practice.

**9.2** The meeting was presided over by the then Chairperson of the Commission, Justice M.N. Venkatachaliah. Among those who attended were Shri Ram Jethmalani, the then Minister of Urban Affairs and Employment; Smt Maneka Gandhi, Minister of State for Social Justice and Empowerment, Shri K.M. Muniyappa; Chairperson, National Commission for *Safai Karamcharis* and Dr. K. Ramalingam, Member, National Commission for *Safai Karamcharis*. It was the unanimous view of the participants that the practice of manual handling of night soil was a major social evil that had to be eradicated. Questions relating to the rehabilitation of persons engaged in manual scavenging, following the conversion of dry latrines into wet latrines, were also discussed. It was decided to set up a Group consisting of the Secretaries in the Ministry of Urban Affairs and Employment, Social Justice and Empowerment, Law and Justice and also a representative of the Planning Commission, at an appropriate level, to consider and make recommendations on the following issues:

- ❑ Whether a legislation in this matter was outside the competence of the Union Parliament and therefore necessitating recourse to the procedure envisaged under Article 252 or whether, in pith and substance, it was encompassed in the legislative field in entry 24 of List III.
- ❑ If the legislation was one under entry 24 of List III, could it, with appropriate amendments, be extended to the whole of India without reference to the legislatures of the States?
- ❑ Whether rehabilitation schemes could be funded in States which have not adopted the legislation.

- ❑ The mechanism for expediting the conversion of dry latrines into wet latrines, both in urban and rural areas.
- ❑ Programmes for rehabilitation of *Safai Karamcharis* relieved from the manual scavenging jobs.

**9.3** At the end of the period under reporting, the position in respect of the Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, was as follows:

**Central Act Applicable:** Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura, West Bengal and all Union Territories.

**Central Act Adopted:** Assam, Haryana, Orissa, Punjab, Gujarat, Bihar and Madhya Pradesh.

**Central Act adoption under consideration:** Rajasthan and Uttar Pradesh.

**State Act Enacted:** Tamil Nadu.

**No decision taken as yet:** Arunachal Pradesh, Kerala, Jammu & Kashmir, Himachal Pradesh, Meghalaya, Manipur, Mizoram, Nagaland and Sikkim.

## Problems of Denotified and Nomadic Tribes

### ADVISORY GROUP ON DENOTIFIED AND NOMADIC TRIBES

**10.1** The Commission had received a petition from the Denotified and Nomadic Tribals Rights Action Group highlighting the problems faced by the Denotified Tribes who are present in varying concentrations in a number of States. The petition alleged that persons belonging to the Denotified Tribes were still being treated as habitual offenders and faced mob-lynching, arson and police brutality. On consideration of the petition, an Advisory Group on Denotified and Nomadic Tribes was set up to advise the Commission as to the nature of enquiry that it may undertake, as well as the recommendations that it could make to deal with the issues raised in the petition.

**10.2** On 15 February 2000, the Commission held a high-level meeting to discuss the specific problems of Denotified Tribes and Nomadic Tribes (DNTs & NTs). The meeting was attended by the Chairperson and all the members of the Commission; Smt Mahasveta Devi, President, and Dr. G.N. Devy, Secretary of the Denotified and Nomadic Tribals Rights Action Group; Chief Secretaries of Karnataka, Rajasthan and West Bengal; Additional Chief Secretaries of Madhya Pradesh and Maharashtra; Principal Secretaries of Andhra Pradesh, Gujarat and Punjab; Secretary Home, Gujarat; Joint Secretary, Ministry of Home Affairs and senior officers of NHRC.

**10.3** There was a general consensus that the Habitual Offenders Act was rarely invoked and there were hardly any cases being registered under the Act. It was therefore agreed that the Act could be repealed with the recommendation of the National Human Rights Commission. The other decisions taken at the meeting are indicated below.

**10.4** Depending upon the spread of population of the Denotified Tribes and Nomadic Tribes (hereinafter referred to as DNTs and NTs) in the State, each State shall decide on the kind of specific apparatus required for dealing with the special requirements and problems of DNTs and NTs and cases of atrocities against them and report the same to the Commission.

**10.5** A retired senior police officer of high reputation shall be appointed in every State by the Commission to liaise with the tribals and report about their problems and cases

of atrocities against them to the Commission as well as to the State Government. The Commission's Special Rapporteurs and the State Human Rights Commissions will also associate themselves with this work.

**10.6** The entire State machinery, specially police officers, are to be sensitised, the effort and initiation whereof have to be taken at the State level. The Commission will also take up the matter of appropriate training with the National Police Academy.

**10.7** Proper enumeration of the DNTs and NTs throughout the country will be made, other than in cases where all such tribes had been merged into SC/ST/OBC categories. While it is likely that there may be variations in the requirements of earlier DNTs and NTs now merged into the SC/ST/OBCs category, this matter might require separate treatment with respect to distinct territories. The Ministry of Home Affairs has been asked to provide statistics in this regard to facilitate the enumeration on the basis of available records.

**10.8** It was decided to provide better access to education, employment and other infrastructural facilities to DNTs and NTs. Where they have been merged into SC/ST/OBCs category, they will be entitled to such facilities as are made available to the respective category.

**10.9** The States have been asked to work out an Action Plan, with specific provisions in their Annual Plans, for the requirements and the special problems of these groups. The Planning Commission will be apprised in the matter of their specific problems. It was also decided that the survey of the socio-economic conditions of such tribes should be undertaken. The Commission is monitoring the follow-up action by the States.

## **Torture Convention and the Delhi Symposium**

**11.1** The National Human Rights Commission of India (NHRC) and the International Rehabilitation Council for Torture Victims (IRCT), Copenhagen, in collaboration with the Indian Medical Association and the Indian Law Institute organised the Eighth International Symposium on 'Torture as a Challenge to the Health, Legal and other Professions', between 22–25 September 1999, in New Delhi.

**11.2** This symposium, the eighth in a series—the preceding one having been held in South Africa in 1995—was a major international event focussing on human rights issues relating to torture and the rehabilitation of torture victims. While earlier symposia had been organized mainly by the medical profession and focussed essentially on their work and responsibility, the sponsors of the eighth symposium believed that legal and other professions, the media, and more widely, civil society should also be fully associated with efforts to tackle this serious problem. Participants at the symposium thus included, in addition to health and legal professionals, representatives of the media, NGOs, human rights activists and national human rights institutions.

**11.3** Ms. Mary Robinson, the UN High Commissioner for Human Rights, and Justice M.N. Venkatachaliah, the then Chairperson of the National Human Rights Commission of India, were the patrons of the symposium held at the Vigyan Bhavan, New Delhi. The Chief Justice of India, Justice A.S. Anand, inaugurated the proceedings on 22 September 1999. A large number of delegates from India and abroad participated, including the President IRCT, Secretary General IRCT, Deputy Secretary General IRCT, the Special Advisor to the UN High Commissioner for Human Rights and representatives of many National Human Rights Commissions and State level Human Rights Commissions. The symposium concluded on 25 September 1999 with the adoption of the 'Delhi Declaration—A Plan of Action' to counter the menace of torture (see Annexure XIV). The former President of India, Mr. R. Venkataraman, was the Chief Guest at the valedictory function of the symposium.

**11.4** From the deliberations, it was felt that action was required on the following matters in the Indian context:

- Early ratification of the UN Convention against Torture by the Government of India.

- ❑ An examination of national laws and their revisions as needed, to deal comprehensively with the prosecution of those who engage in torture and to provide reparation to the victims of torture.
- ❑ An intensified effort by the Government, national institutions, NGOs and other concerned elements of civil society to promote a culture of non-violence and respect for human rights.
- ❑ Greater involvement of all components of civil society, including health, legal and other professions, as well as NGOs and the media in the fight against torture.
- ❑ Special consideration to practical ways of protecting women and children against torture.
- ❑ Sensitisation of the political leadership to issues concerning torture.



## Promotion of Human Rights Literacy and Awareness

### MOBILISING THE EDUCATIONAL SYSTEM

**12.1** Respect for the human rights of all, and the realization of such rights, requires a continuous effort to evolve a culture that is sensitive to the basic needs of every human being, in a society that ensures equity and justice to every individual and every group. Human rights education is essential to the creation of such a culture and society. The Commission has, since its inception, been deeply involved with the effort to introduce human rights education in the curriculum of school going children and also at the university level in order to promote a deeper understanding of human rights. It has also continuously encouraged the endeavours of a large number of NGOs that have been doing significant work in the area of human rights education. A full account of the steps taken by the Ministry of Human Resource Development, the NCERT and the NCTE to introduce human rights education at the school level are contained in earlier reports of the Commission.

**12.2** In respect of human rights education at the university level, by the end of March 2000, degree courses had been introduced in the Aligarh Muslim University, Aligarh; the Cochin University of Science and Technology, Cochin; the Andhra University, Visakhapatnam; the MS University of Baroda, Vadodara; the Banaras Hindu University, Varanasi; and the Shri Venkateshwara University, Tirupati. Diploma courses on Human Rights had been introduced in the University of Mumbai; the Nagpur University; the Jamia Millia Islamia University, New Delhi; the Saurashtra University, Rajkot; the University of Madras, Chennai; the University of Jammu; the Pondicherry University; and the University of Mysore. Certificate courses had been introduced in the Saurashtra University, Rajkot; the University of Madras, Chennai; the University of Jammu; the Pondicherry University; the University of Mysore; the Devi Ahilya Vishwavidyalaya, Indore; the National Law School of India University, Bangalore; and the Berhampur University, Berhampur.

12.3 In the course of the year, the Maharaja Agrasen College, Delhi, sought the Commission's observations on its proposed syllabus for B.A. (Hons) Human Rights. As other such representations were also received by the Commission, concerning the contents of courses to be taken at the certificate/diploma/degree and post-graduate levels on human rights, the Commission asked the University Grants Commission to constitute a Curriculum Development Committee in order to ensure a certain degree of uniformity in the course content and standard of teaching on human rights at these levels. On 17 February 2000, the University Grants Commission constituted a Curriculum Development Committee on Human Rights and Duties Education, under the convenorship of Justice Shri V.S. Malimath, former member of the NHRC to frame the curricula for a two-year post-graduate degree course, a one-year post-graduate degree course, a three to four month certificate course and an undergraduate level foundation course in Human Rights and Duties Education.

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#### HUMAN RIGHTS EDUCATION FOR POLICE PERSONNEL

12.4 The Commission has persisted in its efforts to strengthen the training of police personnel in respect of human rights. In particular, the Investigation Division has monitored the endeavours of the State Governments in this respect. It is gratifying to note that the police authorities of all the States of the country have implemented this training syllabus, and are making sustained efforts to sensitise their men. A number of States have also organized workshops on human rights, and issues relating to human rights are being given increased weightage in their regular training curricula. There continue to be numerous demands for teaching material on human rights addressed to the Commission by the Directors General of Police of various States. The Commission requested Shri K. Krishnamurthy, Additional DGP, Karnataka, to prepare draft teaching material that could be provided to all States. It is expected that this material will shortly be ready for circulation to all concerned.

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#### HUMAN RIGHTS EDUCATION FOR PARA-MILITARY AND ARMED FORCES PERSONNEL

12.5 The Commission continued to accord high priority to the training of personnel of the armed and para-military forces of the country in human rights. The final shape to the training syllabus on human rights for the para-military forces was given after detailed discussions with the Directors General of the Central Police Organisations (CPOs)/para-military forces. The approved syllabus was circulated to all the Directors General of the CPOs for implementation in the basic and in-service courses for their officers and men. The training syllabus circulated by the Commission has been appreciated by all the CPOs, who have confirmed that it would serve to motivate and sensitise all ranks. The Director

General and the officers of the Investigation Division have continued to participate in various workshops organized by CPOs and armed forces from time to time.

**12.6** As part of continued efforts of the Commission to spread awareness on human rights amongst the para-military forces, the tradition of holding a national level debate competition on human rights was maintained in the year 1999–2000. The subject of the debate during the current year was 'The concept of human rights in combating terrorism and militancy'. It was organised by the BSF on 31 March 2000 in New Delhi and adjudicated by a distinguished panel of judges under the Chairmanship of a member of the Commission, Justice Dr. K. Ramaswamy. The debate was organized both in English and Hindi and there were 24 participants in the competition. It was attended by a large number of officers and men of the para-military/armed forces, NGOs, eminent educationists and representatives of the media. The Chairperson, NHRC, presented the winning CRPF team with the running trophy.

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### NATIONAL INSTITUTE OF HUMAN RIGHTS

**12.7** In a major effort to establish a centre of excellence for human rights education, the Commission has set up the National Institute of Human Rights (NIHR) at the National Law School of India University, Bangalore. A Chair on Human Rights was also created with the assistance of this Commission. The Institute was inaugurated on 7 August 1999, at a function in which the Chairperson and the members of the Commission were present. This occasion also coincided with the sanctioning of a project, to NIHR by the Australian High Commission upon the recommendations of this Commission. This project was aimed at developing the capacity of the NIHR and strengthening domestic infrastructure to promote and protect human rights. A sum of A\$ 25,000 was sanctioned under the Australian Human Rights Fund Small Grants Scheme. The project consisted of conducting a foundation course on human rights for newly appointed judges, a refresher course for Sessions Judges already in position and the preparation and printing of a human rights manual with guidelines. The NIHR has already organized a Human Rights Sensitisation Workshop for Judges at the Karnataka Judicial Academy, Bangalore, and a Continuing Education Programme for judicial officers at the Andhra Pradesh Judicial Academy, Secunderabad. The Commission was closely associated with both the programmes. Action for preparation of the manual is also underway. On being finalised, the manual will be made available to judicial officers and also the national and state police academies.

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### INTERNSHIP SCHEME

**12.8** With a view to spreading an awareness of human rights issues among university students, the Commission devised a 'Summer Internship Programme' in the year 1998,

aimed at associating students with the Commission for six weeks every year, during their summer vacations. The Summer Internship Programme—1999 was held for a period of 45 days from 17 May 1999 to 30 June 1999. Eleven students of Law, Political Science, Sociology and Criminology from the Universities of Andhra Pradesh, Karnataka, Rajasthan and Bihar participated in the programme. Apart from the Summer Internship 1999, three students from the National Law School of India University, Bangalore, were given short-term placements in the Commission during the period November–December 1999 and five others during the period January–February 2000.

**12.9** A Human Rights Officer from the Danish Centre for Human Rights worked in the Commission on a Research Project on 'The Conditions of Juvenile Homes and Other Institutions/Homes Set-up under Different Statutes', from 6 January 1999 to 13 August 1999. A report on the topic 'From Neglected and Delinquent Juveniles to the Neglect and Delinquency of Indians—A Study of the Juvenile Justice System in India, in Particular the Juvenile Justice Act, 1986' was submitted to the Commission thereafter.

**12.10** Two other university students, one from Bochum University, Germany, and the other from the Fletcher School of Law & Diplomacy, Tufts University, USA, were also given placement in the Commission during the year.

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## **TRAINING MATERIAL FOR STAFF OF HUMAN RIGHTS COMMISSIONS**

**12.11** The Commission constituted a Core Group in November 1998 with the task of preparing training material for the staff of the National; and State Human Rights Commissions. The Group consisted of representatives from the NHRC; the National Commission for Women; Punjab and Himachal Pradesh State Human Rights Commissions; the Indian Institute of Public Administration; the National Institute of Criminology and Forensic Science; Prof. Hargopal of Central University, Hyderabad; and Shri Joseph Gathia, Executive Director, Centre of Concern for Child Labour. During the course of the year, a sub-group drew up the curriculum. The report of the Core Group as a whole, covering the curriculum, training manual, resource persons, training schedule and list of institutions for the training programme is expected to be made available during the course of the next year.

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## **CONFERENCES, SEMINARS AND WORKSHOPS**

**12.12** A number of major seminars and workshops were held under the aegis of the Commission during the year. They were organized in collaboration with NGOs, international organisations working for human rights, State Human Rights Commissions and academic institutions.



**12.13** The Commission took part in the 55<sup>th</sup> Session of the United Nations Commission on Human Rights, during consideration of the item on National Institutions, between 19–22 April 1999 in Geneva. Some 20 National Institutions took part in the debate. In an important development, the UN Commission on Human Rights made special arrangements for the participation of National Institutions in their own right, and with a status distinct from others, in the proceedings of the Commission.

**12.14** Parallel to the proceedings in the UN Commission on Human Rights, the International Coordinating Committee (ICC) of the National Institutions for the Promotion and Protection of Human Rights, which is the apex body of National Institutions, held its annual meeting. The National Human Rights Commission of India was unanimously elected to continue for the fourth consecutive year as the chair of the ICC. The meeting was addressed, among others, by Ms. Mary Robinson, UN High Commissioner for Human Rights.

**12.15** The NHRC was represented at this meeting by its members Shri Virendra Dayal and Justice Shri V.S. Malimath. Addressing the Session on behalf of the Commission, Shri Virendra Dayal expressed his happiness at the arrangements made for National Institutions to participate in their own right in the work of the UN Human Rights Commission, and expressed the hope that National Institutions which are independent and based on the 'Paris Principles' would be accorded a similar right of participation in other meetings of the United Nations where human rights were the focus. He felt this to be necessary, as National Institutions had a voice and a competence that was distinct from that of both Governments and NGOs.

**12.16** A seminar was held in New Delhi on 1 July 1999 as part of the Indo-British Project on Prison Reforms, which was jointly undertaken by the Commission, the British Council, the Bureau of Police Research and Development and PRAJA, an NGO. The seminar discussed jail management and training in India and the role of the judiciary in the protection of human rights. It also looked into the changing practices in prisons all over the world, with a view to improving respect for human rights within prisons. The seminar was attended by Mr. Justice M.N. Venkatachaliah, Chairperson of the Commission; Sir Rob Young, the British High Commissioner in India and other dignitaries.

**12.17** A National Workshop on Human Rights Education was organized at the Indian Social Institute on 27 August 1999. The workshop, which was attended by more than a hundred academics, researchers, human rights activists and representatives of the Central and State Governments, emphasised that the content of human rights education must be broad-based, and in devising the content, efforts should be made to draw upon the talents of not only all governmental bodies concerned, but also of scholars, intellectuals and leading NGOs and human rights activists. Human rights education in the country must be stimulated from the primary school level to the university level, and must involve

all elements of society, including political parties. The workshop stressed the full and speedy implementation of free and compulsory education for all children of India up to the age of 14 years.

**12.18** Shri Virendra Dayal, Member, represented the Commission in the Fourth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions and in a Seminar on the role of National Institutions in implementing the Conventions on the Rights of the Child, held in Manila from 6-8 September 1999 and on 9-10 September 1999 respectively. The meetings discussed, in particular, issues relating to the role of National Human Rights Institutions in promoting economic and social rights and the rights of women and children. Other matters considered included cooperation between National Institutions and NGOs, the death penalty and human rights, national action plans, the issue of child pornography on the Internet.

**12.19** The National Human Rights Commission of India (NHRC) and the International Rehabilitation Council for Torture Victims (IRCT), Copenhagen, in collaboration with the Indian Medical Association and the Indian Law Institute, organized the Eighth International Symposium on 'Torture as a Challenge to the Health, Legal and other Professions', from 22-25 September 1999, in New Delhi. The symposium made far-reaching recommendations to end the evil practice of torture.

**12.20** The Commission was represented at a Judicial Symposium on Refugee Protection, held in New Delhi on 13-14 November 1999 by Member Shri Virendra Dayal. The symposium was co-hosted by the United Nations High Commissioner for Refugees and the Supreme Court Bar Association. Shri Ram Jethmalani, the then Minister of Law, Justice and Company Affairs, Government of India, gave the introductory address. Amongst the other dignitaries who graced the symposium were former Chief Justices of India Justice Shri P.N. Bhagawati and Justice Shri Ranganath Misra, Judges and former Judges and Senior Advocates of the Supreme Court, officers of UNHCR, Senior Judges of the Supreme Court of Nepal and Bangladesh.

**12.21** The symposium dealt with the status of refugees the world over and the available means to protect them. Special emphasis was placed on the problems of refugees in India and the constitutional provisions and role of the Courts in helping them.

**12.22** The National Human Rights Commission, along with the Department of Women and Child Development (DWCD) and UNICEF, organised a symposium on 20 November 1999 to commemorate the 10th Anniversary of the Convention of the Rights of the Child.

It was on this date, in 1989, that the Convention was adopted by the United Nations General Assembly. Sixty-one countries, in an unprecedented first-day response for any United Nations treaty, signed the Convention on that date itself. Today, the Convention is the most universally accepted human rights treaty in history, having been ratified by all but two countries. India acceded to the Convention on 11 December 1992.



**12.23** The symposium reiterated that care and protection should be considered as enforceable rights of the child and not merely welfare measures. Constitutional requirements prohibiting the employment of children in hazardous industries should be strictly enforced, and an industry should be declared to be hazardous if it is dangerous to children, even if not necessarily to adults.

**12.24** Human Rights Day, which is observed on 10 December each year to commemorate the adoption of the Universal Declaration of Human Rights by the UN General Assembly, was celebrated by the National Human Rights Commission at a function organized on that day during the year under review.

**12.25** Mr. Justice M.N. Venkatachaliah was the Chief Guest at the function and spoke on the Criminal Justice System and Human Rights. The UN Secretary General's message for the day was read out on the occasion. Justice Venkatachaliah also released two booklets published by the Commission. They were the do's and don'ts in respect of arrest, titled 'Guidelines regarding Arrest' and the 'Convention on the Right of the Child' published in both English and Hindi. Awards on 'Creative Writings on Human Rights in Hindi', a scheme which was introduced by the Commission in September 1998 in order to encourage original writings in Hindi on subjects dealing with human rights, were also given away on the occasion. In addition, Justice Venkatachaliah released a Special Day Cover on Human Rights Day brought out by the Department of Posts. The Cover provided a visual presentation of the wording of Section 2(d) of the Protection of Human Rights Acts, superimposed on the logo of the Commission. The cancellation stamp contained the Commission's logo and the purpose of the Special Day Cover.

**12.26** A two-day National Seminar entitled 'Towards an Enabling Legal Environment: Rights of Persons with Disabilities' was organised by the Indian Law Institute, New Delhi, in collaboration with the National Human Rights Commission, the Institute for the Physically Handicapped and the Rehabilitation Council of India from 30-31 March 2000 at the Indian Law Institute, New Delhi. The symposium drew attention to the many problems facing persons with disabilities in the country and the apathy of the government and the society towards them. It also made a number of recommendations that could be of notable help in assisting persons with disabilities to lead normal lives.

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## PUBLICATIONS AND THE MEDIA

**12.27** As indicated earlier in this report, during the year, the Commission published three important studies—State of the Art Forensic Sciences: For Better Criminal Justice, Large Volume Penetrals: Towards Zero Defect, and Quality Assurance in Mental Health. Each of these was well received and in considerable demand amongst human rights activists, scholars, health professionals and the legal fraternity.

**12.28** The monthly newsletter of the Commission continued to provide a steady flow of information relating to the work, programmes, major decisions and concerns of the Commission. These are now available on the Commission's web page along with back issues. The demand for newsletters continued to rise, a number of requests being received from individuals and organizations to be included in the mailing list. The Commission mails more than 4000 newsletters to places within and outside India every month.

**12.29** Twenty newspapers are scanned daily in the Commission and all news items relating to human rights are clipped and filed in a computerised database, facilitating retrieval of important clippings topic-wise, date-wise and newspaper-wise. The clippings serve as an important source of information to the Commission for taking suo motu action. The clipping service is also of immense use to researchers, students and media persons working on human rights related issues. They are provided easy access to these clippings.

**12.30** The print and visual media continued to be of great value to the Commission in its work of protecting human rights and creating awareness amongst the general public. In addition to providing the basis for much of the suo motu action taken by the Commission, the media readily carried the views of the Commission through coverage of its daily activities and through interviews of the Chairperson and members. The press releases and the press briefings of the Commission were also widely used, not least in respect of the decisions of the Commission in respect of individual complaints. Indeed, the Commission is indebted to the media for helping it come closer to the people of India in all parts of the country. This has been an inestimable contribution to the cause of human rights.

**12.31** The Commission also worked with a number of film and television serial makers by providing them with case studies, on the basis of which they have made their films.

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## RESEARCH PROGRAMMES AND PROJECTS

**12.32** The Commission continued to pursue a variety of programmes and projects in pursuance of its statutory responsibility to undertake and promote research in the field of human rights. Issues relating, inter alia, to the elimination of bonded and child labour, the prevalence of iron deficiency and its deleterious consequences on women and children, especially girls, child prostitution and quality assurance in mental hospitals were regularly discussed in the Commission's weekly programme agenda and in meetings of the Full Commission, held every quarter, at which were also present the Chairpersons of the National Commission for Minorities, the National Commission for SCs and STs, and the National Commission for Women.

**12.33** As indicated earlier in this report, the studies on the three major projects undertaken on behalf of the Commission, viz., State of the Art Forensic Sciences: For Better Criminal Justice, Large Volume Parenterals: Towards Zero Defect and Quality Assurance in Mental Health, were released by Shri L.K. Advani, Home Minister of India, in a brief ceremony on 10 June 1999. The Commission adopted the recommendations contained in these studies and copies of these were sent to the concerned authorities in the Centre and the States requesting them to take action to implement the recommendations contained therein. The Commission is pursuing this matter.

**12.34** During the year under report, the Commission, in collaboration with UNICEF, organized a series of Regional Workshops on the role of the electronic media in promoting the right of the child to be protected from sexual exploitation and abuse. The workshops were held in Goa in October 1999, in Ranchi in November 1999, and in Jaipur in February 2000. In this series, a concluding workshop was scheduled to be organized in Puri in May 2000.

**12.35** It will be recalled that the Commission had set up a Chair on Human Rights at the National Institute on Human Rights in the premises of National Law School of India University, Bangalore. During the year, the Commission received reports on the following Research Projects that had been referred by it to the NIHR:

- ❑ Imminent problems connected with the spread of HIV infection and human rights concerns of privacy and dignity of HIV positive persons.
- ❑ The First Optional Protocol to the International Covenant on Civil and Political Rights and the question of its ratification by the Government of India.
- ❑ The Second Optional Protocol to the ICCPR and options before India.
- ❑ International Convention on the Protection of the Rights of all Migrant Workers and their Families: a plea for India's ratification.
- ❑ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: the case for early ratification.
- ❑ The question of jurisdiction of human rights courts under Section 30 of the Protection of Human Rights Act, 1993.
- ❑ Right to Speedy Trial, a compendium of guidelines for speedy trial derived from the decisions of the Apex Court of India.
- ❑ Eye donation and transplantation of cornea: national and international dimensions.
- ❑ Narcotic Drugs and Psychotropic Substances Act: agenda for reform from human rights perspective.
- ❑ Group Accident Insurance Scheme for Fish Workers—an analysis and a proposal.

**12.36** The Commission has initiated action, as appropriate, on these reports.

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## Non-Governmental Organizations

13.1 The work of non-governmental organisations (NGOs) is essential to the empowerment of civil society. It is for this reason that the National Human Rights Commission is called upon by the Protection of Human Rights Act, 1993 [Section 12(I)] to 'encourage the efforts of non-governmental organisations and institutions working in the field of human rights'.

13.2 In order to promote this objective more comprehensively, the Commission is planning to set-up an 'NGO—Liaison and Service' unit under its Projects and Programmes Division. The idea is to create a database of active and credible NGOs in the field of human rights and to promote networking amongst them and the Commission.

13.3 Non-governmental organisations continued to be the eyes and ears of the Commission, greatly facilitating its work and also serving as its sharpest critics. Ties with NGOs continued to proliferate all over the country, in fields as varied as matters relating to human rights complaints, human rights education, research, counselling and practical programmes for groups whose human rights were in jeopardy or needing promotion or protection.

13.4 It was heartening to observe that the number of NGOs in regular contact with the Commission has continued to increase, as indicated in the growing list of NGOs maintained by the Commission. This list has helped the Commission in its work in diverse parts of the country, when it has, time and again, needed to seek the help of local NGOs.

13.5 For its part, the Commission has also continued to assist NGOs and others in organizing programmes of relevance to human rights, providing modest financial support when appropriate. Amongst those assisted in the course of the year were the Indian Society of International Law, New Delhi, which received a grant of Rs. 25,000/- for starting a Post-graduate Diploma Course in Human Rights and International Humanitarian and Refugee Law; the Centre of Concern for Child Labour, Delhi, was given Rs. 25,000/- for organizing a workshop on 'Elimination of the Worst Forms of Child Labour: New Global Cause', held on 28–29 October 1999. The University of Pune was given Rs. 50,000/- for organizing a three day national seminar on Human Rights and the Criminal Justice System in India, in March 2000. The Indian Law Institute, New

Delhi, received a grant of Rs. 1 lakh from the Commission for holding a two day national seminar entitled 'Towards an Enabling Legal Environment: Rights of Persons with Disabilities', on 30 March 2000. A grant of Rs. 30,000 was given to Mohan Lal Sukhadia University, Udaipur, for organizing a two day national seminar on 'Status of Human Rights in South Rajasthan: Issues and Problems', held on 30-31 March 2000.



## Legal Profession and the Commission

**14.1** The Commission is immensely grateful for the ready help that it has been receiving from luminaries of the legal fraternity. A former Chief Justice of the Supreme Court of India, Justice Shri A.M. Ahmadi, most kindly agreed to head an Advisory Committee established by the Commission to examine the Protection of Human Rights Act, 1993 and to make recommendations to make it more effective. The Commission is also deeply indebted to Justice Shri Rajinder Sachar, Justice Shri P.C. Balakrishna Menon, Dr. Rajeev Dhavan, and Prof. N.R. Madhava Menon for agreeing to serve as members of that Advisory Committee.

**14.2** A number of cases have been filed by individuals/NGOs either before the Supreme Court or before the different High Courts of the country, wherein the Commission is either a respondent or an intervenor. In a few cases, the Commission is itself a petitioner. In all such instances, the Commission has most readily been assisted by distinguished members of the bar. The Commission would like to express its gratitude to Shri A.S. Bobde, Senior Advocate, Bombay High Court; Dr. Rajeev Dhavan, Senior Advocate, Supreme Court; Shri A.D. Giri, Senior Advocate, Allahabad High Court; Shri R. Krishnamurthy, Senior Advocate, Madras High Court; Shri A.N. Jaya Ram, Senior Advocate, Karnataka High Court; Shri S. Muralidhar, Advocate, Supreme Court; Shri F.S. Nariman, Senior Advocate, Supreme Court; Shri S. Ramachandra Rao, Senior Advocate, Andhra Pradesh High Court; Justice R.S. Sodhi (prior to assuming his present office); Shri Soli J. Sorabjee, Attorney General (prior to assuming his present position); Shri M.S. Sethi, Senior Advocate, Punjab & Haryana High Court, Shri R. Venkataramani, Senior Advocate, Supreme Court and others for representing the Commission before different courts and for the views and expert opinions which they have given to the Commission upon its request.

**14.3** On 14 October 1999, the Commission organised a function to convey its gratitude and felicitations to those from the bar who had assisted it. The Commission was deeply gratified that many of those listed above were able to attend the function, where they were presented with mementoes by the Chairperson of the Commission.

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## **State Human Rights Commissions and Human Rights Courts**

**15.1** The Protection of Human Rights Act, 1993, envisages the setting up of State Human Rights Commissions, because, being nearer to the people of the respective States, they should be able to provide speedier and less expensive redressal of grievances. The National Human Rights Commission, for its part, has therefore been urging the early establishment of State Human Rights Commissions in all States.

**15.2** Successive Chairpersons have, accordingly, both written to and spoken with the Chief Ministers of States, impressing on them the need to set up Human Rights Commissions. On 31 March 2000, the position was as follows:

- ❑ State Human Rights Commissions had been established in Assam, Himachal Pradesh, Jammu & Kashmir, Kerala, Manipur, Madhya Pradesh, Punjab, Rajasthan, Tamil Nadu and West Bengal.
- ❑ The States of Bihar, Maharashtra and Orissa had issued notifications constituting State Human Rights Commissions. However, these had not yet been established.

**15.3** The National Human Rights Commission has observed with some concern, that though by 31 March 2000, two to three months had passed since notifications were issued by Bihar, Maharashtra and Orissa, the respective State Governments had not taken the concrete steps required to make the Commissions functional. Further, while Rajasthan had issued its notification on 18 January 1999, the appointment of the Chairperson and members was made only in March 2000.

**15.4** As regards Uttar Pradesh, it will be recalled that the State Government issued a notification to establish a State Human Rights Commission on 4 April 1996. However, given the delay in actually constituting the State Commission, a PIL was filed in the High Court of Allahabad in September 1998. The NHRC became a party to the PIL and was represented by Shri A.D. Giri. During the pendency of the writ petition, the Government of Uttar Pradesh proceeded to cancel the notification issued under Section 21(1) of the Protection of Human Rights Act, 1993 with a view to rendering the writ petition infructuous. The High Court, however, took serious objection to this, and in March 2000,

directed the State Government to constitute the State Human Rights Commission within four months.

15.5 The National Human Rights Commission, meanwhile, has continued to hold meetings with the Chairpersons and members of the existing State Human Rights Commissions with a view to developing healthy conventions in the functioning of the various Commissions and to ensure that, in their effort to promote and protect human rights in the country, they work together smoothly and to the maximum benefit of all of the people of this country. However, the National Human Rights Commission cannot but observe once again, that it is disappointed with the slow pace with which State Governments are acting to constitute State Human Rights Commissions. It has also noted that not all the State Human Rights Commissions that have been established, are being appropriately supported through the provision of adequate financial and manpower resources. It strongly recommends, that those State Governments that have not yet constituted Human Rights Commissions, do so at the earliest, and that wherever such Commissions have been constituted, they be provided the backing that is essential to their proper functioning.

## Complaints before the Commission

### NUMBER AND NATURE

**16.1** The total number of complaints registered in the Commission in 1999–2000 was 50,634, a 24.3% increase over the cases registered in 1998–99. The increase provides evidence of the growing determination of the people of India to defend their rights and their faith in the instrumentality of the Commission to do so. Once again, the State of Uttar Pradesh accounted for the largest number of complaints. The 28,598 cases registered from this State accounted for 56.5% of the total complaints received by the Commission during 1999–2000. Bihar followed Uttar Pradesh, with 4,409 complaints, and Delhi was third, with 3,077 complaints.

**16.2** During the year under review, the Commission had a total of 51,159 cases to consider, of which 525 were carry over cases of 1998–99. During the year, the Commission considered 47,819 cases. At the end of this period, 3,340 cases were pending consideration of the Commission. Of the cases that were considered, 20,934 were dismissed *in limini* and 5,941 were disposed of with directions to the appropriate authorities. The Commission took cognizance of 20,944 cases for further action; of which 1,406 were concluded and 19,538 were pending, most awaiting reports asked for by the Commission from different authorities. Thus, during this period, the Commission disposed of a total of 28,281 cases.

**16.3** As far as custodial deaths reported to the Commission are concerned, they showed a decline from 1,286 in 1998–99 to 1,093 in 1999–2000. Of the latter, 177 deaths occurred in police custody and 916 in judicial custody. Maharashtra reported the highest number of deaths in police custody, 30 such cases being reported this year; this was followed by 19 from West Bengal and 18 from Madhya Pradesh. In 1998–99 and 1997–98, custodial death cases in police custody were 180 and 191 respectively. Over the past years, the highest numbers of deaths in police custody have been reported from the States of Andhra Pradesh, Uttar Pradesh, Maharashtra, Madhya Pradesh and Assam.

**16.4** In the year 1999–2000, the maximum number of deaths in judicial custody occurred in Bihar—155 such cases were reported from the different jails in that State, followed by 141 in Uttar Pradesh and 126 in Maharashtra. In total, however, the number of deaths in judicial custody came down from 1,106 in 1998–99 to 916 in 1999–2000.

The guidelines issued by the Commission requiring regular medical checks and health care for prisoners and periodic reporting to the Commission, thus appear to be having some effect. In addition, the involvement of many NGOs, in particular Rotary International, has had a beneficial consequence on the health of prisoners. Further, the vigilance of the Commission has increased, not least through the efforts of its Special Rapporteur, who is the Chief Coordinator of the Custodial Justice Programme. Constant monitoring by him, and members of the Investigation Division, has made evident the concerns of the Commission to all State Governments and prison administrators.

**16.5** It must be made clear, however, that many of the custodial deaths reported to the Commission are not the result of custodial violence. According to the guidelines issued by the Commission, every death in custody including deaths reportedly occurring from natural causes, are to be reported to the Commission within 24 hours of occurrence. It is also important to observe that the word 'custody', as used in Section 27 of the Indian Evidence Act, 1872, does not only mean formal custody. An accused is in police custody when he is under surveillance of the police and cannot break away from the company of a police officer. The word 'custody' as interpreted in various decisions of the courts, might well include conditions such as surveillance, interrogation before arrest etc., irrespective of whether such measures have been formally authorised or not.

**16.6** Of the total number of cases admitted for disposal during 1999–2000, 54 cases pertained to disappearances, 1,157 cases were about illegal detention/illegal arrest, 1,647 cases were of false implications and 5,783 complaints against the police pertained to other issues. During this period, the Commission received 59 cases pertaining to indignity to women, 511 complaints about jail conditions and 341 cases of atrocities against SCs/STs; 5,443 complaints pertained to failure in taking action.

**16.7** A state-wise list of the number of cases registered/considered by the Commission and pending consideration is at Annexure XV. A state-wise list of cases dismissed *in limini*, cases disposed off with directions, cases concluded and cases pending before the Commission is at Annexure XVI. The cases admitted for disposal during the period 1 April 1999 to 31 March 2000 have been categorised. The categories in which the cases have been divided include custodial deaths, custodial rapes, disappearances, illegal detentions/arrests, false implications, other police excesses, failure in taking action, indignity to women, terrorist/naxalites violence, jail conditions and atrocities on SCs/STs. A state-wise list is given at Annexure XVII.

**16.8** Record-keeping has improved in the Commission, and in the process, certain discrepancies came to light, one such being the duplicate entries in the reported cases of custodial deaths for the years 1997–98 and 1998–99, which have since been corrected. The corrected figures of custodial deaths are 998 and 1,286 respectively, against the earlier recorded figures of 1012 and 1297 respectively (Annexure XVIII).



16.9 From its inception up to 31 March 2000, the Commission has ordered compensation in 598 cases. The total amount of compensation that has been ordered is Rs. 7,67,83,634/-. The Commission urges the States to respond promptly and also ensure strict adherence to the different guidelines issued by the Commission from time to time, which will help the Commission to dispose of cases more promptly.

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## INVESTIGATION OF CASES

16.10 The Investigation Division was directed to look into 1,747 cases by the Commission during the period 1999–2000. Of these cases, 1,586 cases were related to collection of facts and monitoring. Field investigations were conducted in 161 cases.

16.11 On the basis of the reports given by the Investigation Division, criminal prosecution had been launched against 55 officials, both police and civilian, and departmental action against 70 police officials. Based on the reports of the Investigation Division, the Commission has awarded monetary compensation in 14 cases, where compensation amounts have ranged between Rs. 10,000/- and Rs. 10 lakhs.

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## ILLUSTRATIVE CASES

An illustrative list of cases decided or considered during the course of the year, indicative of the range of complaints addressed by the Commission, is given below. Under the category of police brutality, a representative sample of cases relating to custodial deaths, torture and fake encounters are summarised. These are followed by cases of police harassment resulting from illegal detention, false implication etc. The other major sections include human rights violations in jail custody; negligence by public authorities; violations of rights of women and children, *Dalits*, minorities, disabled etc.; human rights violations by the security forces and other important cases.

### POLICE BRUTALITY

#### (A) CUSTODIAL DEATHS

*Custodial death of Hamid in Raisen district, Madhya Pradesh*  
(Case No. 1460/95–96/NHRC)

The Commission took suo motu cognizance of a report which appeared in the newspaper *Nayi Duniya*, Bhopal, on 15 June 1995, regarding the custodial death of one Hamid, son of Hafizulla. The news item said that the father of Hamid alleged that his son was picked up by the police from his home for questioning in a theft case reported by his employer, though in fact he was not present at the place on the date of the alleged theft. He was beaten mercilessly and released on 13 June 1995, and again arrested on 14 June 1995,

on the night of which he died. He was rushed to the Raisen District Hospital and later to Hamidia Hospital, where on arrival he was declared to have been brought dead.

The Commission called for a report in the matter from the Government of Madhya Pradesh. In its report, the State Government stated that Hamid was summoned to the police station for interrogation on 14 June 1995, and had consumed some poisonous substance while in the police custody. He was rushed to the hospital where he was declared brought dead. The Additional District Magistrate had also conducted an enquiry, according to which Hamid was illegally detained by the police from 8 June 1995 to 13 June 1995 for interrogation. The post-mortem report indicated that there were simple injuries on his body. The Additional District Magistrate concluded that the death was, indeed, the result of the consumption of poison by Hamid during the period when he was illegally detained in police custody. The officer-in-charge failed to take him to the hospital in an ambulance, and instead, took him in a police van where the personnel were not trained in first-aid. As a result, Hamid died en route to the hospital. What was glaring was the fact that the police records showed that Hamid was summoned on 11 June 1995 and on 13 June 1995, and that he was released after interrogation on both the dates.

The Commission was distressed to see the blatant manner in which records had been tampered with by the very people who were duty-bound to maintain law and order and to uphold the rule of law. Every citizen has the right to life, which includes freedom from illegal confinement and torture. Hamid, an innocent citizen, was illegally confined by the police without any formal arrest, and later died in police custody. The Commission recommended that the Government of Madhya Pradesh pay Rs. 50,000/- as immediate interim compensation to Hamid's family members. The Commission also recommended to the Government of Madhya Pradesh, that it initiate proceedings against the errant police officials.

*Death of an accused in police custody due to beating*  
(Case No. 351/20/97-98/CD)

The District Magistrate, Nagaur, Rajasthan, informed the Commission of the death of one Rameshwar Jat in police custody, who had been called to the police station for questioning in a case. It was stated on behalf of the police that the deceased remained in the police station upto 4.15 p.m. on 19 July 1997, and thereafter quietly slipped out, and that one Daulat Singh Rajput reported to the police at about 6.15 p.m. that a young man had fallen into a well at about 5.00 p.m. He was taken out with the help of neighbours and was identified as Rameshwar Jat. He later died in the hospital.

The Additional District Magistrate, Didwana, who conducted the inquest, came to the conclusion that the deceased was illegally called to the police station on 18 July 1997 and 19 July 1997, and was physically beaten up by certain police personnel. Being

frightened as a result of the beating, he ran away from the police station and fell into a deep dry well, as a consequence of which he sustained injuries which proved fatal. The Inquest Magistrate held certain police officials, including the SHO, responsible for the incident, and ordered the registration of a case for investigation by the CID.

The Commission agreed with the report of the Inquest Magistrate and awarded a further compensation of Rs. 50,000/- to the dependents of the deceased, in addition to the Rs. 50,000/- already sanctioned by the Rajasthan State Government to his legal representatives. The Commission has received a compliance report from the State Government on the payment of compensation of Rs. 50,000/-.

***Fruit vendor beaten to death by the police for not paying 'hafta': Delhi***  
(Case No. 951/96-97/NHRC)

The Commission initiated proceedings in this case on the basis of a report received from the Sub-divisional Magistrate, Shahadra, Delhi, indicating that the death of one Matloob Hussain had occurred on 13 July 1996, following a severe beating inflicted on him by two policemen of the Geeta Colony police station, Delhi, on 11 July 1996.

The Commission subsequently received petitions from certain NGOs, namely the People's Union for Democratic Rights and the People's Union for Civil Liberties; and also from Shri Syed Shahabuddin, former Member of Parliament, who raised the general issue of the violation of the human rights of petty vendors in Delhi and elsewhere in the country. They felt that the Commission should protect this group from the atrocities committed against them by the police and other authorities, including the demands made on vendors to pay *hafta*.

In response to the Commission's notice, the Sub-divisional Magistrate of Shahdara gave a detailed account of the events that had occurred. The report received from the police, however, gave a somewhat different version. From the reports, however, the Commission inferred that a Head Constable and a Constable had subjected the deceased to physical violence, and the beating was so severe that it ultimately proved fatal.

The Commission observed that the higher authorities had done well in taking action against the delinquent police officials by putting them under suspension and prosecuting them after due investigation, though regrettably, this was done only after the death of Shri Hussain. The Commission was, however, pained to observe the lack of sensitivity of the concerned Station House Officer (SHO), who had neither taken adequate or immediate action for the medical treatment of Shri Hussain nor for the registration of a case against the errant police officials, even though he was aware of the incident. The Commission thus assumed that the atrocities committed were with the knowledge of, or in connivance with, the SHO. The Commission, therefore, recommended that disciplinary action be initiated against him for the various acts of commission and omission of which he has been found guilty by the Magisterial enquiry and by the Commission. The

Commission also recommended that the conduct of two police officials, the DCP (East District) and the ACP (Public Grievances Cell) be looked into, and the appropriate action taken in this regard.

The Commission further recommended to the Government of the National Capital Territory of Delhi that it ensure an effective and expeditious trial of the errant officials and make sure that they are punished in accordance with law and not allowed to go scot-free because of weak prosecution. It also directed the Government to ensure that the implementation of the scheme framed by the Municipal Corporation of Delhi in regard to hawkers/petty vendors be implemented at the earliest.

The Commission considered it deeply regrettable that an innocent fruit vendor of about 33 years of age and supporting a family of seven, lost his life as a result of a severe beating by two policemen of the Delhi Police, mainly because he had failed to oblige them by paying the *hafta* (the illegal weekly collection made to permit petty vendors to carry out their trade).

The Commission asked the Government of the National Capital Territory of Delhi to pay a sum of Rs. 2.5 lakhs to the next of kin of Matloob Hussain who had died of police violence.

The Commission also asked the Delhi Government to constitute a high-powered Committee to look into the menace of the collection of *hafta* by the police and other civic functionaries from the petty vendors and other similarly placed persons. The Committee was asked to suggest ways and means to curb this menace, so that this vulnerable section of society can live in peace.

The Commission subsequently received a report from the Government of the National Capital Territory of Delhi indicating compliance with the directions of the Commission.

***Death of Nageshwar Singh following torture and humiliation in police custody: Bihar***  
(Case No. 7482/95-96/NHRC)

Shri Kameshwar Singh, in a complaint to the Commission, alleged that his brother Nageshwar Singh was arrested on 22 August 1993 by the railway police at Barauni and handed over to the Vidupur Police, District Vaishali. He was mercilessly beaten, tortured and humiliated in custody. His head was shaved, face painted and he was driven around the town on a donkey. Shri Kameshwar Singh also alleged that the torture in police custody was the reason for the death of his brother on 25 August 1993.

In response to the Commission's notice, a report received from the DGP, Bihar, admitted that the death of Nageshwar Singh was caused while he was in police custody, though he died while in hospital where he was being treated. It was also reported that he was not produced before a Magistrate after his arrest, and was kept in police custody for more than 24 hours. As many as 11 injuries on his person were recorded in the

post-mortem report, which also mentioned the fracture of three bones in the chest region. In addition, the allegations about the shaving of his head and being driven around town on a donkey were substantiated by the statements of witnesses. The DIG, Tirhut range, opined that the Station Officer(SO)-in-charge of the police station was guilty, and the Superintendent of Police, Vaishali, was directed to take action against him. However, as the complainant also filed a petition before a court on the same issue, investigation in the said case was stalled. The guilty SO-in-charge, though initially suspended, had been reinstated and no action had been taken against the other erring police officers, though it was admitted that Nageshwar Singh died owing to torture and beating inflicted by the police.

Upon perusal of the report, the Commission noted that the death of the victim in police custody was admitted. In addition, it was also admitted that the deceased was not produced before the Magistrate within 24 hours of his arrest, from which an inference of illegal confinement with ulterior motives could be drawn. Further, atrocities of the police on the deceased were also admitted. The Commission noted that though six persons were arraigned as the assailants, no action had been taken against them on the ground that the matter was pending before the court.

Having regard to the facts and circumstances of the case, the Commission directed the Government of Bihar to pay Rs. 3 lakhs as immediate interim relief to the dependents of the deceased, complete the investigation of the case expeditiously, and prosecute the guilty police officials, invoking if necessary, the provisions of Section 210 of the Cr.PC. Further, the Commission directed that departmental action be initiated against the errant police officials for causing serious mortal injuries to the deceased. The Commission also observed that the State Government was at liberty to initiate proceedings for the recovery of the sum of interim relief from the errant police officers. The Commission was informed that the sanction for compensation was issued.

### COMMENT

The Commission observed that it was unfortunate that the stalling of the investigation and departmental action for more than five years were being justified on the ground of pendency of a private complaint filed by the brother of the deceased. This was the result of a misreading, designedly or otherwise, of the law. The pendency of a private complaint did not tie the hands of the investigation. The course to be adopted when there is a case 'pending otherwise than on a police report' before the court, is expressly provided for by Section 210 of the Cr.PC. All that needs to be done is to bring the matter to the notice of the court where the private complaint is pending. The court would stay further proceedings-to enable the police to complete the investigation. Both cases would then be tried together. The pendency of the private case under which the police tried to take shelter for their inaction, was by itself no ground for inaction.

*Death in custody due to police negligence: Uttar Pradesh*  
(Case No. 3583/24/97-98/CD)

The death of an undertrial prisoner, Rajan Singh, was intimated to the Commission by the Additional Inspector General of Prisons, Uttar Pradesh. According to the report received, Shri Rajan Singh had been detained in District Jail, Agra, since 18 January 1995. On 20 September 1995, he tried to escape from a police truck while he was being taken to court along with 13 other undertrial prisoners. It was further reported that another undertrial prisoner, Sanjay Tiwari, who was also travelling in the same truck, jumped and escaped from custody.

The post-mortem report stated that death had occurred due to shock and haemorrhage caused by ante-mortem injuries. The magisterial report stated that Rajan Singh had consumed liquor supplied by police personnel while he was in custody, and had also picked up a fight with them under the influence of liquor. The report held the police personnel guilty of negligence for not having given adequate and satisfactory escort to the prisoner.

The Commission was of the view that the theory of escape from custody was make believe. The injuries supposedly caused by jumping from a moving vehicle, particularly when there was no mention that he was prevented by anyone from jumping, could not have been so serious and extensive as to have caused death. Further, the magisterial enquiry indicating that Rajan Singh had been administered liquor while in custody, pointed to the fact that he could have been subjected to beating while in the police vehicle. The Commission concluded that the life of a young man had been cruelly ended owing to torture and beating by police personnel.

The Commission thus directed the State to pay immediate interim relief of Rs. 5 lakhs to the next of kin of the deceased. The Commission questioned as to whether the second undertrial prisoner, Sanjay Tiwari, had really escaped from custody or had been done to death and his body disposed of. It directed the Government to entrust the two cases to the State Crime Branch Central Investigation Department (CBCID) for in-depth investigation and action thereon. The Commission also recommended initiation of appropriate disciplinary action for major penalties against all those responsible for the two incidents, and suitable action taken in accordance with the law.

*Suicide in police lock-up: Kolar, Karnataka*  
(Case No. 12098/96-97/NHRC)

The Commission was informed by the Superintendent of Police of Kolar District of the death of one Thimmaiah in the Mulbagal Police Station. Thimmaiah had allegedly committed suicide with a nylon rope hung from a window bar in the toilet of the police



station. The Commission also received a complaint from the People's Union for Civil Liberties, Karnataka, suspecting foul play in this case, and requesting the Commission to have the matter investigated, bring the culprits to justice and award compensation to the next of kin of the victim.

Pursuant to the Commission's directions, the Additional Chief Secretary, Karnataka, sent a report along with copies of the post-mortem and inquest reports. These were contradictory in nature and did not establish the fact that the victim had committed suicide. Considering the facts and circumstances as disclosed in the reports, the Commission was of the view that there was justification for a presumptive inference that the death of Thimmaiah, in the absence of a convincing explanation from those who had him in their power and custody, had been caused in custody by the police. In any event, the police, who held sway over the person of Thimmaiah, are guilty of not preventing the suicide, even if the remote theory of a suicide were at all held to be probable.

Accordingly, the Commission directed the Government of Karnataka to register a case against the errant police officials and initiate departmental action against them. A case was also to be registered against the doctor who had conducted the post-mortem, on charges of destroying evidence. The Commission directed the investigation to be taken over by the Corps of Detectives of the Karnataka State, and since there was a strong prima facie case of violation of human rights, the Government of Karnataka was directed to pay an interim relief of Rs. 2 lakhs to the next of kin of the deceased. It would be at liberty to initiate proceedings for recovering the sum from those who, by their high-handedness, had exposed the Government to this liability. The Commission has received a compliance report from the Government of Karnataka on the payment of compensation, disciplinary proceedings and prosecution.

### COMMENT

The liability of the State for damages for violation of the Constitutional rights to life, liberty and dignity of the individual has been recognised and established as a part of the public law regime. In the decisions of the Apex Court, in particular, in the case of *Francis Coralie Mullin v Administrator, Union Territory of Delhi*<sup>1</sup> and *Nilabati Behera v State of Orissa*,<sup>2</sup> the constitutional and juristic foundations of this liability of the State have been formally and finally laid down. Even the claim of sovereign immunity arising out of the State discharging sovereign functions, is held to be no defence at all against the acts of violation of the Constitutionally guaranteed Fundamental Human Rights.

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1 (1981) 1 SCC 608.

2 (1993) 2 SCC 746.

(B) TORTURE

*Torture by Kerala police leading to the death of Hussain*  
(Case No. 64/11/1999-2000)

A.J. Antony, a resident of Wynad district, Kerala, made a complaint to the Commission, alleging that one Hussain, a labourer, was brutally beaten by the police on 19 February 1999 during a raid on a gambling place. According to the complaint, Hussain had explained to the police that he had gone there to collect money from one Khalid Mohammad and not to gamble. However, the police had ignored his pleas and had beaten him so brutally that his spinal cord broke and he was paralysed from below the neck. Since his family was not wealthy, he was brought home after the initial treatment. The complainant requested the Commission to recommend action against the guilty police officials and to award a compensation of Rs. 6 lakhs to the victim.

The Commission immediately called for a report from the DGP Kerala. The report from the DGP stated that during a raid on a gambling den, one of the gamblers, Hussain, was beaten, as a result of which he fell down. Shri Hussain made a statement that the police had beaten him and then had gone away without providing him with any medical treatment. On this basis, a case was registered at the Meppady police station. The report added that the victim had since been discharged from hospital and was undergoing treatment at his residence. A police constable had been placed under suspension, and an oral enquiry had been ordered against him, as also the concerned Sub-Inspector.

Subsequently, the Confederation of Human Rights Organisations informed the Commission that Hussain had died on 26 November 1999, as a result of the brutal torture inflicted on him by the police. The Confederation also sought action against the policemen for murder, and for compensation of at least Rs. 3 lakhs to the family of the deceased.

The Commission took note of the report of the DGP Kerala and of the subsequent report of the Confederation of Human Right Organisations. It observed that the office of the DGP did not dispute the fact that the victim was beaten by the police. The Commission, accordingly, directed the State Government to institute criminal action against the concerned police officials for the murder of Hussain, and also to expedite the departmental proceedings against them. The Commission also recommended that a sum of Rs. 2 lakhs be paid by the Government to the next of kin of Hussain, as immediate interim compensation. The Commission stated that the Government was at liberty to deduct this amount from the salary of the guilty police officials. The Government of Kerala has sanctioned the payment of a sum of Rs. 2 lakhs to the next of kin of Hussain as compensation. The Government has also ordered the DGP Kerala to institute criminal action against the guilty officials for murder.

*Torture by Tiruchi police resulting in the death of Shri Mohan*  
(Case No. 4444/95-96/NHRC)

The Commission received a telegraphic complaint from Smt Ayeeponnu stating that her husband was picked up by the police from their home on 3 September 1995, tortured at the police station and thereafter remanded to judicial custody. While in remand, he was hospitalised in a serious condition and died. The Commission called for a report from the DGP Tamil Nadu. The DGP stated that Mohan was arrested for selling arrack, and had been produced before the Judicial Magistrate the same day and remanded to judicial custody. En route to jail, following an epileptic fit he fell down and sustained a head injury. He was subsequently hospitalised and died. He also stated that the widow had denied having sent a complaint to the Commission.

The matter was further investigated by the Commission through the State Legal Aid and Advice Board, Chennai, and an opinion was also sought from the doctor who had performed the autopsy. While the doctor stated that the deceased appeared to have died of shock and haemorrhage due to a head injury, the Legal Aid and Advice Board also reported that the widow denied having sent a complaint. The Commission examined the facts and circumstances and concluded that the telegram itself was a very telling one, as it was obvious that the widow, being an illiterate person, wished to avoid a confrontation with the police, and therefore denied having sent the telegram. The post-mortem report also indicated that the injuries could not have been caused by a mere fall to the ground due to an epileptic fit. The deceased also did not have a history of epilepsy.

Based on the facts and clinical evidence available, the Commission came to the conclusion that the death was, indeed, due to head injuries inflicted by the police. The Commission accordingly recommended, that in order to compensate the loss of the precious life of the young man, the Government of Tamil Nadu should pay immediate interim relief in the amount of Rs. 2 lakhs to his wife, Smt Ayeeponnu, within two months of the order. The District Collector was also directed to arrange a house for the widow with Rs. 50,000/- and give her a sum of Rs. 10,000/- for furniture, and arrange to deposit the balance amount in her name in a nationalised bank. The State Government was also directed to entrust the matter to the CBI for further investigation, to charge-sheet the persons responsible for the death and to take the case to its logical conclusion. The State Government was further asked to submit compliance reports periodically. The State Government has since sanctioned the amount of compensation recommended by the Commission.

*Allegations of death, rape and torture of tribals as a result of actions of the joint task force set up by the Governments of Tamil Nadu and Karnataka to apprehend Veerappan and his associates*

(Case No. 222/10/97-98, Case No. 534/22/97-98, Case No. 795/22/97-98, Case No. 249/10/97-98, Case No. 79/10/99-2000)

1. Since mid-1997, the Commission had received a number of communications, both from individuals and from NGOs, concerning the activities of the sandalwood smuggler, Veerappan, and the efforts of the Joint Special Task Force (JSTF) of the States of Tamil Nadu and Karnataka to apprehend him. A constant theme in the communications has been the harassment caused to the villagers and tribals in the area of operation of the JSTF, and the violation of their human rights.

2. **Brief summary of the complaints received:** The Commission received complaints from Smt Govindamma and Shri A. Mahaboob Batcha, Managing Trustee of the Society for Community Organization Trust, who transmitted a letter from Justice Shri V.R. Krishna Iyer, former Judge of the Supreme Court; Shri V.P. Gunasekharan, State General Secretary of the Tamil Nadu Tribal Peoples Association; Dr. S. Ramadoss; along with three members of Parliament and two members of the Legislative Assembly of Tamil Nadu; and Dr. D.M. Chandrashekhar, a retired Chief Justice of Karnataka High Court. Their allegations include killing, rape, molestation, torture, harassment, false implication under TADA and detention for long periods under TADA without trial of tribals and innocent hill people by the personnel of the JSTF.

3. **Actions taken by the Commission:** The action taken by the Commission in response to the communications received is summarised below:

- i. On receipt of the complaint from Smt Govindamma, the Commission, on 26 May 1998, directed its DG(I) to collect the facts. Upon the State Government being contacted, the office of the Commandant of the JSTF, in a response dated 17 June 1999, indicated that the husband of the complainant was arrested by the JSTF on 25 April 1993, as there was sufficient evidence of his deep involvement with the activities of Veerappan and his gang. He had been produced before the designated court in Mysore and was not innocent, as claimed by the complainant. While denying any use of third degree methods, the Task Force report stated that on production before the TADA court, the complainant's husband had not complained of any ill-treatment by the police.

Following an analysis of the report, and in the light of the directions of the Hon'ble Supreme Court, the DG(I) recommended that the case of the complainant's husband may be taken up by the Review Committee, as he had been categorized as a B-class prisoner and had been in jail continuously for more than five years.

The Commission also requested Shri Sankar Sen, Special Rapporteur, to offer his comments in the matter. He opined that the Commission may direct the State

Government to place the case of the complainant's husband before the Review Committee for careful scrutiny and consideration, as there were strong reasons for considering the release of the husband of the complainant on bail.

After considering the communication received from Shri A.M. Batcha and, in particular, the letter that it enclosed from Justice V.R. Krishna Iyer, the Commission, in its proceedings of 6 March 1998, recalled its various efforts in respect of petitions received in regard to Veerappan, and concluded that the Governments concerned must have regard for the safety of innocent persons affected by the situation and that it must ensure that their lives are not endangered or their dignity and worth as human beings violated or jeopardized.

The Commission has consistently taken the position, that in enforcing the law, the apparatus of State must, itself, act in ways that are fully in conformity with the law. It has therefore, pronounced itself repeatedly and clearly on acts such as 'fake encounters', which are contrary to the law and therefore, in its view, unacceptable. It has also, in this connection, laid down specific procedures that should be followed, to enquire into and bring to book those who are involved in such acts. Its proceedings and directives, in this connection, are a matter of public record and have been transmitted to all State Governments for their observance. They would be applicable to the present case, as to any other.

Likewise, the Commission has consistently taken the view that when acts of public servants, including those of the security forces, have resulted in the violation of human rights of innocent citizens of the country, and not least of its most vulnerable sections, these acts must be scrupulously enquired into; further, when the results of enquiry so require, it must be ensured that appropriate compensation or other remedies are provided.

- ii. However, on 12 September 1998, Shri A.M. Batcha again complained that the State Governments concerned had not taken any action on the aforesaid directions of the Commission.
- iii. The Commission, accordingly, directed the complainant to provide specific particulars in respect of the affected tribal population, in order to enable it to take up the matter with the authorities. Pursuant to this direction, on 30 November 1998, the Tamil Nadu Tribal Peoples' Association on submitted a number of affidavits from men and women who stated that they had been adversely affected. The Commission, thereafter, in its proceedings of 21 January 1999, directed its DG(I) to discuss the matter further with the complainant.
- iv. Following discussions with Shri Batcha, the DG(I) submitted a report to the Commission dated 16 February 1999. It drew attention to various grievances and sufferings of the people of the area, and also to the fact that innocent people were missing from the camps. The report referred to the detention of 49 persons, including 12 women, without any trial having taken place for over 5½ years. The

DG(I) was told that there had reportedly been no review by the Karnataka Government of the detention of the TADA detainees, the Human Rights Courts constituted by the Tamil Nadu Government had not started functioning and the petitions submitted to the Tamil Nadu Human Rights Commission had not been entertained, as the issues raised involved more than one State. The tribals, who were victims of atrocities, lived in remote areas without even basic amenities; they were reportedly unable to file complaints individually. During the discussions, suggestions were made concerning the need to hold public hearings by the Commission, in one or two places each in Karnataka and Tamil Nadu, as well as a public enquiry at Thalavadi Hill or Satya Mangalam by human rights activists and retired Judges.

- v. The Commission considered the note of the DG(I) during its proceedings on 8 March 1999, and observed that the substance of the representation of Shri Batcha and the Tamil Nadu Tribal Peoples' Association was that the Commission should cause a meaningful and effective intervention which may culminate in the voluntary surrender of Veerappan, thus putting an end to the suffering of the local citizens, the periodic loss of lives and bloodshed, and the highly disturbed and insecure conditions in the area. The killings and retaliatory actions that an operation of this nature involved, could not, in the view of the Commission, be a regular and ongoing feature for decades. It was further noted, inter alia, that the Commission could not decide on an important and sensitive issue such as this without expert advice. It was therefore, observed that it would be advantageous if the opinion of a Committee of professional experts, with wide experience, could be had both on the advisability and the nature of the Commission's intervention, if it is held advisable and in the larger public interest.
- vi. The Commission also examined certain important data furnished by the DG(I), upon its request, on the nature of operations conducted thus far against Veerappan and the costs involved in human and material terms. It thereafter held detailed discussions with the Chief Secretary and DGP of Tamil Nadu; and with the Principal Secretary (Home) and DGP, Karnataka, in a meeting held in New Delhi on 13 April 1999. A decision was then taken to forward the various complaints received by the Commission to the respective State Governments for appropriate action.
- vii. As regards the complaint received from Shri V.P. Gunasekharan alleging the committing of atrocities on villagers by the JSTF of Tamil Nadu and Karnataka, the DGP, Karnataka, in a report dated 9 October 1998, stated that Veerappan and his gang were involved in 135 cases of murder, dacoity, kidnapping for ransom, extortion and other such serious crimes. While 59 cases had been registered in Karnataka, 76 cases had been registered in Tamil Nadu. While furnishing details of the important cases brought against Veerappan, the police denied any



- ill-treatment of those persons who had been arrested under TADA. They added that no complaint of ill-treatment had been made by any person before the designated court on their production before the court. The police report further denied the arrest of many of the persons named in the complaint, as well as the allegation that the villagers had abandoned their homes for fear of the police.
- viii. In their comment, dated 30 November 1998, on the police report, the Tamil Nadu Tribal Peoples' Organization, through its General Secretary Shri V.P. Gunasekharan, reiterated that tribals and innocent hill people had been subjected to inhuman atrocities, ill-treatment, and various forms of torture. Allegations of maiming, confinement in dark rooms, of being chained without food for a number of days, and of the molestation and rape of women in the camps were also reported. A number of specific incidents were mentioned of tribals who were allegedly subjected to serious mistreatment in the camps. The Tamil Nadu Tribal Peoples' Association reiterated that the directions of the Supreme Court had been violated. The Review Committee to look into the TADA cases had not been formed yet, and innocent people remained without trial for a number of years. Therefore, a request for an independent and fair enquiry conducted by a retired High Court or Supreme Court Judge was made, so that those who had been affected could come forward to depose in person.
- ix. In the light of the various allegations made regarding the situation of persons held in the Central Jail, Mysore, the Commission requested its Special Rapporteur, Shri Chaman Lal, to visit that jail. He did so on 25 March 1999, and reported that a total of 127 persons had been detained by the Karnataka Police under TADA, during the years 1993–1997. Seventy-four persons had been released on bail and three had expired, leaving 51 still under detention. Of these 51 detenués, 34 (including 3 women) had been in prison since 1993, 4 since 1994, 11 (including 8 women) since 1995, 2 (including 1 woman) since 1997. Trial in respect of these 51 TADA detenués had not yet commenced, because the place of trial, could not be agreed upon reportedly for security reasons. Shri Chaman Lal further indicated that none of the detenués had availed of any parole since their incarceration. The Special Rapporteur, therefore, observed that the essential relief that the Commission should recommend, should be by way of immediate commencement of the trials, since there could be no legal justification for continuing to keep these persons in custody without trial.
- x. During the period under review, the Commission also received a number of communications from Shri Henri Tiphane, on behalf of the "Campaign for release and rehabilitation of TADA detenués from M.M. Hills (in Karnataka and Tamil Nadu) undergoing detention in Mysore Central Jail". He sought the Commission's intervention under Section 12(b) of the Protection of Human Rights Act, 1993, by taking up the matter before the Supreme Court of India.

4. In its proceedings of 18 June 1999, the Commission expressed serious concern that the efforts to apprehend Veerappan continued to result in frequent complaints that innocent villagers and tribals, living in the area of operation of the JSTF constituted by the State Governments of Tamil Nadu and Karnataka, were subjected to serious violations of their human rights. The allegations of mistreatment of the villagers and tribals were serious, as were the facts relating to the 51 detainees languishing in jail under TADA, who still awaited the start of their trials, though 34 of them had been there since 1993. The Commission also expressed its dismay at the continued detention without trial, for a considerable period of time, of the persons held under TADA in the Mysore Central Jail. It urged that the reasons for this delay, which reportedly relate to the venue of the trial and related security considerations, be resolved expeditiously. The Commission underlined the great importance that the Hon'ble Supreme Court itself attaches to expeditious trial, and to the vital relevance of such trial to a proper respect for human rights of those concerned.

5. With regard to the circumstances, the Commission felt the need for the Constitution of a panel of two eminent persons, one drawn from the judiciary and the other having experience at the highest levels of the police, to look into all relevant aspects of the allegations. In its proceedings of 28 June 1999, the Commission requested Justice Shri A.J. Sadashiva, former Judge of the High Court of Karnataka (presently the Executive Chairman, Karnataka Legal Services Authority) to be the Chairman of the panel. The Commission also requested Shri C.V. Narsimhan, former Director, CBI, to be a member of the panel. The State Governments of Karnataka and Tamil Nadu were requested to extend necessary cooperation and assistance to the panel, which commenced its work.

6. However, a writ petition was filed before the High Court of Karnataka, challenging the jurisdiction of the panel. On 27 March 2000, the High Court passed an interim order staying further proceedings of the panel.

7. The Commission intends to pursue this matter further.

*Illegal arrest, unlawful custody and death of a young person: Madhya Pradesh  
(Case No. 1432/12/97-98/NHRC)*

The Commission was informed of the death of an undertrial prisoner Ram Bhajan Gupta in the Central Jail of Bhopal through a report sent to the Commission by the Additional District Magistrate of Bhopal.

Pursuant to the Commission's directions, the Government of Madhya Pradesh sent the Magisterial enquiry report, along with the post-mortem and other reports, to the Commission. On perusal of the reports, the Commission noted that there was a dispute between police personnel and the victim's father over the payment of money for tea from the latter's teashop. Shri Gupta, who had apparently protested over the non-payment, had been arrested along with his father by the police on a series of charges under the

IPC without any basis. He was produced before the Magistrate, who had made a remand order, and the deceased had been remanded to judicial custody. He had, however, been brutally roughed up while in police custody, and the jail authorities failed to provide prompt medical treatment, with the result that the young man had died.

The Commission noted that Shri Ram Bhajan Gupta had been accused under Section 294 of the Indian Penal Code (IPC), which deals with obscene acts and songs. He had also been charged with preventing a public servant from discharging his duty, criminal assault and criminal intimidation of a public servant. The Commission was distressed to know that a barrage of penal sections were presented before the Magistrate, while the public servants, i.e. the police, were in fact not discharging any duty or public service, but only resisting a legitimate claim of a citizen for the payment of eatables that they had consumed. The conduct of the jail doctor was also callous and roused strong doubts of collusion. The Commission was convinced that the false arrest and prosecution of the deceased by the police had prevented him from exercising his human and Fundamental Rights to have access to proper medical treatment, which had resulted in his death. The Commission was thus of the view that the brutal treatment and harassment by the police, and the negligence of the prison authorities and the doctor, had been the causes for the death, which could otherwise have been prevented.

The Commission thus directed the Government of Madhya Pradesh to pay an immediate interim relief of Rs. 2 lakhs to the next of kin of the deceased, and to initiate appropriate criminal and departmental action against all the delinquent police officials, jail staff and medical staff responsible for the untimely death of a man in the prime of his youth.

*Custodial torture of Rakesh Kumar Vij: Uttar Pradesh*  
(Case No. 12982/96-97)

The Commission had received a complaint from one Raj Kumar Vij of Varanasi alleging that his son, Rakesh Kumar Vij, had been subjected to severe physical torture by the Uttar Pradesh (UP) Police. This had necessitated the hospitalisation of Rakesh in order to save his life. The complainant alleged that the police had illegally detained his son in connection with a murder investigation. It was mentioned in the petition that the victim was ill-treated and tortured, and that electric shocks had been administered to him by making him urinate on a live electric coil in order to elicit information about the murder. He was also not allowed to meet any family member. The torture had totally incapacitated the victim.

The Commission subsequently received a number of petitions from various NGOs and social activists regarding this case. Taking cognizance of the matter, the Commission issued notice to the DGP (UP). The report received from the Senior Superintendent of Police, Varanasi, stated that the victim had sustained injuries as a result of a fall while

trying to run away from police custody. It also mentioned that Shri Rakesh Vij had a criminal record. The petitioner, when asked to respond, refuted the police version. The Commission then directed its own investigation division to inquire into the incident. The report of the investigation team affirmed illegal detention and severe torture of the victim. The enquiry by the State Crime Branch Central Investigation Department (CBCID), initiated by the UP Government, substantiated the investigation team's report.

The Commission also asked the UP Government to constitute a medical board to assess the extent of physical disability suffered by the victim. The medical board gave a report to the Commission, stating that the victim did not suffer from any gross structural damage, and that most of his complaints were subjective. The report also stated that the patient had made a good recovery and that all his medical test results were within normal limits. However, in a communication to the Commission, the complainant, expressed his doubts about the impartiality and trustworthiness of the medical report, and requested the Commission to assess its authenticity.

In view of grave apprehensions of miscarriage of justice, the Commission got the victim examined by the Delhi Trauma and Rehabilitation Centre, which gave an entirely different assessment. Due to the discrepancies between the two medical reports, the Commission then directed that Shri Rakesh Vij be referred to the All India Institute of Medical Sciences (AIIMS) for reassessment of his health status. The Commission also directed the State Government to bear all the medical and travelling expenses of the victim.

According to the report from AIIMS, the victim's spinal cord was compressed, leading to deterioration of power and neurological functioning in his lower limbs, and sensory loss of bladder and bowel movement.

There were 60-80% chances for improvement, but only if the victim undertook high-risk surgery. He was suffering from hearing loss and some of his teeth were missing; he was suffering from severe post-traumatic stress disorder with no proven treatment.

The Commission was thus convinced that police officials had perpetrated custodial violence, brutal or savage in nature, on Shri Rakesh Vij. The Commission was also of the opinion that because of this torture, the victim had suffered trauma and stress and had been rendered incapable of living normally for the rest of his life. This was a case of a gross violation of human rights of a citizen, resulting from barbaric acts of torture perpetrated on him. The State was, therefore, liable to compensate Shri Rakesh Vij for the damages suffered by him.

The Commission thus directed the UP Government to pay Shri Rakesh Vij Rs. 10 lakhs by way of immediate interim relief. The Government was also directed to arrange for the complete medical treatment of Shri Vij at AIIMS, New Delhi, or PGI, Lucknow, as

Shri Vij preferred. The expenses of the treatment as well as the travelling expenses of Shri Vij, along with one attendant, from his native place to the place of medical treatment, would also be borne by the State Government.

The Commission also directed the prosecution of the police officers found responsible for perpetrating various acts of torture on Shri Vij. As recommended by the State CBCID, disciplinary action is to be taken against five police personnel, including the Senior Superintendent of Police and a Superintendent of Police, Varanasi. The Commission has also issued notice to the concerned doctors from Varanasi asking them as to why recommendations should not be made to the State Government of UP to initiate appropriate disciplinary action against them for giving an incorrect report/findings about the status of health and extent of physical disability and incapability suffered by Shri Rakesh Vij.

The Government of UP reported to the Commission its acceptance of the Commission's recommendations with regard to the prosecution of errant police officials, as also in respect of payment of compensation to the victim.

#### COMMENT

Under Section 13(1) of the Protection of Human Rights Act, 1993, the Commission shall, while inquiring into complaints under this Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908. Section 13(2) further provides that the Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the enquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Sections 176 and 177 of the Indian Penal Code.

Section 15 of the Protection of Human Rights Act, 1993, protects those who give evidence before the Commission. It also provides for prosecution of those who give false evidence. Medical personnel have a crucial role in unearthing vital evidence in cases of allegations of torture and custodial violence. They have a duty to ensure that an accurate description of the victim's injuries is provided to the Commission. In this case, the medical board constituted by the Government of UP gave a misleading report to the Commission on the extent of injuries suffered by Shri Rakesh Kumar Vij. The Commission, however, got a further assessment made by the Delhi Trauma and Rehabilitation Centre and then by the All India Institute of Medical Sciences (AIIMS). Using the powers conferred on it by its Statute, the Commission, recommended the initiation of appropriate action against those who tried to mislead it. Article 10(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that each state party shall ensure that education and information regarding the prohibition

against torture are fully included in the training of law enforcement personnel—civil or military—medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Article 10(2) further requires each state party to include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons. In other words, medical personnel not only have a role in the prevention of torture, but are duty bound to do so.

***False implication and torture of Shri Rajiv Rattan by the police***  
(Case No. 9302/95-96)

Shri Rajiv Rattan, a clerk-cum-cashier at the Sahauran Branch of Shivalik Kshetriya Gramin Bank, Hoshiarpur, Punjab, made a complaint to the Commission that he was falsely implicated, illegally detained for 13 days and tortured by the police in a case of theft that had taken place in the bank. The Commission, being unsatisfied with the report of the State Government that the police had neither illegally detained him for 13 days nor had tortured him, directed its Director General (Investigation) to take up a field investigation and submit a report. The NHRC investigation team, after considering the statements of independent witnesses, bank correspondence, medical papers and opinion given by the doctors at PGI, Chandigarh, concluded that the police had tortured the complainant on account of which he sustained a fracture of his neck and of the femur bone of his leg.

The Commission expressed its distress at the brutality perpetrated at the police station and the lawless behaviour of those who are duty-bound to maintain law and order and uphold the rule of law, and also took a serious view of the attempt of the Punjab police to cover up its wrongful actions. The Commission held that the police perpetrated brutalities on the complainant, causing a fracture of his neck and of the femur bone, for which he will have to undergo periodic operations after every eight to ten years. While holding that the police of the Ropar Police Station had disabled Shri Rajiv Rattan permanently by its brutal action, the Commission awarded him an immediate interim compensation of Rs. 2.5 lakhs and also ordered an in-depth enquiry, and initiation of criminal proceedings against the delinquent police officials for falsely implicating and illegally detaining him for 13 days, causing him grave physical injuries. The Commission has received a compliance report with regard to the payment of compensation.

***Death of Dinesh Chandra Misra owing to torture and beating by the police***  
(Case No. 9071/96-97/NHRC)

The Commission was informed by the Superintendent of the District Jail, Faizabad, Uttar Pradesh, that one Dinesh Chandra Misra, an undertrial prisoner aged 25 years, had died in the jail hospital while under medical treatment. The Commission considered the report of the IG (Prisons), denying allegations of illegal confinement and torture and

also the post-mortem report. Having considered the facts and circumstances surrounding the death of the undertrial prisoner in custody, the Commission was prima facie of the view that the deceased was wrongfully confined in the police station and was not produced before a Magistrate within 24 hours. It further held that the death was probably the result of, or at least precipitated by, custodial violence, which could be presumed to have occurred in the circumstances of the case. As there was a prima facie case of torture and unlawful confinement, the Commission ordered the payment of immediate interim relief of Rs. 50,000/- to the dependents of the deceased, and also the initiation of appropriate departmental action against the errant police officials for inflicting torture on the person of the deceased and for wrongful confinement.

### COMMENT

Custodial violence is an unacceptable abuse of power and a serious violation of human rights by those whose duty is to protect the law. It violates Article 21 of the Constitution of India which guarantees the Fundamental Right to life and liberty. Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), also assert that every person has the right to life, liberty and security and no one shall be arbitrarily deprived of life. Further, Article 5 of the Universal Declaration 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.

### **(C) FAKE ENCOUNTERS**

#### ***Killing of four persons in a fake encounter by the police: Uttar Pradesh (Case No. 12235/24/98-99)***

Shri Panna Lal Yadav, a resident of Village Daulatiya, District Varanasi, Uttar Pradesh, alleged, first by means of a telegram dated 19 October 1998, and then through a longer complaint, that his son Om Prakash and three others had been killed by the police in a fake encounter on 17 October 1998.

The SP, Sant Ravi Das Nagar, through a communication dated 18 October 1998, also informed the Commission that four criminals had been killed in an encounter with the police in the area of the Bhadoi police station, on 17 October 1998. It was reported that secret information had been received by the police that, on 17 October 1998, one Dhanjay Singh, a dreaded criminal carrying a reward of Rs. 50,000/- on his head, would commit a dacoity at the petrol pump of one Satyanarayan Harsh on the Mirzapur-Bhadoi Road. Accordingly, Shri Akhilanand Misra, Circle Officer, Bhadoi, constituted three teams to track down the criminals and proceeded to the spot. At about 11.30 am, the police found four persons coming towards the petrol pump, who, on seeing the police party, ran away and took shelter in the nearby bushes. They indiscriminately started



firing at the police party, which returned the fire. After 15 minutes of firing, the police party found four dead bodies at the site, including one of the dreaded criminal, Dhanjay Singh, the son of the complainant.

The Commission found the police version unconvincing, and therefore ordered its own investigation wing to look into the matter. Accordingly, a team headed by a Deputy Superintendent of Police conducted an enquiry. Their report indicated that the alleged encounter was a fake one. The SP, Sant Ravi Das Nagar, also stated that a magisterial enquiry had been ordered into the matter by the District Magistrate, and the State Government had ordered the Crime Branch Central Investigation Department (CBCID) to conduct an enquiry.

On the basis of the enquiry of the CBCID, a case was subsequently registered against 36 persons, including 34 police officials. The CBCID enquiry, on the basis of evidence, opined that the encounter on 17 October 1998 was a fake one, and that, in fact, four innocent persons had been taken out by the police from a nearby hotel and later brutally killed.

By way of immediate interim relief, the Commission ordered, the payment of compensation of Rs. 4 lakhs each to the next of kin/families of each of the victims, namely, Shri Om Prakash alias Munna Yadav, Ajay Kumar Singh, Krisan Harijan and Shamim Natte. The Commission ordered that in each instance, Rs. 50,000/- should be paid in cash and the remaining amount of Rs. 3,50,000/- should be put in a fixed deposit in a nationalised bank for five years in the name of next of kin of the victim, the interest on which should be paid at quarterly intervals to the next of kin. The Commission also recommended to the Government of UP that the CBCID enquiry should be completed expeditiously and a chargesheet filed in the competent court of law for the prosecution of the accused persons. The Commission has received a report from the Government of Uttar Pradesh stating that of Rs. 4 lakhs recommended by the Commission, Rs. 2 lakhs has been paid to each of the families of the four victims.

The Commission has since been informed by the Government of UP that the State CID has finalised its enquiry and has sought the State Government's approval for the prosecution of 34 police officials involved in the case. In addition, departmental action is also being taken against 42 police personnel found guilty of various acts of commission and omission in the matter.

#### COMMENT

The law in India recognizes the right of a citizen to private defence, and in the course of such private defence, even the causing of death can be justifiable in some circumstances. The same right of self-defence is available to a policeman. In addition, if the use of force in the course of an attempt to arrest a person accused of an offence punishable with death or imprisonment for life, results in causing of death, it can also be justifiable under law.

However, if a death is caused in an encounter that cannot be justified on the ground of a legitimate exercise of the right to private defence, or in proper exercise of the power of arrest under Section 46 of Criminal Procedure Code, the police officer causing the death would be guilty of the offence of culpable homicide. Whether the causing of death in the encounter in a particular case is justified, will therefore depend upon the facts established after a proper investigation.

Deeply concerned by complaints of fake encounters, the Commission laid down the procedure to be followed in all cases of encounters in its directions on Complaint No. 234 (1-6)/93-94 brought before the Commission by the Andhra Pradesh Civil Liberties Committee. That procedure, which was spelt out in a letter dated 29 March 1997, from the then Chairperson of the Commission to the Chief Ministers of all the States and Union Territories, commended the following steps:

- ❑ When the police officer in-charge of a police station receives information about the deaths in an encounter between the police party and others, he shall enter that information in the appropriate register.
- ❑ The information as received shall be regarded as sufficient to suspect the commission of a cognizable offence, and immediate steps should be taken to investigate the facts and circumstances leading to death to ascertain what, if any, offence was committed and by whom.
- ❑ As the police officers belonging to the same police station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as the State CID.
- ❑ The question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction, if police officers are prosecuted on the basis of the results of the investigation. //

### (D) POLICE HARASSMENT

#### *Illegal detention: Uttar Pradesh* (Case No. 15016/24/98-99)

The Commission was seized of a complaint from Ms. Kamini Sharma of Mathura, Uttar Pradesh, alleging that her father and one of her brothers had been illegally arrested and detained in custody for a day. These arrests had been made to ascertain the whereabouts of her brother Kapil, who was a suspect in a murder case.

The Commission called for a report in this matter from the SSP, Mathura. The report stated that the three had been called to the police station, but had been let-off after a brief interrogation. There had been no illegal detention.

Finding the report unconvincing, the Commission directed the matter to be investigated by its own investigation division. The report of the investigation team confirmed the

truth of Ms. Kamini Sharma's complaint. It was prima facie established that the arrests and detentions had been illegal and the conclusion was inescapable that they had been detained to put pressure on Kapil Sharma to surrender. The course of action adopted by the police was found to be wholly unjustifiable by the Commission. It could not be backed by any authority of law.

The Commission thus directed the UP Government to get a case of illegal arrest/detention registered against the delinquent police officials, and initiate appropriate disciplinary proceedings against the SSP, Mathura, for his incorrect report and lack of concern for the human rights of the citizenry of the country. The Commission also directed the payment of Rs. 10,000/- to each of the victims by way of immediate interim relief.

***High-handed acts of the police: Uttar Pradesh***  
(Case No. 1970/94-95/NHRC)

In a complaint to the Commission, Shri Brijendra Singh alleged that on 9 April 1994, certain police officials, under the directions of the SHO, came to his house, destroyed his household articles as well as those of his family members and caused a loss of Rs. 2 lakhs. Despite protest by the local population, the doors and windows of his house were extensively damaged. The police allegedly also took away Rs. 18,400/- in cash and 500 grams of gold. The complainant supported his allegations by photographs showing the extent of damage done to his properties.

In response to the notice issued by the Commission, the Government of Uttar Pradesh submitted a report stating that in a case pending against the complainant, the police had gone to his home on a number of occasions to apprehend him. Unable to succeed in their efforts, a coercive process in the form of an attachment proceeding was obtained from the court. During the course of attachment, the State Government admitted that some police officials had committed irregularities for which censure had been recorded in their personal files, and disciplinary action had also been taken against the Inspectors and subordinate police officers.

On consideration of the report, the Commission noted that though irregularities were admitted in the report, the State Government did not mention clearly, whether the guilty police officials were being prosecuted. The report was also silent regarding the allegation of destruction of property worth Rs. 2 lakhs by the police and the taking away of Rs. 18,400 in cash and 500 grams of gold. The Commission found the report very sketchy as it did not respond to all the allegations. The Commission, therefore, rejected the report and called for a fresh report from the Chief Secretary, Government of UP, requesting him to respond to all the allegations in the complaint and the observations made by it.

In a subsequent report, the State Government of UP stated that a Circle Officer and three Sub-Inspectors had been found guilty of committing irregularities during the

attachment proceeding. A censure entry had been made in the confidential report of the Circle Officer, and departmental proceedings had been initiated against the three Sub-Inspectors involved in this case. The report denied that cash and ornaments had been taken and that damage had been caused to the properties of the complainant and his family members. It was reported that during the enquiry, no evidence was found to support the involvement of the policemen in criminal activities, and they had therefore, not been prosecuted.

The Commission noted that in its report, the State Government had admitted that during the course of executing the process of attachment, some 'irregularities' committed by the police had come to light. The word 'irregularities', the Commission observed, was an apologetic euphemism for wanton destruction. The Commission noted that in the successive reports of the State Government, the allegations made by the complainant about the ransacking of his house and the destruction of property have not been traversed and have been admitted, but without mentioning the extent of the damage so caused. The Commission further noted that the photographs filed along with the complaint corroborate the allegation of damage to the property.

Having regard to the facts and circumstances of the case, the Commission made the following observations and recommendations:

- ❑ The penalty imposed by giving a 'censure' in the service book of the Circle Officer was disproportionate to the gravity of the offences on his part. The DGP, Uttar Pradesh, was therefore, requested to review the departmental proceedings and to initiate proceedings to enhance the punishment in a manner that was commensurate with the misconduct, taking into account the gravity of misconduct.
- ❑ As there was prima facie evidence to hold that the petitioner had suffered humiliation, harassment and mental torture at the hands of the Circle Officer and three Sub-Inspectors; sustained losses owing to irregularities, admittedly committed by the police officials in the presence of a gazetted police officer while executing the process of attachment; and keeping in view the ransacking of articles, destruction of property as admitted by the State Government in its report, an interim relief of Rs. 1 lakh be paid to the complainant Shri Bijendra Singh.

The Commission further observed that the State Government was at liberty to initiate proceedings for the recovery of this sum from the errant officials, as their highhandedness had exposed the Government to this liability. The Commission was informed by the State Government that interim relief of Rs. 1 lakh was sanctioned by it.

***Harassment of a social worker by the police: Uttar Pradesh***  
(Case No. 9646/96-97/NHRC)

The Commission received a complaint from one Dr. Rajendra Prasad Pandey, a resident of Lucknow, Uttar Pradesh, alleging that he was imprisoned for 24 hours by the local

police on 27 December 1995 to please his opponents. The complainant was a social worker and was the Convenor of the Hindu Chetna Samiti. The next day, the SHO handcuffed him and took him around the town in broad daylight. The complainant further alleged that though he had complained to the higher authorities, he did not get any justice. The incident had an adverse psychological effect on him, and he had reportedly been condemned by the intelligentsia of the town.

In response to the Commission's notice, the SSP, Lucknow, submitted a report stating that the concerned SHO was found guilty of handcuffing the complainant, who was a man of status and a social worker. An order was issued to punish that official under the relevant rules.

Upon considering the report, the Commission took the view that the liberty and dignity of the complainant had been tarnished by the barbaric and disdainful acts of the concerned police official, who had misused his position and power. It also noted that the atrocities perpetrated on the complainant had affected his psychological balance. Having regard to the loss of dignity of the complainant in the eyes of the society when he had been handcuffed and taken round the city, and having regard to the loss of his liberty, the Commission directed the Government of UP to pay a sum of Rs. 2 lakhs as immediate interim compensation to the complainant within three weeks, and observed that the state was at liberty to recover the whole or part of it from the concerned official.

***Illegal detention/abduction of Rama Rao by the Andhra police***  
(Case No. 5828/95-96/NHRC)

Smt T. Nagarathnam filed a complaint with the Commission alleging that the police had abducted her husband T. Rama Rao from his house on the night of 12/13 November 1995, and that his whereabouts were not known. The Commission immediately called for a report from the State police. However, the report received was not found to be satisfactory, and the Commission therefore, directed its own investigation team to look into the matter and submit a report.

Upon investigation, the NHRC team, found that Shri Rama Rao was picked up in the presence of his wife on the night of 12/13 November due to his suspected involvement in an attempt to murder one Tejeshwar Rao, a local CPI leader, on 4 October 1995. He was initially taken to the town police station Srikakulam, from where he was moved to Luvaru police station and was tortured to extract a confession. However, when nothing could be established against him, he was produced before an Executive Magistrate on 14 November 1995, and released after he executed a personal bond of Rs. 5,000/-. Due to the torture that he had undergone, Rama Rao's first desire was to be free and he did not, therefore, lodge any complaint immediately. However, on 13 November, the Andhra Pradesh Civil Liberties Committee (APCLC) had submitted a memorandum to the Commission alleging that Rama Rao had been abducted and that his rights had been

violated. The police records, on the other hand, stated that he was arrested on 14 November and released on the same day after execution of a personal bond. From the investigation by the NHRC team, it became clear that the police had manipulated the documents and records to cover their misdeeds. Since the police arrest of Rama Rao was both illegal and malafide, the Commission expressed deep distress at the manner in which the police had violated the constitutional rights of Rama Rao, an innocent law abiding person, who was illegally confined and tortured. The Commission recommended that the Government of Andhra Pradesh pay Rs. 25,000/- as immediate interim compensation to Rama Rao, and that they initiate departmental proceedings against the police officials and take such other appropriate action against them as may be necessary. The Commission has received a compliance report from the Government of Andhra Pradesh with regard to the payment of compensation.

COMMENT

Article 9 of the Universal Declaration of Human Rights, as well as Article 9 of the International Covenant on Civil and Political Rights, emphasise that no one shall be subjected to arbitrary arrest, detention or exile. In the above case, there is a violation of the fundamental right guaranteed in Article 21 of the Constitution, which stipulates that no one shall be deprived of his life or personal liberty, except according to procedure established by law.

Arrest involves restriction of liberty of a person arrested, and therefore, infringes the basic human rights of liberty. Nevertheless, the Constitution of India, as well as International human rights laws, recognise the power of the State to arrest any person as a part of its primary role of maintaining law and order. The Constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible.

Article 22(1) of the Constitution provides that every person placed under arrest shall be informed as soon as may be of the grounds of arrest and shall not be denied the right to consult and be defended by a lawyer of his choice; and Section 50 of the Code of Criminal Procedure, 1973, requires a police officer arresting any person to 'forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest'. However, in actual practice, these requirements are observed more in the breach.

Likewise, the requirement of prompt production of the arrested person before the court is mandated both under the Constitution [Article 22(2)] and the Cr.PC (Section 57), is also not adhered to strictly.

A large number of complaints pertaining to human rights violations are in the area of abuse of police powers, particularly those of arrest and detention. Therefore, with a view to narrowing the gap between law and practice, the Commission found it necessary

to prescribe guidelines regarding arrest, even while at the same time not unduly curtailing the power of the police to effectively maintain and enforce law and order and proper investigation. The Commission's guidelines regarding arrest were sent to the Chief Secretaries of all the States and Union Territories on 22 November 1999, with a request to translate these guidelines into their respective regional languages and making them available to all police officers and in all police stations for compliance.

***Alleged illegal detention and custodial torture of Shri Inder P. Choudhrie in Himachal Pradesh: Administration of the lie detector test***  
(Case No. 117/8/97-98)

The Commission had received a petition dated 12 May 1997, from Shri Inder P. Choudhrie, a resident of New Delhi. He alleged that he was arrested by the police in connection with a murder, and thereafter subjected to various kinds of custodial torture for a period of 13 days in police custody in Shimla, where he had gone to attend the hearing of a civil suit. He added that he was illegally detained, tortured and subjected to a 'Lie Detector Test' without his consent, after being given an intravenous drug. He sought an enquiry into the case by the CBI.

As the complainant had also approached the High Court of Himachal Pradesh and later the Supreme Court without any success, the Commission declined to intervene in the matter. Subsequent review petitions filed by the petitioner before the Commission were also dismissed. However, while dismissing the last review petition vide its order dated 20 October 1999, the Commission had taken up the issue of the administration of the Lie Detector Test.

As the "Law" did not regulate the Lie Detector Test, which was administered to an accused hence, the Commission was of the view that some guidelines should be formulated for the purpose.

After a careful consideration of the matter, the Commission laid down the following guidelines relating to the administration of the Lie Detector Test:

- No Lie Detector Test should be administered without the consent of the accused. Option should be given to the accused as to whether he wishes to avail the test.
- If the accused volunteers for the tests, he should be given access to a lawyer. The police and the lawyer should explain to him the physical, emotional and legal implication of such a test.
- The consent should be recorded before a Judicial Magistrate.
- During the hearing before the Magistrate, the accused should be duly represented by a lawyer.
- At the hearing, the person should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate, but will have the status of a statement made to the police.



- ❑ The Magistrate shall consider all factors relating to the detention, including the length of detention and the nature of interrogation.
- ❑ The actual recording of the Lie Detector Test shall be done in an independent agency (such as a hospital), and conducted in the presence of a lawyer.
- ❑ A full medical and factual narration of the manner of information received must be taken on record.

Through a letter dated 11 January 2000, the Commission circulated these guidelines to the Chief Secretaries of States as well as Union Territories.

### COMMENT

The National Human Rights Commission has, from time to time, laid down guidelines for various State and other public functionaries in the proper discharge of their duties. These guidelines ensure that while discharging their duties and responsibilities, these functionaries do not violate human rights. These functionaries have a constitutional obligation to respect and promote Fundamental Rights and the Directive Principles of State Policy. The Constitution has made Fundamental Rights justiciable. The Supreme Court, while interpreting and enforcing Fundamental Rights, has whenever possible, interpreted these rights in the light of the Directive Principles of State Policy. The Supreme Court has also held (vide *Visakha v State of Rajasthan*<sup>1</sup>, and *Nilabati Behera v State of Orissa*<sup>2</sup>), that any international convention not inconsistent with Fundamental Rights and in harmony with its spirit must be read into these provisions to enlarge their meaning and content in order to promote the object of the constitutional guarantee. The State, in its functioning at various levels, is therefore obliged to respect and preserve these basic human rights. And the Supreme Court has, in several cases, laid down guidelines and directions for this purpose (vide a recital of such cases as *Vineet Narain v Union of India*<sup>3</sup>).

Under Section 12 of the Protection of Human Rights Act, 1993, the National Human Rights Commission is entitled, not merely to inquire into any violation of human rights or negligence, in the prevention of such violation, it has also wider statutory obligations for the promotion and protection of human rights, eg it has a statutory obligation to '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' [see Section 12(d)]. The Commission is also required to 'review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures' [see Section 12(e)]; to 'study treaties and other international instruments of human rights and make recommendations for their effective implementation' [see Section 12(f)]; and to undertake 'such other functions as

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1 (1997) 6 SCC 241.

2 (1993) 2 SCC 746.

3 (1998) 1 SCC 226 at 265.

it may consider necessary for the promotion of human rights' [see Section 12(j)]. The National Human Rights Commission is therefore required to lay down guidelines from time to time, for the effective implementation by the State authorities or other public functionaries of the constitutional guarantees and international human rights norms, as interpreted and applied under the judgments of the Supreme Court of India. These further the objectives of protection and promotion of human rights of ordinary men and women in this country.

The guidelines for conducting the Polygraph Test, which requires prior injection of a drug, are meant only to protect and prevent violation of the human rights of the person to be examined; his rights to this effect being guaranteed under Article 21 and Article 20(3) of the Constitution. The guidelines merely spell out in detail the protection available under these constitutional provisions and have been formulated in the discharge of the functions entrusted upon the Commission by Clause (j) of Section 12 of the Act. The effect of conducting the Polygraph Test without the voluntary consent of the person is a serious violation of his human rights guaranteed under the Constitution. Moreover, these guidelines are in the form of recommendations, and non-compliance with the same would result in the evidence recorded becoming inadmissible in a Court of Law, and also violative of the provisions of the Constitution and the Statutes governing the field.

Thus guidelines help to establish the 'best practices' for law enforcing agencies to follow and have usually been accepted and acted upon by the concerned authorities. In fact, the guidelines also help the concerned authority to ensure that it does not act in a manner that is unconstitutional or illegal and violative of human rights.

#### HUMAN RIGHTS VIOLATIONS: JAIL CUSTODY

##### *Death of Bihari Babu due to negligence of the doctor: Madhya Pradesh (Case No. 6096/96-97/NHRC)*

The Commission received a complaint from Shri Ajay Jain of Bhopal, Madhya Pradesh, referring to a news item in the *MP Chronicle*, alleging that one Bihari Babu had died in the Morena Jail premises under mysterious circumstances. The death was attributed to the negligence of the doctor in-charge of the Jail.

The reports received from the Deputy Secretary, Government of Madhya Pradesh, indicated that Dr. R.S. Sharma was found guilty of dereliction of duty and a strong warning was given to him. The Commission considered the matter and held that a punishment limited to a warning to the doctor for dereliction of duty was grossly inadequate and recommended to the Chief Secretary, Madhya Pradesh, that disciplinary action be taken against the doctor and compensation in the amount of Rs. 2 lakhs be paid to the next of kin of the deceased.

*Death of Jagannath Paoji Ingule—Failure on the part of the medical officer to diagnose at an appropriate time: Maharashtra*  
(Case No. 16102/96-97/NHRC)

The undertrial prisoner, Jagannath Paoji Ingule, aged 44 years, was received in Nasik Road prison from Thane Central Prison on 7 May 1995. After nearly one-and-a-half years of undertrial custody, he complained of a swelling in the abdomen and general weakness. He was admitted in the prison hospital on the same day, from where he was referred to the Civil Hospital for expert opinion. Later, he was again admitted in the prison hospital with amoebic dysentery and severe anaemia, and was referred to the Civil Hospital, Nasik, for further treatment. On 3 February 1997, he expired in the Civil Hospital, Nasik.

The inquest report could not arrive at any conclusion on the cause of death. The post-mortem report revealed that the prisoner was suffering from an advanced stage of pulmonary and abdominal tuberculosis. The post-mortem report stated the probable cause of death as cardio-respiratory arrest due to 'pulmonary tuberculosis and plural effusion' and 'abdominal tuberculosis and ascitis and anaemia'.

The Commission considered it unfortunate that the disease was not diagnosed, even though the undertrial prisoner was in custody for more than one-and-a-half years. He was being treated for amoebic dysentery, while he was actually suffering from an advanced stage of tuberculosis—pulmonary as well as intestinal—a fact which was revealed in the post-mortem, and which could have been diagnosed before the illness reached serious proportions. The Commission held that access to adequate, timely and proper medical diagnosis and treatment is an inherent right of prisoners, whose freedom to seek and have access to medical aid outside the prison and on their own is curtailed by law. It further observed that diagnosis and treatment of tuberculosis is not any more a sophisticated area of medicine. With the large-scale manifestation of this infectious ailment in the jails, any jail medical staff should reasonably be expected to know, or ought to have known, the diagnosis of the case that had been admitted.

While holding that there was negligence in the protection of the prisoner's human right to life and that the dependants of the victim were entitled to immediate interim relief under Section 18(3) of the Protection of Human Rights Act, 1993, the Commission recommended that: (i) an immediate interim relief of Rs. 1 lakh be paid by the State Government to the dependants of the deceased; and (ii) the State Government should make a comprehensive appraisal, for the control of the spread of tuberculosis and other infectious diseases in the prisons, and to install, wherever lacking, adequate diagnostic facilities. The Commission has received a compliance report with regard to the payment of Rs. 1 lakh as compensation.

COMMENT

In the case of *Shri D.K. Basu v State of West Bengal*<sup>1</sup>, detailed instructions were given by the Supreme Court on the procedures to be followed by the police in cases of arrest or detention. These instructions, inter alia, include :

- ❑ The arrestee should, when he so requests, be medically examined at the time of arrest and major and minor injuries, if any, as are present on his or her body, be recorded in a memo. The inspection memo should be signed both by the arrestee and by the police officer concerned, and a copy should be given to the arrestee.
- ❑ The arrestee should undergo a medical examination by a trained doctor every forty-eight hours of his detention in custody.

The Supreme Court of India imparted a new dimension to the enforceability of these directions by attaching the sanction of commitment or contempt for breach or violation of these requirements. Article 10(1) of the ICCPR requires the State party to ensure that all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person. Article 11 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that each State party shall keep under systematic review, interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

*Negligence of public authorities—Death of a witness in the police station: Gujarat*  
(Case No. 7820/96-97/NHRC)

The death of one Hasmukhbhai Kanubhai was reported to the Commission by the Section Officer of the Department of Home of the Gujarat Government. It was stated that he had died in the Mahuva police station, where he had been brought as a witness for interrogation. The report of the Sub-Divisional Magistrate stated that the deceased had been detained overnight in the police station. The next day, he had complained of pain in the chest and symptoms of diarrhoea. As his condition started deteriorating, his relatives sought medical help, but the police officials on duty brushed aside their request saying that they were waiting for the Investigation Officer, who alone could take a decision in this regard. After a considerable delay, the deceased was taken in an autorickshaw to the hospital, where he was declared as brought dead. The Government, however, did not consider the death as one in police custody, as the deceased was not an accused, but a witness brought in for interrogation at the police station, and had died on the way to the hospital.

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<sup>1</sup> AIR 1997 SC 610.

The Commission held this to be a case of gross negligence on the part of police officials in the police station, as they had not provided timely medical assistance. It also took the view that custodial death did not only mean the death of an accused person in custody; the term included witnesses taken into custody, whose freedom of movement was curtailed by the police. The Commission felt that this was a case of 'custodial ill-treatment' resulting in death. It thus directed the State Government of Gujarat to pay immediate interim relief of the amount of Rs. 2 lakh to the dependants of the deceased, with the liberty to initiate proceedings for recovery of this sum from those who, by their high-handedness, had exposed the State Government to this liability. It also called for the initiation of disciplinary action against the errant police officials for their negligence in not providing proper and timely medical facilities to the victim. The Commission has received intimation from the Government of Gujarat with regard to the sanction which was issued for payment of Rs. 2 lakhs as compensation.

*Negligence of a medical officer: Uttar Pradesh*  
(Case No. 7122/24/98-99)

Smt Ram Kumari, in her complaint to the Commission, stated that her husband, Shri Krishan Kumar, had died in a road accident when his truck had collided with a tree, and thereafter caught fire. The police prepared an inquest report and sent the burnt body of her husband for post-mortem to Rai Bareilly. A team of three doctors performed the autopsy of the dead body on 17 May 1998, but were unable to give an opinion on the cause and time of death, and therefore, sought the opinion of the State Medico-Legal Expert. The opinion was delayed by six months, as a result of which the complainant was made to rush from Allahabad to Rai Bareilly to plead with the authorities to hand over the remains of her husband's dead body for performing the last rites. The complainant sought the Commission's assistance in getting the dead body released early.

In response to a notice issued by the Commission, the Special Secretary (Medical), Government of Uttar Pradesh, in his letter dated 28 December 1998, admitted the delay in the submission of papers to the Medico-Legal Expert. The Medico-Legal Expert examined the case and found radio opaque shadows of metallic density, and referred the matter for examination to check for the presence of gunpowder. However, these papers remained lying around in the office for about three months. The report of the Medico-Legal Expert also indicated certain deficiencies in the inquest report, like the absence of a site-plan and photographs of the truck. After the report, the bodily remains of the deceased were re-examined on 13 January 1999, by the Chief Medical Officer, Rae Bareilly, who did not find metallic particles as indicated in the report of the Medico-Legal Expert.

A supplementary report was filed by the Special Secretary (Medical), Government of Uttar Pradesh, stating that the remains of the deceased were handed over to the complainant on 15 February 1999. By a final report, dated 19 April 1999, the Commission

was informed that the Chief Medical Officer, Rai Bareilly, was found negligent for not obtaining the Medico-Legal Expert Report promptly. An adverse remark had also been noted in his confidential file.

From the reports, the Commission noted that the bodily remains of the deceased were handed over to the complainant nine months after the death; this had resulted in mental agony to her and forced her to rush to Rai Bareilly to contact the authorities. The Commission held that this avoidable delay was directly attributable to the gross negligence of the State authorities at different levels. In the circumstances, the Commission recommended the payment of interim compensation of Rs. 10,000/- to the complainant by the Government of Uttar Pradesh within two months. The State Government has since paid the compensation.

*Death of an innocent person owing to negligence of the state electricity board: Bihar*  
(Case No. 2010/4/98-99)

The Commission received a complaint from Smt Ranjana Singh alias Ranju, a resident of Daltonganj, Palamu, Bihar, alleging that on 2 August 1996, her husband, Satyabrat Narain Singh, had come in contact with a live electric wire lying in front of Morehouse Patna, as a result of which he was electrocuted and had died. She attributed the death of her husband to the negligence of the Bihar State Electricity Board (BSEB). She also stated that the BSEB had failed to award her any compensation, though in a similar case, the Supreme Court had awarded compensation. The complainant stated that she was facing an acute financial crisis, and was on the verge of starvation, and was also unable to meet the expenditure required for the education of her minor sons. She sought an enquiry into the matter and of suitable compensation to be awarded to her.

In response to the notice, the Government of Bihar, in its report, stated that the late Satyabrat Narain Singh, husband of the complainant, had died of electrocution at Rajinder Nagar, Patna, for which a case dated 5 August 1996 was registered at the Kadam Kuan Police Station, Patna. The report also brought out that the post-mortem on the body of the deceased had been conducted at Patna Medical College and Hospital and that the cause of death was stated to be electrocution. The report of the Secretary, BSEB, confirmed that the L.T. line and live wire of the transmission/distribution line of the Bihar State Electricity Board was broken due to a heavy storm on 2 August 1996, and that Shri Satyabrat Narain Singh had touched the live wire and had died due to electrocution. The report also stated that no compensation was paid to the wife of the deceased by the BSEB, as her husband had died following a natural calamity.

The Commission noted that there was no material on record to show that the storm, which had allegedly led to the breaking of the live wire, was of such intensity or unprecedented severity in nature, that the concerned authorities responsible for the installation and maintenance of the transmission/distribution lines, could not have

foreseen the damage caused by it. On the contrary, all transmission/distribution lines lying there, by their very hazardous nature, were expected to have been so installed as to withstand the vagaries of nature/weather like rain, high velocity wind/storm, etc. Even if it were assumed that the storm was in fact of such a high intensity as could have broken the live wire, the Commission observed that an imperative obligation was cast upon the concerned authorities to take immediate measures to switch off the power so as to prevent disastrous consequences. There was also nothing on record to show that adequate safeguards had been taken by the BSEB to guard the live wire of the transmission/distribution line fallen on the ground, even if it had broken down as a result of the alleged storm. The authorities of the State Electricity Board had a duty to see that the live wire was removed immediately and/or that the power was switched off, so as to make a public place safe. The Commission thus noted that there was a clear breach of duty on the part of the State Electricity Board, which had resulted in the death of Shri Satyabrat Narain Singh. The Commission was, therefore, of the opinion that the State and Electricity Board Authorities were liable to the victim for damages.

The Commission accordingly recommended a compensation of Rs. 2 lakhs to the wife of the deceased by way of immediate interim relief, without prejudice or detriment to her right to claim damages under the civil law. However, in case such a claim is put forth, the Commission said that the concerned adjudicatory authority might take into account the payment of the above interim relief to the complainant while awarding damages. Further, the Bihar State Electricity Board was directed to constitute an enquiry into the matter and to frame adequate regulations/guidelines to take appropriate and prompt measures to prevent the recurrence of such incidents involving human life.

The compliance report with regard to the payment of compensation has been received by the Commission.

#### COMMENT

In *Manohar Lal Sobha Ram Gupta v MP Electricity Board*,<sup>1</sup> the High Court held that it was negligence to omit to use all reasonable means to keep electricity from harming a person. The standard of care required was held to be high, owing to the inherently dangerous nature of electricity, and the burden of proving that there was no negligence was on the authorities. The principle was reiterated in *Angoori Devi v Municipal Corporation Delhi*,<sup>2</sup> and in *Padma Behari v Orissa State Electricity Board*.<sup>3</sup>

The main plank of defence of the State Government and BSEB was that it was an Act of God (*vis major*). The Commission was, however, of the considered view, that the said defence was not available to them for the following reasons:

1 1975 ACJ 494.

2 AIR 1998 Del 305.

3 AIR 1992 Ori 68.



- Act of God (*vis major*) is defined to be such a direct, violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not, by any amount of human care and skill, have been resisted.
- *Vis major*, to afford a defence, must be the proximate cause, the *causa causans*, and not merely a *causa sine qua non* of the damage complained of. The mere fact that *vis major* co-existed with, or followed the negligence, is not an adequate defence. Before an Act of God may be admitted as an excuse, the defendant must himself have done all that he was bound to do.

A more stringent rule of strict liability than the rule in *Rylands v Fletcher*, was laid down by the Supreme Court recently in the case of *MC Mehta v Union of India*. The case related to the harm caused by the escape of oleum gas from one of the units of Shriram Foods and Fertilizer Industries. The Court held that the rule of *Rylands v Fletcher*, which was evolved in the 19th century, did not fully meet the needs of a modern industrial society with highly developed scientific knowledge and technology, where hazardous or inherently dangerous industries were necessary to be carried on as part of the development programme, and that it was necessary to lay down a new rule to adequately deal with problems arising in an industrialised economy. The Court laid down the rule as follows: 'Where an enterprise is engaged in a hazardous or inherently dangerous activity, and harm results to anyone on account of an incident in the operation of such hazardous or inherently dangerous activity, resulting, for example, in the escape of a toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident, and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in *Rylands v Fletcher*. The Court earlier pointed out that this duty is "absolute and non-delegable" and the enterprise cannot escape liability by showing that it had taken all reasonable care and there was no negligence on its part. The basis of the new rule as indicated by the Supreme Court is: (1) If an enterprise is permitted to carry on a hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any incident (including indemnification of all those who suffer harm in the accident), arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads; and (2) the enterprise alone has the resources to discover and guard against hazard or dangers and to provide warning against potential hazards'.<sup>1</sup>

***Case of Shri Devi Shanker gunned down by a forest officer: Rajasthan***  
(Case No. 16588/96-97/NHRC)

The Commission received a complaint from Shri Ghasi Lal from District Sawai Madhopur, Rajasthan, alleging that officials of the Forest Department, Rajasthan, shot dead one Devi

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<sup>1</sup> AIR 1987 SC 965.

Shanker. It was alleged that a forester was also shot dead by the officials of the forest department, led by a Forest Ranger, who had spread a reign of terror in the forest area of Bodal Nakka. The complainant sought impartial investigation into the incident and payment of adequate compensation to the dependents of Devi Shanker.

The Commission took cognizance of the complaint and issued notices to the Chief Secretary and the DGP, Rajasthan, calling for their reports. In response, the SP, Sawai Madhopur, Rajasthan, submitted a report stating that a Case No. 92/96 was registered under Section 302/342/323/504 IPC with regard to the death of Devi Shanker, who was shot dead by forest officials. After investigation of the case, the accused persons, Parvinder Singh and Badan Singh, were arrested and a charge-sheet was filed against them in the court. The death of the forester was also investigated, and after investigation, a Case No. 93/96 was registered under Section 147/148/149/448/353/332/324/307 IPC.

Having noted that two cases were registered with regard to the allegations made by the complainant, the Commission asked the SP, Sawai Madhopur, to apprise it of the present stage of these cases. The Commission directed that a departmental enquiry also be initiated against the accused Forest Ranger for dereliction of duty in the gunning down of an innocent person, Devi Shanker. The Commission further directed the Government of Rajasthan to pay a sum of Rs. 4 lakhs as compensation to the next of kin of the deceased, within four weeks. Further, the Commission asked the Government of Rajasthan to release an amount of Rs. 50,000/- immediately, and the rest of the amount to be deposited in a nationalised bank on a long-term basis, and the interest earned thereon to be paid monthly to the next of kin of the deceased.

***Death of 64 innocent labourers and destruction in a village owing to negligence: Bihar***  
(Case No. 5910/95-96/NHRC)

The Commission received a complaint from Shri Rakhohari Biswas, a resident of Village Lakaruka, Dhanbad, Bihar, alleging that 64 workers had been killed owing to the flooding of water in the Gajlitand colliery, and that villages located in the surrounding area were affected by a poisonous gas. Further, it was stated that cultivable land was destroyed following a fire inside the coal mines, which also led to cracks in the houses of the villagers. The complainant alleged that the concerned authorities, namely, the management of the Bharat Coking Coal Ltd. (BCCL) and the Director General (Mines Safety), Dhanbad, were insensitive to the situation, and that he feared a danger to the lives of the villagers.

In response to the Commission's notice, the Government of Bihar reported that there were cracks on the walls of some houses, and that the leakage of poisonous gas was continuing in small quantities. As regards the destruction of cultivable land, it was stated that cultivation had been discontinued for a long period in that area prior to the incident.

The Commission noted that the State Government's report clearly brought out that an untoward incident, affecting the lives and property of villagers could readily occur,

and there was an immediate need for rehabilitation. The report further stated that the management of BCCL had been contacted for rehabilitation of the villagers, through letters issued in 1995 and in November 1996 and December 1996.

In view of the imminent danger to both human lives and cattle in the area, as brought out in the report, the Commission, in order to ensure that rehabilitation measures were taken, called for a further report within four weeks. In addition, the Commission recommended the payment of Rs. 10,000/- to each of the affected families and Rs. 50,000/- to the families of the deceased, as interim compensation, by the management of BCCL.

***Death of an injured person owing to negligence by the police: Bihar***  
**(Case No. 2054/4/1999-2000)**

The Commission received a complaint from Smt Phoolwanta Kuwar, a resident of Kamur, Bihar, stating that on 16 September 1999, her husband, Late Shri Bindeshwar Chaudhary, had been brutally beaten by Brij Bihari and others in a false case relating to the theft of a buffalo. In that connection, a case had been registered in the Mohania police station, but the police allegedly did not take any action against the accused persons, and her injured husband had been kept in the custody of a Medical Officer, Vinay Bahadur Sinha, after being handcuffed. He had allegedly not been provided proper treatment until he contacted tetanus, at which point, he was referred to a hospital in Varanasi. The complainant stated that her husband had died there owing to the negligence of the doctor and the police. It was further stated that she became a widow at the age of 20 and that her husband had left behind a six-month-old child. The complainant sought a high level enquiry into the matter, and justice for herself and her innocent child.

Upon perusal of the complaint, the Commission issued notice to the Chief Secretary and the DGP, Government of Bihar, to conduct an enquiry and send a report in the matter. The report obtained from the Chief Secretary and the DGP, Bihar, revealed that an investigation in the case was conducted by the DSP Mohania, and it was found that on 16 September 1999, Sonu Chaudhary had brought Bindeshwar Chaudhary in an injured condition to the police station at 9.30 p.m. and had filed a complaint alleging that the injured Bindeshwar Chaudhary and a few others had been caught red-handed by the locals while stealing a buffalo. The public that had gathered beat Bindeshwar brutally, thereby injuring him. Following the complaint, a case was registered under Section 379/411 IPC, and the injured person was referred to Mohania Hospital for treatment. Owing to excessive injuries on the person of Bindeshwar Chaudhary, he was not produced before a court. On 23 September 1999, his condition had deteriorated, and as a result, he was referred to the hospital in Varanasi, where he succumbed to his injuries. On 27 September 1999, the relatives of the victim had taken away the dead body and had filed a complaint, which was registered as Case No. 263/99 under Section 304(A), IPC, against five accused persons. It was also reported that the name of the deceased was in the crime diary Part II in the Mohania police station, and he was also a suspect

in Case No. 179/96 under Section 379 IPC. The post-mortem report attributed the cause of death to respiratory failure, and to the injuries caused on the body of the deceased.

Upon perusal of the report, the Commission noted serious short-comings in it. No information was forwarded to the Chief Judicial Magistrate in Case No. 263/99 for not producing the accused (deceased) within 24 hours of his arrest; when the accused (deceased) was brought to the police station in an injured condition, the police failed to register a complaint against those who had caused injuries; the death of the victim was caused while in police custody, and therefore, a video-film of the post-mortem conducted should have been made. An inquest report should also have been prepared by the Judicial Magistrate. While the SHO of the Mohania police station was arrested with immediate effect, and departmental proceedings were initiated against him, the Commission observed that the police had failed in the performance of their legitimate duties by not registering a case against the wrong-doers who had caused serious injuries to the husband of the complainant. The police was also negligent in not referring the seriously injured husband of the petitioner to the hospital in time, and in providing proper treatment; this had resulted in his death. The Commission further noted that the report was silent about the allegation of handcuffing of the injured husband. It was also admitted that no information was forwarded to the Chief Judicial Magistrate for not producing the injured husband of the complainant before the said court, which confirmed that there had been deliberate inaction on the part of the police. The Commission observed that the evidence on record proved the allegation of the complainant of the ill-treatment of her husband by the police.

Having regard to the facts and circumstances of the case and keeping in view that the complainant was widowed at the age of 20 years and left alone with the responsibility of raising a six-month-old child, the Commission recommended the payment of interim compensation of the amount of Rs. 3 lakh to the wife of the deceased. The Commission further directed that a sum of Rs. 20,000/- may be paid by a demand draft to the complainant, and the balance deposited in a nationalised bank and the interest be paid to her every month. The Commission also asked the Government of Bihar to expedite disciplinary action against the errant police officer. The Commission was informed that necessary sanction was issued for payment of compensation.

### VIOLATION OF RIGHTS OF CHILDREN/WOMEN

***Suicide by a Dalit woman following rape by eight persons including  
four constables: Karnataka  
(Case No. 581/96-97/NHRC)***

A complaint dated 10 April 1996 was received from Hasan Mansur, President, PUCL-Karnataka, that ABC (name withheld to protect identity), a Dalit woman, was raped by eight persons, of whom some were constables, and she had subsequently committed suicide. The

complaint further mentioned that one Ganga had also allegedly been killed by the police. The Commission was requested to investigate the incidents and render justice to the victims.

In response to the Commission's notice, the Government of Karnataka sent a report stating that in ABC's case, four police officers had been kept under suspension and a charge-sheet was filed against them on 5 November 1996. The case was pending trial. The report further admitted that the four police personnel had misbehaved with ABC. Regarding Ganga's case, the report stated that a case Cr. No. 90/95 was registered in the Azadnagar police station and was pending investigation.

The Commission held that though the husband of ABC might have been involved in a crime, she was fully entitled to respect for the dignity of her person. Unable to bear the ignominy of rape, the Commission noted that she had committed suicide. Her next of kin were entitled to be recompensed for the loss of her life. The Commission, therefore, directed the State to pay a sum of Rs. 2 lakhs to the next of kin within six weeks. With regard to the death of Ganga, the Commission directed that if the charge-sheet had not already been filed by them, the investigation should be entrusted to the State CID, who should conduct a thorough investigation and take appropriate follow-up action, and have the accused prosecuted successfully. In addition, disciplinary action against all erring police personnel as for a major penalty, should be taken and concluded as expeditiously as possible.

***Forcible dispossession of a poor woman: Bihar***  
(Case No. 1259/4/98-99)

The Commission received a complaint from an elderly woman, Smt Chinta Devi, alleging that she was forcibly dispossessed of her land at the instance of the local MLA. She also alleged that the MLA and his group had beaten her, looted household articles and razed her tea stall, which was her only source of income.

The Commission directed the SP, Nalanda, to submit a report and also directed its own investigation wing to conduct an enquiry. The Commission's investigation wing reported that though the alleged incident had taken place on 25 September 1997, the police had registered the FIR only on 3 November 1997, and that the delay had been willfully caused by the local SHO, who was suspended on 2 November 1997. It was further stated that the land on which the complainant was running her tea stall was a disputed site, and the matter was sub-judice. A case had already been registered against 11 accused persons for assaulting the complainant, and a charge-sheet had been submitted in the court. No case could be made out against the local MLA for want of sufficient evidence. The report also stated that household property of the complainant worth Rs. 32,000/- could not be recovered, and that no compensation had been paid to the complainant.

The Commission noted that legal action had been taken against the erring officials and the hooligans. The land on which the complainant had set up her tea stall was the subject matter of an on-going civil suit. In the circumstances of the case, the Commission felt that an independent enquiry by a senior police officer into the alleged involvement of the local MLA was warranted.

The Commission expressed its dismay that the local SHO—a public servant—had willfully not registered Smt Chinta Devi's complaint on time. In this case, the dereliction of duty by a public servant had failed to avert an unfortunate incident. The Commission also expressed serious concern that the culprits had destroyed the tea stall, which was the complainant's only source of income.

Keeping the above in view and the constitutional provisions on the right to a means of livelihood, the Commission recommended that:

- ❑ The Government of Bihar pay Rs. 25,000/- (Rupees twenty-five thousand) as immediate interim compensation to Smt Chinta Devi.
- ❑ The Government of Bihar consider providing to Smt Chinta Devi free accommodation under the Indira Avas Yojana scheme to enable her to continue earning her livelihood.
- ❑ The Government of Bihar conduct an independent enquiry into the alleged involvement of the local MLA and submit a report.

**COMMENT**

Every Indian citizen enjoys the Fundamental Right to life that the Supreme Court has interpreted to include the right to earn a livelihood. And no citizen can be deprived of this right, except by a procedure that is just, fair and reasonable. Smt Chinta Devi was a woman who had been deserted by her husband, and was eking out a living for herself and her children by running a small tea stall. By destroying her tea stall and dispossessing her of her land, the culprits had unlawfully deprived her of her Constitutional Right to a means of livelihood.

***Rape of a minor Dalit girl by the protectors of law: Uttar Pradesh***  
(Case No. 9133/24/98-99)

Shri Chandradhas Maurya, a member of Samta Sainik Dal and a resident of District Bulandshar, Uttar Pradesh, in a complaint to the Commission, alleged the kidnapping, rape and suicide of a 15-year-old *Dalit* girl ABC (name withheld to protect identity). He stated that two firemen, along with a police constable, enticed ABC away on 14 August 1998, and took her to their rented premises in front of the police station, where they raped her repeatedly. She was allowed to go away the next morning with the threat that she would be killed if she reported the incident to anyone. The girl disclosed the incident to her family members, and she, along with her family members, went to the police

station, Dibai, and met the Sub-Inspector and later the Fire Station Officer, both of whom, instead of taking cognizance of the case, abused the girl, passed derogatory remarks and also threatened them with implication in false cases. Upon returning home, ABC committed suicide by setting herself on fire and later succumbed to her burn injuries at 9 a.m. on 15 August 1998.

As the complaint related to a grave violation of human rights of a *Dalit* girl, the Commission took cognizance of this matter on a priority basis, and issued notice to the SSP, Bulandshar, calling for a report. The report dated 6 October 1998, received from the SSP, Bulandshar, stated that the complainant had denied having sent the complaint in question to the Commission, but confirmed the averments and allegations made in the complaint with regard to the suicide by ABC after she was raped by the two firemen. It was also reported that, upon a complaint of the grandfather of the victim, a case FIR No. 221/98 under Section 363/366/376/306, IPC, and under Section 3(1)/12 of the SC/ST Act had been registered, and efforts were on to arrest the accused persons.

Upon considering the report, the Commission thought it expedient to get the matter inquired into by its own investigation division. Pursuant to this decision, an Inspector from the investigation division made an on-the-spot enquiry and submitted a report. According to the report, ABC had developed illicit relations with the two firemen. On the night of 14 August 1998, she had been taken by them to their rented house, where she had been sexually exploited. The next day, ABC approached the Fire Station Officer and the SHO to complain about the rape, but neither took cognizance of the case. Thereafter, the girl committed suicide by burning herself. A case was registered on 17 August 1998, but only after a protest and a road blockade by the residents of the village. The report of the investigation team also indicated that the station diary for 16 August 1998, had been tampered with. It was also observed that while the SHO had visited the scene of the crime, he did not record the dying declaration of ABC, though she was capable of giving one at that time.

Upon perusing the report, the Commission held that SHO, Dibai, and the in-charge, Fire Station, Dibai, had not conducted themselves in a manner befitting their office and responsibilities, and that they had not only shown a lack of sensitivity in a matter of grave importance, namely the protection of a *Dalit* girl subjected to sexual assault, but had been thoroughly negligent in not taking cognizance of the complaint lodged by ABC. Instead, the Commission noted, they had allegedly made derogatory and uncharitable remarks about the girl. The Commission observed that the attitude of these two officers had driven ABC to take the extreme step of ending her life by setting herself on fire, having been left with the impression that she would not get justice. The Commission further observed that the remarks and inaction on the part of the officials might, perhaps, make them liable for the offence of abetment of suicide by ABC, which was punishable under Section 306, IPC, and needed to be investigated.



On a consideration of all the facts and circumstances of the case, the Commission recommended to the Government of Uttar Pradesh that:

- ❑ While initiating disciplinary proceedings for major penalty against the concerned SHO and fire station officer, they may be placed under suspension with immediate effect;
- ❑ It entrusted the investigation of the case to the State CID in order to ascertain further the role of these two officers, as also that of another Constable, who was alleged to have aided and abetted in the kidnapping and rape of ABC;
- ❑ By way of immediate interim relief, pay a sum of Rs. 1 lakh to Shri Narain Singh, grandfather of ABC, within a period of one month. Out of the awarded sum of Rs. 1 lakh, a sum of Rs. 25,000/- be paid by way of cash/demand draft and the balance amount of Rs. 75,000/- be put in a fixed deposit in a nationalised bank for a period of five years, periodic interests accruing thereon being payable to him.

Pursuant to the Commission's recommendations, the State Government started a disciplinary enquiry and an enquiry by the State CID. The compensation was also sanctioned.

***False implication of a woman in a murder case: Bihar***  
**(Case No. 15573/96-97/NHRC)**

The People's Union for Civil Liberties (PUCL) drew the attention of the Commission, through a complaint, to the suffering of one Smt Nilmani, who was falsely charged in a case relating to the murder of her sister-in-law. As she could not engage a lawyer to defend herself, she had remained behind bars for 10 years, until she was finally acquitted by the court. The Commission was also informed that Nilmani was living in difficult circumstances after her release. She was reportedly suffering from paralysis and was unable to walk. The PUCL sought adequate compensation for the victim as well as her rehabilitation.

In response to the Commission's notice, the Government of Bihar stated that the matter related to proceedings before a court and not to the conduct of the jail authorities. The Commission, however, noted that the victim had been falsely involved in a murder case and had been compelled to live in jail for more than 10 years for no fault on her part. Further, there was no record to show if any appeal against her acquittal was pending in any court of law. Under these circumstances, the Commission observed that the liability of the State arose on account of her harassment and incarceration during a large part of her active life.

Having regard to the facts and circumstances of the case, the Commission directed the Government of Bihar to pay Smt Nilmani a sum of Rs. 2 lakhs as compensation for her rehabilitation.

*Illegal detention of a three-year-old child for ten years due to  
apathy of the police and other authorities*

(Case No. 78/25/98-99)

Syed Shahabuddin, former MP, drew the attention of the Commission to the plight of a young girl who had witnessed a murder, and was thereafter, detained in police custody for about ten years, as a result of which her childhood was lost. The incident had been reported in *The Times of India* under the caption 'Witness spends 10 years in custody—Case yet to begin'. The Commission immediately took note of the letter and called for a report from the DGP, West Bengal. The office of the DGP forwarded the report, which stated that although the name of the girl had not been mentioned by the complainant or in the newspaper item, the report was presumably about a girl named Kalpana Mistry. According to the report, on 30 March 1990, the learned SJDM, Kalyani Nadia, had ordered that Kalpana Mistry, who was an eyewitness in a case in which her father had allegedly murdered her own mother, should be lodged at Liluaha Home and produced in the court, as and when required. She was last produced in the court on 20 September 1996, and she failed to identify the accused. She was taken to Liluaha Home on 29 September 1996. In between, in 1992, she was shifted from the Liluaha Home to a Child Care Home (run by an NGO) on the orders of Shri R.M. Zameer, IAS, SP and ex-officio Director of Special Welfare, West Bengal, for proper upkeep, schooling, protection, care and further rehabilitation. However, when the said NGO moved the learned court for approval of transfer, the learned Sessions Judge termed the act as highly irregular, and asked for an explanation from the Director of Social Welfare for having transferred the child without approval and intimation to the court. Subsequently, she was again sent to the Liluaha Home. Through its memo dated 1 September 1997, the Social Welfare Department again directed the transfer of the child to a Government approved/recognised NGO Child Care Home for her education, care and further rehabilitation. The report stated that the court had not passed any order so far.

The gist of the report from the office of DGP, West Bengal, was sent to Syed Shahabuddin for his comments. Shahabuddin expressed his anguish both at the callousness of the civil and police authorities who, without a thought regarding the tender age of the child, had kept the girl in isolation, and also the court for not even having cared to pass an order for her future guardianship. He suggested that since the State is a guardian in such cases, the child should be handed over to the SOS Children Home and the NHRC should give suitable compensation which should be deposited in her name as a trust for her future.

The Commission expressed its shock at the inhuman and apathetic manner in which the case was handled by the police and other authorities. The Commission found the very idea of retaining a girl child, who was only three years old at the time of the incident, and considering her competent to be a witness in a court of law, and keeping her waiting for the commencement of the trial for ten long years, as shocking. The appalling lack

of interest shown by the authorities in the welfare of the innocent child resulted in depriving her of her normal childhood, which could never be regained. No amount of compensation, the Commission felt, would be adequate for the loss she had suffered. However, in order to alleviate her suffering to some extent, the Commission recommended to the Government of West Bengal to ensure that the child was suitably rehabilitated and educated in the SOS Children's Home or sent to a reputable institute run by an NGO in or around the city of Calcutta, till she became a major. The Commission also recommended that a sum of Rs. 50,000/- be deposited in her name through a Court Guardian, the interest of which would be paid to the institute looking after her, and the principal amount would be released to her on her becoming a major to enable her to settle in life. A compliance report from the West Bengal Government has since been received.

### COMMENT

In the Universal Declaration of Human Rights, 1948, the United Nations has proclaimed that the child is entitled to special care and assistance. Article 3 of the Convention on the Rights of the Child, 1989, stipulates that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests of the child** shall be a primary consideration.

#### *Education of children of sex workers: Delhi* (Case No. 16754/96-97/NHRC)

The Joint Women's Programme (JWP) and Mashaal Mahila Sangathan (MMS) sent a petition to the Commission on 17 February 1997, complaining about the reluctance of the Municipal Corporation of Delhi (MCD) to allocate one additional room in the MCD Primary School, GB Road, Delhi, for the education of the children of sex workers and attempts to vacate them from the existing room which was allotted to them.

In response to the Commission's notice, the MCD stated that it was not their responsibility to provide accommodation to the JWP to educate the children of the sex workers, or to provide other health programmes to the sex workers and their children. The MCD added that the terms of the initial allotment to the JWP to organize their part-time programme after school hours in room no. 9 had been violated, and that the MCD was itself providing education to all children in the school run by the Corporation. The MCD also said that it would be open to the children of sex workers, to get admitted in that school.

In its proceedings of 7 July 1999, the Commission noted that the increased inflow of students every year compelled the JWP to commit a breach of the conditional order of allotment. The breach of the condition was neither volitional nor for any private profit motive, but to serve the public cause. The Commission was of the considered view that the breach was inconsequential. Having regard to the circumstances, the Commission

held that the MCD, being a local authority and an arm of the State, had a duty to implement the programmes of education and health care for the children of sex workers. In the light of the provisions of the Constitution, relevant Supreme Court judgments and the provisions of international instruments, the Commission recommended the allotment of an additional room to the complainant organization, in addition to it retaining possession of the existing room. After repeated efforts to secure compliance of its directive, the Commission received a report from the MCD indicating that the appropriate action had been taken in accordance with the view expressed by the Commission.

COMMENT

In *Gaurav Jain v Union of India*<sup>1</sup>, the Supreme Court held that, it is the duty of the State and all voluntary non-government organizations and public spirited persons to come to the aid of sex workers and to retrieve them from prostitution, rehabilitate them with a helping hand to lead a life with dignity of person.

The children of sex workers are entitled to facilities and opportunities for their education and health care. Article 19(2) of the Convention on the Rights of the Child stipulates that: 'State authorities shall take all legislative, administrative, social and education measures to protect the child from neglect or negligent treatment, maltreatment or exploitation including sexual abuse'. Articles 28 and 29 of the Convention on the Rights of the Child set out the obligations of States, party to the Convention, in respect of the education of children.

VIOLATION OF RIGHTS OF DALITS, MINORITIES, DISABLED AND OTHERS

*Attacks against Christians in several states*

(Case Nos. 289/6/1999-2000; 351/6/1999-2000; 295/6/1999-2000; 481/6/1999-2000;  
1873/4/1999-2000; 1933/4/1999-2000)

In its previous Annual Report, the Commission recounted in detail the steps it had taken in respect of the killing of an Australian priest, Mr. Graham Stewart Staines and his two sons in Orissa, as well as the attacks that had occurred on members of the Christian community in Madhya Pradesh and Gujarat. The Commission observed 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.

During the year under review, the Commission took cognizance of six specific complaints alleging violations of the rights of members of the Christian community. These were complaints from:

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1 AIR 1997 SC 3021.

1. Mrs. P. Lal Joseph, Barabanki, Uttar Pradesh, regarding harassment, torture and an attack on Christians by one Vijay Singh;
2. Dr. J.J. Bennett concerning attacks on Christians by activists of the Vishwa Hindu Parishad (VHP) and the Bajrang Dal in Gujarat;
3. Shri Samsom C. Christian, concerning acts of religious intolerance by certain groups in Ahmedabad, Gujarat;
4. Shri P.P. Joseph alleging attacks on Christian minorities by VHP and Bajrang Dal activists in Gujarat;
5. Shri Samsom C. Christian alleging attacks on some churches of South Gujarat.
6. In addition, suo motu cognizance was taken on reports covering the alleged kidnapping and mistreatment of a nun working in Bihar.

Greatly concerned by these developments, the Commission was in frequent touch with the Chief Secretaries and Directors General of Police of the concerned States. However, as instances of violence directed against the members of the Christian community continued to be reported in the press, the Commission set in process a comprehensive review of the arrangements required to fully protect the rights of the community in all States of the country. The steps taken would be covered in greater detail in the next Annual Report of the Commission.

*Facilities for foreign nationals detained at Lampur Seva Sadan: Delhi*  
(Case No. 693/30/97-98)

While considering the petition concerning the possible deportation of Shri Rongthong Kuenley Dorji, it came to the notice of the Commission that he had been detained at Lampur Seva Sadan, an institution for rehabilitation of beggars, administered by the Social Welfare Department of the Government of the NCT of Delhi. On 24 May 1999, the Commission directed the Director General (Investigation) [DG(I)] of the Commission to visit Lampur Seva Sadan to make an assessment of the conditions prevailing therein. After his visit to Lampur Seva Sadan, the DG(I) submitted his report in which he stated that the foreigners were confined to a few barracks in one segregated corner of the campus, with a compound wall and a gate. Security was being provided by a section of the Rajasthan Armed Constabulary.

After considering the report, the Commission recommended that separate enclosures be created for foreign nationals and that the Government of the NCT of Delhi undertake immediate repairs and take the following steps to improve the arrangements:

- i. Replace the asbestos sheets roofing with roofing made up of some other material that would not be harmful to inmates.
- ii. Post adequate number of conservancy staff immediately for the cleanliness of the area and for the maintenance of the toilets/bathrooms.
- iii. Make separate cooking arrangements for the foreigners instead of supplying them food from the beggars home, as that might hurt their sentiments and sense of dignity.

- iv. Consider provision of separate STD/ISD booths for use by the foreign detainees.
- v. Establish MI Room where a doctor and para-medical staff are available round-the-clock for medical cover.
- vi. Issue proper instructions to ensure regular visits by senior officers to this detention centre.

The Commission also directed the Principal Home Secretary; Secretary and Director, Social Welfare Department; and the Foreigners Regional Registration Officer of the Delhi Administration to visit the Lampur Seva Sadan and work out a proper strategy for bringing about ameliorative changes not only for the foreign detainees, but also for the institutions for beggars located in the campus. The Commission has received a compliance report.

***Harassment of denotified and nomadic tribals belonging to the Pardhis community in Bighwan village, Pune, Maharashtra***  
(Case No. 512/13/98-99)

Shri G.N. Devy, Secretary, Denotified and Nomadic Tribals Rights Action Group, Vadodara, Gujarat, submitted a complaint to the Commission alleging atrocities on the *Pardhis* community, a denotified community of tribals living in the backwaters on the banks of the Ujni Dam, Bighwan village, Taluk Indiapur, Pune, Maharashtra, by persons in plain clothes serving in the Railway Police on 12 July 1998. It was further alleged that their houses, fishing nets, boats and other materials were burnt. The police had also beaten up the women of the community, including pregnant women, and had attempted rape on two teenaged girls.

On consideration of the reports of the investigation team of the Commission and the Superintendent of Police, Railways, Pune, the Commission found that the police report sent by the SP Railways, Pune, also corroborated the report of the Commission's investigation team, which conclusively established that the Police Anti-Dacoity Team, in their zeal to nab male *Pardhis* who were alleged to have been involved in committing crimes of theft, dacoity, etc. had tortured four innocent women and molested two young women—one of them a teenager. The evidence also established that several huts belonging to the tribals, and their fishing nets had been destroyed. The investigation team had estimated damage amounting to Rs. 10,000/- in respect of each family. In addition, innocent women had suffered trauma and torture. The high-handedness and misconduct of the police officials was unbecoming of their profession. The evidence on record indicated that the police had behaved in a shocking and brutal manner.

In view of the facts and circumstances, the Commission recommended: a) of the four women victims, namely, Smt Shalan Pratap Kale, Smt Manda Latif, Kumari Jyoti and Smt Alka Chandrasal Kale, the first three be paid Rs. 1 lakh each and Smt Alka Chandrasal Kale, Rs. 1,50,000/- as immediate interim relief; (b) a sum of Rs. 10,000/- may be paid to each of the families of the *Pardhis* whose huts, utensils and fishing nets were destroyed, as compensation by way of 'immediate interim relief'; (c) in case a charge-sheet had not yet

been filed in the court against the erring police personnel, the case may be entrusted to the State CID and a charge-sheet be filed thereafter against all the culprits in the appropriate court; and (d) disciplinary action may be initiated against the erring police personnel.

The State Government has sent a compliance report with regard to the payment of compensation.

*Atrocities inflicted on a family in Maharashtra*  
(Case No. 1361/94-95/NHRC)

Shri A.R. Antulay, Member of Parliament (MP), filed a petition dated 12 September 1994, before the Commission, highlighting the case of the Haspatel family of village Walwati, Shrivardhan Taluk, Raigadh District, Maharashtra, who were allegedly subjected to serious atrocities by the police during the communal riots that took place in Maharashtra in December 1992 and January 1993. The complainant stated that the act of the police against an innocent family had the distinct tinge of communal bias.

On consideration of the matter, the Commission noted from the report of the State Government, that departmental action had been ordered against the police officials involved in the matter. The Commission accordingly recommended that, keeping in view the nature of findings in the departmental proceedings, appropriate prosecution should be launched in respect of all, or of such persons who were found responsible for the conduct which had been indicated in the Government order.

The matter was again considered by the Commission on 17 January 2000. The Commission observed that from the conclusions reached and the findings recorded by the State CID; it was evident that Shri Iqbal Ismail Haspatel, his wife, three sons and a daughter-in-law, ie in all six members of that family, were not only humiliated and harassed, but also unlawfully tortured. Some of them were subjected to illegal arrest. All of these persons were subjected to several indignities wholly inconsistent with norms of decency. It was also noted that allegations had been made to the effect that valuable property estimated at Rs. 1.87 lakhs, owned by the victims of the incident, had also been taken away or destroyed by the police officials; this required further verification. The Commission directed the Government of Maharashtra to pay an amount of Rs. 5 lakhs as compensation by way of immediate interim relief to Shri Ismail and his family members. The Government of Maharashtra has complied with the Commission's recommendations on the payment of compensation of Rs. 5 lakhs to the victims.

*Death of workers in silicon factories of Madhya Pradesh*  
(Case No. 7894/96-97/NHRC)

A news item captioned 'Death in the Air' appeared in the *Sunday Observer* in September 1996. The Commission took suo motu cognizance of the news item and called for a report from the Government of Madhya Pradesh. The report indicated that there were 134 slate



factories that had been set up in the Mandsaur District of Madhya Pradesh. The health of the majority of the workers employed in these factories was affected due to inhalation of silicon dust. The Government had taken steps to provide medical facilities and ensure that all these workers were covered under the Employees State Insurance (ESI) scheme. There was a mobile van in operation to provide medical facilities to the workers. They were even provided with pensions on the declaration that the worker was affected by the disease, which was an occupational hazard. The district administration had advised owners of these factories to instal BHEL machinery to minimise dust particles. However, many of the owners of these factories were unable to meet the cost of the sophisticated machinery, this resulted in the spread of silicon dust and affected the workers' health. The Labour Inspectors were visiting the factories and prosecuting those who were not applying the minimum standards laid down for the prevention of this pollution.

Having regard to the provisions of the Indian Constitution as well as to the International Human Rights instruments concerning the right to life, the Commission gave the following directions to the State for future compliance:

1. To ensure the establishing of BHEL machinery in the factories to prevent dust pollution, and to ensure that pollution-free air is provided to workers.
2. Inspection by the Labour Department on a monthly basis, and reports to be submitted to the State Human Rights Commission for monitoring.
3. Widows and children of deceased workers to be taken care of by the factory owner by providing assistance.
4. To ensure that child labour is prevented by the following methods:
  - a. Establishing schools at the cost of factory owners, with assistance from the State for the education of the workers' children.
  - b. The provision of periodic payments for their education and insurance coverage at the cost of factory owners.
  - c. The provision of mid-day meals and clothing to dependent children or children of deceased workers.

#### COMMENT

In examining this matter, the Commission observed that the right to health and medical care is a Fundamental Right under Article 21, read with Articles 39(e), 41 and 43 of the Constitution. The right to life includes protection of the health and strength of workers, and is a minimum requirement to enable a person to live with human dignity. The Universal Declaration of Human Rights, as well as other international instruments, also speak of this right. Continuous exposure to the corroding effect of silicon dust can result in the silent killing of those who work in such an environment. The duty of the State, under the Directive Principles of State Policy of the Constitution, is to ensure the protection of the health of workers employed in such slate factories in Mandsaur and elsewhere in the State.

***Police firing on Dalits: Tamil Nadu***  
(Case No. 172/95-96/NHRC)

A complaint dated 28 February 1995 was received from Shri P. Kamnayya, Organiser and Treasurer, Adi Dravida Welfare Rights Sangh, Karaikudi, Tamil Nadu, which said that two persons belonging to the scheduled castes from Village Vashistpuram, District South Arcot, were shot dead by the Tamil Nadu police on 17 January 1995, while they were trying to protect others of their community, who were being lathi-charged by the police on trying to hoist a flag of Dr. Ambedkar in the street. The allegation was that the police even helped members of other castes to ransack the homes of those belonging to the scheduled castes. Media persons were not allowed to file any report on the matter in the newspapers.

The Commission took cognizance of the complaint and sought a report from the DGP, Tamil Nadu. Although a report was received from the DGP, the Commission was not satisfied with it, and directed the Director General (Investigation) of the Commission to enquire into the matter. On enquiry, it was found that the clashes had taken place not on 17 January 1995, but on 19 January 1995. The police had fired two rounds, causing injury to Jyoti and Mahindra, who were hospitalised and later discharged. However, in the clash, the mob of non-Adi Dravidars had beaten to death two persons, Shri Shanmugham and Shri Ramesh. The police had registered the complaint and charge-sheeted the accused persons.

The Commission considered the report of the Director General (Investigation) and directed the Chief Secretary, Government of Tamil Nadu, to pay Rs. 1 lakh as compensation to the wife of the deceased, Shri Shanmugham, and to give her a job to earn her livelihood. It was also directed that Rs. 1 lakh should be paid as compensation to the father of the deceased, Shri Ramesh, who was also a victim of mob anger. Of the Rs. 1 lakh to be paid to them, it was directed that Rs. 20,000/- may be paid straight away, and the balance Rs. 80,000/- kept in a long-term fixed deposit in a nationalised bank, with the interest earned being paid to them every month. The Commission also directed that Rs. 30,000/- each be paid to Shri Jyoti, son of Shri Muthu; and Shri Mahindra, son of Shri Peruman, who suffered bullet injuries at the hands of the police. Of this, a sum of Rs. 5,000/- should be paid in cash and the balance of Rs. 25,000/- placed in a long-term fixed deposit in a nationalised bank with interest thereof to be paid to them every month. The Government of Tamil Nadu was directed to monitor the prosecution of all those accused and to submit a report to the Commission.

***Rehabilitation of physically handicapped: Madhya Pradesh***  
(Case No. 1528/96-97/NHRC)

Shri Bihari Lal Thevait, a resident of District Bilaspur, Madhya Pradesh, sent a petition to the Commission, wherein he said that he was a 26-year-old man whose lower limbs had been affected by polio. He also suffered from a cardiac problem. He had approached

the District Collector for assistance and employment. Although the District Collector had arranged for his operation free of cost at a private hospital, the operation was not successful, and even after four to five years, he was not cured. He alleged that instead of being provided with a tricycle the operation had been suggested to him. The then District Collector also provided him with assistance at the rate of Rs. 2,000/- per month, and this continued until such time as that Collector was in office. The Collector also passed an order for his appointment as an Assistant Teacher. However, this did not materialise. He, therefore, sought compensation of Rs. 50 lakhs for violation of his Fundamental Rights, treatment of his heart ailment, management of his disability and employment as an Assistant Teacher.

Though the Commission does not normally take action on petitions which relate essentially to service matters, in this case, the Commission issued a notice to the Collector and called for a report, as the petitioner was a disabled person. The Collector responded saying that the complainant was affected by polio when he was one-and-a-half years old, and that both his feet were deformed. The opinion of orthopaedic doctors had been sought, and they had certified that the complainant would have to move on his hands and knees, in a crawling position, unless he was operated upon. Accordingly, he was operated upon in 1988, and his limb deformity was corrected to a large extent. In five months time, he was fitted with calipers and a walking frame to help him stand erect. The Collector also stated that the complainant was entitled to be considered for a job under the quota for persons with disabilities. According to the Collector, the complainant had tried to obtain a certificate of complete recovery to enable him to get the job of an Assistant Teacher, but was advised to obtain a disability certificate from the competent authority. The petitioner apparently made the complaint as he was aggrieved by this advice.

The report of the Collector was sent to the complainant for his comments. However, the petitioner stood by his complaint and stated that the operation, that had been performed was not successful, and his defect had not been cured even after four years. The complainant claimed Rs. 20 lakhs as compensation for mental and physical torture he had undergone, and Rs. 30 lakhs for protection of his rights and for his living.

The Commission considered the matter carefully and expressed appreciation of the action taken by the District Collector. The question whether the condition of the petitioner had worsened after the operation, as claimed by him, was not probed further. However, the Commission felt that the State Government, in a Welfare State, should help alleviate the suffering of such disabled persons. Accordingly, the following recommendations were made by the Commission to the State of Madhya Pradesh:

- a. To grant ex-gratia monetary relief to the tune of Rs. 1 lakh to the petitioner, either from the fund established by the State Government for the welfare of handicapped persons, or from the Chief Minister's Relief Fund.

- b. To offer a job to the petitioner commensurate with his academic qualifications and physical ability, in accordance with the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, or on compassionate grounds.

The State Government has intimated the Commission that it has paid a sum of Rs. 1 lakh as compensation to the petitioner.

***Inhuman treatment of mentally ill patients at Sultan Alavudeen Durgah: Tamil Nadu***  
(Case No. 427/22/1998-99)

After a visit to the Sultan Alavudeen Durgah at Goripalayam, Madurai, on 23 July 1998, Prof. (Mrs.) D. Nazneen, Head of the Department of English, Sri Meenakshi Government College for Women, Madurai, brought to the notice of the Commission what she described as the pathetic plight of mentally ill patients staying in the Durgah. She mentioned that there were a few hundred persons staying there with their wards, seeking a cure for mental illness. According to her, many of the mentally ill patients were chained and kept in sheds that were open from all sides; there was no space even for free movement of their limbs. When certain patients turned aggressive, they were severely beaten.

The Commission took cognizance and obtained a report from the Collector of Madurai. He stated that about 92 mentally ill patients were staying in the Durgah for 'treatment', and that they were being taken care of by their relatives. There was no evidence of beating of the patients; instead, it was stated that the patients and their relatives had reportedly expressed the hope of a cure.

Following directions of the Commission, the Director General (Investigation) of the Commission visited the said Durgah and gave an assessment of the situation. He observed that about 500 patients/devotees were staying in the Durgah. According to him, faith in the Durgah cut across religious lines, as about 75% of those present were Hindus and the rest were Muslims. The accommodation in which these people were living comprised of thatched sheds or open verandahs. The DG(I) also mentioned that, in addition to the Goripalayam Durgah, similar places existed in Tamil Nadu, where the mentally ill were taken and often kept in chains in the hope of a cure.

The Commission observed that it was the helpless situation of the patients and the members of their family that was largely responsible for the recourse to such courses of treatment by them. The inadequacy of proper medical facilities and the indifference of Government-run institutes seemed to be the other contributory factors. The Commission, therefore, directed the State Government to get the entire matter examined through a body of persons which could, inter alia, comprise of the representatives of the State Government, the Tamil Nadu State Human Rights Commission and other experts. The Commission sought a report from the Government of Tamil Nadu on the steps being

taken to alleviate the hardship of the mentally ill persons and of the persons attending to them by providing housing, medical care and other basic amenities. As the response that was received from the Government of Tamil Nadu was inadequate to the situation, the Commission considered the matter again and itself constituted a Committee comprising of Dr. K.S. Mani (former Director, NIMHANS, Bangalore), Dr. (Ms.) Sheela Fenn (retired Professor of Psychiatry, Medical College, Madurai) and the District Collector, Madurai, to visit the Durgah and to make specific recommendations to the Commission for the proper treatment of the patients located in the Durgah. At the close of the period under review, the Commission was awaiting the report of the Committee, upon examining which it would pursue this matter further.

***Discrimination against Dalits: Gujarat***  
(Case No. 14/6/1999-2000)

The Chairman of the Social Justice Committee, a non-governmental organization in Amreily, Gujarat, made a representation to the Commission on 4 January 1999, wherein he stated that the Patel Community of Devalia village in Amreily District was committing atrocities and practising discrimination against the *Dalits* of the village. The *Patels* were preventing the supply of water, milk and butter milk and other essential commodities to the *Dalits*. They were not being engaged as labourers, and the *Patel* community even prevented the neighbouring villages from engaging them for labour work. Besides this, the *Dalits* were prevented from going out of the village, and the crops grown by them were being destroyed by the *Patels* in the presence of the police, who were mute spectators.

The Commission took note of the complaint and issued a notice to the Collector of Amreily to visit the village and hold discussions with the threatened groups and send a report within two days. Shri P.G.J. Nampoothiri, Special Rapporteur of the Commission, was also asked to coordinate action in this matter. In his report dated 20 May 1999, Shri Nampoothiri stated that he had contacted the Collector and the SP of the district. The Collector had indicated that due to his busy schedule, he had been unable to visit the district. In the meantime, another NGO called 'Navjeevan Trust' of Ahmedabad filed a Public Interest Litigation in the High Court. The main thrust of the PIL was the discriminatory methods being followed by the dominant community, namely the *Patels*, against the *Dalits* in the district. The problem had begun with encroachment of land, which was done by both the *Patels* and the *Dalits*. The High Court had ordered the *Panchayat* to remove all encroachments. However, the *Panchayat*, while permitting the *Patels* to continue with their encroachments, dispossessed the *Dalits* of the land encroached by them. The *Patels* had even prevented the *Dalits* from getting jobs under the Drought Relief Programme initiated by the Government. The District Magistrate, in his report of 21 May 1999, stated that he had organized a meeting with the villagers and discussed various problems in the presence of different communities. The *Dalits* had made demands for continuous police protection, creation of wage employment opportunities, provision

of bank loans, etc. The District Collector, with other concerned agencies, was working out the possibility of fulfilling the demands. However, the District administration had not taken a decision on the economic help to be provided, as the matter was sub judice. Security cover was, nevertheless, being provided to the *Dalits*.

The Commission called for a copy of the writ petition and the responses filed in the High Court. The Commission noted, after perusal of the response of the Collector to the writ petition, that the High Court had further appointed a Committee of three advocates and officials to inspect and submit a report. This Committee had found that the Collector's report was not an accurate reflection of the actual situation. There appeared to be large-scale discrimination against the *Dalits*, which was not properly represented in the reply of the Collector. The Collector's reply was, in fact, based on inaccurate data. The *Gram Panchayat* officials also did not cooperate with the Committee when the enquiry was being made. As for the Committee formed by the District Collector, it had not taken any initiative to solve the problem.

The Committee observed that the Collector was resting on the plea that a writ petition was pending in the High Court of Gujarat. The Commission expressed anguish at the fact that even after 50 years of Independence, the violation of human rights was flagrant and that unwarranted discrimination against *Dalits* continued, especially in rural India. The dependence of *Dalits* on agricultural earnings, is the root cause of their being subjugated. The few *Dalit* youths who strove to rise above their circumstances with the help of education, and asserted their right to equal treatment, were branded as extremists. The Commission further examined the question of whether pendency of the writ petition in the High Court actually prevented the District Magistrate from organizing economic empowerment programmes and doing real social justice to the *Dalits*, and whether the Commission was precluded from directing the administration to protect human rights and prevent the violation of the human rights of *Dalits*. Keeping in mind the Constitution of the NHRC, it was felt that just as the Hon'ble High Court had powers of jurisdiction and authority under Article 226 to grant such relief as it deems appropriate to the affected persons in the pending writ petition, the NHRC was equally possessed by and entrusted with the same function to grant redressal of violation of human rights of the *Dalits*. The Commission had, therefore, gone into the magnitude of the problems faced by the *Dalits*, and accordingly, directed the State Government of Gujarat and the District Magistrate, Amreily, to ensure the economic empowerment of the *Dalits* and adopt the following measures:

- ❑ In accordance with Article 39(B) of the Constitution, the District Collector and the Magistrate, Amreily, are to ensure delivery of physical possession of the lands to all the remaining *Dalits* who were given '*pattas*'.
- ❑ To grant '*pattas*' of any other land available in the Village Devalia and within the *Gram Panchayat*'s jurisdiction, as is economical for cultivation as per the rule, and if necessary, organize Cooperative Farming Societies composed of *Dalits*.

- To organize loan facilities for the youth for self-employment schemes or small-scale industries.
- To evolve any other suitable scheme for economic empowerment, keeping in mind the availability of local raw materials.
- The State Government and the District Administration to pay ex-gratia compensation at rates varying between Rs. 30,000/- to Rs. 50,000/- per family, depending on the magnitude of suffering undergone by the family. The sum already paid to four *Dalits* may be deducted from the total payment.
- To ensure supply of drinking water and other essential commodities at controlled prices through fair price shops.
- To continue police protection till the law and order situation becomes normal.

COMMENT

Article 15 of the Constitution of India expressly prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Article 15(2) further stipulates that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to:

- access to shops, public restaurants, hotels and places of public entertainment; or
- the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Article 46 of the Constitution, under the Directive Principles of State Policy, stipulates that the State shall promote with special care, the educational and economic interests of the weaker sections of the people, and, in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation. Under Article 17 of the Indian Constitution, untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability is an offence punishable in accordance with law.

*Violation of human rights of members of the Reang community of Mizoram*  
(Case No. 40/16/97-98)

The President, Akhil Bharatiya Vanwasi Kalyan Samiti, and seven other such like-minded persons submitted petitions to the Commission, wherein they alleged that since September/October 1997, the *Reang* community members had been living in an atmosphere of terror created by the Mizos, with the tacit support of the local administration and the police. As a result of this, over 30,000 *Reangs* had left Mizoram for Tripura. There were apparently several incidents of killing, rape, abduction and burning of houses by the Mizos. The condition in the refugee camps established by the Government of Tripura was also not satisfactory. The petitioners requested intervention by the Commission.

The Commission called for reports from the Governments of Mizoram, Tripura and Assam. The Government of Tripura, in its report, stated that although the influx of



*Reangs* started with about 10,000 people in October 1997, the number had gone up to 30,000. The Government of Tripura was finding it difficult to bear the burden, though they were being financially helped by the Government of India. They mentioned that efforts made to persuade the refugees to return to Mizoram had failed.

The Government of Assam, in its reply, stated that some families had gone into the Karimganj and Balkandi districts of Assam, and were living there in forest villages, earning their living by labour on daily wage basis. No refugee camps had been set up. However, medical aid was being provided.

The Government of Mizoram, in its reply, stated that the administration was making efforts to take action against the local Mizos who had indulged in the burning of houses of some *Reang* families. It was the demand of the Group National Union of the *Reangs* for an autonomous district council, and the murder of a Mizo forest guard by suspected *Bru-Reang* militants, which led to violence between the two communities. Some arrests had been made in this regard. The refugees had been requested by the Home Minister of Mizoram to return, and they were also given Rs. 2,000/- for reconstruction of their houses and a week's ration. However, some of the *Reangs* received the amount and again went back to the refugee camp in Tripura. The Ministry of Home Affairs also confirmed this position and stated that the matter was being closely monitored.

Shri Sudarshan Agarwal, Member, NHRC, and Shri R.C. Jain, Registrar General, visited the spot to make an assessment of the situation. The Special Rapporteur, Shri Chaman Lal, was also deputed to meet the *Reang* refugees and make a report on their problems. According to his report, there were certain inadequacies in the arrangements made at the refugee camps. The Special Rapporteur made certain recommendations to improve the situation. Shri Agarwal, Member, NHRC, held a meeting with the Chief Secretary, Tripura, and other concerned officers, who were requested to implement the recommendations of Shri Chaman Lal on a time-bound basis. The Member, NHRC, also held separate meetings with the petitioners, who emphasised the urgency for the settlement of the issue, since they had serious apprehensions about their security in Mizoram. The Member, NHRC, subsequently held meetings with the Chief Secretaries of the three States and the Additional Secretary of the Ministry of Home Affairs. It was made clear to the Government of Mizoram that there is a specific provision in the Mizoram Accord regarding the protection of rights and privileges of the minorities, and their economic and social development by the Government of Mizoram. The Ministry of Home Affairs assured the Government of Mizoram that para-military forces in adequate strength would be provided to the Government for ensuring the safety and security of the repatriated families. The Government of Mizoram was reminded of their constitutional obligation to take back the refugees and ensure their peaceful settlement in the villages.

The Commission, taking into consideration the reports from the Member, NHRC, and the Special Rapporteur, made the following recommendations:

- i. The *Reangs* are lawful inhabitants of Mizoram and the Government of Mizoram should not only take them back in accordance with the agreement made in November 1997, but should also instill in them a sense of confidence and security.
- ii. The Government of India should play an active role to arrange repatriation of the *Reangs* to Mizoram, and should also give special attention to the safety and security of the *Reangs* on their return to Mizoram.
- iii. The Ministry of Home Affairs and the State Governments of Mizoram and Tripura shall keep the Commission informed of the progress made at regular intervals.

The Commission has received reports from the Governments of Tripura, Mizoram and the Government of India with regard to the action taken on its recommendations.

#### HUMAN RIGHTS VIOLATIONS BY SECURITY FORCES

*Custodial death of Ramaso Shinganaisui, a farmer of Awangkhul,  
in the custody of security force personnel  
(Case No. 49/14/97-98/ACD)*

William Wekselman of Pittsburgh, USA, and three others petitioned the Commission, alleging that on 17 July 1997, at about 8.45 a.m., an Assam Rifles convoy was ambushed by members of the armed opposition near the Saint Savio English School, Ukhrul District, Manipur. Later, at about 10 a.m. on the same day, Shri Ramaso Shinganaisui, a farmer of Awangkhul Ukhrul town, was arrested by the Assam Rifles in connection with the said ambush, and he was reported dead at 4 p.m. on the following day. The complainant alleged that this was a case of extra-judicial execution, and requested the Commission to enquire into the matter, identify the persons responsible for the said killing, and subject them to appropriate criminal, civil and administrative sanctions as provided by law.

The report received from the army authorities confirmed the ambush of the convoy of six vehicles belonging to 20 Assam Rifles by Naga armed underground elements near Saint Savio English School at Ukhrul on 17 July 1997, at about 8.45 a.m., in the course of which there was heavy exchange of fire resulting in injuries to five Assam Rifles 'other rank' officers and 24 civilians. The report also stated that subsequent to the ambush, a cordon-and-search operation was carried out in which some civilians, including the late Ramaso were rounded up and brought to the Battalion Headquarters at Samsai for questioning. When questioned at about 0100 hours on the intervening night of 17 and 18 July 1997, Ramaso complained of chest pain, and was immediately evacuated and administered necessary medical aid. But his condition deteriorated and he expired around 0130 hours on 18 July 1997. His body was handed over to the civil police

at Ukhrul on 19 July 1997 at about 1730 hours. A staff court of enquiry investigated into the circumstances leading to the death of Ramaso, and concluded that the death was due to 'shock and haemorrhage as a result of multiple blunt force injuries homicidal in nature'. The court of enquiry also found certain officers of the 20 Assam Rifles Unit responsible for various acts of commission and omission leading to the death of Ramaso in the custody of the unit, and recommended disciplinary action against Captain S.V. Yadav, officer-in-charge of the interrogation team, and action against Havildar Chhetri, Havildar M.R. Singh and Rifleman S.K. Sharma for beating Ramaso to death.

On consideration of all the facts and circumstances and the material brought on record, the Commission, was not satisfied with the proposed disciplinary action against the Havildars, who were directly responsible for causing injuries to Ramaso leading to his death. It therefore recommended to the Government through the Secretary, Ministry of Defence, that a court-martial be held against them for the offence(s) shown to have been committed by them, and also recommended the payment of a sum of Rs. 2.5 lakhs to the next of kin of the deceased.

### COMMENT

Article 21 of the Constitution provides for the 'right to life', which is a Fundamental Right without which other rights cannot be realised. Custodial violence is prohibited by the laws of India, as well the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention Against Torture. Keeping this in view, the Commission, soon after its establishment in October 1993, issued instructions to all States and Union Territories to submit a report on any instance of custodial death or rapes within 24 hours of occurrence. In its Annual Report for 1996-97, the Commission recommended that paramilitary forces and the armed forces should also report directly to the Commission, any instance of death or rape that may occur when a person is in their custody. As in the case of allegations of custodial death or rape involving the police, the Commission is convinced that any such charges against members of the armed forces must be enquired into promptly and effectively. This recommendation was reiterated in subsequent annual reports.

### *Jawan rapes mentally disturbed girl in public: Assam* (Case No. 27/3/1999-2000)

The Commission took suo motu cognizance of a news item published in *The Statesman* dated 20 April 1999, entitled 'Jawan rapes mentally disturbed girl in public' and directed that a report be given by the Secretary, Ministry of Defence, in the matter.

The report from the Ministry of Defence confirmed the allegation that one Ajit Singh had raped ABC (name withheld to protect identity), a 15-year-old mentally deranged girl, and that an FIR was lodged by a civilian. The girl was examined medically and the Medical Officer had confirmed the offence. Ajit Singh was arrested and placed in military

custody. A summary general court-martial tried Ajit Singh and awarded him eight years rigorous imprisonment and dismissal from service.

While taking note of the action taken by the military authorities against the accused, the Commission expressed the view that the victim, ABC, a mentally disturbed girl, also needed to be compensated. It accordingly directed the District Magistrate, Kokrajhar, to pay a sum of Rs. 25,000/- to the parents of ABC by way of immediate interim relief. The Commission has received a compliance report with regard to the payment of compensation.

#### OTHER IMPORTANT CASES

*Alleged killings of 18 persons by masked gunmen in Baramullah district:  
Jammu & Kashmir  
(Case No. 163/9/1998-99)*

Shri Ghulam Mohammad Bhat, an office-bearer of the *Jamaat-e-Islami* Party, Srinagar, Jammu & Kashmir, complained of the killing of 16 persons and critically wounding of two others in the Baramullah District, allegedly by masked gunmen commonly known as the *Ikhwanies*. In his complaint dated 28 September 1998, he stated that these surrendered militants were allegedly used by political parties and other government agencies. He added that the *Jamaat-e-Islami* J&K leaders, and cadres, and even their relatives were feeling insecure and their rights to life, property, honour and dignity were threatened.

On 20 October 1998, the Commission decided to take up the matter during its next visit to Jammu & Kashmir. On 30 October 1998, it also issued notice to the Chief Secretary and the Director General of Police, Government of Jammu & Kashmir, calling for a report.

In response, the Commission received an interim report dated 18 May 1999, from the Home Department, Government of J&K giving details of the killings. On 2 August 1999, the Commission directed that it be transmitted to the complainant for his comments, and asked the State Government to send its final report. The Commission subsequently received the final report. Upon perusing it, the Commission on 8 September 1999, observed that it was disquieting that 18 persons had admittedly lost their lives, allegedly at the hands of counter-insurgency elements, allegedly acting under the protection of the police. According to the report, the assailants had not been traced. While it is not possible, in the absence of evidence, to say that the killings were the result of the activity of alleged counter insurgency elements acting under the protection of the State authorities, the Commission noted the fact that in none of the 18 cases, the assailants had been traced.

The Commission therefore requested the Director General of Police, J&K, to be present before the Commission to discuss this issue further. On 6 December 1999, the

Director General of Police, J&K, appeared before the Commission. Not satisfied with his response, the Commission, however, acceded to his request for grant of more time to study all the relevant papers and to gather all the relevant information to be able to assist the Commission in a proper manner in the case. On 22 December 1999, he reappeared before the Commission and promised to send an interim status report. On 10 January 2000, the Inspector General, Jammu Range, gave an overall view of the current status of investigation in these cases.

Pursuant to Commission's efforts, the DGP, J&K, reported that enquiry into the cases of killings of all 18 persons had been re-opened and was being supervised by an officer of the rank of Inspector General of Police. Reports received in these cases after the current reporting period under review was over, have revealed that the killings of these persons were the result of a factional infighting between *Jamaat-e-Islami* activists and *Hizb-ul-Mujahideen* cadres. The cases will be covered in greater detail in the next annual report of the Commission.

***Killing of 35 Sikhs by militants in Chatisinghpura: Jammu & Kashmir***  
(Case No. 206/9/1999-2000)

The Commission took suo motu cognizance of reports dated 22 March 2000, which appeared in all leading newspapers, concerning the killing of 35 members of the Sikh community by heavily armed militants in the Chatisinghpura village of Anantnag District, during the night of 21 March 2000. It was stated that all those killed were men, aged between 16 and 55. Later, a woman died of shock on seeing the bodies of those killed. At least two families lost all of their male members. The incident occurred a few hours before the President of the United States of America was to begin an official tour to India. The Commission issued notice to the Chief Secretary and the Director General of Police, Government of J&K, as well as to the Secretary, Ministry of Home Affairs, Government of India, calling for detailed reports. As of the close of the period under reporting, the Commission was pursuing this matter.

***Mass cremation of unidentified bodies by the Punjab police: Referral by the Supreme Court***  
(Case No. 1/97/NHRC)

A reference to this case has been made in the annual reports of the Commission since 1996-97. Having considered the objections and issues raised by various parties in detail, particularly in regard to the legal provisions as well as the facts and circumstances, the Commission passed an order on 4 August 1997, disposing of the preliminary issues.

In regard to the objection relating to the time limitation on its jurisdiction, the Commission took the position that the Supreme Court, by its order, had designated the Commission as a body sui generis to carry out the functions and to determine issues as entrusted to it by the Supreme Court. "The shackles and limitation under the Act are

not attracted to this body as, indeed, it does not function under the provisions of the "Act", but under the remit of the Supreme Court'. 'As a logical consequence, the powers of the Commission in carrying out this mandate are not limited by Section 36(2) or other limiting provisions, if any, under the "Act",' the Commission ruled.

The Commission also 'answered in the negative', the objections relating to the legality of the alleged delegation of authority by the Supreme Court, stating that the Court's order made it clear that it had 'not created any exclusive final adjudicatory jurisdiction in the Commission', but implied that 'the Commission discharged its functions as an instrumentality or agency of the Court'.

The Commission further stated that it would need to greatly augment its logistical capability; it would have to induct officers with judicial experience to record and process the evidence and conduct enquiries under the directions of the Commission, and recommend appropriate compensation subject to final endorsement by the Commission.

On receipt of the above order of the Commission, the Ministry of Home Affairs filed a petition seeking clarification of the Supreme Court's order of 12 December 1996, in the light of Commission's orders settling the objections of the Government of India and laying down 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 enquire 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 enquiry should be restricted only to the 2,097 cases of cremation of bodies—585 fully identified, 274 partially identified and 1,238 unidentified—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 enquiry under the Supreme Court's direction, by holding that it was limited only to those illegal killings/disappearances that culminated in the cremation of 2,097 bodies (585 bodies fully identified, 274 bodies partially identified and 1,238 bodies unidentified), in the crematoria located at Durgyana Mandir,

Patti Municipal Committee Crematorium and Tara Taran, which were also the subject matter of enquiry by the CBI in pursuance of the order of the 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 enquiry, 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 unclaimed/unidentified bodies in the crematoria of the police districts of Amritsar/Majitha/Tarn Taran between June 1994 and December 1994. The order also provided for the setting up of a separate cell for dealing with this enquiry, and directed the Government of Punjab to initially deposit 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 the Commission's order dated 13 January 1999, seeking enlargement of the scope of the enquiry so as to cover the extra-judicial killings and disappearances in the whole of the State of Punjab. The Commission, vide its order dated 24 March 1999, declined any such extension of the scope of the enquiry.

Pursuant to the public notice issued by the Commission, 88 claims were received which have been processed. Out of these 88 applications, the comments of the State of Punjab were invited. In 23 applications, the State of Punjab has informed that the individuals who have made the claim applications had stated that their relatives were not cremated in the three police districts of Majitha, Tarn Taran and Amritsar. These 23 applications were straight-away rejected by the courts, as they were not covered by the remit of the Supreme Court of India. As regards 18 applications, the Government of Punjab agreed to pay compensation as per its policy. For the remaining 47 claim applications, the Commission directed Shri R. Venkataramani, Senior advocate, as *amicus curiae* to have discussions with the Counsels of the State of Punjab as well as with the Punjab police officers. In the meanwhile, the Punjab police officers approached the Commission with a request that the CBI officers had not been supplying the relevant information about the cases which were being investigated by that agency. On 30 November 2000, the Commission directed the CBI authorities to make available all the information which was required by the State of Punjab, so that they might be in a position to process the remaining 47 claim applications.



The Commission has been aware of the concerns expressed in certain quarters, that the scope of the enquiry by the Commission should be enlarged, and that the Commission should make a reference to the Supreme Court seeking clarification on the scope of the enquiry remitted to it. As these and other issues were brought up before the Commission after the current reporting period, they will be covered in greater detail in the next annual report.

## **Interaction with External Groups and Organizations**

**17.1** The Commission has welcomed visitors both from within and outside the country. The doors of the Commission have, likewise, always remained open to those who want to express their views and suggestions on various issues related to human rights, and to seek redressal of their grievances.

**17.2** The Commission had extensive interactions with the members of the diplomatic corps stationed in Delhi, as well as with numerous delegations from abroad. The Commission welcomed such interactions as they helped place in proper perspective, the situation regarding various human rights issues and the effort being made by the Commission in finding remedies for various human rights related problems.

**17.3** Mr. David Spring, Director General of the Canadian International Development Agency (CIDA), visited the Commission on 5 July 1999. India's Deputy Permanent Representative Designate to the UN, Mr. Sharat Sabharwal, called on the Secretary General on 15 July 1999. A delegation from the South African Human Rights Commission (SAHRC), led by the Deputy Chairperson, Ms. Shirley Mabusela, visited the Commission on 26 July 1999. The SAHRC was in the process of establishing a focal point for the rights of children within their Commission, and this study tour was to help them gain an understanding of related issues in India.

**17.4** Dr. David Vayley, Dean, School of Criminal Justice of the State University of New York, Albany, visited the Commission on 13 September 1999 and gave a presentation on police reforms. He appreciated the steps being taken in India to give more power to civil society and to hold both politicians and public servants accountable for their actions. He welcomed the efforts of the Commission in bringing about systemic changes.

**17.5** The Chairperson of the International Advisory Commission of the Commonwealth Human Rights Initiative, Ms. Margaret Renolds, had a meeting with the Chairperson, members and the senior officials of the Commission on 28 September 1999. She briefed the Commission about the human rights situation in Australia and the current issues in the human rights discourse there.

**17.6** Dr. Gemuh E. Akuchu, Executive Secretary of the National Commission on Human Rights and Freedom, Cameroon, visited the Commission from 28 September to 5 October 1999. The Commission arranged for his interaction with the National Commissions for SCs/STs, Minorities and Women. He also visited the Punjab State Human Rights Commission.

**17.7** The European Union Troika visited the Commission on 11 October 1999. The team included H.E. Benjamin Bassin, Ambassador of Finland; H.E. Mr. Claude Blanchemaison, Ambassador of France; H.E. Manuel Marcelo Curto, Ambassador of Portugal; Mr. Michael Barrie Mc Geever, Ambassador—Head of delegation of the European Commission to India, Nepal and Bhutan, and Ms. Ute Banerjea-Komers, Minister, German Embassy.

**17.8** The former Chief Justice of Bangladesh and Chairman, Law Commission, Bangladesh, Mr. Justice Kemaluddin Hossain called on the Commission on 1 November 1999. He was on a visit to India under the Distinguished Visitors Programme of the Indian Council for Cultural Relations. The Minister Counsellor of the Royal Danish Embassy in India, Mr. Jes C. Boye-Moller held discussions in the Commission on 3 November 1999. The Commission also interacted with Mr. Michael Lewis Abbott, QC, Chairman, Australia–India Council. The British Minister of State for Commonwealth, Mr. Peter Hain, visited the Commission on 18 November 1999, and held wide-ranging discussions with it. A team of the Labour Party Parliamentarians from the UK called on the Chairperson on 26 February 2000.

## Administration and Logistic Support

### STAFF

18.1 As on 31 March 2000, 229 persons including 12 Consultants were in position against the total sanctioned strength of 297.

18.2 During the year 1998-99, five posts of Presenting Officers, with supporting staff, were created. One post of Presenting Officer had already been filled and action had been initiated for filling the remaining posts.

18.3 Keeping in view the continuing increase in the work of the Commission, proposals were made to augment the staff strength in the various divisions of the Commission. The Staff Inspection Unit of the Ministry of Finance conducted a special study of staff requirements during the year 1998-99. The assessment of staff strength made by SIU was in the final stages of consideration of the Ministry of Finance. The SIU assessed the additional requirement of posts at 55.

18.4 The growing workload of the Commission necessitated the engagement of Consultants. A special dispensation was obtained from the Government to engage 20 Consultants in the Commission.

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

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### SPECIAL RAPPORTEURS

18.6 The Scheme of appointing Special Rapporteurs to assist the Commission in its more demanding and sensitive responsibilities, to undertake field visits on its behalf, to

interact with Governmental and non-governmental authorities and to follow-up on decisions of the Commission, continued during the year 1998-99. There were four Special Rapporteurs working for the Commission during the period under review. They were involved with a variety of issues of importance to the Commission, including bonded labour, child labour, the situation in the KBK districts of Orissa and the monitoring of the Supreme Court's remits to the Commission relating to the Agra Protective Home, and the three mental hospitals of Agra, Gwalior and Ranchi.

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## USE OF OFFICIAL LANGUAGES

18.7 From its inception, 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 translation of reports and complaints from regional languages is the responsibility of the Hindi section. The Hindi section also translates the monthly newsletter and the Annual Report into Hindi. The scheme for giving cash awards to the writers of original works in Hindi, as well as the undertaking of translations of books on human rights into Hindi continued during the year 1998-99.

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## LIBRARY

18.8 During the year 1998-99, 234 new titles relating to human rights issues were added to the stock of the NHRC Library. As of 31 March 1999, there were 3,382 titles in the Library. The Commission subscribes to 32 periodicals having relevance to human rights issues.

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## FUNDS

18.9 During 1998-99, the Commission received Rs. 6.50 crores (Rs. 65 million) as grants-in-aid from the Government 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 and Auditor General of India, were laid on the table of the *Lok Sabha* on 28 July 1998 and of 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.

## Concluding Observations

**19.1** Those who strive for the promotion and protection of human rights can never be satisfied with their endeavours. The struggle to ensure respect for the dignity and worth of the human person knows no end, whether in this country or anywhere else in the world.

**19.2** Despite this elusive quality, however, the tireless pursuit of this objective is essential to the creating of society of equity and justice, a society in which peace can prevail, in which all of its people, in all of their diversity, can feel included in the great adventure of nation-building.

**19.3** The distinguished thinker, Mahbub-ul-Haq, once observed:

It is true that we may never be able to eliminate all social and economic injustices or to provide equality of opportunity to all people. But we certainly can take a few practical steps to make our society a little more compassionate, a little more humane.

**19.4** In each of the succeeding years since it was established, this, in essence, has been the effort of the Commission. And, not unexpectedly, with each successive year, the Commission has widened the areas of its concern, in order to ensure that the most vulnerable do not remain the least protected, the least respected. As this Report indicates, in the course of the year under review, entirely new challenges demanded the innovative attention of the Commission: for instance, for the first time since its establishment, the Commission made the decision to intervene in the wake of a vast natural calamity—the super-cyclone in Orissa—in order to make sure that the human rights of often marginalized groups, widows and orphans, the destitute, *Dalits* and Tribals were not ignored in the aftermath of the catastrophe, but kept in the centre of the focus of all involved. To the continuing challenges of dealing with the protection of civil liberties; of proposing systemic reforms in the police, prisons and criminal justice system; of reviewing laws and treaty obligations; and working for the promotion of human rights, literacy and awareness, the Commission thus added an increasing and deeper range of measures to protect and promote the rights of the most vulnerable: women and children, bonded labour, persons displaced by mega-projects, denotified and nomadic tribes, members of minority groups, and those challenged by disabilities, or denied access to proper education, health and nutrition, to mention but a few areas of intensified concern.

19.5 The Commission's recommendations, opinions, directions and guidelines must thus be seen in the deeper context of the objective for which it was established, which was to ensure the 'better protection' of human rights in the country. It was to serve this objective that Section 12 of the Protection of Human Rights Act 1993 set out a wide range of functions and powers for the Commission. The positions that the Commission has taken, the views that it has expressed, and the guidelines it has issued have all had the central purpose of ensuring that the authorities of the State, and all public servants, act more effectively to 'better protect' constitutional guarantees and international human rights norms, as interpreted under the judgments of the Supreme Court of the country.

19.6 It is in this spirit that this Report, the seventh in a series, should be read. As in earlier years, its principal recommendations and observations, may be seen in summary form in Annexure XIX.

Sd/-  
(J.S. Verma)  
Chairperson

Sd/-  
(K. Ramaswamy)  
Member

Sd/-  
(Sujata V. Manohar)  
Member

Sd/-  
(Sudarshan Agarwal)  
Member

Sd/-  
(Virendra Dayal)  
Member

New Delhi  
29 March 2001



## **Committee on the Elimination of Discrimination against Women**

### **Principal areas of concern and recommendations**

- 1.** The Committee notes that the Convention and the Beijing Platform for Action have not been integrated into policy planning and programmes. While there have been several national plans in the pre and post-Beijing period, the Committee notes that these adopt a welfare approach toward women.
- 2.** The Committee recommends that the proposed gender empowerment policy integrate the Convention and the Beijing Platform of Action and a rights-based approach.
- 3.** The Committee considers that inadequate allocation of resources for women's development in the social sector and inadequate implementation of laws are serious impediments to the realization of women's human rights in India.
- 4.** The Committee urges the allocation of sufficient and targeted resources for women's development in the social sector, as well as full implementation of relevant laws.
- 5.** The Committee notes that there are many gaps in the legislative framework. The Committee considers that there is an urgent need to introduce comprehensive legislative reform to promote equality and the human rights of women.
- 6.** The Committee recommends that proposals for the National Commission for Women on law reform be used in preparing new legislation, and that the Commission be entrusted with the task of developing working papers on legal reform in critical areas, within a time-frame.
- 7.** The Committee notes that steps have not been taken to reform the personal laws of different religious and ethnic groups in consultation with them so as to conform with the Convention. The Committee is concerned that the Government's policy of non-intervention perpetuates sexual stereotypes, son-preference and discrimination against women.
- 8.** The Committee urges the Government to withdraw its declaration to article 16 (1) of the Convention and to work with and support women's groups as members of the community in reviewing and reforming these personal laws. The Committee also calls upon the Government to follow the directives principles in the Constitution and Supreme Court decisions and enact a uniform civil code which different ethnic and religious groups may adopt.
- 9.** The Committee is concerned that India has not yet established a comprehensive and compulsory system of registration of births and marriages. The Committee notes that inability to prove those important events by documentation prevents effective implementation of laws that protect women and girls from sexual exploitation and trafficking, child labour and forced or early marriage. The Committee is also concerned that failure to register marriages may also prejudice the inheritance rights of women.
- 10.** The Committee calls upon the Government to provide adequate resources and establish a system of compulsory registration of births and monitor implementation in cooperation with women's groups and local bodies. It urges the Government to withdraw the reservation to article 16(2) of the Convention.

11. The Committee is concerned that the fundamental right to education under the Constitution recognised by the Supreme Court has not been realized by providing girls with equal access to primary and secondary education. It notes that budgetary allocation for education is still far below India's commitments with regard to the Beijing Platform for Action.
12. The Committee urges the Government to take affirmative action, set a time-frame and provide adequate resources for primary and secondary education so as to give girls equal access to education and eradicate adult illiteracy among women. It calls upon the Government to make primary and secondary education compulsory by introducing and enforcing relevant regulations.
13. The Committee is concerned that the fundamental rights recognised in the Constitution can be enforced only against state actors and in the event of inaction on the part of the state. It also notes that the private sector, where a great number of women are employed and which is expanding in a period of transition to market economic policies, is not covered by Constitutional standards.
14. The Committee recommends that a sex discrimination act be introduced to make the standards of the Convention and the Constitution applicable to non-state action and inaction.
15. The Committee is concerned that there is a high incidence of gender-based violence against women, which takes even more extreme forms because of customary practices, such as dowry, sati and the devadasi system. Discrimination against women who belong to particular castes or ethnic or religious groups is also manifest in extreme forms of physical and sexual violence and harassment.
16. The Committee urges the Government to implement existing legislation prohibiting such practices as dowry, *devadasi* and caste-based discrimination. It calls upon the Government to strengthen law enforcement and introduce reforms proposed by the National Commission on Women and women activists in regard to the law on rape, sexual harassment and domestic violence.
17. The Committee recommends that a national plan of action be developed to address in a holistic manner the issue of gender-based violence, in line with the Committee's general recommendations 19 and 24. It calls upon the Government to provide statistics and information on violence against women in its next report.
18. The Committee is concerned that women are exposed to the risk of high levels of violence, rape, sexual harassment, humiliation and torture in areas where there are armed insurrections.
19. The Committee recommends a review of prevention of terrorism legislation and the Armed Forces Special Provisions Act, in consultation with the Human Rights Commission, the National Commission of Women and civil society, so that special powers given to the security forces do not prevent the investigation and prosecution of acts of violence against women in conflict areas, and during detention and arrest. The Committee recommends that women be given an opportunity to make their contribution to peaceful conflict resolutions.
20. The Committee recommends the introduction of gender sensitisation and human rights programmes for the police, the security forces and medical professionals, in addition to programmes already undertaken.
21. The Committee is concerned with the continuing discrimination, including violence, suffered by women of the *Dalit* community, despite the passage of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989.

22. The Committee urges the Government to enforce laws preventing discrimination against Dalit women and prohibiting the devadasi system. It urges the Government to introduce affirmative action programmes in such areas as education, employment and health so as to provide life chances to Dalit women and girls and create an environment conducive to their progress. The Committee calls upon the Government to set a time-frame for those interventions and provide information on the progress made in the next report.
23. The Committee is concerned that women and girls are exploited in prostitution and inter-state and cross-border trafficking. It is also concerned that those women are exposed to human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and health risks and that existing legislation encourages mandatory testing and isolation.
24. The Committee calls upon the Government to review existing legislation on trafficking and forced prostitution and to strengthen law enforcement. It recommends the development of bilateral and inter-state controls and reintegration and advocacy programmes to prevent the exploitation of women and girls in forced prostitution and trafficking.
25. The Committee notes with concern that maternal mortality rates and infant mortality rates are among the highest in the world. It also notes the adverse sex ratio and the incidence of sex-selective abortions due to son preference despite the law banning that practice. It notes that family planning is only targeted for women.
26. The Committee recommends the adoption of a holistic approach to women's health throughout the life cycle in the country's health programme. It urges the Government to allocate resources from a women's right to health perspective, following the guidelines of the Committee's general recommendation 24. The Committee calls upon the Government to elicit the support of medical associations in enforcing professional ethics and preventing sex-selective abortions. The Committee also recommends that the Government obtain the support of the medical profession in creating awareness on the urgent need to eliminate practices associated with son preference.
27. The Committee is concerned with the low participation of qualified women in the administration and the judiciary, including family courts and *lok adalats* or conciliation tribunals.
28. The Committee urges the Government to take affirmative action to increase women's participation in the judiciary and *lok adalats*, and provide gender-disaggregated data in its next report.
29. The Committee is concerned with significant disparities in economic activity rates for men and women. It is concerned that the practice of debt bondage and the denial of inheritance rights in land result in gross exploitation of women's labour and their impoverishment.
30. The Committee requests the Government to enforce laws on bonded labour and provide women with self-employment opportunities and minimum wages in home-based production and the non-formal sector. It calls upon the Government to review laws on inheritance urgently and to ensure that rural women obtain access to land and credit.
31. The Committee is concerned that the National Commission on Women has no power to enforce its proposals for law reform or intervene to prevent discrimination in the private or public sector. It notes that the National Commission and state commissions are not supported by adequate financial and other resources. It also notes that the National Commission on Women is not as well resourced or as empowered as the Human Rights Commission of India, and that it has no formal link with the state women's commissions.

32. The Committee recommends that NGOs be represented on the National Commission of Women. The Commission's powers should be as wide as those of the Human Rights Commission and include a complaints procedure. The Committee recommends that State Commissions be placed on a legal basis, be established in all States, and strengthened and linked with the National Commission.
33. The Committee is concerned that despite the willingness of the Government to work with NGOs and women's groups women activists and human rights defenders are exposed to violence and harassment in the communities in which they work.
34. The Committee urges the Government to strictly enforce the law and protect women activists and human rights defenders from acts of violence and harassment. The Committee encourages India to deposit its acceptance of the amendment to article 20, paragraph 1, of the Convention concerning the Committee's meeting time. The Committee urges the Government to sign and ratify the Optional Protocol to the Convention as soon as possible.
35. The Committee requests that the Government responds in its next periodic report to the specific issues raised in its concluding comments.
36. The Committee encourages the wide dissemination in India of the present concluding comments in order to make the people, civil society and Government sectors aware of the steps that have been taken to ensure *de jure* and *de facto* equality of women, as well as further steps that are required in that regard. It also requests the Government to disseminate widely in all local languages the Convention, its Optional Protocol, the Committee's general recommendations and the Beijing Declaration and Platform for Action.

## **Committee on the Rights of the Child**

Principal subjects of concern and recommendations of the Committee on the Rights of the Child:

1. The Committee recommends that the State party pursue efforts to ensure full compatibility of its legislation with the Convention, taking due account of the general principles of the Convention. In this regard, the Committee encourages the State party to consider adopting a code for children.
2. The Committee recommends that the State party take all necessary measures, including the allocation of the required resources (i.e. human and financial) to ensure and strengthen the effective implementation of existing legislation. The Committee further recommends the State party to provide adequate resources and to take all other necessary steps to strengthen the capacity and effectiveness of national human rights institutions, including the National Human Rights Commission, the National Commission for Women, and the Scheduled Castes and Scheduled Tribes Commission.
3. The Committee recommends that the State party adopt a comprehensive national plan of action, based on a child rights-approach, to implement the Convention. The Committee recommends that attention be given to intersectoral coordination and cooperation at and between central, state and municipal levels of government. The State party is encouraged to provide support to local authorities, including capacity-building, for implementation of the Convention.
4. It recommends that the State party develop a comprehensive system for collecting disaggregated data as a basis to assess progress achieved in the realisation of children's rights and to help design policies to be adopted to implement the Convention.
5. The Committee encourages the State party to establish a statutory, independent national commission for children with the mandate of, inter alia, regularly monitoring and evaluating progress in the implementation of the Convention at the federal, state and local levels. Further, such a commission should be empowered to receive and address complaints of violations of child rights, including with respect to the security forces.
6. The Committee recommends that the State party develop ways to establish a systematic assessment of the impact of budgetary allocations on the implementation of child rights and to collect and disseminate information in this regard. The Committee also recommends that the State party ensure the appropriate distribution of resources at the Central, State and local levels, and where needed, within the framework of international cooperation.
7. The Committee encourages the State party to consider a systematic approach to involve NGOs and civil society in general throughout all stages of the implementation of the Convention, including policy-making.
8. The Committee recommends that the State party develop an ongoing programme for the dissemination of information regarding the implementation of the Convention among children and parents, civil society and all sectors and levels of Government. The Committee encourages

the State party to pursue efforts to promote children's rights education in the country, including initiatives to reach those vulnerable groups who are illiterate or without formal education. Moreover, the Committee recommends that the State party develop systematic and ongoing training programmes on the provisions of the Convention for all professional groups working with children (i.e. judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers). The Committee encourages the State party to seek assistance from, inter alia, UNICEF, in this regard.

9. The Committee recommends that the State party review its legislation with a view to ensuring that age limits conform to the principles and provisions of the Convention, and that it takes greater efforts to enforce those minimum-age requirements.

10. The Committee recommends that concerted efforts at all levels be taken to address social inequalities through a review and reorientation of policies, including increased budgetary provision for programmes targeting the most vulnerable groups.

11. In accordance with article 17 of the Constitution and article 2 of the Convention, the Committee recommends that the State party take steps to ensure states abolish the discriminatory practice of 'untouchability', prevent caste and tribe motivated abuse, and prosecute State and private actors who are responsible for such practices or abuses. Moreover, in compliance with Article 46 of the Constitution, the State party is encouraged to implement, inter alia, affirmative measures to advance and protect these groups. The Committee recommends the full implementation of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the 1995 Scheduled Castes and Scheduled Tribes Rules (Prevention of Atrocities) and the 1993 Employment of Manual Scavengers Act. The Committee encourages the State party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat caste-based discrimination. In line with the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.13), the Committee stresses the importance of the equal enjoyment by members of these groups of the rights in the Convention, including access to health care, education, work, and public places and services, such as wells.

12. In accordance with article 2 of the Convention, the Committee encourages the State party to ensure the enforcement of protective laws. The Committee encourages the State party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat gender discrimination, particularly within the family. To assist in these efforts, political, religious and community leaders should be mobilized to support efforts to eradicate traditional practices and attitudes, which discriminate against girls.

13. The Committee encourages the State party to promote and facilitate within the family, the school, care institutions, the courts and the juvenile justice system respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention. In this regard, the Committee recommends that the State party develop skills-training programmes in community settings for teachers, social workers and local officials in assisting children to make and express their informed decisions and to have their views taken into consideration.

14. The Committee recommends that the State party make greater efforts to ensure the timely registration of all births, in accordance with article 7 of the Convention, and take training and awareness-raising measures as regards registration in rural areas. The Committee encourages steps such as the establishment of mobile registration offices, and registration units in schools and health facilities.

15. The Committee recommends that the registration of each child taken to a police station be mandatory, including time, date and reason for detention, and that such detention be subject to frequent mandatory review by a magistrate. The Committee encourages the State party to amend sections 53 and 54 of the Code of Criminal Procedure so that medical examination, including age verification, is mandatory at the time of detention and at regular intervals.
16. The Committee recommends that the State party implement the recommendations made by the National Police Commission in 1980 and the Parliamentary Committee in 1996, which, inter alia, call for a mandatory judicial inquiry in cases of alleged rape, death or injury of persons in police custody; the establishment of investigative bodies; and payment of compensation to people who have been victims of custodial abuse. Amendment to the Juvenile Justice Act is recommended to provide for complaints and prosecution mechanisms for cases of custodial abuse of children. In addition, the Committee recommends the amendment of section 197 of the Code of Criminal Procedure, which requires government approval for prosecution of law enforcement officials when complaints of custodial abuse or illegal detention are alleged; and section 43 of the Police Act, so that the police cannot claim immunity for actions while executing a warrant in cases of illegal detention or custodial abuse.
17. The Committee encourages the State party to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it signed in 1997.
18. The Committee recommends the State party to review the legislative framework of domestic and inter-country adoption. The Committee recommends that the State party become a party to the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption.
19. The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools and care institutions. The Committee recommends that these measures be accompanied by public education campaigns about the negative consequences of ill-treatment of children. The Committee recommends that the State party promote positive, non-violent forms of discipline as an alternative to corporal punishment, especially in the home and schools. Programmes for the rehabilitation and reintegration of abused children need to be strengthened, and adequate procedures and mechanisms established to receive complaints, monitor, investigate and prosecute instances of ill-treatment.
20. In the light of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and of the Committee's recommendations adopted on its Day of General Discussion on Children with Disabilities (CRC/C/69), the Committee recommends that the State party increase the capacity of institutions for the rehabilitation of children with disabilities and improve access to services for such children living in rural areas. Awareness campaigns which focus on prevention, inclusive education, family care and the promotion of the rights of children with disabilities, need to be undertaken. Adequate training should also be made available to persons working with these children. The Committee encourages the State party to undertake greater efforts to make available the necessary resources and to seek assistance from, inter alia, UNICEF, WHO and relevant NGOs.
21. The Committee recommends that the State party take all necessary steps to adapt, expand and implement the Integrated Management of Child Illness strategy, and to pay particular attention to the most vulnerable groups of the population. The Committee also recommends that the State party undertake studies to determine the socio-cultural factors, which lead to practices

such as female infanticide and selective abortions, and to develop strategies to address them. The Committee recommends continued allocation of resources to the poorest sections of society and continued cooperation with and technical assistance from, inter alia, WHO, UNICEF, the World Food Programme and civil society.

22. The Committee recommends that the State party strengthen the existing National Reproductive and Child Health programme, targeting the most vulnerable groups of the population. The Committee recommends that the State party combat discrimination against HIV/AIDS affected persons by strengthening awareness-raising and sensitisation programmes for the public, and particularly health professionals. The Committee recommends continued allocation of resources to the poorest sections of society and continued cooperation with and technical assistance from, inter alia, WHO, UNICEF, UNAIDS and civil society.

23. In accordance with article 27 of the Convention, the Committee recommends that the State party take appropriate measures to give effect to its commitments made at Habitat II in 1996 regarding children's access to housing. In the light of Commission on Human Rights resolution 1993/77 on forced evictions, the Committee encourages the State party to prevent any occurrence of forced relocation, displacement and other types of involuntary population movements. The Committee recommends that resettlement procedures and programmes include registration, facilitate comprehensive family rehabilitation and ensure access to basic services.

24. The Committee recommends that the State party establish mechanisms to ensure these children are provided with identity documents, nutrition, clothing and housing. Moreover, the State party should ensure these children have access to health care; rehabilitation services for physical, sexual and substance abuse; services for reconciliation with families; education, including vocational and life-skills training; and access to legal aid. The Committee recommends that the State party cooperate and coordinate its efforts with civil society in this regard.

25. The Committee encourages the State party to enact the 83rd Constitutional Amendment Bill. In line with the 1993 and 1996 Supreme Court decisions (*Unni Krishnan*; and *M.C. Mehta vs. State of Tamil Nadu and Others*, respectively), the Committee recommends that the State party implement measures designed to comply with Article 45 of the Constitution, which mandates free and compulsory education for all children up to 14.

26. The Committee recommends that the State party undertake studies on, and develop measures to address, the prevailing disparities in access to education; to improve the quality of teacher training programmes and the school environment; to ensure that the quality of non-formal education schemes is monitored and guaranteed and that working and other children who participate in such schemes are integrated into mainstream education. The Committee recommends that the State party ensure and facilitate opportunities for the most vulnerable groups of children to proceed to secondary education.

27. The Committee recommends that the State party take due regard of the aims of education laid down in article 29 of the Convention, including tolerance and equality between the sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous groups. The Committee recommends that the State party consider introducing human rights issues, including the Convention, into the school curricula.

28. The Committee encourages the State party to make available the necessary resources and to seek assistance from, inter alia, UNICEF, UNESCO and relevant NGOs.



29. The Committee recommends that the State party adopt comprehensive legislation to ensure adequate protection of refugee and asylum-seeking children, including in the field of physical safety, health, education and social welfare, and to facilitate family reunification. In order to promote the protection of refugee children, the Committee encourages the State party to consider ratifying the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons; and the 1961 Convention on the Reduction of Statelessness.
30. The Committee recommends that the State party will at all times ensure respect for human rights and humanitarian law aimed at the protection and care of children in armed conflict. The Committee calls upon the State party to ensure impartial and thorough investigations in cases of rights violations committed against children and the prompt prosecution of those responsible, and that it provides just and adequate reparation to the victims. The Committee recommends that clause 19 of the Protection of Human Rights Act be repealed to allow inquiries into alleged abuses committed by members of the security forces to be conducted by the National Commission on Human Rights. In line with the recommendations of the Human Rights Committee (CCPR/C/79/Add.81), the Committee recommends that the requirement of governmental permission for criminal prosecutions or civil proceedings against members of the security forces be abolished.
31. The Committee encourages the State party to withdraw its declaration with respect to article 32 of the Convention, as it is unnecessary in the light of the efforts the State party is making to address child labour. The Committee recommends that the State party ensure the full implementation of the 1986 Child Labour (Prohibition and Regulation) Act, the 1976 Bonded Labour (System Abolition) Act and the 1993 Employment of Manual Scavengers Act.
32. The Committee recommends that the 1986 Child Labour Act be amended so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children; and coverage is expanded to include agriculture and other informal sectors. The Factories Act should be amended to cover all factories or workshops employing child labour. The Beedi Act should be amended so that exemptions for household-based production are eliminated. Employers should be required to have and produce on demand proof of age of all children working on their premises.
33. The Committee recommends that the State party ensure that laws provide criminal and civil remedies, especially in the light of decisions of the Supreme Court in relation to compensation funds for child labourers (*M.C. Mehta vs. The State of Tamil Nadu* and *M.C. Mehta vs. Union of India*). The Committee recommends that court procedures be simplified, so that responses are appropriate, timely and child-friendly, and to vigorously pursue enforcement of minimum-age standards.
34. The Committee recommends that the State party encourage states and districts to establish and oversee child labour vigilance committees, and ensure that a sufficient number of labour inspectors are adequately resourced to carry out their work effectively. A national mechanism to monitor the implementation of standards at state and local levels should be established and empowered to receive and address complaints of violations, and to file First Information Reports.
35. The Committee recommends that the State party undertake a national study on the nature and extent of child labour, and that disaggregated data, including violations, be compiled and kept up to date to serve as a basis for designing measures and evaluating progress. The Committee further recommends that the State party continue its efforts to carry out campaigns to inform and sensitise the general public, especially parents and children, of work hazards; and to involve and train employers', workers' and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals.

36. The Committee calls upon the State party to ensure that the competent authorities cooperate and coordinate their activities, including with respect to education and rehabilitation programmes; and that present cooperation between the State party and relevant United Nations agencies, such as ILO and UNICEF, and NGOs be expanded. The Committee recommends that the State party ratify ILO Convention No. 138 concerning the Minimum Age for Admission to Employment, and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

37. The Committee recommends that the State party develop a national drug control plan, or a Master Plan, with the guidance of the United Nations Drug Control Programme (UNDCP). The Committee encourages the State party to continue its efforts to provide children with accurate and objective information about substance use, including tobacco use, and to protect children from harmful misinformation through comprehensive restrictions on tobacco advertising. The Committee recommends cooperation with and assistance from WHO and UNICEF. The Committee further recommends that the State party develop rehabilitation services for children who are victims of substance abuse.

38. The Committee recommends that the State party ensure that legislation criminalizes the sexual exploitation of children and penalizes all the offenders involved, whether local or foreign, while ensuring that the child victims of this practice are not penalized. While noting that Devadasi, or ritual prostitution, is prohibited under the law, the Committee recommends that the State party take all necessary measures to eradicate this practice. In order to combat trafficking in children, including for commercial sexual purposes, the Penal Code should contain provisions against kidnapping and abduction. The Committee recommends that the State party ensure that laws concerning the sexual exploitation of children are gender neutral; provide civil remedies in the event of violations; ensure that procedures are simplified so that responses are appropriate, timely, child-friendly and sensitive to victims; include provisions to protect from discrimination and reprisals those who expose violations, and vigorously pursue enforcement.

39. The Committee recommends that a national mechanism to monitor implementation should be established, as well as complaints procedures and helplines. Rehabilitation programmes and shelters should be established for child victims of sexual abuse and exploitation.

40. The Committee recommends that the State party undertake a national study on the nature and extent of sexual abuse and sexual exploitation of children, and that disaggregated data be compiled and kept up to date to serve as a basis for designing measures and evaluating progress. The Committee recommends that the State party continue its efforts to carry out extensive campaigns to combat harmful traditional practices, such as child marriages and ritual prostitution; and inform, sensitise and mobilize the general public on the child's right to physical and mental integrity, and safety from sexual exploitation.

41. The Committee recommends that bilateral and regional cooperation be reinforced, involving cooperation with border police forces from neighbouring countries, especially along the eastern frontier areas in the states of West Bengal, Orissa and Andhra Pradesh. The State party should ensure that the competent authorities cooperate and coordinate their activities; and that present cooperation between the State party, and, *inter alia*, UNICEF, be expanded.

42. The Committee recommends that the State party review its laws in the administration of juvenile justice to ensure that they are in accordance with the Convention, especially articles 37, 40 and 39, and other relevant international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations

Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System.

43. The Committee recommends that the State party abolish by law the imposition of the death penalty on persons under 18. The Committee also recommends that the State party consider raising the age of criminal responsibility and ensure that persons under 18 years are not tried as adults. In accordance with the principle of non-discrimination contained in article 2 of the Convention, the Committee recommends article 2 (h) of the 1986 Juvenile Justice Act be amended to ensure that boys under 18 years are covered by the definition of juvenile, as girls already are. The Committee recommends that the 1986 Juvenile Justice Act be fully enforced and that the judiciary and lawyers be trained and made aware of it. The Committee further recommends that measures be taken to reduce overcrowding, to release those who cannot be given a speedy trial and to improve prison facilities as quickly as possible. The Committee recommends that the State party ensure regular, frequent and independent monitoring of institutions for juvenile offenders.

44. The Committee further suggests that the State party consider seeking technical assistance from, inter alia, the Office of the United Nations High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the Coordination Panel on Juvenile Justice.

45. Finally, the Committee recommends that in accordance with article 44, paragraph 6, of the Convention, the initial report submitted by the State party be made widely available to the public at large, and that consideration be given to the publication of the report along with the written answers to the list of issues raised by the Committee, the relevant summary records of the discussion and the concluding observations adopted thereon by the Committee following its consideration of the report. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organizations.

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## **Role of Human Rights Cells in Sensitising Police Personnel with regard to Human Rights**

Justice J.S. Verma  
Chairperson

January 1, 2000

Dear Chief Minister,

You may be aware that on the recommendations of the National Human Rights Commission, the State Police had set up the Human Rights Cell in its Police Headquarters. The main objective of the setting up of this Cell was to provide an in-house machinery in the police organisation itself to supervise the conduct of its police personnel and prevent any violation of human rights of the people by the police force itself which is meant to be people-friendly.

It has been noticed that even after the Human Rights Cell headed by the DGP/IGP was made functional, there has not been any significant decline in genuine complaints of human rights violations committed by the police. There can be no serious dispute about the need to improve the mind-set of the personnel wielding power and authority and thereby the perception necessary for the appropriate human rights culture which is people-friendly.

I need hardly emphasise that the acknowledged index of civilization in the international community is the track record of respect for human rights in a country. The importance of making every effort to improve our human rights record is, therefore, obvious. Unsatisfactory and inhumane living conditions in prisons is a serious human rights violation, which requires prompt action for its correction.

Recently the Commission has framed and released its 'Guidelines on Police Arrests', which requires strict observance. This step would prevent human rights violations in a large area, which is a daily police function.

I earnestly hope that all instruments of governance would rededicate themselves towards promoting a better human rights culture realising that the dignity of the individual is a part of the constitutional promise and it contributes to the augmentation of human resource development in the nation. I have no doubt you equally share this concern and would take the needed steps in that direction.

With regards,

Yours sincerely,

Sd/-

(J.S.VERMA)  
Chairperson

To  
The Chief Ministers of all States.

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## Compliance of NHRC Guidelines regarding Arrest

National Human Rights Commission

D.R. Karthikeyan  
Director General

22 November 1999

Sir,

After due consideration of all the aspects involved, the National Human Rights Commission has adopted certain guidelines regarding "arrests".

A note containing these guidelines approved by the Commission is enclosed herewith. The Commission requests all the State Governments to translate these guidelines into their respective regional language and make them available to all Police Officers and in all Police Stations.

Senior officers visiting Police Stations may ensure the availability of such guidelines with the respective police officers and Police Stations and ensure their compliance.

Yours faithfully,

Sd/-

(D.R. Karthikeyan)  
Director General (Investigation)

To ,

The Chief Secretaries/Administrators of all States and UTs.

Copy to: Home Secretaries and Director Generals of Police of all States & UTs.

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## Letter to Chief Ministers of All States on the District Complaints Authority

National Human Rights Commission

Dr. Justice K. Ramaswamy  
Member

24 December 1999

Dear Chief Minister,

The National Human Rights Commission has been receiving innumerable complaints against the civilian authorities and Police personnel criticising that they are abusing and misusing power and tend to trample the human rights of the innocent people and, in particular, focus in the media on the atrocities committed by the Police personnel. The Commission, therefore, after deep deliberation, decided to suggest constitution of District Complaints Authorities consisting of the Principal District Judge of the concerned district, the District Collector/Deputy Commissioner in charge of the District civil administration, the Senior Superintendent of Police, Superintendent of Police in charge of a District police administration as Members of the District Complaints Authority, and the Superintendent of Police/Additional Superintendent of Police to act as the Ex-officio Member Secretary of the Authority to whom the complaints would be addressed and appropriate recommendations, if necessary, could be made to the State Human Rights Commission, if any in existence, or to the National Human Rights Commission. In the State of Kerala, such a District Complaints Authority named as 'District Human Rights Authority' for each district has been constituted and is functioning effectively. The functioning of a District Complaints Authority would inculcate a sense of responsibility in the conduct, of the public officials and create faith and confidence among the people in the rule of law.

I would, therefore, request you to kindly constitute a District Complaints Authority and advise the Chief Secretary and D.G.P. of your State to instruct District Collectors/Deputy Commissioners and Sr. Supdts. of Police/Supdts. of Police to act as Members and Supdts. of Police/Addl. Supdts. of Police as Ex-officio Secretary of the District Complaints Authority and the District Judge to act as Chairman with public notice of its constitution and function. This step would go a long way to infuse confidence of the people in the rule of law. The action taken may kindly be intimated.

With regards,

Yours sincerely,

Sd/-

(DR. JUSTICE K. RAMASWAMY)

To,

Chief Ministers of all States/Administrators of Union Territories.

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## Letter to Chief Justices of the High Courts on Undertrial Prisoners

National Human Rights Commission

Dr. Justice K. Ramaswamy  
Member

22 December 1999

Dear Brother Chief Justice,

Right to speedy trial is a facet of fair procedure guaranteed in Article 21 of the Constitution. In Kartar Singh's case (Constitutionality of TADA Act case), J.T. 1992 (2) SC 423, the Supreme Court held that speedy trial is a component of personal liberty. The procedural law – if the trial is not conducted expeditiously, becomes void, violating Article 21 as was held in Hussain Ara's four cases in 1979. In Antulay's case, 1992(1) SCC 215, a constitution bench directed completion of the trial within two years in cases relating to offences punishable up to seven years, and for beyond seven years, within a period of three years. If the prosecution fails to produce evidence before the expiry of the outer limit, the prosecution case stands closed and the court shall proceed to the next stage of the trial and dispose it off in accordance with law. That view was reiterated per majority even in the recent judgement of the Supreme Court in Raj Dev Sharma II versus Bihar, 1999(7) SCC 604 by a three-judge bench.

In the Common Cause case, 1996 (2) SCC 775—in D.O. Sharma I's case—it was held that the time taken by the courts on account of their inability to carry on the day-to-day trial due to pressure of work, will be excluded from the dead-line of two years and three years, respectively, imposed in the aforesaid cases. In the latest Raj Dev Sharma's case 1999 (7) SCC 604 the majority reiterated the above view.

In Common Cause II case, 1996 (4) SCC 33, the Supreme Court directed release of the undertrial prisoners, subject to certain conditions mentioned therein. The principle laid down in the Common Cause case is not self-executory. It needs monitoring, guidance and direction to the learned Magistrates in charge of dispensation of the criminal justice system at the lower level, before whom the undertrial prisoners are produced for extension of the period of remand. It is common knowledge that it is the poor, the disadvantaged and the neglected segment of the society who are unable to either furnish the bonds for release, or are not aware of the provisions to avail of judicial remedy of seeking a bail and its grant by the court. Needless or prolonged detention not only violates the right to liberty guaranteed to every citizen, but also amounts to blatant denial of the human right of freedom of movement to these vulnerable segments of the society who need the protection, care and consideration of law and criminal justice dispensation system.

In this background, may I seek your indulgence to consider the above perspectives and to set in motion appropriate directions to the Magistracy to follow up and implement the law laid down

by the Supreme Court in the Common Cause II case? For your ready reference, the principles laid therein are deduced as set guidelines are enclosed herewith. I had a discussion with the Hon'ble Chief Justice of the Andhra Pradesh High Court, who was gracious enough to have them examined in consultation with brother Judges and necessary directions issued to all the Magistrates and Session Judges to follow up the directions and ensure prevention of unnecessary restriction of liberty of the under-privileged and poor undertrial prisoners. I would request you to kindly consider for adoption and necessary directions issued to the Magistrates and Sessions Judges within your jurisdiction to follow up and ensure enjoyment of liberty and freedom of movement by poor undertrial prisoners.

With regards,

Yours sincerely,

Sd/-

(DR. JUSTICE K. RAMASWAMY)

To,

Chief Justices of all High Courts.

## Measures for Improving Police—Public Relationship and Confidence

National Human Rights Commission

D.R. Karthikeyan  
Director General (Investigation)

22 December 1999

Dear Shri

The bulk of the complaints received by the National Human Rights Commission concerns security forces. Again most of such complaints relate to alleged commissions and omissions on the part of the police during the investigation. Many of them pertain to non-registration of complaints, delayed investigations, investigations not being done fairly, objectively and impartially and the inaccessibility of police officers.

It goes without saying that to be effective and successful, the police must enjoy the trust, confidence and respect of the people living in their jurisdiction. The Commission advises all the States to comply with the following suggestions, which are already in force in the State of Kerala to improve police public relationship and confidence and also to effectively prevent violation of law and to detect crimes that may occur.

For removing such apprehensions and difficulties, the following steps may be adopted:

- I. Toll free phone number for public to convey crime intelligence/information to the police
  - a. A toll free telephone number, which is 1090, is given for the entire State of Kerala. For the purpose of uniformity all over the country, all the States could adopt No. 1090 for this purpose.
  - b. Any member of the public can ring up 1090, which will be installed in the Police Control Room/Police Station/Sub-divisional Office. This will be toll free within the State even on the STD from remote parts of the District and the State.
  - c. While recording the information on phone no. 1090, the caller will not be compelled to give his name and address. If the caller so desires, a code number may be given to him so that at a future date, the caller can call 1090, identify himself with the code number and get to know the result of the investigation as a result of his information.
  - d. In appropriate cases where valuable information results in detection of quality cases, the caller/informant could be rewarded or his public-spirited service could be recognized by way of issuance of a commendation certificate at the appropriate level.
- II. Need for the investigating agencies to keep the complaints/victims informed of the progress of investigation
  1. F.I.R. should be issued promptly on receipt of a complaint revealing cognizable offence. Copy of the F.I.R. should be handed over to the complainant and an entry to this effect should be made in the First Case Diary itself.

2. If the complaint does not reveal a cognisable offence warranting registration of an F.I.R., the complainant should be intimated the reasons therefore.
3. If the investigation of a case is not completed within three months from the date of registration, the complainant should be intimated in writing such a fact, and also the specific reasons for not completing the investigation. Such reasons could be like the inability to arrest the accused, the inability to complete examination of all the witnesses, non-receipt of report from the expert, non-receipt of prosecution sanction, legal impediment and similar specific reasons.
4. The proof of sending such an intimation like a postal acknowledgement or a written acknowledgement from the complainant should be obtained and kept on the case file. An entry to that effect is also to be made in the Case Diary File.
5. If the investigation of the case could not be completed within 6 months of the date of registration, once again a similar intimation should be given to the complainant indicating the cause for such non-completion of investigation and an acknowledgement obtained and kept on the case file.
6. If the investigation is not completed within one year, a more detailed intimation should be prepared by the I.O. who should also obtain the endorsement of the next higher gazetted officer, who should personally verify and satisfy himself the genuineness of the cause for such delay. Such an intimation with the endorsement of the gazetted officer should be sent to the complainant and the acknowledgement kept in the case file.
7. When the charge sheet is filed before the court on completion of investigation, a similar intimation should be sent to the complainant along with the copy of the charge sheet. This fact should also find a mention in the case diary.
8. In case the complainant is not available for any reason, such notices can be handed over to any other member of the family.

III. *Meeting of Station House Officers with the public*

The Station House Officers be directed to hold regular monthly meetings in various towns/villages in their jurisdictions twice a month. It will help the public to meet the Police Officers and voice their grievances, if any. This will also enable the Police to sensitise the public on various issues and seek their cooperation in prevention of crime and maintenance of law and order. This will make the SHO obligatory to visit town/village in his jurisdiction along with his staff after giving advance publicity through the Panchayat and the press. The senior officers also could be asked to attend such meetings wherever possible.

Experience of Kerala is that most of such calls on toll free number are genuine and have resulted in detection of a number of pending cases and in prevention of commission of offences.

With regards,

Yours sincerely,

Sd/-

(D.R. Karthikeyan)

To,

All Chief Secretaries/Administrators, DGPs of all States and UTs and Commissioners of Police, Delhi, Chennai, Mumbai, Bangalore, Calcutta, Hyderabad and Ahmedabad.

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*Annexure Seven*

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## Circular

6 July 1999

The Commission receives a large number of representations from the petitioners/complainants/victims seeking the intervention and justice from the Commission. These representations are presently being sent to the District Collector/Magistrate/Deputy Commissioner/District Superintendent of Police concerned for verification but in majority of the cases these are in turn being sent to the very officers against whom the allegations are made. This results in apprehension and misgivings in the mind of the victim/complainant about the impartial and objective reporting. With a view to injecting a credible reporting system, the Commission recommends the following procedure which may be adopted by the State authorities in so far as references made by the Commission are concerned:

### I. ON NOTICES

The complaints are sent to the District Superintendent of Police by the Law Division or the Investigation Division as per the directions of the Commission seeking verification of the allegations made by the complainant. As the complaint cannot be accepted on its face value at the first stage, the facts are required to be ascertained from the District authorities, in whose jurisdiction the alleged police excesses are reported to have taken place. A preliminary enquiry may be caused through their channels to judge the veracity of the petition.

Such reference may not be enquired into by the same officer against whom the complaint has been made but are to be enquired into by another officer senior to him in rank. In case this is not possible then an officer of equivalent rank from another unit or District may be detailed. For this purpose, the DIG Range or the Zonal IG may be requested by the Superintendent of Police to depute an officer.

### II. SERIOUS CASES

In serious complaint cases where the Commission feels that the matter needs to be probed by a senior officer, then it is the responsibility of the State Police either of DGP or Zonal IG or DIG range level to depute an officer of proven integrity to cause the inquiry. Such reporting is covered under statutory requirement of Section 14(1) of the Protection of Human Rights Act, 1993.

Similarly, when a report is called for on the complaint against an officer of a particular rank in revenue or any other Department, the inquiry may be got conducted by an officer senior to him.

### III. GENERAL

The Commission has repeatedly conveyed its view to the State Governments that when senior officers of the State/Centre are requested by the Commission to examine complaints against

functionaries of the police, executive, magistracy or any other governmental authority and submit report—the statute indeed entitles the Commission to draw on the time and resources of such Central and State Government agencies—it would be stultifying the very purpose of the Commission requesting senior officers of the benefit of their views if such senior officers delegate this responsibility to some subordinate officers and merely forward the reports received from such subordinate officers. However, if the senior officers, in their wisdom, delegate this function to their subordinates and ask an officer of a lower rank to examine the matter, the Commission would be entitled to expect such senior officers to examine the reports closely and endorse their veracity before commending them for the acceptance of the Commission.

The main purpose of prescribing this procedure is to insulate the reporting system from possible allegations or wrong aspersions and to present an objective, fair and impartial image of the administration.

Sd/-

(D.R. Karthikeyan)

To,

Chief Secretaries, Home Secretaries, DGPS of States/Commissioners of Police of Metropolitan Cities.



## Premature Release of Prisoners

### 1. GUIDELINES ON PREMATURE RELEASE OF THE PRISONERS

1. The relevant provisions in regard to the suspension and remission of sentence is contained in Section 432 of the Criminal Procedure which reads as follows:

**“Power to suspend or remit sentences:**

- i. When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.
- ii. Whenever an application is made to the appropriate Government for the suspension or remission of a sentence the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.
- iii. If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.
- iv. The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.
- v. The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and

- a. Where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or
  - b. Where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.
- vi. The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposed any liability upon him or his property.
  - vii. In this section and in section 433, the expression ‘appropriate Government’ means
    - a. In cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

- b. in other cases, the Government of the State within which the offender is sentenced or the said order is passed.”

1.1 The above power of remission of sentences under Section 432 is circumscribed by the provisions of 433A which reads as under :

“Restriction on powers of remission or commutation in certain cases - Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by laws, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.”

## 2. COMPOSITION OF THE STATE SENTENCE REVIEW BOARDS

Each State shall constitute a Review Board for the review of sentence awarded to a prisoner and for recommending his premature release in appropriate cases. The Review Board shall be a permanent body having the following constitutions:

- |   |   |          |
|---|---|----------|
| a. Minister Incharge, Jail Department,<br>Principal Secretary, Home, Principal<br>Secretary, Incharge of Jail Affairs<br>Law & Order. | — | Chairman |
| b. Judicial Secretary/Legal Remembrancer  | — | Member   |
| c. A District & Session Judge nominated<br>by the High Court  | — | Member   |
| d. Chief Probation Officer  | — | Member   |
| e. A senior police officer nominated by<br>by the DG of Police not below the<br>rank of IG of Police.                                 | — | Member   |
| f. Inspector General of Prisons<br>Secretary  | — | Member   |

The recommendations of the Sentence Review Board shall not be invalid merely by reason of any vacancy in the Board or the inability of any Member to attend the Board meeting. The meeting of the Board shall not however, be held, if the quorum is less than 4 Members including the Chairman.

### 2.1. PERIODICITY OF THE BOARD'S MEETINGS

The State Sentence Review Board shall meet at least once in a quarter at the State Headquarters on date to be notified to Members at least ten days in advance with complete agenda papers.

However, it shall be open to the Chairman of the Board to convene a meeting of the Board more frequently as may be deemed necessary.

## 3. ELIGIBILITY FOR PREMATURE RELEASE

The following category of inmates shall be eligible to be considered for premature release by the State Sentence Review Boards.

- i. Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A Cr.PC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions.
- ii. All other convicted male prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 14 years of imprisonment inclusive of remissions and after completion of 10 years actual imprisonment i.e. without remissions.
- iii. All other convicted female prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 10 years of imprisonment inclusive of remissions and after completion of 7 years actual imprisonment i.e. without remissions.
- iv. Convicted prisoners undergoing the sentence of life imprisonment on attaining the age of 65 years provided he or she has served atleast 7 years of imprisonment including the remissions.
- v. The convicted prisoners undergoing the sentence of imprisonment for life and who are suffering from terminal diseases like cancer, T.B., AIDS, irreversible kidney failure, cardio-respiratory disease, leprosy and any other infectious disease etc. as certified by a Board of Doctors on completion of 5 years of actual sentence or 7 years of sentence including remissions.

#### **4. INABILITY FOR PREMATURE RELEASE**

The following category of convicted prisoners undergoing life sentence may not be considered eligible for premature release:

- i. Prisoners convicted of the offences such as rape, dacoity, terrorist crimes etc.
- ii. Prisoners who have been convicted for organised murders in a premeditated matter and in an organised manner.
- iii. Professional murderers who have been found guilty of murder by hiring them.
- iv. Convicts who commit murder while involved in smuggling operations or having committed the murder of public servants on duty.

#### **5. PROCEDURE FOR PROCESSING OF THE CASES FOR CONSIDERATION OF THE REVIEW BOARD**

- i. Every superintendent of Central/District Jail who has prisoner(s) undergoing sentence of imprisonment for life, shall initiate the case of the prisoner at least 3 months in advance of the date when the prisoner would become eligible for consideration of premature release as per the criteria laid down by the State Government in that behalf.
- ii. The Superintendent of Jail prepares a comprehensive note in each case giving out the family and societal background of the prisoner, the offence for which he was convicted and sentenced and the circumstances under which the offence was committed. He will also reflect fully about the conduct and behaviour of the prisoner in the jail during the period of his incarceration, behaviour/conduct during the period he was released on probation leave, change in his behavioural pattern and the jail offences, if any, committed by him and punishment awarded to him for such offence(s). A report shall also be made about his physical, mental health or any serious ailment with which the prisoner is suffering entitling his case special consideration for his premature

release. The note shall also contain recommendation of the Jail Superintendent whether he favours for the premature release of the prisoner or not and in either case it shall be supported by adequate reasons.

iii. The Superintendent of Jails shall make the reference to the Superintendent of Police of the district where the prisoner was ordinarily residing at the time of the Commission of the offence, for which he was convicted and sentenced, or where he is likely to resettle after his release from the jail. However, in case the place where the prisoner was ordinarily residing at the time of Commission of the offence is different from the place where he committed the offence, a reference shall also be made to the Superintendent of Police of the district in which the offence was committed. In either case, he shall forward a copy of the note prepared by him to enable the Superintendent of Police to express his views in regard to the desirability of the premature release of the prisoner.

iv. On receipt of the reference, the concerned Superintendent of Police shall cause an inquiry to be made in the matter through the senior police officer of the appropriate rank and based on his own assessment shall make his recommendations. While making the recommendations the Superintendent of Police shall not act mechanically and oppose the premature release of the prisoner on untenable and hypothetical ground apprehensions. In case the Superintendent of Police is not in favour of the premature release of the prisoner, he shall return the reference to the Superintendent of the concerned jail not later than 30 days from the receipt of the reference.

v. The Superintendent of Jails shall also make a reference to the Chief Probation Officer of the State and shall forward to him a copy of his note. On receipt of the reference, the Chief Probation Officer shall either hold or cause to be held an inquiry through a Probation Officer in regard to the desirability of premature release of the prisoner having regard to his family and social background, his acceptability by his family members and the society, prospects of the prisoner for rehabilitation and leading a meaningful life as a good citizen. He will not act mechanically and recommend each and every case for premature release. In either case, he should justify his recommendation by reasons material. The Chief Probation Officer shall furnish his report/recommendations to the Superintendent of Jails not later than 30 days form the receipt of the reference.

vi. On receipt of the report/recommendations of the Superintendent of Police and Chief Probation Officer, the Superintendent of jail shall put up the case to the Inspector General of Prisons at least one month in advance of the proposed meeting of the Sentence Review Board. The Inspector General of Prisons shall examine the case bearing in mind the report recommendations of the Superintendent of Jail, Superintendent of Police and the Chief Probation Officer and shall make his own recommendations with regard to the premature release of the prisoner or otherwise keeping in view the general or special guidelines laid down by the Government of the Sentence Review Board. Regard shall also be had to various norms laid down and guidelines given by the Apex Court and various High Courts in the matter of premature release of prisoners.

## **6. PROCEDURE AND GUIDELINES FOR THE REVIEW BOARD**

i. The Inspector General of Prisons shall convene a meeting of the Sentence Review Board on a date and time at the State Headquarters, an advance notice of which shall be given to the Chairman and Members of the Board at least ten days in advance of the scheduled meeting and it shall accompany the complete agenda papers i.e. the note of the Superintendent of Jail,

recommendations of Superintendent of Police, Chief Probation Officer and that of the Inspector General of Prisons alongwith the copies of documents if any.

ii. A meeting shall ordinarily be chaired by the Chairman and if for some reasons he is unable to be present in the meeting, it shall be chaired by the Judicial Secretary-cum-Legal Remembrancer. The Member Secretary (Inspector General of Prisons) shall present the case of each prisoner under consideration before the Sentence Review Board. The Board shall consider the case and take a view. As far as practicable, the Sentence Revising Board shall endeavour to make unanimous recommendation. However, in case of a dissent, the majority view shall prevail and will be deemed to be decision of the Board.

iii. While considering the case of premature release of a particular prisoner, the Board shall keep in view the general principles of amnesty/remission of the sentences as laid down by the State Government or by Courts as also the earlier precedents in the matter. The paramount consideration before the Sentence Review Board being the welfare of the prisoner and the society at large. The Board shall not ordinarily decline a premature release of a prisoner merely on the ground that the police has not recommend his release on certain farfetched and hypothetical premises. The Board shall take into account the circumstances in which the offence was committed by the prisoner and whether he has the propensity and is likely to commit similar or other offences again.

iv. Rejection of the case of a prisoner for premature release on one or more occasion by the Sentence Review Board will not be a bar for reconsideration of his case. However, the reconsideration of the case of a convict already rejected shall be done only after the expiry of a period of one year from the date of last consideration of his case.

v. The recommendations of the Sentence Review Board shall be placed before the competent authority without delay for consideration. The competent authority may either accept the recommendations of the Sentence Review Board or reject the same on the grounds to be stated or may ask the Sentence Review Board to reconsider a particular case. The decision of the competent authority shall be communicated to the concerned prisoner and in case the competent authority has ordered to grant remission and order his premature release, the prisoner shall be released forthwith with or without conditions.

## **7. MONITORING OF CASES THROUGH THE OFFICE OF CHIEF CO-ORDINATOR OF CUSTODIAL JUSTICE PROGRAMME, NHRC**

The Committee considers that while computerised records of all the prisoners serving life sentence in the prisons of the country for a follow up of their cases by the NHRC is extremely desirable, it does not presently seem to be feasible. Such a monitoring could only be possible with necessary infrastructural and manpower support.

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## Fixation of Tenure for the Inspectors General of Prisons

National Human Rights Commission

Justice J.S. Verma  
Chairperson

21 December 1999

Dear Chief Minister,

One of the important functions of the National Human Rights Commission as provided under Section 12 of the Protection of Human rights Act, 1993 is to "visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon". The Commission during the last 5 years undertook visits to a large number of prisons all over the country, enquired into numerous complaints regarding violation of human rights from prisoners and highlighted the need for prison reforms in its orders and reports. The Commission strongly feels that there is an urgent need for systemic reforms in prisons.

In this connection, I intend to draw your attention to another matter of importance concerning prison administration. The post of the Inspector General of Prisons, who heads the prison administration in the State, is now filled up by officers either from the Indian Administrative Service or the Indian Police Service. However, the Commission is pained to observe that usual tenure of the officers is too brief and most of them view the posting as I.G. Prisons as an inconvenient loop-line job and look ahead for suitable posts in the mainstream of general administration. The upshot is that Inspectors General of Prisons do not continue in this post for a fixed period and become birds of passage. Sometimes the post remains vacant for a long time. Such a situation, you will agree with me, is not conducive to efficient prison administration.

In order to bring about a qualitative improvement in the prison administration, the Commission is of the view that the selection of officers for the posts of Inspectors General of Prisons be done carefully. An officer of proven integrity and competence with faith in the human rights culture may be selected for the post and he may be allowed to continue in the post for a minimum period of about three years. This will impart continuity and dynamism and will also provide efficiency and credible leadership to the prison administration.

Earlier my predecessor had written to you vide letter no. NHRC/Prison/SP-II/96 dated 25 September 1996 on this subject. However, I felt that I should write to you again and



re-emphasise the need for a fixed tenure of Inspectors General of Prisons after careful selection. This step, on your part, will go a long way in improving the quality and promoting concern for human rights in the prison administration.

I look forward to an early and positive response.

With regards,

Yours sincerely,

Sd/-  
(J.S. Verma)

To,

The Chief Ministers of all States.

## Letter to the Chief Justices of All High Courts Regarding Human Rights

National Human Rights Commission

Justice J.S. Verma  
Chairperson

January 1, 2000

Dear Chief Justice

As you are aware, one of the important functions entrusted to the National Human Rights Commission under the Protection of Human Rights Act, 1993, is to visit the prisons, study the conditions of the prison inmates and suggest remedial measures. During the last five years the Members of the Commission and its senior officers have visited prisons in various parts of the country and have been appalled by the spectacle of overcrowding, in sanitary conditions and mismanagement of prison administration. The problem is further compounded by lack of sensitivity on the part of the prison staff to the basic human rights of the prisoners.

The State Prison Manuals contain provisions for District and Sessions Judges to function as ex-officio visitors to jails within their jurisdiction so as to ensure that prison inmates are not denied certain basic minimum standards of health, hygiene and institutional treatment. The prisoners are in judicial custody and hence it is incumbent upon the Sessions Judges to monitor their living conditions and ensure that humane conditions prevail within the prison walls also. Justice Krishna lyer has aptly remarked that the prison gates are not an iron curtain between the prisoner and human rights. In additions, the Supreme Court specifically directed that the District and Sessions Judges must visit prisons for this purpose and consider this part of duty as an essential function attached to their office. They should make expeditious inquiries into the grievances of their prisoners and take suitable corrective measures.

During visits to various district prisons, the Commission has been informed that the Sessions Judges are not regular in visiting prisons and the District Committee headed by Sessions Judge/District Magistrate and comprised of Senior Superintendent of Police is not meeting at regular intervals to review the conditions of the prisoners.

Indeed in most of the jails, there is a predominance of under trials. Many of them who have committed petty offences are languishing in jails, because their cases are not being decided early for reasons, which it is not necessary to reiterate. The District Judges during their visits can look into the problem and ensure their speedy trial. The Supreme Court in its several judgements has drawn attention to this fact and to the attendant problems in prison administration arising therefrom. The Supreme Court has also emphasised the need for urgent steps to reduce their

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number of expeditious trial and thereby making speedy justice a facet of Article 21 of the Constitution a reality.

You may consider giving appropriate instructions to the District & Sessions Judges to take necessary steps to resolve the acute problem, which has the impact of violating a human right, which is given the status of constitutional guarantee.

I would be grateful for your response in this matter.

With regards,

Yours sincerely,

Sd/-

(J.S.VERMA)

To,

All Chief Justices of High Courts.

## Letter Regarding Mentally Ill Persons Languishing in Prisons

National Human Rights Commission

Justice J.S. Verma  
Chairperson

7 February 2000

Dear Chief Minister,

The National Human Rights Commission is receiving distressing reports from different States regarding the sad plight of mentally ill persons languishing in prisons without proper care and attention. They are being treated like any other prisoner. Recently, an officer of the Commission visited a Central Prison in a North-Eastern State and found to his horror that as many as 44 mentally deranged persons were lodged in the prison. They were not receiving proper psychiatric treatment and attention.

May I invite your attention to the fact that the Mental Health Act, 1987 which came into force with effect from 1.4.1993, does not permit lodging of mentally ill persons in prisons? This is a very insensitive manner of dealing with them. They are meant to be kept in mental asylums and provided proper treatment. Indeed, detention of mentally ill persons in jails amounts to an egregious violation of human rights. The State Governments cannot escape their obligation to provide proper psychiatric treatment to the mentally ill. Further, it has been brought to my notice that a number of non-criminal lunatics are also being kept in jails in violation of the existing Prison Rules.

Earlier, my predecessor had in his letter dated 11 September 1996, clearly said that if the Commission's officers during jail inspections detect presence of mentally sick persons in jails, the Commission would award compensation to them or to the members of their families and further direct the State Government to recover the amount of compensation from the jail officers responsible for this lapse. I deem it necessary to reiterate this instruction of the Commission to safeguard the rights of the unfortunate and hapless mentally ill persons now lodged in jails.

I request you to issue clear directions to the Inspector General of Prisons to ensure that mentally ill persons are not kept in jail under any circumstances. Moreover, the State Government must make proper arrangements for their treatment in approved mental institutions and not treat them as unwanted human beings.

With regards,

Yours sincerely,

Sd/-

(J.S.Verma)

To,

All Chief Ministers/Chief Administrators of States and UTs.

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## Recommendations of the NHRC for Amendments to the Protection of Human Rights Act, 1993

Sl No.	Present Provision	Proposed Amendment	Reasons
1.	<b>Long Title</b> An act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.	An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto <i>including the implementation of International Covenants.</i>	Reference to International Covenants specifically made.
2.	<b>Section 1(2)</b> Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.	Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to <i>International Covenants</i> and any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.	Reference to International Covenants specifically made to clarify doubts. NHRC's order dt. 11.6.99 in Case No.802/94-95/NHRC and connected matters taken into account.
3.	<b>Section 2</b> 1(a) "armed forces" means the naval, military and air forces and <u>includes any other armed forces of the Union.</u>	"armed forces" means the naval, military and air forces.	Excludes para-military forces for the reasons that in International Forums lack of jurisdiction over military and para-military forces is pointed out as a serious infirmity affecting the credibility of the NHRC and commitment (to Human Rights) on the part of Govt. of India.

Sl No.	Present Provision	Proposed Amendment	Reasons
	<p><b>1(f)</b>                      "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16<sup>th</sup> December, 1966.</p>	<p>"International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16<sup>th</sup> December, 1966 <i>and any other Covenant and Convention which has been, or may hereafter be, adopted by the General Assembly of the United Nations.</i></p>	<p>Expands the scope to include subsequent covenants instead of freezing it in time to the year 1966.</p>
	<p><b>1(g)</b>                      "Member" means a Member of the Commission or of the State Commission, as the case may be, <u>and includes the Chairperson.</u></p>	<p>"Member" means a Member of the Commission or of the State Commission, as the case may be.</p>	<p>As the term Chairperson is defined earlier, it is redundant to include Chairperson within the definition of Member and hence this change.</p>
	<p><b>Section 2(2)</b>                      Any reference in this Act to a law, which is not in force in the <u>State of Jammu and Kashmir</u>, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.</p>	<p>Any reference in this Act to a law which is not in force in <i>any area</i> shall, in relation to that <i>area</i>, be construed as reference to the corresponding law, if any, in force in that <i>area</i>.</p>	<p>Broadbases the provision to cover any such contingency in any area instead of the provision being restricted to one state.</p>
4.	<p><b>Section 3</b>                      2(d) two Members to be appointed from amongst persons <u>having knowledge of</u>, or practical experience in, matters relating to human rights.</p>	<p>Two Members to be appointed from amongst persons <i>who are working or had worked in the field of human rights</i> and have practical experience in matters relating to human rights  <i>Following explanation shall be introduced below Sub-Section (2)(d)</i>  <b>Explanation:</b>  <i>In the composition of the Commission care shall be taken</i></p>	<p>Provision is slightly modified for better focus at the same time avoiding too restrictive a provision.</p> <p>This is suggested in lieu of any specific reservation for any</p>

Sl No.	Present Provision	Proposed Amendment	Reasons
		<i>to ensure that it reflects the pluralistic character of the polity.</i>	category/group in view of separate commissions for Minorities, SC/ST and Women
	(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.	(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as may be delegated to him by the Commission <i>or the Chairperson.</i>	To enable delegation of power to Secretary General by Chairperson in respect of matters for which Chairperson alone is empowered.
5.	<b>Section 4</b>	<b>Section 4</b> In sub-section(1) after the second proviso, the following proviso shall be inserted <i>Provided also that in the case of appointment of a Member, the Chairperson shall be a member of the Committee.</i>	Membership of the Committee expanded because of Chairperson's responsibility for proper functioning of the Commission.
		The following proviso shall be added after the third proviso <i>Provided however also that in case of an equality of votes in the meeting the Chairperson of the Committee shall have a casting vote.</i>	To meet the contingency equality of votes.
	<b>Sub-section (2)</b> No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.	No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy <i>or absence</i> in the Committee <i>referred to in sub-section (1).</i>	To cover the contingency absence.
6.	<b>Section 5</b> (1) <u>Subject to the provisions of sub-section (2),</u> the Chairperson or any other Member of the Commission shall only be	The Chairperson or any other Member of the Commission shall only be removed from his office by order of the President	Modified in view of proposed deletion of sub-section (2)



Sl No.	Present Provision	Proposed Amendment	Reasons
	<p>removed from his office by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.</p>	<p>on the ground of proved misbehavior or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.</p>	
	<p>(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be:-</p> <ul style="list-style-type: none"> <li>(a) is adjudged an insolvent; or</li> <li>(b) engages during his term of office in any paid employment outside the duties of his office; or</li> <li>(c) is unfit to continue in office by reason of infirmity of mind or body; or</li> <li>(d) is of unsound mind and stands so declared by a competent court; or</li> <li>(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.</li> </ul>	<p>To be deleted entirely.</p>	<p>In this regard reference is invited to Art. 124(4) of the Constitution regarding removal of judges. In light of that provision, Sec. 5(2) is deemed redundant and Sec. 5(1) deemed sufficient for effecting the removal as the words 'proved misbehaviour or incapacity' can cover all the grounds enumerated in the present Sec. 5(2).</p>
<p>7. <b>Section 6</b></p>	<p>Marginal note. Term of office of Members.</p>	<p>Term of office of <i>Chairperson</i> and Members.</p>	<p>Change needed consequent upon the change in the definition in Sec. 2(1)(g).</p>

Sl No.	Present Provision	Proposed Amendment	Reasons
		A new sub-sec.4 will be added and it shall read as follows: <b>(4) Chairperson or any Member may by writing under his hand addressed to the President resign his office.</b>	To provide for the contingency of resignation as such provision does not exist now.
8.	<b>Section 8</b> Terms and conditions of service of Members.	Terms and conditions of service of <i>Chairperson</i> and Members.	
	The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed.	The salaries and allowances payable to, and other terms and conditions of service of, <i>the Chairperson</i> and the Members shall be such as may be prescribed.	Change needed consequent upon the change in the definition in Sec. 2(1)(g).
	Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.	Provided that neither the salary and allowances nor the other terms and conditions of service of <i>the Chairperson</i> or a Member shall be varied to his disadvantage after his appointment.	
9.	<b>Section 9</b> No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution <u>of the Commission.</u>	No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in <i>its</i> constitution.	For removal of ambiguity in the current provision.
10.	<b>Section 10</b> (2) The Commission shall regulate its own procedure.	The Commission shall, <i>by regulations, specify</i> its own procedure <i>for the conduct of its meetings and other matters.</i>	For better clarity.
11.	<b>Section 11</b> The Central Government shall make available to the Commission:	The Central Government <i>shall with the concurrence of the</i>	To focus on and secure the autonomous position of the

Sl No.	Present Provision	Proposed Amendment	Reasons
		<i>Commission, make available to the Commission:</i>	Commission, it is considered necessary that appointments are made with the concurrence of the Commission.
	(a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and	(a) an officer of the rank of Secretary to the Government of India <i>who shall be appointed by the Commission as the Secretary-General of the Commission.</i>	
	(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.	(b) an officer of the rank of a Director-General of Police <i>who shall be appointed by the Commission as the Director-General (Investigation) of the Commission.</i>	The present sub-section(b) is split into two sub-sections for better clarity.
		(c) <i>such police and investigative staff, as the Commission may consider necessary from time to time, who shall be appointed by the Commission.</i>	
	(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.	(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other <i>investigative</i> , administrative, technical and scientific staff as it may consider necessary.	To enable the Commission to appoint investigative staff of its choice even from outside the Government.
	(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section(2) shall be such as may be prescribed.	(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed <i>by regulations.</i>	In keeping with the autonomous status of the Commission this amendment is needed as the Commission should have the final say on the salaries, allowances etc. of the staff appointed by Commission.
12.	<b>Section 12</b>		
	(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into a complaint of	(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, <i>or on the request of the Supreme Court.</i>	To provide for the contingency of cases being referred to the Commission by the Supreme Court and to obviate the kind of difficulties which arose in

Sl No.	Present Provision	Proposed Amendment	Reasons
	(i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant. Clause (c) visit, <u>under intimation</u> to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;	(i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant; Clause (c) visit any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;	the Punjab Mass Cremation Case  The stipulation of "intimation" to State Government done away with as it is neither in keeping with the autonomy of the Commission nor is capable of ensuring the element of surprise over the visit.
13.	<b>Section 13</b> (1)(a) summoning and enforcing the attendance of witnesses and examining them on oath  (1)(f) any other matter which may be prescribed	(1)(a) summoning and enforcing the attendance of witnesses and examining them on oath <i>and obtaining duly signed statements.</i>  (1)(f) any other matter which may be prescribed <i>by regulations.</i> <b>New Sub-section 6</b> <i>(a) The Commission may, whenever it considers expedient to do so, transfer any of the complaints filed or pending before it to the State Human Rights Commission of the State from which the complaint arises, for disposal in accordance with the provisions of the Act. Provided that the complaint so transferred is one respecting which the State Commission would have jurisdiction to entertain.</i> <i>(b) The complaint so transferred under clause (a) shall be dealt with and disposed of by the State Commission, as if the complaint had initially been filed before the State Commission.</i>	Based on experience to obviate the situation of a witness refusing to sign his oral statement with the ulterior motive to deny it at a later point of time. To bring in specificity.  To enable transfer of complaints to the State Commissions wherever they are set up.

Sl No.	Present Provision	Proposed Amendment	Reasons
14.	<b>Section 14</b> (1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.	(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer <i>of the Commission</i> , or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government as the case may be.	Scope expanded to bring in clarity and to enable utilisation of the services of the officers of the Commission without being legally challenged.
	(2)(a) summon and enforce the attendance of any person and examine him.	(2)(a) summon and enforce the attendance of any person and examine <i>and obtain his duly signed statement</i> .	For the same reason as in Sl. No. 12 (Sec. 13(1)(a)).
15.	<b>Section 18</b> Marginal Note. Steps after Inquiry.	Steps <i>during and</i> after inquiry.	The Ahmadi Committee had suggested a complete overhaul of the present provision from Sec.14 to Sec. 18 to cater to various requirements but the Commission has narrowed them down to a few important changes keeping in view the need to reduce amendments to the bare minimum while at the same time ensuring that essential elements as are required for increasing the effectiveness of the provisions are not lost sight of.
	The Commission may take any of the following steps upon the completion of an inquiry held under this Act namely-	The Commission may take any of the following steps <i>during, or</i> upon the completion of an inquiry held under this Act namely.	To clarify the scope for making necessary interim orders also during the pendency of the inquiry.
	(1) where the inquiry discloses the commission of violation of	(1) where the inquiry discloses the commission of violation of	Sub-section(1) is amplified and scope is provided for other

Sl No.	Present Provision	Proposed Amendment	Reasons
	human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned government or authority <u>the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;</u>	human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned government or authority: (a) payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary; (b) the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons; (c) such further action as it thinks fit;	recommendations being made.
	(3) recommend to the concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary.	(3) recommend to the concerned government or authority <i>at any stage of the inquiry</i> for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary.	Amplifies the provisions to enable payment of interim relief at any stage of the inquiry.
16. <b>Section 19(2)</b>	The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.	(a) <i>Upon receipt of the report together with the recommendation of the Commission the Central Government if considers itself unable to comply with the same or any part of it, shall communicate its reasons for inability to the Commission within a period of three months, or such further extended period as may be given for this purpose by the Commission.</i> (b) <i>The Commission shall thereafter consider the same and make such final recommendations as it deems fit.</i>	Provision amplified for better appreciation and understanding of the matter where Central Government may feel difficulty in accepting the recommendation of the Commission in a given case/ situation.

Sl No.	Present Provision	Proposed Amendment	Reasons
		(c) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.	
17. <b>Section 20</b>	(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any	(2) The Central Government and the State Government, as the case may be, <i>shall within a period of three months from the date of receipt of such report</i> cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any <i>Provided that where any such report is not laid before the Houses of Parliament or the State Legislature, as the case may be, within that period, it shall be open to the Commission to publish such report.</i>	As the reports of the Commission are sought after by the National and International Human Rights bodies and by NGOs and others, it is deemed necessary to avoid delays in the release of the report. This provision will enable the Commission to release the reports in time.
18. <b>Section 21</b>	(1) A State Government may constitute a body to be known as the ..... (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.	A State Government <i>shall</i> constitute a body to be known as the ..... (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.	It is highly desirable, looking at the widespread violation of human rights in many parts of the country, that each State has its own Human Rights Commission. Therefore, it is desirable to introduce the element of compulsion and hence the proposed amendment.

Sl No.	Present Provision	Proposed Amendment	Reasons
	<p>(2) The State Commission shall consist of:</p> <p>(a) a Chairperson who has been a Chief Justice of a High Court;</p> <p>(b) one Member who is, or has been, a Judge of a High Court;</p> <p>(c) <u>one Member who is, or has been, a district Judge in that State;</u></p> <p>(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.</p>	<p>(2) The State Commission shall consist of:</p> <p>(a) a Chairperson who has been a Chief Justice of a High Court;</p> <p>(b) one Member who is, or has been, a Judge of a High Court;</p> <p>(c) <i>one</i> Member to be appointed from amongst persons <i>who are working in the field or had worked in the field of human rights</i> and have practical experience in matters relating to human rights</p> <p><i>The following explanation shall be introduced under sub-section 2.</i></p> <p><i>Explanation</i>  <i>In the composition of the Commission care shall be taken to ensure that it reflects the pluralistic character of polity</i></p>	<p>The size of the State Commission is proposed to be reduced in order to make them more compact and further also keeping in view the need to lower the financial burden on the States.</p>
19.	<p><b>Section 22</b></p> <p>(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:</p> <p>Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of</p> <p>(a) The Chief Minister—Chairperson</p> <p>(b) Speaker of the Legislative Assembly—Member</p> <p>(c) Minister in-charge of the Department of Home, in that State—Member</p> <p>(d) Leader of the Opposition in the Legislative Assembly—Member</p>	<p>(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:</p> <p>Proviso 1: Every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of</p> <p>(a) The Chief Minister—Chairperson</p> <p>(b) Speaker of the Legislative Assembly—Member</p> <p>(c) Minister in-charge of the Department of Home, in that State—Member</p> <p>(d) Leader of the Opposition in the Legislative Assembly—Member</p>	



Sl No.	Present Provision	Proposed Amendment	Reasons
	<p>Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee."</p>	<p>Proviso 2: Where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.</p>	
	<p>Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.</p>	<p>Proviso 3: No sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.</p>	
		<p><i>Proviso 4: In case of an equality of votes in the meeting the Chairperson shall have a casting vote.</i></p>	<p>To provide for such a contingency of equality of votes.</p>
		<p><i>Proviso 5: In the case of appointment of the Chairperson of the State Commission, the Chairperson of the National Human Rights Commission shall be consulted.</i></p>	<p>To enable the Committee to focus its choice, the presence of the former Chief Justice of India who has knowledge of the functionaries under consideration for the office of the Chairperson of the State Commission is expected to be helpful.</p>
		<p><i>Proviso 6: In the appointment of a Member, the Chairperson of the State Commission shall be a member of the Committee.</i></p>	<p>For the same reasons as in Sl. No. 4 i.e. introduction of 3<sup>rd</sup> proviso to Sec. 4.</p>
		<p><i>A new Section shall be added as follows: Section 22(1)(A) It shall be permissible for the Chairperson or Member, as the case may be, of one State Commission to be appointed as the Chairperson or Member, as</i></p>	<p>This is an enabling provision which will be useful to those states especially the small ones in the North East or Goa or Pondicherry, etc. who for</p>

Sl No.	Present Provision	Proposed Amendment	Reasons
		<i>the case may be, of another State Commission provided however the consent of the concerned State Government, and of the concerned Chairperson or Member as the case may be, is obtained.</i>	financial or other reasons seek an alternative provision.
	(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee.	(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee referred to in sub-section (1).	For the same reason as in Sl. No. 4 i.e. Sec. 4(2)
20.	<b>Section 23</b> (1) <u>Subject to the provisions of sub-section (2)</u> , the Chairperson or any other member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.	The Chairperson or any other member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.	Changes proposed for the reasons as in the case of Sec. 5 (See Sl. No. 5).
	(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be: (a) is adjudged an insolvent; or (b) engages during his term of office in any paid	To be entirely deleted.	Changes proposed for the reasons as in the case of Sec. 5 (See Sl. No. 5).

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	<p>employment outside the duties of his office; or</p> <p>(c) is unfit to continue in office by reason of infirmity of mind or body; or</p> <p>(d) is of unsound mind and stands so declared by a competent court; or</p> <p>(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.</p>		
21.	<p><b>Section 24</b> Head Note Term of office of Members of the State Commission.</p>	<p>Term of office of <i>Chairperson</i> and Members of the State Commission.</p> <p><i>New sub-section (4) shall be added.</i> <i>Chairperson or any Member may, by writing under his hand addressed to the Governor, resign his office.</i></p>	<p>For the same reason as in the case of change proposed in Sl. No. 6.</p> <p>For the same reason as in the case of change proposed in Sl. No. 6.</p>
22.	<p><b>Section 26</b> Terms and conditions of service of Members of the State Commission.</p> <p>The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed by the State Government.</p> <p>Provided that neither the salary and allowances nor the other terms and conditions of service or a Member shall be varied to his disadvantage after his appointment.</p>	<p><b>Section 26</b> Terms and conditions of service of <i>the Chairperson</i> and Members of the State Commission.</p> <p>The salaries and allowances payable to, and other terms and conditions of service of <i>the Chairperson</i> and the Members shall be such as may be prescribed by the State Government.</p> <p>Provided that neither the salary, allowances nor the other terms and conditions of service of <i>the Chairperson</i> or a Member shall be varied to his disadvantage after his appointment.</p>	<p>As in Sl. No. 8.</p>

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23.	<b>Section 27</b> Sub-section(1) The State Government shall make available to the Commission:	The State Government shall, <i>with the concurrence of the Commission</i> , make available to the Commission:	Changes similar to those suggested to Sec. 11 (Sl. No. 10) and for the same reasons too.
	(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and	(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and	
	(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.	(b) <i>an officer of the rank of an Inspector General of Police who shall be appointed by the Commission as the Inspector General (Investigation) of the Commission;</i>	The present sub-section (b) is split into two for better clarity.
		(c) <i>such police and investigative staff, as the Commission may consider necessary from time to time, who shall be appointed by the Commission.</i>	
	(2) subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.	(2) subject to such rules as may be made by the State Government in this behalf, the Commission may appoint such other <i>investigative</i> , administrative, technical and scientific staff as it may consider necessary.	Changes similar to those suggested to Sec. 11 (Sl. No. 10) and for the same reasons too.
	(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.	(2) The salaries, allowances and other terms and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed <i>by regulations</i> .	Changes similar to those suggested to Sec. 11 (Sl. No. 10) and for the same reasons too.

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24. <b>Section 28</b>	<p>(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.</p>	<p>(2) The State Government shall within a period of three months from the date of receipt of such report, cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any. The following proviso shall be added: "Provided that where any such report is not laid before the House or Houses, as the case may be, of State Legislature within that period, it shall be open to the State Commission to publish its report".</p>	<p>Changes proposed are similar to the changes proposed to Sec. 20 and for the same reasons (see Sl. No. 16).</p>
25. <b>Section 30</b>	<p>For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences. Provided that nothing in this section shall apply if: (a) a Court of Session is already specified as a special court; or</p>	<p><i>(1) Where an offence under any law for the time being in force also involves the violation of human rights, the State Government may, for the purpose of providing speedy trial of the offence involving human rights as, specified by notification issued in that behalf by the appropriate Government, and with the concurrence of the Chief Justice of High Court by notification, constitute one or more Human Rights Courts to try the offence.</i></p>	<p>To have a better focus to this laudable provision to have easy access to justice at the District level itself in case of human rights violations, which however, in its present form is lacking in clarity, the provision is amplified and clarified.</p>

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(b)	a special court is already constituted, for such offences under any other law for the time being in force.	<p><i>(2) A Human Rights Court shall be presided over by a person who is, or has been a Sessions Judge who shall take cognizance and try the offence, as nearly as may be in accordance with the procedure specified in the Code of Criminal Procedure, 1973.</i></p> <p><i>Provided that a Human Rights Court shall, as far as possible, dispose of any case referred to it within a period of three months from the date of framing the charge.</i></p> <p><i>(3) It shall be competent for the Human Rights Court to award such sentence as may be authorised by law and the power to decide the violation of human rights shall, without prejudice to any penalty that may be awarded, include the power to award compensation, relief, both interim and final, to the person or members of the family, affected and to recommend necessary action against persons found guilty of the violation.</i></p> <p><i>(4) An appeal against the orders of the Human Rights Court shall lie to the High Court in the same manner and subject to the same conditions in which an appeal shall lie to the High Court from a Court of Session.</i></p> <p><i>(5) Nothing in this section shall apply if—</i></p> <p><i>(a) a Court of Session is already specified as a special court; or</i></p>	

Sl No.	Present Provision	Proposed Amendment	Reasons
		(b) a special court is already constituted, for such offences under any other law for the time being in force.	
26. <b>Section 32</b>	(1) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.	(1) The Central Government shall <i>pay to the Commission</i> by way of grants such sums of money <i>as are from time to time approved by Parliament</i> after due appropriation, by law in this behalf.	Provision modified to confer financial autonomy to the National Human Rights Commissions in keeping with its mandate and in line with the Paris Principles governing the establishment and strengthening of the National Institutions for Promotion of Human Rights.
	(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section(1)	(2) The Commission, <i>in its discretion</i> , may spend such sums as it think fit for performing the functions under this Act out of grants referred to in sub-section(1).	
27. <b>Section 33</b>	(1) The State Government shall after due appropriation made by Legislature by law in this behalf, pay to the Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.	(1) The State Government <i>shall pay to the Commission</i> by way of grants such sums of money <i>as are from time to time approved by Legislature</i> after due appropriation, by law in this behalf.	Provision modified to confer financial autonomy to the State Human Rights Commissions in keeping with their mandate and in line with the Paris Principles governing the establishment and strengthening of the National Institutions for Promotion of Human Rights.
	(2) The Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section(1).	(2) The Commission, <i>in its discretion</i> , may spend such sums as it thinks fit for performing the functions under this Act out of grants referred to in sub-section (1).	

Sl No.	Present Provision	Proposed Amendment	Reasons
28.	<b>Chapter VIII</b> Heading: Miscellaneous	<b>Chapter VIII</b> <i>Jurisdiction of the Commission.</i>	Change needed in view of complete overhaul proposed of Sec. 36 and 37.
29.	<b>Section 36</b> Head note <u>Matters not subject to jurisdiction of the Commission.</u>  <b>Sub-sections</b> (1) The 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.	<i>Taking cognizance of matters before other Commissions.</i>  (1) <i>Notwithstanding anything contained in any other law and constitution of a State Human Rights Commission, or any other Commission, except a Commission appointed under the Commission of Inquiries Act, the Commission may take cognizance of and inquire into the violation of human rights, notwithstanding the cognizance thereof taken by the concerned Commission, either by itself or in coordination with the concerned Commission and deal with it in accordance with this Act.</i>  <i>Provided further that the Commission may, in its discretion, entertain any matter already considered and decided by any other Commission, except a Commission appointed under the Commission of Inquiries Act, for examination either suo motu or at the instance of the aggrieved person except on the question of quantum of compensation.</i>	Change needed in view of complete overhaul proposed of Sec. 36 and 37.  In keeping with the pre-eminent status of the National Human Rights Commission, it is considered necessary that it should have the overarching ability to oversee the issues of human rights violations and their remedies and hence this provision has been proposed.  In addition to the reasons given above, it is also considered that a certain power of judicial superintendence and powers similar to those under Art. 136 of the Constitution are necessary to prevent any miscarriage of justice in any case of violation.
	(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting	(2) The Commission or the State Commission shall not, <i>subject to the proviso, inquire into any matter</i> after the expiry of one year from the date on	





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		<i>own motion, or on an application made by the Central or State Government, or by a party to any such complaint, that such issues are substantial issues of general importance, the Commission may withdraw the complaints or inquiries before the State Commission or State Commissions and inquire into all the matters itself.</i>	
31.		Introduction of a new Chapter IX After Sec. 37 in the Principal Act introduce the following words and figures. "Chapter IX—Miscellaneous"	Necessitated because of the change made to heading of Chapter VIII.
32.	<b>Section 40</b> <i>(2)(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under subsection (3) of section 11.</i>	To be deleted.	Since appointment of the kind in Sec. 11(3) will be governed by regulations (see Sl. No. 10) this provision is redundant.
	(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only	(3) Every rule made under this Act by the Central Government or every regulation u/s 41A(2)(a) made by the Commission shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that	Enabling provision for placing of the Regulations before Parliament.

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	<p>in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p>	<p>the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p>	
33.	<p><b>Section 41</b> (2)(b) The conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 27.</p>	<p>To be deleted.</p>	<p>Since appointment of the kind in Sec. 27(3) will be governed by regulations (see Sl. No. 21) this provision is redundant.</p>
	<p>Sub-section (3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.</p>	<p>Every rule made by the State Government under this section <i>and every regulation made by the State Commission under Section 41(B)(2)(a)</i>, shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.</p>	<p>Enabling provision for placing the Regulations before State legislatures.</p>
34.		<p><i>Amendment to introduce new Sec. 41A and 41B.</i> <i>Sec. 41A—Power of the Commission to make regulations:</i> <i>(1) The Commission may, subject to the rules made by the Central Government by notification and with the approval of that Government make regulations to carry out the purposes of this Act.</i></p>	<p>Provision needed in view of the stipulation that certain matters will be prescribed by the Commission through Regulations (See Sec. 10(2) and Sec. 11(3)—Sl. No. 9 &amp; 10).</p>

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35.		<p><i>(2) In particular, and without prejudice to the foregoing power such regulations may provide for all or any of the following matters, namely:</i></p> <p><i>(a) Salaries and allowances of officers and other staff under Sec. 11(3).</i></p> <p><i>(b) Any other matter which the Commission is required to prescribe by regulations.</i></p> <p><b>Section 41B—Power of the State Commission to make regulations:</b></p> <p><i>(1) The State Commission may, subject to the rules made by the State Government, by notification and with the approval of that Government, make regulations to carry out the purpose of this Act.</i></p> <p><i>(2) In particular, and without prejudice to the foregoing power, such regulations may provide for all or any of the following matters, namely:</i></p> <p><i>(a) Salaries and allowances of officers and other staff under Section 27(3).</i></p> <p><i>(b) Any other matter which the State Commission is required to prescribe by regulations.</i></p>	<p>Provision needed in view of the stipulation that certain matters will be prescribed through Regulations by the State Commission (see Sec. 10(2) and Sec. 27(3)—Sl. No. 9 &amp; 21).</p>

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**Amendment of Conduct Rules of Government Servants  
Prohibiting Employment of Children below  
the Age of 14 as Domestic Help**

National Human Rights Commission

Justice J.S. Verma  
Chairperson

December 13, 1999

Dear Chief Minister,

The Commission has been concerned and disturbed on the reported employment of children below 14 years of age as domestic help by the Government servants. The Commission had come across newspaper reports and cases before it where children were known to be engaged in long and laborious hours of work and even subjected to torture. The Commission took up this matter with the Central and the State Governments. Recently the Central Government has issued the required notification amending the CCS (Conduct) Rules prohibiting such employment. To our earlier communication, your Government had informed that the matter was under examination. However, we have not heard of any final decision taken on the matter.

Looking to the fact that such an inhuman practice which degrades and devalues the childhood of the young of this country, I am sure your Government will hasten to carry out the necessary amendment to the Conduct Rules applicable to the Government servants. It is needless to draw attention to the specific provisions in the Constitution of India which expect such measures to be taken by the Government when it is also the duty of every citizen to abide by the Constitution (see Article 51A {a}). May I request you to kindly inform me of the decision taken by your Government in this regard?

With regards,

Yours sincerely,

Sd/-

(J.S. VERMA)

To,

Chief Ministers/Chief Administrators & States and UTs who had not amended the Conduct Rules of government servants of their respective States.

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## **Delhi Declaration and Programme of Action on Freedom from Torture**

The Vienna Declaration and Programme of Action adopted by the UN World Conference on Human Rights in June 1993 constituted a landmark as the international level in the consideration of freedom from torture. Since then a number of developments have taken place.

These include:

- ❑ A steadily increasing number of states have ratified the UN Convention Against Torture. Several more have signed the Convention and initiated the process of ratification. However, the number of states having ratified the Convention Against Torture in full and without reservations is still regrettably small. Therefore in many cases the individual protection foreseen under the Convention is denied.
- ❑ An increasing number of national human rights institutions have been established, many of which have given priority to the problem of torture.
- ❑ Despite continuance of impunity laws in certain countries, the number of alleged perpetrators formally indicted and actually brought to trial are on the increase nationally as well as internationally.
- ❑ The recognition of the need to provide comprehensive reparation to victims of torture is gaining ground nationally, as well as internationally.
- ❑ Access to professional health and legal assistance is available to an increasing number of survivors of torture worldwide.
- ❑ Relevant training and material concerning torture is available to a growing number of health professionals and law enforcement personnel, civil and military. However, few countries—even state parties to the Convention against Torture—have systematically implemented such training in the curricula of all relevant professions as foreseen in the Convention. Relevant training material has also not been made available in all the languages required at country level.
- ❑ An initiative has been taken by a number of concerned NGOs and health professional to update and expand existing manuals for forensic medical examination of suspected victims of torture. The resulting Istanbul Protocol outlines principles for investigations and diagnostic tests. It also suggests international minimum standards expected to be considered shortly by the UN.
- ❑ Multilateral and bilateral funds for assistance to victims of torture have been on the increase but are still far from sufficient to allow continued operation and the necessary expansion of appropriate services for survivors of torture and their families.
- ❑ An increasing number of states have joined the European Convention for Prevention of Torture accepting unhindered access to any place of detention including psychiatric services under the jurisdiction of a state party. However, the efforts within the UN Commission on Human Rights trying to create a similar system at the global level have still not resulted in consensus.



- ❑ In 1997 the UN General Assembly instituted June 26 as international day in memory of victims of torture. This day is now being observed all over the world.

#### **HOWEVER THE SYMPOSIUM ALSO NOTED WITH CONCERN**

- ❑ Although torture, as a matter of state policy, has ended in certain countries that have witnessed changes in regime, it continues to be widely prevalent in many countries where it is still either accepted, or at least tolerated, as part of law enforcement interrogation and punishment.
- ❑ War and situations of armed conflict within and between states have, in recent years, given rise to the gravest human rights violations including torture.
- ❑ Health professionals in many countries still find themselves under duress to condone or cover up torture in violation of their codes of ethics and the UN Principles of Medical Ethics.

#### **GIVEN THE CONTINUED WIDESPREAD PRACTICE OF TORTURE AT THE THRESHOLD TO THE NEW MILLENNIUM, THE SYMPOSIUM URGED THE FOLLOWING ACTION AT THE NATIONAL LEVEL**

- ❑ Sensitisation of the political leadership to issues concerning torture.
- ❑ Accession to the UN Convention against Torture where this has not taken place.
- ❑ Accession to the Statute of Rome on the establishment of the International Criminal Court.
- ❑ Expediting revision of national laws to deal comprehensively with the prosecution of torturers and reparation to victims of torture.
- ❑ Significant increase in the number and size of state contributions to the UNVFVT (United Nations Voluntary Fund for Victims of Torture) as well as identification of a systematic canvassing of potential supplementary donors to the UNVFVT.
- ❑ The systematic and effective monitoring by national human rights institutions of instances of torture, particularly of custodial violence.
- ❑ Undertaking of every effort to promote a culture of non-violence and the respect for human rights.
- ❑ Repealing of laws providing impunity to torturers.
- ❑ Special consideration to practical ways of protecting women and children against torture.
- ❑ Greater involvement of all components of civil society, including health, legal and other professions as well as non-governmental organisations and the media in the fight against torture

#### **THE SYMPOSIUM FURTHER URGED THE FOLLOWING ACTIONS TO BE TAKEN BY THE UN**

- ❑ Expediting consideration of an Optional Protocol to the Convention against Torture allowing international access to all places of detention under the jurisdiction of State Parties to the Protocol.
- ❑ Expediting consideration of the proposed UN Principles for Restitution, Compensation and Rehabilitation of Victims of Grave Human Rights Violations and fundamental freedoms.
- ❑ Expediting consideration of international minimum standards for forensic examination of alleged victims of torture and the effective global dissemination of the guidelines contained in the Istanbul Protocol.

- ❑ Ensuring diligent prosecution of alleged torturers and effective protection and redress to victims of torture and their families within the framework of the procedures being developed for the International Criminal Court.
- ❑ Providing technical assistance to the production and effective global dissemination of relevant teaching material on torture issues for health, legal, law enforcement and other concerned personnel.
- ❑ Providing technical assistance for recurrent international and national information campaigns with a view to creating and maintaining public awareness of the continued practice of torture and of the need to provide effective reparation to torture survivors and their families.
- ❑ Strengthening the capacity and resource base of the UN mechanisms supporting the fight against torture.

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*Annexure Fifteen*

**Statement Giving Number of Cases Registered, Number of Cases Considered, and Number of Cases Processed but Pending Consideration by the Commission during 1999-2000**

Sl. No.	Name of State/UT	No. of Cases pending consideration as on 01/04/1999	No. of Cases Registered		Total (3+4+5)	No. of Cases considered	Cases processed but pending consideration
			Complaints	Custodial death/rapes			
1	2	3	4	5	6	7	8
1.	Andhra Pradesh	11	530	84	625	584	41
2.	Arunachal Pradesh	5	38	4	47	39	8
3.	Assam	2	145	33	180	170	10
4.	Bihar	17	4247	162	4426	4226	200
5.	Goa	1	38	4	43	38	5
6.	Gujarat	0	501	32	533	463	70
7.	Haryana	1	1632	29	1662	1567	95
8.	Himachal Pradesh	6	119	1	126	106	20
9.	Jammu & Kashmir	40	209	0	249	235	14
10.	Karnataka	15	618	41	674	636	38
11.	Kerala	12	277	20	309	291	18
12.	Madhya Pradesh	82	2118	71	2271	2062	209
13.	Maharashtra	10	2022	156	2188	2011	177
14.	Manipur	12	42	1	55	48	7
15.	Meghalaya	0	20	2	22	18	4
16.	Mizoram	1	1	0	2	2	0
17.	Nagaland	3	19	0	22	21	1
18.	Orissa	16	595	46	657	624	33
19.	Punjab	18	798	53	869	849	20
20.	Rajasthan	7	1898	48	1953	1778	175
21.	Sikkim	0	6	0	6	5	1
22.	Tamil Nadu	19	1264	57	1340	1273	67
23.	Tripura	7	53	0	60	54	6
24.	Uttar Pradesh	161	28439	159	28759	26829	1930
25.	West Bengal	10	742	62	814	724	90
26.	A&N Islands	4	13	3	20	17	3
27.	Chandigarh	2	58	0	60	52	8
28.	Dadra & Nagar Haveli	1	7	0	8	8	0
29.	Daman & Diu	1	1	0	2	2	0
30.	Delhi	60	3052	25	3137	3052	85
31.	Lakshadweep	0	3	0	3	2	1
32.	Pondicherry	1	36	0	37	33	4
<b>Total</b>		<b>525</b>	<b>49541</b>	<b>1093</b>	<b>51159</b>	<b>47819</b>	<b>3340</b>

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*Annexure Sixteen*

**State-Wise List of Cases Disposed of/Pending Disposal by the Commission during 1999-2000**

Sl. No.	Name of the State/UT	Dismissed in limini	Disposed of with directions	Cases taken cognizance		Total
				Concluded	Pending	
1.	Andhra Pradesh	218	88	15	263	584
2.	Arunachal Pradesh	18	4	3	14	39
3.	Assam	80	25	8	57	170
4.	Bihar	1828	403	77	1920	4228
5.	Goa	13	9	3	13	38
6.	Gujarat	209	100	10	144	463
7.	Haryana	595	481	55	436	1567
8.	Himachal Pradesh	58	9	4	35	106
9.	Jammu & Kashmir	103	11	11	110	235
10.	Karnataka	295	124	22	195	636
11.	Kerala	158	51	5	77	291
12.	Madhya Pradesh	996	595	46	425	2062
13.	Maharashtra	792	555	52	612	2011
14.	Manipur	22	2	3	21	48
15.	Meghalaya	7	3	0	8	18
16.	Mizoram	1	1	0	0	2
17.	Nagaland	6	13	0	2	21
18.	Orissa	297	141	12	174	624
19.	Punjab	360	21	143	325	849
20.	Rajasthan	736	192	51	799	1778
21.	Sikkim	3	1	0	1	5
22.	Tamil Nadu	641	275	41	316	1273
23.	Tripura	24	9	2	19	54
24.	Uttar Pradesh	11562	2575	466	12224	26827
25.	West Bengal	427	94	5	198	724
26.	A&N Islands	6	2	2	7	17
27.	Chandigarh	37	1	2	12	52
28.	Dadra & Nagar Haveli	4	2	2	0	8
29.	Daman & Diu	2	0	0	0	2
30.	Delhi	1414	150	365	1123	3052
31.	Lakshadweep	1	1	0	0	2
32.	Pondicherry	21	3	1	8	33
<b>Total</b>		<b>20934</b>	<b>5941</b>	<b>1406</b>	<b>19538</b>	<b>47819</b>

## State-Wise Statement of Category of Cases

Sl. No.	Name of the State/UT	Custodial deaths		Custodial Rapes	Disappearance	Illegal detention/ Arrest	FALSE implications
		Police Custody	Judicial Custody				
1	2	3	4	5	6	7	8
1.	Andhra Pradesh	11	73	0	1	7	4
2.	Arunachal Pradesh	4	0	0	0	0	0
3.	Assam	11	22	0	1	1	0
4.	Bihar	7	155	0	0	30	84
5.	Goa	2	2	0	0	1	2
6.	Gujarat	13	19	0	1	6	8
7.	Haryana	5	24	0	5	29	47
8.	Himachal Pradesh	1	0	0	0	0	1
9.	Jammu & Kashmir	0	0	0	1	5	1
10.	Karnataka	6	35	0	0	5	4
11.	Kerala	6	14	0	1	1	1
12.	Madhya Pradesh	13	58	0	1	11	15
13.	Maharashtra	30	126	0	14	11	22
14.	Manipur	0	1	0	0	0	0
15.	Meghalaya	0	2	0	0	0	0
16.	Mizoram	0	0	0	0	0	0
17.	Nagaland	0	0	0	0	0	0
18.	Orissa	1	45	0	1	1	4
19.	Punjab	11	42	0	2	17	39
20.	Rajasthan	3	45	0	0	28	23
21.	Sikkim	0	0	0	0	0	0
22.	Tamil Nadu	9	48	0	4	17	8
23.	Tripura	0	0	0	1	0	0
24.	Uttar Pradesh	18	141	0	20	956	1258
25.	West Bengal	19	43	0	0	1	1
26.	A&N Islands	1	2	0	0	0	0
27.	Chandigarh	0	0	0	0	1	1
28.	Dadra & Nagar Haveli	0	0	0	0	0	0
29.	Daman & Diu	0	0	0	0	0	0
30.	Delhi	6	19	0	1	29	124
31.	Lakshadweep	0	0	0	0	0	0
32.	Pondicherry	0	0	0	0	0	0
Total		177	916	0	54	1157	1647

## Admitted for Disposal during 1999-2000

Other Police Excessess	Failure in taking action	Indignity to women	Terrorist Naxalities Violation	Jail conditions	Atrocities on SC/ST	Others	Total
9	10	11	12	13	14	15	16
72	27	4	0	8	12	59	278
4	1	0	0	0	0	8	17
16	3	0	0	0	0	11	65
346	394	12	0	77	37	853	1995
2	3	0	0	1	0	3	16
30	19	0	0	4	5	49	154
94	149	1	0	18	8	111	491
7	12	0	0	0	0	18	39
61	8	0	0	2	0	43	121
54	15	0	0	24	4	70	217
16	14	0	0	3	2	24	82
124	99	2	0	10	9	129	471
102	50	2	0	44	5	258	664
19	4	0	0	0	0	0	24
4	0	0	0	1	0	1	8
0	0	0	0	0	0	0	0
1	0	0	0	0	0	1	2
27	20	4	0	14	8	60	185
100	112	5	0	15	2	123	468
209	161	3	0	30	37	311	850
0	0	0	0	0	0	1	1
95	38	4	0	19	14	100	356
5	2	0	0	0	3	10	21
3901	3856	9	0	193	186	2157	12695
27	28	2	0	4	1	76	202
2	0	0	0	1	1	2	9
7	1	0	0	0	0	4	14
0	0	0	0	0	1	1	2
0	0	0	0	0	0	0	0
457	425	11	0	42	5	369	1488
0	0	0	0	0	0	0	0
1	2	0	0	1	1	4	9
5783	5443	59	0	511	341	4856	20944



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*Annexure Eighteen*

**Statement of Custodial Death (Police and Judicial) as  
Reported by the States/UTs**

S. No.	States/UTs	1997-1998						1998-1999						
		Earlier reported			Revised			Earlier reported			Revised			Total
		PC	JC	Total	PC	JC	Total	PC	JC	Total	PC	JC	Total	
1.	Andhra Pradesh	21	52	73	21	53	74	24	98	122	25	96	121	
2.	Arunachal Pradesh	2	2	4	2	2	4	3	-	3	2	1	3	
3.	Assam	14	20	34	18	15	33	16	21	37	15	22	37	
4.	Bihar	9	110	119	10	107	117	9	184	193	10	182	192	
5.	Goa	-	3	3	-	2	2	1	-	1	-	1	1	
6.	Gujarat	9	28	37	10	27	37	8	42	50	8	37	45	
7.	Haryana	3	8	11	3	7	10	3	18	21	4	18	22	
8.	Himachal Pradesh	-	-	-	-	-	-	1	1	2	2	-	2	
9.	Jammu & Kashmir	2	-	2	2	-	2	-	-	-	-	-	-	
10.	Karnataka	6	35	41	7	33	40	8	41	49	10	40	50	
11.	Kerala	6	29	35	6	30	36	4	26	30	4	25	29	
12.	Madhya Pradesh	18	43	61	17	43	60	20	100	120	19	99	118	
13.	Maharashtra	19	115	134	17	116	133	21	98	119	20	98	118	
14.	Manipur	1	-	1	1	-	1	3	-	3	3	-	3	
15.	Meghalaya	2	-	2	2	-	2	1	6	7	1	6	7	
16.	Mizoram	-	1	1	-	1	1	-	-	-	-	-	-	
17.	Nagaland	1	-	1	1	-	1	1	-	1	1	-	1	
18.	Orissa	4	19	23	4	19	23	8	60	68	-	68	68	
19.	Punjab	11	26	37	8	27	35	12	46	58	12	43	55	
20.	Rajasthan	12	32	44	11	30	41	3	49	52	3	47	50	
21.	Sikkim	-	-	0	-	-	0	-	-	-	-	-	-	
22.	Tamil Nadu	11	55	66	13	54	67	13	42	55	14	41	55	
23.	Tripura	3	-	3	2	-	2	1	-	1	-	-	-	
24.	Uttar Pradesh	16	169	185	14	172	186	16	221	237	20	222	242	
25.	West Bengal	10	43	53	10	43	53	6	41	47	6	40	46	
<b>UNION TERRITORIES</b>		13	29	42	-	-	-	1	20	21	-	-	-	
26.	A&N Islands	-	-	-	-	-	-	-	-	-	-	2	2	
27.	Chandigarh	-	-	-	-	-	-	-	-	-	-	-	-	
28.	Dadra & Nagar Haveli	-	-	-	-	-	-	-	-	-	-	-	-	
29.	Daman & Diu	-	-	-	-	-	-	-	-	-	-	1	1	
30.	Delhi	-	-	-	11	26	37	-	-	-	-	17	17	
31.	Lakshdweep	-	-	-	-	-	-	-	-	-	-	-	-	
32.	Pondicherry	-	-	-	1	-	1	-	-	-	1	-	1	
<b>Total</b>		<b>193</b>	<b>819</b>	<b>1012</b>	<b>191</b>	<b>807</b>	<b>998</b>	<b>183</b>	<b>1114</b>	<b>1297</b>	<b>180</b>	<b>1106</b>	<b>1286</b>	

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## Summary of the Report and of the Principal Recommendations

1. The Commission has repeatedly drawn attention to the delay in the placing of its Annual Reports before Parliament. The time lag between the submission of the Report and placing it before Parliament was more than nine months in respect of the Annual Report for the year 1996-97, while it was twelve months for the Report of 1997-98 and 13 months for the Report of 1998-99. It has been observed that the Reports of the Commission are an essential source of information to the people of this country and to all who are connected with human rights and that there is need to place the reports promptly before Parliament along with the Action Taken Report. It has also been recommended that this shall be done not later than the session immediately following submission of the Report. The Commission has further urged that the Reports of the Commission should be allowed to be released to the public, if for any reason they cannot be placed before Parliament in the session immediately following the submission of the report. It would like to repeat this recommendation.

(Para 1.2)

2. The Commission is compelled to observe that successive Action Taken Reports have been less than clear in respect of whether recommendations of the Commission will be implemented or what the timeframe will be for the implementation of recommendations. Further when recommendations pertain to the States, the Commission expects that the Central Government will use its best efforts to secure compliance at the earliest. Too often, however, the Action Taken Reports simply indicate that the recommendation in question falls within the competence of the States and does not indicate what, if anything, will be done thereafter. The Commission urges the Central Government and State Governments to respond with greater precision to the recommendations of the Commission and to endeavour to comply them within clearly defined time-limits.

(Para 1.2)

3. The Commission has the following recommendations to make at this stage, in regard to the issues of Gender discrimination:

- ❑ The Commission would like to reiterate its recommendation, repeatedly made in earlier reports, that there is urgent need to ensure that free and compulsory education is provided as a Fundamental Right to all children until they complete the age of 14 years as required by the Supreme Court and that the 83rd Amendment to the Constitution be passed without further delay. The Commission would also like to emphasize that greater efforts are required to combat discrimination against the girl child in all of its manifestations and that, in particular, the doors must be opened to better health care and education.
- ❑ The Commission is convinced of the efficacy of effective and timely consultation with all concerned groups in civil society before the submission of India's reports before the competent treaty bodies. It therefore recommends to the Central Government that it undertake thorough and extensive consultations with all the appropriate NGOs and other

activist groups, in as large a number of centres across the length and breadth of the country as possible, before preparing country reports.

- ❑ The Commission recommends, in particular, the gender sensitization of health workers, and a specifically targeted health care campaign to combat discrimination against girls and women in regard to access to nutrition so as to effectively combat maternal anaemia. It further recommends that a vigorous and comprehensive national campaign be undertaken against female foeticide and female infanticide as these are matters which need urgent and utmost concern of the Government of India and the State Governments.
- ❑ The Commission notes with deep concern the prevalence of the devadasi system in certain parts of the country and also the persistence of trafficking in women, especially those belonging to the weaker sections of society, for the purpose of prostitution. It recommends that Government take effective and vigorous steps to prevent these atrocities on women and prepare a meticulous nation-wide programme, with special emphasis on vulnerable regions/areas, to deal with these deeply troubling practices that constitute gross violations of human rights.
- ❑ The Commission also urges that the training of other key players in the governance of the country including, inter alia, members of the judiciary, administration and police personnel, be reoriented to make them more sensitive to gender related issues and the requirements of the Constitution, and the laws and treaty commitments of the country.
- ❑ The Commission strongly recommends that early action be taken at the political level to provide for better representation for women in the State Legislatures and in Parliament, either through early enactment of the 85th Amendment to the Constitution or other appropriate means.
- ❑ The Commission recommends the strengthening of the National Reproductive and Child Health Programme.
- ❑ The Commission recommends that concerted efforts should be made to bring down the rate of maternal mortality with special reference to the larger Northern States of India, where it is much higher than the national average, and through more focussed National Nutritional Anaemia Control Programme to effectively bring down maternal mortality and low birth weight amongst children.

(Para 2.21)

4. The Commission recommends that the Government of India undertake comprehensive steps to root out 'Untouchability' and, for this purpose, implement the provisions of the Protection of Civil Rights Act, 1976 and the Prevention of Atrocities against SCs and STs Act, 1989 more vigorously than hitherto. Further, the Government should sensitize the police force to act impartially and fearlessly to give protection to the SCs and STs and to educate the general public against the pernicious practice of 'untouchability' and discrimination directed against the SCs and STs.

(Para 2.39)

5. The Commission urges the Central Government to be more forthcoming and transparent in respect of the Bijbehera incident and to place the records of the relevant proceedings before the Commission as required by it. The Central Government is also urged, once again, to act with greater resolve to bring to book those involved in the abduction and subsequent killing of Shri Jalil Andrabi and to inform the Commission fully of the efforts it is making in this regard.

(Paras 3.7-3.8)

6. The Commission has in its earlier reports urged the Central Government to direct the armed forces, including the para-military forces, to report to the Commission – as does the police – any cases that might occur of the death of persons while in their custody. Such a system of accountability, as observed earlier by the Commission, would add to the credibility and transparency of the actions of the armed forces and also prevent propagandist and unsubstantiated charges being made against them. The Memorandum of Action Taken, however, reiterates the view of the Government of India that a procedure for dealing with the armed forces different from that provided in the Protection of Human Rights Act 1993 is not necessary.” There is clearly, at present, a difference of opinion between the Commission and the Central Government on this matter, with the Commission believing that there is need for greater transparency and accountability. The Commission has, therefore, proposed an amendment to the Protection of Human Rights Act 1993 in respect of the armed forces and urges that the recommendations made by it in respect of this matter, and its Statute more generally, be acted on without delay.

(Paras 3.9–3.10)

7. The Commission notes that deaths in police custody have not shown any significant decline over recent years. The Commission is of the view that unless there is determined action to curb such incidents and to punish the personnel involved in them promptly and severely, the record of the country in regard to custodial violence will remain deeply blemished. The Commission therefore recommends that, in every case of death in police custody, the prima facie presumption should be that of custodial violence and a criminal case should be registered. All such cases should be promptly investigated. As suggested by the National Police Commission, the Commission in its earlier reports recommended that there should be a mandatory enquiry by a Sessions Judge in each case of custodial death, rape or grievous hurt. The action taken report on the Annual Report for 1998–99 stated as follows:

“The Code of Criminal Procedure (Amendment) Bill, 1994 introduced in the Rajya Sabha on May 9, 1994 includes a proposal to amend Section 176 Cr.PC to provide that in case of death or disappearance of a person or rape of a woman while in the custody of the police there shall be a mandatory judicial inquiry and in case of death, examination of dead body shall be conducted within 24 hours of death. The Bill was referred to the Parliamentary Standing Committee on Home Affairs which has submitted its Report with certain recommendations. This report is under examination.” The Commission urges the Government to complete examination expeditiously and to take further action.

8. While the Commission’s instructions for reporting the occurrence of custodial deaths, whether in jail or in police custody, is being complied with by all States and Union Territories, the Commission finds that subsequent action to send the post-mortem report, along with the videography of the post-mortem and the magisterial inquiry report, is often considerably delayed. The Commission calls upon all States and Union Territories to send these reports promptly to the Commission and to strictly observe the directions of the Commission in this regard.

(Para 3.19)

9. The Commission in its earlier reports also recommended that Section 197 of the Code of Criminal Procedure may be amended, on the basis of Indian Law Commission’s recommendations, to obviate the necessity for governmental sanction for the prosecution of a police officer, where a prima-facie case has been established, in an enquiry conducted by a Sessions Judge of the commission of a custodial offence. The action taken report on the Annual Report for 1998–99 states as follows:

“152<sup>nd</sup> Report of the Law Commission was referred back to the Law Commission to consider the recommendations relating to Section 197 of the Criminal Procedure code contained in their Report for providing a comprehensive review of Code of Criminal Procedure 1973. The 154<sup>th</sup> Report submitted by Law Commission containing a comprehensive review of the Cr.PC, has not included the recommendations made by the National Human Rights Commission with respect to Section 197 of the Cr.PC”.

Upon a reconsideration, the Commission reiterates its earlier recommendations for the amendment of Section 197 of the Code of Criminal Procedure.

(Para 3.18)

10. The Commission's instructions in regard to the video filming of post-mortem examinations of deaths occurring in judicial or police custody have been complied with by all States and Union Territories except Arunachal Pradesh, Maharashtra, Mizoram, Manipur, Uttar Pradesh, Andaman & Nicobar Islands, Chandigarh, Delhi, Dadra & Nagar Haveli and Lakshadweep. The Commission recommends that these States and Union Territories also act upon these instructions without further delay in order to help ensure that custodial violence is curbed, and that those involved in it are brought to book.

(Para 3.22)

11. The Commission calls upon the States of Arunachal Pradesh, Bihar, Gujarat, Jammu & Kashmir, Kerala, Maharashtra and Nagaland to adopt and use the Model Autopsy Form devised by the Commission for the conduct of post-mortem examinations in respect of custodial death.

(Para 3.23)

12. The Commission calls upon the Government of Uttar Pradesh to comply with its recommendations following the visit to police lock-ups in that State by officers of the Commission.

(Para 3.25)

13. The Commission calls upon the Central Government to take prompt action on such recommendations of the Ribeiro Committee “which can”, as mentioned in the Action Taken Report for the year 1998-99, “be implemented within the existing constitutional limitations”.

(Para 3.27)

14. The Commission calls upon all the State Governments which have established human rights cells in the Offices of the Directors General of Police to use these cells to sensitize the police officers in the State on human rights issues relevant to the police force, so that its personnel increasingly recognise, respect and protect the human rights of the citizenry. An appropriate level of funds should be allocated to the human rights cells in order to enable them to prepare the appropriate curricula and conduct workshops for the spread of human rights awareness among police personnel of the State. The Commission is convinced that such steps could constitute an important way of reducing human rights violations by police personnel and lead to greater public trust in them.

(Para 3.29-3.32)

15. The Commission receives a large number of complaints of human rights violations resulting from the abuse of police powers relating to arrest and detention. In order to minimise the scope

of misuse or abuse of such powers, Commission formulated guidelines which have been circulated to all States and Union Territories. The Commission urges all States and Union Territories to have these guidelines translated into local languages and distributed to police personnel in all police stations. These guidelines should also be made available to NGOs, citizens fora and lawyers associations, and be prominently displayed in all police stations so as to be readily accessible to all members of the public.

16. The Commission calls upon all States, except Arunachal Pradesh, Assam, Gujarat, Jammu & Kashmir, Kerala, Manipur, Nagaland, Orissa, Punjab, West Bengal and Union Territories of Andaman & Nicobar Islands, Chandigarh and Pondicherry which have already taken appropriate action, to issue instructions to have the guidelines in respect of arrest and detention incorporated in the training curriculum for their police personnel and observed by all police personnel.

(Paras 3.33–3.37)

17. The Commission calls upon all States to have Toll-Free telephone facilities, to establish systems to inform complainants of the status of their complaints; to instruct SHOs to hold regular meetings with the public in order to build rapport and confidence; and to promote better police-community relationships by having the SPs meet leaders of the public on a regular basis to achieve this end.

(Para 3.42–3.43)

18. In the sphere of police-community relations, the most concerned and least satisfied members of the public, often complain of the lack of transparency in police work, and delays, indifference and corruption, in dealing with complaints and cases. While several corrective steps have been taken, the complainant, very often, is not informed of the steps taken by the police. This results in the complainant/ victim becoming suspicious that the police has either not taken any action at all or that it is under the influence of the rival party or acting under political pressure or extraneous considerations. The Commission is of the view that it is the duty of the police to inform complainants of the registration of an FIR or the reasons for non-registration. It has also recommended that if investigations are not completed within three months, the Investigating Officer should inform the complainant in writing of the reasons for such delay and reiterates the same.

(Paras 3.44–3.46)

19. The Commission has observed that a fear psychosis often governs the feelings of the general public in their dealings with the police. The Commission has appreciated, in this connection, the effort made by the Kerala Police to reduce such anxieties, a system having been established whereby the Station House Officers hold public meetings in various towns/villages in their jurisdictions twice a month. The Commission recommends that this practice be followed in other States as well. The Commission has proposed that the DGPs/Chief Secretaries of the States advise the SPs of Districts to undertake regular meetings with different sections of the society in order to promote better police-community relations and to enable the police to get information, intelligence and public co-operation. The Commission is convinced that such exchanges can contribute to the better protection of human rights in the country and a greater sensitivity in society towards such rights and recommends the same to all States.

(Paras 3.48–3.50)



20. The Commission calls upon the States to set-up credible reporting system, to respond to requests of the Commission for inquiry into allegations of violations of human rights and to ensure that such inquiries are conducted impartially, objectively and promptly and supervised by personnel respected for their integrity.

(Para 3.51)

21. The Commission calls upon senior officers of the States not to mechanically forward reports of inquiries received from officers under their jurisdiction but to critically and closely examine and endorse the veracity of the facts and conclusions before submitting these reports for the acceptance of the Commission.

(Para 3.52)

22. The Commission calls upon all the States to implement its guidelines on the supply of reading material to prisoners.

(Para 3.54)

23. In the light of the decision of the Supreme Court in the case State of Gujarat vs. Hon'ble High Court of Gujarat requiring the payment of equitable wages to prisoners for the work done by them, the Commission calls upon those States which are yet to revise the level of wages paid to prisoners to do so at the earliest in compliance with the ruling of the Apex Court.

(Paras 3.55-3.56)

24. The Commission calls upon all States to scrupulously implement the guidelines of the Commission in regard to the premature release of prisoners and the maintenance of prison records in such a manner so as to enable the Commission to monitor action in this respect. The Commission calls upon the States of Andhra Pradesh, Bihar, Himachal Pradesh, Maharashtra, Nagaland, Manipur and Union Territory of Andaman & Nicobar, which have not yet responded to the Commission concerning the implementation of these guidelines, to act expeditiously in this matter.

(Paras 3.57-3.64)

25. On reviewing issues relating to prison administration, the Commission has grown increasingly concerned that instructions regarding the medical examination of prisoners at the time of admission, and periodically thereafter, are not being observed. Likewise, serious problems continue to persist in respect of escorts for prisoners being sent for treatment and provision of vocational training to prisoners. The Commission also calls upon the States to update and revise their jail manuals to incorporate international standards and to ensure that judgements of the Supreme Court on human rights of prisoners are implemented fully.

(Paras 3.65-3.66)

26. The Commission is of the opinion that in order to bring about qualitative improvement in prison administration, it is imperative that officers of proven integrity and competence are selected for the post of Inspector General (Prisons) and allowed to continue to work in that post for a minimum period of three years. The Commission calls upon all States to provide a fixed tenure for IG (Prisons).

(Para 3.67)

27. The Commission remains deeply concerned about the predominance of undertrials in the population of prisons. The Commission is heartened at the positive response of the High Courts which have addressed communications to Sessions Judges requesting them to visit prisons regularly to review the conditions prevailing therein and to ensure speedy trial of those cases in which persons who have committed petty offences are languishing in jails because their cases are not being decided for various reasons.

(Para 3.68)

28. The Commission is distressed to note that mentally challenged persons have been kept in prisons and that, compounding this violation of their rights, they have also been denied proper medical care and attention. Since the Mental Health Act, 1987 does not permit the lodging of mentally challenged persons in prisons, it is illegal to do so. In this connection, the Commission calls for early and positive action by the State Governments on the letters addressed to the Chief Ministers of all States by its Chairperson, urging them to ensure that mentally challenged persons were not kept in jails under any circumstances.

(Para 3.69)

29. The Commission has, in its preceding Reports, made specific proposals concerning the need to improve certain aspects of the administration of Criminal Justice in India. In the report for 1998–99, the Commission drew attention to the lack of efficiency in police investigation, certain problems bedeviling the administration of Criminal Justice in the Courts, and recommended a programme of action for speedy clearance of criminal cases.

The Action Taken Report (ATR) for the year 1998–99 listed the steps taken by the Central Government on these recommendations. These included the dispatch of letters to the State Governments stressing the need for financial autonomy to the Courts, and to the National Judicial Academy to develop programmes for speedy clearance of criminal cases in courts and interaction with the NIC for the extensive use of computerisation in the subordinate judiciary. With regard to changes suggested in the substantive law, the ATR referred to the comprehensive review of the Cr.PC 1973 undertaken by the Law Commission and to the recommendations made by the latter for amending the Cr.PC. The ATR indicates that the recommendations of the Law Commission are being processed.

The Commission urges the Government to complete the processing of the recommendations of the Law Commission speedily and to take steps to amend the Cr.PC accordingly. As the improvement of the administration of Criminal Justice is of some importance to the Commission, is reiterating those recommendations.

(Paras 3.70–3.73)

30. While the use of forensic science in securing evidence that can result in just and speedy results in criminal cases is well accepted, forensic services in the country are still grossly inadequate and have not incorporated the latest techniques available in this field. The Commission had therefore constituted a Core Group of experts to examine the facilities in forensic science laboratories in the country and to make appropriate recommendations. The report of the Core Group “State of the Art Forensic Sciences: For Better Criminal Justice” was released on 11 June 1999 by Shri L.K. Advani, Union Home Minister. The Commission had requested the Ministry of Home Affairs to take action on the recommendations made in the report but has not received an adequate response on this issue. The Commission calls upon the Ministry of Home

Affairs to initiate early and comprehensive action to implement the recommendations made in the report.

(Para 3.81-3.86)

31. Concerned at the contamination of life-saving I.V. fluids which had wide implications for the health of the people of this country and to their right to life, the Commission constituted an Expert Committee to make an indepth study to examine the reasons for contamination and to suggest measures to prevent such lapses. The report of the Committee titled "Large Volume Parenterals - Towards Zero Defect" was released on 11 June 1999 by Shri L.K. Advani, Union Minister for Home Affairs. The Commission calls upon the parties concerned viz. M/s Core Health Care Ltd.; Central Drug Controller General of India, Government of India; Commissioner, Food and Drug Control Administration, Government of Gujarat; Ram Manohar Lohia Hospital, New Delhi; Medical Stores Depot to implement its recommendations which are comprehensive in character, fully and expeditiously.

(Para 3.92-3.96)

32. The Commission reiterates its call, made to the Ministry of Health, Government of India and the Health Departments of all the State Governments that they implement the recommendations contained in the Commission's report entitled "Quality Assurance in Mental Hospitals" in full measure.

33. The Commission has requested the Central Government to amend comprehensively the Protection of Human Rights Act, 1993, through a report transmitted to it in March 2000. The Commission urges that steps be taken to bring the requested amendments before Parliament during the Budget Session 2001.

(Para 4.3-4.6)

34. The Commission has been repeatedly urging the Government to ratify the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Despite the passage of three years since the signing of the Convention on 14 October 1997, there has been no progress in this respect. The delay has brought no credit to the country and has sent an ambiguous message as to the commitment of India to end the odious practices covered by this Convention. The Commission would like to reiterate in the clearest terms, that it accords the highest importance to early ratification of the Convention and urges the Government to end the unbecoming delay that has injured the reputation of the country and has been sent confusing signals as to the intentions of India in regard to this matter.

(Para 4.8)

35. The Commission is of the view that there is a need for India to evolve a National Policy and promulgate a National Law relating to the Status of Refugees that is in accord with international law and practice on this subject. The Commission would like to reiterate its view that a small group of experts including experts from outside the Government, should be constituted by the Ministry of External Affairs to go into this matter at an early date. It is unbecoming for a country, that has now been a Member of the Executive Committee of the Office of the UN High Commissioner for Refugees Programme for a number of years, to function in an ad-hoc manner in respect of a matter of such importance as this.

(Para 4.9)

36. In view of large percentage of expectant mothers continuing to suffer from anaemia, despite nearly three decades of implementation of the National Nutritional Anaemia Control Programme, the Commission recommends that a close look be taken at the programme to re-evaluate it to make it more effective.

(Para 5.1)

37. The Commission has been pursuing the need to formulate a revised national policy to deal with greater sensitivity with issues concerning the rehabilitation of people affected by mega projects. The Commission urges that the Ministry of Rural Development and the group of Ministers seized of this matter to take the decisions required in this regard and incorporate, in the Land Acquisition Act, appropriate provisions.

(Para 6.2)

38. The Commission calls upon the Government of Karnataka to speed up the process of compliance with the recommendations of the Commission in regard to the people affected by the Kabini Reservoir Project and the Bandipur National Park (Project Tiger) Project.

(Para 6.31)

39. The Commission calls upon the Government of Orissa to act expeditiously upon the recommendations of the Commission in respect of long term measures, including the construction of additional cyclone shelters, sanction of ICDS schemes, etc. The Commission urges the Government of Orissa to follow-up on the observations arising out of the report of the Special Rapporteur of the Commission after his visit to the cyclone affected districts and initiate suitable remedial actions.

(Para 6.4-6.10)

40. The Commission calls upon the Government of Uttar Pradesh to expeditiously comply with the recommendations of the Commission in respect of the empowerment of tribals and other landless persons of Mirzapur, Allahabad and Chitrakoot districts in Uttar Pradesh where on account of the actions of the land mafia and their accomplices, the SCs and STs have, in numerous and identified instances, been dispossessed of the lands, forced into bondage and denied the minimum wages to which they are entitled.

(Para 6.13-6.16)

41. The Commission calls upon the Government of Uttar Pradesh to take the steps recommended by the Commission to eliminate bonded labour and child labour in the carpet belt and to ensure that, in this task, the offices of the State Government officials, employers, NGOs and the affected families act in concert, with the active intervention of the district administration in ensuring that the carpet industry is freed of child labour.

(Para 7.1-7.11)

42. The Commission calls upon the Government of Karnataka to identify the bonded labour employed in various industries of that State, with special care being given to the silk industry in Magadi and Ramanagaram, and to ensure that the practice bonded labour and child labour in hazardous industries is brought to an end in accordance with a programme that can be achieved within a clearly defined time frame.

(Para 7.12)

43. The Commission calls upon the Government of Gujarat to undertake a meticulous survey to assess the extent of child labour, especially in the construction industry and the diamond cutting and polishing industry, and pursue steps to eliminate this pernicious practice within the State in accordance with a programme that is attainable within a clearly defined time frame.

(Para 7.13)

44. While the Commission is gratified to note that a number of States have amended the Conduct Rules for civil servants to prohibit the employment of children below the age of 14 years as domestic servants by Government servants, the states of Arunachal Pradesh, Bihar, Gujarat, Haryana, Kerala, Meghalaya, Orissa, Punjab, Uttar Pradesh, Manipur, Nagaland and Rajasthan, which have not yet taken a decision in this regard, are urged to act expeditiously on this matter and amend the respective service rules of their States so as to end the practice of employment of child labour by employees of Government.

(Para 7.15-7.16)

45. The Commission is appalled that demeaning practice requiring the manual handling of night soil persists in many parts of the country. The Commission calls upon all States to take steps to put an end to this practice. The Commission, in particular, recommends that the States of Rajasthan, Uttar Pradesh, Arunachal Pradesh, Kerala, Jammu & Kashmir, Himachal Pradesh, Meghalaya, Manipur, Mizoram, Nagaland and Sikkim adopt the Central Act at an early date.

(Para 9.1-9.3)

46. The Commission is distressed that members of the denotified and nomadic tribes (DNTs and NTs) continue to face serious problems in many states. It calls upon all States to take steps to deal with the problems of these persons with greater sensitivity, to create strengthened mechanisms to deal with the special requirements and problems of the DNTs and NTs and to prevent atrocities being committed against them. It also calls upon the States to repeal the Habitual Offenders Act and to implement the decisions taken in the meeting convened by the Commission on 15 February 2000.

(Para 10.1-10.9)

47. In the light of the Delhi Declaration adopted at the VIII International Symposium on "Torture as a Challenge to the Health, Legal and Other Professions", the Commission calls upon the Government of India to take action, in particular, on the follow issues:

- Ratification of the UN Convention against Torture.
- Expediting the revision of national laws to deal comprehensively with the prosecution of those engaged in torture and reparation to the victims of torture.
- Greater involvement of all components of civil society, including health, legal and other professions as well as non-governmental organisations and the media in the fight against torture.
- Special consideration to practical ways of protecting women and children against torture.
- Sensitisation of the political leadership to issues concerning torture.

(Para 11.1-11.4)

48. Respect for human rights and the realisation of such rights, requires a continuous effort to evolve a culture that is sensitive to the needs of all. Human rights education, from the

school-level onwards, is essential to this process. While a number of colleges and universities have introduced certificate, degree and diploma courses in human rights and the NCERT and NCTE have introduced human rights education at the school-level and in teacher-education respectively, the Commission is of the view that the greater involvement of Central and State Governments is essential if such education is to be more thoroughly imparted. Considerable work is needed to incorporate human rights concerns into the educational system by weaving the message of such rights into the curricula of every class and every subject. This is a considerable task and the Commission calls upon the Central and State Governments to undertake this responsibility in consultation and coordination with NGOs and academic institutions that have experience in this matter. The Commission also urges the Government of India to respond with greater purpose to its recommendation that a National Action Plan on Human Rights Education be prepared to enhance awareness and strengthen respect for human rights in all sections of society through the dissemination of information and better training.

(Para 12.1–12.3)

49. The Commission has repeatedly approached the States which do not as yet have Human Rights Commissions to take action to set up institutions at an early date. The Commission has also, in its recommendations for seeking amendments to the Protection of Human Rights Act, 1997 suggested that the number of Members in the State Commission be reduced, if need be, to 3 and to make provision to have common Members appointed where the States wish to do so with a view to lessening the financial demands on the State. The Commission is also concerned that the States of Bihar, Maharashtra and Orissa which have issued notifications to constitute Human Rights Commissions but have not yet done despite the passage of considerable time. The Commission calls upon these States to set up Commissions without any further delay.

(Para 15.1–15.3)

50. The Commission considers it essential to observe that the Government of Uttar Pradesh has, in particular, approached the matter of setting up a State Human Rights Commission in a most casual and nonchalant manner. Despite a commitment before the High Court of Allahabad that it would establish a Human Rights Commission within a stipulated period of four months, the State Government has not taken the steps necessary to act upon this commitment. The Commission calls upon the State of Uttar Pradesh to set up a State Human Rights Commission, that will commend the respect of the people of that State, without any further delay.

(Para 15.4)

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# **Charts & Graphs**

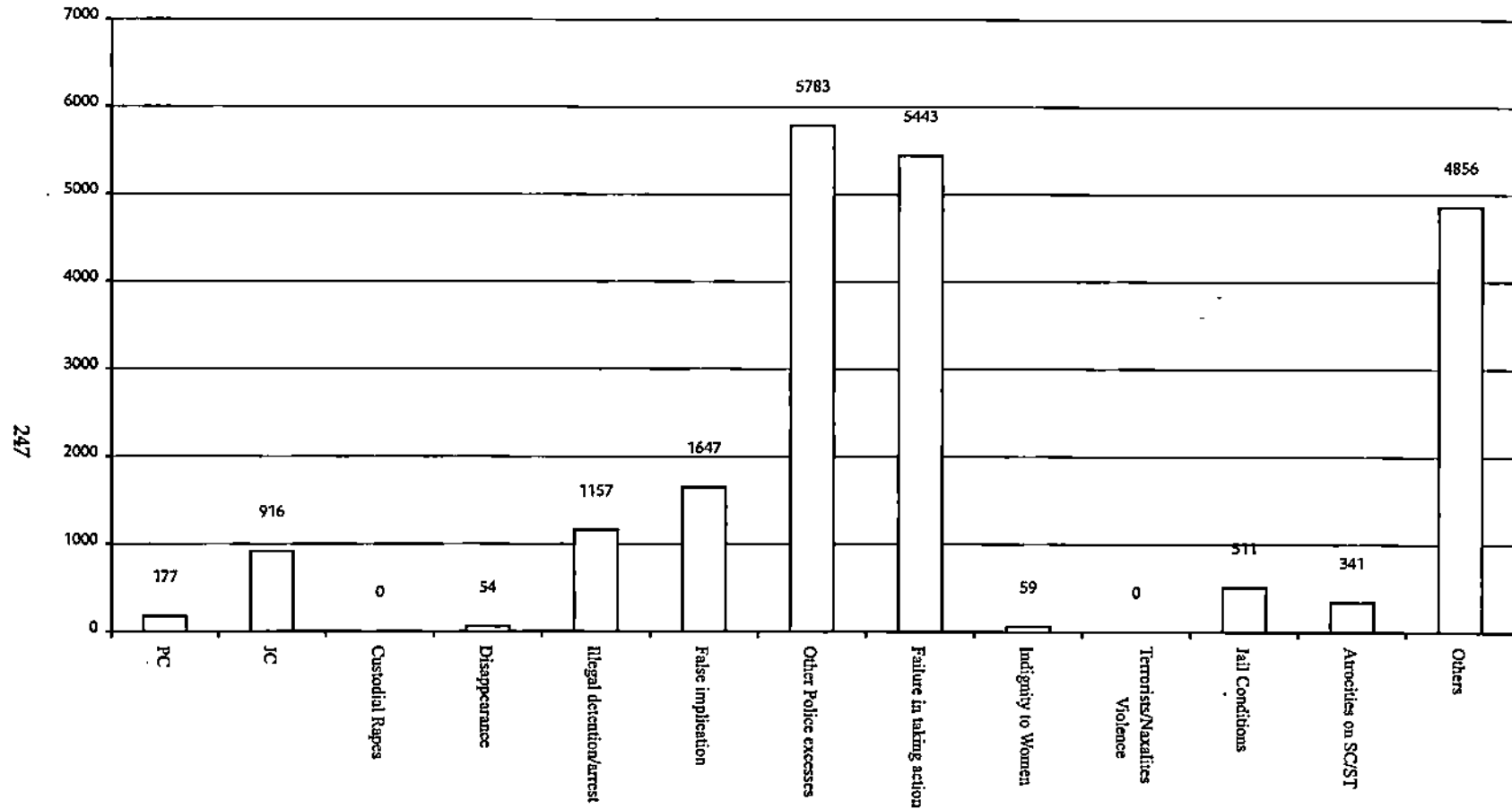


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## Nature and Categorisation of the Cases Admitted for Disposal by the Commission during 1999-2000

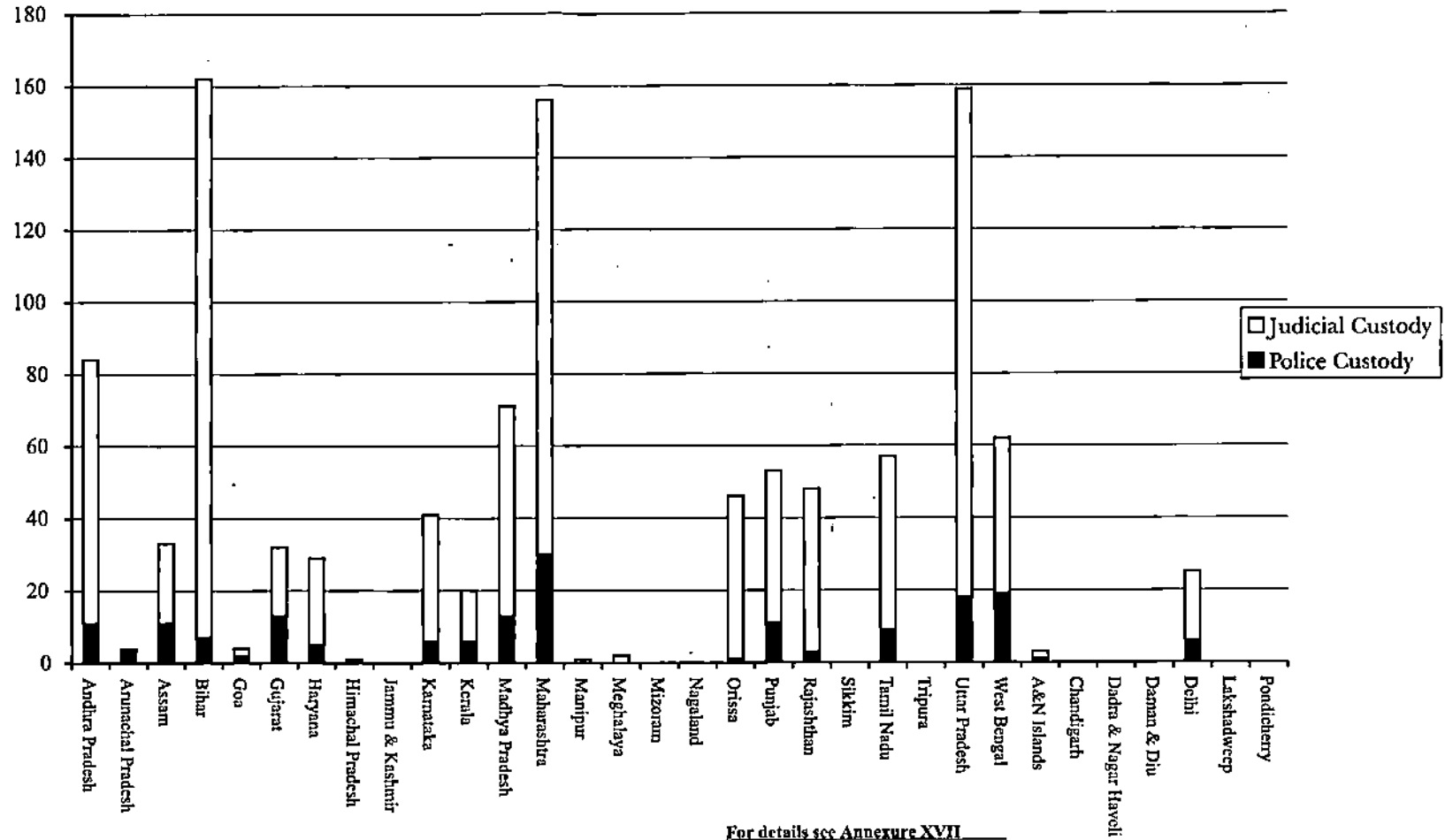
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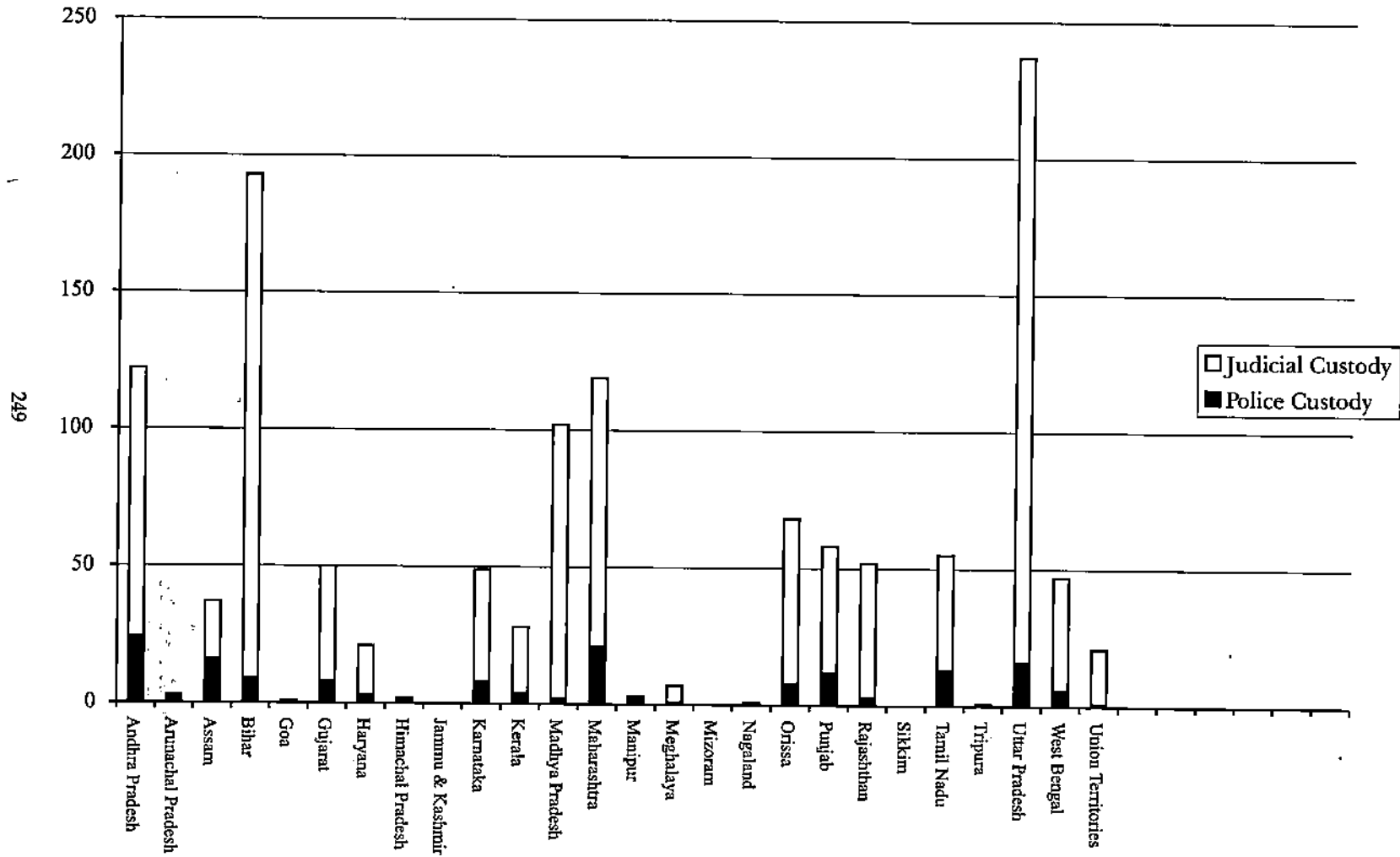
For details see Annexure XVII

## Custodial Deaths during 1999-2000

248

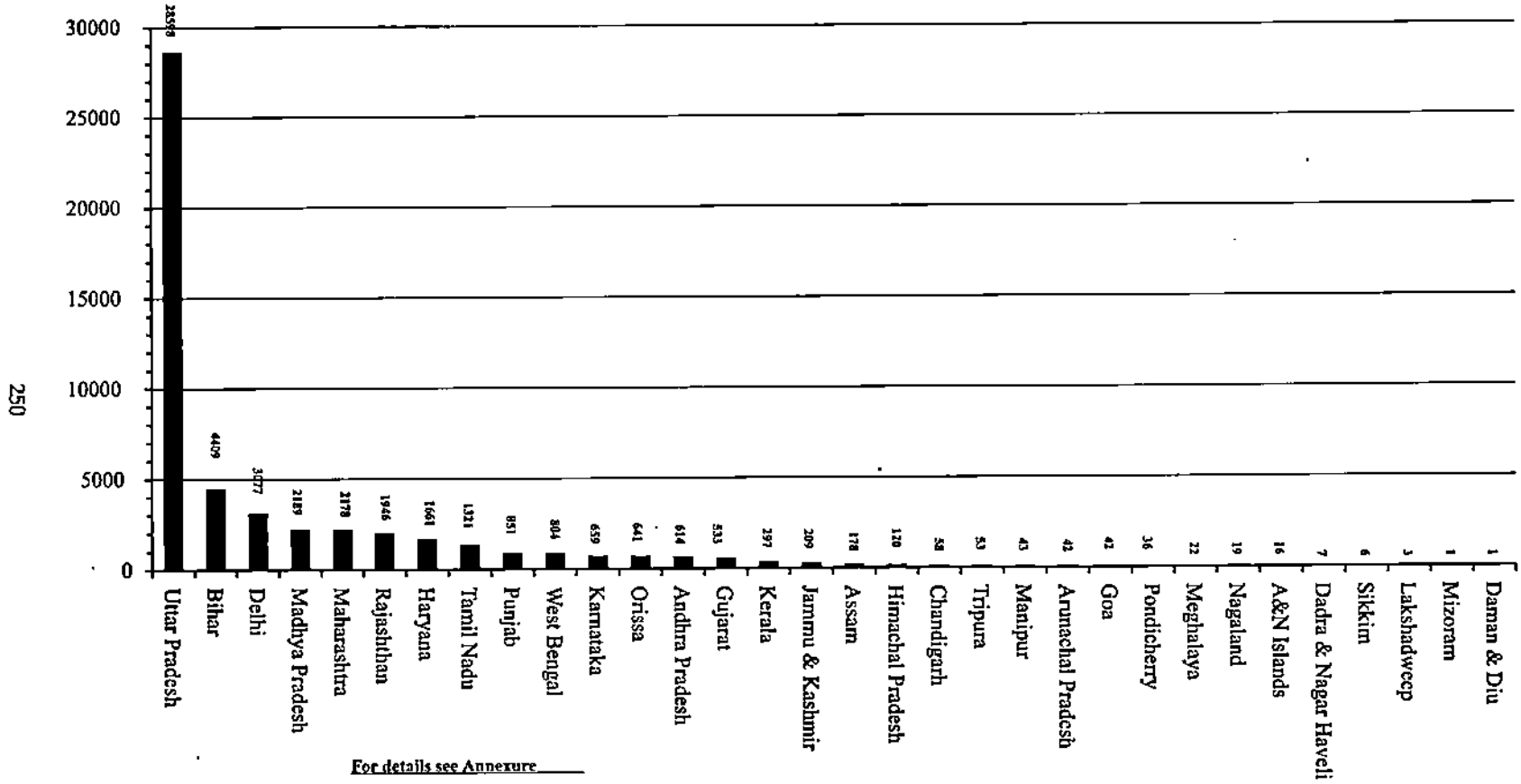


## Custodial Deaths during 1998-99

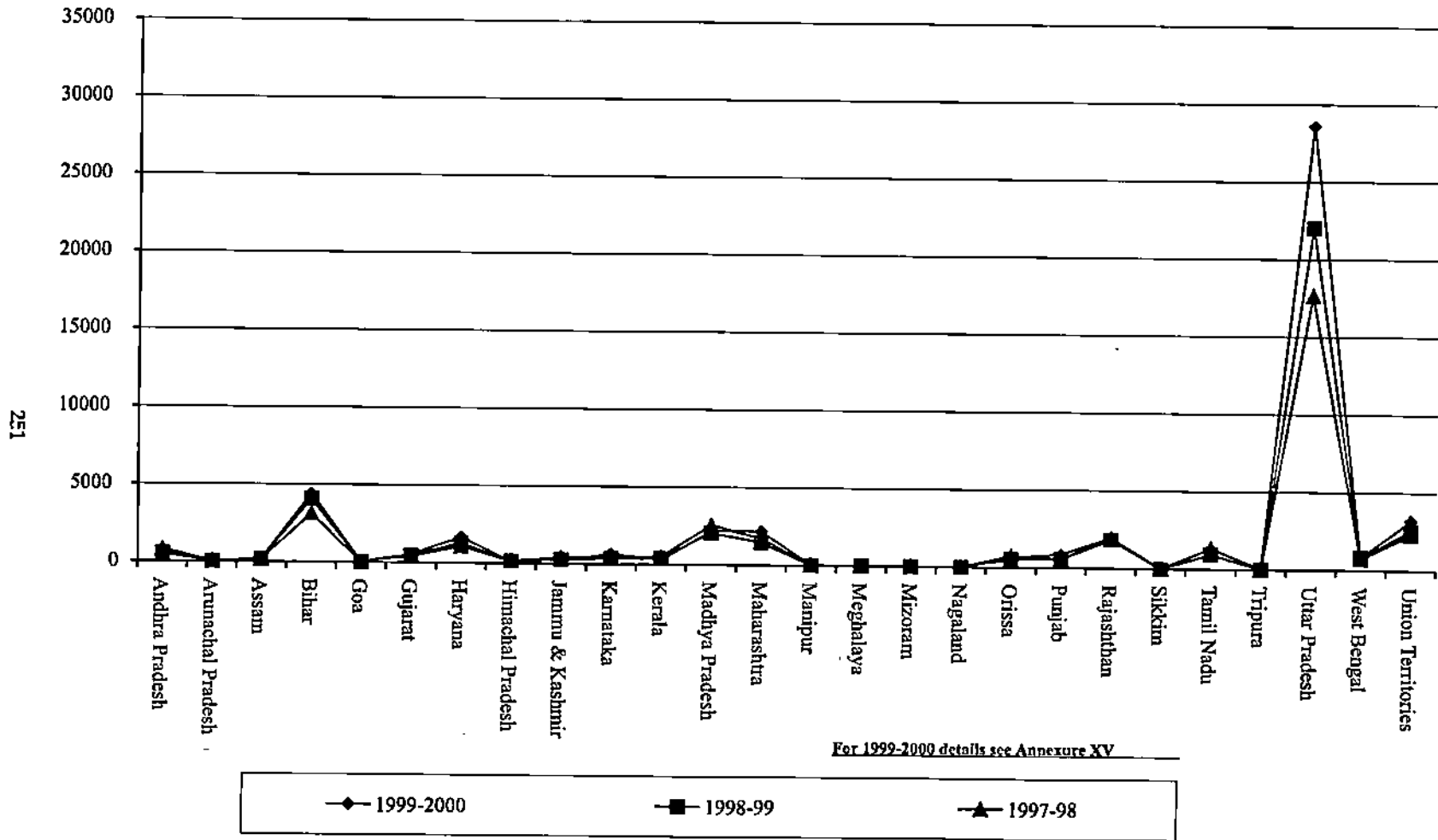


## State-Wise Break-up of Complaints Registered during 1999-2000

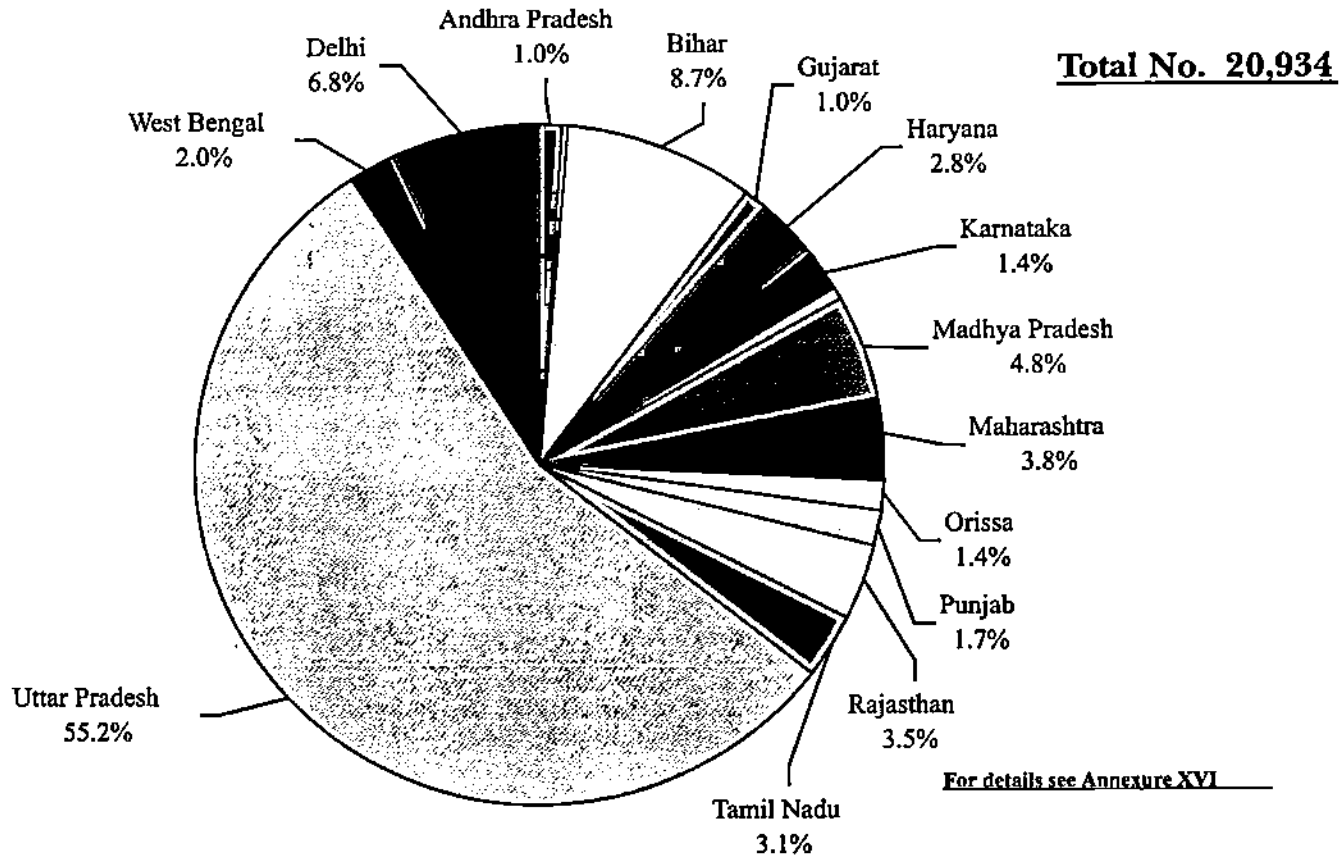
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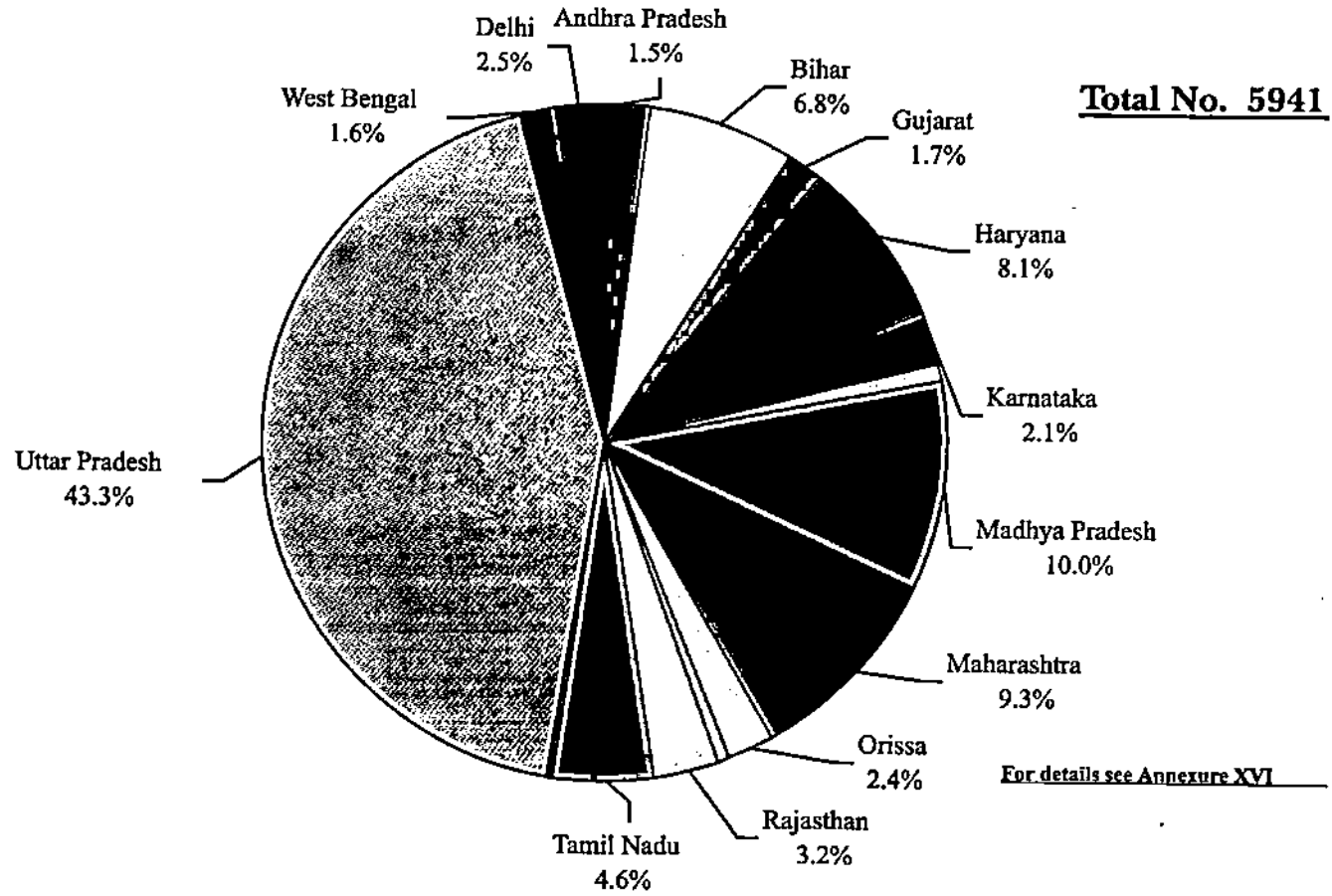
## Total Complaints Registered during the Last Three Years



**No. of Cases Dismissed In Limine during 1999-2000.  
States/UTs with a Dismissal Rate of More than 1%.**



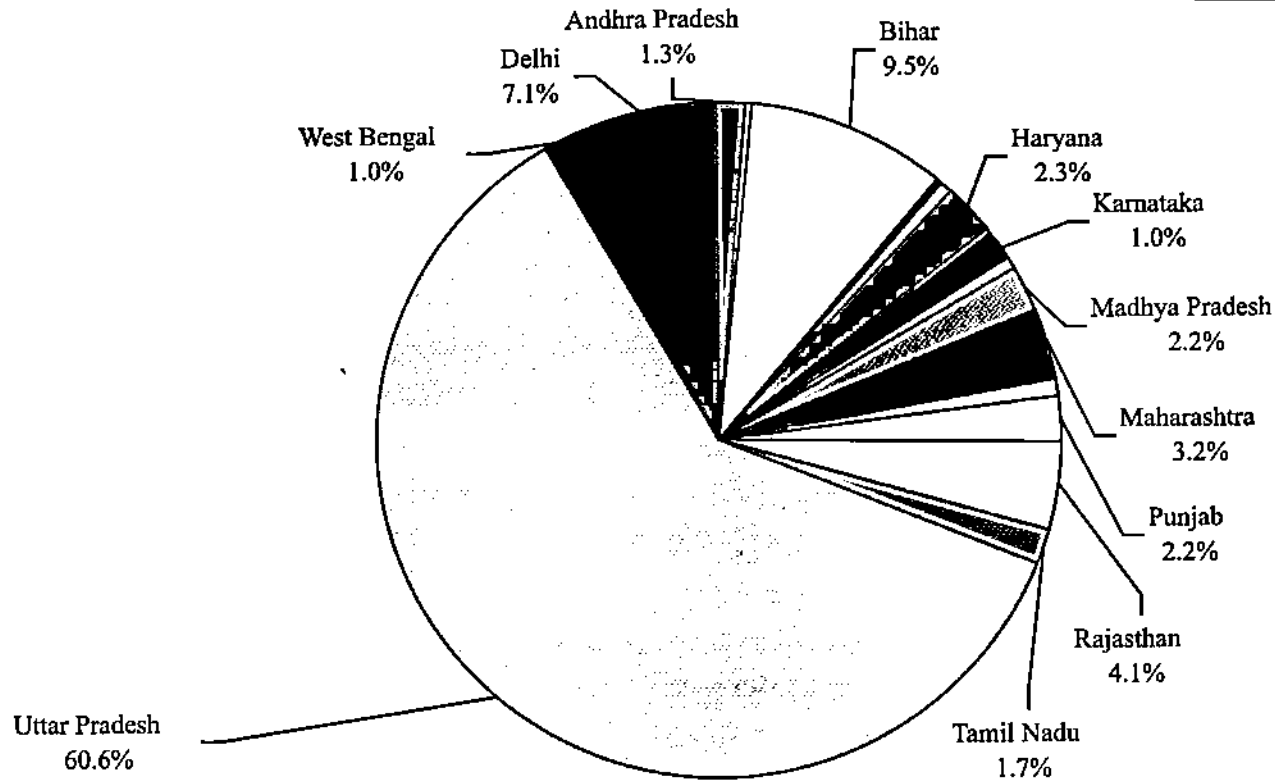
**No. of Cases Disposed of with Directions during 1999-2000. States/UTs with a Dismissal Rate of More than 1%.**





**No. of Cases Considered/Admitted for Disposal during 1999-2000.  
States/UTs with a Dismissal Rate of More than 1%.**

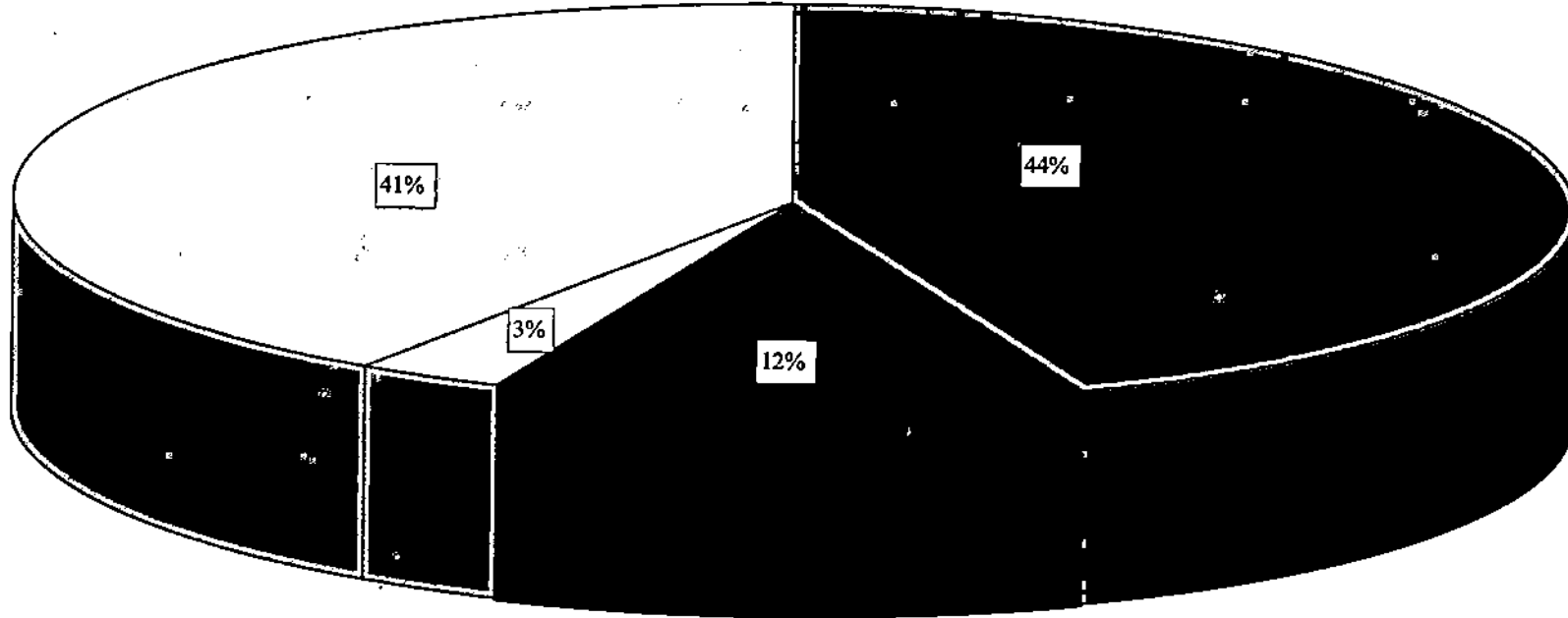
**Total No. 20,944**



**For Details see Annexure - XVII**

**No. of Cases Disposed of/Pending Disposal by the Commission during  
1999-2000**

Total No. 47,819



For details see Annexure XVI

- Dismissed in limine
- Disposed of with directions
- Concluded
- Pending consideration





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