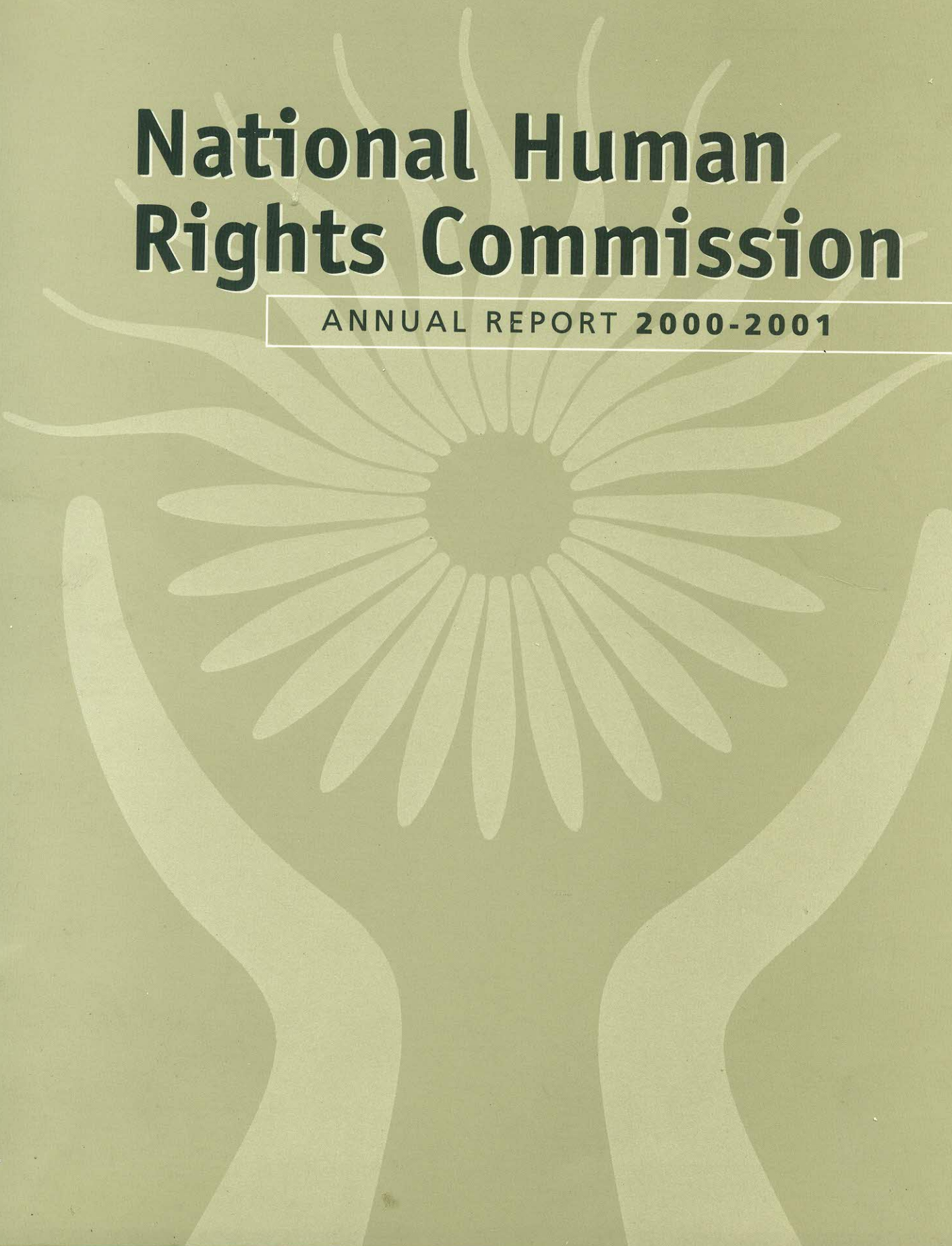


National Human Rights Commission Annual Report 2000-2001

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ANNUAL REPORT 2000-2001



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Sardar Patel Bhawan
Sansad Marg, New Delhi 110001

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Preface

The defence of human rights is, in essence, the defence of human dignity. This is the high purpose that the National Human Rights Commission must serve. It is a purpose that derives not only from the Statute of the Commission but from the Constitution itself, for Article 21 of the Constitution, as interpreted by the Supreme Court, means that all who live in India have a right to a life with human dignity.

This majestic and expansive vision of the Constitution is more easily acclaimed than attained. And certainly the Commission, whose duty it is to strive for the fulfilment of that vision, cannot but be acutely aware of the great distance that must be traversed to come near to it.

The Annual Reports of the Commission, including this Report, give an account of the incremental efforts of the Commission to reach out towards that goal. They recount the positions taken by the Commission on a range of matters, as also its achievements, frustrations and disappointments. For ease of reference, the principal Recommendations and Observations made in the present Report may be seen in summary form at the end of the Report in Chapter 16.

With every passing year, and this is the eighth Annual Report, the conviction has grown in the Commission that the right to a life with human dignity requires respect for the totality of the human person. And this has led to a further conclusion: it is essential for the Commission to focus, in equal

measure, on economic, social and cultural rights as well as on group rights, just as it does on civil and political rights. The indivisibility and inter-related nature of rights is a reality and there is a symbiosis between them. That is why the reports of the Commission have sought to encompass all of them.

In approaching issues of concern to it, including vexed issues such as the protection of human rights in the face of terrorism, the Commission has, at all times, sought to be guided by the philosophy of the Constitution which, in its Preamble, has expressed the two core values that must jointly be protected and advanced: the dignity of the individual and the unity and integrity of the nation. In the scheme of the Constitution, there is no incompatibility between these values, instead, they reinforce each other. A strong nation requires, as a *sine qua non*, the strong protection of the dignity of those who comprise the nation. To act otherwise, is to injure both.

Indeed, in the final analysis, it is the dignity and worth of the most vulnerable and marginalised that must, above all, be protected if the political and economic strength of the nation is to be assured and its cohesiveness guaranteed. The defence of the frontiers of our Republic thus begins with the defence of its citizenry, starting with the weakest. This is why the Commission has been urging that particular attention be paid to the rights of the most vulnerable: women and children, especially the girl child, bonded and child labour and those who are the victims of trafficking, dalits and adivasis, members of minority groups, those challenged by disabilities and those displaced and rendered homeless by mega-calamities and mega-projects. It is for them that the doors of opportunity must, first and foremost, be thrown open. It is their right to education, health, nutrition and shelter that must be advanced if the nation is to fulfil its great potential and destiny.

The defence of human rights and dignity is an imperative of the Constitution and there should be no doubt or ambivalence on this matter. The greater the power, the greater the responsibility to recognise and to act upon this imperative. Mahatma Gandhi, who had an unrivaled capacity to express the truth with simplicity and directness, put it this way:

'It has always been a mystery to me how men can feel themselves honoured by the humiliation of their fellow beings.'

Every citizen of India, and especially every functionary of the State, should bear Gandhiji's observation and truth constantly in mind. That would see us move closer to a life with dignity for all.

This Annual Report is a brief recounting of the endeavours of the National Human Rights Commission, in the year 2000-2001, to help us move in that direction.

Sd/-
(J. S. Verma)
Chairperson

Sd/-
(K. Ramaswamy)
Member

Sd/-
(Sujata V. Manohar)
Member

Sd/-
(Virendra Dayal)
Member

New Delhi
31 December 2001

Introduction

CHAPTER 1

1.1 This report of the National Human Rights Commission covers the period 1 April 2000 to 31 March 2001. It is the eighth such report of the Commission. The seventh report, dealing with the period 1 April 1999 to 31 March 2000, was submitted to the Central Government on 29 March 2001.

1.2 As of the time of writing the present report, the seventh report had not been laid before each House of Parliament, along with the Memorandum of Action Taken, as envisaged under Section 20(2) of the Protection of Human Rights Act 1993. The Commission is constrained to observe, once again, that such delays in tabling consecutive Annual Reports disrupt the preparation and presentation of the reports of the Commission. Further, in the absence of a Memorandum of Action Taken, it becomes impossible for the Commission to know what steps, if any, are being taken by the Central Government to implement the recommendations of the Commission, or to gauge the reasons for the non-acceptance of one or the other of its recommendations. Such a situation is hardly conducive to the 'better protection of human rights' in the country, the avowed purpose of Parliament of adopting the Protection of Human Rights Act, 1993.

1.3 In such circumstances, the Commission sees no alternative but to append to the present report the entire set of Recommendations and Observations of its preceding report (Annexure 1). It will be seen that the very first of those recommendations urged the Central Government to place the Annual Reports of the Commission promptly before Parliament, together with the Memorandum of Action Taken. The recommendation added that this should normally be done not later than the Session

immediately following submission of the report. The Commission is of the view that it is essential for all concerned to respect the Protection of Human Rights Act, 1993 in letter and in spirit, and to observe the discipline expected of the Act.

1.4 During the period covered by the present report, Shri Justice Jagdish Sharan Verma continued to serve as Chairperson of the Commission, with Dr Justice K. Ramaswamy, Smt. Justice Sujata V. Manohar, Shri Sudarshan Agarwal and Shri Virendra Dayal serving as its Members. In addition, in accordance with Section 3(3) of its statute, Shri Justice Mohammed Shamim, Chairperson of the National Commission for Minorities, Shri Dilip Singh Bhuria, Chairperson of the National Commission for Scheduled Castes and Scheduled Tribes, and Smt. Vibha Parthasarathi, Chairperson of the National Commission for Women, continued to serve as ex-officio Members of the Commission.

1.5 Shri N. Gopaldaswami remained the Secretary-General and Chief Executive Officer of the Commission during the period under review, while Shri Y. N. Srivastava succeeded Shri D. R. Karthikeyan as Director General (Investigation) upon the retirement of the latter and Shri Charanjit Jawa held charge of the post of Registrar General (Law) after Shri R. C. Jain completed his term of office in that post.

Census 2001: The Human Rights Dimension

CHAPTER 2

2.1 In February 2001 the country undertook and completed the Census of India 2001, the last such census having been conducted in 1991. The Provisional Population Results, released on 26 March 2001, are of immense interest, not least to those concerned with the state of human rights in the country.

2.2 Census 2001 confirms the persistence of patterns of discrimination against women and the girl child, both within the family and beyond, limiting their access to education, nutrition, health care and other essential rights.

2.3 It will be recalled that the Annual Report of the Commission for the year 1999-2000 had dwelt at some length on the unyielding character of such discrimination, despite the vision of the Constitution which, under Article 14, expressly proclaimed equality before the law and, under Article 15, unequivocally prohibited discrimination on grounds of religion, race, caste, sex or place of birth.

2.4 Based on a careful analysis of available data on female to male sex ratios, maternal mortality rates, life expectancy at birth, and crimes against women, the Commission had concluded in its preceding Report that *'discrimination against women and girls is still a pervasive phenomenon, even though the Constitution set itself against discrimination based on sex and enjoined the State to act against such discrimination.'* The Commission also observed that a further dimension was added to the multiple discrimination faced by women and girls when discrimination based on caste was added to the other acts that were violative of their rights. The Commission therefore proceeded to make a number of recommendations to deal with the

situation, starting once again with its repeated plea that free and compulsory education be provided as a Fundamental Right to all children until they complete the age of 14 years, that greater efforts be made to combat discrimination against the girl child in all of its manifestations and that, in particular, the doors be thrown open for them to have better access to education, nutrition and health care.

2.5 Census 2001 is not without encouraging news: there are positive trends both in respect of the nation-wide female to male ratio and a significant increase in literacy figures. Yet, the disaggregated State-wise figures are cause for deep concern, the broad picture being as follows:

- On 1 March 2001, the population of India was 1,027,015,247, of whom 531,277,078 were male and 495,738,169 were female. The sex ratio (the number of females per 1000 males) for the country as a whole was 933, an improvement of 6 points over the figure of 927 recorded in Census 1991. This was the first time since 1901, when the sex ratio was 972, that the declining trend has been arrested.
- However, while the national average was 933, many States/Union Territories were disconcertingly below that average. The lowest sex ratio among the major States of the country was in Haryana, where it was 861. But others below the national average were:

Andaman and Nicobar Islands (846), Arunachal Pradesh (901), Assam (932), Bihar (921), Chandigarh (773), Dadra and Nagar Haveli (811), Delhi (821), Gujarat (921), Jammu and Kashmir (900), Madhya Pradesh (920), Maharashtra (922), Nagaland (909), Punjab (874), Rajasthan (922), Sikkim (873), Uttar Pradesh (898).
- It was particularly disturbing to note that the comparatively affluent belt comprising Haryana, Punjab, Delhi and Chandigarh had figures far below the national average and that, in the most populous State of the country, Uttar Pradesh, the ratio was 35 points below that average.
- Yet more alarming was the sharp decline — nation-wide — in the sex ratio of the child population in the age group 0 to 6 years. That ratio fell from 945 in 1991 to 927 in 2001. The sharpest decline was in the States of Himachal Pradesh, Punjab, Haryana, Gujarat, Uttaranchal, Maharashtra and the Union Territory of Chandigarh. It was obvious, at one level, that this decline related to discrimination against the girl child in matters of health care and nutrition.

Worse still, at a deeper level it pointed to a grave violation of human rights resulting from female infanticide and foeticide, the latter the consequence of the wide-spread misuse of sex-determination tests.

- On the literacy front, it was heartening to note from Census 2001 that the literacy rate in the population over 7 years of age rose to 65.38 per cent as against 52.7 per cent in 1991, an increase of 13.17 percentage points. Even more heartening was the fact that the literacy rate for females increased by 14.87 percentage points during this period, as against 11.72 percentage points for males. This helped to reduce the gap between male and female literacy from 28.84 percentage points in 1991 to 21.70 percentage points in 2001.
- For the first time since Independence, too, the absolute number of illiterates in the country showed a decline. There were 31.96 million less illiterate persons in India in 2001 compared to 1991, the decline among males being 21.45 million, and 10.51 million among females.
- Bihar recorded the lowest literacy rate in the country (47 per cent). The other States falling below the national average of 65.38 per cent being:

Andhra Pradesh (61.11), Arunachal Pradesh (57.74), Assam (64.28), Chhatisgarh (65.18), Dadra and Nagar Haveli (60.03), Jammu and Kashmir (54.46), Jharkhand (54.13), Madhya Pradesh (64.11), Rajasthan (61.03) and Uttar Pradesh (57.36).

2.6 In the light of the above, and in addition to the recommendations contained in its preceding Annual Report on the measures to be taken to combat discrimination based on gender, the Commission now urges that:

- The correct conclusions be drawn from the Provisional Population Results of Census 2001 both at the Central and State levels: these should lead to the formulation and better implementation of policies, programmes and laws to further reduce the disparities that continue to exist between males and females in the country in respect of access to education, nutrition and health care; and
- A concerted effort is made to end the misuse of sex-determination tests in the country since this has encouraged the evil practice of female foeticide, a gross violation of the right to life and the worst possible form of discrimination based on sex.

2.7 As further results of Census 2001 come to be tabulated and published, there will no doubt be a wealth of additional information provided that will be germane to a fuller understanding of human rights in the country.

Civil Liberties

CHAPTER 3

A] Human Rights in Areas of Terrorism and Insurgency

3.1 In its Annual Report for the year 1998-99, the Commission observed that *'India's often lonely fight against terrorism has grown less lonely as the realisation has gradually spread, since the 1993 World Conference on Human Rights and as a result of more recent events, that "The acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights"'*

3.2 This report is being written in the shadow of yet more recent events: massive acts of terrorism have convulsed the world and left no doubt as to the global reach and net-working of the perpetrators of such violence. No longer is India alone in arguing that such acts can never be justified, that they are hostile to human rights despite arguments to the contrary, and that those who perpetrate them are the mortal enemies of such rights. Indeed, ever since the 1993 World Conference and the subsequent adoption of the 1994 United Nations Declaration on Measures to Eliminate International Terrorism, the international community has, with repeated and increasing severity, asserted 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.' (United Nations General Assembly resolution 49/60 of 9 December 1994, annex, *emphasis added*).

3.3 During the period under review, this assertion was reiterated by the United Nations General Assembly in its resolution 55/158 of 12 December 2000. The Assembly also decided, in that resolution, that the Ad Hoc Committee of the Assembly should elaborate a comprehensive convention on international terrorism. The Commission welcomes these developments, and the spate of other recent decisions, taken variously in the UN Human Rights Commission, the UN General Assembly and the Security Council, to come to grips more firmly with the menace of international terrorism and the grave impact that it is having on human rights. The Commission has, for some years, expressed the view that there is urgent need for the early conclusion of a comprehensive convention on international terrorism. It commends the Government of India for playing a leading role in the effort to achieve this objective.

3.4 The Commission has also noted that the United Nations General Assembly in the same resolution cited above, viz 55/158, urged all States that have not yet done so to consider, as a matter of priority, becoming parties to the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164 annex) and the International Convention for the Suppression of the Financing of Terrorism (General Assembly resolution 54/109, annex). It also called upon all States to enact, as appropriate, domestic legislation necessary to implement the provisions of those Conventions.

3.5 The Commission would like to recall that it had already urged that such action be taken in an Opinion that it pronounced on 14 July 2000 in connection with the Prevention of Terrorism Bill 2000. In that Opinion, the Commission had observed that there were now twelve global treaties pertaining to the subject of international terrorism. However, despite this array of international instruments, the Commission noted that it remained essential, both to the cause of human rights and to the fight against terrorism, that the measures required to be taken under each of these Conventions were fully and meticulously under-taken, both in terms of appropriate legislation, where this may still be needed, and in terms of other practical arrangements essential to the effective implementation of these Conventions. The Commission had accordingly urged the Government of India to do so and, in particular, to enact a suitable law to deal with the financing of terrorism.

3.6 In that same Opinion, the full text of which may be seen at Annexure 2, the Commission had also stated that, '*...consistent with the view that it took in respect of TADA, the Commission is now unanimously of the considered view that there is no need to enact a law based on the Draft Prevention of Terrorism Bill, 2000 and the needed solution can be found under existing laws if properly enforced and implemented, and amended, if necessary. The proposed Bill, if enacted, would have the ill-effect of providing unintentionally a strong weapon capable of gross misuse and violation of human rights which must be avoided particularly in view of the experience of the misuse in the recent past of TADA and earlier of MISA in the emergency days.*'

The Commission accordingly noted with regret, '*its inability to agree with the opinion of the Law Commission in its 173 rd Report*' and recommended '*that a new law based on the Draft Prevention of Terrorism Bill, 2000 be not enacted.*'

Such a course, the Commission stated, was, '*consistent with our country's determination to combat and triumph over terrorism in a manner also consistent with the promotion and protection of human rights.*'

3.7 Indeed, over the past years, the Commission has steadily maintained that the war against terrorism must be fought boldly and won. But this duty, for all of the difficulties it entails, must be accomplished in a manner that accords with an uncompromising adherence to the provisions of the Constitution of our Republic, the laws of our land, and the relevant international instruments, including those on human rights, to which India is a State party. The Commission is convinced, and has so stated, that the menace of terrorism must be fought by the combined efforts of all elements of society, not by the armed forces and police alone. That is why it has stressed the importance of the political, economic and social dimensions of the problem and also urged that it is essential — in the interests of winning the fight — to ensure transparency and accountability in dealing with those who may be guilty of human rights violations.

3.8 During the course of the year under review, the human rights situation in Jammu and Kashmir remained fraught with difficulties, requiring the utmost attention of the Commission. According to figures released by the Government of India, 762 civilians were killed in the State as a result of the acts of militants in the course of the year 2000. Of them, 563 were Muslims, the others being Hindus or Sikhs. A deliberate attempt was made, on occasion, to heighten differences along communal lines in the State. Thus, 35 Sikhs were killed in the village of Chittisinghpura on 20-21 March 2000. On 24

July 2000, a senior Hizbul-Mujahideen leader made the announcement of a unilateral ceasefire for three months. This was welcomed by the Government and efforts were immediately made to initiate a dialogue. However, other militant groups soon denounced the unilateral ceasefire announcement and more than a 100 people were killed in an orgy of violence in Jammu and Kashmir on 1, 2 and 10 August 2000, including pilgrims on the Amarnath Yatra, labourers and journalists. On 21 November 2000, 5 Sikhs who were driving trucks were killed at Banihal, while on 24 November 2000, 5 Hindus were killed on a bus in Doda.

3.9 Despite such efforts to provoke a state of terror in the general public and to further vitiate the atmosphere in the State, the Commission was heartened by the bold decision, made at the highest level of Government, not to initiate any combat operations against militants in Jammu and Kashmir during the holy month of Ramzan, which started on 27 November 2000 and the subsequent extension, on two occasions, of that decision. The Commission also welcomed the decisions announced at the policy level to accelerate economic development, to seek to redress the genuine difficulties of the people of the State and to initiate talks with those who eschewed the path of violence. It was a matter of deep disappointment that these initiatives were, unfortunately, sabotaged by groups operating from across the border. As a result, the opportunity for peace was once again postponed and the State continued to witness the loss of life and the violation of human rights.

3.10 For its part, the Commission continued to take action, both *suo motu* and on the basis of complaints, on reports of human rights violations in the State. In the course of the reporting period, 295 complaints were received, many of which listed a dozen or more incidents alleging serious violations of human rights. The great majority of the complaints were directed against the conduct of the armed forces and police in the State. They included allegations, *inter alia*, of enforced disappearances, illegal detention, torture, custodial deaths, extra-judicial killings and fake encounters.

3.11 In each such case, the Commission issued notice to the competent authorities of the State and to the Defence and Home Ministry as appropriate. As responses were received, and as the Commission issued directives in respect of them, particular efforts were made to keep the complainants informed of the steps and decisions taken. In a number of instances, when the allegations were especially grave, the complainants were invited to visit the Commission so that they could be briefed in detail on the efforts being made.

3.12 Among the cases considered were those relating to the killings of 35 Sikhs in Chittisinghpura on 20-21 March 2001, referred to above; the killing of 5 persons in Patrival by the armed forces on 25 March 2000, who were stated to be responsible for the killings in Chittisinghpura; and the killing of pilgrims on the Amarnath Yatra on 1 August 2000. In respect of the Chittisinghpura incident, both the Central and State Governments responded that, of the 20 persons who had been identified to be involved in the crime, 2 had been arrested, 6 had been killed in encounters, while 12 were being sought. Shortly after, however, the Commission was dismayed to read in the press that those who had reportedly been killed in encounters at Patrival, a short distance away from Chittisinghpura, were identified as villagers who had, according to the people of the area, been killed in 'fake encounters' and wrongly blamed for the Chittisinghpura killings. On further enquiries from the Commission, the Government indicated that samples had been taken for the DNA testing of those who had been killed at Patrival. It remained a matter of the gravest concern to the Commission that, despite the passage of many months, the results of the DNA testing had not been made public.

3.13 The Commission is of the view that the manner in which the Patrival incident has been handled has done great harm to the cause of human rights in the State and to the reputation of the armed forces and the Governmental authorities, both at the Centre and in the State. The Commission therefore urges the Government to disclose the facts relating to the deaths in Patrival and take appropriate action if wrong has been done. The long-term interests of the State and the security of the nation can never be advanced by the concealment of possible wrong-doing. It is a serious mistake to think otherwise.

3.14 The Commission is therefore appreciative of the investigation undertaken by the Commission of Inquiry headed by Lt. General J. R. Mukherjee to look into the killing of Amarnath pilgrims and shopkeepers in Pahalgam on 1 August 2000. In marked contrast to the Patrival incident, those responsible for the deaths in Pahalgam were identified, whether they were terrorists or police personnel; security lapses were also identified and recommendations were made to improve arrangements; criminal prosecutions and disciplinary actions were also recommended in the light of the findings. The Commission, on studying the reports received, asked that measures be taken in accordance with the Commission of Inquiry report and that it be notified, thereafter, of the action taken.

3.15 The Commission also took cognisance of a complaint that it received concerning

the killing of 8 persons and the injuring of some 20 others on 3 August 2000 in Anantnag, where a crowd was demonstrating against the killings in Patrival that had occurred on 25 March 2000. In response to notices issued, both the State and Central Governments informed the Commission that a Commission of Inquiry had been appointed headed by Shri Justice S. R. Pandian. The Report of the Pandian Commission was subsequently communicated to the Commission. The report held, *inter alia*, that certain officers of the police and CRPF had been guilty of an excessive use of force; it also recommended changes in the manner of deployment and use of police and paramilitary forces. The Commission was thereafter, advised of the follow-up action taken by the State Government to launch criminal and disciplinary proceedings against those held responsible, and to award compensation to the next of kin of the deceased and to those who were injured. In the light of the range of actions taken, the Commission concluded that there was no need for it to pursue this matter further.

3.16 In another instance, the Commission received a series of complaints from a leader of the Jamaat-e-Islami in Jammu and Kashmir alleging that 18 of his party activists had been killed in Baramulla district in 1998. Investigations had made scant progress and the Commission was requested to assist. The Commission issued notices to the State Government and, dissatisfied with reports that it received, summoned the Director-General of Police to its Headquarters. The intervention of the Commission resulted in the re-opening of investigations in respect of all of the cases that had been closed. In 7 cases, charge-sheets were subsequently filed and a full accounting provided in respect of the other cases. It was learnt that certain of the killings had resulted from internecine fighting among rival political groups.

3.17 These cases have been recounted in brief as they are indicative of the complexity of the situation in Jammu and Kashmir and the varied procedures that were followed to inquire into and redress allegations of human rights violations. In certain instances, as required by Section 36(2) of the Protection of Human Rights Act, 1993, the Commission held back when Commissions of Inquiry were especially appointed and awaited the results of those inquiries before deciding whether to proceed or not. In other instances, the Commission urged stronger, more diligent investigations. In each instance, the Commission was advised of the outcome of the inquiry or investigation and, thereafter, decided upon the course of action it should most appropriately take.

3.18 The Commission regrets, however, that it has not always been able to count on the transparency of the investigations undertaken. The Patrival incident referred to above, joins the Jalil Andrabi case as an instance in which opacity obscured the

evident need to function with openness and clarity. The Andrabi case remains *sub judice*, with no progress having been made in bringing to justice those allegedly responsible for his abduction and subsequent death. The Commission regrets the persistence of such a situation, just as it does the lack of cooperation extended to it through the denial of access to records requested by it in respect of trials conducted against members of the para-military forces accused of human rights violations. The tragic incident that occurred in Bijbehara on 22 October 1993 is illustrative of this recalcitrance. The Commission had been compelled to move a Writ Petition before the Supreme Court but the records have not as yet been forthcoming. Indeed, in a case relating to the conduct of members of a para-military force in the north-eastern State of Manipur, a similar problem has arisen, with the Home Ministry repeatedly denying access to the records required by the Commission. However, the Secretary, Ministry of Home Affairs, has indicated that he will look into the issue personally.

3.19 For these reasons, and most of all to fulfil its Statutory purpose of ensuring the 'better protection' of human rights in the country, the Commission is convinced that there is urgent need to amend, *inter alia*, Section 19 of the Protection of Human Rights Act, 1993. The amendments proposed by the Commission have been pending before the Central Government since March 2000, adversely affecting the Commission in the performance of its duties. The Commission cannot but reiterate its strongly held view that amendments to the Act, along the lines proposed by it, are long over-due. It urges the Central Government to proceed with the needed amendments without further delay.

3.20 The Commission also takes this occasion to draw attention to its earlier recommendations in respect of the armed forces made in its preceding report, including *inter alia* its view that the Central Government should direct the armed forces, including the para-military forces, to report to the Commission — as does the police — any case that might occur of the death of persons while in their custody. This requirement, if observed with care, would go a long way towards ending acts of custodial violence and the possibility of extra-judicial killings. Such a development could transform the conduct of the armed forces including the para-military forces, and also, incidentally, reduce the allegations brought against them of violence of this kind, which is impermissible under the laws of our land and contrary to the principles of international human rights law and humanitarian law.

3.21 In the course of the year under review, the Commission, after considering with care the complaints brought before it against the armed forces, including the para-

military forces, made specific recommendations in respect of 3 cases, requiring the payment of compensation or the launching of proceedings against personnel held to be responsible for the violation of human rights. The army, for its part, informed the Commission of the investigations it had undertaken into such violations by its own personnel. It stated that it had registered 120 such complaints in 2000-2001, of which 96 related to Jammu and Kashmir and 26 to the North-Eastern States. In one case, where rape had occurred, an officer of the rank of Captain was found to be guilty and sentenced to 7 years rigorous imprisonment; he is to be cashiered. As far as the para-military forces are concerned, the Border Security Force, stated that only one complaint was registered by it, in Jammu and Kashmir, relating to house-breaking and attempted rape. The proceedings had been completed but the decision had yet to be announced. No information was received from the other para-military forces. This confirms, once again, the greater diligence and transparency of the army in dealing with human rights complaints when compared with the para-military forces. It also re-inforces the argument that it is necessary to amend the definition of 'armed forces', as at present contained in the Protection of Human Rights Act, 1993 along the lines proposed by the Commission, so that the restrictive procedures of Section 19 of the Act do not apply to the para-military forces.

3.22 The Commission remained in touch with the competent authorities at the State-level, both in Jammu and Kashmir and in the North-Eastern States, in respect to the broad range of human rights issues facing them, particularly matter involving the relationship and responsibilities of civil and military authorities in countering insurgency and terrorism, and the need to observe the guidelines set down by the Supreme Court in respect of the Armed Forces (Special Powers) Act, 1958.

3.23 The Chairperson of the Commission personally visited the State of Jammu and Kashmir in February 2000. A thorough review was made, on that occasion, of the status of compliance in respect of complaints received by the Commission and the adequacy or otherwise of investigations conducted; the acts of violence and terror committed by the militants; the allegations of excesses committed by the armed forces and police; the procedures to be followed in reporting on custodial deaths; the adoption and use of the model autopsy form devised by the Commission; the translation of publications of the Commission, notably the Guidelines on Arrest, into the language of the State; the constituting of the District Complaints Authority; arrangements for the rehabilitation of militancy-affected persons, orphans and destitute women; the establishment of juvenile homes; and the ending of manual scavenging, among other issues.

3.24 The Commission also continued to hold hearings in respect of the problems faced by members of the Kashmiri Pandit community, some 3,00,000 of whom have had to leave the valley since the insurgency began, together with over a 1,000 Muslim families and a number of Sikh families. In order to bring greater coherence to the manner in which the varied complaints of the Pandits were being handled by the State Government, the Commission proposed the constitution of a Committee at the State-level, with the Special Rapporteur of the Commission as a Member. While the Committee has helped in some measure in providing assistance to those with grievances, the Commission regrets to observe that the Committee has not always functioned with the regularity expected of it or received the cooperation that it requires. The Commission therefore urges the State Government to give greater attention to this matter.

3.25 In addition, the Commission has continued to receive communications from political parties in Jammu and Kashmir, including those belonging to Hurriyat, complaining on occasion of the detention of leaders, or cadres, or violence directed against them. The Commission has intervened, as appropriate, including in instances when passports were needed to travel abroad for weddings, or medical treatment, or to go on Haj or accompany a family member on pilgrimage.

3.26 As regards the North-Eastern States, it is important to record, in addition, that 52 complaints were received by the Commission in the course of the year 2000-2001 alleging the violation of human rights by personnel of the armed forces. Twenty-four of these cases related to the conduct of the army, while 28 cases concerned the para-military forces. As with other complaints received by the Commission, steps were immediately taken to issue notice to the authorities concerned, reports were called for and examined. Where these were found to be unsatisfactory, the authorities were directed to clarify the facts. In the course of considering these complaints, the Commission considered it essential to direct that compensation be paid to the next-of-kin of a hotel manager in Kohima, Nagaland, who was taken away by the security forces to participate in a combing-operation but who died in subsequent cross-fire. Two other important cases have reached a critical stage before the Commission: one relates to custodial torture and a possible extra-judicial killing in Manipur; the other to a 'disappearance' and possible custodial death in the same State. In respect of the latter case, the Commission has issued notice to the Ministry of Home Affairs and to the Government of Manipur to show cause as to why immediate interim relief should not be accorded, under section 18(3) of the Protection of Human Rights Act, to the next-of-kin of the victim. The Commission intends to see these and other cases from the North-Eastern States through to their logical conclusion.

B] Custodial Death, Rape and Torture

3.27 Soon after being established in 1993, the Commission issued instructions that any instance of custodial death must be reported to it within 24 hours of occurrence. Such information was to be followed by the submission to the Commission of the relevant post-mortem report, the magisterial inquest report and a videography report on the postmortem. Unfortunately, it was observed that there was frequent delay in the sending of these reports. This in turn delayed the processing of cases of custodial violence in the Commission and the awarding of interim relief when, *prima-facie*, there was reason to conclude that a custodial death had resulted from custodial violence. Of the total number of 1,093 cases of custodial death reported in 1999-2000, the States from which the highest number of inquiry reports were awaited were: Maharashtra – 28, West Bengal -19, Uttar Pradesh – 17, Madhya Pradesh – 12, Andhra Pradesh – 11, Assam – 11, Gujarat – 11, Punjab – 10 and Tamil Nadu – 9. In total, of the 177 cases of death in police custody registered in 1999-2000, the Commission had yet to receive full reports in respect of 165 cases. As regards deaths in judicial custody, which numbered a total of 916 in 1999-2000, reports had been received in respect of 396 cases but were awaited in respect of 520 cases. The highest number of reports awaited were from: Bihar – 112, followed by Maharashtra – 89, Andhra Pradesh – 61, Tamil Nadu – 41, Rajasthan – 39, Punjab – 38.

3.28 Given this unsatisfactory situation, the Commission has issued fresh instructions requesting that all concerned reports, namely the post-mortem, videograph and magisterial inquiry reports, must be sent to the Commission within two months of the incident. The postmortem reports have to be recorded on a new form, designed by the Commission, which has been circulated to all concerned authorities. Further, in every case of custodial death, a magisterial inquiry has also to be conducted as directed by the Commission. It should be completed expeditiously and transmitted to the Commission within the deadline of two months that has been set by the Commission.

3.29 In certain cases of custodial death, and after the post-mortem examination, the viscera are sent for examination and a viscera report is required. However, such reports also take time in being received. The Commission has therefore clarified that the post-mortem reports and other related documents should be sent to the Commission without waiting for the viscera report, with the latter being sent subsequently as soon as it is available.

3.30 These instructions were communicated in a letter addressed to the Home Secretaries of all States/Union Territories, all Director Generals of Prison and all Director Generals of Police by Shri N. Gopalaswami, Secretary General of the Commission, on 5 January 2001.

3.31 The Commission has noted with interest and satisfaction that there has been a decline in the total number of custodial deaths reported in 2000-2001, the number having gone down to 1037 from 1093 in 1999-2000. The total number of deaths in police custody have shown a significant decrease, from 177 in 1999-2000 to 127 in 2000-2001. The deaths in judicial custody too have declined from 916 in 1999-2000 to 910 in 2000-2001.

3.32 The States in which deaths in police custody have shown notable decline were Andhra Pradesh, Madhya Pradesh, Maharashtra, Tamil Nadu, West Bengal and Uttar Pradesh. However, there has been an increase in such deaths in Delhi, Assam and Punjab. The state-wise position indicating the number of custodial deaths is given at Annexure 7.

C] Encounter Deaths

3.33 The guidelines framed by the Commission in respect of the procedures to be followed by the authorities in dealing with deaths that occurred in encounters involving the police were circulated to all Chief Secretaries of States and Administrators of Union Territories on 29 March 1997. The Commission called for acceptance of these guidelines and their faithful implementation.

3.34 In response, the Commission received letters from all State Governments/Union Territories conveying their acceptance of the guidelines.

3.35 In the course of the year 2000-2001, however, the Commission received 109 complaints alleging that deaths had occurred as a result of 'fake' encounters. A statement showing the state-wise position in respect of such complaints is given in Annexure 8. In each of these cases, the Commission is seeking to ensure that enquiries are made and action taken in accordance with its standing instructions relating to encounter deaths.

3.36 The situation in Andhra Pradesh continued to be deeply disturbing, with frequent complaints of 'fake' encounters being brought to the notice of the Commission. The matter was accordingly raised at the level of the Chief Minister by the Chairperson, when he visited the State in March 2001.

3.37 The Commission has urged that inquiries into encounter deaths be carried out by police officers known for their impartiality and integrity. Given the large number of pending inquiries, the Government of Andhra Pradesh has also been advised to set up a mechanism to expedite these inquiries and to give proper publicity to the results so that the people of the State do not lose faith in the system and can, instead, come to the conclusion that the authorities function with transparency and accountability.

D] Video Filming of Post-Mortem Examination and Revision of Autopsy Forms

3.38 In its endeavour to ensure that reporting on custodial deaths is accurate and timely, the Commission had recommended to all States and Union Territories (UTs) that the post-mortem examination of custodial deaths be video-filmed and transmitted to the Commission so as to enable it to assess independently the cause of such deaths. During the year 2000-2001, the States of Arunachal Pradesh, Mizoram, Delhi and Union Territory of Chandigarh indicated that they would comply with the Commission's recommendations, in addition to those who had done so earlier. The remaining States and Union Territories viz., Maharashtra, Manipur, Uttar Pradesh and Andaman and Nicobar Islands were urged to follow the example of others and to comply with the recommendations at an early date.

3.39 The Commission also continued to urge those States that had not yet done so to comply with its recommendation to adopt the Model Autopsy Form prepared by the Commission and circulated to States and Union Territories on 27 March 1997. Reminders were issued on 31 January 2001 and 12 March 2001. The Governments of Arunachal Pradesh and Maharashtra reported their acceptance of the recommendation during the period under review, the latter seeking certain clarifications from the Commission. The Government of Jammu and Kashmir responded saying that the Forensic Medicine Department of the Government Medical College of the State had suggested certain modifications for incorporation in the form.

The clarifications sought by the Government of Maharashtra and the suggestions made by the Government of Jammu and Kashmir were under consideration of the Commission. The States of Bihar, Gujarat, Nagaland and Kerala were still considering the recommendation. The Commission urged that they take action on this matter without further delay.

Minimum Kit for Autopsies

3.40 A Committee, headed by Dr Justice K. Ramaswamy, was set up by the Commission to discuss issues relating to autopsy procedures and to assess the utility of a Model Minimum Kit for Autopsies proposed by Dr Joep Toebosh, Consultant, Commonwealth Human Rights Initiative. The Committee submitted its report on 7 February 2001. It contained the following concluding observations and recommendations:

- There is a need that certain minimum basic facilities be provided for the proper conduct of post-mortem examinations. These include an adequate building, continuous water supply, a neat table on which to conduct an autopsy and appropriate instruments at the Medico-Legal Centre. As an integral part of this scheme, encouragement by way of monetary incentives should be given to the forensic doctor and the staff assisting him so that all the material particulars relating to medico-legal aspects are correctly and truthfully recorded. The notes of the autopsy doctor, containing all those details, would become part of the post-mortem report.

At the Centre where the autopsy is conducted, the facility for chemical analysis should also be provided so that undue delay in submitting the post-mortem report could be avoided. In many a case, the need to call for a report from a Forensic Science Laboratory can be avoided, unless the doctor conducting the post-mortem opines that the report of the Forensic Science Laboratory is also necessary. The chemical analysis report, done immediately after the autopsy, would form part of the record relating to the post-mortem of the deceased.

- The need for a second post-mortem report is, at present, often being felt. The Committee recommended that the following rules be observed in respect of a second post-mortem:

- (a) This procedure, ordinarily, should not be undertaken unless either the Investigating Officer (IO) or the concerned authority or supervisory officer is of the view that the first post-mortem was wrongly done or done with a view to helping the accused to escape punishment.
 - (b) The second post-mortem may also be ordered by the Sub-Divisional Magistrate/Additional District Magistrate of the area concerned, after looking into all the facts.
 - (c) The second post-mortem should be conducted by a 'Board' of two Forensic Medicine Specialists at a teaching institution where post-mortems are being conducted.
 - (d) The post-mortem report of the first doctor should be made available to the Board before conducting the second post-mortem.
 - (e) The doctor who conducts the first post-mortem should be informed about the same and be allowed to be present at the second post-mortem.
- There is a need to strengthen the existing Forensic Science Laboratories by providing them with the requisite trained manpower for the examination of viscera, and by ensuring the availability of modern infra-structural facilities and equipment.
 - With regard to the ordering of sets of the Minimum Autopsy Kit proposed for use by Dr Joep Toebosch, the Committee observed that since the minimum infra-structural facilities and instruments were available at the places where post-mortem examinations were conducted, there was no need to order sets of the Minimum Autopsy Kit.

E] Systemic Reforms: Police

1) Submission before the Supreme Court on Police Reforms

3.41 The Commission has been convinced, for a number of years, that the

improvement of the human rights situation in the country requires far-reaching systemic reforms of the police. Regrettably, a situation has developed in which those who should be the protectors of such rights are, too often, the predators. The vast number of complaints received by the Commission each year alleging the violation of human rights by police personnel provides melancholy testimony to this. Earlier Annual Reports of the Commission have therefore commented at length on this subject and the report for 1997-98 contained an annexure providing in full the detailed recommendations that the Commission made in a proceeding before the Supreme Court in the matter of Prakash Singh vs Union of India, which relates to the question of police reform.

3.42 In addition to the recommendations of the Commission, the Supreme Court has also received the views and recommendations of the Ribeiro Committee, which was set up on its directive. The views of the Padmanabiah Committee on Police Reforms, which was subsequently constituted by the Ministry of Home Affairs, are also now available.

3.43 In the course of the year under review, the Commission continued to follow the proceedings before the Supreme Court. The Commission remains of the view that reform of the police is of critical importance to the protection and promotion of human rights in the country. The present situation which has, too often, permitted extraneous influences to affect police work adversely, must not be allowed to continue if the country is to repose the faith that it should in its police. Reforms, therefore, along the lines of the submissions made by the Commission and by others before the Supreme Court, remain absolutely essential if the quality of policing is to be improved and human rights better protected. The Commission urges the Central and State Governments to show the necessary political will to reform the police along the lines of the recommendations that have been made. Failure to do so is diminishing faith in the impartiality and integrity of the police and corroding the national polity.

2) Establishment of Human Rights Cells in State Police Headquarters

3.44 Upon the suggestion of the Commission that the police in each State should establish an in-house mechanism to deal with the increasing number of complaints of human rights violations by members of the police force, each State Governments has

indicated that a cell has been constituted in the Office of the Director-General of Police to perform this task. Elaborate guidelines have been provided to the State Governments by the Commission on the manner in which these cells should function.

3.45 Experience gained of the working of these cells over the past year indicates that they have been serving a useful purpose, not least as the nodal points for the contacts that are required on the day-to-day basis between the Commission and the police of each State. The cells are seeking to ensure that reports sought by the Commission are provided within the time-frames specified for them and that investigations are more carefully undertaken. The cells are also serving the wider purpose of sensitising the police in each State to human rights considerations by organising workshops, developing training curricula and undertaking other activities designed to achieve this purpose.

3.46 The Commission would like to emphasise that the value of such cells will, in the long-term, depend on the quality and commitment of those who are appointed to head them and the support that they receive from the highest levels of the political and administrative leadership in each State. The Commission therefore recommends that special care be taken in respect of the appointments that are made in respect of those who are charged with the responsibility of heading these cells and that the fullest cooperation is extended to them.

3) Constitution of District Complaint Authority

3.47 In order to improve the interaction between the public and the police and to check the violation of human rights, the Commission had requested the Chief Justices of the High Courts and Chief Ministers/Administrators of all State and Union Territories to consider issuing directions to District Judges to constitute, in their respective jurisdictions, a 'District Complaint Authority', with the Principal District Judge as the Chairman and the District Collector/Deputy Commissioner and the Senior Superintendent of Police/Superintendent of Police as Members. It was hoped that the establishment of such bodies, which would examine grievances of the public, would inculcate a sense of responsibility in the conduct of public servants and strengthen faith in the rule of law.

3.48 In the course of the year under review, the High Courts of Himachal Pradesh, Madras, Rajasthan, Bombay, Guwahati, Allahabad, Karnataka, Orissa, Calcutta and

Gujarat responded positively to the proposal, while the High Court of Punjab and Haryana stated that the matter was under consideration. The Commission is pursuing the issue with the remaining High Courts that have not yet responded.

3.49 Positive responses have also been received from the State Governments/Union Territories of Arunachal Pradesh, Meghalaya, Orissa, Kerala, Gujarat and Lakshadweep, which have agreed to the establishment of the District Complaint Authority. The Governments of Assam, Bihar, Goa, Maharashtra, Mizoram, Nagaland, Punjab, Karnataka, Andaman and Nicobar Islands and Pondicherry have indicated that the proposal is still under their active consideration. The Governments of certain States/Union Territories, namely Andhra Pradesh, Haryana, Himachal Pradesh, Madhya Pradesh, Rajasthan, Sikkim, Tripura, West Bengal, Tamil Nadu, Uttar Pradesh and Delhi had sought clarifications, to which answers were provided. The States/Union Territories of Jammu and Kashmir, Manipur and Chandigarh were yet to respond and reminders have been sent to them.

4) Other Measures to Improve Police-Community Relationship

3.50 The Commission has, from time to time, been making other suggestions as well to improve the relationship between the police and the communities that they serve. The emphasis has been on the taking of measures that will improve the 'out-reach' of the police, thus enabling it to perform its duties better, to gain the confidence of the public and to protect their rights more effectively.

3.51 The Commission had, *inter alia*, proposed that a single toll free number, 1090, first used successfully in Kerala, be extended all over the country to convey crime intelligence and information to the police, that investigating agencies keep complainants and victims informed of the progress of investigations, and that meetings be regularly arranged between Station House Officers and the public. It was the view of the Commission that such two-way communication could build public confidence, provide solutions locally to problems that arise and, generally, create a safer environment that is conducive to the better promotion and protection of human rights.

3.52 In the course of the year under review, the Governments of Haryana, Delhi, Madhya Pradesh, Tamil Nadu and the Andaman and Nicobar Islands indicated that

measures had been taken along the lines proposed by the Commission. The other States and Union Territories are being encouraged to take similar action.

F] Systemic Reforms: Prisons

1) Mentally Ill Persons in Prisons

3.53 The Commission has, since September 1996, been urging the Governments of all States/Union Territories to respect the provisions of the Mental Health Act, 1987, which prohibits the lodging of the non-criminal persons, who are mentally ill, in prisons. These instructions were reiterated by the Chairperson of the Commission in letters addressed to the Chief Ministers/Administrators of all States/Union Territories on 7 February 2000. Further, the Custodial Justice Cell of the Commission has been engaged in an effort to gather precise information on the number and condition of mentally ill persons in jails all over India. The Commission has been shocked to find that, in clear violation of the provisions of the Mental Health Act, mentally ill patients were still being lodged in prisons in Assam, Jammu and Kashmir, Karnataka, Manipur, Orissa, Rajasthan, Sikkim, Tamil Nadu, West Bengal and Delhi. The situation was the worst in West Bengal, where 112 mentally ill persons, who were not criminals, were incarcerated in Alipore Special Jail. The Commission directed that they be transferred to an appropriate hospital for the mentally ill. Tamil Nadu and Manipur have complied with the directions of the Commission and transferred non-criminal persons, who were mentally ill, from prisons to appropriate hospitals.

2) Medical Examination of Prisoners on Admission to Jail

3.54 Alarmed by the large number of deaths in prisons attributed to tuberculosis and other contagious diseases, the Commission has considered it essential to remind State/Union Territory Governments that they have a mandatory obligation to ensure that every prisoner is medically examined on admission and that those suffering from any disease are provided proper treatment. The Commission has, further, introduced a system of obtaining reports from the Inspectors General of Prisons every six months with a view to ensuring that the Commission's instructions are being complied with.

3) Statistics on Prison Populations

3.55 Given the serious over-crowding in certain prisons in the country, the Custodial Justice Cell (CJC) of the Commission has started collecting statistics from all States/Union Territories regarding the prison population as of 30 June and 31 December of each year. The reports received from the States/Union Territories for the period ending 30 June 2000 were analysed and submitted to the Commission. Overcrowding was noticed in prisons in the States of Andhra Pradesh, Bihar, Goa, Gujarat, Haryana, Karnataka, Madhya Pradesh, Orissa, Punjab, Sikkim, Uttar Pradesh, Delhi and Andaman and Nicobar Islands. The worst situation was in Delhi, where over-crowding was 221 per cent higher than the number for which the facilities were built. The Secretary General of the Commission has written to the Chief Secretaries of these States on 5 February 2001 requesting them to take remedial measures to reduce congestion in the prisons of their respective States. Replies received thus far indicate that certain States have begun to take steps to reduce over-crowding in prisons, *inter alia*, by expediting trials or by ensuring that those undertrials who are eligible for the grant of bail can be released in this manner.

4) NHRC Nominees for Prison Visitors in Maharashtra

3.56 The Commission had in October 1997 appointed 33 nominees as Prison Visitors in Maharashtra on a request from Government of Maharashtra based on the direction of Mumbai High Court in writ petition No. 3899/96, Mukta Ram-Sita Ram Shinde vs. the State of Maharashtra. The Commission has observed, however, that only 12 of them have actually been visiting prisons and sending reports to the Home Department, Maharashtra and the Commission. The visits of the nominees to the prisons have proved useful in improving conditions in the jails that they have inspected. The Commission therefore urges those nominees who have not been visiting prisons regularly to do so, for only then will the purpose of their nomination be fulfilled.

5) Seminar on Prison Reforms

3.57 The Custodial Justice Cell of the Commission, in collaboration with the National Institute of Criminology and Forensic Sciences (NICFS), New Delhi organised a one-day Seminar on Prison Reforms on 14 September 2000 at Vigyan Bhawan, New Delhi.

The seminar was attended by eight Directors General of Prisons/Inspectors General of Prisons and seven District and Sessions Judges from the States of Bihar, Delhi, Haryana, Himachal Pradesh, Maharashtra, Punjab, Rajasthan, Uttar Pradesh and West Bengal. The seminar was inaugurated by the Chairperson, NHRC, and the resource persons included Dr Kiran Bedi, Joint Commissioner of Police, Delhi, Dr Hira Singh, former Director, National Institute of Social Defence (NISD) and Dr Mrs Rani Shankar Das, Secretary, Penal Reforms and Justice Association (PRAJA). The issues discussed in the seminar included the problems of undertrials, UN Guidelines and Standard Minimum Rules for the Treatment of Prisoners, recommendations of the All India Committee on Jail Reforms and a Draft Prison Bill, directives/guidelines of the Supreme Court regarding conditions in jails, and the initiatives of the NHRC to improve jail conditions.

6) Orientation Course for Prisons Officials of Gujarat

3.58 An orientation course for Jail Superintendents of Gujarat was held at Ahmedabad on 16-17 October 2000, which was attended by the Superintendents of all the 22 jails in Gujarat. In addition to deliberating on the problems of prisoners, the working and living conditions of the prison staff were also discussed. The Minister for Jails, Gujarat took a keen interest in the programme and engaged in a very frank and useful interaction with the participants. He assured them that his Government would initiate action promptly on the problems highlighted in the interaction.

7) New Prison Bill

3.59 The Commission is pursuing its recommendation, made to the various States/Union Territories, to draft a new Prison Bill and Jail Manual and to bring these in line with contemporary thinking on the subject. The Commission has noted with satisfaction that the Government of Jammu and Kashmir has revised its jail manual, incorporating most of the provisions of the Draft Indian Prison Bill 1996, which the Commission had prepared and circulated to States/Union Territories for consideration. The Commission has, in addition, received a Draft Bill prepared by the Government of Rajasthan for its comments. It urges the remaining States/Union Territories to take appropriate action in this regard and to inform the Commission of the steps they are taking.

8) Premature Release of Life Term Prisoners

3.60 Given the inconsistent and varying practices being followed in the country at present, the Commission considered the need for uniformity of standards and procedures in connection with the premature release of convicts undergoing life imprisonment in prisons around the country. The Commission noted that although the 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 (Cr. PC), the procedures and practices followed by the State Governments to exercise this power were not uniform. The Commission, therefore, considered the matter and evolved Guidelines, on which the views of the States/Union Territories were sought. The details of the Guidelines were set out in the last Annual Report of the Commission. During the year under review, the Commission reiterated its recommendation that these Guidelines be observed by the States and that, wherever existing rules are inconsistent with any of the Guidelines, the State Governments should make appropriate modifications in the rules so that the Guidelines can be implemented uniformly throughout the country.

3.61 The Commission has received responses from 26 States and Union Territories, the majority of which have accepted the Guidelines. The Commission urges the States of Andhra Pradesh, Bihar, Himachal Pradesh, Maharashtra and Nagaland, and the Union Territory of Andaman and Nicobar Islands, which have not yet responded, to do so at the earliest.

G] Human Rights and Administration of Criminal Justice System

3.62 In its preceding reports, the Commission has made a number of precise proposals aimed at improving certain aspects of the administration of Criminal Justice in India.

3.63 Upon the Commission's recommendation, the Central Government wrote to the State Governments stressing the need for financial autonomy of the courts. The Central Government had also asked the National Judicial Academy to develop programmes for the speedy clearance of criminal cases in courts and to interact with

the National Informatics Centre (NIC) so that there could be a more extensive use of computerisation in the subordinate judiciary. As regards certain changes in the substantive law that had been proposed by the Commission, the Government had indicated in its Action Taken Report (ATR) for the year 1998-99 that the Law Commission's recommendations in respect of amendments to the Cr.PC were under consideration of the Government.

3.64 In the absence of an Action Taken Report covering, the Annual Report of the Commission for the period 1999-2000, the Commission is not aware of the further progress, if any, made by the Government to implement the recommendations of the Commission on this overall subject. The Commission must therefore reiterate its earlier view that the Central Government completes the processing of the recommendations of the Law Commission speedily and take steps to amend the Cr.PC accordingly. The Commission also considers it necessary to restate some of its major recommendations concerning the changes that are required in the substantive laws since these have not as yet been effectively addressed by the authorities. These recommendations are:

- There be a process of progressive and massive decriminalisation of offenses now recognised and made culpable as penal offenses. They should be treated as merely actionable wrongs for which compensation and not punitive action is the appropriate remedy.
- The class of compoundable offenses under the Indian Penal Code (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 the *terminus a quo*.

The judicial remands should be self-limiting and should indicate the date on which the under-trial prisoner would automatically be entitled to go to bail in terms of the conditions prescribed by the Supreme Court.

- There should be a comprehensive training package for programmes of training of all judicial personnel and all Court administrators.
- In the proportion of population-judge ratio, India is today amongst lowest in the world; this needs to be rectified.

3.65 Given the importance of these matters to the better protection of human rights in the country, the Commission once again urges the Government to pursue the speedy implementation of these recommendations of the Commission.

H] Visit to Jails

3.66 One of the functions of the Commission, spelt out in section 12(c) of the Protection of Human Rights Act 1993, is '*to visit jails and other custodial institutions and study the living conditions of the inmates and make suitable recommendations*'. The Commission has continued to fulfil this function, its Chairperson, Members and Senior Officers visiting such institutions as required.

1) Visit to Tihar Central Jail, Delhi

3.67 The Chairperson, Shri Justice J. S. Verma alongwith Shri Sudarshan Agarwal, Member and Shri Chaman Lal, Special Rapporteur of the Commission paid a three-hour visit to Tihar Central Jail, New Delhi on 29 August, 2000. He obtained a first hand impression of the prevailing conditions, interacted with the prisoners and heard their complaints. He also visited the NGO run drug de-addiction centre, the computer cell, the jail hospital and other parts of the jail premises.

3.68 Based on the report of the visit, the Commission forwarded the following observations/recommendations to the jail authorities as well as to the Government of the National Capital Territory of Delhi (NCTD).

Over-crowding It was observed that undertrials constitute 84.4 per cent of the total population of the jail. Construction was in progress of three additional prisons in the Tihar complex and a District Jail at Rohini, in North Delhi. The Delhi Administration has proposed the construction of nine additional prisons and an Open Jail as measures necessary to finding a permanent solution to the problem of overcrowding. The Commission recommended to the Government of the NCT of Delhi that staff sanctioned for the new jails under construction be recruited and properly trained well before these jails are commissioned so as to avoid any delay in shifting the inmates to the new premises.

Organisational Problems A cadre review of the staff of the Central Jail, Tihar, should be undertaken by the Government of NCT of Delhi in order to provide adequate promotional avenues to the permanent staff posted therein, to prevent stagnation and to keep their morale high.

Vocational Training The Commission noted with satisfaction the scope and diversity of the vocational training being imparted to the inmates and the professional manner in which the jail industries are being run. However, the Commission was of the view that the actual number of convicts (14 per cent) associated with these activities was very low. The hope was expressed that the commitment made by the ADG (Prisons) to the effect that the number of persons engaged in these trades would be raised from 250 to 700 within the current year would be fulfilled. The Commission also recommended the linking of the Jail Factory Wages to the Minimum Wage Rates in force in the NCT of Delhi.

Payment of Wages for All Types of Labour It was observed that the convicts employed on prison duties such as gardening, cleaning of toilets, maintenance of campus and office work were not being paid any wages, although wages for physical work were admissible for cooking and factory jobs. It was recommended that inmates assisting the jail administration in the other work should also be paid nominal wages in accordance with the current rates.

Parole The report observed that the powers of granting parole to the convicts in emergencies resulting from death or serious illness in the family are highly centralised. The Commission recommended that these powers be delegated to the DIG/IG (Prison) and even the Superintendent of the Jail in cases of emergency, as is the practice in most of the other jails.

Management of Drug Addicts Under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, treatment is given only to those who are convicted. However, the number of addicts who are undertrials is greater than those who are convicts. The facilities for treatment developed under the provisions of the Act should be extended for treatment to all who need it. Suitable NGOs should be identified and requested to adopt affected prisoners while they are still in the jail, so that the treatment of the prisoners can continue even after they are released and they can be properly rehabilitated. The Government of the NCT has been requested to draw up an appropriate programme in this regard.

Board of Visitors The Board of Visitors constituted under Rule 12 of the Delhi Prison (Visitors) Rules, 1988, is an important institutional arrangement involving civil society in keeping a watch on the jail administration. It comprises both official and non-official members. No official visitor has been appointed after 30 September 1996, nor has the Board of Visitors visited the jail. The Commission recommended immediate constitution of the Board of Visitors and enforcement of this statutory provision.

Undertrials A number of undertrials were languishing in the jail for unduly long periods, although they had been granted bail, as they were unable to furnish the surety as prescribed by the Court. It was recommended by the Commission that all cases of undertrials should be examined individually by the jail administration in the light of the directions issued by the Supreme Court in the 'Common Cause' case in order to identify those who are entitled to be released on personal bond and the concerned courts should be moved accordingly. It was added that the observations recorded on the court lock-ups may be forwarded to the Registrar of the Delhi High Court with the request that they may be brought to the notice of the Chief Justice for appropriate action.

Women Prisoners It was decided that the State Commission for Women may be requested to visit the jail and hear the grievances of women inmates individually and take appropriate action to redress their grievances.

Repair and Maintenance of Buildings Regarding the suggestion for allotment of 10 per cent of the total budget to the Prison Administration for undertaking minor repairs, it was decided that the jail administration may directly take up the matter with the Government of NCT of Delhi for its consideration.

Over-detention of Prisoners The Commission was distressed to learn of the over-detention of prisoners allegedly because of deliberate discrepancies in the release warrants issued by the Courts. The Commission was informed that the matter had been taken up formally by the jail administration with the Sessions Judge. The Commission was of the view that the unscrupulous personnel of the jail administration and of the Courts who were involved in such malpractices should be identified and dealt with suitably. The Commission desired that the matter be brought to the notice of the Registrar of the Delhi High Court with the request that it be brought before the Chief Justice.

2) Visits to Jails and Police Lock-ups in Other States

3.69 Shri A. B. Tripathy, Special Representative of the Commission for Orissa, visited the following Jails and Police Lock-ups in that State:

- Circle Jail, Berhampur, on 18/19 June, 2000;
- District Jail, Dhenkanal, on 27 July, 2000;
- Circle Jail, Sambalpur, on 23 August, 2000;
- Sub-Jail, Jagatsinghpur, on 26 September, 2000;
- Police lock-ups in Bhadrak town; and
- Kendrapara Jail, on 17 November 2000.

3.70 The observations of Shri A. B. Tripathy in respect of conditions in the Circle Jails of Berhampur and Sambalpur were forwarded to the Government of Orissa for remedial action. Regrettably, the compliance reports received from the office of the Inspector General Prisons, Orissa indicated that very little action had, in fact, been taken on the observations made by the Special Representative. The reports stated that various proposals were pending with the State Government which had, ultimately, to take the decisions required to implement the recommendations. No reply was, however, received from the Home Department of Orissa during the period under review. In these circumstances, the Commission is constrained to observe that there is need for the State Government to react with greater sensitivity and promptness to the observations made by the Special Representative.

3.71 Visits to jails were also made by Dr S. B. Medhi, Special Representative of the Commission in Assam. He inspected the following:

- Jorhat Jail and Jorhat Open Air Jail on 14 May 2000; and
- Nalbari Jail on 25 May 2000.

3.72 The observations made by the Special Representative were considered by the Commission and forwarded to the State Government of Assam for follow-up.

I] Conditions of Remand Homes

1) Visit to Juvenile Homes

3.73 During the period under review, Shri S. V. M. Tripathi, Special Representative of the Commission in Uttar Pradesh visited the following Observation Homes/Juvenile Homes in that State:

- Rajkiya Shishu Sadan, Rajkiya Balika Niketan, Zila Sharanalaya and Praveshalaya and Rajkiya Samprekshan Griha in Allahabad on 10 July 2000;
- Government Observation Home, Banda, on 22 August 2000;
- Rajkiya Samprekshan Griha, Haridwar; Rajkiya Samprekshan Griha and Rajkiya Uddhar Griha at Saharanpur on 25-26 August 2000;
- Government Observation Home, Sitapur, on 13 October 2000; and
- Rajkiya Samprekshan Griha, Kanpur Nagar; Rajkiya Samprekshan Griha, Kanpur Dehat; Rajkiya Kishore Griha, Rajkiya Bal Sadan and Rajkiya Mahila Ashram at Kanpur, on 12 December 2000.

3.74 The observations and recommendations of the Special Representative were considered by the Commission and the Government of Uttar Pradesh was requested to initiate follow-up action and improve the living conditions, health care, education and vocational training and rehabilitatory measures for the inmates in line with the reports of the Special Rapporteur.

3.75 Shri S. V. M. Tripathi also visited the Observation Home in Dehradun on 27

May 2000 and the Juvenile Home in Moradabad in June 2000. In his reports, the Special Representative commented on infrastructural inadequacies, lack of arrangements for education, inadequate health care and the need to sensitise the staff in respect of the human rights and welfare of the inmates. These reports, too, after consideration by the Commission, were sent to Uttar Pradesh Government for action along the lines recommended.

2) Visit to Home for Destitute Women — Vrindavan

3.76 In order to study the condition of destitute women, particularly widows, living in Vrindavan and to consider the possibility of setting-up a programme to ameliorate their circumstances, Smt. Justice Sujata V. Manohar and Shri Sudarshan Agarwal, Members of the Commission, made a visit to Vrindavan on 5 and 6 December 2000. On 2 February 2001, the Commission considered their report along with the recommendations that they had made. As directed by the Commission, a copy of the report was sent to the concerned authorities of the State Government. Action Taken Reports received from the Director, Social Welfare as well as the District Magistrate, Mathura indicate that:

- Proper accommodation has been provided to more than 400 widows.
- LPG connections will be provided to the widows who are living in various buildings and group cooking will be tried, on an experimental basis.
- Government will construct additional toilets/bathrooms to ensure the availability of better sanitation facilities for the widows.
- The pension for some 1,500 widows will be increased from Rs.125 per month to Rs.250 per month and the scheme will be extended to another 1,500 widows. The payment of pension will be made by cheque.
- Ration cards will be issued to a 1,000 widows.
- A Special Fund will be established for the widows, to provide *inter alia* for the proper performance of cremation and related rites.
- Necessary steps have been taken to ensure the provision of proper medical facilities to the widows.

3.77 The Commission is monitoring the progress of the action taken by the State Government on its recommendations.

J] Improvement of Forensic Science Laboratories

3.78 To improve the forensic science services in the country, which are at present greatly in need of attention, the Commission had constituted a Core Group of Experts to study all aspects of the subject and to report to it. The Group examined the State forensic science laboratories and services available in the country and submitted its report, which was released to the public personally by Shri L. K. Advani, Union Minister for Home Affairs, on 11 January 1998. Copies of the report were thereafter sent to the Ministry of Home Affairs and the Chief Secretaries of all States/Union Territories. As there was no reaction from the Ministry of Home Affairs to the report, the Commission considered it essential to remind that Ministry, on 9 August 2000, that a response was due. An interim reply was subsequently received from the Ministry of Home Affairs on 5 September 2000, stating that the matter was under consideration. The Commission wrote to the Ministry again, on 10 October 2000, asking for more specific information on the action, if any, that was being taken.

3.79 The Commission is of the view that the report prepared by the Core Group of experts contained many valuable recommendations. The forensic science services in the country are woefully inadequate. The Commission therefore urges the Ministry of Home Affairs and the various State/UT Governments to act promptly on the report, which has now been with them for over three years. Failure to improve the forensic science services is gravely affecting the administration of criminal justice in the country and leading to serious violations of human rights.

K] Large Volume Parenterals: Towards Zero Defect

3.80 On receipt of a complaint regarding contaminated life-saving I.V. fluids, the Commission took up the varied implications of this issue which related not only to the health care of the citizens of the country but also to their right to life.

3.81 The Commission requested two eminent experts to examine all aspects of the matter and, upon receiving a comprehensive report from them, made a series of recommendations to all the concerned authorities seeking implementation of the report. As there was delay in the implementation of certain of the recommendations, the Commission considered it essential to issue notices once again on the basis of a news item that appeared in December 2000 under the title 'Hospital Sleeps on NHRC Suggestions'. By the close of the period under report, however, substantial progress had been made on the recommendations of the Commission by the Central Drug Controller General of India; the Commissioner, Food and Drug Control Administration, Gujarat; M/s Core Health Care Ltd.; the Ram Manohar Lohia Hospital, New Delhi and the Medical Stores Depot. The Commission is heartened by this progress and urges that vigilance be maintained by all concerned to ensure that the Commission's recommendations are faithfully and consistently implemented.

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

CHAPTER 4

A] Prevention of Terrorism Bill, 2000

4.1 In the course of the year under review, the Commission considered it essential to examine the Draft Prevention of Terrorism Bill, 2000 which the Law Commission of India had submitted, together with 173rd Report, to the Government of India. The Commission did so in the exercise of its functions under Section 12 of the Protection of Human Rights Act, 1993, of which clauses (d), (f) and (j) were particularly relevant. These functions require the Commission, *inter alia*, 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, study treaties and other international instruments on human rights and make recommendations for their effective implementation, and such other functions as it may consider essential for the promotion of human rights.

4.2 In pronouncing its view on the Draft Bill, the Commission observed that it was '*an essential function of the Commission to formulate its opinion on the desirability and need for enacting such a stringent law and to give public expression to it for consideration by the Parliament and all those involved in the making of laws so that due weight is given to the Commission's opinion in the performance of this exercise.*'

4.3 Given the importance that the Commission attaches to the views that it formulated in respect of the Draft Bill, the full text of the Opinion that it issued on 14 July 2000 may be seen at Annexure 2 of this report.

4.4 In drafting its Opinion, the Commission considered the following issues:

- Is there any need for the enactment of a new law?
- If yes, then the kind of new law which needs to be enacted.

4.5 The Opinion then stated, *'it is the considered unanimous opinion of the Commission that there is no need to enact the new law (Prevention of Terrorism Bill, 2000) and, therefore, the need did not arise to answer the other question.'*

4.6 In its Opinion, the Commission noted that the Draft Bill set out the kind of actions, which are proposed to be dealt with under the Bill. These actions, the Commission pointed out, are substantially taken care of under the existing laws such as the Indian Penal Code, 1860; Arms Act, 1959; Explosives Act, 1884; Explosive Substances Act, 1908; Armed Forces (Special Powers) Act, 1958; Unlawful Activities (Prevention) Act, 1967; and Suppression of Unlawful Activities against the Safety of Civil Aviation Act, 1982. In addition, there are at present at least four Preventive Detention Acts enacted by the Union of India: the National Security Act, 1980; Prevention of Black Marketeering and Maintenance of Supplies Act, 1980; Prevention of Narcotic Drugs and Psychotropic Substances Act, 1988; and the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Further, there are a number of Preventive Detention Acts enacted by various States. The Commission was of the view that between these legal measures, all the 'terrorist acts' contemplated under the new Bill appeared to be covered. If necessary, the Indian Penal Code or any provisions of any other Act could be amended to cover any specific action, which at present might not be covered. The punishments provided under these Acts could also be increased where necessary. But there was no need to have a separate new Bill for the purpose of creating new offenses.

4.7 The Commission then considered the avowed justification for the new law; namely:

- that it was difficult to secure convictions under the criminal justice system;
- and that trials were delayed and hence there was need for special courts.

4.8 The Commission observed, in this connection, that the main problem facing the country today related to proper investigation of crimes, efficient prosecution of criminal trials and delays in adjudication and punishment in the Courts. However, these problems could not be solved by enacting laws that do away with the legal safeguards, which are designed to prevent innocent persons from being prosecuted

and punished. Nor can the problem be solved by providing for a different and more drastic procedure for prosecution of certain crimes, for making confessions before the police admissible in evidence contrary to the provisions to the Evidence Act, for raising the presumption of guilt as set out in the Bill, and creating special Courts. These provisions would seriously affect human rights guaranteed under the Constitution and violate basic principles of criminal jurisprudence as internationally understood.

4.9 To strengthen the criminal justice system, the Commission suggested three stages at which remedial measures needed to be taken urgently by the Government:

- **The stage of investigation:** this should be carried out speedily and efficiently. The investigation machinery must be independent, well trained and free from political or any other kind of interference.
- **The stage of prosecution:** there must be efficient prosecution on behalf of the State of all crimes related to terrorism. It is essential that experienced Public Prosecutors be appointed in sufficient numbers to prosecute crimes involving terrorism.
- **The stage of trial:** there was great need to end the delays in criminal courts, which were undermining the criminal justice system. One of the main causes of delay is shortage of courts. It is necessary to create many more Sessions Courts with proper infrastructure and to appoint many more competent Sessions Judges. Obviously, in States where terrorism was rampant, additional courts would have to be set up as early as possible. There could also be no doubt that cases dealing with acts of terrorism must be given preference for early disposal (preferably within six months).

4.10 The Commission felt that if there were a large number of acquittals today, it was not for lack of any laws but for lack of proper utilisation of these laws, lack of proper investigation and prosecution, and lack of adequate number of courts to try the offenses. Unless these root problems were redressed, adopting draconian laws would only lead to their grave misuse, as had been the case with the previous TADA law.

4.11 The Commission also pointed out that the Bill would hinder, rather than enhance, the effective implementation of treaties and other international instruments on human rights and would not be in consonance with many provisions of the International Covenant on Civil and Political Rights (ICCPR) to which India is a State

Party. The Commission observed, however, that one area where a suitable law needs to be enacted related to the financing of terrorism. It suggested that Government frame appropriate legislation in this connection in the light of the International Convention on this subject.

4.12 Concluding, the Commission stated that the proposed Bill, if enacted, would have the ill effect of providing unintentionally a strong weapon capable of gross misuse and violation of human rights, which must be avoided particularly in view of the experience of the misuse in the recent past of TADA and earlier of MISA of the emergency days. The Commission thus recommended that a new law based on the Draft Prevention of Terrorism Bill, 2000 be not enacted. It asserted that such a course is consistent with our country's determination to combat and triumph over terrorism in a manner also consistent with the promotion and protection of human rights.

B] Child Marriage Restraint Act, 1929

4.13 The widespread persistence of child marriage in certain parts of the country has been of great concern to the Commission over a number of years. The efforts of the Commission to deal with the problem have been dealt with in detail in earlier Annual Reports.

4.14 In order to curb the practice of child marriage in the country, the Commission had taken the view that the Child Marriage Restraint Act, 1929 should be recast. In December 1999, the Commission also considered the question of whether it would be preferable to provide for compulsory registration of marriages in the Hindu Marriage Act, 1955 through appropriate amendments, instead of making such a provision in the Child Marriage Restraint Act, 1929. In order to proceed further on the matter, the overall issue was discussed by Dr Justice K. Ramaswamy, Member of the Commission with the Secretary, Legislative Department on 26 September 2000. The Secretary, Legislative Department felt that it may first be desirable for the Commission to gather information as to how many States have made rules under Section 8 of the Hindu Marriage Act.

4.15 The Chief Secretaries of all the States were accordingly requested to send the requisite information. Their reports indicated that the States of Tamil Nadu, Kerala,

Madhya Pradesh, Orissa, West Bengal, Tripura, Punjab, Rajasthan and Maharashtra and the Union Territory of Pondicherry had framed Rules under Section 8 of the Hindu Marriage Act, 1955. However, except for Maharashtra, the registration of marriages was not compulsory anywhere. The States of Bihar and Himachal Pradesh were in the process of framing the Rules. The States of Jammu and Kashmir, Goa, Meghalaya, Mizoram, Nagaland and the Union Territories of Andaman and Nicobar Islands and Lakshwdeep so far had not framed any such Rules. Information from the remaining States was awaited.

4.16 After further considering this entire issue, the Commission requested Justice (Smt.) Sujata V. Manohar, Member of the Commission to study it once again and to offer her comments. She was of the view that it was necessary, first of all, to provide for registration of all marriages — whether religious or civil. Further, just as there were registers of births and deaths, there should be registers of marriages where any marriage in any form, performed within the area, must be registered. This would provide an authentic record of the marriage and put an end to all disputes regarding the performance of the marriage. Justice (Smt.) Sujata V. Manohar also made certain specific suggestions for the amendment of the Child Marriage Restraint Act. A copy of detailed remarks on the subject may be seen at Annexure 3. On 12 December 2000, the Commission considered the remarks prepared by Justice (Smt.) Sujata V. Manohar on the Child Marriage Restraint Act, 1929 and decided to send these, as the remarks of the Commission, to the Department of Women and Child Development for placing them before the group of Ministers at the time when they considered the draft on Women's Empowerment Policy.

C] Protection of Human Rights Act, 1993

4.17 It is the view of the Commission that the Protection of Human Rights Act, 1993 is in serious and urgent need of amendment if the purpose of the Act, 'the better protection' of human rights in the country, is to be achieved. It was to this end that the Commission set-up a high-level Advisory Committee under the chairmanship of Justice A. M. Ahmadi, former Chief Justice of India, to assess the need for structural changes and amendments to the Act. The Committee submitted its report to the Commission on 18 October 1999 and the Commission subsequently, in February 2000 considered those recommendations most carefully. Following a clause-by-clause analysis, the Commission formulated its own views on the amendments that were

required to be made to the Act and submitted these to the Government in March 2000 requesting that they be acted upon without delay. The amendments proposed by the Commission and the reasons for its proposals were annexed in full to the Annual Report for 1999-2000.

4.18 It is a matter of deep regret to the Commission that, despite repeated contacts with the Government, both at the highest political level and at the working level, the period under review concluded without the needed amendments being made to the Act. It is impossible for the Commission to refrain from expressing its profound disappointment at this state of affairs, as it seriously affects the capacity of the Commission to fulfil the high purpose for which it was established, a purpose that the Commission is determined to serve, in the interest of the country and all of its people, to the utmost of its capacity. The Commission, therefore, takes this opportunity to urge the Central Government, once again, to act without further delay on the amendments that it has proposed to the Act.

D] Implementation of Treaties and Other International Instruments

1) Protocols to the Convention on the Rights of the Child

4.19 During the period under review, the Commission considered Optional Protocols 1 and 2 to the Convention on the Rights of the Child, dealing respectively with the sale of children, child prostitution and child pornography, and the involvement of children in armed conflicts. In pursuance of its statutory responsibilities, the Commission recommended that these Protocols be adopted by the Government of India and asked the Department of Women and Child Development as well as the Ministry of External Affairs to take the appropriate action required in this regard. The Commission is happy to note that, pursuant to its recommendations, the Department of Women and Child Development has initiated action on this matter.

2) Protocols to the Geneva Conventions

4.20 The Commission received a letter dated 6 September 2000 from Mr Michel

Ducraux, Regional Delegate, International Committee of the Red Cross requesting the Commission to facilitate, if possible, the accession of India to the 1977 Protocols to the Geneva Conventions of 1949. The Commission considered this matter in a meeting held on 19 September 2000 and decided, in the first instance, to seek the views of the Ministry of External Affairs on this matter. As of the end of the reporting period, there had been no response from that Ministry, despite reminders. The Commission thus urges the Ministry of External Affairs to examine this issue expeditiously and to offer its comments to the Commission at an early date.

3) Convention Against Torture

4.21 The Commission continued to press the Government of India to ratify the Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment or Treatment, which was signed by India on 14 October 1997 on the recommendation of the Commission. It has been a matter of great disappointment to the Commission that the process of ratification has been inordinately delayed and that this delay has sent an ambiguous message regarding the commitment of the Government to respect the provisions of this Convention, despite the fact that Article 21 of the Constitution already covers this area effectively. As observed by the Commission earlier, the Right against Torture has been judicially recognised by the Apex Court as a Fundamental Right, making that right and the corresponding obligation of the State and its agencies a fundamental entrenched right.

4.22 The Commission has been informed that the Principal Secretary to the Prime Minister held an inter-ministerial meeting on this question in July 2000 and gave directions to expedite work relating to the amendment of existing legislation so as to facilitate the process of ratification. Reportedly, the matter is engaging the attention of the Ministry of Home Affairs and the Ministry of Law and Justice. Given the frequent assurances that it has received from the highest levels of Government that the delay has occurred only for procedural reasons, and not for any reasons of substance, the Commission once again urges the Government to fulfil its promise of ratification and to do so without further loss of time.

4) Convention and Protocol on the Status of Refugees

4.23 The efforts of the Commission to encourage the Government of India to

consider afresh its position in respect of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol on this subject have been recounted in earlier reports. In the course of the year, the Commission also received a number of communications from non-governmental organisations stating that there was evident need for India to adopt national legislation, consistent with the Convention and Protocol, to protect refugees in the country in a better manner. Numerous complaints were received alleging inconsistency and discrimination in the handling of different groups of refugees, it is also being asserted that, on occasion, acts of '*refoulement*' or the forced repatriation of refugees against their will, were occurring. The Commission considered such communications carefully and, on each occasion, sought the response of the Ministries of External Affairs and of Home Affairs. Both denied that '*refoulement*' had occurred. The Ministry of External Affairs added that a legal framework to deal with refugee issues already existed in the relevant provisions of the Indian Constitution, the obligations undertaken by India under various international human rights instruments, particularly the International Convention on Civil and Political Rights (ICCPR) and a series of judicial pronouncements. In addition, there had been refugee-specific legislation enacted whenever considered necessary, such as the legislation dealing with refugees from Pakistan in the period 1947-50 and the Foreigners from Uganda Order, 1972.

4.24 The Commission considered this response on 3 November 2000. It was of the view that the reasons given by the Ministry of External Affairs to deny the need for comprehensive national legislation to deal with refugees were not convincing. The Commission is firmly of the opinion that a comprehensive national law ought to be devised, keeping in view the decisions of the Supreme Court as well as international instruments on the subject. The Secretary General of the Commission has been asked to take up this matter with the Foreign Secretary. The Commission proposes to pursue this matter and to hold in-depth discussions with the Foreign Secretary and others concerned in this regard.

E] National Plan of Action for the Promotion and Protection of Human Rights

4.25 The Office of the UN High Commissioner for Human Rights organised an Inter-Sessional Regional Workshop on National Plans of Action for the Promotion and

Protection of Human Rights in Bangkok, Thailand from 5-7 July 1999. The broad purpose was to examine how best Governments could fulfil the commitment they have repeatedly made, ever since the 1993 World Conference on Human Rights, to devise and implement such National Plans. Following the Workshop, the Ministry of External Affairs forwarded a copy of the conclusions of the Workshop to the Commission along with an annexure that contained possible elements to facilitate the development of National Action Plans for the promotion and protection of Human Rights. The annexure suggested, *inter alia*, that the following steps be taken:

- Establishing a national co-ordinating committee for the development of the national plan of action for the promotion and protection of human rights.
- Conducting a baseline study on the promotion and protection of human rights in the country.
- Identifying possible substantive components of a national human rights action plan.
- Developing priorities and strategies.
- Drafting the national plan of action and associated activities.
- Implementing the national plan of action.
- Monitoring and evaluation of the national plan of action.
- Review and revision of the national plan of action.

4.26 The Commission noted that the conclusions of the Regional Workshop in Bangkok were most useful and worth pursuing. It therefore asked what steps the Government of India had taken or would be taking to implement the recommendations contained in those conclusions. In response to a communication from the Commission, a senior official in the Ministry of Home Affairs replied on 27 June 2000 stating that, *'this Ministry is of the view that the conclusions of the Inter-Sessional Workshop and the annexure containing possible elements to facilitate the development of a National Action Plan for the promotion and protection of human rights are very useful and important. It is felt that steps like conducting a baseline study on the promotion and protection of human rights in the country, developing priorities*

and strategies are essential to formulate a plan. On the issue as to who should do the base line study, it is felt that NHRC is the ideal agency for this purpose more so in view of its mandate under Section 12(d), (g), (h), (i) and (j) of the Protection of Human Rights Act, 1993'.

4.27 This reply from the Ministry of Home Affairs was considered by the Commission and it took the view that the responsibility for the preparation of the National Plan of Action rested squarely on the Government of each State that had attended the Workshop. However, since the Government of India had requested the Commission to take the lead, the Commission felt that this opportunity could be utilised to guide the Government in the preparation of the Plan of Action.

4.28 The Ministry of Home Affairs was subsequently requested to constitute a Committee comprising senior representatives of various ministries dealing with human rights issues, namely, the Ministries of Home Affairs, External Affairs, Human Resource Development, Social Justice and Empowerment, Health and Family Welfare, Labour, Law, Justice and Company Affairs and Defence. It was suggested that the Joint Secretary of the Commission could be the Convenor of the Committee and that the Committee could meet at regular intervals and guide the Ministry of Home Affairs in evolving a National Action Plan. As a start, the Committee would seek information from the respective Ministries/Departments on what they proposed to do with regard to the promotion and protection of human rights. The Commission also forwarded a National Action Plan prepared by the Government of Australia to the Ministry of Home Affairs, so as to enable it to see how another Government had approached this subject. As of the conclusion of the present reporting period, a reply from the Ministry of Home Affairs was awaited. The Commission urges the Ministry to complete its examination of this matter expeditiously so that work can commence on drafting a National Plan of Action.

F] Freedom of Information Bill, 2000

4.29 The right to information is of great importance to good governance, the empowerment of people and, indeed, to the proper realisation of a range of other rights. Because of this, the Commission considered it essential to take up the provisions of the Freedom of Information Bill, 2000 for close scrutiny. In doing so, the

Commission took particular note of the views expressed by Smt. Aruna Roy of Mazdoor Kisan Shakti Sanghatan and by Dr Rajeev Dhawan, Director, Public Interest Legal Support and Rehabilitation Centre. In addition, the Commonwealth Human Rights Initiative made a presentation before the Commission giving its views on the Bill. Having studied the matter comprehensively, the Commission proposes to transmit its recommendations to the Union Government.

G] Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

4.30 Taking cognisance of media reports that the Government was planning to amend the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; the Commission sought and obtained from the Ministry of Social Justice and Empowerment a copy of the Draft Bill. After a clause-by-clause examination of the Bill and after consulting experts in the field, the Commission forwarded its suggestions, by way of amendments to the existing legislation, to the Government for its views. These suggestions covered, *inter alia*, the definition of disability and a disability NGO, the composition of Central and State Coordination Committees, reservation in jobs for persons with mental retardation, better access to facilities for persons with sensory disability and provisions relating to non-discrimination, care and protection. The following were some of the suggestions and observations:

- Include persons afflicted with Hemophilia and Thalassemia in the definition of disability; relax attendance rules in educational institutions/courts; provide specialised long-term medical care for such persons. Include a chapter on medical care expenses and ensure, in particular, that this benefit reaches persons afflicted with these medical disabilities.
- Express mention be made of Filariasis in the definition of locomotor disability so that persons affected by this disease could avail of the benefits.
- Autism and Multiple Disability should also be expressly named in the Persons with Disabilities Act.

- The inclusion of the following definition of 'disability NGO', as recommended by the Disability Act Amendment Committee, in the definition clause:

'Disability NGO means a non-governmental service or self help organisation for persons with disability which has been registered under the relevant law and has atleast 5 years experience of working in the field.'

- The problem with the Central and State Coordination Committees was that they were mammoth, Government-heavy bodies. There was need to divide the membership of the Coordination Committees into two categories — those whose membership was necessarily required for every meeting and the others, whose attendance could depend upon the proposed agenda.
- Over a long period of time, a major effort has been made in training to enhance the employment capabilities of persons with mental retardation. Further, the National Institute of Mental Handicap has undertaken a number of projects by which jobs have been identified in the public services, which could suitably be performed by persons with mental retardation. However, reservation in jobs has not been extended to persons with mental retardation. This is a major negation of policies, which are designed to be disability — inclusive.
- Include non-discrimination clauses in all chapters dealing with positive rights i.e. education, employment, access, etc. Include a new section to provide that no person shall be discriminated against only by reason of mental, physical or sensory impairments, whether or not such impairments have been expressly included in the statute.
- There are no floor-level legislative guarantees regarding care and protection, which have been left totally to the discretion of the executive. The nutritional, residential, medical, developmental and educational needs of children without careers must be the joint and several responsibilities of the Central and State Governments and Local Authorities. Similar facilities could be extended to destitute persons with disabilities, aged persons with disabilities and without careers, and persons with multiple disabilities.
- Access is not only a problem for persons with loco-motor disability. There was need to launch a scheme to provide support services such as escort and interpretation to persons with sensory disability.

Right to Health

CHAPTER 5

5.1 The Commission has consistently taken the view that the right to a life with human dignity, enshrined in the Constitution, must result in the strengthening of measures to ensure that the people of this country, and particularly those belonging to economically disadvantaged sections of society, have access to better and more comprehensive health facilities.

5.2 It was to widen and deepen its own understanding of the issues involved and to promote the view that the right to an adequate level of health-care was essential to a life with dignity, that the Commission constituted a Core Advisory Group on Health, headed by its Chairperson and comprising Professor V. Ramalingaswamy, Dr Shanti Ghosh, Dr Prema Ramachandran, Professor Pravin Visaria, Professor N. Kochupillai, Professor K. Srinath Reddy and Professor L. M. Nath. The Group was specifically requested to prepare a plan of action for systemic improvements in the health delivery systems of the country.

5.3 In keeping with its broad objective to give greater practical meaning to the right to health care, the Commission organised two major gatherings during the period under review. The first was a Workshop on Health and Human Rights, with special reference to Maternal Anaemia, which was held in New Delhi on 26-27 April 2000. The second was a National Conference on Human Rights and HIV/AIDS, jointly organised by the Commission with the National AIDS Control Organisation, Lawyers Collective, UNICEF and UNAIDS, which was held in New Delhi on 24-25 November 2000.

5.4 In both instances, the reports of the Workshop/Conference were subsequently

considered in-depth by the Commission, which upon formulating its own recommendations, forwarded these to the concerned authorities for appropriate action. These recommendations may be seen at Annexures 4 and 5. The Commission would like to place on record its deep appreciation to those who participated in these gatherings, contributing their ideas and experience to the proceedings. The Commission would also like to observe that, in each instance, the Central Government was represented at the senior-most levels and that the manner of its participation promises well for a widening understanding in the country of health as a human right.

Rights of the Vulnerable

CHAPTER 6

A] Rehabilitation of People Displaced by Mega Projects

6.1 The Commission has had occasion to observe, on more than one occasion, that it has been deeply disturbed by the inadequacy of the rehabilitation packages offered to persons displaced or otherwise adversely affected by mega development projects. It has taken the view that it is essential to balance the demands of development with the need to ensure equity and justice, and to make sure that the national interest is not advanced as a reason to justify the victimisation of those who are, too often, amongst the most disadvantaged and vulnerable citizens of our country. With this in mind, the Commission had been urging that a Fresh National Policy be finalised to deal with the Resettlement and Rehabilitation of Project Affected Persons/Families and it was informed that the draft of such a Policy was pending consideration before a Group of Ministers.

6.2 On 16 October 2000, the Commission received a petition from the National Committee for Protection of National Resources (NCPNR) which related to the issue of the acquisition of land for development projects and the resettlement and rehabilitation of persons/families affected by such projects. The petition stated that the Land Acquisition Act, 1894, which is still in force today, does not contain any provision for rehabilitation and that this had resulted in grave violations of the human rights of displaced persons who depended for their livelihood on the land and the resources that it provided. The Commission was requested to examine the matter in

its entirety and to make suitable recommendations to the Government, especially as the Government was reported to be considering a comprehensive Land Acquisition (Amendment) Bill, 2000 without incorporating into it any provisions relating to resettlement and rehabilitation. The petition urged that provisions covering resettlement and rehabilitation should be part of the Land Acquisition Act itself, so that they became justifiable.

6.3 The Commission considered the request contained in the petition carefully and agreed with the view that the resettlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act itself, or be the subject of appropriate separate legislation. The Commission was additionally of the view that the Government should, while adopting a comprehensive policy, provide for that policy to be incorporated into appropriate legislation within a specified time frame. The Commission also decided to invite the Secretary, Ministry of Rural Development, to meet the Commission, in order to inform the Ministry of its view on the subject. The Secretary, Ministry of Rural Development, accompanied by other senior officers of the Ministry, met the Commission on 13 February 2001. During the ensuing discussions, the Commission emphasised that it was desirable to incorporate the resettlement and rehabilitation package in the Land Acquisition Act itself and advanced the following reasons and ideas:

- ILO Convention 107, to which India is a party, provides for the protection of the rights of indigenous and tribal people.
- Incorporation of the Rehabilitation and Resettlement (R&R) package in the law will ensure the R&R of Project Affected People in a systematic manner.
- The provision of an R&R package in the law itself would help to avoid litigation, at times frivolous, in such matters, and this in turn would help to avoid delays and cost overruns in projects.
- Once the R&R package is provided in the law, there would be uniformity in dealing with cases by the Courts; this would prevent lack of uniformity in the handling of such cases and interference by the Courts.
- The R&R facilities should be provided in advance before actual acquisition of land takes place.

- The Commission had noted that, in a number of cases, land in excess of what was needed was being acquired and that no consultation was taking place with the people likely to be affected by the acquisition of land. A properly prepared project document with estimates of expenditure involved in the R&R package would avoid acquisition of excess land.
- For the purpose of transparency and information of the people likely to be affected by a project, a Committee should be constituted consisting of representatives of the Government, the industry/agency for which land is proposed to be acquired and the project affected people. The Commission should hold detailed consultations before acquisition of land.

6.4 The Commission also decided to discuss this matter further with the Minister for Rural Development, after the Secretary, Ministry of Rural Development had been able to inform the Minister of the views expressed by the Commission in this regard.

B] Dispensation of Relief Measures to:

1) The Orissa Cyclone Affected

6.5 It will be recalled that the Commission took *suo motu* cognisance of the situation arising from the devastating cyclone, which struck large areas of the State of Orissa in October 1999. The Commission considered it essential to intervene in order to ensure that the rights of the affected population — particularly the most vulnerable — were properly protected in the aftermath of the catastrophe. It accordingly directed Shri N. Gopaldaswami, the then Secretary General and Shri Chaman Lal, Special Rapporteur of the Commission, to visit the affected area and make a detailed assessment of the situation. After considering their reports, the Commission issued specific directions and recommendations on 8 December 1999 on the manner in which the relief and rehabilitation work should be conducted.

6.6 The Special Rapporteur visited the cyclone-affected districts repeatedly during the year 2000-2001 in order to review the implementation of the directions/recommendations of the Commission. After each such visit, he reported back to the Commission, which continued to monitor the situation carefully and remain in close touch with the State authorities.

6.7 In a proceeding dated 21 August 2000, the Commission noted with satisfaction the implementation of its directions/recommendations regarding (a) the enumeration of casualties and the disbursement of ex-gratia payments; (b) the enumeration of widows, destitute senior citizens, orphans and their rehabilitation; (c) the disbursement of house-building grants; (d) the repair of primary school buildings and health institutions; (e) the initiation of action for construction of cyclone shelters; and (f) the allotment of Indira Awas Yojana houses.

6.8 The Commission observed, however, that follow-up action had been slow in respect of (a) the commencement of the ICDS projects already sanctioned by the Government of India; (b) the grant of mandatory compensation to fisherman families for the loss/damage of boats and nets; and (c) the establishment of Ham Radio clubs.

6.9 While the Commission was satisfied with the probe into the allegations of professional lapses on the part of some District Collectors and the Chief Executive Officer of the Cuttack Municipal Corporation, it felt that the probe into the allegations about the delay in the opening of the gates of three irrigation projects should have been more extensive. The Commission noted, with some reservation, the findings of the Expert Committee leading to the suspension of a petty Junior Engineer without ascertaining and fixing responsibility on any of the higher authorities. The Commission observed that it was hard to believe that a Junior Engineer was the sole or the highest authority involved in a serious matter of this kind. The Commission therefore indicated its expectation that the issue would be examined more closely with a view to arriving at a complete finding which would identify all of the authorities responsible for the failure/negligence, and result in appropriate deterrent action being taken to avoid the recurrence of such lapses in future.

6.10 The Commission commended the work done by UNICEF in running the Child Labour Prevention Centres in six of the affected districts. Further, after considering the district-wise reports of its Special Rapporteur, the Commission placed on record its appreciation of the sincerity, dedication and commitment displayed by the following District Collectors in organising and executing the relief and rehabilitation work in their respective districts:

Shri P. K. Mohapatra, IAS, Collector, Puri; Shri P. K. Jena, IAS, Collector, Cuttack; Shri Sarbeswar Mohanty, IAS, Collector, Jagatsinghpur; Shri B. C. Swain, IAS, Collector, Kendrapara; Shri Ashwini Kumar, IAS, Collector, Balasore.

2) The Gujarat Quake Affected

6.11 The catastrophic earthquake that devastated large areas of Gujarat on 26 January 2001 was the second occasion on which the Commission intervened, *suo motu*, in the immediate aftermath of a major natural disaster. The first such occasion was in the wake of the super-cyclone that struck the coastal districts of Orissa on 29-30 October 1999.

6.12 As on that occasion, the Commission considered it imperative to take the initiative to ensure that the rights of the affected population — especially the most vulnerable groups — were protected in the aftermath of the calamity and that the most disadvantaged did not become the least assisted in the wake of the tragedy.

6.13 Thus, immediately after the earthquake, the Commission directed its Special Representative, Shri P. G. J. Nampoothiri, stationed in Ahmedabad, to report to it on the relief and rehabilitation measures being undertaken in that State, so as to enable the Commission to take steps, if necessary, to issue appropriate directions or guidelines to the concerned authorities of the Central or State Government for the purpose of facilitating the performance of the tasks that were required to be undertaken.

6.14 The Commission also decided to monitor the rehabilitation measures and, for this purpose, deputed its Secretary General to visit the affected areas and report back to it. The Secretary General, accordingly, visited the State immediately thereafter and submitted an interim report to the Commission. As the present reporting period came to a close, the Secretary General was undertaking a longer visit to the area and holding discussions with the officials of the State Government and NGO representatives in Gandhinagar and Ahmedabad.

6.15 Pending the issuance of its detailed report on the situation, together with specific directions, the Commission expressed its deep sense of sorrow and concern at the unprecedented loss of life and property that had resulted from the catastrophic earthquake. The Commission took note of the actions being undertaken by the Central Government, the Government of Gujarat, various other State Governments, other nations, and national and international NGOs to provide immediate relief. The Commission stated that it was aware of the daunting task of rehabilitation that lay ahead, and observed that it was essential that the governmental machinery involved in rehabilitation should be able to take all the steps necessary to ensure the equitable distribution of both relief and rehabilitation assistance. The Commission emphasised

that, in the process, the poor, destitute women, children and the elderly, who would be in the greatest need of relief and rehabilitation assistance, should not be deprived of the assistance that is provided, or made to suffer. The Commission added that there was a need to look into broader issues, relating to the preparedness of the country, to face such calamities, especially as a considerable part of the country was in an earthquake-prone zone. There was, in addition, the need to look into the arrangements required to ensure the construction of earthquake-proof buildings in vulnerable areas and to ensure the coordination of disaster relief in a planned and rational manner.

6.16 At the end of period under review, the Commission was awaiting the detailed reports of its Secretary General and Special Representative, on the basis of which it was to decide its future course of action.

C] Focal Point on the Human Rights of Women, Including Matters Relating to Trafficking

6.17 In follow-up of a recommendation made by the Asia Pacific Forum of National Human Rights Institutions in a meeting held in Manila in September, 1999, the United Nations High Commissioner for Human Rights, Ms Mary Robinson, had requested each National Institution in the region to nominate an appropriate individual to serve as a Focal Point on the Human Rights of Women, including matters relating to Trafficking.

6.18 The Commission considered the request and, thereafter, the Chairperson nominated Justice (Smt.) Sujata V. Manohar, Member of the Commission, to serve as the Focal Point. The Senior Research Officer of the Commission was deputed to assist the Member.

6.19 It was further decided that the Focal Point would focus on the following matters:

1) Co-ordination and Co-operation

(i) International/Regional Levels

- Review the existing commitments made at the international and regional

levels to prevent and to eliminate trafficking and violence against women and suggest steps for their implementation.

- Promote better cooperation between countries and international organisations, and other catalysts which have a key role in preventing and eliminating trafficking and violence against women, including UNIFEM, UNICEF, the UN Centre for Human Rights, the UN Commission on Human Rights, ILO, UNESCO, UNDP, WHO, UNAIDS, INTERPOL, UN Crime, Prevention and Criminal Justice Division, UNFPA, the World Tourism Organisation, the UN High Commissioner for Human Rights, and the UN Special Rapporteur on Violence Against Women.

(ii) National/Local Levels

- Review/develop and strengthen comprehensive, cross-sectoral and integrated strategies and measures so that there are national and local level agenda(s) for action and indicators of progress, with set goals and time frame for implementation, targeted to prevent and eliminate trafficking and violence against women.
- Network with civil society organisations in the prevention and elimination of trafficking and violence against women.

2) Prevention

- Review and amend relevant laws to prevent trafficking and violence against women.
- Strengthen national, social and economic policies and programmes to safeguard women vulnerable to trafficking and violence.
- Develop special modules of sensitisation for personnel manning homes for women, police officials, border police officials, health personnel and NGOs to prevent and combat trafficking and violence against women.

- Initiate gender-sensitive public information campaigns to raise awareness about the nature and degree of human rights abuses experienced by women who are trafficked and subjected to violence.
- Mobilise the corporate sector, including the tourism industry, against the use of its networks and establishments for trafficking in women.
- Sponsor studies to create a reliable and relevant data base on women vulnerable to trafficking and violence, their exploiters etc.

3) Protection

- Review, amend, strengthen and monitor implementation of laws, policies and programmes to protect the rights of trafficked women as well as those being subjected to violence of different kinds, bearing in mind that the different types of perpetrators and ages and circumstances of victims require different legal and programmatic responses. In the case of trafficking of women, the Focal Point would ensure that the trafficked women have the right to initiate relevant administrative and legal proceedings against traffickers as well as obtain redressal for all harms they have suffered and that they have full access to women-friendly personnel and support services in all sectors, more particularly in the legal, social and health fields.
- In the case of trafficking of women, ensure that certain procedural protections are guaranteed before, during, and after any legal proceedings involving the trafficked women. These protections could include, for example, maintaining the confidentiality of legal proceedings, encouraging prosecutors to consult with experts on trafficking, informing trafficked women of the progress and disposition of any proceedings against the alleged traffickers, and allowing trafficked women the opportunity to testify by special means where live testimony may cause harm, whether physical or psychological, to the trafficked person.
- Identify, establish and strengthen networks between national and international law enforcement authorities, including INTERPOL, and civil society to monitor the commercial sexual exploitation of women.

4) Repatriation and Reintegration

- Take effective action to ensure safe and voluntary return of trafficked women to their home/communities.
- Suggest measures/programmes to facilitate voluntary repatriation of trafficked women into their chosen communities.
- Provide support to NGOs that have developed programmes to assist the safe repatriation and reintegration of trafficked women.
- Suggest provision of education, skills training and employment assistance to trafficked women in order to prevent re-trafficking.
- Suggest suitable measures for recovery of women subjected to violence including sexual harassment at the work place.

6.20 It is believed that the designation of the Focal Point, with the terms of reference indicated above, will greatly strengthen the capacity of the Commission to deal coherently with issues relating to the human rights of women, including the vexed question of trafficking, which is increasingly menacing the lives of women and children in this country, as indeed, in other parts of the world.

D] Combating Sexual Harassment of Women at the Work Place

6.21 In the course of the year under review, the Commission received a number of complaints alleging sexual harassment at the work place. It therefore considered it essential not only to deal with the individual complaints and provide redressal in those instances, but also to take up the issue of sexual harassment at the work place more broadly, as it constituted an unacceptable and too frequent violation of human rights that had to be addressed comprehensively.

6.22 In particular, the Commission observed that the guidelines issued by the Supreme Court in its landmark judgement in the case of *Vishaka vs. State of Rajasthan*

1997 (6) SCC 241 were not being implemented adequately, whether in institutions of the public sector or in those of the private sector. Many institutions had not set up the Complaints Committee, required under the judgement, to deal with complaints of sexual harassment at the work place. There also appeared to be a certain ambiguity with regard to the exact role of the Complaints Committee and whether such a Committee could be equated with an Inquiry Committee set-up in a disciplinary inquiry, or whether it had a wider role.

6.23 In order to consider and clarify these issues a meeting was convened under the Chairmanship of Justice (Smt.) Sujata V. Manohar, Member, NHRC on 1 March 2001 to discuss the exact role of the Complaints Committee as envisaged by the Supreme Court in the Vishaka judgement.

6.24 The decisions taken in the meeting were as follows:

- The findings of the Complaints Committee in all matters pertaining to sexual harassment at the place of work should be considered as final against the delinquent official as this would lead to early decision on the sensitive issue and save the victim from undue harassment. For this purpose, the inquiry conducted by the Complaints Committee should be deemed to be the inquiry conducted in a departmental inquiry under the disciplinary proceedings drawn up against the delinquent official.
- The composition of the Complaints Committee should conform to the Supreme Court guidelines in the Vishaka case. The Complaints Committee should be a permanent body available to the employees and not a committee constituted to consider a given complaint only.
- The overall mechanism of the Complaints Committee should be based on the principle of natural justice so that fair and just inquiry is conducted against the delinquent officer.
- To achieve the above objectives, it was suggested that suitable amendments be carried out in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 by the Department of Personnel and Training (DOPT), Government of India in addition to the notifications already issued.
- It was suggested that themes, based on the important guidelines prescribed by

the Supreme Court in the Vishaka case, be for the creation of awareness amongst employees, as also for alerting them about the seriousness of the employers towards the issue of sexual harassment at the work place.

- It was suggested that a Committee headed by the Secretary, Department of Women and Child Development may be constituted, with Secretaries of the Ministry of Labour and the Department of Personnel and Training (DOPT) and representatives of prominent voluntary organisations as members, for monitoring the implementation of the guidelines laid down by the Supreme Court in the Vishaka case.
- In order to ensure that the Vishaka guidelines were implemented, the Secretary, DOPT would write to the Secretaries of the Personnel Departments of the States and Union Territories to carry out the necessary amendments in their Rules so that appropriate complaints mechanism could be set-up in all States/UTAs for the redressal of complaints on sexual harassment at the work place.
- It was agreed that, following the guidelines issued by the Supreme Court, it was necessary to monitor the setting-up of Complaints Committees by the employers in the private sector also. The Commission would take the initiative to arrange a series of meetings with the representatives of the Bar Council, Chambers of Commerce, University Grants Commission, educational institutions and organisations of small-scale industries among others.

6.25 Action in accordance with these decisions is being taken by the Commission and by those who attended.

E] Increase in the Maintenance Allowance for Divorced Women

6.26 The Commission received a communication from the Chief Secretary, Government of Haryana, forwarding a proposal from certain senior officials of the Government of Haryana to the effect that the maintenance allowance for divorced women, as provided for in Section 125 Cr.PC, needed to be enhanced. The present provision, it was observed, allowed a maximum of Rs.500 per month, which was

woefully inadequate in the circumstances prevailing today. The amount had last been fixed in 1973. It was observed that some State Governments had taken the initiative to increase the amount to Rs.2,501-3,000. However, as the procedure involved was most cumbersome and it took the State Governments a great deal of time to carry out the requisite enhancement, it was suggested that the Commission recommend action to amend the Cr.PC on this matter. The Commission appreciated this suggestion coming from officers of the Haryana Government. It has recommended to the Government, (Department of Women and Child Development) on 19 September 2000 that the maximum amount of the maintenance allowance be increased from Rs.501 to Rs.5,000 per month for purposes of section 125 of the Cr.PC.

F] Protection of Anonymity of Victims of Rape

6.27 The Commission has been greatly concerned that cases relating to rape are often known by the name of the victim. This imposes lasting damage to the reputation and morale of the victim. The Commission accordingly decided to write to the Chief Justice of the Supreme Court of India as well as to the Chief Justices of the High Courts and to the Ministry of Home Affairs, requesting that steps be taken to ensure the anonymity of victims of rape.

6.28 The Commission observed that even though women were the victims of this heinous crime, cases that reached a Court generally got to be known by the name of the woman who had suffered. The Commission therefore urged that the anonymity of the victim should be ensured, so that rape cases do not perpetuate the suffering of the women who were the victims of this grave crime.

6.29 The Commission also stressed that the proper training of officials at different levels was absolutely essential if they were to deal with such crimes against women with greater sensitivity.

G] Rights of Older Persons

6.30 The Commission is represented on the National Council for Older Persons constituted by the Ministry of Social Justice and Empowerment. The first meeting of this Council was held on 13 June 2000 when a draft long-term Action Plan (2000-2005) was discussed in relation to the implementation of the National Policy on Older Persons. The Commission thereafter considered the draft Action Plan and its comments and suggestions on that Plan were conveyed to the Ministry of Social Justice and Empowerment (Annexure 6). The Commission also decided that there was need to mobilise the efforts of all concerned on behalf of the elderly and that all areas of activity should be identified carefully. Additionally, the Commission took the view that assistance should be permitted to those who are already engaged in constructive activities. In the light of this, the Commission held two rounds of discussions with Non-Governmental Organisations working for the rights of older persons. Arising out of these discussions, the Commission sought the response of the Ministries of Social Justice and Empowerment, Law, Justice and Company Affairs, Home Affairs, Finance, Health and Family Welfare and Insurance Companies on the following suggestions that had been made:

- Medical insurance cover for older persons beyond 70 years and as long as they live.
- Provision of separate queues for older persons in hospitals.
- Need for increasing old age homes facilities. Every major hospital/district hospital and primary health centre must have a separate wing for older persons and a hospice for the terminally ill, funded by the Government.
- Ascertain from the various States the action being taken by them to check abuse of the elderly and the action that they proposed to take to protect the rights of the aged.
- Pensions for older persons.
- Provision in the Indian Penal Code to make abuse of the elderly an offense punishable under law.

- Starting of a website by the Government to provide, in one place, information relating to health, finance and investment, Government circulars etc. relevant to older persons, on the lines of ELDERNET.

6.31 At the conclusion of the reporting period, the response of the various Ministries was awaited. The Commission intends to pursue this matter.

Abolition of Child Labour and Bonded Labour

CHAPTER 7

A] Abolition of Child Labour

7.1 The Commission has been making a major effort to have an impact on the child labour situation in Uttar Pradesh. Persistent endeavours to generate greater awareness and sensitivity in the District Administration and Labour Department of that State have begun to show positive results, particularly in the carpet belt. The Special Rapporteur of the Commission, Shri Chaman Lal, continued to make periodic visits to the districts of Allahabad, Varanasi, Bhadoi and Mirzapur and, based on his reports, the Commission issued specific directions to the State Government in respect of the detection and withdrawal of children employed in hazardous occupations/processes, the admission of such children into the formal and non-formal system of schooling, particularly the schools established under the National Child Labour Project, the economic rehabilitation of the affected families, and the prosecution of offending employers.

7.2 A total of 1,361 child labourers were detected in Uttar Pradesh in 2000-01 — 394 in hazardous and 967 in non-hazardous employment categories. Of them, 140 were from the six districts of the carpet belt. The children who were detected came from 325 families, including 98 from the carpet belt. Some 180 employers were involved, including 85 in the carpet belt. The prosecutions launched numbered 587, including 41 in the carpet belt. A total of 580 recovery certificates were issued, to realise Rs.20,000 per child from the offending employers; 176 of these pertained to the carpet

belt. A total amount of Rs.20.42 lakhs was actually recovered, which includes Rs.5.85 lakhs in the carpet belt. The money was credited to the Child Labour Rehabilitation and Welfare Fund created by the Government of Uttar Pradesh with an initial grant of Rs.100 lakhs.

7.3 The Commission has been monitoring the prosecution of cases under the Child Labour Act in Uttar Pradesh. The rate of disposal (127 per thousand) is still very poor, but the conviction rate (19.02 per cent) has shown some improvement when compared with previous years. The District Magistrates are constantly being reminded of their responsibility to improve the speed and quality of prosecutions.

7.4 A Committee to study all aspects of the child labour situation in the lock industry in Aligarh was constituted by the Commission on 2 August 2000. Shri Chaman Lal, Special Rapporteur, was appointed to serve as Chairman; the Members of the Committee were Shri Madhukar Diwedi, Special Secretary, Labour Department, Government of Uttar Pradesh; Shri B. K. Singh, Deputy Commissioner, Agra; Shri Joseph Gathia, Director, Centre of Concern for Child Labour, Delhi; and Smt. Sadhana Ramachandran, Advocate, Supreme Court. The Committee visited Aligarh to make a detailed study of the subject and gave a comprehensive report to the Commission, which contained a number of important suggestions to deal with the problem. Copies of the report were sent to the Labour Secretary, Government of India and the Chief Secretary, Government of Uttar Pradesh to elicit their comments.

7.5 Three hundred and seventy schools have been sanctioned under the National Child Labour Project for the 11 child labour prone districts of Uttar Pradesh. At present, 346 schools were operational and 19,807 children, withdrawn from work, were being provided Non-Formal Education with benefits of supplementary nutrition, health care and a monthly stipend. The Principal Secretary, Labour has assured the Commission that the remaining 24 schools (23 in Azamgarh and 1 in Khurja) would also start functioning by the end of July 2001. The schools were being run largely by NGOs, whose effectiveness and credibility were being closely monitored.

7.6 The Commission engaged Dr Bhupinder Zutshi of the Himalayan Research and Cultural Foundation to conduct a study on the Impact, Community Response and Acceptance of Non-Formal Education under the National Child Labour Project in the carpet weaving districts and glass bangles region of Ferozabad in Uttar Pradesh. The report has been made available to the competent authorities; it contains a positive assessment of the impact of the Commission's intervention in the carpet belt.

7.7 One-day Workshops were held at Aligarh (30 September), Kanpur (9 October), Allahabad (10 October) and Moradabad (9 November) by the Uttar Pradesh Labour Department, with assistance from UNICEF. The Workshops were useful in assessing the magnitude of the problem of child labour, in sensitising the concerned agencies, in creating a deeper awareness of the evils of child labour and in providing ideas to combat this practice.

B] Preventing Employment of Children by Government Servants: Amendment of Service Rules

7.8 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, the Indian Police Service and the Indian Forest Service. This has been done upon the recommendation and insistence of this Commission.

7.9 The Commission had observed that employing children below and upto the age of 14 years was reprehensible, and that this was more so when the employer was a Government servant. It had urged that an appropriate change be made in the Conduct Rules of Government servants by both the Centre and States, so that the employment of such children would not only be viewed as misconduct, but also invite a major penalty. The Commission had been pursuing this matter with the Centre and States since February 1997, when the then Chairperson of the Commission had written to the Minister of State for Personnel, Public Grievances and Pension. He had subsequently written to the Chief Ministers of all States on 3 March 1997. On 13 December 1999, the present Chairperson had written a further letter to the Chief Ministers of those States that had not amended their Service Conduct Rules. He appealed to them to carry out the necessary amendments at the earliest.

7.10 The Ministry of Personnel, Public Grievances and 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 for work any child below the age of 14 years.' The States of Andhra Pradesh, Assam, Goa, Himachal Pradesh, Jammu and 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 letters that have been written to them by the Commission. They are urged to do so at an early date.

C] Abolition of Bonded Labour

7.11 In pursuance of the directions of the Supreme Court dated 11 November 1997 in Writ Petition (Civil No.3922)\1985, the Commission has been overseeing the implementation of the Bonded Labour Act in different parts of the country.

1) Uttar Pradesh

(a) Carpet Belt

7.12 Shri Chaman Lal, Special Rapporteur, continued to monitor the bonded labour and child labour situation in Uttar Pradesh with particular focus on the districts of the carpet belt viz. Allahabad, Varanasi, Bhadoi, Mirzapur, Jaunpur and Sonebhadra, visiting the area in April-May 2000. Shri Justice J. S. Verma, Chairperson, held a meeting with the District Magistrates (DMs) of the six districts of the carpet belt in Varanasi on 11 June 2000 and reviewed the child labour situation in the region. Dr Justice K. Ramaswamy, Member of the Commission, who is monitoring work relating to the implementation of laws concerning bonded labour and child labour, visited the districts of Mirzapur, Bhadoi and Varanasi in October 2000 accompanied by the Special Rapporteur and held meetings with the district officials, representatives of the carpet manufacturers and household units, and office bearers of key NGOs working in the field of bonded labour and child labour. He also visited schools for children withdrawn from child labour in these districts and interacted with a Self Help Group

of women in the district of Bhadoi who were being trained in carpet weaving by Bal Adhikar Pariyojana, an NGO being supported by UNICEF, which had formed a production unit of its own. These women belonged to the families of children who had been withdrawn from child labour and admitted to school.

(b) Kol Tribals

7.13 In May 2000, the Commission constituted an Expert Group to suggest long term measures for the upliftment of Kol tribals in Uttar Pradesh who have, for long, been the victims of bonded labour and other oppressive social and economic practices. Shri Chaman Lal, Special Rapporteur, was the Convenor of this Group; the members were Professor Sheotaj Singh, General Secretary, Bonded Labourers' Liberation Front; Shri Amar Saran, Advocate, Allahabad; and Shri Bharat Dogra, Journalist. The Committee visited Shankargarh Block in Allahabad and Mau Block in Chitrakoot to study the living conditions and other related issues affecting the rights of Kol tribals. The Group interacted with the district officials, representatives of NGOs and heard a large number of Kol tribals in their habitats. The report of the Group, proposing both short-term and long-term measures for improving the economic and social conditions of the Kol tribals, has been sent to the Government of Uttar Pradesh for eliciting a response. The Commission will issue its recommendations and directives after considering their response.

7.14 A total of 379 bonded labourers were identified and released in Uttar Pradesh in 2000-01, bringing the aggregate number so released from 1996-97 to 1,738. Of the 379 released in 2000-01, 227 were migrant labourers, who were to be rehabilitated by their parent States. Of the remaining 152, 106 were rehabilitated during the course of the year 2000-01 itself, under the Centrally Sponsored Schemes of the Government of India, an equal share of the funding coming from the Central Government and the Government of Uttar Pradesh. However, 449 labourers including 46 released from bondage in the year 2000-01 were awaiting rehabilitation as of 31 March 2001. The Commission is of the view that the rehabilitation of migrant labourers, principally belonging to Bihar, is not progressing satisfactorily. It has taken up the matter with the Union Labour Ministry to see whether the existing procedures could be simplified. The Commission is also of the view that the total number of bonded labourers detected, namely 1,738 in the five-year period from 1996-97 to 2000-01, is lower than the situation warranted. This has been conveyed to the Government of Uttar Pradesh. The Commission has also directed that Government to constitute Vigilance

Committees in 13 of a total of 70 districts and 109 of a total of 299 Sub-Divisions, which do not as yet have these committees though they are mandatory under the law.

2) Punjab, Haryana, Himachal Pradesh and Chandigarh

7.15 The Commission has also reviewed the situation of bonded labour in the States of Punjab, Haryana, Himachal Pradesh and the Union Territory of Chandigarh. It refused to accept the assertion of these States/Union Territories that their areas were free of bonded labour. They have, instead, been urged to review the situation in the light of the judgements of the Supreme Court in the Bandhua Mukti Morcha and Asiad Workers' cases and tighten the enforcement of the Bonded Labour System (Abolition) Act 1976, the Contract Labour (Regulation and Abolition) Act 1970, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 and the Minimum Wages Act 1948. After reviewing the bonded labour situation in Haryana, where 8 out of a total of 19 districts have been identified as bonded-labour prone, the Commission has taken the view that the detection of bonded labour cases (88 in 2000-01 till 31 January 2001) was inadequate and that, in addition, the rehabilitation of those who had been released was slow. The situation in respect to the implementation of the Bonded Labour Act is similar in Punjab, which has reported the detection of only 107 bonded labourers since 1 January 1998.

3) Rajasthan

7.16 In April 2000, the Commission reviewed the work relating to the identification, release and rehabilitation of bonded labour and child labour engaged in cutting and polishing of precious stones in Jaipur. The Commission has been receiving complaints of the persistence of bonded and child labour in the stone cutting and gem polishing industries of Rajasthan. In April 2001, Dr Justice K. Ramaswamy, Member, visited the State. The Secretary, Rural Employment, Rajasthan informed him that, between 1976 and February 2000, 11,168 bonded labourers had been identified in Rajasthan according to NGOs working in the State, however, the number of bonded labour identified in Rajasthan was many times higher and, in addition, bonded labour from Rajasthan were working in Punjab, Haryana, Delhi.

7.17 Information received from the Labour Secretary, Rajasthan, added that in 1997-98, 832 inspections had been carried out and 89 cases of child labour had been

identified. Of these, 150 cases had been adjudicated and penalties to the tune of Rs.9,500 awarded. In 1998-99, 1,524 inspections were carried out and 601 charge sheets filed in the courts; 232 of these cases had been decided and the penalties amounting to Rs.83,650 had been imposed. In 1999-2000, 2,617 inspections resulted in 26 charge sheets being filed. A total of 126 cases had been decided and fines amounting to Rs.52,075 had been imposed. Labour Secretary himself admitted that the discrepancy between the large number of inspections conducted and the comparatively small number of cases filed, was because of evasion of the law. In many cases, the child labourers were whisked away when inspections were anticipated; in other cases, prosecution failed because of the manipulation of the age of the children. There is evident need for far greater care and circumspection and the handling of such cases and the Government of Rajasthan has been requested to proceed accordingly.

4) Andhra Pradesh and Karnataka

7.18 Shri K. R. Venugopal, Special Rapporteur of the Commission inspected the gold-covering units in Machilipatnam of Krishna district and the auto units of Vijayawada district, Andhra Pradesh. He also visited the silk industry in Magadi where child labour was detected and Ramanagaram areas of Karnataka. This was done during the course of June 2000.

7.19 In July 2000, the Commission reviewed work relating to the release and rehabilitation of bonded and child labour in the southern states of Andhra Pradesh and Tamil Nadu with the senior officers of these States. The Commission emphasised the need for a convergence of the efforts of all the developmental departments in the rehabilitation of the released bonded labourers. It also urged that such efforts be backed by the pooling of resources from all sources in order to ensure the effective rehabilitation of the released bonded/child labourers. The Chief Secretary, Andhra Pradesh informed the Commission that action for the identification and rehabilitation of bonded labourers, and the formation of co-operative societies to assist them, had been taken up by the Government of Andhra Pradesh. It was added that, in the district of Mehboobnagar, 22 co-operative societies had been formed, while the formation of another 28 such societies was under way. Similarly, 12 societies had been formed in the Ranga Reddy district for the released bonded labourers. The District Collectors of the other districts of the State had also been instructed to constitute co-operative societies for those who were released. In addition, Vigilance Committees had been constituted in 19 districts and the Collectors of the four remaining districts had been

instructed to constitute Committees urgently. The NGOs were also being increasingly involved in the identification of bonded and child labourers. The children released from bondage and the children of bonded labourers were being admitted to the government schools and hostels in the State.

5) Tamil Nadu

7.20 As regards Tamil Nadu, the following issues were identified for immediate action by the authorities of the State:

- Compilation of a list of all the bonded labourers, district-wise.
- Involvement of NGOs and other reputed institutions in the process of further identification of bonded labourers.
- Formation of co-operative societies for the released bonded labourers in order to ensure their effective rehabilitation.
- Convergence of resources available from all sources in the Government for the proper rehabilitation of released bonded labourers and to avoid their return to bondage.

6) Consultations with Ministry of Labour/ State Governments

7.21 The Commission has been interacting with the Ministry of Labour and, through its Special Rapporteurs, with the State Governments, to evolve suitable measures to end the problem of bonded labour in the country decisively. To this end, after considering the dimension, scope and objective of the task assigned to it by the Supreme Court, the Commission decided, on 22 September 2000, to constitute a group of eminent and experienced persons to prepare a report for it on the overall situation of bonded labour as it persists in the country today. The group has been asked to make recommendations in respect of the existing schemes, so as to render more effective the implementation of laws dealing with the abolition of bonded labour.

7.22 The Convener of the group is Shri Chaman Lal, Special Rapporteur. The other

members are Shri S. R. Sankaran, IAS (Retd.); Shri K. R. Venugopal, IAS (Retd.); Shri K. B. Saxena, Principal Adviser, Planning Commission; Shri Vivek Pandit of Samarthan; Swami Agnivesh, President, Bandhua Mukti Morcha and Shri Harsh Mandar, IAS (MP).

7.23 The group will, *inter-alia*, identify bonded labour-prone districts; and industries and occupations employing bonded labour; it will review existing laws relating to bonded labour in India and their enforcement and suggest improvements as needed; it will look into all aspects of the training required in respect of the enforcement of bonded labour laws, particularly in so far as this concerned target groups, such as officers of the revenue, labour and police departments, advocates and public prosecutors who handle bonded labour cases; it will hold seminars and workshops at the district and State levels to bring together government officials and NGOs for a better understanding of their roles and responsibilities in the collaborative effort required to end the practice of bonded labour; it will study the various Poverty Alleviation Programmes in force, with a view to ensuring their optimum utilisation in arranging for the rehabilitation of bonded labourers; it will analyse and disseminate information relating to judgments/orders of the various High Courts and the Supreme Court relating to bonded labour laws.

7.24 The group has been asked to finalise its report, along with its recommendations, within a period of six months.

7.26 The Commission has been interacting with the Ministry of Labour and, through Special Rapporteurs, with the State Governments, in order to evolve suitable measures to deal with the problem of bonded labour in the country. The Commission has also been considering the best manner in which it can achieve the objectives assigned to it by the Hon'ble Supreme Court. It is to further this purpose that the Commission decided to constitute this group.

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Quality Assurance in Mental Hospitals

CHAPTER 8

A] Mental Hospitals in Ranchi, Agra and Gwalior

8.1 Upon being entrusted with the supervision of the functioning of three major mental hospitals in Ranchi, Agra and Gwalior by the Supreme Court of India on 11 November 1997, the Commission constituted a Central Advisory Group, headed by the Chairperson, to carry out the remit of the Apex Court.

8.2 The Central Advisory Group, in a meeting held on 6 July 1999, constituted a sub-committee headed by Shri Sudarshan Agarwal, Member of the Commission as its Chairman, with the Secretary General, NHRC and the Secretaries of the Ministry of Social Justice and Empowerment and the Department for Women and Child Development in the Ministry of Human Resource Development as Members, to advise it on the steps to be taken to rehabilitate patients who languished in the hospitals even after they were cured of mental illness.

8.3 In a meeting of the sub-committee held thereafter, the Secretary, Department of Women and Child Development informed the Commission that the Department had devised a scheme for the setting-up of Short Stay Homes for women and girls as well as for the establishment of Employment and Income Generating Training-cum-Production units for women, and that these schemes could be suitably adapted for the rehabilitation of women who were treated and cured of mental illness. The Secretary, Ministry of Social Justice and Empowerment also informed the Committee that the

Ministry had a scheme to promote voluntary action for persons with disabilities, which also covered programmes for the rehabilitation of women who were mentally ill.

8.4 The Directors of the three mental hospitals were accordingly requested to identify suitable NGOs, through whom the schemes of the two Ministries could be implemented for the rehabilitation of cured patients. The Commission has since received two proposals each from the Directors of the Agra Mental Hospital and the Ranchi Mental Hospital and one from the Director of the Gwalior Mental Hospital. These proposals have been sent to the Ministry of Social Justice and Empowerment for favourable consideration. The matter is being pursued with that Ministry so that expeditious action can be taken. The Commission, in its meeting held on 28 July 2000, further decided that a group consisting of experts and representatives from the National Commission for Women may be constituted to study the problems of rehabilitation of cured patients and work out a plan of action for the establishment and running of Half-Way Homes.

8.5 Shri Chaman Lal, Special Rapporteur, visited the Mental Hospital in Ranchi between 30 June-2 July 2000, the Mental Hospital in Agra on 17 November 2000 and the Gwalior Mental Hospital on 17 and 18 March 2001. The reports submitted by Shri Chaman Lal were considered by the Commission and the Directors of these Hospitals and the authorities concerned in the Government of Bihar, Uttar Pradesh and Madhya Pradesh respectively were requested to implement the suggestions made in the reports. In order to encourage the authorities concerned to implement the directions of the Supreme Court in all seriousness, the Commission proposed that a meeting be held of the Directors and Chairpersons of the Management Committees of these Hospitals, the Health Secretary, Government of India and the Health Secretaries of the three concerned States on 8 May 2001.

B] Dargah in Tamil Nadu

8.6 Earlier Annual Reports of the Commission have indicated that, in August 1998, the Commission had received a petition alleging that mentally ill persons were being kept in chains and confined in a restricted space in the Sultan Alayudeen Dargah at Goripalayam near Madurai. The Commission had sought a report from the District Collector of the area. The Collector in turn had confirmed that about 92 mentally ill

patients were staying at the Dargah, brought in by their relatives with faith in the curative powers of the Dargah. The Collector had, however, denied any illtreatment of the patients.

8.7 The Commission got the case investigated in February 1999 by the then Director General (Investigation) of the Commission. According to his report, 500 patients/devotees were staying inside the campus of the Dargah. 75% of them were Hindus and the rest were Muslims. About 100 patients were found to be in chains. The patients were kept in thatched sheds and in verandahs. The report highlighted that similar places/Dargahs also existed in other areas of Tamil Nadu where mentally ill patients were chained and kept in the hope of a faith cure.

8.8 On considering these reports, the Commission directed the State Government of Tamil Nadu to get the entire matter examined by a body of experts. The report of the group of experts, however, stated that the complaint was exaggerated and added that there was no evidence of torture or compulsion by the Dargah authorities. The inmates had expressed satisfaction and faith in the cure of their mental illness, even though some of them had been kept in chains.

8.9 The Commission was dissatisfied with this approach to the issue. It decided, instead, to have the matter examined in greater detail by a Committee headed by the eminent psychiatrist Dr K. S. Mani of Bangalore. The Committee recommended that:

- Patients cannot and should not be treated as cattle. Responsibility for admission and discharge must be in the hands of a qualified psychiatrist and cannot be left to the Dargah.
- There should be strict supervision of drug intake by the patients.
- Institutionalisation should be only for brief periods at a time and facilities should be ensured for rehabilitation programmes with emphasis on adequate social inputs from family members:
- Family members should not be allowed to leave patients in the Dargah and to walk away; instead family members should be educated in respect of the nature of the mental illness.
- Living conditions in the Dargahs should be vastly improved.

- There should be facilities for early diagnosis and regular treatment of mental illnesses in these areas of the State.

8.10 On 3 January 2001, the Commission considered and accepted the report of the Committee and directed the Government of Tamil Nadu to implement the recommendations forthwith and send its compliance report at the earliest. At the close of the period under review the Commission was awaiting compliance by the Government of Tamil Nadu.

8.11 The Commission regrets to observe that in Tamil Nadu, as elsewhere in the country, there is still a great lack of sensitivity to issues covering the rights of those who are mentally challenged. This is witnessed not only in respect of those consigned to unregulated Dargahs, but also in respect of those who are incarcerated in prisons — in regard to whom the corrective measures required to be taken by State Governments have been inadequate, despite repeated letters from Chairpersons of this Commission. Further, the Commission is constrained to observe that inadequate action has been taken on the report on Quality Assurance in Mental Hospitals, which was transmitted by the Commission to the Central and State Governments in 1999. It will be recalled that the report contained precise and comprehensive recommendations on what needs to be done. The Commission urges that both the Central and State Governments act with greater focus and conviction to ensure that the rights of the mentally ill are properly respected and that appropriate steps are taken to implement the recommendations of the Commission in respect of those who are so challenged.

Manual Scavenging

CHAPTER 9

9.1 The Commission has accorded the utmost priority to ending the degrading and inhuman practice of manual handling of night soil prevalent in many parts of the country. It has taken up this matter at the highest levels of the Central and State Governments on frequent occasions. In addition, in the course of the year under review, the Commission set up a group comprising the Secretaries of the Ministries of Urban Affairs and Poverty Alleviation, Social Justice and Empowerment, Law, Justice and Company Affairs and representatives of the Planning Commission, to pursue this matter and to make appropriate recommendations to ensure that plans and programmes to end this practice yield clear results within a reasonable time frame. The Commission has, in particular, remained in close touch with the Ministry of Urban Development and Poverty Alleviation, which is the nodal Ministry of the group, in order to expedite the implementation of the recommendations of the group. The Ministry of Urban Development and Poverty Alleviation informed the Commission that the various issues raised by the Commission would be discussed in detail with the States in January 2001.

9.2 While taking note of this, the Commission felt, however, that the overall issue of the persistence of manual scavenging had not been taken-up as seriously as it should have been by the Ministry of Urban Development and Poverty Alleviation. It therefore asked its Secretary General to pursue this matter with the Secretary, Ministry of Urban Development and Poverty Alleviation and a further meeting was held between them on 23 March 2001. The Commission is of the view that it is essential to keep this matter high on its agenda. It urges the Ministry of Urban Development and Poverty Alleviation, as also the Governments of all States and Union Territories to act with

greater determination to implement the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

9.3 So far, 14 States and all Union Territories have either accepted the Central Law or enacted their own laws. The adoption of the Central Act was still under consideration by Rajasthan and Uttar Pradesh. However, 9 States — Arunachal Pradesh, Kerala, Jammu and Kashmir, Himachal Pradesh, Meghalaya, Manipur, Mizoram, Nagaland and Sikkim had not taken any decision in this regard during the period covered by this report. The Commission believes that the determination and leadership to end the totally unacceptable practice of manual scavenging must come from the highest political level. The practice constitutes a gross violation of human rights and an assault on the dignity and worth of the human person that flies in the face of the constitutional guarantee of a life with dignity for each human being in this country.

Problems of Denotified and Nomadic Tribes

CHAPTER 10

10.1 In its preceding Annual Report, the Commission had commented in detail on the efforts it was making to protect the rights of denotified and nomadic tribes and to ensure that they were not treated as 'habitual offenders' by the police, or subjected to brutality by the law-enforcing machinery. The Commission had received and investigated many complaints to this effect as also others alleging that members of these tribes were frequently the victims of lynching by mobs, arson and other outrages.

10.2 Working closely with Smt. Mahasveta Devi and Dr G. N. Devy, President and Secretary respectively of the Denotified Tribal Rights Action Group, the Commission had therefore called a meeting of the Chief Secretaries and senior officers of a number of concerned States on 15 February 2000 to deal with this matter further. It had followed-up that meeting by making a number of recommendations to the State Governments, which had concentrations of these tribes.

10.3 It is a matter of deep regret to the Commission that none of these State Governments has reported any positive action on those recommendations despite repeated reminders to them, the last of which was sent on 5 March 2001. The apathy of the States concerned is all the more disturbing because of the promises readily made in the meeting with the Commission in February 2000. The States concerned, which attended the meeting, were: Karnataka, Rajasthan and West Bengal (represented by their Chief Secretaries); Madhya Pradesh and Maharashtra (represented by their Additional Chief Secretaries); Andhra Pradesh, Gujarat and Punjab (by their Home Secretaries).

10.4 Once again, the Commission urges a greater sensitivity, at the highest political and administrative levels, to the problems afflicting marginalised sections of our society including those who are considered to be denotified tribes and nomadic tribes.

Promotion of Human Rights Literacy and Awareness

CHAPTER 11

A] National Action Plan for Human Rights Education

11.1 In earlier reports, the Commission had highlighted the need for the Government of India to draw-up, expeditiously, a National Action Plan for Human Rights Education as part of the observance of the UN Decade for Human Rights Education 1995-2004. Pursuant to the urging of the Commission, a Coordination Committee was appointed to work out a schedule of activities for the UN Decade for Human Rights Education, under the Chairmanship of the Home Secretary, Government of India. The Coordination Committee, comprising representatives of various Ministries, drew-up a draft National Action Plan which was considered and approved on 29 March 2001. The Commission welcomes this development, even though it was belated. It takes this opportunity to underscore the importance of ensuring the full implementation of the Action Plan for Human Rights Education. The Commission, on its own part, also intends to monitor closely the follow-up action that is being taken by the concerned Ministries.

B] Mobilising the Educational System

11.2 The University Grants Commission (UGC) has informed the Commission that certificate courses in human rights were being conducted in Devi Ahilya Vishwavidyalaya, Indore; National Law School of India University, Bangalore; and

Berhampur University, Berhampur; and that Diploma Courses were being held in the Universities of Mumbai, Nagpur, Jamia Millia Islamia, Saurashtra, Chennai, Jammu, Pondicherry, and Mysore. It was further stated that Degree Courses in Human Rights were being conducted in Aligarh Muslim University, Aligarh; Cochin University of Science and Technology, Kochi; Andhra University, Visakhapatnam; the M. S. University of Baroda, Vadodara; Banaras Hindu University, Varanasi; and Sri Venkateswara University, Tirupati.

11.3 In order to provide a further stimulus to human rights education, the Commission has taken the view that research should also be conducted on human rights issues under the aegis of the UGC. The Commission has, therefore, urged the UGC to earmark a certain number of fellowships for research on clearly identified human rights subjects. It is the belief of the Commission that its work to redress human rights grievances can be greatly strengthened if backed by well-researched material.

11.4 With a view to accelerating the spread of human rights education, the Commission also urged the UGC to convene a meeting of its Standing Committee on Human Rights at the earliest. In response, the Commission was informed that the tenure of the Standing Committee was of two years, that this period had expired and that no new Committee had been constituted in its place. Deeply concerned at this state of affairs, the Commission was taking steps to have the situation rectified.

11.5 During the period under review, the Commission sanctioned a one-time grant of Rs.2 lakhs to the Indian Law Institute, Delhi for starting a Post Graduate Diploma Course in Human Rights Law.

C] National Institute of Human Rights

11.6 In order to establish a centre of excellence for human rights education, the Commission had 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. During the year under review, work was completed by the Institute on a Hand Book on Human Rights for Judicial Officers. It seeks to address the needs of Judicial Officers at the district level and provides practical guidelines to those who seek

remedies in courts for the violation of human rights. The Hand Book covers a range of issues that Trial Court Judges and Magistrates deal with in their daily functioning and provides guidance and information to facilitate their work and widen their understanding of human rights related issues. The Commission hopes that this effort will not only be of assistance to members of the Judiciary, but also to police officers, administrators and NGOs interested in protecting human rights. The Commission is of the view that the writing of this Hand Book should not be considered to be a one-time exercise. The Hand Book will need to be continuously updated and its contents refined from time to time. The Commission would like to recall that this Hand Book was prepared with a grant of Australia \$25,000 from the Australian Human Rights Fund Small Grants Scheme, which was given to the Institute upon the recommendation of the Commission. The grant was also used to conduct Continuing Education Programmes for Judicial Officers in Karnataka and Andhra Pradesh.

D] Human Rights Training for Civil Servants

11.7 The Commission has, for some time, been engaged in creating a greater awareness of human rights among young administrators so that they may retain sensitivity towards such rights throughout their careers and strive to promote and protect them. The Chairperson of the Commission has, to this end, visited the Lal Bahadur Shastri National Academy of Administration, Mussoorie, during the year under review. During his interaction with the Director and senior officers of the Academy, he emphasised the importance of introducing human rights related issues in the various courses run by the Academy and other National Training Institutions. The Commission has been informed that a Module on human rights has been introduced by the Academy in the Foundation Course for civil servants at the instance of the Department of Personnel and Training. The Academy has also made it mandatory for all Indian Administrative Service Officer Trainees to complete two field assignments, focused on the subject of the violation of human rights, during the course of their year-long training period in the districts. The Commission has stressed the importance of introducing inputs on human rights in Phase-I of the IAS training programme (as field assignment) and also in Phase-II of that programme (discussion on completed assignments), as well as in the in-service training for Provincial Civil Service officers promoted to the IAS. The Commission is of the view that the prescribed syllabi for these courses should be suitably modified to ensure that the

subject of Human Rights is included on a regular basis, in future, among the courses to be provided by the Academy. The Commission has urged the Academy to take the lead in the area of Human Rights Training and, after discussion with other National Training Institutions, to send a comprehensive proposal to the Commission. The Commission foresees an important role for the Department of Personnel and Training in this regard.

11.8 During the year under review, the Commission approved two research projects proposed by the National Society for Promotion of Development Administration, Research and Training at the Lal Bahadur Shastri National Academy of Administration, Mussoorie. The details of these projects, designed to create greater awareness of human rights among officer trainees or young officers in the field, are provided elsewhere in this report.

11.9 The Commission has pointed out to the Director of the Academy that it would also be appropriate to acquaint middle-level officers with the provisions of important international instruments on Human Rights, not least those relating to economic, social and cultural rights and with the obligations of India to implement and monitor these instruments appropriately. The Commission has, therefore, urged the Lal Bahadur Shastri National Academy of Administration to conduct a separate training programme for IAS officers of the rank of Deputy Secretary/Director and Joint Secretary. The Commission has offered its assistance to the Academy in deciding the in-puts, identifying the resource persons and suggesting relevant materials and books for the course.

11.10 The Commission has further suggested that it would be useful to have officer trainees, after the completion of the assignments undertaken by them during their district training, to present their reports in Phase-II of their Training Programme. The Commission has offered to depute a representative to be present at the time of such presentations.

11.11 A set of the more important Instructions and Guidelines issued by the Commission between the period of its establishment in October 1993 and until November 2000, was compiled and made available to the Academy. The publication was circulated to all IAS probationers undergoing Phase-II of their Training Programme. The Commission has also made the publication available to other concerned agencies.

11.12 The Commission sought and obtained in-puts on human rights for the basic training programme of Indian Police Service (IPS) probationers in the Sardar Vallabhbhai Patel National Police Academy, Hyderabad. It has continued to maintain close contacts with that Academy and other police training institutes.

11.13 Reference has been made earlier in this report to the preparation of a Handbook on Human Rights for Judicial Officers. Both the Handbook and the publication containing 'the Instructions and Guidelines' referred to above were released in the course of a function organised by the Commission on Human Rights Day, 10 December 2000. The Commission proposes to bring out a Human Rights Handbook in collaboration with Butterworths India, to enhance an awareness of human rights among all sections of society. The Commission also proposes to publish a Compendium of Important Cases (1993-2001) and an Instruction Manual on Bonded Labour.

E] Human Rights Education for Police Personnel

11.14 During the period under review, two training projects were initiated jointly with the British Council, on 'Human Rights Investigation and Interviewing Skills' and 'Improving Custodial Management', to train police officers and human rights investigators in the States. The details of these projects are given later in this report.

11.15 Under the first project, two regional training programmes were conducted, one at Chandigarh and the other at Hyderabad, in March 2001. The second project, on 'Improving Custodial Management', sought to increase the awareness of police officers in the States of Bihar, Haryana, Himachal Pradesh, Gujarat and Uttar Pradesh in respect of the best practices and procedures on Custodial Management. Accordingly, two police officers were nominated from each of the identified States and sent on mission to the United Kingdom for a ten-day intensive training programme. It is proposed that all the trained officers will now act as Master Trainers and impart training to other police officers in their respective States.

F] Human Rights Education for Para-Military and Armed Forces

11.16 The continuing interaction between the Commission and the senior-most echelons of the armed forces has ensured that the subject of human rights is now firmly included in the training courses that are conducted for all levels of their personnel. Indeed, the Commission itself devised a training syllabus for the para-military forces, in full consultation with their Directors General. Further, to maintain the link between the Commission and the para-military forces, an annual debate was once again organised on a human rights theme, involving all of the para-military forces. It was conducted in both English and Hindi and elicited considerable interest and enthusiasm.

11.17 Contact also continued to be maintained with Army Headquarters on a range of issues relating to human rights, including human rights education. There were frequent invitations extended to the Commission to address gatherings of army officers in the field, as also in institutes and colleges in which they were attending courses. The Commission accepted these invitations readily, conscious of the need to deepen an understanding of human rights issues among armed forces personnel and also, for its part, to better understand the challenges that the armed forces have to face, in the often provocative circumstances in which they have to serve.

G] Internship Scheme

11.18 With a view to increasing awareness of human rights among university students, the Commission introduced a 'Summer Internship Programme' in 1998, the purpose being to hold it annually and to rotate the internships, on a regional basis, among the various universities of the country. The Summer Internship Programme-2000 was held for a period of 47 days from 15 May to 30 June 2000. In all, nine students of Law, Political Science, Sociology and Criminology, were selected from the universities in the States of Tamil Nadu and Maharashtra. During the course of the year, a 'Winter Internship Programme' was also introduced. Thirteen students were chosen from Aligarh Muslim University, Jawaharlal Nehru University and Jamia Milia University. The programme was held from 4 December 2000 to 5 January 2001. The

Commission made a particular effort to improve the structure of the internship programmes so that the interns could derive maximum advantage. The programme has been greatly welcomed by students and universities around the country. Applications have also been received from students studying in other countries. The Commission was happy to see that its internship programmes were attracting the attention of the younger generation and that many of the interns were sustaining their interest in human rights in their advanced studies and, in some case, their careers.

H] Seminars and Workshops

11.19 The Commission, in collaboration with the Department of Women and Child Development and UNICEF, organised a two-day workshop on Health and Human Rights in India, with special reference to Maternal Anaemia, on 26-27 April 2000. Shri Arun Jaitley, Minister of State for Information and Broadcasting, Shri N. T. Shanmugam, Minister of State for Health and Family Welfare and Smt. Sumitra Mahajan, Minister of State for Women and Child Development participated in the proceedings.

11.20 On 31 July 2000, the Commission convened a meeting of the Directors General of Police/Inspectors General of Police of State Governments and Union Territories and the Special Rapporteurs/Special Representatives of NHRC to review the human rights situation in the various States as well as the functioning of the Human Rights Cells established by them. On the next day, 1 August 2000, a separate meeting was held with the Special Rapporteurs and Special Representatives of the Commission to consider measures to improve and strengthen their system of functioning.

11.21 A National Symposium on Human Rights and Human Development was jointly organised by the Commission and UNDP in New Delhi on 12 September 2000. The Symposium focused on the Human Development Report 2000, a central theme of which was the co-relation between Human Rights and Human Development. Participants took the position that issues relating *inter alia* to nutrition, health-care, education, shelter, employment and protection against calamities were not merely developmental concerns, but intrinsically related to a proper respect for human rights, including the right to information.

11.22 The two-day National Conference on Human Rights and HIV/AIDS was held in

New Delhi on 24-25 November 2000. It was jointly organised by the Commission, NACO, Lawyers' Collective, UNICEF and UNAIDS. The Conference, *inter alia*, considered issues relating to consent and testing, confidentiality, discrimination in health care and employment, women in vulnerable environments, children and young people, people affected/infected by HIV/AIDS and marginalised populations.

11.23 The Commission and the Angaja Foundation jointly organised a Workshop on Issues of Child Rape and Child Sexual Abuse on 14-15 December, 2000.

11.24 The Commission was instrumental in a training programme being organised by the National Law School of India University, for the benefit of District Judges of the States of Andhra Pradesh and Karnataka. The material prepared for that programme, suitably modified with inputs obtained from the trainees, was thereafter published as a Handbook on Human Rights for Judicial Officers.

11.25 The Commission organised its annual debate on human rights for members of the para-military forces. The subject this year was: '*There is no Conflict between Respect of Human Rights and Combating Terrorism*'. The debate was held in New Delhi on 5 March 2001, the participants being from the Assam Rifles, Border Security Force, Central Industrial Security Force, Central Reserve Police Force, Indo-Tibetan Border Police, National Security Guard and the Railway Protection Force.

11.26 The Commission has, over the years, strengthened its cooperation with NGOs, many of whom have taken a leading role in bringing complaints of human rights violations before the Commission and being associated with it in projects and programmes aimed at deepening and widening a culture of human rights. In order to enhance interaction between NGOs and the Commission, a Regional Consultation was organised by the Commission on 13 March 2001 with NGOs based in the States of Jammu and Kashmir, Haryana, Punjab, Delhi, Uttar Pradesh and Himachal Pradesh. This Consultation initiated a process that will result in consultations with NGOs in other regions as well; the process is designed to further strengthen the indispensable partnership that exists between the Commission and NGOs serving the cause of human rights.

I] Publications and the Media

11.27 Following a series of workshops in different regions of the country, the Commission, in collaboration with Prasar Bharati and UNICEF, framed a set of Guidelines to assist the media in reporting on the problem of child sexual abuse. The Guidelines will serve to sensitise and equip the media to play a more active and catalytic role in promoting the rights of children, particularly the right to protection, and to develop a clearer understanding of existing legislation and international instruments to combat child sexual abuse. The Guidelines, which were released on 14 March 2001, were as follows:

- Media should bring the issue of child sexual abuse into the realm of public knowledge and public debate. It is important that the issue of sexual abuse is presented as a serious violation of rights, not only as an offense against children.
- Media should, through sensitive and meaningful projection and coverage of the issue, be instrumental in creating a sense of moral indignation and outrage over incidents of child sexual abuse. Media should also take care to ascertain the facts, context and circumstances. A report on such sensitive issues should not be filed based on superficial interviews with persons supposedly witnesses to the incident.
- Media should desist from the temptation to sensationalise or exaggerate a particular incident of child abuse.
- When media reports an incident of sexual abuse it should also report subsequently on actions taken by concerned authorities and continue to report till action is taken to punish the abusers.
- Media should not unwittingly glorify the act of sexual abuse by giving undue prominence to the perpetrator.
- The victim should not be further victimised or made to relive the trauma he/she has been through.
- Under no circumstances should the media disclose or reveal the identity of the victim. Masking techniques should be used wherever the victim is made to give a first person account of his/her experience. The victim, relatives and concerned persons must be assured of confidentiality.

- Media should not create a prurient interest in the sexuality of the child by image or innuendo.
- The child should not come across as a passive entity.
- Besides drawing attention to the problem of child sexual abuse, the media also needs to enlighten the public as to what can be done to prevent such incidents, and what needs and must be done if such an incident has taken place, including providing information on legal or other remedies.
- Media should provide its target audience with full knowledge about the rights of the child and the legal remedies available to a child in the unfortunate event of a case of child sexual abuse occurring.
- Media needs to develop a system wherein viewers/audience can comment on and evaluate the quality and impact of the programmes being aired and telecast.
- Media should document and widely disseminate Best Practices on prevention of child sexual abuse, action taken against abusers, work of selected NGOs, etc.
- In all reporting, the media must be guided by the principle that the 'best interest of the child' must be respected as required under the Convention on the Rights of the Child.

11.28 As indicated earlier in this report, during the course of the year under review, the Commission released two publications, a 'Handbook on Human Rights for Judicial Officers', and 'Important Instructions/Guidelines' issued by the Commission between the period October 1993 and November 2000.

11.29 The monthly Newsletter of the Commission continued to disseminate information about the Commission's programmes and priorities to human rights activists, members of the legal fraternity, administrators, representatives of NGOs, research scholars and students, both within the country and well beyond. The Newsletter has also been providing the gist of important decisions of the Commission on individual complaints addressed to it. The mailing list of the Commission for the dispatch of the Newsletter has now grown to 4,187. Despite the growing demand for copies of the Newsletter and the increasing cost involved in producing it, the Commission has continued its policy for making the Newsletter available to its readers

free-of-cost. The Newsletters of the Commission, including back issues, are now available on the website of the Commission, www.nhrc.nic.in. The Commission continues to receive a steady stream of comments on the Newsletter, both from all parts of India and from abroad. The Commission is grateful to readers of the Newsletter for their interest, invaluable comments and suggestions.

11.30 The Commission has also been providing material in the form of case studies to various media organisations for use in TV films, serials and documentaries. This material has been incorporated in a number of programmes that have been shown on major TV channels.

11.31 The Commission, along with UNICEF and Save the Children Fund (UK), sponsored a film 'Aruvacode Diary' produced by Sanket Productions. It is a film on the rehabilitation of former sex workers in a small town near Calicut called Aruvacode. The film recounts the efforts of an NGO to revive the skill of pottery in the village and to train the young persons who had earlier been victimised to make items that were market-oriented in design. This has enabled the residents of the village to increase their incomes substantially, to end social exclusion and to lead a life of dignity once again. The Commission plans to screen the film in different circuits and especially among NGOs working in the area of rehabilitation.

11.32 A crew from the Asia-Pacific Forum of National Human Rights Institutions, which was making a film on the work of selected National Institutions of the region, namely those of Australia, Indonesia and India, visited the Commission. The crew shot extensive footage of the work being done, under the supervision and monitoring of the Commission, to end child labour in Uttar Pradesh. It visited areas of the carpet belt in that State and filmed the National Child Labour Schools and Non-Formal Educational Centres. The crew interacted with carpet manufacturers and loom owners of the area and was in India from 22-25 February 2001. Interviews were also recorded with the Chairperson and Members of the Commission, as well as with representatives of prominent NGOs working in the field of child labour eradication. The Commission has received 10 hours of footage from the filmmakers. It plans to get this footage edited into a short film on child/bonded labour.

11.33 The Clipping Information Service of the Commission continues to grow, with daily additions on human rights related issues culled from the national press. The clippings are being computerised, enabling easy retrieval newspaper-wise, date-wise and topic-wise. The service provides a valuable source of information to researchers

and students visiting the Commission. It also continues to serve as an important source of reference material for the Commission on varied issues. The daily clippings circulated to the Chairperson, Members and senior officers of the Commission has enabled the Commission to take *suo motu* cognisance of a number of cases of human rights violation reported by the media.

11.34 The Commission firmly believes that those who work for the media are key allies in the promotion and protection of human rights and in the correcting of social attitudes that have, for too long, resulted in the violation of human rights in this country, particularly of those who constitute the most vulnerable sections of society. The Commission would, therefore, like to take this opportunity to thank the media for their increasing and in-depth coverage of human rights issues. There has been a perceptible improvement and deepening of this coverage in the period since the establishment of the Commission in 1993. This has contributed immensely to a heightened understanding in the country of the importance of respecting human rights.

J] Research Programmes and Projects

11.35 The Commission approved financial assistance for a research project on the 'Impact, Community Response and Acceptance of Non-Formal Education under the National Child Labour Project: A Case Study of the Carpet-Weaving Belt of Mirzapur-Bhadhoi and Glass-Bangle Region of Ferozabad' proposed by the Himalayan Research and Cultural Foundation, New Delhi in June 2000. The study was undertaken by Dr Bupinder Zutshi, Visiting Faculty, Centre for the Study of Regional Development, Jawaharlal Nehru University, New Delhi. The research project was completed during the period under review and the final report was due to be submitted to the Commission.

11.36 Dr Atindra Sen, Executive Director, National Society for Promotion of Development Administration, Research and Training (NSDART) at the Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussoorie informed the Commission that the Academy was keen on conducting five research studies on Human Rights. Of these, the following two were approved by the Commission and are to be taken up immediately:

- Insurgency and Human Rights Violations in Jammu & Kashmir and the North-East.
- Tribal, Environment and Violations of Human Rights.

11.37 The objective of the proposed studies is to document the types and manner of human rights violations, understand and analyse the causes and suggest remedial measures. It is proposed to conduct research on these issues in such a manner that the very process of research also achieves the goal of sensitisation of those involved in the research. NSDART has indicated that it plans to associate officer trainees, or young officers in the field, in conducting the research and to use the output of the research in training-programmes conducted by the Academy. The research projects are to be completed within two years.

11.38 The National Institute of Criminology and Forensic Science (Ministry of Home Affairs), Delhi submitted a project proposal on the 'Rights of Women Prisoners in Indian Jails: A Sociological Study'. The study is proposed to be conducted in three phases and to be completed within a period of one year. The objectives of the proposed study are to:

- Ascertain the socio-economic background of women prisoners and the nature of criminal charges bringing them to jail.
- Undertake an in-depth study of the situation in which they are living in prisons.
- Examine the nature, type and extent of vocational training facilities available to them and the type of work given to them for keeping themselves engaged.
- Analyse the rights enjoyed by women prisoners in jails.
- Ascertain the nature and extent of measures adopted by prison officers to protect the human rights of women prisoners.
- Explore and analyse the situation in which the rights of women prisoners are violated.
- Suggest ways and means to upgrade the protection of human rights of women prisoners.
- Assess the situation relating to rehabilitation of released women prisoners in the past few years and the extent of involvement of NGOs in this regard.

11.39 SEVAC, a Kolkata-based NGO, requested financial assistance from the Commission for its research project titled 'Operation Oasis', which seeks to identify the mentally ill persons languishing in different jails/homes in West Bengal. According to SEVAC, most of these persons are not officially recognised as mentally ill or mentally disabled. Consequently, the benefits that should be available to them under the provisions of the 'Mental Health Act' and 'Disability Act' do not reach them. Recently, SEVAC conducted a study in certain Homes for the Vagrant and Destitute in West Bengal and found that significant number of mentally ill persons were lodged in these Homes who could be rehabilitated after proper medical treatment.

11.40 The project 'Operation Oasis' is expected to take a year to be completed. Explaining the rationale behind the proposed project, SEVAC observed that since conditions in Jails and Homes around the country is largely similar, the outcome of the proposed study in West Bengal could help in forming a basic idea regarding the proportion of mentally ill persons among the jail and home inmates in the country as well as provide an insight into their living conditions. The project could also help in evolving a meaningful strategy to develop an infrastructure to bring such persons under the purview of treatment and rehabilitation programmes.

K] Visits of the Chairperson and Members to Various States

11.41 The Chairperson visited Jammu and Kashmir on 8 February 2001 and held discussions with the Chief Secretary/Home Secretary/DGP and other senior officials. The details of the visit have already been reported in Chapter 3 of this Report.

11.42 The Chairperson visited the State of Andhra Pradesh on 2 March 2001 and held meetings with the Chief Minister and senior State Government officials. Issues discussed included the allegation of deaths resulting from 'fake encounters,' the killing of human rights activists, manual scavenging and bonded labour. The Chairperson also visited the States of Uttar Pradesh, Maharashtra, Chandigarh, Karnataka, Madhya Pradesh, West Bengal and Punjab holding discussions with the Chief Secretary/DGP and other senior officials on all issues relevant to the human rights situation in those States.

11.43 Members Justice Smt. Sujata V. Manohar and Shri Sudarshan Agarwal, as reported earlier, visited Vrindavan (Mathura) in Uttar Pradesh on 5-6 December, 2001 to study the plight of widows. They held discussions with senior officials of the Government, the District Magistrate, Mathura and representatives of a number of prominent NGOs on matters relating to the rehabilitation of the widows. On the basis of recommendations made by the Members of the Commission, the Commission then issued directions to the State Government.

11.44 Dr Justice K. Ramaswamy, Member visited the State of Rajasthan and held public hearing on atrocities committed against women, dalits and adivasis. The Member also

visited the States of Andhra Pradesh, Karnataka, Uttar Pradesh, Haryana, Himachal Pradesh, Punjab and Gujarat and held discussions with senior officers, NGOs and others in respect of the identification, release and rehabilitation of bonded labourers.

L] Visits Abroad

11.45 The Commission participated in the Fifth International Workshop of National Institutions for the Promotion and Protection of Human Rights held in Rabat, Morocco between 13-15 April, 2000. Immediately thereafter, on 17 and 18 April 2000, the Commission participated in a meeting of the International Coordinating Committee of National Institutions and the 56th Session of the UN Commission on Human Rights in Geneva. The delegation of the Commission comprised Justice Shri J. S. Verma, Chairperson, Shri Virendra Dayal, Member and Shri N. Gopalaswami, Secretary General.

11.46 A Regional Workshop on the Role of National Human Rights Institutions in advancing the International Human Rights of Women was held in Suva, Fiji from 5-7 May, 2000. The Commission was represented by Smt. S. Jalaja, Joint Secretary of the Commission.

11.47 The 5th Annual Meeting of the Asia Pacific Forum (APF) was held in Rotorua, New Zealand from 7-9 August, 2000. The Commission was represented by Justice Shri J. S. Verma, Chairperson, Dr Justice K. Ramaswamy, Member and Shri N. Gopalaswami, Secretary General. Amongst the important issues discussed was the need for a formal structure for the Forum.

11.48 The Joint Secretary of the Commission also attended a Regional Workshop on Economic, Social and Cultural Rights, jointly organised by the Canadian Human Rights Foundation and the Philippines Commission on Human Rights. It was held in Manila, Philippines, between 5-10 November 2000.

11.49 The Chairperson visited Sri Lanka between 3-5 December 2000 to deliver the Millennium Lecture at the University of Colombo and the Fourth Neelan Tiruchelvam Millennial Lecture at the International Centre for Ethnic Studies, Colombo.

M] Mobile Phone Facility

11.50 In order to make the Commission more accessible to the public, particularly when emergencies arise after office hours and on holidays, the Commission has designated a special telephone number No. 98-102-98 900 to receive complaints from those seeking assistance from the Commission. A senior officer of the Commission is in charge of this facility. This service is available to the public from 6.00 p.m. on every working day till 10.00 a.m. the next morning and round-the-clock on holidays.

N] Training

11.51 As mentioned earlier, in this report, a project on 'Improving Custodial Management' was jointly started by the Commission along with the British Council. Under this Project, 11 out of 12 trainers, two each from the States of Himachal Pradesh, Bihar, Uttar Pradesh, Haryana and Gujarat and one from the Commission participated in the training course. They, in turn, will train 200 trainees in their respective States on Custodial Management Practices.

11.52 The Commission also took up a project jointly with the British Council on 'Human Rights Investigation and Interviewing Skills'. The objectives of the project were to: (a) develop professional competence in investigation, interviewing and reporting skills, (b) enhance knowledge of human rights issues and (c) assess the feedback from the first series of training for 120 personnel in making improvements for further training. The project was developed with the support of the Foreign and Commonwealth Office, United Kingdom. Phase 1 involved the training of a core group of 8 trainers. Phase 2 will focus on the delivery of regional training programmes and Phase 3 will conduct an evaluation and assess the overall impact for planning future inputs. The Commission/British Council collaboration has been extended in two important ways: (a) by including trainers from the Commission and the State Human Rights Commissions in addition to those provided by the British Council; (b) inviting host institutes to be part of the regional programmes.

Non-Governmental Organisations

CHAPTER 12

12.1 To '*encourage the efforts of non-governmental organisations working in the field of human rights*' is a statutory responsibility of the Commission under Section 12 (i) of the Protection of Human Rights Act, 1993. The Commission is of the view that this is not just a responsibility, but a necessity. The promotion and protection of human rights cannot gather momentum without the fullest cooperation between the Commission and NGOs. They are the Commission's most natural allies and most honest critics.

12.2 To build a better nation-wide network with NGOs devoted to the cause of human rights and to develop a formal structure which would have a greater impact on the situation, the Commission started holding Regional Consultations with NGOs and voluntary organisations engaged with the promotion and protection of human rights. The first in the series of consultations was held in New Delhi on 13 March 2001. It will be followed by consultations in other regions of the country. More than 80 NGOs from the States of Jammu and Kashmir, Haryana, Punjab, Delhi, Rajasthan, Uttar Pradesh, Himachal Pradesh and Uttaranchal participated in the Delhi Consultation. The main recommendation that emerged from the Consultation was that there was greater need to create a heightened awareness of the human rights of diverse sections of society, and particularly in respect of those sections that were the most vulnerable. Human rights education was essential, not only for public servants, but at all levels of governance from the village-panchayat upwards. There was also a need to bring about far-reaching changes in civil society in order to create greater respect for human rights.

12.3 The Commission also considered it essential to look into issues regarding the

protection of NGOs working in the field of human rights. The Commission intends, in particular, to involve NGOs in efforts to give greater publicity to the rights of groups such as women and children, bonded labour, dalits and tribals. It will also seek to interact more fully with NGOs in programmes such as those relating to prison reform and the right to information.

12.4 As in the past, the Commission continued to receive complaints relating to serious violations of human rights from NGOs, which acted as the eyes and ears of the Commission in the remotest corners of the country. There was also a strengthening of cooperative efforts by way of holding joint seminars and workshops in different parts of the country. Support from NGOs has increased steadily in the work of the Commission. This is illustrated in the number and variety of NGOs that have shown their keenness to receive the Commission's Newsletter and to participate in activities organised by the Commission. The Commission greatly welcomes this trend.

12.5 It has, unfortunately, come to the notice of the Commission that some institutions/individuals have used the logo of the Commission illegally, claimed an association with the Commission that they did not have, and misused the name of the Commission. The Commission does not register/associate/affiliate any institution or individual with it. The existence of the name of an institution in the mailing list or NGO list with the Commission does not in any way authorise that institution to act on behalf of the Commission. The Commission is saddened to observe that this is being done in order to mislead the public; such acts undermine the most positive work being done by numerous other organisations working with such dedication to promote and protect human rights.

12.6 In the course of the year, the Commission provided financial assistance to a number of organisations/institutions for conducting programmes on human rights. The Tata Institute of Social Sciences, Mumbai was given Rs.40,000 to organise a seminar on 'Human Rights' at the national level in June 2000. The Indian Law Institute of New Delhi was given financial assistance of Rs.10,000 to print the proceedings of a seminar on the theme 'Towards an Enabling Legal Environment: Rights of Persons with Disabilities,' which it had organised in collaboration with the Commission and which was addressed by a Member of this Commission, Shri Virendra Dayal. The Himachal Pradesh Human Rights Commission was given Rs.50,000 for organising a seminar on 'Crimes Against Children, Women and Scheduled Castes/Scheduled Tribes'. An amount of Rs.18,020 was given to the Angaja Foundation, an NGO, to organise a two-day workshop on 14-15 December 2000 on 'Issues of Child Rape and

Child Sexual Abuse', as indicated earlier in this report. The Dagaon Child Welfare Centre of Jorhat, Assam was provided financial assistance of Rs.30,375 to organise human rights camps for 300 villages of Assam; these commenced on 1 December 2000. The North Eastern Socio-Legal Training and Research Institute, Dispur, Assam was provided a sum of Rs.13,000 for organising a workshop on 'Human Rights' at Nagaon District, Assam on 16 December 2000 and a sensitisation camp on 'Human Rights' in the sub-urban area of Guwahati city in Assam on 22 December 2000. The Institute of the World Congress on Human Rights in Jawaharlal Nehru University organised a two-day national seminar on 'Human Rights' on 15-16 December 2000 in New Delhi for which the Commission gave assistance to the amount of Rs.25,000. The Child Labour Action Network, Delhi was given Rs.25,000 for organising a two-day conference on the 'Future of Children in India', which was held in New Delhi on 29-30 September 2000. The Citizens Forum of Berhampur, Orissa received assistance amounting to Rs.30,000 for organising a seminar on 'Human Rights' in Berhampur on 18 February 2001. The Council of Cultural Growth and Cultural Relations of Cuttack, Orissa was given Rs.24,000 to hold a one-day seminar on 'Human Rights' on 10 December 2000. The Department of Sociology, Punjab University, Chandigarh received Rs.19,000 for organising a two-day national workshop on 'Inter-State Migrant Workers, with Special Focus on Punjab, Haryana and Delhi', which was held on 22-23 March 2001.

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State Human Rights Commissions and Human Rights Courts

CHAPTER 13

13.1 The Commission continued to discuss the question of the setting-up of State Human Rights Commissions with those State Governments that had yet to constitute them. Eleven States have now established State Human Rights Commissions. They are Assam, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Punjab, Rajasthan, Tamil Nadu and West Bengal. The States of Orissa and Bihar had issued notifications to set-up State Human Rights Commissions in their respective States, but these are yet to be formally established. The newly formed States of Chhattisgarh, Uttaranchal and Jharkhand have also been requested to set-up Human Rights Commissions.

13.2 The Government of Uttar Pradesh had issued a notification on 4 April 1996 to constitute a State Commission under section 21 of the Protection of Human Rights Act, 1993. However, the subsequent steps required to set-up the Commission were not taken. The matter was brought before the High Court of Allahabad in September 1998 and, on 10 January 2000, that Court directed the Government of Uttar Pradesh *'to take expeditious steps within three months from today for obtaining the recommendations of the Statutory Committee constituted under section 22(1) of the Act and to proceed to make the appointments in terms of section 21(2) and (3) of the Act'*.

13.3 Subsequently, on 12 May 2000 the Government of Uttar Pradesh filed an affidavit before the Court seeking extension of time by three months for complying with the directions of the Court. The State Government also averred therein that *'the State Government, after due consideration, has since decided to set-up the State Human Rights Commission and further necessary action in this regard is being taken'*. However,

even after this commitment before the High Court, the Uttar Pradesh State Human Rights Commission has not been constituted.

13.4 The Commission has suggested an amendment to Section 30 of the Protection of Human Rights Act, 1993 which provides for Human Rights Courts at the district level. The present provision is inadequate and defective and requires modification, without which Human Rights Courts at the district level, even if formed, cannot function effectively. Many States have designated Human Rights Courts under the provisions of Section 30 of the present Act. However, in the absence of action being taken on the proposed amendment, these courts are not adequately discharging the purpose for which they were designated. This is deeply disappointing. The Commission would like to observe, in this connection, that it is not sufficient to set-up State Human Rights Commissions or to designate courts to serve as Human Rights Courts. The quality of both must be ensured, both in terms of personnel and competence, if this central purpose of the Protection of Human Rights Act, 1993 is to be properly observed.

Complaints Before the Commission

CHAPTER 14

A] Number and Nature

14.1 The total number of complaints registered in the Commission in 2000-2001 was 71,555, a further increase of 41.32 per cent over the cases registered in 1999-2000. The ever-increasing number of complaints provides evidence of the growing awareness and determination of the people of India to defend their rights and their faith in the instrumentality of the Commission to do so. It also poses a constantly increasing challenge to the Commission and the duty to discharge its responsibility effectively. Since its establishment, the Commission has been getting nearly 50 per cent of the total number of complaints that it receives from the State of Uttar Pradesh. The 40,444 cases registered from this State in 2000-2001, accounted for 56.52 per cent of the total number of complaints received by the Commission during the year under review. That this trend of increasing complaints from Uttar Pradesh has continued over the last seven years is a matter of concern to the Commission, particularly since that State has failed thus far to set-up a Human Rights Commission of its own. Bihar followed Uttar Pradesh, with 4,273 complaints; it too lacks a State-level Human Rights Commission. Delhi was third, with 4,085 complaints.

14.2 During the year under review, the Commission had a total of 74,899 cases to consider, of which 3,340 were carry-over cases of 1999-2000. During the year, the Commission considered 60,287 cases. At the end of the period under review, 14,612 cases were pending consideration of the Commission. Of the cases that were

considered, 23,886 were dismissed in limini and 19,248 were disposed of with directions to the appropriate authorities. A total of 17,153 cases were taken cognisance of by the Commission for further action. Of these, 1,249 had been concluded and 15,904 were pending. In most of such cases, the reports that were asked for by the Commission from the varying authorities of the Central and State Governments were awaited. Thus, the Commission during this period, disposed of a total of 44,383 cases.

14.3 In terms of outstanding reports, the most recalcitrant States were Uttar Pradesh, Delhi and Tamil Nadu. The Commission urges them to cooperate with greater promptness and diligence in the discharge of the responsibilities entrusted to the Commission by Parliament.

14.4 As far as custodial deaths reported to the Commission were concerned, they showed a marginal decline from 1,093 in 1999-2000 to 1,037 in 2000-2001. Of these, 127 deaths occurred in police custody and 910 in judicial custody. Two deaths were also reported to have occurred in the custody of the Army in Jammu and Kashmir. Maharashtra continued to report the highest number of deaths in police custody. Nineteen such cases were reported this year, followed by 13 from Punjab and 11 each from Madhya Pradesh, Assam and Gujarat. In 1998-99 and 1999-2000, custodial death cases in police custody were 180 and 177 respectively. Compared to the last two years there has therefore been a reduction in the number of deaths in police custody reported to the Commission. During the period under review, the number of such deaths indicated a decline in the States of Andhra Pradesh, Kerala, Tamil Nadu, Maharashtra, Uttar Pradesh, Bihar and West Bengal.

14.5 In the year 2000-01, the maximum cases of deaths in judicial custody occurred in Bihar. One hundred and thirty seven cases were recorded in the different jails in that State, followed by 121 in Uttar Pradesh and 104 in Maharashtra. In total, however, the number of deaths in judicial custody came down slightly from 916 in 1999-2000 to 910 in 2000-01. The guidelines issued by the Commission requiring regular medical check-ups 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 effect 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 by members of the Investigation Division, has made evident the concerns of the Commission to all State Governments and prison administrators.

14.6 It must be noted, in this connection, that not all custodial deaths reported to the Commission are the result of custodial violence. According to the guidelines issued by the Commission, every death including natural deaths in custody, are to be reported to the Commission within 24 hours of occurrence. The word 'custody', in section 27 of the 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 the police officer and get away. The word 'custody' has been interpreted in various decisions of the courts and, thus, depending upon the circumstances, 'custody' might well include the period of surveillance, interrogation before arrest etc., irrespective of whether formally authorised or not.

14.7 Of the total cases admitted for disposal during 2000-01, 54 cases pertained to disappearances, 1,257 cases related to illegal detention/illegal arrest, 821 cases alleged false implication and 3,947 complaints related to other police excesses. During this period, the Commission received 56 cases specifically alleging that the dignity of women had been violated, 73 cases of sexual harassment, 89 complaints about jail conditions and 206 cases alleging atrocities against members of the Scheduled Castes/Scheduled Tribes, together with 2,983 complaints alleging that public servants had failed to take the appropriate action expected of them. The Commission is seeking to refine and improve its system for categorising the complaints received by it.

14.8 A state-wise list of the number of cases registered/considered by the Commission and pending consideration is at Annexure 9 A state-wise list of cases dismissed in limini, cases disposed of with directions, cases concluded and cases pending before the Commission is at Annexure 10. The cases admitted for disposal during the period 1 April 2000 to 31 March 2001 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, sexual harassment, jail conditions and atrocities on Scheduled Castes/Scheduled Tribes and others. A state-wise list is at Annexure 11.

14.9 It is worth noting that, since its establishment in October 1993, the Commission has ordered compensation in 499 cases. The total amount of compensation that has been ordered till now amounts to Rs.13,26,66,934.

14.10 The Commission urges the Central and State Governments to respond promptly to its requests for reports and to act without delay on its varied

recommendations on individual cases. The Commission also urges them to adhere more carefully to the various guidelines issued by it from time to time, as this would help the Commission to dispose of cases promptly and better fulfil the responsibilities entrusted to it under the Protection of Human Rights Act, 1993.

B] Investigation of Cases

14.11 The Investigation Division was directed to look into 1,597 cases by the Commission during the period 2000-01. Of these cases, 1,469 cases related to the collection of facts and the monitoring of the action being taken on complaints. Such steps were required in respect of the complaints received from various parts of the country, especially Uttar Pradesh, Rajasthan, Delhi, Haryana, Uttaranchal, Bihar and Tamil Nadu. Spot investigations were carried out in 128 cases on the directions of the Commission; they were conducted most frequently in Uttar Pradesh, Delhi, Haryana, Bihar, Punjab, Rajasthan and Madhya Pradesh.

14.12 On the basis of the reports and recommendations of the Investigation Division, criminal prosecutions were launched in 9 cases and departmental actions were initiated in 47 cases against errant police officials and other public servants. In addition, based on the advice of the Investigation Division, monetary compensation was awarded in 88 cases, the amounts ranging from Rs.5,000 to 3 lakhs.

C] Illustrative Cases

14.13 The substantial increase in the number of cases considered by the Commission is reflected in the range of human rights violations brought before it as in the previous years, a large number of cases related to custodial deaths, torture, fake-encounters and police harassment. The Commission has also considered cases, which affect human dignity, rights of children, women, minority groups and disadvantaged communities, particularly dalits and tribals.

14.14 The Commission is aware that the cases summarised in its Annual Reports provide just an illustration of the many thousands of complaints addressed to it and

that there is a desire, particularly among human rights activists and scholars, to have access to a greater range of the Commission's decisions. The Commission, too, is keenly interested in contributing to the jurisprudence of human rights and widening an awareness of the positions it has taken. To this end, the Commission is compiling for publication a Compendium of the principle cases that have come before it since 1993 and, in addition, it is increasingly seeking to place the gist of its decisions in important cases and, in some instances, the full text of such decisions, on its web-site www.nhrc.nic.in.

1) Police Excesses

A) Custodial Deaths

1) Death of Gothandam in Police Custody: Pondicherry (Case No. 75/32/97-98/CD)

Upon being informed of the custodial death of one Gothandam, aged 23 years, who was brought to the Police Station during the night of 15/16 February 1998 but who died in the course of interrogation, the Commission issued notice to the Government of Pondicherry calling for a report.

The report received from the Government of Pondicherry indicated that all the five police officials who had been involved in this incident were placed under suspension; a criminal case had been registered against them and a sum of Rs.60,000 had been paid as compensation to the father of the deceased.

The Commission observed, however, that the amount of Rs.60,000 was far too meagre, especially since the death of the young man had been caused in police custody. The magisterial enquiry report also showed that the victim has been tortured severely. Keeping in mind these facts, the Commission directed the issue of a show cause notice to the Government of Pondicherry as to why an additional amount of Rs.2 lakhs be not granted as immediate interim relief under Section 18 (3) of the Protection of Human Rights Act, 1993.

The Government of Pondicherry responded saying that the matter was pending before a Court. The Commission, however, took the view that the payment of immediate interim relief under Section 18(3) of the Protection of Human rights Act,

1993 was not dependent on the outcome of the criminal prosecution. It accordingly directed the Government of Pondicherry to deposit an amount of Rs.2 lakhs in a nationalised bank, in the name of the next of kin of the victim, adding that the interest that accrued thereon be made available to the next-of-kin every three months.

A report indicating compliance with the directive of the Commission has since been received.

2) Illegal Detention, Torture and Death of Shah Mohammed in Police Custody and Negligence on the Part of Doctors for not Conducting a Thorough Post Mortem: Madhya Pradesh (Case No. 3855/96-97/NHRC)

The Commission initiated proceedings in this case upon receipt of a wireless message from the Superintendent of Police, Durg which indicated that the custodial death had occurred of a certain Shah Mohammed, a resident of Bhilai in district Durg of Madhya Pradesh. A petition was later received from the Secretary of the Madhya Pradesh State Committee, CPI (ML) alleging that Shah Mohammed had been picked up by the police on the night of 16 July 1996, illegally detained and brutally tortured to death. The petition added that the wife of the deceased had not been informed of what had occurred.

In response to a notice from the Commission, the Government of Madhya Pradesh transmitted to the Commission copies of the magisterial inquiry report, the post-mortem report, the inquest panchnama and viscera examination report.

According to the police version, Shah Mohammed, alongwith five others, had been found to be travelling in a jeep under suspicious circumstances during the night of 17-18 July 1999. Reportedly, the group was apprehended by the Inspector of Bhatti, Bhilai, and brought to the police station. Inquiries made indicated that they had hatched a conspiracy to murder a lady, Ms Mazara Bai, the foster mother of Shah Mohammed, after obtaining her signatures on certain papers purported to be a will of her entire property. In the afternoon, however, Shah Mohammed had complained of uneasiness and sickness and was, therefore, taken to Durg hospital for treatment. He died there later in the day. A case crime No. 160/96 under section 115, 116, 120(B) IPC and 25, 27 Arms Act had been registered against Shah Mohammed and his associates.

The post mortem examination report indicated there were only two injuries; one ante-mortem and the other post-mortem on the body of the deceased. The ante-mortem injury was in the form of a contusion measuring 2.5 cms x 2 cms on the lateral side of the left toe of the deceased, while the post-mortem injury (purportedly caused by a rodent bite) was on the right side of the cheek, measuring 9.3 cms x 3 cms from the edge of the lip to the ear, with a reddish liquid oozing out from the said injury. The inquest panchnama proceedings conducted by the City Magistrate and attested by five witnesses did not indicate any other external injury on the body. The magisterial inquiry was conducted by Shri B. L. Tiwari, Additional Collector and District Magistrate.

His report concluded that Shah Mohammed was in critical condition around noon and had, in fact, died even before he was moved to the hospital. The inquiry also stated that the two doctors involved in conducting the post-mortem had produced an inconclusive report, which did not provide a definite opinion about the cause of death; nor had these doctors sent the requisite samples for histopathological examination to the Director, Medical Institute. The Additional Collector and District Magistrate therefore concluded that the death of Shah Mohammed resulted from negligent conduct on the part of the concerned police officers.

After considering all of these reports the Commission concluded that Shah Mohammed was picked up by the police in the evening of 16 July 1996, kept in illegal detention in the police lock-up by the police of Bhatti, Bhilai until the afternoon of 18 July 1996 and brutally tortured during the period of his illegal detention. It was this that led to his death at the police station in the afternoon of 18 July 1996, before he was removed to the hospital.

The Commission accordingly, acting under section 18 (3) of the Protection of Human Rights Act, 1993, recommended that the Government of Madhya Pradesh take action to:

- Register a case of custodial death against the Officer-in-Charge of the Police Station Bhatti, Bhilai and other police officers who were responsible for causing the death of Shah Mohammed;
- Initiate appropriate disciplinary proceedings against the two doctors who had not conducted the post-mortem examination thoroughly and who had failed to prepare a comprehensive post-mortem examination report;

- Pay a sum of Rs.2.5 lakhs to the next-of-kin of the deceased within a period of four weeks of this, an amount of Rs.50,000 was to be payable immediately and the balance deposited in the fixed term account in a nationalised bank for a period of five years, the interest accruing thereon being paid to the next of kin.

3) Torture in Police Custody Results in the Death of Kartik Mehto: Bihar (Case No. 8903/95-96)

The Commission received a complaint from Smt. Munuwa Devi alleging that her husband, Kartik Mehto, had been illegally detained by the police on 27 September 1995, brutally tortured and that this led to his death in police custody on 4 October 1995.

In response to a notice from the Commission, the report of the police admitted to the death of the Kartik Mehto in police custody. It added that a case had been registered against a Sub Inspector under section 302 IPC. The Sub Inspector had surrendered before a Court and was being dealt with in accordance with law.

In the light of the report received, the Commission directed the Government of Bihar to pay immediate interim compensation of Rs.2 lakhs to the family of the deceased and to recover this amount from the accused. The Commission also recommended that employment be given to one of the members of the family of the deceased, in accordance with his/her educational qualifications. Of the total amount of the compensation awarded, the Commission directed that 50 per cent be kept in a fixed deposit in the name of the widow of the deceased, who may be allowed to draw on the interest every quarter.

4) Harassment by Police Leads to Suicide of Surinder Singh: Uttar Pradesh. (Case No.1929/96-97)

The Commission received a complaint from one Mukesh in May, 1996 stating that a dispute existed between his brother, Surinder Singh, and a certain Chhatar Singh, in regard to a tubewell. He added that the Sub Inspector of Police, R. K. Sharma, in connivance with the latter, had implicated his brother in a false case of theft. He also alleged that though a sum of Rs.2000 had been paid to the Police upon their demand, but that the Sub Inspector had continued to torture Surinder Singh. As a result of this humiliation, he stated that Surinder Singh had committed suicide on 5 May 1996, leaving behind a written note blaming Sub Inspector R. K. Sharma for his death.

The Commission directed the Senior Superintendent of Police, Bijnore, Uttar Pradesh to investigate the matter and submit a report. According to the report received, the Sub Inspector had indeed implicated Surinder Singh in a case under Sec. 379/411 IPC. He had then demanded Rs.5,000, but only Rs.2,000 was paid by him. The Sub Inspector had thereafter threatened the complainant and his family members and, as a result of this harassment and mental torture, Surinder Singh committed suicide. In the course of the investigation, it was learnt that a case had been registered against the Sub Inspector under various sections of the Indian Penal Code. It was also learnt that a Head Constable, Assistant Sub-Inspector and a Station House Officer were also involved in this incident and that disciplinary action had been recommended against them. The Sub Inspector had been suspended and the Head Constable and other police officials had been charge-sheeted under the Police Rules.

After considering the report, the Commission considered it appropriate to award interim relief in the amount of Rs.1 lakh to the legal heirs of the deceased who, by admission of the police itself, were tortured while in custody and forced to commit suicide. The Commission further directed the Senior Superintendent of Police, Bijnore to inform the Commission of the progress in the various proceedings against the police officials.

B) Torture

5) False Implication of the Complainant and Others and Torture by Police: Delhi. (Case No. 3069/30/1999-2000)

The Commission received a petition from one Dara Singh alleging that during the night of 26 March 2000 he, alongwith Manmohan Singh, Bhim Singh, Anil Sharma and others, was detained in the Anand Parbat Police Station, Delhi at the instance of one Smt. Veero Devi. All of them were brutally beaten by Inspector A. S. Tyagi, Station House Officer. They were later implicated in a false case under Section 506, 354 of the Indian Penal Code.

Upon considering the petition, the Commission asked its Director General (Investigation) to enquire into the matter and submit a report. An enquiry was accordingly conducted by an Investigation Team of the Commission, which examined the complainant and his associates, Smt. Veero Devi, Sub Inspector Hari Prasad, Inspector A. S. Tyagi, Constable Sardar Singh and Shri Mohammed Ali, Assistant

Commissioner of Police. Documentary evidence perused by the Investigation Team included the Medico Legal Report (MLR) of the injured and the Daily Diary Report (DDR) etc., maintained at the police station.

Upon considering the detailed report submitted by the Investigation Team, the Commission reached the conclusion that Inspector Tyagi had manipulated the DDR to show his absence from the police station at the time of the illegal detention and torture. Further, it appeared that Inspector Tyagi had taken offense at the conduct of Constable Sansar Singh who had appeared before the Investigation Team of the Commission and disclosed the truth of what had occurred at the police station. The Commission held that Dara Singh and others were illegally detained in the police station during the night of 26 March 2000 and that the Inspector was wholly responsible for this and the torture inflicted on them.

The Commission, therefore, recommended:

- The payment of compensation of Rs.10,000 each to Dara Singh, Manmohan Singh, Bhim Singh, Anil Sharma and R. K. Mishra for the torture inflicted on them in custody;
- Departmental enquiry be initiated against Inspector A. S. Tyagi to ascertain his liability and that action be taken based on the findings in that enquiry; and
- Constable Sansar Singh may be transferred from the Anand Parbat Police Station to any other police station in view of the apprehension expressed by him, which appeared to be reasonable.

Before the close of the reporting period, the Commission had been informed that compensation had been paid to the victims; that the departmental enquiry was in progress and that Constable Sansar Singh had been transferred from the police station.

6) Allegations of Death, Rape and Torture of Tribals as a Result of Actions of the Joint Task Force set up by the Government of Tamil Nadu and Karnataka to Apprehend Veerappan and Associates. (Case No. 222/10/97-98, 534/22/97-98, 795/22/97-98, 249/10/97-98, 79/10/99-2000)

The preceding report of the Commission contained a detailed account of the manner in which the Commission has, since mid-1997, dealt with complaints that it has received alleging the harassment and, in certain instances, the rape, torture and death of villagers and tribals living in the area where the Joint Special Task Force (JSTF) constituted by the State Governments of Tamil Nadu and Karnataka has been operating in its effort to apprehend the sandalwood smuggler, Veerappan.

That account provided an idea of the complaints received from a number of petitioners and the steps that the Commission had taken in respect of each of them until the end of the last reporting period, namely, 31 March 2000. For purposes of brevity and for ease of reference, a summary is provided below of certain of the steps taken in 1999-2000. The Commission:

- Directed its Director-General (Investigation) in January 1999 to contact the principal complainants and the two State Governments in regard to the serious allegations brought before the Commission, both in respect of torture and the detention of tribals under TADA;
- Urged the two Governments to have the cases of the TADA detainees brought before the respective Review Committees, in accordance with the directions of the Supreme Court.
- Deputed its Special Rapporteur, Shri Chaman Lal, to visit Central Jail, Mysore. He reported that 127 persons in total had been detained under TADA by the Karnataka police during the years 1993-97, and that 51 of them remained under detention as at the time of his visit on 25 March 1999. These 51 detainees comprised 34 persons (including 9 women) who had been in prison since 1993, 4 since 1994, 11 (including 8 women) since 1995 and 2 (including 1 woman) since 1997. Trials in respect of these 51 TADA detainees had not, at that time, commenced and none of them had availed of parole after being incarcerated.
- In April 1999, the Commission called the senior-most officers of the two State

Governments to New Delhi to discuss the situation with them, so that appropriate action could be taken.

- As there was no major change in the situation, the Commission concluded, in a proceeding of 18 June 1999, that the allegations of mistreatment of the villagers and tribals were indeed serious, as were the facts relating to the languishing in jail of 51 detainees under TADA. The Commission expressed dismay at the continued detention without trial and underlined again the great importance that the Hon'ble Supreme Court itself attached to expeditious trial and to the vital relevance of such trial to a proper respect for the human rights of those concerned.
- Having regard to the circumstances, the Commission felt the need to constitute a Panel of two eminent persons to look into all relevant aspects to the allegations. Justice A. J. Sadashiva was appointed to serve as Chairman of the Panel, with Mr C. V. Narasimhan, former Director, CBI, as its Member. The two State Governments were requested to extend the necessary cooperation to the Panel, which commenced its work.

However, soon after, 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. Faced with this situation, the Commission requested Shri Jayaraman, Advocate General of the State of Karnataka, to represent the Commission before the High Court.

On 13 September 2000, the Commission received a letter from Amnesty International urging it to intervene in respect of this matter in a proceeding before the Apex Court. The Commission also received a number of letters from non-governmental organisations making similar suggestions. The Commission considered these communications and took the view that, as it was already a party in this matter before the Karnataka High Court, and had taken its stand before that Court, it did not consider it necessary also to intervene in the Supreme Court.

On 1 November 2000, the Commission took note of a request made to it to intervene in proceedings before the Supreme Court which sought the withdrawal of cases under TADA pending against the 51 detainees in the Central Jail, Mysore. The request was made to the Commission in the context of the well-known film star, Dr Raj Kumar having been taken hostage by Veerappan. The Commission observed that this

matter had been heard in the Supreme Court and closed for orders on 31 October 2000, according to media reports. As a fresh request was made to the Commission on the same subject, the Commission considered the matter yet again but took the view that no intervention by the Commission was required in the proceedings, which had been closed in the Supreme Court after hearing of the arguments on 31 October 2001. The Commission observed that it had placed its viewpoint before the Karnataka High Court in the matter pending before it in connection with the proceedings before Justice A. J. Sadashiva Committee. The Commission added that this by itself was sufficient reason not to intervene on its own without any notice being given by the Supreme Court to the Commission in the matter. The Commission also noted that it was reasonable to assume that its view point was sufficiently well known, and also known to the State Governments of Karnataka and Tamil Nadu, which were parties in the Supreme Court. The Commission noted that there was no material available to it which gave an indication that either or both of the State Governments had relied on the view point of the Commission for the purpose of deciding to withdraw the prosecution against the 51 detenués. The Commission, therefore, declined to intervene in the proceedings in the Supreme Court.

**7) Mistreatment and Torture of Prabhakar Mehta by
the Officers of Enforcement Directorate: Maharashtra.
(Case No. 1208/13/97-98)**

Shri Prabhakar L. Mehta, a resident of Mumbai, submitted a petition dated 26 December 1997 to the Commission complaining of mistreatment and torture by officers of the Enforcement Directorate, Mumbai. He alleged that personnel of the Enforcement Directorate had raided his residence and had picked up both his wife and him at 1.30 p.m. on 22 December 1997 from their home and then taken them to the office of the Directorate. While his wife had been released early in the night, the petitioner alleged that he had been kept in custody overnight and tortured in order to coerce him into furnishing false statements as a witness in an on-going investigation of the Directorate. In the process, he stated, he was brutally assaulted and denied food and water. He added that passports belonging to him and to his wife had been illegally taken away and that no reference had been made of their seizure in the Panchnama.

In response to a notice issued by the Commission to the Enforcement Directorate, the latter sent a report stating that there was no substance to the complaint of Shri Mehta. The Commission then asked its own Investigation Division

to conduct an independent inquiry into the facts of the case. Based on the oral, documentary and circumstantial evidence of independent witnesses, as well as an examination of doctors and hospital records, the Investigation Division stated that there was sufficient evidence in support of the allegations made by the petitioner.

As a *prima-facie* case of the violation of law and the fundamental rights of the petitioner appeared to have been established, the Commission forwarded the petition of Shri Mehta, alongwith the report of its Investigation Division, to the Commissioner of Police, Mumbai to register a case under the appropriate provisions of law, to cause an investigation and set the process of criminal justice in motion. The Commission also issued a show-cause notice to the Enforcement Directorate seeking to know as to why 'immediate interim relief' under section 18(3) of the Protection of Human Rights Act, 1993 should not be awarded to the victim as his human rights had been violated by public servants.

The Enforcement Directorate stated that, on the basis of a complaint filed by the petitioner, a case was pending in the court of the Additional Chief Metropolitan Magistrate, Mumbai. In view of the pendency of the criminal case, the Enforcement Directorate contended that the Commission could not grant immediate interim relief as this would seriously prejudice the Directorate's case in the criminal prosecution, and that the Commission should await the outcome of the criminal case before exercising its powers of recommendation.

The Commission, after considering the response of the Directorate, and holding a series of hearings, concluded that the petitioner had been assaulted in the office of the Directorate and that this had resulted in grievous injuries to him. Since a criminal prosecution was pending, the Commission refrained from making any comments that would reveal the identity of the officers involved in the assault. The Commission was, however, convinced that a strong *prima-facie* case existed to establish that the human rights of the petitioner had been violated. The Commission observed that no law entitled a public servant to violate the human rights of a person being interrogated on the suspicion of a charge. The granting of any relief under section 18(3) of the Protection of Human Rights Act, 1993 was for violation of human rights. Having regard to the facts and circumstances, the Commission, therefore, directed that the petitioner be granted relief in the amount of Rs.50,000. The Commission also observed that, in the pending prosecution, the parties were free to adduce evidence in support of their case. Further, the concerned court was free to consider independently the evidence on record and decide the case on merits without being in any way influenced by the proceedings of the Commission.

Subsequent to the proceedings before the Commission, the Enforcement Directorate filed a writ petition in the High Court of Delhi against the Commission's recommendations. The matter is, at present, pending before that Court.

8) Illegal Detention, Torture and False Implication by Police: Uttar Pradesh. (Case No. 21883/24/98-99)

On 22 March 1999, the Commission received a telegram alleging that Anil Kumar and Rajendra Kumar had been taken away by the Faizabad Police from Kanpur on 15 March 1999 and had not been produced before the Chief Judicial Magistrate until 16 March 1999. It was stated that the police had beaten them mercilessly, that their hands and legs had been broken and that they were unable to walk.

The Commission took cognisance of the complaint and called for a report from the Director General of Police, Uttar Pradesh (U.P.). In response, the report received from the Superintendent of Police, Faizabad, Uttar Pradesh stated that, on 22 March 1999, two persons, namely, Anil, s/o Ram Nath and Ragey, s/o Shivnath had been arrested by the police from Karayappa Marg Press Club Gate, Civil Lines, Faizabad on the ground that they respectively had, in their possession, 18 and 20 tablets of an intoxicating drug. A case crime No. 941 and 942 under section 21/22 of the Narcotic Drugs and Psychotropic Substances Act (NDPS), had been registered against them and was under investigation. It was added that the Inquiry Officer had not found the allegations of torture by the police to be true.

After examining the report, the Commission directed that it be sent to the complainant for his comments. In response, the complainant reiterated the stand taken by him in the complaint. Thereupon, the Commission directed its Director General (Investigation) to depute an officer from the Investigation Division to investigate the case. The officer of the Commission after conducting the investigation, reported the following:

- On 12 March 1999, a case had been registered at Police Station Kotwali, Faizabad by one Daya Shankar regarding the alleged theft of his jeep and investigation had been entrusted to Sub Inspector R. K. Saxena.
- On 14 March 1999, this Sub Inspector accompanied by Daya Shankar, a friend and three constables, visited Kanpur with a view to conducting a raid on the

Yashoda Guest House. As they were not allowed to enter this Guest House initially, they took the help of Sub-Inspector Nageshwar Pandey of Naubasta PS, Kanpur, entered the Guest House and arrested Anil Kumar, his brother Rajesh Kumar and Rajendra Kumar.

- The police beat all three of them as they had denied any involvement in the theft of the jeep. They were detained illegally on 15 and 16 March 1999 at PS Naubasta and Rail Bazaar of Kanpur.
- Thereafter, Rajesh Kumar was sent away, but the others were taken to PS Civil Lines, Faizabad and were kept in illegal custody from 17 to 22 March 1999. They were thereafter implicated in a false case, produced before a Court, and subsequently released.
- They were not medically examined even though they had received injuries.

After considering all the material on record, the Commission concluded that the police had deprived the three persons of their liberty. The Commission accordingly recommended that the Government of Uttar Pradesh pay immediate interim compensation of Rs.40,000 each to Anil Kumar and Rajendra Kumar and Rs.10,000 to Rajesh Kumar. The Director General of Police, Uttar Pradesh was also directed to cause an inquiry to identify the police personnel responsible for holding the three persons in illegal detention, and for torturing them. The Director General of Police was also asked to initiate appropriate action against the errant police personnel in accordance with the law and to submit a report on the steps taken to the Commission.

**9) Illegal Detention and Torture of an ISRO Scientist: Kerala.
(Case No. 235/11/98-99)**

The Commission, on 14 March 2001, directed the Government of Kerala to pay a sum of Rs.10 lakhs as 'immediate interim relief' to Shri S. Nambinarayanan, a scientist working in the Indian Space Research Organisation (ISRO) Headquarters in Bangalore, as compensation for gross violation of his human rights by public servants. The background to the decision is given below.

In October 1994, a criminal case of espionage under the Indian Official Secrets Act, 1923, was initiated in which Shri Nambinarayanan was implicated as an accused

along with five others. He was arrested on 30 November 1994. The case was handed over to the Intelligence Bureau (IB) on 5 December 1994. The complainant alleged illegal detention and custodial torture by officials of the Kerala Police and IB and the involvement of the Inspector General of Police (Crimes) of the Kerala Police and the Joint Directors of the IB in his illegal detention and in the gross violation of his human rights during custody. He also alleged vilification by officers of the Kerala Police and IB, which had led to considerable humiliation and trauma to his entire family.

On 2 December 1994, the Government of Kerala had issued a notification entrusting the investigation of the case to the Central Bureau of Investigation (CBI). Shri Nambinarayanan was then remanded to CBI custody till the Kerala High Court ordered his release on bail on 19 January 1995. According to the report submitted by the CBI to the Chief Judicial Magistrate, Ernakulam on 13 April 1996, the allegations of espionage were not proved and were found to be false. The CBI investigation also disclosed that the accused persons had been harassed and physically abused, which was supported by medical examination. This torture was apparently inflicted to extort confessions.

Accepting the final report of the CBI, the Chief Judicial Magistrate, by his order dated 2 May 1996, discharged the complainant and the other accused. However, the Kerala Police filed a revision petition in the Kerala High Court challenging the complainant's discharge. The Court dismissed the petition.

In spite of these developments, the Government of Kerala took the unusual step of issuing a notification withdrawing the consent given to the CBI for investigation of the case and ordering 'reinvestigation' by a special team of the Kerala Police. The notification was later amended to describe the 'reinvestigation' as a 'further investigation'.

The complainant filed a writ petition in the Kerala High Court. The Court held that even though the State Government's notification could not be quashed, it had no jurisdiction to file a complaint before a court in respect of any offence under sections 3,4 and 5 of Indian Official Secrets Act. The complainant in an appeal before the Supreme Court challenged this judgment. The Supreme Court, by its judgment dated 29 April 1998, quashed the notification directing 'further investigation'. It also passed strictures against the Kerala Government and observed that the subsequent notification issued by it was inconsistent with the role of a responsible Government bound by the rule of law. Accordingly, the Apex Court awarded Rs.1 lakh to each of the appellants as costs to be paid by the Kerala Government.

After the conclusion of the criminal case against him, Shri Nambinarayanan submitted a petition to the Commission on 14 October 1998 complaining of the gross violation of his human rights and seeking the award of compensation.

The Commission, on considering the facts, held that the allegation of the gross violation of the human rights of the complainant by officers of the Kerala Police and IB were proved by the conclusions of the CBI report, which had been upheld by the Apex Court of the country. The Government of Kerala had supported this unlawful action, which was a malafide exercise of power, as held by the Supreme Court. The complainant, a senior scientist of considerable repute, whose contribution in Space Research was acknowledged, was kept under suspension for a period of 18 months on a false case foisted on him which resulted in a loss of his reputation apart from the ignominy and damage to his health in addition to the considerable expenditure incurred by him to defend himself from the false accusation. The Commission felt that the damage done to the complainant and his family as a result of these unlawful acts was difficult to assess fully. However, the findings of the CBI, duly approved by the Supreme Court, were sufficient to prove the gross violation of his human rights by public servants.

Thus, on 6 September 1999, the Commission directed the Union Home Secretary, the Director, IB, the Chief Secretary and Director General of Police, Kerala to immediately conduct enquiries to identify the officers who had committed the excesses and initiate appropriate disciplinary as well as criminal action against them and submit a compliance report to the Commission. After a lapse of considerable time, the IB, by its letter dated 29 August 2000, informed the Commission that the charge sheets issued by the Ministry of Home Affairs, Government of India, had been served on 9 IB personnel. The Commission, thereafter, on 4 September 2000, issued notice to the Ministry of Home Affairs as well as the Government of Kerala to show cause as to why 'immediate interim relief' under Section 18(3) of the Protection of Human Rights Act, 1993 be not granted in favour of Shri S. Nambinarayanan.

In response, the Government of India as well as the Government of Kerala appeared before the Commission through their counsel to submit their objections. According to the counsel for Government of India, a Civil Suit had been filed by the complainant claiming damages amounting to Rs.1 crore against the State of Kerala and the Union of India, the outcome of which would be prejudiced by the award of relief by the Commission. Further, it was held that the matter was *sub judice* and so the Commission should not grant any such relief. It was also urged that disciplinary

proceedings were pending against the charge-sheeted IB officers the outcome of which might also get prejudiced by the Commission's directions. The counsel for the State of Kerala contended that the complaint had been made more than one year after the alleged violation of human rights and thus barred from the purview of the NHRC.

The Commission disposed of the objections raised, holding that the true scope and purport of section 18(3) of the Act and the nature of 'immediate interim relief' granted thereunder, was to provide immediate interim relief in a case where a strong *prima-facie* case of violation of human rights had been made out, so that the complainant need not await determination in another proceeding of the full compensation awardable or the identification of the particular public servant guilty of the violation and the determination of his liability. The amount of the 'immediate interim relief' so awarded should be adjusted in the total compensation determined as payable in a proceeding like a Civil Suit so that the same amount was not paid twice. Regarding the bar of limitation of one year under section 36(2) of the Act, the Commission expressed its opinion that because the inquiry into the facts had been concluded with the findings of the Supreme Court and as no independent inquiry was required to be conducted by the Commission, the period of one year could commence only from 29 April 1998 when the Supreme Court gave its judgment. Even if the complaint had been filed earlier, i.e., within one year of the complainant's arrest on 30 November 1994, the matter in the Commission would have to be kept pending because of the pendency of proceedings in the competent courts till its final conclusion in the Supreme Court.

Expressing the view that the Civil Suit would determine the precise terms of the monetary compensation to which the complainant was entitled, the Commission directed that the sum of Rs.10 lakhs should be paid to Shri S. Nambinarayanan by the Government of Kerala as 'immediate interim relief' within two months and compliance reported to the Commission. The Government of Kerala was also directed to report on the action taken against its delinquent officers, as directed by the Commission on 6 September 1999.

10) Fracture Sustained by Sheshrao Rayasing Rathod following Police Mistreatment: Maharashtra (Case No: 1299/13/98-99)

The Commission received a petition from Shri Sheshrao Rayasing Rathod, a resident of Mahuli, Maharashtra, stating that during the course of the Zila Parishad

election campaign on 12 December 1998, the petitioner and his friends, Harishchandra and Umesh Sawant, were stopped by a police Sub Inspector and five constables when they were returning from Sawali village. Though they were not within the jurisdiction of these police officials, they were allegedly beaten by them. As a result, the left leg of the petitioner was fractured. It was further alleged that it was done at the instance of one Madharao Nimbalkar of Village Sawali, whose wife was a contestant in the Panchayat Samiti election. In addition, it was alleged that the Sub Inspector had registered a false complaint against the petitioner.

Upon taking cognisance of the complaint, the Commission issued a notice to the Director General of Police, Maharashtra. The report received from his office confirmed the fact that the Sub Inspector of Police Station, Digras had misused his official position and that the incident had occurred outside his area of jurisdiction. An enquiry into the matter indicated that the Sub Inspector had acted at the behest of Madarao Nimbalkar of Sawali Village and that, as a result of merciless beating inflicted on the petitioner, his left leg was indeed fractured. The report also confirmed that a false case had been registered against the petitioner. The report concluded by stating that departmental action was being taken against the Sub Inspector and that it had been recommended that his increments be withheld for two years.

The Commission expressed deep regret over the fact that the police, whose duty it was to protect human rights, was itself involved in the violation of such rights. Having regard to the grievous injuries suffered by the petitioner at the hands of the Sub Inspector, the Commission recommended the payment of immediate interim compensation of Rs.30,000 to him; it also recommended that this amount may be recovered from the concerned police official if the Government so wished. Further, the Commission asked to be informed of the payment of compensation, as well as the status of the case registered against the Sub Inspector.

C) Fake Encounters

11) Death of a Labourer in a Fake Encounter: Bihar (Case No. 3879/4/98-99)

The Commission received a complaint from Smt. Manva Devi alleging that Assistant Sub Inspector Surender Paswan of Police Station Rivil Ganj, Chapra had dragged her husband out of their home and shot him dead. She added that her

complaint was initially not registered by the Station House Officer (SHO) at Rivil Ganj Police Station but that the FIR was lodged only on the directions of the Judicial Magistrate, Saran. The police, she stated, had tried to hush-up the case.

In response to a notice from the Commission, a report was received from the Director General of Police, Bihar. It stated that an investigation had been conducted by the Deputy Superintendent of Police (DSP), Saran and that the investigation indicated that the victim, Parsu Ram, was a dreaded criminal who was suspected in 10-12 criminal cases and against whom a case had been registered. It was added that the ASI Surendra Paswan had gone to arrest Parsu Ram under the instructions of the Inspector at Sadar Police Station. A chase had ensued and Parsu Ram had opened fire. ASI Surender Paswan had then fired in self-defence and Parsu Ram had died in the encounter. It was stated that a country-made pistol and three bullets had been found near the body of the deceased.

The Commission, on studying the reply, came to the view that this was, *prime facie*, a case of a death in a fake encounter. Further investigation by the Investigation Division of the Commission revealed that the complainant's husband was a daily labourer who was staying with his family in District Saran (Chapra). He was not named in any of the cases referred to by the police and there was no merit in the contention of the police that Parsu Ram Nut was indeed Bacha Nut, who was involved in a number of criminal cases. In fact, the newspaper 'Hindustan' of 12 June 2000 had indicated that Bacha Nut was active in the area and was still engaged in his criminal activities. Moreover, there were independent witnesses who had seen ASI Surender Paswan dragging the victim out of his house by his collar. The investigation also confirmed that the complaint originally made by the complainant was not entertained by the police station and that the investigation supposedly undertaken by the police was shoddy and suffered from a lack of impartiality. Indeed the police had submitted a final report seeking to close the case.

In these circumstances, the Commission concluded that the State police had tried to hush-up the case and had given a false report. The Commission therefore directed the Director General of Police, Bihar, to ask the CBCID to conduct a fresh investigation of the case and to submit its report to the CJM. Concluding that this was, *prima-facie*, a case involving a fake encounter, the Commission considered it appropriate to award immediate interim compensation to the next-of-kin of the deceased under section 18(3) of the Protection of Human Rights Act, 1993. The Commission accordingly issued a show cause notice to the Government of Bihar

asking as to why payment to the amount of Rs.1 lakh should not be made to the next of kin of the deceased.

D) Police Harassment

12) False Implication by Police: Bihar (Case No. 3321/4/97-98)

The Commission received a complaint from Mohammed Nizam and Mohammed Hashim stating that they had been falsely implicated in a case allegedly of the murder of one Devki Kumari. They stated that Devki Kumari had, in fact appeared in court and given a statement under section 164 Criminal Procedure Code (Cr.PC.) indicating that she was alive. The complainants had, however, been sent to jail and denied bail.

In response to the Commission's notice, a report was received from the Superintendent of Police, Madhepura, Bihar which stated that a case under section 302 Indian Penal Code (IPC) was pending against the complainants.

The Commission, however, received and considered a further representation by the complainants, enclosing an acquittal order of the court, which also directed the State Government to initiate action against the errant police officers. The Commission reached the conclusion that this was a case in which the complainants had been humiliated in the eyes of the public and unnecessarily dragged before a court under the serious charge of murder because of faulty investigation reports by the police.

The Commission accordingly awarded compensation of Rs.20,000 to each of the complainants as immediate interim relief and also directed the recovery of this amount from the police officers who were guilty of the faulty investigation

13) Police High-Handedness Against Agitating Farmers in Ten Villages of C. R. Pattna Taluk, Hassan District: Karnataka (Case No. 91/10/1998-99)

The Commission initiated proceedings in this case on the basis of a petition dated 27 July 1998 from Shri G. Puttaswamy Gowda, former Minister, Karnataka alleging atrocities against farmers of ten villages of C.R. Pattna Taluk, Hassan District,

Karnataka who engaged in an agitation on 20-21 July 1998. Similar complaints were also received from Shri D. M. Chandrashekhar, retired Chief Justice of Karnataka High Court; H. K. Patel, former leader of the Opposition; M. Gopal, Secretary, All India Kisan Sabha (Karnataka State Committee); P. Kodanada Ramaiah, ex-MP; M. Veerappa Moily, former Chief Minister, Karnataka and four others.

Upon considering these petitions, the Commission deputed its Special Rapporteur, Shri Chaman Lal, to make an on-the-spot investigation of the situation and submit a report. He met the complainants, the victims, the concerned government officials and various public figures in Hassan and Bangalore and presented his report to the Commission on 2 June 1999. The Commission also received a detailed report from the Government of Karnataka.

Having examined both the reports, the Commission recommended that an assessment be made of the quantum of property loss and the nature of injury suffered by individual victims as a result of the police action. The Commission further proposed that this be done by inviting public claims and that these claims should be examined by a suitably constituted Committee, headed by an officer of the rank of Secretary to the Government. Based on the recommendations of that Committee, the Commission suggested that compensation be paid to the victims. The State Government was asked to report to the Commission on the action taken.

In compliance, the Government of Karnataka informed the Commission that a High-Powered Committee had been constituted by the State Government under the leadership of the Home and Transport Department and had started functioning as of 17 February 2000. The Committee had received as many as 1,343 claims from victims, had visited the concerned villages and inspected the properties in order to verify the authenticity of the claims that had been filed. The Government of Karnataka subsequently reported again, saying that work was well underway and that it was awaiting the final report of the Committee, which was expected shortly.

14) Acts of Police High-Handedness against Dalits in Ogalure Village: Tamil Nadu (Case No: 772/22/98-99)

A non-governmental organisation, Peoples Watch — Tamil Nadu, filed a complaint on 22 December 1998 asserting that serious acts of police high-handedness had occurred against dalits in Ogalure village, Perambalur District, Tamil Nadu during

the night of 30 November 1998 and again in the early morning of 1 December 1998.

Upon examining the complaint and the response received from the Government of Tamil Nadu, the Commission considered it essential to conduct a series of hearings at its Headquarters.

At the conclusion of these hearings, the Commission pronounced its views. The Commission noted that the police had received information that activists of the Dalit Panthers India were planning to destroy public properties in Cuddalore and Perambalur areas. Upon hearing that militants belonging to this organisation were hiding in Ogalure village, the police had gone to that village to make preventive arrests. The Commission further noted that the police had initially sent a small party into the village during the night of 30 November 1998. However, as this was repulsed, the police had sent in a large party in the early hours of 1 December 1998, armed at least with lathis. This party appeared to have assaulted the villagers with lathis, injuring some of them and breaking their utensils.

From the evidence available, the Commission observed that the injuries did not appear to be very serious, except in respect of two women. The evidence available clearly indicated that Loganayaki was assaulted by the police and, as a result, suffered injuries on her back and stomach, which required her to take medical treatment. There was no explanation forthcoming from the respondents for the assault on Loganayaki, who was a physically disabled person and inside her hut. Though the respondents had challenged the date on which Loganayaki's affidavit had been recorded by the complainants, the basic fact of Loganayaki having been assaulted and injured by the policemen on the morning of 1 December 1998 could not be doubted. The injuries had resulted in internal bleeding, though the scant medical evidence before the Commission did not satisfactorily establish whether she had suffered an abortion or not. The second injured lady was Muthamil Selvi, who fractured her hand as a result of the police assault on 1 December 1998.

The Commission further noted that the police had rounded up and arrested 69 persons on December 1998. Of these, 34 were women, 3 of them with infants, and there were 4 elderly persons. The rest were men. After considering the reasons and circumstances mentioned by the police in respect of these arrests, the Commission concluded that the guidelines laid down by the Supreme Court in *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416 in regard to the steps to be taken at the time of making an arrest had not followed by the police. No arrest memos were prepared. While the

arrested persons were produced before the Judicial Magistrate at 5 PM on the same day, they were remanded to police custody upto 15 December 1998. Their bail applications were also rejected. However, on 17 December 1998, the High Court granted bail to all the persons arrested, on furnishing a bond of Rs.5,000 each and they were redressed on 18 December 1998. Charge sheets against these persons were, however, filed only on 29 November 1999, almost a year after the incident and long after the present complaint had been filed before the Commission and notices had been issued to the respondents.

From the explanation given by the police to the Commission for arresting 34 women, infants and elderly persons, the Commission noted that these persons were deprived of their liberty for trying to prevent the arrest of 32 men from the village. There was no allegation that these women, children or elderly persons were armed with any weapon or that they had, in fact, attacked the police party although stones were thrown at the police party by some of the villagers and at least one policeman was injured in stone throwing. The Commission observed that the guidelines issued by the Supreme Court were intended to check the abuse of police power, to ensure transparency and accountability and at the same time efficiency and effectiveness in the police. The Supreme Court had observed that the police force needed to develop a proper work culture, training and orientation consistent with basic human values. Though the guidelines were required to be circulated to every police station, they appeared to have been ignored.

In these circumstances, the Commission took the view that there was need to pay interim compensation to the 34 women, some of them with infants, and the elderly persons who were detained from 1 to 18 December 1998, for no reason, at the insistence of the police.

The Commission also commented on a separate incident, which had a bearing on the present case. On 17 December 1998, one Chandra, daughter of Rasu, who was a dalit, was raped by Ramaraj, a Vanniyar. Chandra was a widow at the time. On the complaint of Chandra, a Crime No. 766/98 was registered by Mangalamedu Police Station under Sections 341, 324 and 376 read with Section 511 of the Indian Penal Code. Ramaraj was arrested. He was, however, released on bail. No complaint under the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 was registered. It was only after a year, when a Member of the Commission for Scheduled Castes and Scheduled Tribes visited Ogalure village on 24 December 1999, that an offense under the SC/ST (Prevention of Atrocities) Act was registered against Ramaraj.

The respondents were unable to explain why a crime under the SC/ST (Prevention of Atrocities) Act was not initially registered on the complaint of Chandra. Had this been done in good time, she could have received compensation under the Act amounting to Rs.25,000, which could have helped her in her medical treatment. By the time the compensation was awarded on 6 January 2000, Chandra had died and the compensation could be paid only to her father.

The Commission accordingly condemned the gross negligence of the police in handling such crimes, particularly when the victim was entitled to the benefit of compensation under the SC/ST (Prevention of Atrocities) Act and timely receipt of such compensation could have been of great help to her possibly saving her life. The Commission observed that police officers were expected to know the provisions of this Act and added that they should register complaints under this Act when the complaint clearly relates to the violation of provisions of this Act. The Commission stated that the non-recording of an offense under this Act in the case of Chandra had, therefore, to be condemned. It also asked the State of Tamil Nadu to inquire further into the matter in order to take appropriate action against the errant police personnel.

The Commission concluded that the case represented an instance of lawlessness on the part of the police which had resulted in serious injuries to two women and the arrest and detention of 34 women with children and 4 elderly persons from 1 December 1998 to 18 December 1998, when there was no justification for depriving them of their liberty for such a length of time. It was essential for the preservation of the Rule of Law that legitimate duties assigned to the law enforcement agencies were lawfully discharged and that people who were poor not maltreated or their meagre belongings mindlessly destroyed or damaged by persons who were entrusted by law with the duty of maintaining law and order.

The Commission, therefore, recommended that the State of Tamil Nadu pay to Loganayaki a sum of Rs.1 lakh, to Muthamil Selvi a sum of Rs.50,000 and to each of the 34 women and elderly persons arrested a sum of Rs.10,000 each, and an additional compensation of Rs.5,000 per child to the women with children, as immediate interim compensation. The State was also directed to take appropriate departmental action to identify the errant police officials, to punish them for not following the D.K. Basu guidelines and to further ensure that the guidelines were circulated to all police stations to be followed rigidly. The Commission made the above recommendations without prejudice to the pending criminal prosecutions.

15) Unjustified Arrest and Detention of Farmers to Recover Arrears of Land Revenue: Uttar Pradesh (Case No. 19265/96-97)

The Commission had issued directions to the State Government of Uttar Pradesh, through its Chief Secretary, to pay 'immediate interim relief' of Rs.10,000 each to a number of farmers who were detained unjustifiably, for about a fortnight and without proper dietary provision, by the district administration.

The Commission was apprised of this case on receipt of a complaint from Shri Sharda Belvi, which enclosed a press report, alleging the arrest and detention of several farmers in makeshift jails to recover arrears of land revenue from them. The complaint also alleged that the detained farmers were not given proper and adequate food while in custody. They were given an extremely meagre dietary allowance of 50 paise per person per day.

The report called for from the District Magistrate, Jalaun, stated that the district administration had taken up a special drive for the recovery of land revenue from defaulting farmers. The defaultees had been arrested pursuant to warrants of arrest issued against them after following due procedure of law. They were detained in the civil lock-up of the Tehsil. The report also said that since the family and friends of the detained farmers were making arrangements for food, the State administration catered for the meals of only those who were unable to make their own arrangements.

The Commission was of the view that the facts and circumstances of the case indicated not only the insensitivity of the concerned authorities but also their ignorance of the law laid down by the Supreme Court in such situations.

The Apex Court held that *'to recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his willful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness ...'*. The judgement further held that *'the simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past, or alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and strained circumstances will play permanently'*. (Jolly George Varghese vs. The Bank of Cochin, AIR 1980 SC 470).

The Commission felt that in the present case no attempt was made to address the real issue and reach a proper conclusion. The Tehsildar or any other authority had not held any inquiry. The jurisdictional fact of the default resulting from omission verging on dishonest disowning of the obligation was absent, without which the power to detain could not be invoked.

Thus, according to the Commission, the detention of several farmers for a period of about a fortnight and that too without proper arrangements, especially for their meals, was totally unjustified. The State, which was under an obligation to make proper arrangements for the detenus, could not abdicate this obligation merely on the ground that the arrangements were to be made by their relatives or friends. The diet allowance of 50 paise per person was fixed several decades ago; it was grossly inadequate to meet the cost of even one square meal for a person.

In addition to giving directions on the financial compensation to be paid to the detenus, the Commission asked the Government of Uttar Pradesh to frame guidelines in consonance with the Supreme Court judgement for the use of the concerned authorities who are in-charge of making recoveries of land revenue. It has also directed the revision of the existing norms of the dietary allowance for civil prisoners and, wherever these norms were inadequate, to meet the cost of the diet of the inmates.

2) Protection of Rights of Dalits, Minorities, Disabled and Others

16) Atrocities on Dalit Women by Forest Officials: Uttar Pradesh (Case No. 2731/96-97/NHRC)

The Commission took *suo motu* cognisance of a news item entitled 'Girls paraded naked by the Daroga' on the basis of a report in a newspaper on 21 June 1996 and called for a report from the Director General of Police, Uttar Pradesh.

In his report, the Director General of Police, Uttar Pradesh mentioned that a Case No.49/96 under the relevant sections of the Indian Penal Code and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 had been registered against the concerned Forest Officer and four Forest Guards. Upon preliminary investigation, the charges had been proved against all the five accused

persons and the State Government had been requested to sanction the prosecution of these persons.

Upon considering the above report, the Commission directed the State Government to grant sanction for the prosecution of the errant officials expeditiously.

In response, Shri Bhagwan Shankar, Special Secretary, Government of Uttar Pradesh informed the Commission that a chargesheet dated 16 July 1998 had been filed in court by the Investigation Officer, Naraini, District Banda. The report of the Superintendent of Police, Banda indicated that the concerned Forest Officer had taken two ladies into his custody. He had later apprehended two more women. The four women were disrobed and later beaten by the Forest Sub Inspector. They were released only after they had agreed to pay a sum of Rs.1000 and give honey to the Forest Department officials. The Commission noted that the involvement of the officials had been proved during investigation and that a chargesheet had been filed. In view of the fact that dignity of the four women had been violated by the Forest Sub Inspector and five officials, the Commission held that the State was vicariously liable for the payment of compensation. Accordingly, the Commission recommended the payment of a sum of Rs.50,000 as interim compensation to each of the four women. The Director General (Investigation) of the Commission was asked to monitor the trial of the case closely.

The Commission has since been informed, however, that the errant officials have filed a case in the High Court of Allahabad, where the matter is now pending.

**17) Seven Boys from Balmiki Community Paraded Naked by Police:
Haryana (Case No:393/7/1999-2000)**

In a complaint to the Commission, one B. Jit Singh stated that on 2 June 1999, an Assistant Sub Inspector and two Constables from the Police Post Khandsa Road, Gurgaon, Haryana had picked up seven boys aged between 7 and 12 years, taken them to the Police Post, stripped them naked and paraded them on the streets. They were also forced to clear garbage from nearby areas. The parents of the children were also insulted. The only fault of boys, it was stated, was that they were playing cricket in their locality and that their ball had landed in the premises of the Assistant Sub Inspector.

Pursuant to the Commission's directions, two reports were received from the

Superintendent of Police, Gurgaon. In view of the inherent anomalies and contradictions in these reports, the Commission, however, directed its own Investigation Division to inquire into the matter and submit a report.

After a thorough investigation, the Commission's team reported that seven children belonging to Balmiki Community were humiliated, stripped naked, and paraded in the locality and also beaten up by police personnel. In its proceedings dated 2 May 2000, the Commission accordingly held that the concerned police personnel had abused their power. Apart from exhibiting depraved conduct, the Commission held that the behaviour of the concerned police personnel constituted a gross violation of the rights of the children involved. The Commission therefore directed the Superintendent of Police, Gurgaon to file charge sheets against the three errant police personnel under the appropriate provisions of the Indian Penal Code and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to pursue the case diligently and also initiate disciplinary action. In addition, the Commission recommended the payment of a sum of Rs.20,000 as compensation to each of the seven boys. The Commission also observed that the State Government was at liberty to recover this amount from the salaries of the concerned police personnel.

The State Government has subsequently reported to the Commission that it has paid the compensation to the children and was complying with its recommendations.

18) Attacks on Members of the Christian Community 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)

Previous reports of the Commission have indicated in detail the steps taken by the Commission to protect the rights of members of the Christian community in the aftermath of the killing of the Australian priest, Mr Graham Stewart Staines and his two sons in Orissa, as well as attacks on members of the community in Madhya Pradesh and Gujarat. During the year under review, the Commission continued to pay the closest attention to instances when atrocities were reported to have been committed against Christians. At the time of the writing of this report, the Commission had intervened, often by invoking its *suo motu* jurisdiction, in twenty incidents in which persons professing the Christian faith had been mistreated, assaulted or even killed in different parts of the country.

In each instance, the Commission called for reports from the highest echelons of the concerned State Governments and pursued matters thereafter. A number of incidents related to Uttar Pradesh. But the intervention of the Commission was also required in respect of incidents that occurred in Indore, Madhya Pradesh; in various locations of Gujarat; in Rewari, Haryana and in Nashik, Maharashtra. Further, the Commission intervened following the killing of a Christian priest, Ashish Prabhash, in Batala, Punjab and the bomb blasts that rocked Churches in the States of Goa, Andhra Pradesh and Karnataka.

In addition to issuing directives as required in these cases, the Commission also received and considered a number of petitions, both from organisations and individuals complaining that such incidents disclosed a pattern of violence against Christians and their institutions, particularly in some States, which created a reasonable apprehension in the minds of Christians throughout the country of victimisation and the violation of their human rights. The Commission took careful note of similar apprehensions that were voiced in editorials, articles and news items in the media and the general feeling that they conveyed that there was need to better protect the human rights of the Christian community and the safety of their institutions, as also to ensure that such acts of violence were prevented from occurring in the future. The Commission observed that such apprehensions were of serious concern, that they were shared by many in the country, and that they must be addressed by all the authorities. For this reason, the Commission considered it essential to make an in-depth scrutiny of the situation, not merely by inquiring into the violation of human rights of the section of people involved in the specific incidents on which *suo motu* cognisance had already been taken, but also by exploring the avenues necessary for the prevention of any such violations in future, and ensuring that there was no neglect on the part of the public authorities concerned in the performance of their duties.

The Commission therefore issued notice on 21 June 2000 to the Chief Secretaries of all States and Union Territories as well as to the Ministry of Home Affairs, Government of India, calling for reports on the measures already taken in this behalf and the plans of action drawn up by them to meet the situation. Urging all of them to accord top priority to this matter, the Commission pointed out that it was necessary to preserve '*the secular credentials of the nation and to fulfil the promise of fraternity and common brotherhood*' envisaged in the Constitution. The Commission's decision was based on the need to take a holistic view of the situation as well as to inspire the requisite confidence amongst persons of the Christian community. In response to the

notice issued by the Commission, reports were received from all the concerned authorities, who sought to answer in full the concerns raised by the Commission.

On 18 October 2000, the Commission directed the issue of fresh notices to all State Governments inviting their attention specifically to letter No. 9/42/96-CHC dated 22 October 1997 of the then Union Home Minister, Shri Indrajit Gupta, with an annexure thereto addressed to all Chief Ministers of States/Union Territory Administrations and D.O. letters No. 14013/35/98-US (D.V) dated 2 January 1999 and No. 5/98-NIMC dated 28 January 1999 of the then Union Home Secretary, Shri B. P. Singh to the Chief Secretaries/Administrators of all the States/Union Territories. The State Governments were requested to indicate the follow-up action, if any, taken by them to comply with the directions contained in the above-mentioned letters of the Union Home Minister and the Union Home Secretary. The Home Minister had enclosed with his letter the revised 'Guidelines To Promote Communal Harmony' with a request to the States to take urgent action in accordance with those Guidelines.

Based on an analysis of all the responses received, the Commission is taking steps to call a meeting of the senior officers of the States principally concerned to discuss and monitor all aspects of this matter. It is important, in this report, to recount illustratively the specific action that the Commission took following the murder of Brother George, during the night of 6-7 June 2000, in St. Francis Public School, Mathura, Uttar Pradesh, in respect of which, a case was registered under section 396 IPC. On 11 June 2000, the cook of Brother George, Vijay Ekka was picked up by the police for interrogation. He remained in police custody but was found dead on 17 June 2000. On 19 June 2000, in response to a press report entitled 'Cleric's cook dies in police custody', the Commission issued notice to the Chief Secretary and Director General of Police, Uttar Pradesh calling for a report within one week. The Commission also directed the Director General of Police, Uttar Pradesh to have a video recording made of the post-mortem examination conducted in this case. Pursuant to the Commission's orders, a team from its Investigation Division also conducted an on-the-spot inquiry into this incident and submitted a report to the Commission.

On 26 September 2000, the Commission asked the Government of Uttar Pradesh, through its Chief Secretary, to show-cause, if any, why an amount of Rs.2 lakhs not be granted as 'immediate interim relief' to the next of kin of Vijay Kumar Ekka. As there was no response from the Government of Uttar Pradesh, the Commission on 20 November 2000 recommended that an amount of Rs.2 lakhs be granted as immediate interim relief under section 18(3) of the Protection of Human Rights Act, 1993 to the next kin of Vijay Ekka.

The Commission continues to keep a close watch on all incidents and reports expressing an apprehension regarding the violation of rights of members of the Christian community. The situation in this respect is under the constant monitoring of the Commission.

19) Inhuman Treatment of Mentally Ill Patients at Sultan Alavudeen Durgah: Tamil Nadu (Case No. 427/22/1998-99)

The report of the Commission for the year 1999-2000 provided an account of the complaint brought before the Commission by Professor (Mrs) D. Nazneen concerning the pathetic plight of mentally ill patients in the Sultan Alavudeen Durgah at Goripalayam, Madurai district, Tamil Nadu. The patients, many of whom were reported to be kept in chains, had been left in the Durgah by their families, in the hope of being cured by their faith. Disturbed by the situation, the Commission had asked the State Government to look into the matter and also requested its Director General (Investigation) to make a study on the spot.

As the report received from the Government of Tamil Nadu was, however, unsatisfactory, the Commission constituted a Committee comprising 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. The Committee, after studying the situation, submitted a detailed report containing specific recommendations, the gist of which is given below:

PLAN A (Short Term)

- Sultan Alavudeen Durgah in Goripalayam, Madurai, should be banned from chaining their patients, even if they are brought there by their relatives on their own volition. They should not be kept in the Durgah for years at end.
- The methods of admission, discharge, record keeping, nursing care must meet at least some minimum criteria. All of these matters need to be streamlined and made more transparent, with adequate checks and balances. The Durgah authorities cannot and should not be allowed to treat patients without a medical

backup support. This, in turn, must be by a registered medical practitioner belonging to any system of medicine; it need not necessarily be by an allopath. If other systems of medicine are to operate under the aegis of the Durgah, the question of monitoring the diagnosis and treatment has to be taken care of. This must be viewed in the light of advances in other recognised types of medicine available in the country and with whom they must learn to work together for the benefit of patients.

- The authorities in the Durgah appear to be inclined to accept medical help from the Department of Psychiatry, Madurai Medical College and the attached Government Rajaji Hospital. An experienced and responsible Psychiatrist from this Department can visit the Durgah often for screening, diagnosis, drug treatment and follow up in the premises of the Durgah itself. The latter must provide at least minimum standard of facilities with respect to human dignity, including nursing care. Patients cannot and should not be treated as cattle. Responsibility for admission and discharge must be in the hands of the Psychiatrist and cannot be left to the Durgah.
- None of the measures recommended above will succeed unless coupled with health education of the family and explanation about the nature of the illness.
- An improvement must be made in the environment and living conditions in the Durgah.
- If the alternatives discussed above do not materialise, the authorities of the Durgah cannot and should not be allowed to continue with the existing methods. Nor can they run outpatient services sans medical supervision.

PLAN B (Long Term)

- Like other illnesses, the long-term care of mental illness also requires early diagnosis and regular treatment.

After considering the matter on 3 January 2001, the Commission forwarded the report, together with its recommendations, to the State Government of Tamil Nadu for implementation. As at the end of present reporting period, the Action Taken Report of that Government was awaited.

20) Rape of Four Scheduled Caste and Scheduled Tribe Women in West Godavari District: Andhra Pradesh (Case No. 343/1/98-99)

The proceedings in this case were initiated by the Commission on the basis of a complaint received from Dr P. Pulla Rao; it concerned four incidents of rape involving young women belonging to the Scheduled Castes and Scheduled Tribes (SC and ST) in West Godavari District of Andhra Pradesh.

The Commission initially directed the Director General of Police, Andhra Pradesh to take appropriate action on the complaint, asking him to secure relief expeditiously for the victims in each of these cases. The Commission later also sought a detailed report on the action taken to rehabilitate the young women concerned. In response, the Director General of Police, Andhra Pradesh confirmed that rape had occurred in all the four incidents. He also indicated the action taken in each instance by way of registration of a case, investigation of the crime, and the arrest and prosecution of those responsible for the crimes. The State Government, however, took the view before the Commission that since the victims and those who had committed the crimes belonged, to the Scheduled Castes and Scheduled Tribes, the women were not eligible for the payment of compensation under the existing schemes.

The Commission overruled this contention and asked the Government of Andhra Pradesh to:

- Undertake a review of the existing schemes, so that victims of rape belonging to the Schedules Castes and Scheduled Tribes are provided monetary assistance/ex-gratia payment and afforded such relief even if the culprits/rapist belongs to the same caste/community and that such schemes also provide for the rehabilitation of the victims.
- Ensure that the persons responsible for committing the heinous offense of rape in these four cases are prosecuted, tried and punished in accordance with law.
- Pay a sum of Rs.50,000 as monetary compensation to each of the victims.

21) Complaints Against Security Forces: High-Handed Acts of Army Personnel: Andhra Pradesh. (Case No. 67/1/1999-2000)

In a decision dated 1 November 2000, the Commission made far-reaching recommendations to the Ministry of Defence, Government of India to compensate farmers of Andhra Pradesh who were victims of actions taken against them by personnel of the army.

The Commission had, on 19 May 1999, taken *suo motu* cognisance of a report stating that some 300 army personnel had gone on a pre-dawn rampage in Hyderabad and had attacked farmers who had come to sell their produce at Rythu Bazaar in that city on 12 May 1999. They threatened the farmers who were sleeping in the compound and severely beat up four of them who had protested. The losses incurred during the incident were estimated by the district administration to amount to around Rs.12 lakhs. The farmers had occupied sheds set-up at the Bazaar by the State Government on military land with the permission of the army authorities. The State Government had condemned the action of the army personnel for taking the law into their own hands and had lodged a strong protest with the Defence Minister and Army Headquarters.

In reply to a notice from the Commission, the Ministry of Defence had justified the action of the army men in forcibly evicting the farmers. The reply stated that the State Government had backtracked on its assurance to vacate the area within the specified period for which it had been given on lease by the army. The Ministry denied the violation of any human rights by the army.

On the other hand, the report of the Collector of Ranga Reddy District, who was an eyewitness to the whole incident, said that despite her pleadings, hundreds of military personnel had demolished the property erected at Rythu Bazaar while she and the police personnel who were present at that time could only remain silent spectators. Around 80 farmers who were at the site at the time of the incident were manhandled and four of them were seriously injured. Vegetables worth Rs.1.7 lakhs were strewn around and the temporary structures erected were irreparably damaged. The total damage worked out to Rs.11.26 lakhs. Photographs supported the Collector's eyewitness report.

The Commission, on considering both these responses, recorded in its proceedings of 20 September 1999 that the two reports, from two responsible and highly placed functionaries of the Central and State Governments, were in total

variance. It observed that the pertinent question was whether or not the army personnel had committed high-handed acts. Therefore, it requested the Secretary, Ministry of Defence, to get the entire matter examined, including the aspect of the propriety of the Ministry in making such sweeping denials of events in the face of an apparently authentic report of senior officers of the State Government.

The Commission also requested the Chief Secretary, Government of Andhra Pradesh to examine both the responses and give his own report. The report of the Chief Secretary clearly pointed to the high-handedness of the army personnel and made the disturbing observation that the role of the Andhra Pradesh Sub-Area Commander in the incident had been questionable. The Chief Secretary's report was also sent to the Ministry of Defence for its response.

The Ministry of Defence, however, reiterated its earlier version and asked the Commission to call the concerned officers of the Army and State Government and take a view of the matter. However, in the meeting called by the Commission on 6 September 2000, the concerned army officials chose not to come and were represented only by the Civilian Staff Officer of Army Headquarters.

The Commission therefore had to formulate its opinion and consider the allegation of the violation of human rights of the victims based on the facts and circumstances of the case. The Commission had no hesitation in rejecting the version of the army authorities, which was in direct conflict with the version of the State Government. Certain admitted facts and circumstances also supported this conclusion of the Commission.

The Commission also learned that the State Government, keen to ensure the continuance of the Bazaar in the same location, had already moved for this land to be exchanged with some other land of the State Government, which could be given to the army instead. Discussion in this regard was in progress between the State Government and the Army and the Sub-Area Commander had been requested to await the final outcome of this discussion. Thus, there was no occasion for the District Collector to tell the Sub-Area Commander to carry out the eviction, as had been alleged by the Army. Moreover, the unusual time of early morning chosen for carrying out the surprise action, without any prior notice to the occupants or to the District Collector, supported the allegation of high-handedness by the Army personnel and their intention to take even the State Government by surprise.

Rejecting the clandestine and unlawful action of the army personnel, the Commission said, *'a civilised legal system does not permit even a trespasser with settled possession to be thrown out in this manner without resort to the procedure established by the law'*.

The Commission thus directed the Ministry of Defence, Government of India to pay a sum of Rs.12 lakhs as compensation for loss to property, a sum of Rs.10,000 to each of the four farmers beaten up by the army personnel and a sum of Rs.5000 to each of the farmers forcibly evicted. The Government of India was asked to pay the above amounts, granted as 'immediate interim relief' under section 18(3) of the Protection of Human Rights Act, 1993, to the Government of Andhra Pradesh. The calculation of the total amount was to be made by the Chief Secretary, Andhra Pradesh and intimated to the Secretary, Ministry of Defence within one month. The Government of India was asked to pay this amount to the Government of Andhra Pradesh within one month thereafter, for disbursement among those entitled, within one month.

The Government of India was also asked to consider initiating proceedings to identify the army personnel responsible for the violation of human rights in the above incident and to take appropriate action against them. The Ministry of Defence was, further, asked to formulate necessary guidelines for the observance of human rights of the civilian population by the Armed Forces while performing their duties in non-combat areas.

In concluding, the Commission emphasised the urgency and need for amending the Protection of Human Rights Act, 1993 to empower the National Human Rights Commission to inquire more effectively into human rights violations by the Armed Forces. Any further delay or inaction, it observed, was likely to erode the credibility of the Government of India in its commitment to respect human rights.

The Commission has since been informed of compliance with its directives in this case.

3) Protection of Rights of Children and Women

22) Custodial Rape of a Disabled Girl Lodged in Observation Home: Maharashtra. (Case No. 1027/13/97-98/ACR)

The District Women and Child Welfare Officer, Mumbai informed the Commission that a girl suffering from hearing and speech disabilities who was lodged in the Observation (Remand) Home, Umarkhadi, Mumbai was raped by the cook employed in that Home on 21 September 1997. A police report had been lodged with the Dongri Police Station on the incident.

In response to a notice issued by the Commission, the concerned Deputy Director Women and Child Welfare in his report confirmed the incident. The report also stated that a criminal case had been registered and investigated by the police and that the accused, Shivaji Nanaware, had been arrested. He had been charge-sheeted and was in custody facing trial before a court of law. The authorities had also found that the Superintendent and Deputy Superintendent of the Observation Home had been negligent in discharging their duties and departmental action had therefore been instituted against them after they were suspended. The Management of the Institution had also decided to take action against the Chief Officer involved. However, before that decision could be implemented, the Chief Officer had resigned and had been relieved of his responsibilities.

The Commission noted that requisite action had been initiated in this case by way of prosecuting the person accused of being responsible for raping a disabled girl while in custodial care. It was further noted that action had also been initiated against the concerned officers who were entrusted with the duty of control and supervision over the Observation Home. The Commission observed, however, that there was no indication that any relief had been provided to the rape victim. Having regard to the facts and circumstances of the case, the Commission was of the view that this was a fit case in which it should invoke its jurisdiction under Section 18(3) of the Protection of Human Rights Act, 1993 to afford monetary relief to the victim so as to alleviate her sufferings. The Commission, therefore, made the following recommendations to the Government of Maharashtra through its Chief Secretary:

- To pay a sum of Rs.50,000 to the victim of rape within a period of one month.
- To inquire into the circumstances which led to a delay in sending the intimation of this incident to the Commission.

- To intimate to the Commission the outcome of the criminal prosecution launched against Shivaji Nanaware and the disciplinary action initiated against the Superintendent and Deputy Superintendent of the Observation Home.

23) Rape of a Ten Year Old Girl Child in Juvenile Observation Home: Karnataka and Andhra Pradesh. (Case No. 32/1/1999-2000)

The Commission took cognisance of a complaint received from the Juvenile Rights Forum, Hyderabad, Andhra Pradesh regarding the plight of a 10 year old girl who was an inmate of the Juvenile Observation Home in Hyderabad. The petitioner alleged that the girl was transferred from the Raichur Observation Home, Karnataka on 10 July 1998. She was found to be bleeding at the time of her admission in the Home in Hyderabad on 10 July 1998 and again on 3 August 1998. It was further stated that the officials did not provide any medical treatment. Upon examination at Nilofer Hospital on 11 September 1998, the doctors found evidence pointing to brutal rape. The petitioner also alleged that the girl was in a severe state of shock. Though the police had registered a case under Section 376 IPC, the petitioner alleged that it had not conducted a proper investigation. The petitioner added that certain journalists from Karnataka had pointed to the involvement of officials of the Observation Homes, both of Raichur and Hyderabad, as well as of certain politicians.

Taking serious note of the allegations in the petition, the Commission sought and obtained a report from the Government of Andhra Pradesh. Upon careful consideration of the report, the Commission on 18 October 2000 directed the Government of Andhra Pradesh to step up efforts to complete the investigation of the case and to pay an interim compensation of Rs.50,000 to the parents of the girl for the suffering and trauma that this child had endured while in a Juvenile Home.

4) Negligence of Public Authorities

24) Negligence on the Part of Jail Authorities Leads to the Death of an Inmate: Bihar. (Case No. 3165/4/1998-99)

In her complaint dated 22 January 1999, Meena Singh, stated that her husband, Sudhir Kumar Singh, who had been in judicial custody for four months in Ranchi Jail, Bihar, had died on 22 January 1999 in the jail premises as a result of the negligence of the jail authorities.

The Commission issued notice to the Home Secretary, Government of Bihar. In response, a report received from the State Government stated that the deceased, Sudhir Singh, alias 'Bhima' was an undertrial prisoner since 16 May 1998. It was further reported that on 22 January 1999 at about 7 AM when another inmate, Anil Sharma, was taken out of his cell, the latter alongwith his associates, suddenly attacked Sudhir Singh and Hari Singh near Ward No. 2. Owing to this sudden attack, Sudhir Singh was grievously injured and was immediately sent to R. M. L. Hospital where he was declared dead. The report added that a post mortem examination had been held which indicated that the death was caused by sharp-edged weapons. The magisterial enquiry, however, did not rule out the possibility of the involvement or callousness of jail authorities in respect to the events that occurred within the jail premises.

Upon perusal of the above report, the Commission noted that there was an outbreak of violence between two groups of inmates near Ward No. 2. Sharp-edged weapons were freely used and Sudhir Singh was killed in the melee that ensued. The jail authorities permitted inmates of the prison to be in possession of sharp-edged weapons and they also let a situation develop in which these weapons were freely used to cause grave injuries to Sudhir Singh leading to his death. The Commission observed that this was an act of gross negligence on the part of the jail authorities.

Having regard to the circumstances, the Commission directed the following:

- The Government of Bihar pay a sum of Rs.2 lakhs as compensation to the complainant, of which Rs.25,000 should be released to her immediately and the balance deposited in a nationalised bank, for a period of five years, with the interest earned thereon being paid at monthly intervals to her.
- A full enquiry be instituted by the Inspector General Prisons into the circumstances leading to the possession of lethal weapons by the inmates of the prison and the reasons for the inability to control the violence that occurred on the fateful day of the attack on Sudhir Singh. Action should be instituted against those officials who were responsible for allowing such a situation to develop.

25) Negligence on the Part of Police Leads to the Killing of Mahendra Pal Singh: Uttar Pradesh. (Case No. 39/24/97-98/ACD)

The Commission received a complaint dated 24 February 1997 from a certain

Shri Surya Pal Singh alleging that his brother, Mahendra Pal Singh, was brutally murdered on 26 August 1995 while he was under police protection. He was taken into police custody earlier, following a quarrel between Mahendra Pal Singh and Umashanker on some trivial issue. The complainant stated that his brother had to open fire with his gun in self defence, killing two persons, after which Police Constable Preetam Singh Yadav caught hold of his brother and handed him over to Sub Inspector, D. D. Singh, Officer in Charge of Police Post, Police Station Mangalpur, District Kanpur Dehat, Uttar Pradesh. The Sub Inspector, after taking the gun, allegedly handed over Mahendra Pal Singh to his assailants who killed him within the premises of the police post. Although a case under Sections 147/302/120-B IPC had been registered and investigation had commenced, no action had been taken against the Sub Inspector of Police who had exposed Mahendra Pal Singh to his assailants.

The Commission issued notice to the Chief Secretary and Director General of Police, Uttar Pradesh calling for a report in the matter. In response, the report from the State Government indicated that a case FIR No. 212/95 under section 302 IPC and under section 3(2) (5) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 had been registered at Police Station, Mangalpur on the complaint of a certain Umashanker Diwakar. After investigation, a final report had been submitted in the case as the accused, Mahendra Pal Singh had died after being attacked by a mob that had used stones and brickbats against him. A cross case No. 212-A/95 under section 147/302/120-B IPC had been registered on the complaint of Sunayna, wife of Mahendra Pal Singh, against Umashanker Diwakar and others and, after investigation, a charge-sheet had been submitted against the accused Umashanker, alias Rama Kant, Beenu, alias Vinay Kumar, Naseer Hamed and Akil under Section 147/302 IPC. It was, however, confirmed that Mahendra Pal Singh had been forcibly taken away by an unruly mob from the custody of police personnel and done to death by the mob.

The Commission noted that, at least, a few of the assailants who had attacked Mahendra Pal Singh with stones and brickbats had been identified and charge-sheeted. The Commission, however, found it difficult to endorse the view of the State Government that the police officials were in no way negligent and that they were helpless, as they had to face a large crowd that was out to break the law. The police report had itself indicated that Mahendra Pal Singh was in police custody when he was forcibly taken away by the agitated members of the unlawful assembly and that he was allowed to be killed by them. There was no indication in the reports as to whether the Sub Inspector, who should have been armed at the time, used his weapon to attempt to

disperse the mob, particularly in a situation that was surcharged and in which there was a high probability that Mahendra Pal Singh would have been killed had he been exposed to the agitated mob. The Commission was of the view that the concerned police officer was negligent in the performance of his duty, which required him to protect Mahendra Pal Singh from being assaulted by the members of the unlawful assembly.

Accordingly, the Commission recommended to the State Government of Uttar Pradesh through its Chief Secretary that it

- Initiate departmental action against Sub Inspector, D. D. Singh, Officer-in-charge of the Police Post and other officials for negligence in not protecting Mahendra Pal Singh and allowing him to be killed by the members of an unlawful assembly.
- Pay a sum of Rs.1 lakh to the next-of-kin of the deceased within a period of one month.

**26) Death of a Girl in VVIP Movement: Uttar Pradesh.
(Case No. 13881/24/97-98)**

The Commission received a complaint from one Ram Bahadur Singh alleging that his daughter, Vandana Singh, a student of 9th standard, was crushed by a vehicle which was deployed for the security of an Ex-Prime Minister on 7 November 1997 while she was returning from her school on her bicycle. Though she was rushed to the hospital by the police, she succumbed to her injuries. The complainant further alleged that though this incident was reported to the Thana Cantt, and Crime No. 2006/97 under section 279/304A IPC had been registered, no serious investigation had been carried out owing to the involvement of a police vehicle. He sought an inquiry by an independent agency to punish the errant policemen.

The Commission took cognisance of the complaint and obtained a report from the concerned Senior Superintendent of Police. It stated that, on that particular day, a large number of police vehicles were on duty and it was not possible to identify the vehicle involved in the incident. The report further added that, on completion of the investigation, a Final Report had been filed in the Court on 30 June 1998.

The Commission noted from the above report that the life of a young girl had

been lost owing to the negligence of a driver who was deployed on Government duty. The Commission further noted the hazards caused to the public as a result of VIP movement and also the fact that the local administration was casual and insensitive to the tragedy. The Commission observed that no significance was attached to the fact that it was a Government vehicle driven by a Government employee, which knocked down and killed the girl and which gave rise to the Government's vicarious liability as well. It was the duty of the driver involved in the accident to report the accident and those in the motorcade to take necessary action, which they failed to do. Even if it was not possible to identify the delinquent driver at this stage, the Government's liability to pay compensation remained, the Commission noted.

The Commission, therefore, directed the payment of interim compensation of Rs.2 lakhs to the next-of-kin of the deceased within four weeks. In response, the State Government through its letter dated 31 March 2001 informed the Commission that Rs.1 lakh has been sanctioned to the next-of-kin of the victim.

27) Victim of Medical Negligence: Orissa. (Case No. 359/18/99-2000)

Shri Girija Sankar Tarasia, Chairman, Social Welfare Council, Nayagarh, Orissa in his complaint to the Commission alleged that one Prawat Kumar Sethi became a victim of medical negligence at the hands of Doctors of the District Hospital, Nayagarh, Orissa. Prawat Kumar Sethi was bitten by a stray dog and owing to his indigent condition, he went to the District Government Hospital, Nayagarh for being given free shots of the needed vaccine. In that Hospital, however, the rabies vaccine was not preserved in cold storage. Prawat, received the anti-rabies injections on his stomach for seven days but, as a result, developed serious ailments including partial paralysis and the abnormal functioning of a kidney. It was stated that he had no means to undergo treatment at a private hospital and was fighting for his life. The complainant prayed for an independent inquiry into the negligence of the medical personnel at the District Hospital and adequate compensation for the maintenance and treatment of the patient.

Taking cognisance of the complaint, the Commission called for and received report from the District Collector, Nayagarh and the Department of Health and Family Welfare, Government of Orissa.

Upon considering these reports, and keeping in view the trauma caused to

Prawat Kumar Sethi, the Commission *inter alia* directed on 6 December 2000 the award of an enhanced compensation of Rs.2 lakhs to the patient for his further treatment and maintenance.

In compliance of this direction, an interim report has been received from the Collector, Nayagarh.

5) Bonded Labour

28) Release of Bonded Labourers and their Rehabilitation: Punjab. (Case No. 663/19/1999-2000)

The Commission took *suo motu* cognisance of a press report which appeared in the 'Indian Express' dated 17 December 1999 entitled '84 Bonded Labourers Freed, Narrate Shocking Tales of Torture, Molestation'. In the press report, it was stated that 84 bonded labourers, who were freed from a cold storage construction site, stated that they were beaten and were given third degree treatment. The woman workers alleged rape and molestation. None of the workers were paid their wages.

The Commission directed the Director General of Police, Punjab and the Senior Superintendent of Police, Jalandhar to send reports to the Commission on this article. The latter responded saying that one Mohan Singh, who was constructing a cold storage, was providing labourers with clothes, food, free accommodation and Rs.600 per month. The labourers, however, had stated that they had been working for the last four months and were not given wages because the owner had promised to pay them when they returned to their native places. When the Sub Divisional Magistrate, Shahkot and Station House Officer, Police Station, Shahkot visited the spot, the labourers told them that they did not wish to work with the cold-storage owner as his behaviour was insulting. A woman labourer, named Saloni stated that one Pappu had beaten her husband and locked him in a room. The owner could not, himself, be contacted. However, his employees agreed to pay the wages to the labourers. The report added that the Labour Inspector had been directed to ensure the payment of wages to the labourers so that they might go wherever they wanted. The labourers had been brought to the office of the Sub Divisional Magistrate where food had been arranged for them. The labourers were then set free and they went back to their homes. The report concluded by saying that a case, FIR No. 236 dated 15 December 1999, had been registered under section 16, 17 of the Bonded Labour System

(Abolition) Act and under Sections 342/323/354 of the Indian Penal Code.

Upon perusing the report, the Commission noted that it was not clear whether the District Magistrate, Jalandhar had issued release certificates and ensured that the bonded labourers would be rehabilitated. By proceedings dated 23 March 2000, the Commission therefore directed its Director General (Investigation) to contact Senior Superintendent of Police (SSP), Jalandhar and to secure the relevant details. The further report, received from the SSP, indicated that the 65 bonded labourers had been released and that the minimum wages due to them had been collected from Mohan Singh, owner of the cold storage. However, release certificates under the relevant Act and the rehabilitation package envisaged under it had not been provided. The Commission, therefore, directed the District Magistrate, Jalandhar:

- To issue release certificates to all the 65 bonded labourers, namely the 42 men and 23 women involved. Further, a sum of Rs.20,000 was to be paid to each of the 65 released bonded labourers under the relevant legislation, of which a sum of Rs.5,000 may be paid in cash or by demand draft to each labourer.
- Form a cooperative society; have it registered under the State Cooperative Societies Act as a Released Bonded Labourers Cooperative Society; treat the balance amount of Rs.15,000 per head as share capital of each of the members of the society.
- Under the appropriate Rozgar Yojana or any other appropriate scheme available, provide governmental work to the cooperative society.
- An Inspector of the Cooperative Societies should monitor the working of the society. The work allotted to it would be jointly done by all the members of the cooperative society and the returns from their labour would be enjoyed by them in equal proportion.
- In case any Government land was available in the village, the district administration shall take steps to allot the same to the cooperative society and all the members would collectively cultivate the land and reap the benefit in equal proportion. The District Administration would also, in that event, arrange appropriate loans for reclamation of land, its cultivation, and supply of seeds or saplings for agricultural operations, manure etc., for the successful working of the society. The Agriculture Department should be directed to help them in the farming.

- In case all the members of the Society were illiterate, the Inspector belonging to the Cooperative Department should assist them in writing the accounts regularly and ensuring its successful working.
- The District Labour Officer should ensure the successful prosecution of the offender for the offenses charged against him. The District Labour Officer should act in collaboration with the concerned Public Prosecutor/District Attorney, as the case may be, and take the case to its logical conclusion.

29) Exploitation of Bonded Labour: Maharashtra (Case No. 1173/13/1999-2000)

Shri Mareppa Siddappa, in his complaint to the Commission, alleged that his wife, son and others were being used as bonded labourers by one Govind Sevu Rathod. He complained of harassment, sexual exploitation and the non-payment of wages. He also alleged that though the matter was reported to the police, no action was taken by them. The petitioner sought their release from bondage.

The Commission sought and obtained a report from the Superintendent of Police, Ratnagiri, Maharashtra. According to the report received, the case involved allegations of the non-payment of wages for six months, the extraction of forced work, restrictions on freedom of movement of the labourers, sexual exploitation and assault. In view of this, a case had been registered under the Bonded Labour System (Abolition) Act, 1976 and the accused persons had been arrested immediately. The wife of the complainant and his two sons had been handed over to the complainant. The case was under further investigation.

Upon perusing the above report, the Commission directed the Superintendent of Police, Ratnagiri to furnish a status report on the case that had been registered. The Commission further directed the District Administration to issue release certificates under the provisions of the Bonded Labour System (Abolition) Act, 1976; pay a sum of Rs.20,000 to each of the released bonded labourers and ensure their rehabilitation by forming a co-operative society of the released bonded labourers and of any other bonded labourers in the area. The Commission also recommended that they may be rehabilitated under the Employment Assurance Scheme or through a land-based rehabilitation scheme.

30) NHRC's Initiative Results in the Release of Bonded Labourers: Haryana (Case No. 513/7/98-99)

The Commission received a complaint from Prof. Sheotaj Singh, General Secretary of the Bonded Labour Liberation Front, Delhi alleging that 20 persons including men, women and children were being kept as bonded labourers in a stone quarry in Gurgaon, Haryana. According to the complaint, though the Sub Divisional Magistrate of the area had visited the site and admitted that minimum wages were not being paid to the labourers, he had refused to issue release certificates to them.

On 21 September 1999, the Commission directed the Chief Secretary, Haryana, to look into the matter and submit a report. In response to the Commission's notice, the Labour Commissioner of Haryana stated that this was not a case of bonded labour but a dispute between workers and their employer regarding wages. Both the parties had reached an agreement, after which the labourers had been sent back to their home district, namely, Jaipur in Rajasthan. The report further stated that the complaint of Prof. Sheotaj Singh alleging non-release of the bonded labour was false.

The Special Rapporteur of the Commission, Shri Chaman Lal, was asked to look into the matter. He recommended that the Commission's own investigation team should meet the bonded labourers who were now living in Jaipur district in order to ascertain the facts.

Accordingly, an investigation team of the Commission, along with senior representatives of the Rajasthan University Women's Association and an officer deputed by the District Magistrate of Jaipur, visited Durgapura, 10 kilometres away from Jaipur city where about 29 persons including 10 children were found camping in the open. They had been living there since their return from Haryana in the second half of September 1999. They belonged to the Banjara Nomadic Tribe and had gone to Haryana in 1994 to market their products. While they were there, one Balkar Singh lured them to work in a stone quarry, offering them attractive wages. After a year, they were denied payment of wages and in lieu of wages, arrangements were made with a local general merchant to provide them daily rations on credit. When the labourers objected and demanded full wages, they were forcibly confined in their hutments after working hours and were guarded by armed musclemen. In August 1999, they somehow managed to establish contact with Prof. Sheotaj Singh. When word spread that Prof. Singh had lodged a complaint, labourers were made to put their thumb impressions on papers of agreement declaring that they had received Rs.5,000 each

towards the settlement of their wages. This was done in the presence of the local Sub Divisional Magistrate and police officials. The money was, however, not given to the labourers and, instead, it was adjusted against the items taken by them from the local merchant. In the third week of September 1999, they were transported away from Haryana, escorted by policemen, and later dumped on the outskirts of Jaipur city.

The Sub Divisional Magistrate, when questioned by the team of the Commission, reiterated that the issue related to a wage dispute in which he had worked out a compromise and that, to avoid any further chance of exploitation, he had made arrangements for the transportation of the labourers to Jaipur on their request. He claimed ignorance of the legal interpretation of the Supreme Court verdict wherein the word 'bonded labour' had been given a wider interpretation, covering all cases where wages paid to the labourers was less than the minimum fixed by the Government. The Deputy Commissioner, Gurgaon, was also not fully aware of the whole episode. However, after discussions with the officials of the Commission, the district officials dispatched 19 Release Certificates to the Commission to be handed over to the labourers. The District Magistrate, Jaipur assured the Commission that immediate steps would be initiated to render all help to rehabilitate these Banjaras under various welfare schemes of the Government.

The Release Certificates were handed over to the labourers in December 1999 at a small function held in Jaipur. To rehabilitate these labourers, arrangements were made to shift their families temporarily to a Government housing building in Sanganer, near Jaipur city. Thereafter, they would be permanently settled under the Indira Awas Yojna. The Government of Rajasthan informed the Commission that efforts are also being made to allot them cultivable land. Employment is being given to them under the Rural Development Schemes near Sanganer Airport to help them earn their immediate livelihood. A cooperative is being created for them, to which stone mines would be leased in order to generate work in which the tribals had experience. Of the Rs.10,000 given to each of the 19 labourers, along with their Release Certificates, Rs.2,000 was given in cash and rest of the money was deposited in their respective bank accounts. The District Magistrate had sanctioned Old Age Pensions to two elderly women. A pension was also announced to a person who became disabled following serious leg injuries while working in the Gurgaon mines. Cash relief of Rs.5,000 from the Chief Minister's Relief Fund was also announced for his treatment.

The Commission expressed its appreciation of the role of the officers who were involved in the release of the bonded labourers and the subsequent effort to rehabilitate them.

31) Release of Bonded Labourers and their Rehabilitation: Uttar Pradesh. (Case No. 15178/24/98-99)

The Commission had received a complaint from Shri R. S. Chaurasia, General Secretary, South Asian Coalition on Child Servitude stating that eight labourers, all of whom belonged to the Scheduled Tribes, had been kept in bondage by one Raj Narain Giri in District Sonebhadra, Uttar Pradesh. It was further stated that the labourers had not been paid any wages as these were being adjusted against certain advances which they had taken from the employer two years earlier. The complaint added that when one of the labourers, Achaibar could not go to work for a few days owing to an illness, he was brutally beaten by the employer and his men. As a result of the beating, he became unfit to lift any load.

The Commission took cognisance of the complaint and issued notice to District Magistrate, Sonebhadra, Uttar Pradesh. A report was received from the Sub Divisional Magistrate, Sonebhadra stating that four of the labourers who worked with Raj Narain Giri had left him because they were given meagre wages and were beaten by his men. The remaining four labourers were still found to be working with him, of their own will and without any pressure. They were, however, being paid meagre wages @ 2 kgs. of grain per day to feed their families.

Upon considering this report, the Commission gave the following directions:

- The Superintendent of Police, Sonebhadra was asked to register a case against Raj Narain Giri under the Prevention of Atrocities on Scheduled Castes and Scheduled Tribes Act, 1989 and the Bonded Labour System (Abolition) Act 1976 and to get the case duly investigated.
- The District Magistrate, Sonebhadra was directed to initiate proceedings under the Bonded Labour System (Abolition) Act, 1976 and have the order passed for releasing the labourers from bondage.
- Have the minimum wages paid to the released bonded labourers by collecting the same from Raj Narain Giri.
- On issuing the release certificates of all the bonded labourers, arrange for payment of the compensation to the released bonded labourers under the relevant legislation.

- Upon receipt of compensation from the State and Central Governments, arrange
 - a) To identify an appropriate scheme for rehabilitation of the released bonded labourers on a sustained basis.
 - b) A sum of Rs.1,000 for each of these labourers may immediately be paid from the compensation of Rs.10,000 each.
 - c) Organise a cooperative society for the released bonded labourers, transfer the balance amount of Rs.9,000 per head as share capital standing to their credit for successful functioning of the society; allot appropriate work or raw material for their continued work so as to enable them to earn their livelihood and lead a life with dignity without relapsing into bondage again.
 - d) Direct the appropriate officer of the Cooperative Department to monitor, guide and ensure efficient functioning of the cooperative society of the released bonded labourers and submit a compliance report as also periodical quarterly reports in that behalf.

32) Release of 13 Bonded Child Labourers from a Carpet Factory in Allahabad District: Uttar Pradesh. (Case No. 20183/24/1999-2000)

Shri R. S. Chaurasia, General Secretary, South Asian Coalition on Child Servitude, New Delhi in his complaint to the Commission stated that 13 bonded child labourers were rescued from a carpet factory owned by Shri Radhey Shyam Bharti of Village Haricharanpur, Police Station and Tehsil Handia, Allahabad, Uttar Pradesh on 17 December 1999. He alleged that the children, instead of being handed over to their parents, were kept in a reform home. He asked that the children be handed over to their parents and that action should be taken by the Labour Department against the employer under the relevant legislation relating to child labour, minimum wages etc.

The Commission directed its Director General(Investigation) to collect the facts. The report received from the District Magistrate indicated that the 13 child labourers, who were also bonded, were rescued on 17 December 1999 and sent to the Child Reformatory Home, Khuldabad because the parents/guardians were not available. On 23 January 2000, Inspector, Police Station Handia, was instructed to verify the

addresses of children and hand them over to their respective parents. The Commission, however, received fax messages from NGOs stating that some of the children had been handed over to their guardians while four were yet to be released. After considering the complaint on 27 March 2000, the Commission directed the concerned District Magistrate to depute a team of officers to record the particulars of the children and, thereafter, to issue Release Certificates and pay compensation to the retrieved child labourers.

On 2 May 2000, the Commission requested its Director General (Investigation) to depute a team of officers to record the statements of all concerned. The team submitted its report stating the following:

- 13 bonded children who were released went back to the loom holders and worked for 10 days.
- It was established that the doctor in charge of the Primary Health Centre gave a fake medical certificate regarding the age of the children to help the accused person. The team suggested that the medical authorities may be asked to initiate suitable action against the concerned doctor after holding an enquiry.
- In the instant case, though no gross negligence was noticed, there was certainly some callousness exhibited by the District authorities.

Upon considering the report of the Investigation Team of the Commission, the Commission directed the following:

- District Magistrate, Allahabad may pay compensation to each of the retrieved child labourers at the rate of Rs.20,000 and in addition, recover a sum of Rs.20,000 per child from the employer in accordance with the Supreme Court Judgement. A sum of Rs.1,000 be paid as cash and the balance deposited in a Fixed Deposit in a nationalised bank nearest to their village. The interest earned thereon be paid to each child every month for their education and a report submitted on the action taken within four weeks.
- Action be taken against the Doctor In-charge of the Primary Health Centre for having issued wrong certificates of age to the children employed in the loom.
- Labour Department of Uttar Pradesh Government to take action against the

accused, Radhey Shyam Bharati, under the provisions of the Bonded Labour System (Abolition) Act, 1976 as also the Payment of Wages Act.

- Surprise checks be conducted in the areas in and around Allahabad, Mirzapur and Bhadoi Districts, where the practice of bonded child labour is prevalent and appropriate action be taken against errant loom owners.

33) Exploitation of Migrant Labour: Punjab (Case No. 700/19/97-98)

The Commission initiated proceedings in this matter upon receipt of a petition from the Indian Social institute, an NGO. It complained of exploitation of migrant agricultural labour from Bihar, which included both men and women, by the rich farmers in Punjab as well as certain intermediaries. The Commission also took note of a news item in the 'Times of India' dated 27 March 1998 entitled 'Brisk Sale of Bhaiyas in Punjab Mandi' which referred to the *modus operandi* of procuring these labourers and equated it with 17th Century barbarism and slave trade; an investigation paper prepared by Father Mathew Palachuvatill, Trinity College, Chogitty, Jalandhar dated 27 February 1998 which gave a deep insight into the problem and also highlighted the exploitation of four such women; an article written by Harpreet Kaur entitled 'Of a death like — here is a market that flourishes'.

Taking cognisance of the matter, the Commission issued notice to the Home Secretary, Government of Punjab calling for a report in the matter. Along side, the Commission also asked the Director General (Investigation) to undertake a spot investigation.

The report received from the Sr. Superintendent of Police, Hoshiarpur confirmed that labourers from Bihar used to gather at the house of one Tarlok Singh, resident of Village Fatehpur, who in turn, supplied the labourers to the people living in surrounding areas. A case FIR No. 27 dated 30 March 1998 under sections 420/341 IPC was registered against Tarlok Singh and he was charge-sheeted. It also stated that no Bihari labourers come to the house of Tarlok Singh now and the said work was stopped.

The report of the Investigation Wing of the Commission exposed the dimensions of the problem relating to the illegal trade in human beings more fully. The report revealed that this trade had been flourishing in the knowledge and patronage of the police and other authorities for the last 30 years. The labourers from Bihar were taken to Punjab on contract basis often on their own volition on account of poverty. Further

there was an acute shortage of labourers in Punjab, with a large number of young men in Punjab having gone abroad. The Investigation Team of the Commission did not rule out the possibility of sexual exploitation of certain women labourers who migrate to the State of Punjab.

Upon consideration of the matter, the Commission was of the view that the State Government of Punjab had not shown the requisite concern to the problem of migrant labour and their approach was myopic, as its scrutiny was restricted to a single instance of one Tarlok Singh of District Hoshiarpur being engaged in the trade of migrant labour and launching prosecution against him. The Commission observed that the problem is not a simple one and a one-time affair. It is a perennial, larger and deep-rooted one. The Commission was, therefore, of the considered view that the problem needed to be addressed by the concerned Ministries and Departments so as to find a solution and ensure that the employment of migrant labour was so regulated as to afford them prescribed/fair wages, humane conditions of living without their exploitation either by the employers or by the intermediaries. The Commission pointed out that this could be done through appropriate legislative measures/statutory schemes.

The Commission, therefore, directed the Ministry of Labour, Government of India, through its Secretary and the State Government of Punjab through its Chief Secretary to formulate appropriate rules/schemes to achieve the above objective. They were asked to send the same within a period of two months to the Commission for consideration before enacting/notifying them.

The requisite reports have since been received and are being considered by the Commission.

6) Other Important Cases

34) Mass Cremation of Unidentified Dead Bodies by Punjab Police: Referral by Supreme Court (Case No. 1/97/NHRC)

Previous reports of the Commission have provided full details of the proceedings conducted by the Commission in respect of the above-mentioned case in the years prior to that covered by this report.

It will be recalled that, pursuant to a public notice issued by the Commission, 88 claims were received and processed. Twenty three of them did not fall within the police districts of Amritsar, Majitha and Tarn Taran. Since the Commission had been asked to look into cases pertaining only to these three districts, the Commission excluded these 23 claims from consideration and informed the concerned claimants accordingly.

In the second category were 18 cases in respect of which the Government of Punjab had offered the payment of compensation in accordance with its policy, the Commission considered that that offer itself was sufficient *'to render the State Government liable for payment of compensation on the above basis'*. The Commission had added that, for this conclusion to be reached, *'it does not matter whether the custody was lawful or unlawful or the exercise of power of control over the persons was justified or not and it is not necessary even to identify the individual officer or officers responsible/concerned'*. In view of the Government of Punjab conceding its liability to pay the compensation in these 18 cases, there was no contest of the cases and the Commission simply reiterated the liability of the Punjab Government for the payment of compensation.

The Commission observed that section 18(3) of the Protection of Human Rights Act, 1993 empowers the Commission to recommend grant of immediate interim relief. This provision of immediate interim relief can be given without waiting for the final decision on the quantum of compensation or deciding the responsibility of the officials whose actions had resulted in the violation of human rights in the interests of providing quick relief to the victim or victim's family. However, in these 18 cases, the Commission itself has neither decided the quantum of total compensation nor the interim compensation. In fact, the offer for the payment of compensation was that of the Government of Punjab.

In the third category, there were 47 claims, which were being scrutinised according to settled principles for award of compensation. For this purpose, the Commission requested the Counsel for Punjab and the *Amicus Curiae* to carry out the scrutiny and to report to the Commission to enable the Commission to proceed further. The Commission made it clear that the quantum of compensation payable in the earlier 18 cases falling under the second category will be decided along with those found fit for payment of compensation in the third category of 47 cases.

On 15 February 2001, while considering a petition filed for the review of the

Commission's earlier orders regarding enlarging the scope of its enquiry, the Commission observed that it was very clear about the remit made by the Apex Court of the country in this matter. The Commission rejected the petitioner's request that it make a reference to the Supreme Court seeking a clarification on the scope of enquiry remitted to the Commission by its order dated 12 December 1996 as it did not entertain any doubt in that behalf. It, however, left it open for the petitioners to seek any such clarification from the Supreme Court, if they so desired.

The Commission noted that the scope of this enquiry related to 2,097 cremations according to the CBI report, of which 585 were of persons who had been identified, 274 partially identified and the remaining 1,238 unidentified. In response to the public notice issued by the Commission, only 88 claims had been filed. The Commission, therefore, stated that as far as practicable, efforts must be made to enquire into all or as many out of the 2,097 cremations as was possible. In respect of the 585 identified cases, the CBI report would be the basis for proceeding with the enquiry irrespective of whether any claim had been made in respect of them or not. In respect of the 274 partially identified cases, the Commission directed that the available particulars are to be utilised for making full identification and obtaining the requisite particulars to enable the inquiry to proceed. In respect of the remaining 1,238 unidentified cremations, the Commission directed that efforts should be made to obtain the necessary particulars in every possible manner so that even in respect of them an enquiry, if possible, can be held.

The Commission requested Shri R. Venkataramani, *Amicus Curiae* to examine the CBI reports and other materials available with the Commission for this purpose and then suggest the modality which should be adopted for further action in this matter.

The Commission, in its order of 15 February 2001, reiterated that the determination of the quantum of compensation payable in all cases should be done at one point of time after the scrutiny of all cases, so that the compensation payable in the 18 cases referred to in its order of 18 August 2000 is also to be determined at the end of the proceedings.

The proceedings in respect of this are continuing before the Commission.

35) Killing of 35 Members of Sikh Community in Anantnag District of Jammu and Kashmir by Militants. (Case No. 206/9/1999-2000)

The Commission took *suo motu* cognisance of a newspaper report in 'The Times of India' dated 22 March 2000 in respect of the killing of 35 persons of the Sikh community in Anantnag District, Jammu and Kashmir by militants.

Upon notice being issued to the State Government, a report was received saying that a Commission of Inquiry consisting of Justice Shri S. R. Pandian, a retired Judge of Supreme Court, had been appointed by the Government of Jammu and Kashmir to enquire into causes and circumstances leading to the event of firing on 3 April 2000 which led to the death of 8 persons, justification for use of force and fixation of responsibility for use of excessive force, if any.

On considering this report, the Commission observed that Justice Pandian Commission of Inquiry had not been mandated to enquire into either the incident of 20 March 2000 in respect of the massacre of 35 innocent Sikhs or the incident of 25 March 2000 in which reportedly 5 foreign mercenaries were killed by the Security Forces.

A subsequent report submitted by the Director General of Police, Jammu and Kashmir indicated that a case had been registered in respect of the killing of the 35 Sikhs and that investigation was in progress. The report further indicated that, of the twenty accused persons identified in connection with the killing of 35 Sikhs, 6 were killed in subsequent encounters; 2 were further detained under the Public Safety Act and 12 were absconding. A chargesheet had been filed in the case on 13 November 2000. The report stated that three Pakistan nationals belonging to Lashkar-e-Toiba had confessed their involvement in the killings. The State Government had made adequate security arrangements for the protection of villagers residing in vulnerable areas and provided an ex-gratia payment of Rs.1 lakh to the next of kin of the deceased and Rs.75,000 to those permanently disabled.

Upon considering the report submitted by the State Government, the Commission directed that Government furnish a report on the action taken on the findings and recommendations of Justice Pandian Commission as well as to furnish a progress report in respect of the case before the CJM, Anantnag in respect of the killing of 5 persons on 25 March 2000.

The Commission continues to monitor these matters.

**36) Measures to Prevent Deaths due to Starvation: Orissa.
(Case No. 37/3/97-LD)**

The Commission took cognisance of the matter of alleged starvation deaths in KBK districts (Kalahandi, Nuapada, Bolangir, Sonepur, Koraput, Malkangiri, Nawarangpura and Rayagada) of Orissa on a communication received from the then Union Agriculture Minister, Shri Chaturanan Mishra, in November, 1996. Later, the Supreme Court of India, in its order dated 26 July 1997, directed the petitioners, namely, the Indian Council of Legal Aid and Advice and others (Writ Petition Civil No.42/97) to approach the National Human Rights Commission for seeking interim relief and rehabilitation measures for preventing deaths due to starvation in the KBK districts. Full details of the manner in which the Commission addressed this task have been recounted in great detail in the Commission's Reports of 1997-98 and 1998-99. Based on a number of hearings, the Commission made far-reaching recommendations on time-bound short-term practical measures which are to be dove-tailed into long-term plans to end the scourge of deprivation, malnutrition and cyclical starvation in the KBK region. Important recommendations made earlier by the Commission are:

(a) Monitoring

Monitoring of the release and rehabilitation measures by a State-Level Monitoring Committee headed by the Chief Secretary which would also guide the overall effort.

(b) Specificity of Programmes

After careful consultation with all concerned, the Commission obtained from the State Government a specific set of commitments — district-wise and programme-wise — in respect of each of the 8 districts of KBK area under the heads 'Rural Water Supply and Sanitation (RWSS), Primary Health-Care, Society Security Programme, Soil Conservation and Rural Development.

The Commission gave specific directions about the development of drinking water facilities at the scale of one tube-well for 250 population ensuring the availability of the water source to all within a distance of half a kilometre. The efficient maintenance of the existing tube-wells and

introduction of the community maintenance facilities through a scheme of Self-Employed Mechanics (SEM) was also recommended.

To improve the standard of the Primary Health Care, the Commission gave district-wise targets of opening of 8 additional PHCs, expand the existing arrangement of Mobile Health Units, fill up vacancies of doctors and para-medical staff and take special measures to deal with problems of gastro-enteritis and malaria.

The extent of social security net available to destitute old citizens, widows and disabled persons was expanded on Commission's recommendations and disbursement of pension under various schemes was streamlined. The Commission asked the State Government to give special attention to the efficient functioning and strengthening of the emergency feeding and supplementary nutrition programmes operated from the Anganwadi Centres in starvation prone areas of the KBK districts and also give careful attention to the mid-day meal programmes meant for the children of primary schools by maintaining an adequate stock of food grains to guard against the possibility of any interruption.

(c) Long Term Measures

Realising the temporary nature and limited impact of the interim relief measures, the Commission recommended that the State Government should, after a thorough review and evaluation of the existing laws, carry out land reforms to tackle the problem of poverty and deprivation on a permanent basis. Afforestation and Soil Conservation measures on a large scale were also recommended as part of permanent solution of the problem.

The Commission has been reviewing the implementation of the above programmes through quarterly Performance Appraisal Reports received from the Government of Orissa since the beginning of 1998. The Special Rapporteur of the Commission Shri Chaman Lal has been visiting the districts of KBK regularly to verify the Performance Appraisal Reports on the ground and give his assessment of the pace and quality of the work in various fields of relief and development.

Shri Chaman Lal, Special Rapporteur visited KBK districts from 26 December

1999 to 6 January, 2000 and again from 7 to 17 August 2000. The Commission heard this case in its special sittings on 22nd March and 14 December 2000. In the hearing of the case held on December 14, 2000, the Commission considered the district-wise Performance Appraisal Reports for the period from January 1998 to March, 2000 submitted by the Government of Orissa, the Report of the Special Rapporteur, NHRC on his visit to KBK districts from 7 to 17 August 2000 and the compliance reports received from the Government of Orissa on the issues raised by the Special Rapporteur in his reports. A broad account of the targets achieved under various heads and the recommendations of the Commission for further action is given below:

(a) Rural Water Supply and Sanitation (RWSS)

The scale of one tube-well for 250 population was achieved in all the districts except Koraput well before the target date of 31 March 2000. The Commission accepted the request of the Government of Orissa to extend the time-frame for implementation of the scale in Koraput upto December 2000 in view of practical difficulties of terrain and equipment. The maintenance facilities have been improved in all the districts except Malkangiri, Bolangir and Sonapur which need more attention. The Commission's recommendation regarding introduction of Self-employed Mechanic Scheme (SEM) has been successfully implemented in some blocks of Bolangir and Kalahandi districts. The Commission asked the State-Level Monitoring Committee to ensure that this Scheme is implemented fully in all the districts.

(b) Primary Health-Care

Actual availability of doctors and para-medical staff has been improved in all the districts except Nuapada. The target of opening of 8 additional PHCs-3 in Koraput, 2 each in Malkangiri and Rayagada and 1 in Kalahandi — was completed within the allotted time-frame. After completing the target of establishing 22 Mobile Performance Units, the facility has been extended to all the 80 blocks of the KBK region by opening 49 additional Mobile Health Units. The Commission has asked the State-Level Monitoring Committee to regularly monitor the availability of Medical Officers and ensure that vacancies in KBK region do not exceed 20 per cent of the sanctioned strength. Though the incidence of death due to diarrhoea has been brought down considerably in the KBK districts after the intervention of the NHRC, the

continuing deaths due to gastro-enteritis in Kalahandi, Nuapada, and Bolangir is a cause for concern. The Commission has asked the State Government to give special attention to increasing incidence of death due to malaria in every district of KBK region. The State Government has been asked to make an objective assessment of the efficacy of existing anti-malaria measures and adoption of an effective strategy to tackle the menace.

(c) Social Security Programmes

The Commission has noted with satisfaction the overall improvement in the operation of the old age, widow and disabled pension schemes in all the districts. The Public Distribution scheme (PDS) has also registered remarkable improvement as a result of the increasing involvement of the Gram Panchayats in its operation. Women Self-Help Groups have also been associated with the PDS in some areas with encouraging results. The Commission has asked the Government to take necessary measures to streamline PDS in Nuapada and Bolangir where some deficiencies have been noted.

The Emergency Feeding Programme meant largely for destitute and abandoned old persons has been working satisfactorily in all the districts. A serious flaw in its operation in blocks Chandrapur, Ramaguda and Kashipur of District Rayagada was mentioned in the Commission's proceedings of 22 March 2000. The Commission took adverse note of the delay in response of the State Government to its suggestion to supply weekly dry ration instead of daily cooked food to the beneficiaries of these blocks who were physically incapable of walking to the Feeding Centres for daily meal.

(d) Soil Conservation

The Commission has commented adversely on the execution of the Soil Conservation Programmes whose importance as part of the long-term solution to the chronic problem of poverty and deprivation cannot be over-emphasised. After considering the report of the Special Rapporteur, the Commission has asked the State Government to make a thorough review of all the on-going projects under EAS and NWDPR. With the assurance of the Chief Secretary, it is expected that the Watershed Projects, both under

NWDPRA and under EAS, would be executed with community participation in accordance with MORAE guidelines and effectively supervised by the Director, Watershed Mission who has been specially selected for this job.

(e) Rural Development

The Commission has found the execution of Jawahar Rozgar Yojna (JRY) and Employment Assurance Scheme (EAS) to be efficient in Koraput, Kalahandi, Rayagada and Bolangir from an overall assessment covering the period January 1998 to March 2000. The performance of district Nabrangpur and Malkangiri is rated as satisfactory with 60 to 70 per cent funds utilisation. The performance of Sonepur was unsatisfactory under JRY, while that of Nuapada was poor, both in JRY and EAS. The execution of Indira Awas Yojna Project (IAY) has been commendably good in all the districts of KBK.

(f) Land Reforms

The Commission has advised the State Level Monitoring Committee to give its utmost attention to full implementation of the existing provisions of Land Reform Act and expedite Government's decision on the recommendations of the Expert Committee constituted on Commission's recommendations. The Committee has made useful recommendations relating to Tenancy, Separation of Holdings and Correction of RORs, Ceiling surplus land, Procurement Policy and Institutional Credit etc.

The Commission has urged the State Level Monitoring Committee to review the execution of Poverty Alleviation Programmes regularly, identify weaknesses and strengths of different districts and take remedial action to ensure that the grants received from the Government of India are efficiently utilised on developmental activities by providing wage employment to the vulnerable sections of rural population.

The Commission is happy to learn about the amendment of Regulation 2 of 1956 taken up by the Government of Orissa to impose a total ban on transfer of tribal land to non-tribals, involvement of Panchayat Raj Institutions for detection of illegal land transfers and restoration of land to

original owners and enforcement of the punishment for unlawful occupation of tribal land.

(g) Afforestation

The Commission has noted with satisfaction the launching of massive Afforestation Programme under Block Plantation, Rehabilitation of Degraded Forest (RDF) and Non-Timber Forest Produce Plantation (NTFP), which are being executed with community support. The Commission has emphasised the need for regular monitoring of these programmes by the State Level Monitoring Committee, given the enormity of funds involved and the importance of the matter for the long-term solution to the problems of the KBK region.

The Commission commends the Government of Orissa for the new NTFP policy, which has transferred the ownership of 60 NTFP items to Gram Panchayats. The implementation of the new policy needs to be watched carefully to protect it from vested interests and expand its scope further to give the tribal population rights to collect, procure, conserve and sell non-timber forest produce.

(h) Literacy

Taking note of the low-level of literacy (29.24 pe cent) in the KBK region, the Commission has asked the Government of Orissa to give special attention to KBK districts in the literacy campaign and in the policies and programmes for improving educational facilities. The involvement of NGO sector after careful identification of credible NGOs has also been recommended.

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Administration and Logistic Support

CHAPTER 15

A] Staff

15.1 The total sanctioned strength of the Commission was 297 posts. Keeping in view the considerable increase in the work of the Commission, a special study of the staff requirements was conducted by the Staff Inspection Unit (SIU) of the Ministry of Finance during the year 1998-99. The additional strength requirement of 55 posts (including 24 leave reserve posts) assessed by the SIU was accepted by the Commission. The Ministry of Home Affairs has since issued orders for the creation of 34 posts. As of 31 March 2001, there were thus 331 sanctioned posts in the Commission, against which 249 persons were in position. Efforts were being made to fill the vacant posts, the quality and integrity of the personnel being the prime concern of the Commission.

15.2 Since it will take time to build and develop a cadre of its own, the Commission has resorted to a variety of methods of selection, including deputation, re-employment and direct recruitment. The process of absorption of employees working in the Commission has been continuing, and permanent absorption in the grade of PS to Members, DSPs in its Investigation Division and Assistant Accounts Officers in its Accounts Division was initiated during the year under review.

15.3 The ever-increasing workload of the Commission has necessitated the engagement of Consultants to cope with the additional work. A special dispensation was obtained from the Government to engage 20 Consultants in the Commission.

15.4 The scheme of appointing Special Rapporteurs to assist the Commission in its more demanding and sensitive responsibilities and for interacting with governmental and non-governmental authorities, continued to be in operation during the year 2000-01. There are at present two Special Rapporteurs working for the Commission. They are concentrating, in particular, on key issues such as prison reforms, bonded labour, child labour, and the implementation of the remits of the Supreme Court in respect of the Agra Protective Home, the three Mental Hospitals at Agra, Gwalior and Ranchi, and the monitoring of conditions in the KBK districts of Orissa.

B] Strengthening the Functioning of Special Rapporteurs/Representatives

15.5 In addition to the two Special Rapporteurs referred to above, the Commission has, since 1999, had a scheme to appoint Special Representatives in selected States. At present, there are Special Representatives in the States of Uttar Pradesh, Assam, Bihar, Orissa, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan and Gujarat. They are looking into issues relating to civil and political rights, as well as economic, social and cultural rights and are sending a regular feed-back to the Commission. They also provide guidance to citizens in regard to the provisions of the Protection of Human Rights Act, 1993 and the modalities of seeking redressal from the Commission. The Special Representatives are authorised to receive and transmit applications to the Commission. As and when needed, they are required to undertake surprise visits to police stations, police/judicial lock-ups, jails, and custodial homes for women and children. On occasion, they have been requested to look into complaints received by the Commission, or to undertake special responsibilities in the event of emergency situations.

15.6 A meeting of the Special Rapporteurs and Special Representatives was held in New Delhi on 1 August 2000. Presiding over the meeting, the Chairperson, Justice J. S. Verma stated that the Commission would like to take advantage of their experience and expertise to further the cause of human rights and to spread human rights education. The participants were requested to suggest measures to improve the functioning of the system of Special Rapporteurs and Special Representatives. Based on their suggestions, certain important decisions were taken. They included the following:

- As the Commission has to take cognisance of the observations made by the Special Rapporteurs/Special Representatives in their reports regarding conditions in Jails/Homes, the Commission desired that these reports be sent to the Commission. Where, however, urgent and immediate action was required to be taken to avoid procedural/administrative delay, the reports may be sent directly to the State Government.
- With regard to the identification of the nodal agency in the police set-up with which they should interact, it was clarified that the Human Rights Cells functioning in the Police Headquarters would be the appropriate point of contact.
- With regard to the role and functions of Special Rapporteurs/Special Representatives, the Chairperson of the Commission observed that in no case should the impression be given to the public that the Special Rapporteurs or Special Representatives were the State-level officers of the Commission. It was clarified that they were to act as informal mechanisms, outside the regular set-up of the Commission, and function as a credible machinery to apprise the Commission of ground realities and to facilitate the efforts of the Commission to carry out the functions assigned to it.

C] Use of Official Languages

15.7 From its inception, the Commission has been receiving complaints and reports in Hindi, as well as in the various regional languages of the country. The translation of the complaints and reports received in the regional languages, and foreign languages, is the responsibility of the Hindi Section. During the year under review, the Hindi Section translated 5,670 complaints received in the Commission. This section is also translating the monthly Newsletter and the Annual Report of the Commission into Hindi. The scheme for granting cash awards to those engaged in original writing in Hindi on Human Rights subjects, as well as for the translation of books in regional languages or English into Hindi, continued during the year 2000-01.

D] Library

15.8 As on 31 March 2001, there were 3,807 titles in the Library, 104 new titles being added to the Library in 2000-01.

E] Funds

15.9 Under Section 32 of the Protection of Human Rights Act, 1993, the Commission is financed by the Central Government by way of grants-in-aid after due appropriation made in this behalf by Parliament. During 2000-01, the Commission received Rs.620 lakhs under Revised Estimates as grants-in-aid. The expenditure of the Commission during the year was Rs.566.08 lakhs.

15.10 The accounts of the Commission are prepared in a format prescribed by the Central Government under the NHRC (Annual Statement of Accounts) Rules, 1996. The Comptroller and Auditor General of India audits the accounts. The accounts of the Commission for the year 2000-01 were finalised and submitted to Comptroller and Auditor General for audit and the issue of an Audit Certificate. After receipt of the Audit Certificate, the Accounts of the Commission, along with the Audit Report, are printed and forwarded to the Central Government for causing the Audit Report to be laid before both Houses of Parliament.

Summary of Principal Recommendations and Observations

CHAPTER 16

16.1 Given below are principal recommendations and observations contained in the present report.

16.2 As of the time of writing the present report, the seventh report had not been laid before each House of Parliament, along with the Memorandum of Action Taken. The Commission is constrained to observe, once again, that such delays in tabling consecutive Annual Reports disrupt the preparation and presentation of the reports of the Commission. Further, in the absence of a Memorandum of Action Taken, it becomes impossible for the Commission to know what steps, if any, are being taken by the Central Government to implement the recommendations of the Commission, or to gauge the reasons for the non-acceptance of one or the other of its recommendations. In such circumstances, the Commission sees no alternative but to append to the present report the entire set of Recommendations and Observations of its preceding report. (Paras 1.2 and 1.3)

16.3 Based on a careful analysis of available data on female to male sex ratios, maternal mortality rates, life expectancy at birth, and crimes against women, the Commission had concluded in its preceding Report that *'discrimination against women and girls is still a pervasive phenomenon, even though the Constitution set itself against discrimination based on sex and enjoined the State to act against such discrimination'*. The Commission also observed that a further dimension was added to the multiple discrimination faced by women and girls when discrimination based on caste was added to the other acts that were violative of their rights. The Commission therefore proceeded to make a number of recommendations to deal with the

situation, starting once again with its repeated plea that free and compulsory education be provided as a Fundamental Right to all children until they complete the age of 14 years, that greater efforts be made to combat discrimination against the girl child in all of its manifestations and that, in particular, the doors be thrown open for them to have better access to education, nutrition and health care. (Para 2.4)

16.4 Census 2001 is not without encouraging news: there are positive trends both in respect of the nation-wide female to male ratio and a significant increase in literacy figures. Yet, the disaggregated State-wise figures are cause for deep concern. (Para 2.5)

16.5 In the light of the above, and in addition to the recommendations contained in its preceding Annual Report on the measures to be taken to combat discrimination based on gender, the Commission now urges that:

- The correct conclusions be drawn from the Provisional Population Results of Census 2001 both at the Central and State levels: these should lead to the formulation and better implementation of policies, programmes and laws to further reduce the disparities that continue to exist between males and females in the country in respect of access to education, nutrition and health care;
- A concerted effort is made to end the misuse of sex-determination tests in the country since this has encouraged the evil practice of female foeticide, a gross violation of the right to life and the worst possible form of discrimination based on sex. (Para 2.6)

16.6 The Commission has, for some years, expressed the view that there is urgent need for the early conclusion of a comprehensive convention on international terrorism. It commends the Government of India for playing a leading role in the effort to achieve this objective. The Commission has also noted that the United Nations General Assembly in its resolution 55/158 of 12 December 2000, urged all States that have not yet done so, to consider as a matter of priority, becoming parties to the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. It also called upon all States to enact, as appropriate, domestic legislation necessary to implement the provisions of those Conventions. (Paras 3.3 and 3.4)

16.7 The Commission would like to recall that it had already urged that such action be taken in an Opinion that it pronounced on 14 July 2000 in connection with the

Prevention of Terrorism Bill 2000. In that Opinion, the Commission had observed that there were now twelve global treaties pertaining to the subject of international terrorism. However, despite this array of international instruments, the Commission noted that it remained essential, both to the cause of human rights and to the fight against terrorism, that the measures required to be taken under each of these Conventions were fully and meticulously under-taken, both in terms of appropriate legislation, where this may still be needed, and in terms of other practical arrangements essential to the effective implementation of these Conventions. The Commission had accordingly urged the Government of India to do so and, in particular, to enact a suitable law to deal with the financing of terrorism. (Para 3.5)

16.8 Indeed, over the past years, the Commission has steadily maintained that the war against terrorism must be fought boldly and won. But this duty, for all of the difficulties it entails, must be accomplished in a manner that accords with an uncompromising adherence to the provisions of the Constitution of our Republic, the laws of our land, and the relevant international instruments, including those on human rights, to which India is a State party. The Commission is convinced, and has so stated, that the menace of terrorism must be fought by the combined efforts of all elements of society, not by the armed forces and police alone. That is why it has stressed the importance of the political, economic and social dimensions of the problem and also urged that it is essential — in the interests of winning the fight — to ensure transparency and accountability in dealing with those who may be guilty of human rights violations. (Para 3.7)

16.9 During the course of the year under review, the human rights situation in Jammu and Kashmir remained fraught with difficulties, requiring the utmost attention of the Commission. For its part, the Commission continued to take action, both *suo motu* and on the basis of complaints, on reports of human rights violations in the State. In the course of the reporting period, 295 complaints were received, many of which listed a dozen or more incidents alleging serious violations of human rights. The great majority of the complaints were directed against the conduct of the armed forces and police in the State. They included allegations, *inter alia*, of enforced disappearances, illegal detention, torture, custodial deaths, extra-judicial killings and fake encounters. (Paras 3.8 and 3.10)

16.10 Among the cases considered were those relating to the killings of 35 Sikhs in Chittisinghpura on 20/21 March 2001, referred to above; the killing of 5 persons in Patribal by the armed forces on 25 March 2000, who were stated to be responsible for

the killings in Chittisinghpora; and the killing of pilgrims on the Amarnath Yatra on 1 August 2000. In respect of the Chittisinghpora incident, both the Central and State Governments responded that, of the 20 persons who had been identified to be involved in the crime, 2 had been arrested, 6 had been killed in encounters, while 12 were being sought. Shortly after, however, the Commission was dismayed to read in the press that those who had reportedly been killed in encounters at Patribal, a short distance away from Chittisinghpora, were identified as villagers who had, according to the people of the area, been killed in 'fake encounters' and wrongly blamed for the Chittisinghpora killings. On further enquiries from the Commission, the Government indicated that samples had been taken for the DNA testing of those who had been killed at Patribal. It remained a matter of the gravest concern to the Commission that, despite the passage of many months, the results of the DNA testing had not been made public. (Para 3.12)

16.11 The Commission is of the view that the manner in which the Patribal incident has been handled has done great harm to the cause of human rights in the State and to the reputation of the armed forces and the Governmental authorities, both at the Centre and in the State. The Commission therefore urges the Government to disclose the facts relating to the deaths in Patribal and takes appropriate action if wrong has been done. The long-term interests of the State and the security of the nation can never be advanced by the concealment of possible wrong-doing. It is a serious mistake to think otherwise. (Para 3.13)

16.12 The Commission regrets, however, that it has not always been able to count on the transparency of the investigations undertaken. The Patribal incident referred to above, joins the Jalil Andrabi case as an instance in which opacity obscured the evident need to function with openness and clarity. The Andrabi case remains *sub judice*, with no progress having been made in bringing to justice those allegedly responsible for his abduction and subsequent death. The Commission regrets the persistence of such a situation, just as it does the lack of cooperation extended to it through the denial of access to records requested by it in respect of trials conducted against members of the para-military forces accused of human rights violations. The tragic incident that occurred in Bijbehara on 22 October 1993 is illustrative of this recalcitrance. The Commission had been compelled to move a Writ Petition before the Supreme Court but the records have not as yet been forthcoming. Indeed, in a case relating to the conduct of members of a para-military force in the north-eastern State of Manipur, a similar problem has arisen, with the Home Ministry repeatedly denying access to the records required by the Commission. Latterly, however, the

Secretary, Ministry of Home Affairs, has indicated that he will look into the issue personally. (Para 3.18)

16.13 For these reasons, and most of all to fulfil its Statutory purpose of ensuring the 'better protection' of human rights in the country, the Commission is convinced that there is urgent need to amend, *inter alia*, Section 19 of the Protection of Human Rights Act, 1993. The amendments proposed by the Commission have been pending before the Central Government since March 2000, adversely affecting the Commission in the performance of its duties. The Commission cannot but reiterate its strongly held view that amendments to the Act, along the lines proposed by it, are long over-due. It urges the Central Government to proceed with the needed amendments without further delay. (Para 3.19)

16.14 The Commission also takes this occasion to draw attention to its earlier recommendations in respect of the armed forces made in its preceding report, including *inter alia* its view that the Central Government should direct the armed forces, including the para-military forces, to report to the Commission — as does the police — any case that might occur of the death of persons while in their custody. This requirement, if observed with care, would go a long way towards ending acts of custodial violence and the possibility of extra-judicial killings. Such a development could transform the conduct of the armed forces including the para-military forces, and also, incidentally, reduce the allegations brought against them of violence of this kind, which is impermissible under the laws of our land and contrary to the principles of international human rights law and humanitarian law. (Para 3.20)

16.15 In the course of the year under review, the Commission, after considering with care the complaints brought before it against the armed forces, including the para-military forces, made specific recommendations in respect of 3 cases, requiring the payment of compensation or the launching of proceedings against personnel held to be responsible for the violation of human rights. The army, for its part, informed the Commission of the investigations it had undertaken into such violations by its own personnel. It stated that it had registered 120 such complaints in 2000-2001, of which 96 related to Jammu and Kashmir and 26 to the North-Eastern States. In one case, where rape had occurred, an officer of the rank of Captain was found to be guilty and sentenced to 7 years rigorous imprisonment; he is to be cashiered. As far as the para-military forces are concerned, the Border Security Force, stated that only one complaint was registered by it, in Jammu and Kashmir, relating to house-breaking and attempted rape. The proceedings had been completed but the decision had yet to be

announced. No information was received from the other para-military forces. This confirms, once again, the greater diligence and transparency of the army in dealing with human rights complaints when compared with the para-military forces. It also re-inforces the argument that it is necessary to amend the definition of 'armed forces', as at present contained in the Protection of Human Rights Act, 1993 along the lines proposed by the Commission, so that the restrictive procedures of Section 19 of the Act do not apply to the para-military forces. (Para 3.21)

16.16 The Commission also continued to hold hearings in respect of the problems faced by members of the Kashmiri Pandit community, some 300,000 of whom have had to leave the valley since the insurgency began, together with over a 1000 Muslim families and a number of Sikh families. In order to bring greater coherence to the manner in which the varied complaints of the Pandits were being handled by the State Government, the Commission proposed the constitution of a Committee at the State-level, with the Special Rapporteur of the Commission as a Member. While the Committee has helped in some measure in providing assistance to those with grievances, the Commission regrets to observe that the Committee has not always functioned with the regularity expected of it or received the cooperation that it requires. The Commission therefore urges the State Government to give greater attention to this matter. (Para 3.24)

16.17 The situation in Andhra Pradesh continued to be deeply disturbing, with frequent complaints of 'fake' encounters being brought to the notice of the Commission. The matter was accordingly raised at the level of the Chief Minister by the Chairperson, when he visited the State in March 2001. The Commission has urged that inquiries into encounter deaths be carried out by police officers known for their impartiality and integrity. Given the large number of pending inquiries, the Government of Andhra Pradesh has also been advised to set up a mechanism to expedite these inquiries and to give proper publicity to the results so that the people of the State do not lose faith in the system and can, instead, come to the conclusion that the authorities function with transparency and accountability. (Paras 3.36 and 3.37)

16.18 In its endeavour to ensure that reporting on custodial deaths is accurate and timely, the Commission had recommended to all States and Union Territories (UTs) that the post-mortem examination of custodial deaths be video-filmed and transmitted to the Commission so as to enable it to assess independently the cause of such deaths. (Para 3.38)

16.19 The Commission also continued to urge those States that had not yet done so to comply with its recommendation to adopt the Model Autopsy Form prepared by the Commission and circulated to States and Union Territories on 27 March 1997. (Para 3.39)

16.20 The Commission remains of the view that reform of the police is of critical importance to the protection and promotion of human rights in the country. The present situation which has, too often, permitted extraneous influences to affect police work adversely, must not be allowed to continue if the country is to repose the faith that it should in its police. Reforms, therefore, along the lines of the submissions made by the Commission and by others before the Supreme Court, remain absolutely essential if the quality of policing is to be improved and human rights better protected. The Commission urges the Central and State Governments to show the necessary political will to reform the police along the lines of the recommendations that have been made. Failure to do so is diminishing faith in the impartiality and integrity of the police and corroding the national polity. (Para 3.43)

16.21 Upon the suggestion of the Commission that the police in each State should establish an in-house mechanism to deal with the increasing number of complaints of human rights violations by members of the police force, each State Government has indicated that a cell has been constituted in the Office of the Director-General of Police to perform this task. The Commission would like to emphasise that the value of such cells will, in the long-term, depend on the quality and commitment of those who are appointed to head them and the support that they receive from the highest levels of the political and administrative leadership in each State. The Commission therefore recommends that special care be taken in respect of the appointments that are made in respect of those who are charged with the responsibility of heading these cells and that the fullest cooperation is extended to them. (Paras 3.44 and 3.46)

16.22 The Commission is pursuing its recommendation, made to the various States/Union Territories, to draft a new Prison Bill and Jail Manual and to bring these in line with contemporary thinking on the subject. The Commission has noted with satisfaction that the Government of Jammu and Kashmir has revised its jail manual, incorporating most of the provisions of the Draft Indian Prison Bill 1996, which the Commission had prepared and circulated to States/Union Territories for consideration. The Commission has, in addition, received a Draft Bill prepared by the Government of Rajasthan for its comments. It urges the remaining States/Union Territories to take appropriate action in this regard and to inform the Commission of the steps they are taking. (Para 3.59)

16.23 Given the inconsistent and varying practices being followed in the country at present, the Commission considered the need for uniformity of standards and procedures in connection with the premature release of convicts undergoing life imprisonment in prisons around the country. The Commission, therefore, considered the matter and evolved Guidelines, on which the views of the States/Union Territories were sought. The details of the Guidelines were set out in the last Annual Report of the Commission. (Para 3.60)

16.24 The Commission has received responses from 26 States and Union Territories, the majority of which have accepted the Guidelines. The Commission urges the States of Andhra Pradesh, Bihar, Himachal Pradesh, Maharashtra and Nagaland, and the Union Territory of Andaman and Nicobar Islands, which have not yet responded, to do so at the earliest. (Para 3.61)

16.25 In its preceding reports, the Commission has made a number of precise proposals aimed at improving certain aspects of the administration of Criminal Justice in India. In the absence of an Action Taken Report covering, the Annual Report of the Commission for the period 1999-2000, the Commission is not aware of the further progress, if any, made by the Government to implement the recommendations of the Commission on this overall subject. The Commission must therefore reiterate its earlier view that the Central Government completes the processing of the recommendations of the Law Commission speedily and take steps to amend the Cr.PC accordingly. (Para 3.62 and 3.64)

16.26 To improve the forensic science services in the country, which are at present greatly in need of attention, the Commission had constituted a Core Group of Experts to study all aspects of the subject and to report to it. The Commission is of the view that the report prepared by the Core Group of experts contained many valuable recommendations. The forensic science services in the country are woefully inadequate. The Commission therefore urges the Ministry of Home Affairs and the various State/Union Territories Governments to act promptly on the report, which has now been with them for over three years. Failure to improve the forensic science services is gravely affecting the administration of criminal justice in the country and leading to serious violations of human rights. (Paras 3.78 and 3.79)

16.27 On receipt of a complaint regarding contaminated life-saving I.V. fluids, the Commission took up the varied implications of this issue which related not only to the health care of the citizens of the country but also to their right to life. (Para 3.80)

16.28 As there was delay in the implementation of certain of the recommendations, the Commission considered it essential to issue notices once again on the basis of a news item that appeared in December 2000 under the title, 'Hospital Sleeps on NHRC Suggestions'. By the close of the period under report, however, substantial progress had been made on the recommendations of the Commission. The Commission is heartened by this progress and urges that vigilance be maintained by all concerned to ensure that the Commission's recommendations are faithfully and consistently implemented. (Para 3.81)

16.29 In the course of the year under review, the Commission considered it essential to examine the Draft Prevention of Terrorism Bill, 2000 which the Law Commission of India had submitted, together with 173rd Report, to the Government of India. To strengthen the criminal justice system, the Commission suggested three stages at which remedial measures needed to be taken urgently by the Government:

- The stage of investigation: this should be carried out speedily and efficiently. The investigation machinery must be independent, well trained and free from political or any other kind of interference.
- The stage of prosecution: there must be efficient prosecution on behalf of the State for all crimes related to terrorism. It is essential that experienced Public Prosecutors be appointed in sufficient numbers to prosecute crimes involving terrorism.
- The stage of trial: there was great need to end the delays in criminal courts, which were undermining the criminal justice system. One of the main causes of delay is shortage of courts. It is necessary to create many more Sessions Courts with proper infrastructure and to appoint many more competent Sessions Judges. Obviously, in States where terrorism was rampant, additional courts would have to be set up as early as possible. There could also be no doubt that cases dealing with acts of terrorism must be given preference for early disposal (preferably within six months). (Paras 4.1 and 4.9)

16.30 The Commission felt that if there were a large number of acquittals today, it was not for lack of any laws but for lack of proper utilisation of these laws, lack of proper investigation and prosecution, and lack of adequate number of courts to try the offenses. Unless these root problems were redressed, adopting draconian laws would only lead to their grave misuse, as had been the case with the previous TADA law. (Para 4.10)

16.31 The Commission also pointed out that the Bill would hinder, rather than enhance, the effective implementation of treaties and other international instruments on human rights and would not be in consonance with many provisions of the International Covenant on Civil and Political Rights (ICCPR) to which India is a State Party. The Commission observed, however, that one area where a suitable law needs to be enacted related to the financing of terrorism. It suggested that Government frame appropriate legislation in this connection in the light of the International Convention on this subject. (Para 4.11)

16.32 Concluding, the Commission stated that the proposed Bill, if enacted, would have the ill effect of providing unintentionally a strong weapon capable of gross misuse and violation of human rights, which must be avoided particularly in view of the experience of the misuse in the recent past of TADA and earlier of MISA of the emergency days. The Commission thus recommended that a new law based on the Draft Prevention of Terrorism Bill, 2000 be not enacted. It asserted that such a course is consistent with our country's determination to combat and triumph over terrorism in a manner also consistent with the promotion and protection of human rights. (Para 4.12)

16.33 The widespread persistence of child marriage in certain parts of the country has been of great concern to the Commission over a number of years. After further considering this entire issue, the Commission requested Justice (Smt.) Sujata V. Manohar, Member of the Commission to study it once again and to offer her comments. She was of the view that it was necessary, first of all, to provide for registration of all marriages — whether religious or civil. Further, just as there were registers of births and deaths, there should be registers of marriages where any marriage in any form, performed within the area, must be registered. This would provide an authentic record of the marriage and put an end to all disputes regarding the performance of the marriage. Justice (Smt.) Sujata V. Manohar also made certain specific suggestions for the amendment of the Child Marriage Restraint Act. On 12 December 2000, the Commission considered the remarks prepared by Justice (Smt.) Sujata V. Manohar on the Child Marriage Restraint Act, 1929 and decided to send these, as the remarks of the Commission, to the Department of Women and Child Development for placing them before the group of Ministers at the time when they considered the draft Women's Empowerment Policy. (Paras 4.13 and 4.16)

16.34 It is the view of the Commission that the Protection of Human Rights Act, 1993 is in serious and urgent need of amendment if the purpose of the Act, 'the better protection' of human rights in the country, is to be achieved. The Commission

formulated its own views on the amendments that were required to be made to the Act and transmitted these to the Government in March 2000 requesting that they be acted upon without delay. (Para 4.17)

16.35 It is a matter of the deepest regret to the Commission that, despite repeated contacts with the Government, both at the highest political level and at the working level, the period under review concluded without the needed amendments being made to the Act. It is impossible for the Commission to refrain from expressing its profound disappointment at this state of affairs, as it seriously affects the capacity of the Commission to fulfil the high purpose for which it was established, a purpose that the Commission is determined to serve, in the interest of the country and all of its people, to the utmost of its capacity. The Commission, therefore, takes this opportunity to urge the Central Government, once again, to act without further delay on the amendments that it has proposed to the Act. (Para 4.18)

16.36 During the period under review, the Commission considered Optional Protocols 1 and 2 to the Convention on the Rights of the Child, dealing respectively with the sale of children, child prostitution and child pornography, and the involvement of children in armed conflicts. In pursuance of its statutory responsibilities, the Commission recommended that these Protocols be adopted by the Government of India and asked the Department of Women and Child Development as well as the Ministry of External Affairs to take the appropriate action required in this regard. The Commission is happy to note that, pursuant to its recommendations, the Department of Women and Child Development has initiated action on this matter. (Para 4.19)

16.37 The Commission considered the matter of India's accession to the 1977 Protocols to the Geneva Conventions of 1949 and decided, in the first instance, to seek the views of the Ministry of External Affairs on this matter. As of the end of the reporting period, there had been no response from that Ministry, despite reminders. The Commission thus urges the Ministry of External Affairs to examine this issue expeditiously and to offer its comments to the Commission at an early date. (Para 4.20)

16.38 The Commission continued to press the Government of India to ratify the Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment or Treatment, which was signed by India on 14 October 1997 on the recommendation of the Commission. It has been a matter of great disappointment to the Commission that the process of ratification has been inordinately delayed and

that this delay has sent an ambiguous message regarding the commitment of the Government to respect the provisions of this Convention, despite the fact that Article 21 of the Constitution already covers this area effectively. Given the frequent assurances that it has received from the highest levels of Government that the delay has occurred only for procedural reasons, and not for any reasons of substance, the Commission once again urges the Government to fulfil its promise of ratification and to do so without further loss of time. (Paras 4.21 and 4.22)

16.39 The efforts of the Commission to encourage the Government of India to consider afresh its position in respect of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol on this subject have been recounted in earlier reports. It was of the view that the reasons given by the Ministry of External Affairs to deny the need for comprehensive national legislation to deal with refugees were not convincing. The Commission is firmly of the opinion that a comprehensive national law ought to be devised, keeping in view the decisions of the Supreme Court as well as international instruments on the subject. (Paras 4.23 and 4.24)

16.40 Taking cognisance of media reports that the Government was planning to amend the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; the Commission sought and obtained from the Ministry of Social Justice and Empowerment a copy of the Draft Bill. After a clause-by-clause examination of the Bill and after consulting experts in the field, the Commission forwarded its suggestions, by way of amendments to the existing legislation, to the Government for its views. (Para 4.30)

16.41 The Commission has had occasion to observe, on more than one occasion, that it has been deeply disturbed by the inadequacy of the rehabilitation packages offered to persons displaced or otherwise adversely affected by mega development projects. It has taken the view that it is essential to balance the demands of development with the need to ensure equity and justice, and to make sure that the national interest is not advanced as a reason to justify the victimisation of those who are, too often, amongst the most disadvantaged and vulnerable citizens of our country. With this in mind, the Commission had been urging that a fresh National Policy be finalised to deal with the Resettlement and Rehabilitation of Project Affected Persons/Families and it was informed that the draft of such a Policy was pending consideration before a Group of Ministers. (Para 6.1)

16.42 The Commission was of the view that the resettlement and rehabilitation of

persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act itself, or be the subject of appropriate separate legislation. The Commission was additionally of the view that the Government should, while adopting a comprehensive policy, provide for that policy to itself be incorporated into appropriate legislation within a specified time frame. (Para 6.3)

16.43 The Commission received a communication from the Chief Secretary, Government of Haryana, forwarding a proposal from certain senior officials of the Government of Haryana to the effect that the maintenance allowance for divorced women, as provided for in Section 125 Cr.PC, needed to be enhanced. The present provision, it was observed, allowed a maximum of Rs.500 per month, which was woefully inadequate in the circumstances prevailing today. The Commission appreciated this suggestion coming from officers of the Haryana Government. It has recommended to the Government, (Department of Women and Child Development) on 19 September 2000 that the maximum amount of the maintenance allowance for divorced women be increased from Rs.501 to Rs.5,000 per month for purposes of section 125 of the Cr.PC. (Para 6.27)

16.44 The Commission has been greatly concerned that cases relating to rape are often known by the name of the victim. This imposes lasting damage to the reputation and morale of the victim. The Commission observed that even though women were the victims of this heinous crime, cases that reached a Court generally got to be known by the name of the woman who had suffered. The Commission therefore urged that the anonymity of the victim should be ensured, so that rape cases do not perpetuate the suffering of the women who were the victims of this grave crime. (Para 6.27 and 6.28)

16.45 The Commission also stressed that the proper training of officials at different levels was absolutely essential if they were to deal with such crimes against women with greater sensitivity. (Para 6.29)

16.46 The Commission is represented on the National Council for Older Persons constituted by the Ministry of Social Justice and Empowerment. The first meeting of this Council was held on 13 June 2000 when a draft long-term Action Plan (2000-2005) was discussed in relation to the implementation of the National Policy on Older Persons. The Commission thereafter considered the draft Action Plan and its comments and suggestions on that Plan were conveyed to the Ministry. The Commission also decided that there was need to mobilise the efforts of all concerned

on behalf of the elderly and that all areas of activity should be identified carefully. Additionally, the Commission took the view that assistance should be permitted to those who are already engaged in constructive activities. The Commission held two rounds of discussions with Non-Governmental Organisations working for the rights of older persons. The Commission sought the response of the Ministries of Social Justice and Empowerment, Law, Justice and Company Affairs, Home Affairs, Finance, Health and Family Welfare and Insurance Companies on the following suggestions that had been made:

- Medical insurance cover for older persons beyond 70 years and as long as they live.
- Provision of separate queues for older persons in hospitals.
- Need for increasing old age homes facilities. Every major hospital/district hospital and primary health centre must have a separate wing for older persons and a hospice for the terminally ill, funded by the Government.
- Ascertain from the various States the action being taken by them to check abuse of the elderly and the action that they proposed to take to protect the rights of the aged.
- Pensions for older persons.
- Provision in the Indian Penal Code to make abuse of the elderly an offense punishable under law.
- Starting of a website by the Government to provide, in one place, information relating to health, finance and investment, Government circulars etc. relevant to older persons, on the lines of ELDERNET.

At the conclusion of the reporting period, the response of the various Ministries was awaited. (Paras 6.30 and 6.31)

16.47 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, the Indian Police Service and the Indian Forest Service. This has been done upon the recommendation and insistence of this

Commission. 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 and 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 letters that have been written to them by the Commission. They are urged to do so at an early date. (Paras 7.8 and 7.10)

16.48 In May 2000, the Commission constituted an Expert Group to suggest long term measures for the upliftment of Kol tribals in Uttar Pradesh who have, for long, been the victims of bonded labour and other oppressive social and economic practices. The report of the Group, proposing both short-term and long-term measures for improving the economic and social conditions of the Kol tribals, has been sent to the Government of Uttar Pradesh for eliciting a response. The Commission will issue its recommendations and directives after considering that response. (Para 7.13)

16.49 A total of 379 bonded labourers were identified and released in Uttar Pradesh in 2000-01, bringing the aggregate number so released from 1996-97 to 1,738. Of the 379 released in 2000-01, 227 were migrant labourers, who were to be rehabilitated by their parent States. Of the remaining 152, 106 were rehabilitated during the course of the year 2000-01 itself, under the Centrally Sponsored Schemes of the Government of India, an equal share of the funding coming from the Central Government and the Government of Uttar Pradesh. However, 449 labourers including 46 released from bondage in the year 2000-01 were awaiting rehabilitation as of 31 March 2001. The Commission is of the view that the rehabilitation of migrant labourers, principally belonging to Bihar, is not progressing satisfactorily. It has taken up the matter with the Union Labour Ministry to see whether the existing procedures could be simplified. The Commission is also of the view that the total number of bonded labourers detected, namely 1,738 in the five-year period from 1996-97 to 2000-01, is lower than the situation warranted. This has been conveyed to the Government of Uttar Pradesh. The Commission has also directed that Government to constitute Vigilance Committees in 13 of a total of 70 districts and 109 of a total of 299 Sub-Divisions, which do not as yet have these committees though they are mandatory under the law. (Para 7.14)

16.50 The Commission has also reviewed the situation of bonded labour in the States of Punjab, Haryana, Himachal Pradesh and the Union Territory of Chandigarh. It refused to accept the assertion of these States/Union Territories that their areas were free of bonded labour. They have, instead, been urged to review the situation in the light of the judgements of the Supreme Court. (Para 7.15)

16.51 In April 2000, the Commission reviewed the work relating to the identification, release and rehabilitation of bonded labour and child labour engaged in cutting and polishing of precious stones in Jaipur. It felt that there was evident need for far greater care and circumspection in the handling of such cases and the Government of Rajasthan has been requested to proceed accordingly. (Paras 7.16 and 7.17)

16.52 In July 2000, the Commission reviewed work relating to the release and rehabilitation of bonded and child labour in the southern states of Andhra Pradesh and Tamil Nadu with the senior officers of these States. The Commission emphasised the need for a convergence of the efforts of all the developmental departments in the rehabilitation of the released bonded labourers. (Para 7.19)

16.53 The Commission regrets to observe that in Tamil Nadu, as elsewhere in the country, there is still a great lack of sensitivity to issues covering the rights of those who are mentally challenged. This is witnessed not only in respect of those consigned to unregulated Dargahs, but also in respect of those who are incarcerated in prisons — in regard to whom the corrective measures required to be taken by State Governments have been inadequate, despite repeated letters from Chairpersons of this Commission. Further, the Commission is constrained to observe that inadequate action has been taken on the report on Quality Assurance in Mental Hospitals, which was transmitted by the Commission to the Central and State Governments in 1999. It will be recalled that the report contained precise and comprehensive recommendations on what needs to be done. The Commission urges that both the Central and State Governments act with greater focus and conviction to ensure that the rights the mentally ill are properly respected and that appropriate steps are taken to implement the recommendations of the Commission in respect of those who are so challenged. (Para 8.11)

16.54 The Commission has felt that the overall issue of the persistence of manual scavenging had not been taken-up as seriously as it should have been by the Ministry of Urban Development and Poverty Alleviation. It therefore asked its Secretary General to pursue this matter with the Secretary, Ministry of Urban Development and

Poverty Alleviation and a further meeting was held between them on 23 March 2001. The Commission is of the view that it is essential to keep this matter high on its agenda. It urges the Ministry of Urban Development and Poverty Alleviation, as also the Governments of all States and Union Territories to act with greater determination to implement the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. (Para 9.2)

16.55 In its preceding Annual Report, the Commission had commented in detail on the efforts it was making to protect the rights of denotified and nomadic tribes and to ensure that they were not treated as 'habitual offenders' by the police, or subjected to brutality by the law-enforcing machinery. It had made a number of recommendations to the State Governments, which had concentrations of these tribes. It is a matter of deep regret to the Commission that none of these State Governments has reported any positive action on those recommendations despite repeated reminders to them, the last of which was sent on 5 March 2001. The apathy of the States concerned is all the more disturbing because of the promises readily made in the meeting with the Commission in February 2000. (Paras 10.1, 10.2 and 10.3)

16.56 Once again, the Commission urges a greater sensitivity, at the highest political and administrative levels, to the problems afflicting marginalised sections of our society including those who are considered to be denotified tribes and nomadic tribes. (Para 10.4)

16.57 In earlier reports, the Commission had highlighted the need for the Government of India to draw-up, expeditiously, a National Action Plan for Human Rights Education. Pursuant to the urging of the Commission, a Coordination Committee was appointed to work out a schedule of activities for the UN Decade for Human Rights Education, under the Chairmanship of the Home Secretary, Government of India. The Coordination Committee, comprising representatives of various Ministries, drew-up a draft National Action Plan which was considered and approved on 29 March 2001. The Commission welcomes this development, even though it was belated. It takes this opportunity to underscore the importance of ensuring the full implementation of the Action Plan for Human Rights Education. (Para 11.1)

16.58 In order to provide a further stimulus to human rights education, the Commission has taken the view that research should also be conducted on human rights issues under the aegis of the UGC. The Commission has, therefore, urged the

UGC to earmark a certain number of fellowships for research on clearly identified human rights subjects. It is the belief of the Commission that its work to redress human rights grievances can be greatly strengthened if backed by well-researched material. (Para 11.3)

16.59 With a view to accelerating the spread of human rights education, the Commission also urged the UGC to convene a meeting of its Standing Committee on Human Rights at the earliest. In response, the Commission was informed that the tenure of the Standing Committee was of two years, that this period had expired and that no new Committee had been constituted in its place. Deeply concerned at this state of affairs, the Commission was taking steps to have the situation rectified. (Para 11.4)

16.60 The Commission has, for some time, been engaged in creating a greater awareness of human rights among young administrators so that they may retain sensitivity towards such rights throughout their careers and strive to promote and protect them. The Chairperson of the Commission has, to this end, visited the Lal Bahadur Shastri National Academy of Administration, Mussoorie, during the year under review. During his interaction with the Director and senior officers of the Academy, he emphasised the importance of introducing human rights related issues in the various courses run by the Academy and other National Training Institutions. The Commission has been informed that a Module on human rights has been introduced by the Academy in the Foundation Course for civil servants at the instance of the Department of Personnel and Training. The Academy has also made it mandatory for all Indian Administrative Service Officer Trainees to complete two field assignments, focused on the subject of the violation of human rights, during the course of their year-long training period in the districts. The Commission has stressed the importance of introducing inputs on human rights in Phase-I of the IAS training programme (as field assignment) and also in Phase-II of that programme (discussion on completed assignments), as well as in the in-service training for Provincial Civil Service officers promoted to the IAS. The Commission is of the view that the prescribed syllabi for these courses should be suitably modified to ensure that the subject of Human Rights is included on a regular basis, in future, among the courses to be provided by the Academy. The Commission has urged the Academy to take the lead in the area of Human Rights Training and, after discussion with other National Training Institutions, to send a comprehensive proposal to the Commission. The Commission foresees an important role for the Department of Personnel and Training in this regard. (Para 11.7)

16.61 The Commission continued to discuss the question of the setting-up of State Human Rights Commissions with those State Governments that had yet to constitute them. Eleven States have now established State Human Rights Commissions. (Para 13.1)

16.62 The Commission has suggested an amendment to Section 30 of the Protection of Human Rights Act, 1993 which provides for Human Rights Courts at the district level. The present provision is inadequate and defective and requires modification, without which Human Rights Courts at the district level, even if formed, cannot function effectively. Many States have designated Human Rights Courts under the provisions of Section 30 of the present Act. However, in the absence of action being taken on the proposed amendment, these courts are not adequately discharging the purpose for which they were designated. This is deeply disappointing. The Commission would like to observe, in this connection, that it is not sufficient to set-up State Human Rights Commissions or to designate courts to serve as Human Rights Courts. The quality of both must be ensured, both in terms of personnel and competence, if this central purpose of the Protection of Human Rights Act, 1993 is to be properly observed. (Para 13.4)

16.63 Since its establishment, the Commission has been getting nearly 50 per cent of the total number of complaints that it receives from the State of Uttar Pradesh. The 40,444 cases registered from this State in 2000-2001, accounted for 56.52 per cent of the total number of complaints received by the Commission during the year under review. That this trend of increasing complaints from Uttar Pradesh has continued over the last seven years is a matter of concern to the Commission, particularly since that State has failed thus far to set-up a Human Rights Commission of its own. (Para 14.1)

16.64 During the year under review, the Commission had a total of 74,899 cases to consider, of which 3,340 were carry-over cases of 1999-2000. During the year, the Commission considered 60,287 cases. At the end of the period under review, 14,612 cases were pending consideration of the Commission. Of the cases that were considered, 23,886 were dismissed in limine and 19,248 were disposed of with directions to the appropriate authorities. A total of 17,153 cases were taken cognisance of by the Commission for further action. Of these, 1,249 had been concluded and 15,904 were pending. In most of such cases, the reports that were asked for by the Commission from the varying authorities of the Central and State Governments, were awaited. Thus, the Commission during this period, disposed of a total of 44,383 cases. (Para 14.2)

16.65 In terms of outstanding reports, the most recalcitrant States were Uttar Pradesh, Delhi and Tamil Nadu. The Commission urges them to cooperate with greater promptness and diligence in the discharge of the responsibilities entrusted to the Commission by Parliament. (Para 14.3)

16.66 The Commission urges the Central and State Governments to respond promptly to its requests for reports and to act without delay on its varied recommendations on individual cases. The Commission also urges them to adhere more carefully to the various guidelines issued by it from time to time, as this would help the Commission to dispose of cases promptly and better fulfil the responsibilities entrusted to it under the Protection of Human Rights Act, 1993. (Para 14.10)

Sd/-

(J. S. Verma)

Chairperson

Sd/-

(K. Ramaswamy)

Member

Sd/-

(Sujata V. Manohar)

Member

Sd/-

(Virendra Dayal)

Member

New Delhi

31 December 2001

Summary of the Report (1999-2000) and of the Principal Recommendations

ANNEXURE 1

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.

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.

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 emphasise 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 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 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.

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 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.

5 The Commission urges the Central Government to be more forthcoming and transparent in respect of the Bijbehara 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.

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.

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.P.C 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 video-graphy 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.

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 offense. The action taken report on the Annual Report for 1998-99 states as follows: '*152nd 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 154th Report submitted by Law Commission containing a comprehensive review of the Cr.P.C., has not included the recommendations made by the National Human Rights Commission with respect to Section 197 of the Cr.P.C.*'

Upon a reconsideration, the Commission reiterates its earlier recommendations for the amendment of Section 197 of the Code of Criminal Procedure.

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 and Nicobar Islands, Chandigarh, Delhi, Dadra and 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.

11 The Commission calls upon the States of Arunachal Pradesh, Bihar, Gujarat, Jammu and 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.

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.

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'*.

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 sensitise 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.

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 and Kashmir, Kerala, Manipur, Nagaland, Orissa, Punjab, West Bengal and Union Territories of Andaman and 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.

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.

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.

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.

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.

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.

22 The Commission calls upon all the States to implement its guidelines on the supply of reading material to prisoners.

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.

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 and Nicobar, which have not yet responded to the Commission concerning the implementation of these guidelines, to act expeditiously in this matter.

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.

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).

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 offenses are languishing in jails because their cases are not being decided for various reasons.

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.

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 bedevilling 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 importance, the Commission, is reiterating those recommendations.

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.

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.

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.

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 sent confusing signals as to the intentions of India in regard to this matter.

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.

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 closer look be taken at the programme to re-evaluate it to make it more effective.

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.

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.

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.

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.

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.

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 of 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.

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.

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.

45 The Commission is appalled that the 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 and Kashmir, Himachal Pradesh, Meghalaya, Manipur, Mizoram, Nagaland and Sikkim adopt the Central Act at an early date.

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.

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.

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.

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 so despite the passage of considerable time. The Commission calls upon these States to set up Commissions without any further delay.

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 command the respect of the people of that State, without any further delay.

The Prevention of Terrorism Bill, 2000— Opinion of the Commission

ANNEXURE 2

Coram

Justice Shri J. S. Verma, Chairperson

Justice Dr K. Ramaswamy, Member

Justice Smt. Sujata V. Manohar, Member

Shri Sudarshan Agarwal, Member

Shri Virendra Dayal, Member

1 Introduction Media reports indicate that the Law Commission of India has submitted the draft Bill together with its 173rd Report to the Government of India and that the Bill is likely to be moved in the next session of the Parliament for its enactment as a law to deal with terrorism in the country. There has been a debate in the country for some time about the need of enacting such a stringent law as well as its form in case of its enactment. The debate has also focussed on the experience of the working of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and the fact of it being permitted to lapse. Divergent views have emerged in the debate and the Law Commission of India has recommended enactment of the law in terms of the proposed Bill.

2.1 Functions of the Commission specified in Section 12 of the Protection of Human Rights Act, 1993, particularly those in clauses (d), (f) and (j) are relevant in this context. These functions include: 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; study treaties and other international instruments on human rights and make recommendations for their effective implementation; and such other functions as it may consider necessary for the promotion of human rights. It is, therefore, an essential function of the Commission to formulate its opinion on the desirability and need of enacting such a stringent law and to give public expression to it for consideration by the Parliament and all those involved in the making of the laws so that due weight is given to the Commission's opinion in the performance of this exercise.

2.2 It may be recalled that in discharge of this statutory obligation, the Commission had earlier opposed the continuance of the TADA Act and a letter dated 20 February, 1995 to this effect was sent by the then Chairperson to all Members of Parliament and it is also included in the Annual Report of the Commission for the year 1994-1995 as Annexure 1. The earlier opinion of the Commission is relevant at this juncture not merely as the historical background but also because of its relevance in the formation of the opinion of the Commission in the present context.

3.0 It is in the performance of this statutory responsibility that the Commission has examined the need for enactment of such a law in its meeting held on 11 July, 2000. The matter has been considered not strictly from the point of view of the constitutional validity of the proposed new law and its provisions which, if necessary, would be a matter for the courts to decide, but on the need and wisdom of enacting such a law particularly in the light of the earlier experience with the TADA, the adequacies of the existing laws and the provisions of international covenants to which India is a party. Even though absence of need to enact the law and its un-wisdom are not grounds of constitutional invalidity, yet they are relevant for the performance of the functions of the Commission and of the Parliament. This is the occasion for examination of this question.

4.0 Issues In the above background, the issues which arise for consideration in this context are the following, namely:

- Is there any need for the enactment of the above new law?
- If yes, then the kind of new law which needs to be enacted.

It may here be mentioned that the Chairperson of this Commission was invited by the Law Commission to inaugurate its seminar on 20 December, 1999 to discuss the proposed Bill. In his inaugural address, the Chairperson identified these two issues which arose for discussion in the seminar and while refraining from expressing any opinion on the first issue, he said that in the event of such a law being found necessary, it must have a human face as indicated in decisions of the Supreme Court and also because of the past experience.

5.0 Answer The considered unanimous opinion of this Commission is that there is no need to enact the above new law (Prevention of Terrorism Bill, 2000) and, therefore, the need does not arise to answer the other question.

6.0 Reasons Brief reasons for the Commission's unanimous opinion are indicated here after:

6.1 Existing Laws The Prevention of Terrorism Bill, 2000 under Section 3 sets out the kind of actions which are proposed to be dealt with under the Bill. These actions are substantially taken care of under the existing laws. For example, any action which threatens the unity, integrity, security or sovereignty of India is covered by Section 153-B of the Indian Penal Code (IPC). Chapter 6 of the IPC deals with Offences against the State. Section 121-A which forms part of this Chapter deals with conspiracy to overawe by means of criminal force or the show of criminal force, the Central or State Government and the offence is punishable with imprisonment for life. Section 122 deals with collecting arms and ammunition with the intention of waging war against the Government of India. Section 124-A deals with sedition. Under Chapter 8 dealing with Offences against Public Tranquillity, Section 153-A deals with promoting enmity between two groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony. Chapter 16 deals with Offences affecting the Human Body. It includes causing hurt or grievous hurt, wrongful confinement, kidnapping, abduction and so on. Apart from the Indian Penal Code, there is the Arms Act, 1959, Explosives Act, Explosive Substances Act and the Armed Forces (Special Powers) Act, 1958 the last of which gives powers to the armed forces in disturbed areas to use force even leading to death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting assembly of five or more persons or carrying of weapons or things capable of being used as weapons or fire-arms, ammunition or explosive substances. There is also the power to arrest without warrant in the circumstances set out in the Act.

6.2 There is also on the statute book Unlawful Activities (Prevention) Act, 1967 which can be suitably modified if required. We have also enacted the Suppression of Unlawful Activities against the Safety of Civil Aviation Act, 1982 to deal effectively with offenses against the safety of civil aviation. This was pursuant to India ratifying the Hague Convention of 1970 for dealing with hijacking and Montreal Convention of 1971 for the suppression of unlawful acts against civil aviation. This Act provides the necessary legal provisions for giving effect to these Conventions.

6.3 In addition, there are at present in force at least four Central Preventive Detention Acts and a number of Preventive Detention Acts enacted by various States. The Preventive Detention Acts enacted by the Union of India include the National Security Act, 1980, the Prevention of Black Marketeering and Maintenance of Supplies Act, 1980, the Prevention of Narcotic Drugs and Psychotropic Substances Act, 1988 and the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Between these legal measures, all the 'terrorist acts' contemplated under the new Bill appear to be covered. If necessary, the Indian Penal Code or any provisions of any other Act can be amended to cover any specific action which at present may not be covered, though, it does not appear to be so. The punishments provided under these Acts can be increased where necessary. But there does not appear to be any need to have a separate new bill for the purpose of creating new offenses.

6.4 **Avowed justification for the new law** The avowed justification for these provisions appears to be (i) it is difficult to secure convictions under the criminal justice system; and (ii) trials are delayed. Hence special courts will speed up trial. Undoubtedly, the main problem which the country is facing today, relates to proper investigation of crimes and efficient prosecution of criminal trials. Adjudication and punishment of crimes also take a long time before the Courts. The problem, however, cannot be solved by enacting laws that do away with the legal safeguards that are designed to prevent innocent persons from being prosecuted and punished.

The problem cannot also be solved by providing for a different and more drastic procedure for prosecution of certain crimes, for making confessions before the police admissible in evidence, contrary to the provisions of the Evidence Act, and for raising presumption of guilt as set out in the Bill, and creating special courts. These provisions seriously affect human rights guaranteed under the Constitution and violate basic principles of criminal jurisprudence as internationally understood.

6.5 **Remedy** There are three stages at which remedial measures need to be taken on

an urgent basis by the Government to strengthen the criminal justice system:

6.5.1 **The stage of investigation:** Unless investigation is carried out speedily and efficiently, it is not possible to have a speedy and effective trial leading to conviction. The investigation machinery must be independent and free from political or any other kind of interference, an imperative to which NHRC has drawn attention in successive Annual Reports to the Parliament. Unfortunately, as various Police Commission Reports and the experience of the NHRC have shown, constant political interference with the police force has seriously impaired the ability of the police to investigate crimes freely and efficiently. There is also a need for giving proper training for efficient and effective investigation, including improvement of forensic skills and laboratories, another matter to which the National Human Rights Commission has repeatedly drawn attention. Such training and facilities are at present sadly lacking. In the case of Vineet Narain and Ors. Vs. Union of India and Ors., (1998) 1 SCC 226, the Supreme Court has observed: *'There is another aspect of rule of law which is of equal significance. Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition.'*

The Supreme Court in that case, has also observed: *'...there is urgent need for the State Governments also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also of all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicising the personnel...'*

There is, therefore, an urgent need to have independent and well-trained investigation machinery to investigate crimes, particularly, crimes related to terrorism.

6.5.2 There must also be efficient prosecution on behalf of the State, of all such crimes. Once again in the above case, the Supreme Court has observed: *'The recent experience in the field of prosecution is also discouraging...discharge of the accused on filing of the charge-sheet indicates, irrespective of the ultimate outcome of the matters pending in the higher courts, that the trial court at least was not satisfied that a prima-facie case was made out by the investigation. These facts are sufficient to indicate that*

either the investigation or the prosecution or both were lacking...Investigation and prosecution are interrelated and improvement of investigation without improving the prosecution machinery is of no practical significance.'

It is, therefore, essential that experienced Public Prosecutors are appointed to prosecute crimes involving terrorism and that they are appointed in sufficient numbers.

6.5.3 The delays in criminal courts are also undermining the criminal justice system. One of the main causes of delay is shortage of courts. It is necessary to create many more Sessions Courts, provide the necessary infrastructure to these Courts and to appoint many more Sessions Judges who are competent and possess integrity. The judiciary can be requested to give training or refresher courses to these Sessions Judges at the various Judicial Academies of the various States for speedy disposal of cases before them without undermining judicial adjudication. Criminal trials especially those dealing with serious offenses, which are tried by the Court of Sessions, need to be speedily conducted and disposed of. There can be no doubt that amongst these cases, those dealing with acts of terrorism must be given preference for early disposal (preferably within six months). But, for this purpose, it is essential that depending upon the number of such crimes in each State, and bearing in mind the average disposal per Judge, adequate numbers of additional Sessions Judges are appointed in each State, along with adequate numbers of Public Prosecutors who will prosecute the cases before them and additional courts are accordingly set up with the necessary infrastructure. This has to be done on an urgent footing. When this is done, crimes connected with terrorist activities should be given priority before the Sessions Courts in those States where such additional Sessions Courts are set up along with all the above concomitants. Obviously in those States where terrorism is rampant, additional courts will have to be set up as early as possible and the Union Government should, wherever necessary, assist the State Government in financing such additional courts.

The correct remedy for speedy trial and punishment of crimes connected with terrorism in India is proper strengthening of the crime investigation and prosecution machinery and criminal justice system. If there are a large number of acquittals today, it is not for lack of any laws but for lack of proper utilisation of these laws, lack of proper investigation and prosecution, and lack of adequate number of courts to try the offenses. Unless this root problem is redressed, adopting draconian laws will only lead to their grave misuse, as has been the case with the previous TADA law.

6.6 Obligations of the State under International Covenants etc. In pursuance of its

statutory responsibility the Commission has examined the Prevention of Terrorism Bill 2000 and, in particular, sought to form an opinion as to whether the Bill will increase, or decrease, the effective implementation of treaties and other international instruments on human rights. In pursuing this responsibility, the Commission has also had in mind the opinions of the Supreme Court, notably in *Vishaka and Others vs. State of Rajasthan and Others* (1997(6)SCC 241 and *Apparel Export Promotion vs. A. K. Chopra* (1999(1)SCC 759) in respect to this matter. In the former case, the Court took the view that it was '*... now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.*'

In the latter, the Court held '*In cases involving violation of human rights, the courts must ever remain alive to the international instruments and conventions and apply the same to a given case where there is no inconsistency between the international norms and the domestic law occupying the field.*'

6.7 The Commission has concluded that, set against these observations, the Prevention of Terrorism Bill, 2000 would hinder, rather than enhance, the effective implementation of treaties and other international instruments on human rights and that, in particular, the provisions of the Bill would not be in consonance with many provisions of the International Covenant on Civil and Political Rights (ICCPR) to which India is a State Party. Moreover, the meaning of the 'right to life with dignity' in Article 21 of the Constitution of India must include the provisions of the international instruments on the subject because there is no inconsistency between them and the domestic law.

6.8 As in the case of the Terrorist and Disruptive Activities (Prevention) Act, 1987, this is especially so in respect of the following:

6.8.1 Raising of the presumption of guilt, and shifting the burden to:

- the accused, to establish his innocence.
- Art. 14(2) of the ICCPR expressly requires that, '*Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty.*'

6.8.2 Making confessions before a police officer admissible in evidence.

- The Commission is of the view that this would increase the possibility of coercion and torture in securing confessions and thus be inconsistent with Article 14(3) (f) of the ICCPR which requires that *'everyone shall be entitled to the guarantee of not being compelled to testify against himself or to confess guilt.'* This provision is consistent with Article 20(3) of the Constitution of India.
- It would also imperil respect for Article 7 of the ICCPR which categorically asserts *'no one shall be subjected to torture or to inhuman or degrading treatment or punishment...'* It may be recalled that this right is non-derogable under any circumstances, including times of war and public emergency that India has already signed the Convention against Torture on 14 October 1997, though ratification is still awaited.

6.8.3 Modifying the provisions of the Code of Criminal Procedure, particularly in regard to the time set for investigation and grant of bail.

- Article 14(3) (a) of the ICCPR requires that an accused, *'... be informed promptly and in detail... of the nature and cause of the charge brought against him,'* while
- Article 14(3)(c) of the ICCPR asserts the right, *'to be tried without undue delay.'*

Further, Article 9(2) of the ICCPR states: *'Anyone who is arrested shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him;'* while

- Article 9(3) asserts: *'Anyone arrested or detained on a criminal charge shall be promptly brought before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody...'*

6.9 There are a number of other provisions of the Bill that would have a chilling effect on human rights, notable among them being Section 3(8) which provides for punishment for those in possession of information of material assistance in preventing the commission of a terrorist act. Read with Section 14, which gives powers to investigating officers to require individuals to furnish information in their possession, the Bill could gravely jeopardise the work of professionals such as journalists. The provision would also run counter to Article 19 of the ICCPR dealing with the right to the

freedom of expression, which includes the right *'to seek, receive and impart information and ideas of all kinds...'* subject to certain restrictions, *'but these, shall only be such as are provided by law and are necessary,'* *inter alia,* *'for the protection of national security or of public order (ordre public), or of public health or morals.'*

6.10 Furthermore, the provisions of Section 37(1) of the Bill, which provide for immunity from legal proceedings and prosecutions against the Central and State Governments and officials acting *'in good faith,'* are inconsistent with the provisions of Article 2(3) of the ICCPR, under which, *'Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms are herein recognised as violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.'*

The proviso to Section 37(1) of the Bill carries this inconsistency yet further, in that it provides a blanket immunity for, *'any serving member or retired member of the Armed Forces or other para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.'*

Clearly, too, such a provision would adversely affect the already limited jurisdiction of the National Human Rights Commission under Section 19 of the Protection of Human Rights, 1993 to deal with complaints alleging the violation of human rights by members of the Armed Forces and, in consequence, further militate against the express purpose of that Act that the Commission should ensure the *'better protection'* of human rights in the country.

6.11 It is worthwhile to recall in this overall connection that, since the World Conference on Human Rights, held in Vienna in June 1993, the international community has been categorical in its assertion that, *'The acts, methods and practices of terrorism in all its forms and manifestations... are activities aimed at the destruction of human rights'* (Paragraph 17 of the Declaration and Programme of Action).

Further, in a series of resolutions in recent years on *'Human Rights and Terrorism,'* and in its 1994 Declaration on *'Measures to Eliminate International Terrorism,'* the General Assembly of the United Nations has consistently taken the view *'that terrorism, in all its forms and manifestations, wherever and by whomever committed, can never be justified in any instance, including as a means to promote and protect human rights.'* The General Assembly has also observed 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.' The General Assembly has therefore urged States to '*enhance international cooperation at regional and international levels in the fight against terrorism in accordance with relevant international instruments, including those relating to human rights, with the aim of its eradication.*' Of these instruments, the International Covenant on Civil and Political Rights and the Convention against Torture, referred to above, are surely among the most important.

6.12 At a time when India is itself urging support for the adoption of a comprehensive International Convention on Terrorism, it is essential to recall these developments, and the stated need to abide by the international instruments on human rights, even while combating terrorism with view to eradicating this menace. It is also essential to recall that while an overall Convention on this subject is yet to be adopted, ten multilateral conventions have already been adopted on various aspects of terrorism, and that India is a State Party to each of these Conventions. These are the:

- Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970,
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971,
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973,
- International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979,
- Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980,
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988,

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988,
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988,
- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997,
- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

6.13 It is important, both to the cause of human rights and to the fight against terrorism, that the measures required to be taken by the Government of India under each of these Conventions are fully and meticulously undertaken, both in terms of appropriate legislation, where this may still be needed, and in terms of other practical arrangements essential to the effective implementation of these Conventions.

6.14 Check on Financing of Terrorism One area where suitable law needs to be enacted is the area of financing of terrorism. The UN General Assembly in its resolution of 17 December, 1996 called upon States to take steps to prevent and counteract through proper domestic laws, the financing of terrorists and terrorist organisations whether such financing is direct or indirect through organisations which may be camouflaged as charities or which are engaged in unlawful activities such as illicit arms trafficking, drug-dealing and racketeering including the exploitation of persons for purposes of funding terrorist activities. Article 4 of the International Convention on the Suppression of Financing of Terrorism enjoins each State Party to adopt such measures as may be necessary to establish as criminal offense under its domestic law, the offense relating to financing of terrorism as set out in Article 2 and to make these offenses punishable by appropriate penalties which take into account the grave nature of the offenses. It is in this area that there appears to be a lack of appropriate legislation. Unfortunately, the present Bill is silent on this aspect. The Government needs to frame appropriate legislation in the light of this international convention.

7.0 Conclusion For the above reasons, and consistent with the view that it took in respect of TADA, the Commission is now unanimously of the considered view that there is no need to enact a law based on the Draft Prevention of Terrorism Bill, 2000

and the needed solution can be found under the existing laws, if properly enforced and implemented, and amended, if necessary. The proposed Bill, if enacted, would have the ill effect of providing unintentionally a strong weapon capable of gross misuse and violation of human rights which must be avoided particularly in view of the experience of the misuse in the recent past of TADA and earlier of MISA of the emergency days.

This Commission regrets its inability to agree with the opinion of the Law Commission in its 173rd Report and recommends that a new law based on the Draft Prevention of Terrorism Bill, 2000 be not enacted. Such a course is consistent with our country's determination to combat and triumph over terrorism in a manner also consistent with the promotion and protection of human rights.

New Delhi

14 July 2000

Regarding Child Marriage Restraint Act, 1929

ANNEXURE 3

Despite the existence of the Child Marriage Restraint Act, 1929, child marriages are still quite rampant. The incidence of child marriages seems to be widely prevalent in the states of Rajasthan and Madhya Pradesh and to a lesser extent, in the other States also. Mean age of marriage for females has arisen from 13.2 years at the beginning of the twentieth century to an average age of 19.4 years for both men and women combined, in 1994 (Women and Men in India 1996-97, Central Statistical Organisation, Department of Statistics, Ministry of Planning and Programme Implementation, Government of India (dt. 29.1.98). Since the latter figure is an average of the combined ages of men and women, the average for women is much lower than 19.4 years. In fact, some of the private studies show that in Rajasthan in 1997, 60 per cent of girls were married before the age of 14 and in the slums of Delhi, 77 per cent women were married before the age of 15 (See Vandana: Abolition of Child Marriage under Hindu Law: A Plea for Protection of Reproductive Rights of the Girl Child — Delhi Law Review Vol. XXI, 1999 p. 117). If at the end of a hundred years, this is the rise in the age of marriage for women, a serious examination is required of the causes for the persistence of child marriage and more particularly, about the effectiveness of the Child Marriages Restraint Act, which came on the statute book as far back as in 1929.

The bad effects of a child marriage are obvious. First of all, it is a violation of the rights of the child, particularly the girl child, depriving her of opportunities and facilities to develop in a healthy manner, to obtain education and to lead a life of freedom and dignity. It also has disturbing consequence for the reproductive health of a child bride. It leads to a vicious circle of early pregnancy, malnutrition, maternal

mortality and high infant mortality. Therefore, a child marriage not only denies the girl child control over her reproductive rights and damages her health but also prevents her from getting education and employment. In early maternity there are also greater chances of fetal deformity and there is a high risk to the mother's life. At the national level, child marriages create a longer legitimate reproductive life span and contribute to population explosion.

Various cultural factors have led to the persistence of this practice. These include low status of women in society and the anxiety of the parents to get the unwanted girl child married as early as possible to be relieved of the 'burden' of looking after her. It is also believed that the more mature a girl gets, there are greater chances that she may not accept the choice made by her parents, or that she will not conform to the traditional norms regarding marriage, thus creating social problems for parents. Child marriages are an easy way out for parents who want their daughters to obey and accept their choice of a husband for them. There is also a belief that child marriage is a protection for the girls against unwanted masculine attention or promiscuity. Unless these beliefs are tackled, child marriages will continue to take place since they are seen as protecting parents and absolving them of all responsibilities towards their young daughters even though such marriages may do considerable harm to the young daughters. This is an area where the rights of the girl child need urgent protection.

The reason why the Child Marriage Restraint Act, 1929 has proved ineffective is because it has not seriously tackled the issue of child marriages, and has adopted an equivocal stand in that connection. Although originally, a child under this Act was defined as a male below 18 years, and a female below 14 years, this age has been revised upwards and all marriages where a male is below 21 years and a female below 18 years are considered as child marriages. While there is a rising of the age bar against child marriages, the remedies under the Act to prevent or punish such marriages remain as weak as before. The marriage is valid. The punishments are nominal. The punishment to a male over the age of 21 years marrying a child is simple imprisonment of three months and a fine. The punishment for solemnising a child marriage is also the same and the punishment for a parent or guardian of a child for arranging such a marriage is also the same. Although offenses under the Act are now to be treated as cognisable for the purpose of investigation, they are not to be treated as cognisable for other purposes. Even the power to issue an injunction prohibiting the marriage in contravention of the Act is circumscribed by the requirement that no injunction shall be issued unless the Court has previously given notice to such person and has given him an opportunity to show cause.

It is necessary, first of all, to provide for registration of all marriages — whether religious or civil. Just as there are registers of births and deaths, there must be registers of marriages where any marriage in any form, performed within the area, must be registered. This would provide an authentic record of a marriage and would put an end to all disputes regarding the performance of a marriage. The register must have columns regarding the names of parties marrying, their age, their status (unmarried, divorced etc.), names of both parents of both sides, their addresses, method of performing the marriage (Hindu rites, Muslim marriage, civil marriage, etc.), the name of the person solemnising the marriage, the date of marriage and the venue.

- (1) The Child Marriage Restraint Act must be recast. In the first place, a responsibility must be placed under the Act on local administrative officers to prevent impending child marriages whether singly or in groups.

On certain days such as Akshaya Trutiya, it is well known that mass marriages take place. The local official should be empowered to move the court for prevention of such mass marriages by a general court order that may be communicated to the villages over the media, by publication or by beating of drums. For single marriages a specific injunction order can be obtained.

- (2) All marriages that breach such an injunction will be void *ab initio*.
- (3) There should be a provision in the Child Marriage Restraint Act (as in the State of Gujarat) for the appointment of Child Marriage Prevention Officers either for the whole State or for districts where it is known that child marriages are more prevalent.
 - (a) The Child Marriage Prevention Officer should be entrusted with the duty to prevent marriages being performed in contravention of the Act by taking such action as he might think appropriate, including initiation of proceedings in a Court for obtaining an injunction. This should be in addition to the duty imposed on the local administration to prevent such marriages and not in substitution of it.
 - (b) It should also be his or her duty to collect evidence for the effective prosecution of persons contravening the provisions of the Act.
 - (c) The Child Marriage Prevention Officer should also be entrusted with the

duty of creating awareness of the evils which result from child marriages and educating people about the detrimental effects of such marriages on the health and well being of children. In fact, an obligation should be cast on each State to set up a proper machinery in each of its affected districts for dissemination of proper information and for education being given to the people to wean them away from child marriages.

- (4) In case of urgency, *ex parte ad interim* injunction can be granted without notice.
- (5) It should also be open to others — friends, well-wishers, NGOs, public spirited and respectable citizens to move the Court for an injunction.
- (6) While a marriage in violation of an injunction order should be void, all other Child marriages should be voidable. A boy or a girl who was below the prescribed age at the time of his/her marriage should have the right to avoid that marriage at any time upto completion of one year after attaining the minimum age prescribed under the Act. For this purpose, a matrimonial petition will have to be filed through the next friend if the petitioner is a minor. He/she should have the right to engage his or her own lawyer for this purpose. Such a petition can also be filed by the guardian of the petitioner if he/she is a minor. But the minor will have a right to be independently represented and heard.
- (7) When a girl seeks to avoid such a marriage, she should nevertheless be entitled to get maintenance from her husband as well as his parents or guardians until she remarries. This should be without prejudice to her right to be maintained by her parents/guardians and to live in the parents' family home. The Court while granting a declaration should grant her appropriate reliefs in this connection.
- (8) Any male who wishes to avoid such a marriage must deposit in court in advance at the time of filing the petition the full amount received by him/his family from the bride's side in connection with that marriage, as also the marriage expenses incurred by the bride's family. He must also pay maintenance to the wife until she remarries.
- (9) No person who was of the prescribed age or above at the time of marriage can

ask for avoiding the marriage under this Act.

- (10) The punishment for contravening the provisions of the Act should be more stringent, particularly the punishment for those who solemnise such a marriage such as the priest. It will be the duty of the solemniser to satisfy himself/herself regarding the age of the bride and the bridegroom before performing the marriage.
- (11) The punishment of the parents or the guardians concerned should be more deterrent, but in the form of heavy fines.
- (12) The offense should be made cognisable in every respect.

(Sujata Manohar)

7 December 2000

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Recommendations of the Workshop on Maternal Anaemia

ANNEXURE 4

- 1** Right to health, a right inherent in every human being and integral to the dignity of the person assured in Article 24 of UDHR, Article 12 of International Covenant on Economic, Social and Cultural Rights, Articles 4 and 5 of CEDAW and the Directive Principles in Articles 39(f), 41, 43, and 47 of the Constitution, be expressly transformed and declared as a fundamental right, in an expansive manner with an inclusive definition to encompass within its ambit all facets of health touching human dignity, in Part III of the Constitution. It is therefore recommended that right to health be declared as a fundamental right and a suitable amendment to the Constitution be made to this effect.
- 2** While the right to health should be made a fundamental right, a co-relative duty also be cast on the State under Article 47 to be enforced through legislative or executive measures.
- 3** A comprehensive legislation be enacted covering all facets of health with specific emphasis on health rights of women during pregnancy and thereafter, as well as the child's right to nutrition and a healthy environment.
- 4** Considering that women's literacy plays a crucial role in spreading awareness about maternal anaemia and the remedial actions to be taken, the Commission recommends the setting up of a National Literacy Mission for women for improving the literacy of women at all levels in the country within a specified time-frame.
- 5** As the citizen will be able to realise his rights only through full awareness of what

he is entitled to as also the factors contributing to healthy living, education of all children be made a fundamental right, in particular upto primary level and upto the age of 14 years. It is further recommended that girl children who are more vulnerable would need special care and be made eligible to free and compulsory education upto graduation.

6 The shares of education in the budgets of most States have declined significantly from 4.1 per cent in 1990-91 to 3.8 per cent in 1995-96. The NHRC recommends increase in the share of public expenditure on education, especially education of women in the budget.

7 Since awareness cannot come without education on human rights, human rights education be made part of the curriculum both in formal and non-formal education at all levels.

8 Awareness programmes on maternal anaemia should be taken up through the ICDS programme by organising workshops and training programmes covering all panchayats. The ICDS blocks may be categorised into groups based on the high incidence of maternal anaemia and levels of women literacy and their performance monitored closely.

9 The subjects of maternal health and anaemia should form a part of all educational/vocational training and employment programmes specially designed for women both by the Central and State Governments.

10 As effective participation at the grassroots level is necessary for the success of the programme of anaemia eradication, the programme should be extensively decentralised.

11 It was unanimously recognised on the basis of comprehensive scientific reviews presented in the Workshop that prevalence of Iron deficiency anaemia was alarmingly high in the country. Maternal mortality rate for all India is 408 per 1,00,000 births. However, in the larger northern states, it is almost twice as high. In mothers anaemia causes high maternal mortality, high incidence of low-birth weight of children and related high infant mortality among the newborns. It is also recognised that the surviving low birth weight babies may end up with compromised mental and physical development. Iron deficiency anaemia in its worst form is prevalent among pregnant and adolescent women as well as pre-school children. The populous northern states,

and particularly the poorer sections of these states, are the most severely affected and these vulnerable areas and sections of the society require immediate attention.

12 There is urgent need to promote the out-reach of ante-natal care to the rural community. Prevention of maternal anaemia, the single most important cause of maternal mortality, is the most effective way to reduce maternal mortality rapidly in the country. The groups agree unanimously with the professional and scientific opinion that supplementation with iron-folate tablets is the most effective and urgently actionable method for anaemia prevention in the country.

13 The bio-availability of iron in Indian diet is poor. There are a number of Iron absorption inhibitors present and further iron absorption promoters like Vitamin C are deficient in Indian diet. Currently, cereals account for 56 per cent of the iron intake in the Indian diet, while only 5 per cent is accounted for by green leafy vegetables. Widespread dissemination of all relevant information is an urgent need to improve public awareness. There is also a need to promote iron fortification of the people's diet through additional/alternative measures such as double fortification of salt (with iron and iodine) as well as iron fortification of popular and widely consumed food items such as pickles, condiments, wheat-flour, etc. The feasibility of the technology developed by CFTRI for wheat-flour fortification be examined on an immediate basis. The technical and scientific feasibility of using pickles and chutneys as vehicles of iron fortification in the Indian context be examined in-depth for early implementation.

14 Prevention of anaemia using some approaches developed in Ayurveda seems promising. Therefore it is recommended that research and development work may be undertaken to promote these approaches. If successful, it will provide culturally preferable and popular anaemia prevention methods to the people at large. Research work is also to be undertaken to enhance the bio-availability of iron in popular cereals like rice as a long-term solution to this problem. Due notice has to be taken of certain of the traditional methods of preparing and processing foods such as soaking, malting, baking, etc. which are scientifically known to enhance the bio-availability of iron. These practices need to be promoted and knowledge about these practices needs to be disseminated far and wide as they will have easy acceptability with the public at large. It is also necessary to undertake detailed studies to establish the role and relevance of haemopoietic factors (Vitamin B12) in anaemia prevention as a large population of the country has vegetarian diet habits and this research can benefit the vegetarians.

15 The anaemia prevention programme needs not only to be decentralised but non

governmental organisations should be involved extensively to secure widespread peoples' participation so that this programme is made into a truly people's movement.

16 The Conference recommends organisation of workshops, seminars in all colleges for women/high schools for girls with a view to create awareness on health issues relating to women, with special reference to maternal anaemia.

17 The Conference suggested that a data bank may be specially set up in the NSSO for collection and maintenance of data of women's health including that relating to maternal anaemia along with the percentage of literacy of the women, village/panchayat/district-wise in the country which will enable effective monitoring of maternal anaemia on the basis of data collected directly from the fields.

18 The National Human Rights Commission may play an active role through continuous interaction with government agencies, NGOs and other interested citizens through periodic consultations and reviews.

19 Media campaign needs to be undertaken against the ill effects of fast food and for the propagation of healthy, indigenous and time tested food habits.

20 The Commission also recommends taking measures for ending all types of discrimination against girl children especially relating to their health and education.

Conclusions/Recommendations of the National Conference on HIV/AIDS

ANNEXURE 5

Conclusions/Recommendations of the National Conference on HIV/AIDS on 24-25 November, 2000

- Clear link between Human Rights, HIV/AIDS, and Development
- Harmonisation between individual rights and community interests
- Destigmatisation would result in a more enabling environment
- Access to drugs as an assertion of Human Rights
- Involvement of civil society and States in the response to HIV/AIDS

Consent and testing

- Protocol on informed consent to be applicable for all medical interventions including HIV/AIDS
- Provision of infrastructure for counselling in all testing settings
- Availability of testing services for all should be the goal

Confidentiality

- Confidentiality paramount role in HIV/AIDS response
- Disclosure only to be made in exceptional circumstances
- Explore innovative measures to implement respect for confidentiality
- Legal framework, administrative procedures and professional norms for enabling environment

Discrimination in Health Care

- Anti-discrimination legislation to cover the private sector
- State to guarantee safe working environment for health care workers

Discrimination in Employment

- Anti-discrimination legislation to cover the private sector
- Medical insurance scheme to cover HIV positive employees

Women in vulnerable environments

- Ensure legal changes for empowering women — property rights/marital rape
- Increasing male responsibility and involvement in the response
- Right to information and
- Access to care
- Reducing silence about sexuality
- Decriminalise sex work/prostitute, not prostitution
- Life skill education
- Reintegration of sex workers in a participatory manner

Children and Young People

- Review of Juvenile Justice Act
- Coordinated response to children's issues
- Recognition of children and young people as persons capable of accessing rights
- Mass media to be used extensively

People Affected/Infected

- Accessibility of legal remedy
- Reduction of cost of drugs
- Scaling up VTC services
- Quality control of services and drugs
- Government to manufacture drugs
- Right to information
- Review of legislations impeding interventions

Marginalised Populations

- Review disabling laws and processes (Section 377 IPC, NDPS Act)
- Legitimisation of needle exchange and condom distribution programs

In addition to the recommendations received after the Conference from UNAIDS, the following proposals have also made:

- 1) HIV/AIDS may not be treated only as a health problem, but should be recognised as a social problem too. Therefore, a holistic approach is required.
- 2) There should be wide publicity about the causes and spread of HIV/AIDS especially at the grass root level as most of the people, even the educated, are not aware of the full facts.
- 3) Wide publicity is needed for testing facilities available at various places in the country.
- 4) After testing positive, most people do not know what to do further. There should be publicity also for medical facilities available at various places in the country.
- 5) Setting up research-cum-rehabilitation centers with the help from public/private sector by voluntary organisations, public/private institutions.
- 6) Government to encourage research on alternate medicines available within indigenous systems; public sector drug companies may take up research for development of cheaper vaccines/medicines for treatment of the disease.
- 7) Prescription of best medical practices for medical professionals and health workers dealing with the problem.
- 8) Protection of medical professionals and health workers.
- 9) Spread of information through media and cinema, training/awareness programmes amongst panchayats, schools and universities about the HIV/AIDS.

- 10) Close net-working amongst the NGOs and the hospitals dealing with the problem.

Issue of guidelines to hospitals, NGOs, medical professionals, experts, social workers etc. dealing with the problem.

Comments/Suggestions on the draft Long Term Action Plan (2000-2005) for Implementation of the National Policy on Older Persons

ANNEXURE 6

The programmes prepared under the Action Plan by various Ministries are general in nature. They are to be more specific and focused to be taken up within a feasible time frame.

The Action Plan should make a distinction between short term and long-term programmes. Out of the programmes suggested, programmes which are important and of immediate benefit to the aged need be segregated, and taken up within a specified time frame for execution.

While schemes like ADHAR are being taken up for the senior citizens, there is need for simplifying the procedures and ensuring easy access to the schemes.

The Inter-Ministerial Committee should meet at least once in 3 months. Periodic review by the State Governments may also be taken up.

Although Panchayats, NGOs and other non-governmental agencies and institutions are proposed to be involved, in what manner they are to be involved is not specified in the Action Plan by the Ministries.

Priority need be given for the aged within all the existing schemes taken up by all Ministries, especially the Ministry of Rural Development and Employment, Ministry of Social Justice and Empowerment. All District Rural Development agencies may be given necessary directions by the Government of India to ensure priority for the aged within all schemes, which are being implemented by the agency.

Review of all existing schemes by all the Ministries with a view to facilitate implementation of all welfare measures for the aged.

In addition to the other steps suggested by the Ministry of Railways, easy facility for getting in and out of railway compartments for the senior citizens may be taken up by redesigning the steps at the entry/exit of railway compartments.

Since a majority of the aged live in villages and their environment and problems are different from the urbanised, the schemes for rural poor may be segregated, and taken up on priority.

Benefits under the social security schemes like old age/destitute pensions do not reach the old people in the villages on time. Steps may be taken for streamlining implementation of the scheme in consultation with the State Governments. Implementation could be taken up through Panchayats and responsible NGOs.

Many of the old people amongst the tribals are displaced from their own land due to land alienation (indebtedness being the main cause). Priority for old people among the tribals in the disposal of land alienation cases could be considered.

Priority may be given to the aged amongst the people displaced by Mega projects while considering their rehabilitation.

Special employment/self-employment schemes in the rural areas for the aged in conformity with their age, need and capacity may be taken up by the Ministry of Rural Development.

The Ministry may explore the possibility of involving the Co-operative Sector for taking up/earmarking appropriate Schemes and implementing them through the existing/functioning multi purpose Cooperatives, including Primary Agriculture Cooperatives (PACs) and Large Area Multi Purpose Cooperative Societies (LAMPS) in tribal areas for eligible persons above the age of 65.

Suitable number of houses may be earmarked for the aged under the housing schemes for poor in the rural sector especially under the Jawahar Gram Samaridhi Yojana (JGSY) being implemented by the District Rural Development Agencies on the guidelines issued by the Rural Development Ministry.

Statement Showing Details of Custodial Deaths/Rapes Reported by the State since 1993-94

ANNEXURE 7

State/UT	1993-94	1994-95				1995-96			1996-97		
	Total	PC	JC	Others	Total	PC	JC	Total	PC	JC	Total
Andhra Pradesh	0	6	0	0	6	10	45	55	27	70	97
Arunachal Pradesh	0	0	0	0	0	0	0	0	2	0	2
Assam	1	14	4	0	18	7	15	22	13	12	25
Bihar	4	17	0	0	17	8	67	75	14	79	93
Goa	0	1	1	0	2	0	0	0	3	0	2
Gujarat	0	0	0	0	0	18	4	19	18	32	50
Haryana	1	2	0	0	2	4	5	9	2	7	9
Himachal Pradesh	0	2	0	0	2	0	1	1	1	0	1
Jammu & Kashmir	1	0	0	3	3	15	0	15	4	0	4
Karnataka	0	1	0	0	1	3	10	13	8	28	36
Kerala	1	3	0	0	3	2	2	4	6	9	15
Madhya Pradesh	1	2	8	1	11	2	7	9	8	7	15
Maharashtra	0	2	0	0	2	9	25	34	21	180	201
Manipur	1	2	1	0	3	4	0	4	1	0	1
Meghalaya	1	3	0	0	3	0	3	3	0	10	10
Mizoram	0	0	0	0	0	0	2	2	0	0	0
Nagaland	0	1	0	1	2	2	0	2	2	1	3
Orissa	0	3	1	1	5	2	8	10	3	10	13
Punjab	0	10	2	0	12	8	8	16	5	12	17
Rajasthan	1	10	0	0	10	6	11	17	5	25	30
Sikkim	0	0	0	0	0	1	0	1	0	0	0
Tamil nadu	6	7	0	2	9	4	1	5	3	18	21
Tripura	0	1	0	0	1	0	0	0	0	0	0
Uttar Pradesh	8	5	0	1	6	13	24	37	32	139	171
West Bengal	0	14	1	0	15	14	37	51	6	42	48
A & N Islands	0	0	0	0	0	0	0	0	0	0	0
Chandigarh	0	0	0	0	0	0	0	0	0	0	0
D & N Haveli	0	0	0	0	0	0	0	0	0	0	0
Daman & Diu	0	0	0	0	0	0	0	0	0	0	0
Delhi	7	5	33	0	38	7	33	40	5	19	24
Lakshadweep	0	0	0	0	0	0	0	0	0	0	0
Pondicherry	1	0	0	0	0	0	0	0	0	0	0
Chattisgarh	0	0	0	0	0	0	0	0	0	0	0
Jharkhand	0	0	0	0	0	0	0	0	0	0	0
Uttaranchal	0	0	0	0	0	0	0	0	0	0	0
Total Cases	34	111	51	9	171	136	308	444	188	700	888

During the year 2000-2001 two deaths took place in the custody of Army and Custodial Rape also, hence the total number of deaths/rapes in custody comes to 1,040.

1997-98			1998-99			1999-2000			2000-2001			Grand Total
PC	JC	Total	PC	JC	Total	PC	JC	Total	PC	JC	Total	
21	53	74	25	96	121	11	73	84	2	76	78	515
2	2	4	2	1	3	4	0	4	1	1	2	15
18	15	33	15	22	37	11	22	33	11	11	22	191
10	107	117	10	182	192	7	155	162	2	137	139	799
0	2	2	0	1	1	2	2	4	2	3	5	16
10	27	37	8	37	45	13	19	32	11	27	38	221
3	7	10	4	18	22	5	24	28	4	20	24	106
0	0	0	2	0	2	1	0	1	1	2	3	10
2	0	2	0	0	0	0	0	0	0	1	1	26
7	33	40	10	40	50	6	35	41	5	41	46	227
6	30	36	4	25	29	6	14	20	1	26	27	135
17	43	60	19	99	118	13	58	71	11	37	48	333
17	116	133	20	98	118	30	126	156	19	104	123	767
1	0	1	3	0	3	0	1	1	0	0	0	14
2	0	2	1	6	7	0	2	2	1	0	1	29
0	1	1	0	0	0	0	0	0	1	0	1	4
1	0	1	1	0	1	0	0	0	0	0	0	9
4	19	23	0	68	68	1	45	46	2	55	57	222
8	27	35	12	43	55	11	42	55	13	48	61	249
11	30	41	3	47	50	3	45	48	3	38	41	238
0	0	0	0	0	0	0	0	0	0	0	0	1
13	54	67	14	41	55	9	48	57	4	24	28	248
2	0	2	0	0	0	0	0	0	2	0	2	5
14	172	186	20	222	242	18	141	159	10	121	131	940
10	43	53	6	40	46	19	43	62	9	38	47	322
0	0	0	0	2	2	1	2	3	0	2	2	7
0	0	0	0	0	0	0	0	0	1	2	3	3
0	0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	1	1	0	0	0	0	0	0	1
11	26	37	0	17	17	6	19	25	9	28	37	225
0	0	0	0	0	0	0	0	0	0	0	0	0
1	0	1	1	0	1	0	0	0	0	0	0	3
0	0	0	0	0	0	0	0	0	1	29	30	30
0	0	0	0	0	0	0	0	0	1	33	34	34
0	0	0	0	0	0	0	0	0	0	6	6	6
191	807	998	180	1100	1286	177	916	1093	127	910	1037	5951

Statement showing the cases of alleged fake encounters reported to the Commission during 2000-2001

ANNEXURE 8

	States/Union Territories	No. of Cases
1	Andhra Pradesh	14
2	Arunachal Pradesh	—
3	Assam	—
4	Bihar	6
5	Goa	—
6	Gujarat	2
7	Haryana	—
8	Himachal Pradesh	—
9	Jammu and Kashmir	1
10	Karnataka	—
11	Kerala	—
12	Madhya Pradesh	1
13	Maharashtra	9
14	Manipur	—
15	Meghalaya	—
16	Mizoram	—
17	Nagaland	—
18	Orissa	—
19	Punjab	—
20	Rajasthan	—
21	Sikkim	—
22	Tamil nadu	2
23	Tripura	—
24	Uttar Pradesh	68
25	West Bengal	—
26	Andaman and Nicobar Islands	—
27	Chandigarh	—
28	Dadra and Nagar Haveli	—
29	Daman and Diu	—
30	Delhi	—

continued on next page

	States/Union Territories	No. of Cases
31	Lakshadweep	—
32	Pondicherry	—
33	Chattisgarh	—
34	Jharkhand	2
35	Uttaranchal	4
	Total Cases	109

Statement giving number of cases registered, number of cases considered by the Commission, and number of cases processed but pending consideration by the Commission during the year 2000-2001

ANNEXURE 9

State/UT	No. of cases processed but pending consideration	No. of cases registered		Total (2+3+4)	No. of cases considered	No. of cases pending consideration as on 01/04/2000
		Complaints	Custodial deaths/rapes			
1	2	3	4	5	6	7
Andhra Pradesh	41	925	78	1,044	945	99
Arunachal Pradesh	8	30	2	40	36	4
Assam	10	174	22	206	181	25
Bihar	200	4,134	139	4,473	3,282	1,191
Goa	5	60	5	70	49	21
Gujarat	70	718	38	827	638	189
Haryana	95	2,553	24	2,672	2,125	547
Himachal Pradesh	20	118	3	141	101	40
Jammu and Kashmir	14	292	3	309	251	58
Karnataka	38	720	46	804	711	93
Kerala	18	423	27	468	403	65
Madhya Pradesh	209	2,861	48	3,118	2,504	614
Maharashtra	177	2,409	123	2,709	2,213	496
Manipur	7	33	—	40	36	4
Meghalaya	4	5	1	10	8	2
Mizoram	—	9	1	10	7	3
Nagaland	1	8	—	9	6	3
Orissa	33	907	57	997	864	133
Punjab	20	948	61	1,031	871	160
Rajasthan	175	2,569	42	2,781	1,850	931
Sikkim	1	16	—	17	12	5

continued on next page

State/UT	No. of cases processed but pending consideration	No. of cases registered		Total (2+3+4)	No. of cases considered	No. of cases pending consideration as on 01/04/2000
		Complaints	Custodial deaths/rapes			
1	2	3	4	5	6	7
Tamil nadu	67	1,528	29	1,624	1,437	187
Tripura	6	41	2	49	47	2
Uttar Pradesh	1,930	40,312	132	42,375	34,518	7,857
West Bengal	90	782	48	920	613	307
A & N Islands	3	14	2	19	17	2
Chandigarh	8	72	4	84	68	16
D & N Haveli	—	6	—	6	3	3
Daman & Diu	—	5	—	5	5	—
Delhi	85	4,047	38	4,170	3,512	658
Lakshadweep	1	4	—	5	4	1
Pondicherry	4	42	—	46	32	14
Chattisgarh	—	280	30	310	254	56
Jharkhand	—	1,174	34	1,208	840	368
Uttaranchal	—	2,257	6	2,263	1,819	444
Foreigners	—	39	—	39	25	14
Total	3,340	70,510	1,045	74,899	60,287	14,612

State-wise list of cases disposed of/pending disposal by the Commission during the year 2000-2001

ANNEXURE 10

State/UT's	Dismissed in limini	Disposed of with directions	Cases taken cognisance		Total
			Concluded	Pending	
1	2	3	4	5	6
Andhra Pradesh	353	193	30	369	945
Arunachal Pradesh	14	6	1	15	36
Assam	65	32	1	83	181
Bihar	1,203	1,003	10	1,066	3,282
Goa	16	7	6	20	49
Gujarat	283	139	12	204	638
Haryana	842	712	37	534	2,125
Himachal Pradesh	40	27	1	33	101
Jammu & Kashmir	45	69	5	132	251
Karnataka	347	146	15	203	711
Kerala	211	87	8	97	403
Madhya Pradesh	1,223	654	18	609	2,504
Maharashtra	828	546	71	768	2,213
Manipur	10	5	—	21	36
Meghalaya	—	3	—	5	8
Mizoram	3	1	—	3	7
Nagaland	5	—	—	1	6
Orissa	400	217	13	234	864
Punjab	286	290	23	272	871
Rajasthan	710	577	16	547	1,850
Sikkim	4	4	1	3	12
Tamil nadu	666	340	58	373	1,437
Tripura	22	8	1	16	47
Uttar Pradesh	13,199	11,931	615	8,773	34,518
West Bengal	269	118	4	222	613
A & N Islands	9	1	—	7	17
Chandigarh	36	15	—	17	68

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State/UT's	Dismissed in limini	Disposed of with directions	Cases taken cognisance		Total
			Concluded	Pending	
1	2	3	4	5	6
Dadra & Nagar Haveli	2	1	—	—	3
Daman & Diu	5	—	—	—	5
Delhi	1,413	1,122	261	716	3,512
Lakshadweep	2	—	—	2	4
Pondicherry	17	8	—	7	32
Chattisgarh	148	56	2	48	254
Jharkhand	415	232	2	191	840
Uttaranchal	785	690	38	306	1,819
Foreigners	10	8	—	7	25
Total	23,886	19,248	1,249	15,904	60,287

State-wise statement of category of cases admitted for disposal during the year 2000-2001

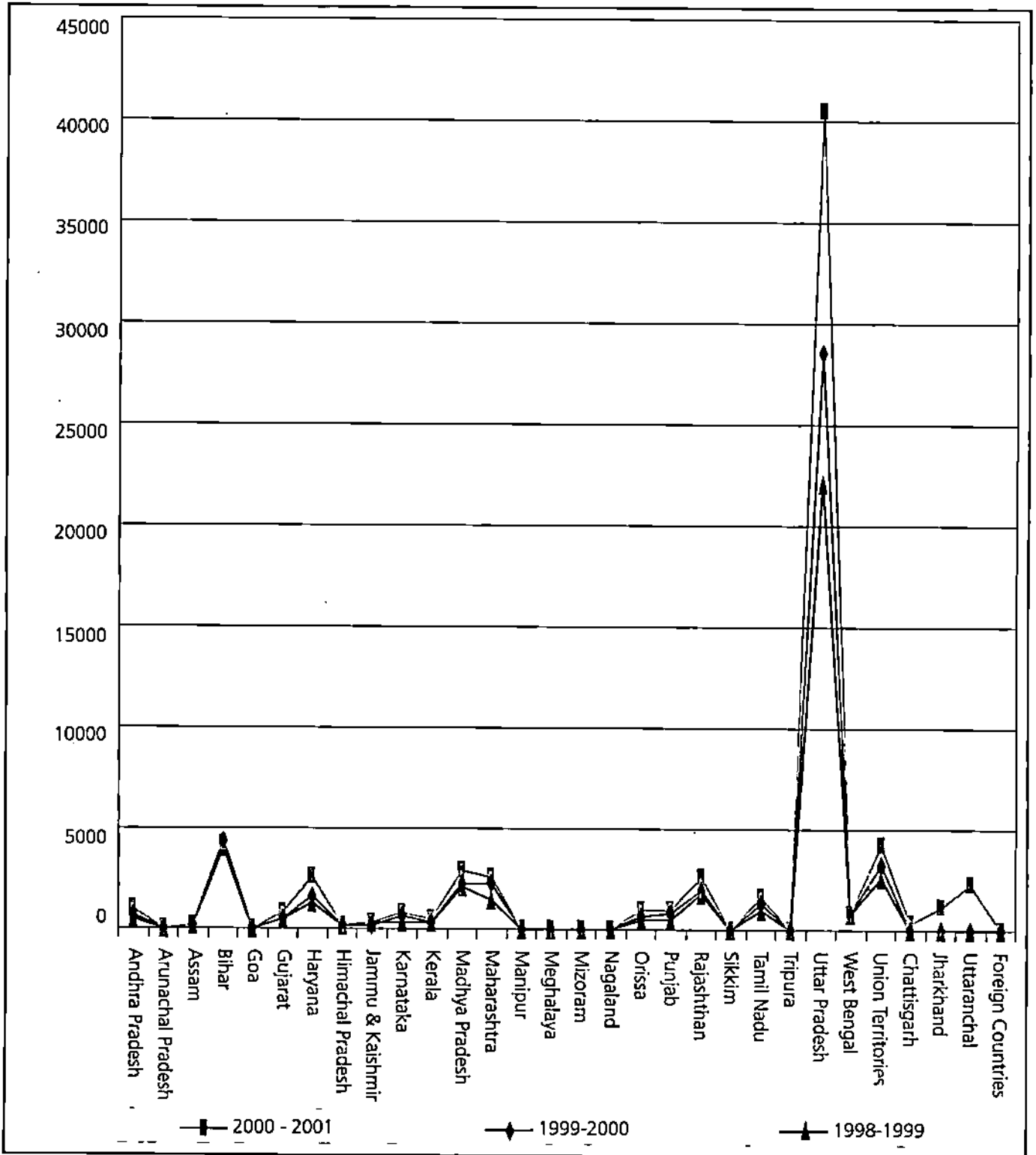
ANNEXURE 11

State/UT's	Custodial death			Custodial rapes	Disappearances	Illegal detention/arrest	False implication
	Police custody	Judicial custody	Defence/Para-military				
1	2	3	4	5	6	7	8
Andhra Pradesh	2	76	—	—	1	19	5
Arunachal Pradesh	1	1	—	—	—	—	—
Assam	11	11	—	—	—	2	2
Bihar	2	137	—	—	8	16	27
Goa	2	3	—	—	—	2	—
Gujarat	11	27	—	—	—	8	5
Haryana	4	20	—	—	2	54	35
Himachal Pradesh	1	2	—	—	—	—	—
Jammu & Kashmir	—	1	2	—	4	4	—
Karnataka	5	41	—	—	—	15	3
Kerala	1	26	—	—	—	2	1
Madhya Pradesh	11	37	—	—	3	22	14
Maharashtra	19	104	—	0	23	17	11
Manipur	—	—	—	—	—	1	—
Meghalaya	1	—	—	—	—	—	—
Mizoram	1	—	—	—	—	—	—
Nagaland	—	—	—	—	—	—	—
Orissa	2	55	—	—	1	6	1
Punjab	13	48	—	—	4	7	—
Rajasthan	3	38	—	0	2	12	4
Sikkim	—	—	—	—	—	—	—
Tamil nadu	4	24	—	1	—	45	10
Tripura	2	—	—	—	—	—	—
Uttar Pradesh	10	121	—	0	4	964	631
West Bengal	9	38	—	0	2	2	1
A & N Islands	—	2	—	—	—	—	—
Chandigarh	1	2	—	0	—	1	—
Dadra & Nagar Haveli	—	—	—	—	—	—	—
Daman & Diu	—	—	—	—	—	—	—
Delhi	9	28	—	0	1	17	34
Lakshadweep	—	—	—	—	—	—	—
Pondicherry	—	—	—	—	—	—	—
Chattisgarh	1	29	—	—	1	1	—
Jharkhand	1	33	—	—	2	4	—
Uttaranchal	—	6	—	—	—	43	26
Foreigners	—	—	—	—	—	—	—
Total	127	910	2	1	54	1,257	821

Other police excesses	Failure in taking action	Indignity to women	Sexual harassment	Jail conditions	Atrocities on SC/ST	Others	Total
9	10	11	12	13	14	15	16
109	31	—	4	4	11	137	399
1	2	—	—	—	—	11	16
21	7	—	—	—	—	30	84
150	162	6	9	9	16	534	1,076
5	1	—	—	—	—	13	26
30	13	2	2	—	7	111	216
90	122	2	7	8	13	214	571
2	3	—	1	—	1	24	34
69	6	—	2	1	—	48	137
53	13	—	10	3	3	72	218
16	8	2	4	—	2	43	105
70	72	1	1	2	3	391	627
112	47	—	1	2	4	499	839
8	—	—	—	—	—	12	21
—	—	—	—	—	—	4	5
—	—	—	—	—	—	2	3
—	—	—	—	—	—	1	1
23	26	5	3	5	5	115	247
62	34	2	1	8	1	115	295
74	70	6	3	4	18	329	563
—	—	—	—	—	—	4	4
120	36	3	1	—	21	166	431
5	1	—	—	—	—	9	17
2,450	1,963	12	16	25	87	3,105	9,388
25	15	2	—	—	2	130	226
—	1	—	—	—	—	4	7
4	—	—	—	1	—	8	17
—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—
296	244	10	2	12	1	323	977
—	—	—	—	—	—	2	2
1	3	—	—	—	—	3	7
6	5	—	—	—	—	7	50
33	27	1	4	4	6	78	193
111	71	1	1	1	5	79	344
1	—	1	1	—	—	4	7
3,947	2,983	56	73	89	206	6,627	17,153

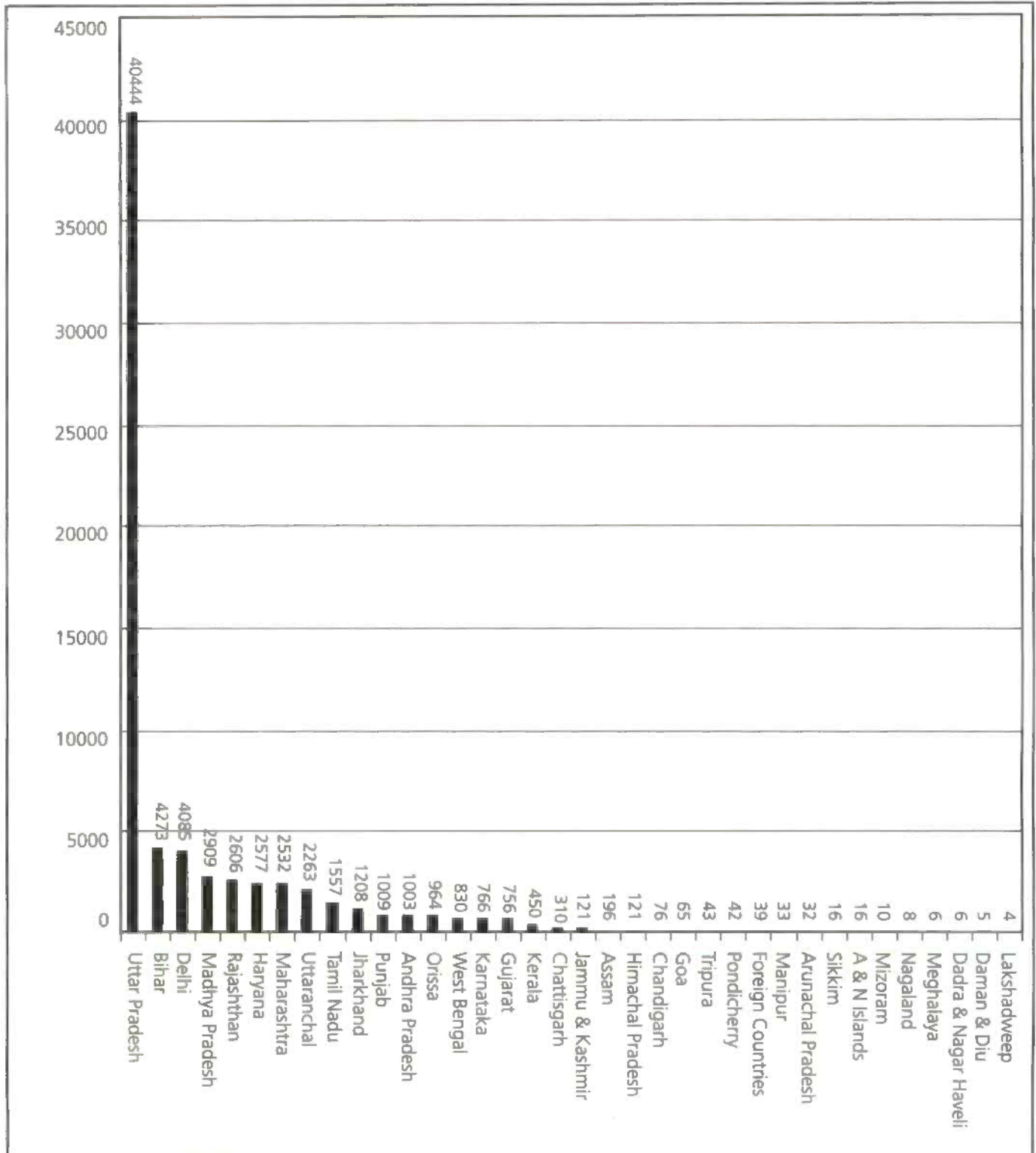
Total complaints registered during the last three years

For 2000-2001 details see Annexure 9



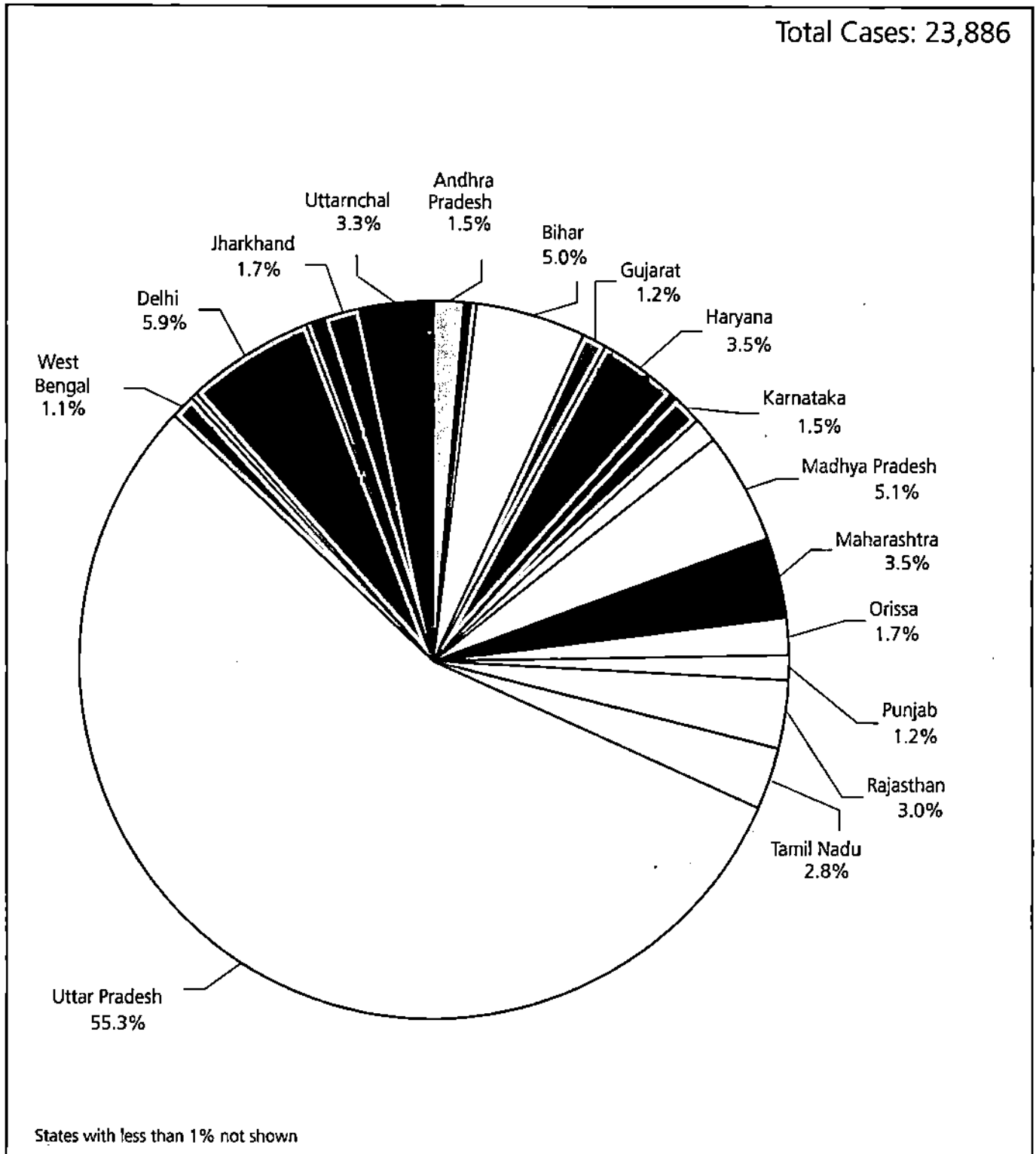
State wise break up of complaints registered during the year 2000 - 2001

For details see Annexure 9



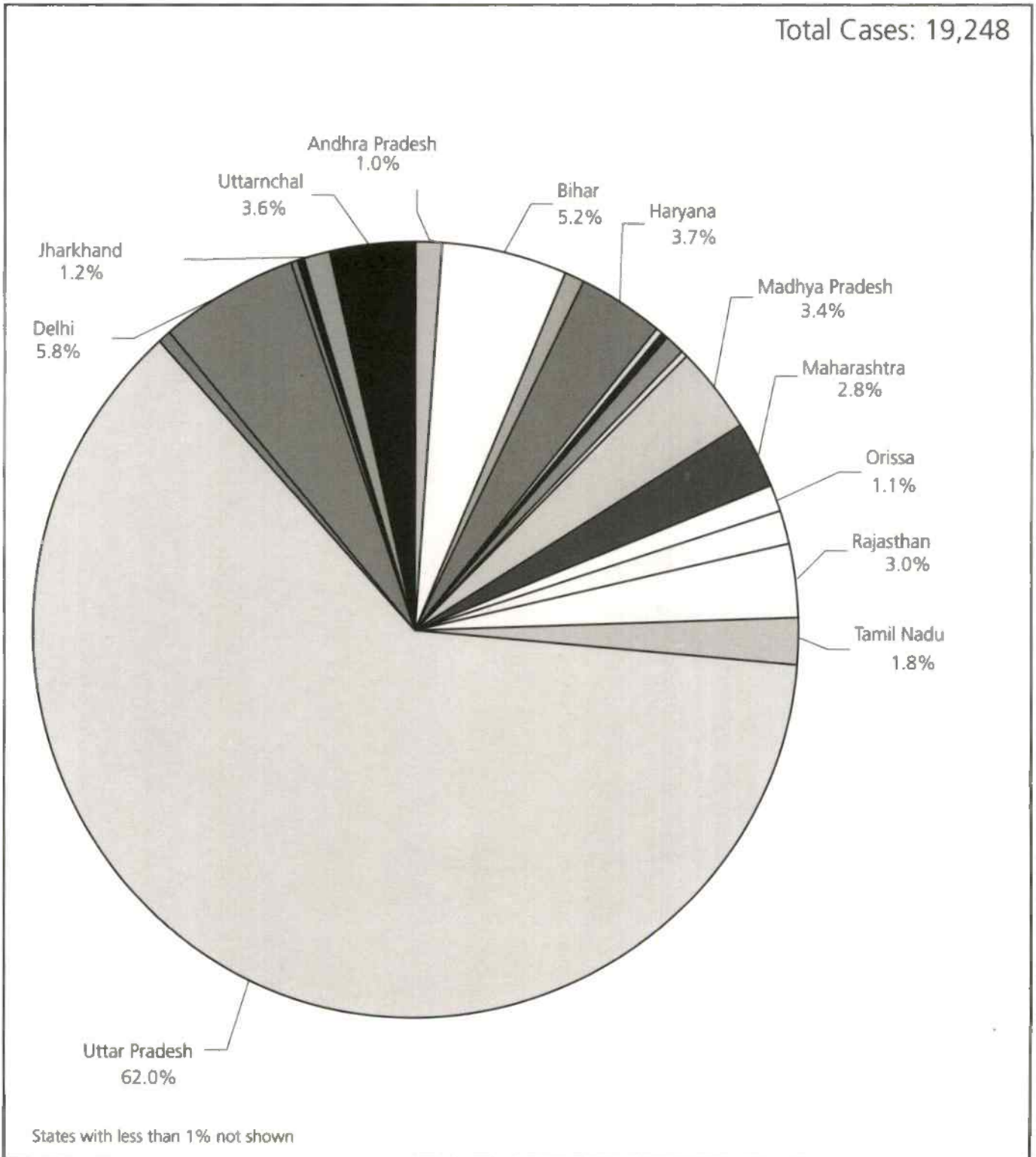
**Cases dismissed in limini during the year 2000-2001.
States/UTs with a dismissal rate of more than 1%.**

For details see Annexure 10



Cases disposed off with directions during the year 2000-2001. States/UTs with a dismissal rate of more than 1%.

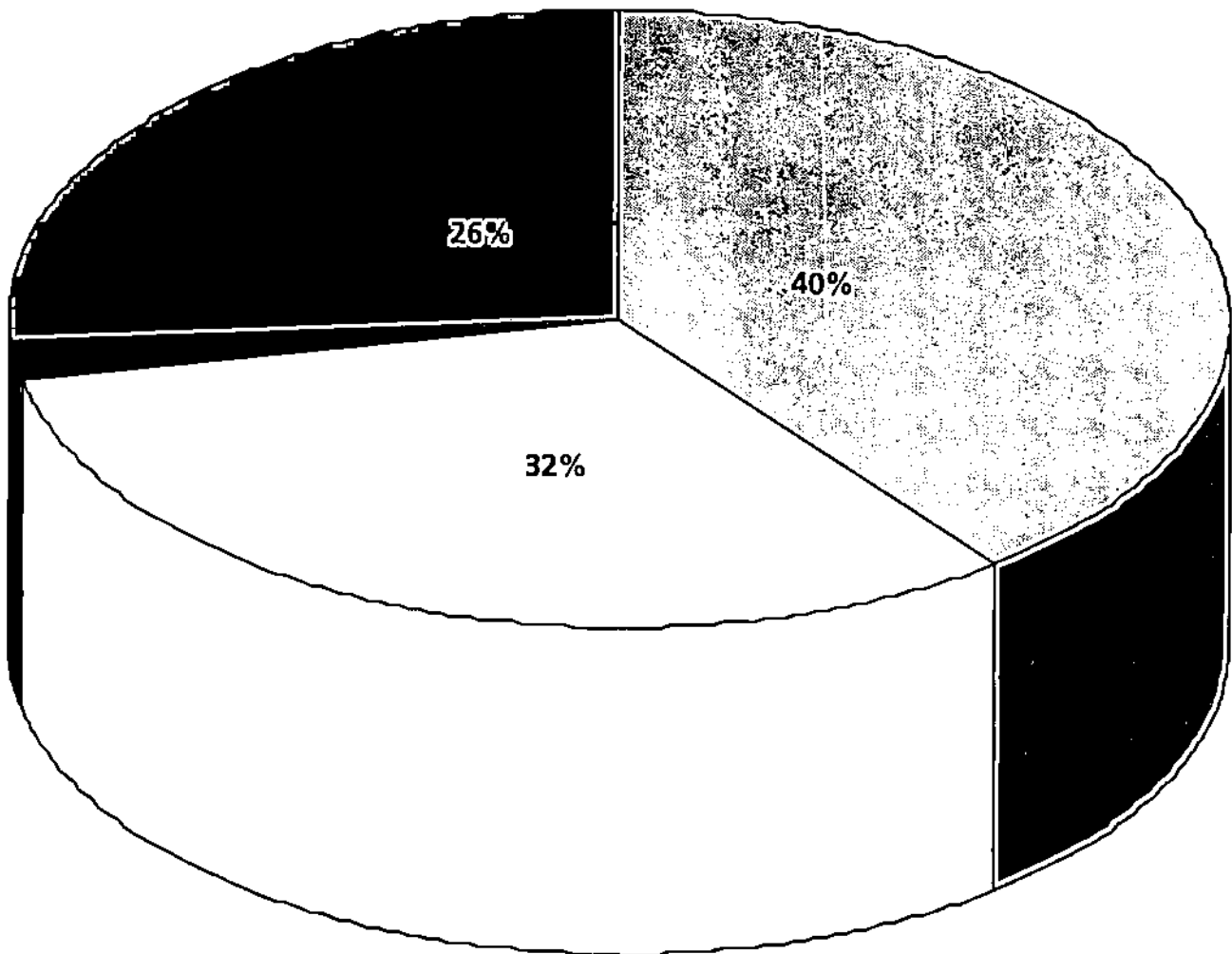
For details see Annexure 10



Cases disposed off/pending disposal by the Commission during the year 2000-2001

For details see Annexure 10

Total Cases: 60,286



■ Dismissed in limini

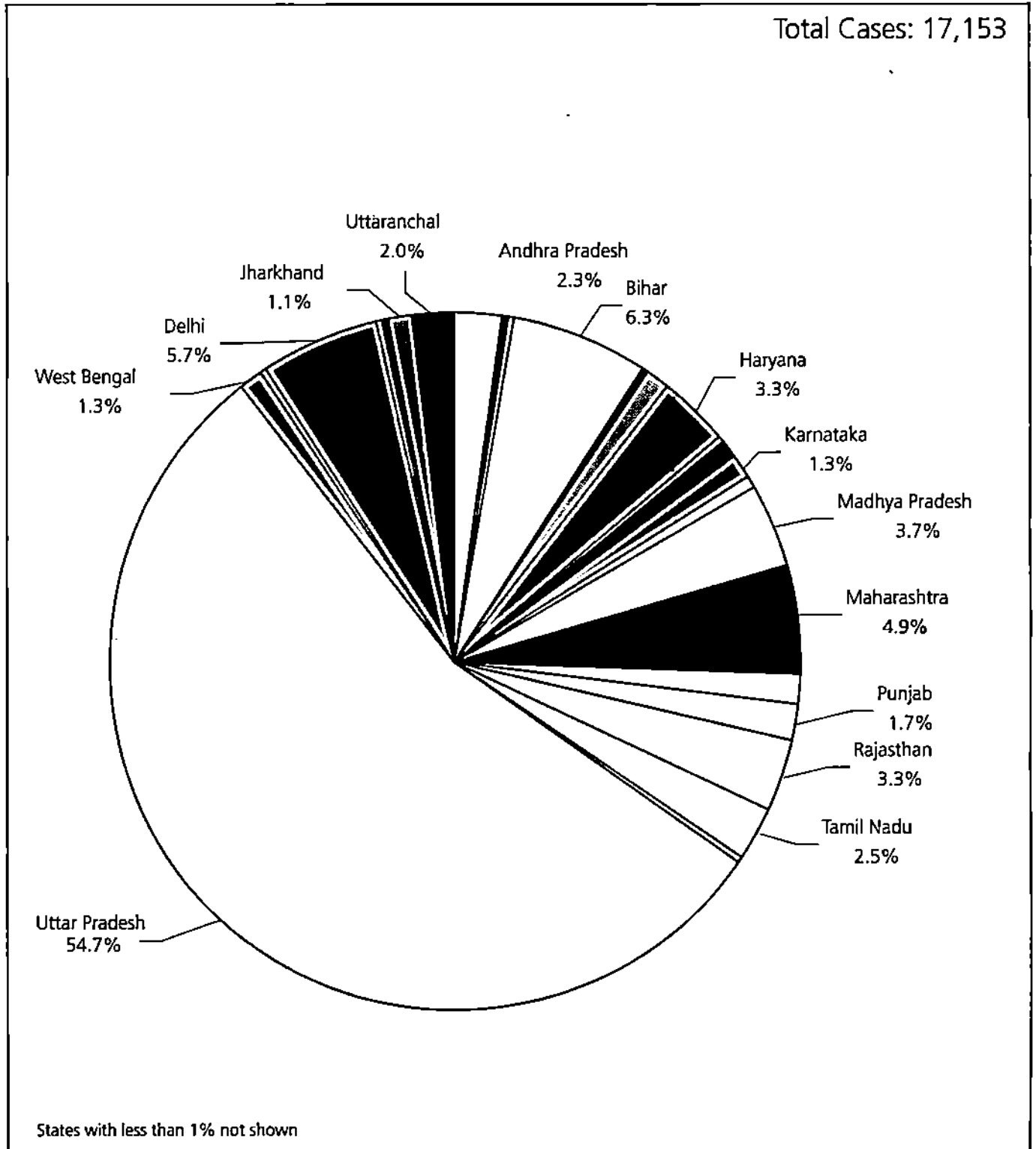
□ Disposed of with directions

■ Concluded

■ Pending Disposal

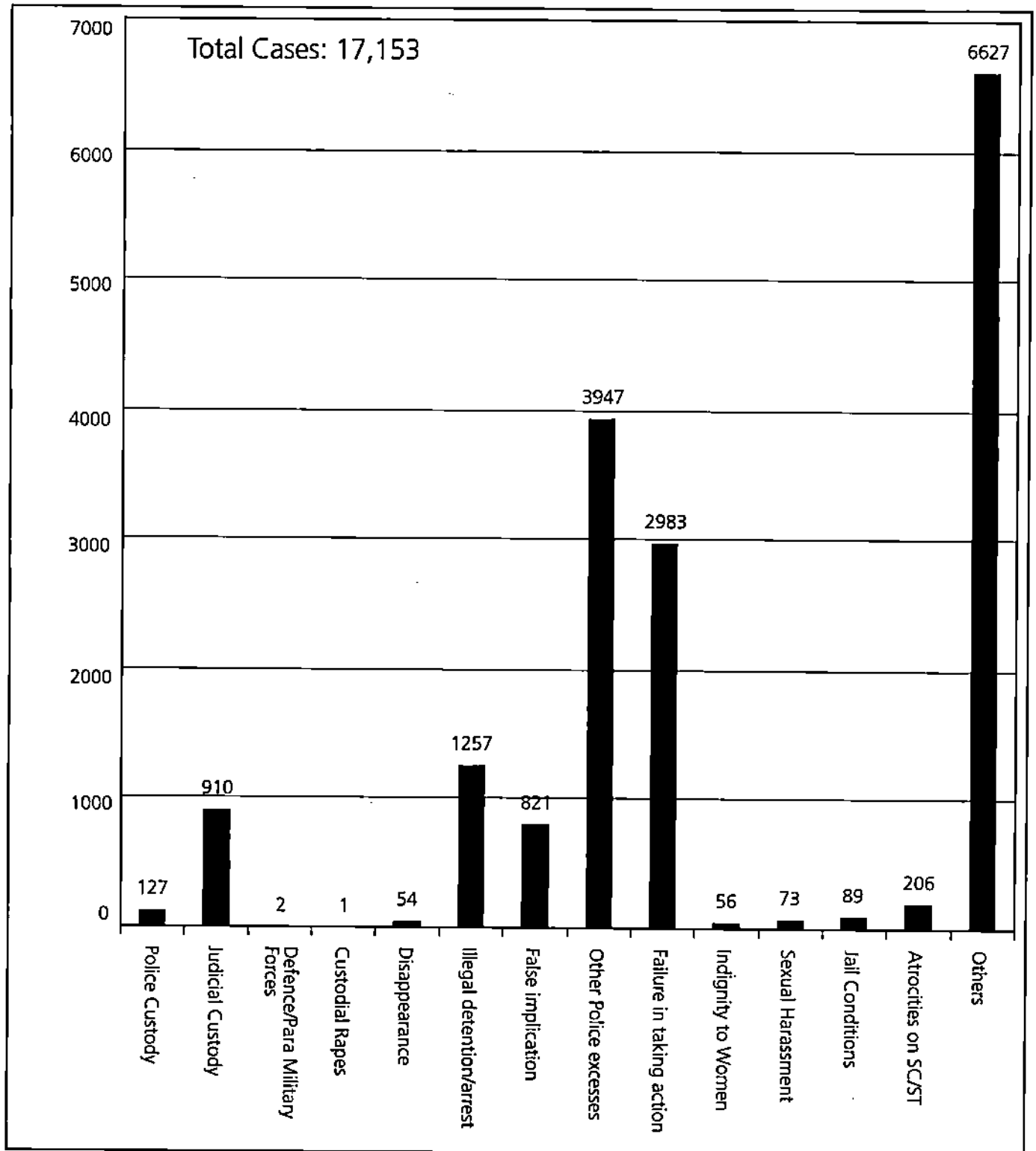
Cases considered/admitted for disposal during the year 2000-2001. States/UTs with a dismissal rate of more than 1%

For details see Annexure 11



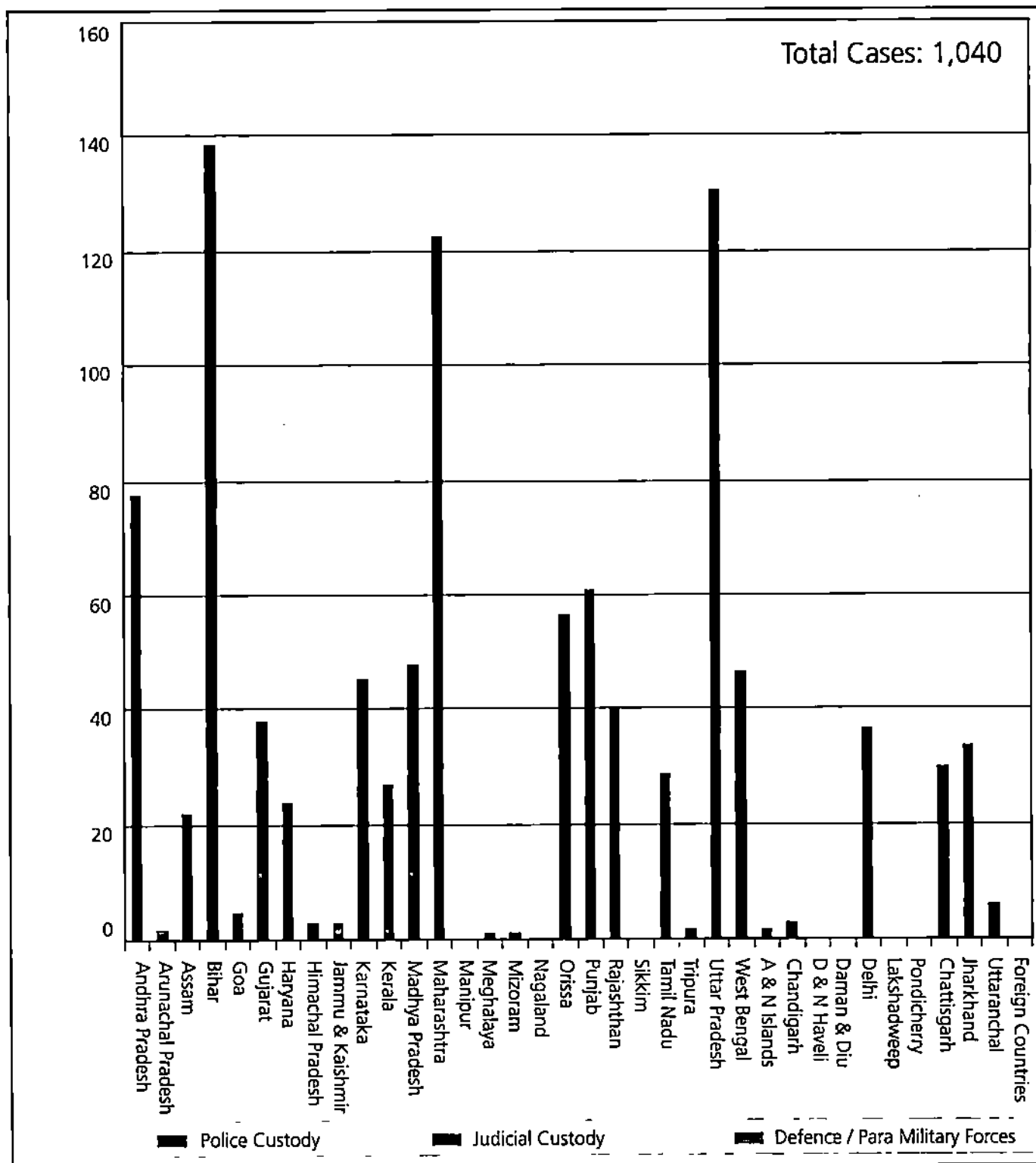
Nature and categorisation of the cases considered by the Commission during the year 2000 - 2001

For details see Annexure 11



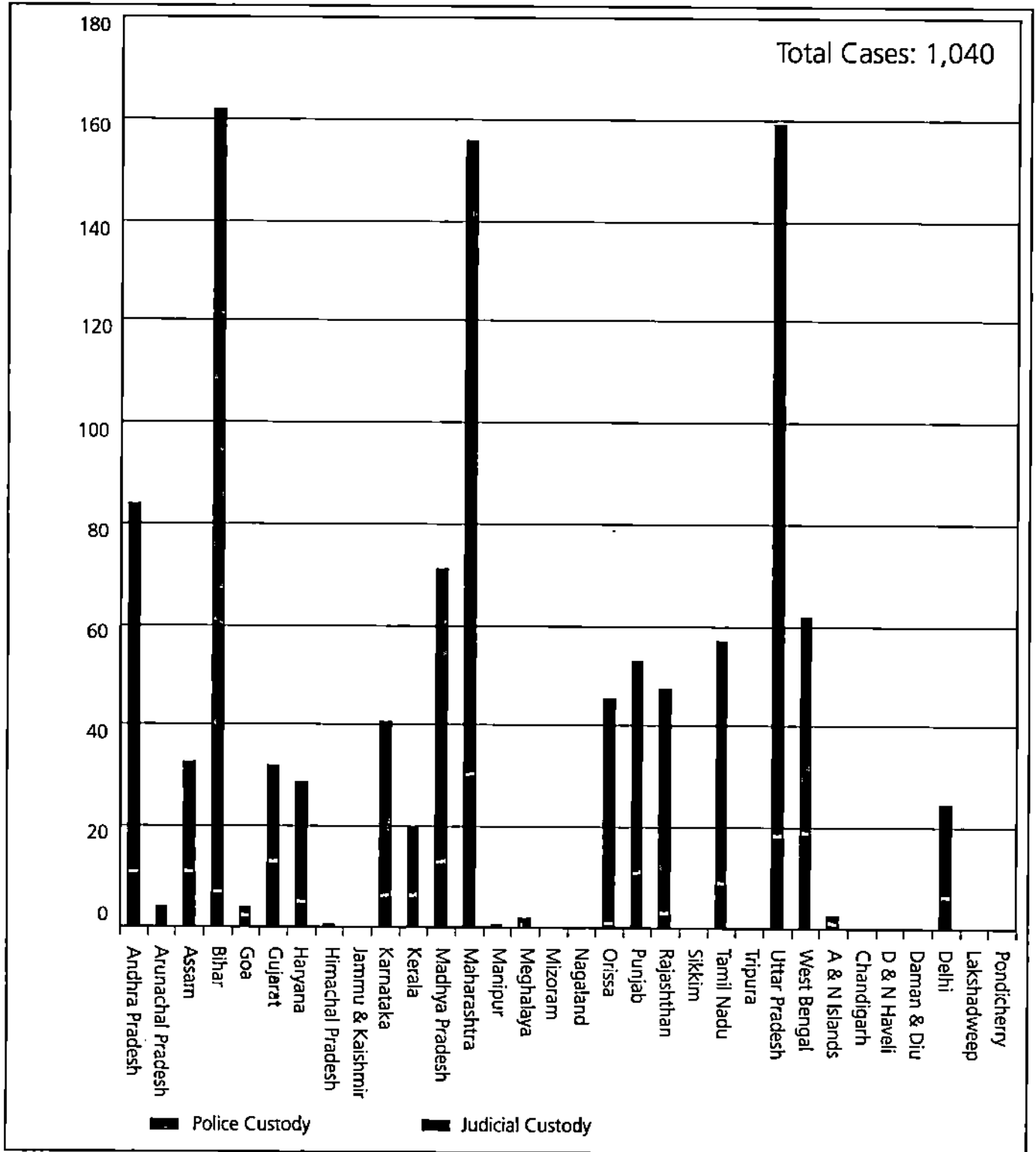
Custodial Deaths/Rapes during the year 2000-2001

For details see Annexure 7



Custodial Deaths during the year 1999-2000

For details see Annexure 7





National Human Rights Commission

Sardar Patel Bhawan, Sansad Marg
New Delhi 110 001, India

fax 91-11-3340016, 3344113

email nhrc@ren.nic.in

web www.nhrc.nic.in