

ISSN 0973-7553



# Annual Report 2005-2006

NATIONAL HUMAN RIGHTS COMMISSION

**NATIONAL HUMAN  
RIGHTS COMMISSION**

**Annual Report  
2005-2006**



**National Human Rights Commission**

Faridkot House, Copernicus Marg,

New Delhi - 110 001, India

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**Annual Report 2005-2006**



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# Introduction

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**1.1** This is the thirteenth annual report of the National Human Rights Commission covering the period April 1, 2005 to March 31, 2006.

**1.2** The twelfth annual report of the Commission, for the period from April 1, 2004 to March 31, 2005 was forwarded to the Central Government on January 12, 2006 for preparing the Memorandum of Action Taken and placing the same before the Parliament in accordance with the procedure envisaged under section 20(2) of the Protection of Human Rights Act, 1993. This was tabled in the Lok Sabha and the Rajya Sabha on August 22 and 23, 2006 respectively alongwith the Memorandum of Action Taken Report.

**1.3** The eleventh annual report of the Commission, for the period April 1, 2003 to March 31, 2004 was tabled in the Lok Sabha and the Rajya Sabha together with the Memorandum of Action Taken on March 7 and 8, 2006 respectively.

**1.4** The annual reports of the Commission serve as essential sources of information on the human rights situation in the country.

**1.5** The Commission had also forwarded copies of the eleventh annual report to all the State Governments/Union Territories as required under Section 20(2) of the Protection of Human Rights Act, 1993, for tabling the report in the State Legislature, along with a Memorandum of Action Taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

# Chapter-1



## Introduction

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**1.6** In the year 2004-2005, 74,401 complaints were received by the Commission, while 85,661 cases were disposed off during the year. The Commission, thus, took effective steps to deal with the pending cases. In the year under review (2005-2006), 74,444 complaints had been received by the Commission, while 43,069 complaints were pending with the Commission, which included 3,989 cases awaiting preliminary consideration and 39,080 cases in respect of which reports were either awaited from the authorities concerned or the reports had been received and were pending for further consideration within the Commission itself. In all, the Commission disposed of 80,923 complaints during the year under review.

**1.7** During the period under review, the Chairperson, Members and Senior Officers of the Commission participated in various meetings organized by the National Human Rights Institutions. The Commission also addressed various issues relating to Rights of the Disabled, Internally Displaced Persons, Food Security, Trafficking in Women and Children, Health, Rights of the Elderly, Manual Scavenging and Custodial Justice, etc. The Commission in collaboration with the office of the UN High Commissioner for Human Rights (OHCHR) organized a three-day International Round Table on National Institutions implementing Economic, Social and Cultural Rights at New Delhi.

**1.8** During the period under review, Dr. Justice A.S. Anand continued to serve as the Chairperson with Dr. Justice Shivaraj V. Patil, Shri Justice Y. Bhaskar Rao, Shri R.S. Kalha and Shri P.C. Sharma as Members.

**1.9** With regard to those who are “deemed to be Members of the Commission” under the provisions of Section 3(3) of the Act, Dr. Tarlochan Singh demitted office on 10th February 2006 as the Chairperson of the National Commission for Minorities and Shri Mohammad Hamid Ansari assumed charge on 6th March 2006 as Chairperson of the Commission. Smt. Girija Vyas continued in office as Chairperson of National Commission for Women.

**1.10** Shri Nirmal Singh, IAS (TN: 1970) continued in office as Secretary General.

Sd/-  
(A. S. Anand)  
Chairperson

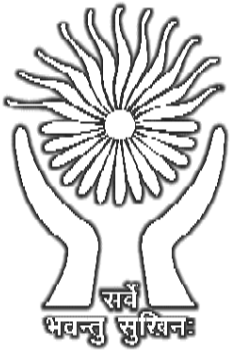
Sd/-  
(Shivaraj V. Patil)  
Member

Sd/-  
(Y. Bhaskar Rao)  
Member

Sd/-  
(R.S.Kalha)  
Member

Sd/-  
(P.C.Sharma)  
Member

New Delhi  
October 31, 2006



## An Overview

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**2.1** The National Human Rights Commission, set up under the Protection of Human Rights Act, 1993, has relentlessly endeavoured to fulfil the aspirations of the citizens of the country in leading a life of dignity and self-respect.

**2.2** Today, both the government of the day as well as the Commission face daunting challenges in the task of protecting human rights of the citizens of the country. With the grim spectre of terrorism continuing to target innocent and defenceless people, the task has never been more daunting for the Commission. The Commission has always stood firm in its belief that the twin concepts of individual and national security are mutually compatible and attainable; not contradictory as the lay person often erroneously believes. That said, the Commission is also firmly of the belief that terrorism has to be dealt with a firm and decisive hand. The killing of innocents as was recently done in the Mumbai train blasts, can never be tolerated or condoned, whatever be the grievances of the perpetrators, if one can even categorize it as such. It has been heartening that the world has been quick and emphatic to condemn the wanton acts of terrorism faced by India. It shows two things: that many nations are currently facing the scourge of terrorism and, secondly, the sympathizers and perpetrators of terrorism driven philosophy have no friends amongst the civilized people. The Commission has, however, maintained that to curb terrorism, the actions of the State must neither violate the rule of law nor curtail civil liberties of citizens generally.

# Chapter 2

### **Economic, Social and Cultural Rights**

2.3 There exist massive inequalities, more particularly in the developing countries, which render the enjoyment of Human Rights rather illusory. The political freedom would not have much of significance or meaning for the teeming millions of people in various countries who suffer from poverty and all social evils flowing from it, unless economic, social and cultural rights are assured to them. The National Institutions need to address violations of economic, social and cultural rights as forcefully as they address those of civil and political rights.

### **International Round Table on National Institutions Implementing Economic, Social and Cultural Rights**

2.4 The Commission, in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR), organized a three-day International Round Table on National Institutions implementing Economic, Social and Cultural Rights at New Delhi, from November 29 to December 1, 2005. The principal objective of the Round Table was to discuss and strengthen the role and capacity of National Institutions in protecting and promoting economic, social and cultural rights (ESCR). Twenty four National Institutions from countries in America, Africa, Europe and Asia-Pacific participated in the Round Table. A declaration called the 'New Delhi Declaration' was adopted by the delegates at the conclusion of the Round table.

### **Rights of the Disabled**

2.5 The Commission has been privileged to be involved, through its Special Rapporteur on disability related issues, in the role assigned to National Institutions in the ad-hoc Committee constituted for drafting the International Convention on Disability, which has made substantial progress.

2.6 The Commission had received a representation from the Delhi Association of Deaf, a NGO working in the field of hearing impairment, regarding the discrimination being faced by persons with hearing impairment. Thereafter, the Special Rapporteur of the Commission submitted a proposal for the development of standard sign language for Indians with hearing impairment.

2.7 A consultative meeting of various potential partners was held in the Commission and it was also attended by the Government officials, NGOs, linguistics experts, etc. After extensive deliberations, a project concerning development of Indian sign language was evolved, involving other project partners like National Council for Educational Research and Training, New Delhi, National Institute of Hearing Handicapped, Mumbai and British Council, New Delhi. During the project, a technical vocabulary of sign language will be prepared by the end of 2006 and a team from UK will be visiting India to provide assistance for development of Indian sign language.

2.8 A National Conference on Disability was held on 23rd June 2005 at New Delhi under CHRC-NHRC-IGNOU Linkage Project. During the conference, the issues concerning Human Rights Education and Disability and Systemic Improvement for better protection of Human Rights of persons with disabilities were extensively discussed. The National Conference recommended that to keep disability under the spotlight, the Government of India may consider instituting an independent Department of Disability and Development and the Government may also consider instituting a National Task Force on the issue of accessibility by persons with disabilities in all public places, transport system, media and public information systems.

2.9 A Manual on Human Rights, Disability and Law was also released alongwith Braille and accessible CDs in the National Conference on Disability. The manual is an impressive compilation of a range of positive examples of disability Jurisprudence. It further explores a variety of general and disability specific instruments, such as core international human rights treaties, declarations, proclamations and rules to establish their relevance for persons with disabilities. It also analysed the Constitution of India and the relevant statutes.

2.10 The Commission brought out a handbook entitled Employment of Persons with Disabilities in Government of India. The handbook is in a Question and Answer form and replies almost all questions concerning the issues of employment of persons with disabilities. The handbook also advocates the importance of a barrier free environment.

2.11 Some of the complaints looked into by the National Human Rights Commission, illustrative of the concerns of the Commission involving the rights of the disabled, during the year, include the **case of a young girl** student, who has been suffering from paralysis in her lower limbs since childhood and, who is totally dependent on a wheel chair for every movement, had been facing difficulties in attending classes, as her mother had to take her wheel chair to the classroom located on the first floor of the building of the school everyday.

2.12 Taking cognizance of the issue, the Commission directed the District authorities to look into the matter and submit their comments. The matter is still under consideration of the Commission. Similarly, the Commission has intervened in the case of discrimination against a visually impaired person who had been refused admission, as he was blind.

2.13 Taking cognizance, the Commission directed the Secretary, Department of Education, Government of Andhra Pradesh, to look into the matter and send his comments. The matter is still under consideration.

## **Rights of the Persons Displaced, Due to Natural and Man-made Disasters**

2.14 In times of disasters, either owing to natural calamities or those caused by man, the Commission has observed that it is the most vulnerable sections of society, the poor women

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and children who bear the brunt of the catastrophe and the consequent displacement. It is keeping in mind this aspect that the Commission has been intervening whenever there have been cases of disasters. The Commission sees its role as being complementary to that of the Government, so that relief and rehabilitation efforts reach the affected people quickly. The news of the calamity arising from the devastating earthquake, which hit large areas in Northern India, particularly the State of Jammu & Kashmir, resulting in unprecedented loss of life and property, has caused great anguish and deep concern to the Commission. The Commission noted that the Central Government and the State Governments have already initiated steps for providing immediate relief to the affected persons. The Commission appreciates that a daunting task of rehabilitation lies ahead. The Commission was of the opinion that it is essential that the Government machinery, involved in provision of relief and rehabilitation, is able to take all necessary steps for equitable distribution of both relief as well as rehabilitation measures while maintaining transparency to ensure that the poor, destitute women, destitute children, old persons and other marginalized sections of the society, who would be in greater need of relief and rehabilitation measures/care are not deprived of or made to suffer any further and are taken care of properly.

### **Food Security**

**2.15** Death by starvation constitutes the greatest violation of the human rights of an individual. The Commission has always taken serious note of starvation deaths occurring anywhere in the country. The problem of starvation deaths arising out of drought conditions in Koraput, Bolangir and Kalahandi districts of the State of Orissa, has attracted special attention of the Commission since 1997. The Commission has also been concerned with the general conditions of hunger, destitution and poverty that are responsible for suicides, particularly by the farmers and other forms of physical and psychological degradation that arise on account of lack of freedom from hunger and denial of right to food. The Commission believes that persons living in conditions of poverty and destitution have often been found to be suffering from prolonged hunger and malnutrition.

**2.16** The Indian Council of Legal Aid and Advice and others had filed a Writ Petition (civil) No. 42/97 before the Supreme Court of India inviting attention to starvation deaths in the KBK Districts of Orissa despite the direction of the Apex court in an earlier case reported as 1989 Supp. (1) SCC 258. On the basis of information furnished by the petitioner before the Supreme Court about an intervention by the Commission in a complaint, the Supreme Court vide its order dated April 28, 1997 and July 26, 1997 remitted the matter to the Commission for its disposal. The Supreme Court also directed the petitioner to submit further suggestions before the Commission for consideration of the matter.

**2.17** The case was dealt with by the Commission as a Court case with notice to all the parties. The Commission noticed that the expression right to life contained in Article 21 of the Constitution has been judicially interpreted as not merely a life of survival or animal existence but a life with human dignity. It therefore, observed that the State was

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obliged to provide at least those minimum requirements which are essential to enable a person to live with human dignity and right to food is inherent to live with dignity.

**2.18** As a result of the proceedings by the Commission, the Government of Orissa proposed short term and long-term measures of development to end the scourage of deprivation, malnutrition and cyclical starvation in the KBK Districts of Orissa. As a part of monitoring of the situation in the three Districts on a continuing basis, the Commission sought and examined quarterly performance appraisal reports relating to the achievement of physical and financial targets. The key areas of concern for the Commission included **rural water supply and sanitation, primary health care, social security schemes, soil conservation, rural development, afforestation, land reforms, SC/ST development and school education**. Both the State Government and the Special Rapporteur of the Commission submitted their interim reports from time to time.

**2.19** The Commission considered the reports submitted by the Special Rapporteur which presented a satisfactory picture about the execution of long-term action plan under the various heads. The Commission considered the proposed revised long-term action plan in achieving the ultimate objective of drought proofing, poverty alleviation and development saturation to improving the quality of life of the people in KBK districts and recommended to the Planning Commission for further extension of RLTA beyond March, 2007. The Commission recommended execution of all projects under a system of surveillance and monitoring and hope for encouraging action both by the State Government as well as by the Government of India.

**2.20** As a result of constant monitoring of the situation arising out of the reported deaths in the above noted districts of the State of Orissa, the Commission received the compliance report submitted by the Orissa Government. As a sequel to the recommendations of the Commission, the Government of Orissa constituted a committee to suggest amendments to the Orissa Relief Code in March, 2005.

**2.21** In view of the significance of freedom from hunger, the Commission also felt the need to formulate a programme of action for making the 'Right to Food' a reality in the country. It is with this end in view that the Commission constituted a Core Group on the Right to Food under the Chairmanship of the Chairperson, NHRC.

**2.22** The Commission also seriously looked into the issue of rural indebtedness, which has been a significant contributory factor driving the marginal farmers to commit suicide. The Commission took *suomotu* cognizance of press reports highlighting the suicide by farmers in the State of Maharashtra, in 2004 and directed the State Government authorities to submit an Action Taken Report.

**2.23** The Commission received a complaint from the State of Karnataka alleging that farmers in Karnataka were committing suicide due to hunger caused by failure of crops due to drought

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and in the absence of relief works. The Commission directed its Special Rapporteur to conduct an on-the-spot enquiry and give his report. Accordingly, the Special Rapporteur, NHRC visited the affected areas and submitted a detailed report with broad recommendations. The Commission obtained the views of the State Government and Union Ministries of Agriculture and Rural Development on the recommendations. The Report has generated extensive feed back on these issues of policy and implementation on the issues fundamental to the rural poor in the context of their Right to Life, Livelihoods, Work, Food and Credit.

**2.24** Taking *suomotu* cognizance of various news items reporting incidents of suicide by farmers in Andhra Pradesh due to crop failure and mounting debt burden, the Commission got the matter examined by its Special Rapporteur who submitted a detailed report containing various recommendations. The recommendation was sent to the State Government of Andhra Pradesh. The State Government of Andhra Pradesh informed the Commission that a Cabinet Sub-Committee had considered the recommendations of the Commission and decided to take 'short term' and 'long term' measures to deal with the situation. The State Government also constituted a 'Farmers' Welfare Commission (FWC)' to go into the causes of suicides by farmers and to suggest remedial measures.

**2.25** A copy of the Report of Commission on Farmers Welfare and Status of Action Taken on Recommendations of Commission on Farmers Welfare has been received in the Commission and the same is under consideration.

### **National Action Plan for Human Rights**

**2.26** Although India has made considerable efforts in the development and promotion of a national action plan for Human Rights education, it is yet to develop a National Action Plan for the promotion and protection of human rights. There is now a greater urgency than ever before to prepare such a plan.

**2.27** Many States have initiated and finalized the process of developing National Action Plan for Human Rights. The issue regarding the preparation of a National Action Plan for the protection and promotion of human rights was considered by the Commission. The Commission has decided to take up the task of development of the National Action Plan. The Commission constituted a Working Group and an Advisory Committee to prepare a National Action Plan for Human Rights. The list of members of the Working Group and Advisory Committee includes representatives of various departments of Government, NGOs and eminent lawyers. The Working Group decided to focus on the following areas, which would require a continuous dialogue and discussion before taking an appropriate shape for its documentation in the body of National Action Plan for human rights:

*Human rights education; Criminal justice system, encompassing police, prosecution-court etc; Rights of vulnerable (women, children, bonded labour, dalits, elderly, tribal minorities and disabled, etc.); Right to food, water, health and environment; Right to social security, Globalization and human rights.*

2.28 The Working Group has also decided in a meeting held recently that the Commission should prepare draft chapters of the proposed National Action Plan for Human Rights and these chapters will be extensively discussed with the concerned ministries/departments of Government of India before it is finalized.

### **Trafficking in Women and Children**

2.29 The rapid increase in trafficking in women and children has become a matter of concern for the Commission. To make appropriate recommendations, the Commission sponsored an Action Research on Trafficking in Women and Children in India in collaboration with the UNIFEM and the Institute of Social Sciences, New Delhi, with a view to know the trends, dimensions, factors and responses related to trafficking in women and children. Based on the findings of research, the Commission made recommendations to the State as well as Central Government. Besides requesting all the concerned agencies to implement the recommendations made in the report, the Commission itself has prepared a comprehensive Plan of Action to implement the recommendations in true spirit (**Annexure 8**). The Plan of Action has been disseminated amongst all the stakeholders. Many of the action points spelled out in the Plan of Action developed by the National Human Rights Commission have also been reflected in the final Concluding Statement and Plan of Action that emanated out of the Regional Workshop on Human Trafficking and National Human Rights Institutions: Cooperating to End Impunity for Traffickers and to Secure Justice for Trafficked People that was organised by the Asia Pacific Forum of National Human Rights Institutions (APF) in collaboration with the Human Rights Equal Opportunity Commission of Australia (HREOC) in Sydney, Australia, from 20 to 23 November 2005. For example, action points spelt out under the head 'Education' in Sydney Workshop's Plan of Action, have also been enumerated in NHRC's Plan of Action under the head, 'Training, Education and Awareness'. Similarly, both the Action Plans have suggested 'formulation or amendment of laws relating to trafficking in conformity with the international standards and local requirements'. Likewise, both the Action Plans talk about 'the needs for a comprehensive human rights based approach for repatriation, rehabilitation and reintegration of trafficked victims'. A copy of the Sydney Workshops Plan of Action is appended as **Annexure 13**.

### **International Conventions and Treaties**

#### **Optional Protocols to the Convention on the Rights of the Child**

2.30 The United Nations General Assembly adopted two Optional Protocols to the Convention on the Rights of the Child on May 25, 2000. They are: (1) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and (2) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The Commission recommended to the Government of India that it should examine and become a party to these two Optional Protocols. These Optional Protocols



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were signed on November 15, 2004 by the Government of India, but they were yet to be ratified. **The Commission's persistent efforts yielded dividends with the Government of India ratifying both the Optional Protocols.** Optional Protocol (1) was ratified on **November 30, 2005.** The Optional Protocol (2) was ratified by the Government of India on **August 16, 2005.**

### International Commitments

**2.31** While the report was under preparation, major changes have taken place in the UN system. The creation of Human Rights Council, which replaced the Commission for Human Rights, has endowed a greater responsibility on the National Human Rights Institutions. It is imperative that NHRIs chart out clearly the role they envisage in the new Council. Accordingly, in the 17th Session of the International Coordinating Committee of National Institutions (ICC) held at Geneva in April, 2006, a number of key decisions were reached. First and foremost, it was agreed to prioritize the issue of NHRI access to the Human Rights Council. In accordance with the above decisions, it was decided to establish a Working Group to develop an ICC position on the roles of NHRI in the Human Rights Council, consisting of one representative from each of the four regional groups. From the Asia Pacific region, Justice (Dr) A.S. Anand, Chairperson, NHRC-India was nominated as the spokesperson of the Asia Pacific Forum (APF) in the working group. One of the major tasks of the Working Group was to give final shape to the ICC paper on the role of NHRIs in the Human Rights Council. The observation and suggestions made by the NHRC, India on the likely role of the NHRIs in the Human Rights Commission were well received by the NHRIs in the Asia Pacific Region and were incorporated in toto in the final ICC paper on the subject. The Chairperson of the Commission attended the first session of the Human Rights Council in June, 2006, Justice Anand, Chairperson, NHRC-India was the only National Institution, which was given an opportunity to make a statement before Human Rights Council. The Chairperson made intervention on behalf of the National Human Rights Commission of India on 'Right to Development'. A copy of the statement is appended as **Annexure 6\***.

**2.32** During the year 2005-2006, the Commission received a total of 74,444 complaints. Against this, the Commission disposed off 80,923 complaints, which included complaints carried-forward from earlier years. Since its inception, the Commission has made recommendations either for interim relief or disciplinary action or prosecution or all or more than one of them in a total of 882 cases. From October 1993 to March 31, 2006, the Commission had recommended grant of interim relief to the tune of rupees 10.33 crores (Rs. 103.36 Million) in a total of 691 cases. The recommendations by the Commission in these cases were in addition to its recommendations for payment of immediate interim relief to the next of kin in the Punjab Mass Cremation Case.

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*\*As the issue is of great importance, status at the time of writing and printing of this report is given.*

### **Punjab Mass Cremation Case**

2.33 The Commission received a remit from the Supreme Court of India to examine cremation of 2,097 dead bodies by the Punjab Police in the district of Amritsar, Majitha and Tarantaran, Punjab. During the year 2005-2006, the Commission received and considered objections from the counsel for State of Punjab as well as the petitioners in respect of the names included/excluded from the list of the deceased. On the basis of the material placed before the Commission, out of a total of 2,097 (on recheck 2,059) cases of deceased, the Commission recommended an amount of Rs. 23.24 Crores as relief to the next of kin of 1,245 identified deceased till October 10, 2006 who were found to be in actual or deemed custody of the police prior to their death and cremation\*.

### **State Human Rights Commissions**

2.34 State Human Rights Commissions have been set up in 15 States. The Commission has been reiterating its view that 'better' protection of human rights can be ensured if all the States set up Human Rights Commission with proper facilities. The Commission, on its part, has endeavoured to assist and guide the State Commissions in whatever manner possible, whenever requests for such assistance or guidance have been sought. The strengthening of the State Commissions is an important agenda in the Commission's activities. With this end in view, the Commission has taken the initiative to have annual interactions with all the State Human Rights Commissions.

### **Spread of Human Rights Awareness**

2.35 Despite Human Rights gaining ground and becoming the subject of concern to the legal fraternity, academics, researchers, policy makers and others, the human rights issues still remain limited to the educated section of the society. In this endeavour, the Karnataka Women's Information and Resource Centre, an NGO based in Bangalore, prepared a book, *Human Rights Education for Beginners*, for the Commission. The course material for the book was largely drawn from the experiences gained out of the human rights movements in India. The book in a consolidated form gives an insight into the whole issue of human rights and can enlighten any citizen about human rights.

2.36 The Commission also released a translation of the UN publication, *Human Rights, Compilation of International Instruments* in the National Language, **Hindi**. The compilation has come out in two volumes. The first volume, which deals with Universal Instruments, has been divided into two parts, while the second volume deals with Regional Instruments.

### **Financial Contribution to the APF**

2.37 The Commission has contributed an amount of US \$ 100,000 to the Asia Pacific Forum during the year 2005-2006.

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\* As the issue is of great importance, status at the time of writing and printing of this report is given.

### **Non-Governmental Organisations**

**2.38** Encouraging the efforts of the Non-Governmental Organizations (NGOs) working in the field of human rights is a statutory responsibility of the Commission under Section 12(i) of The Protection of Human Rights Act, 1993. The promotion and protection of human rights cannot gather momentum without the fullest cooperation between the Commission and the NGOs.

**2.39** The Commission has had several significant partnerships with the non-governmental organizations during the year on various critical areas of human rights concerns. In the area of Human Rights Education, a constructive outcome fructified in the form of a publication on 'Human Rights Education for Beginners'. This publication was brought out by the **Karnataka Women's Information and Resource Centre (KWIRC)**, an NGO based in the State of Karnataka, for the National Human Rights Commission.

**2.40** The efforts of the Commission to abolish the abominable practice of manual scavenging have been continuing. The Commission has stressed the need for the involvement of genuine NGOs in the implementation of programme to motivate people and make sincere efforts to abolish the practice of manual scavenging.

**2.41** The Commission organized a '**Health Week**' aimed at creating awareness regarding 'Health Care' of elderly people (senior citizens), in collaboration with **HelpAge India**, an NGO, from March 20-24, 2006 at New Delhi. Lectures on, prevention of heart attack and strokes, diabetes, vision problems, arthritis and bone management, diseases of the prostate gland, specific health concerns of older women, mental health and nutrition for elderly, were delivered by medical specialists in the field.

### **Custodial Justice**

**2.42** The primary responsibility of the police is to protect life, liberty and property of citizens. Criminal Justice System is to ensure protection of these rights. When an individual is in custody, it means that he is in the custody of the State and, therefore, to ensure that his human rights are protected, is the direct concern and responsibility of the State. The individuals are kept in custody in police station, in judicial custody in jail, juvenile homes and mental homes. The National Human Rights Commission (NHRC), in collaboration with Penal Reform and Justice Administration (PRAJA), organized a two-day Seminar on Custodial Justice on March 30-31, 2006, at Vigyan Bhawan, New Delhi. The main objective of the Seminar was to highlight the fact that Custodial Torture is preventable and that it is the responsibility of the State to protect the rights of people in custody.

**2.43** The main recommendations that emanated from the aforesaid Seminar after the deliberations can be placed under two heads, one relating to Police set up and the other relating to Prisons:

## Police Set-up

- ▶ The violations in police custody are reported during investigations, resulting in deaths and physical torture.
- ▶ NHRC, as a monitoring body over deaths and violence in police custody, has emphasized scientific, professional and humane approach towards persons detained for investigations.
- ▶ NHRC recommends that the investigations need to be carried out expeditiously and in a given time frame. The guidelines for arrest, set out in the **D. K. Basu vs. West Bengal case** by the Supreme Court have emphasized time and again for compliance from appropriate state authorities. Besides, it has urged upon senior leadership to involve themselves in the task of investigations and custodial management of the detainees. Full use of scientific techniques and forensic science should be made to obviate resorting to physical torture during interrogations. Training in interrogating skills is *sine quo non* of all investigations by the police.
- ▶ On analyzing statistics, it has been revealed that the Crime against minorities, children and women, need special attention and speedy disposal. Hence, there is need to monitor these cases every fortnight.
- ▶ There should be *zero tolerance* for any violation of human rights in custody. In cases where misconduct or guilt of police personnel is established, it should be ensured that the penalties imposed should be commensurate with the misconduct/guilt.
- ▶ There is a strong need to bifurcate the police personnel into two separate wings: one relating to investigation and the other for law and order duties. Accordingly, the personnel should be trained to specialize in investigation procedures. This will definitely help in speedy disposal of the cases.
- ▶ To imbibe above practices, training is to be taken as a continuous process of learning and to be used with the purpose of changing the attitudes and mindset of the police personnel.

## Prisons

- ▶ NHRC has observed that the number of under trial prisoners (UTPs) is increasing day by day and the period for which they languish in jails is also a very long one. In few a cases, NHRC has found undertrials in judicial custody for 24-54 years, which is far beyond the punishment prescribed for any offence under the penal law.
- ▶ NHRC recommends an urgent review of the UTP's not only for setting free the prisoners who have undergone their terms of imprisonment, but also for decongesting the prisons in addition to the following steps:
  - A. Working out a system of holding of regular special courts in the prisons for early disposal of cases.
  - B. The Judicial officers have to be exhorted to consider bail petitions carefully, obviating any possibility of torture in custody. Similarly, ensuring a speedy trial should be the

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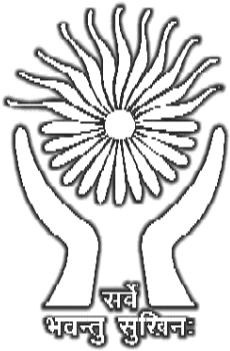
main thrust of all judicial functions, including summoning and examination of witnesses. The investigating agency should make special efforts to provide legal aid wherever necessary.

- C. The visit to the prison by District Magistrate, SSP and Judicial officers should be not merely a routine exercise; and they should record efforts made for speedy disposal of cases. Innovative methods, like release of Under Trial Prisoners on bonds, if the prisoners have completed one half or two thirds of their punishment period, should be adopted.
- ▶ For the convicted persons, the Reformation-correction and Rehabilitation should be worked out with the development departments, to expose them to the skills, which will find them better employment opportunities, once they are outside the custody. There have been good examples tried out in different parts of the country and there is a need to encourage this. In specific kind of cases where reformation is the main motive, the State Government should be urged to have special provisions to impart skills, which will enable better rehabilitation opportunities.
  - ▶ The prison conditions should be made more humane for the women, the aged and mentally ill prisoners.
  - ▶ Regular check ups and special provision for the mentally ill prisoners has been taking a back seat in the arrangements made in the jails so far. NHRC would like to draw the attention of the State Governments to ensure that the mentally ill prisoners are kept separately and necessary medical treatment is provided to them.

### Conclusion

**2.44** These are turbulent times in many parts of the world. It becomes apparent that in many ways, the world has become complicated, to say the least. The destinies and interests of nations and their citizens have become interlinked to such an extent that, invariably, the actions of one have adversely affected the other, leading to strife and suffering. In all such tragic situations, it has been mostly the common people, men, women and children who have their rights violated. This is the greatest challenge, which all of us are faced with. In their constant endeavour for a better future, nations and their citizens should always respect the human rights of the people who could be affected in the process. But experience has shown that more often this is not so. The result is that innocent people all over the world, irrespective of their colour, religion and creed, have suffered the most.

**2.45** The role of the national institutions has to be seen in the above context. Every nation State has its own priorities and goals. However, there are some minimum standards, which can rightfully be expected to be fulfilled by all to meet their international obligations and the larger world order. A free and fully autonomous national institution is the best guarantor for the protection of human rights within the country.



# Civil Liberties

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## A] Terrorism and Insurgency

**3.1** Today, both the world at large and India in particular, face daunting challenges in the task of protecting human rights of the common people regardless of the country they belong to. No country in the world can be said to be free from the deadly scourge of terrorism. With the grim spectre of terrorism continuing to target innocent and defenceless people, the task has never been more sensitive for the Commission. The Commission has always stood firm in its belief that the twin concepts of national security and individual dignity are mutually compatible and, not contradictory.

**3.2** A peaceful society rests on the pillars of justice and individual accountability. The concern for justice has been the paramount objective of the Commission while dealing with the vexed issue of terrorism. The Commission believes that the State has the unquestionable right, and indeed the duty, to combat and overcome terrorism. However, those in authority must take the greatest care to ensure that counter-terrorism measures do not mutate into measures that cloak, or justify, the violation of human rights, or corrode the sacred trust of democratic government from within. This has been an oft-repeated stand taken by the Commission in all fora.

**3.3** The Commission is also acutely aware of the complexity of protecting human rights in the new international climate, which made it obligatory for States to take a number of specific measures, and to cooperate, in the fight against terrorism. Several subsequent acts of terrorism, which have killed innocent people the world over, have only tended to magnify the urgency of the issue. India has not been a recent victim of terror acts. It may not be an

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## Civil Liberties

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exaggeration to mention that more than any other country in the world, India has been facing terrorism for a long time, affecting its peace and tranquility.

**3.4** The Commission, in the international fora viz. in the meetings of the Asia Pacific Forum of National Institutions and the Human Rights Commission, has reiterated that the action, which any State takes to fight and triumph over the evil of terrorism must fall within the parameters of the Rules of Law and conform to the high standards that we have set for ourselves – in our Constitution, laws, and in the great human rights treaties adopted since the founding of the United Nations. The Commission firmly believes that there can be no selective approach while dealing with terrorism and there has to be united and concerted effort to fight the menace, without chilling the civil liberties of the citizens.

**3.5** Terrorism has to be dealt with firmly. During the year, the country has been a witness to wanton acts of violence. The trail of murder and mayhem left behind by the purveyors of terror showed that the victims, in most incidents, were ‘soft’ targets; as briefly indicated below:

- ▶ At least 24 CRPF personnel were killed in a powerful landmine blast triggered by naxals in Bijapur police district of Chhattisgarh on September 4, 2005;
- ▶ On October 29, 2005, on the eve of the festival of Diwali, which is celebrated with great fervour all over India, the blasts occurred at several busy places in the Capital city of Delhi killing about 60 people, most of whom were shopping for the festival season;
- ▶ Gunmen opened fire at scientists in Indian Institute of Science campus, Bangalore, on December 28, 2005, killing a Delhi-based professor;
- ▶ Over two dozen people were killed on February 28, 2006, in a Naxalite triggered landmine blast in Deantewara district of Chhattisgarh state;
- ▶ Blasts rocked the Sankatmochan Temple and a railway station in Varanasi on March 7, 2006, where a series of bombings took place across the city. Twenty people were reported to have been killed and as many as 101 others were injured.

**3.6** A cursory glance reveals that terror knows no religion, defies all logic and is inimical to the whole of humanity. Most of the victims in the above incidents were innocent civilians. The Commission forcefully and unequivocally condemns all such acts of mindless violence.

**3.7** The Commission also took *suo motu* cognizance based on media reports of killing of three minor boys by security forces in Kupwara District of Jammu and Kashmir. The print and electronic media had, on July 25, 2005, carried reports of killing of three innocent minor boys in a shoot out allegedly by the security forces. It sought reports from the State and the case is still under consideration. The Commission has taken similar actions in various other cases also where lives were lost at the hands of the terrorists as well as security forces.

3.8 Thus, the Commission has been careful in keeping a balance between the need for safeguarding the paramount objective of national security as well as the sacred obligation of individual dignity and freedom. It is an unenviable task, but a necessary one to be performed in the democratic framework of our country.

3.9 At the time of writing the report, the gruesome images of the innocents killed in the Mumbai train blasts, has stupefied the nation. Such acts can never be tolerated or condoned, whatever be the grievances of the perpetrators, if one can even categorize it as such. It is heartening that the world has been quick and emphatic to condemn the wanton acts of terrorism faced by India. It shows two things: that many nations are currently facing the scourge of terrorism and, secondly, the sympathizers and perpetrators of a terror driven philosophy, have no friends amongst the civilized people.

## **B] Prison Population**

3.10 The Commission continued to compile and analyse prison statistics on bi-annual basis. During the period under report, the prison statistics as of December 31, 2004 were analysed. The salient points of the analysis are given in the succeeding paragraphs:

### **Analysis of Prison Population as of 31 December 2004**

3.11 The total prison population of the country was 3,32,112, which shows an increase of 2.96% over the prison population of 3,22,566 as on December 31, 2003. The authorised capacity of 2,38,855 shows an overcrowding to the extent of 39% for the country as a whole as compared to 35.76% as on December 31, 2003. Eleven States/UTs, namely, Delhi, Bihar, Chhattisgarh, Gujarat, Haryana, Jharkhand, Madhya Pradesh, Orissa, Sikkim, Tripura and UP experienced overcrowding ranging from 57% to 195% above the authorized capacity.

3.12 Delhi, which has in all previous analyses occupied the top position in the scales of overcrowding, has moved to second place as a result of the commissioning of an additional district jail. Jharkhand (195%) has taken the top slot followed by Delhi (150%), Chhattisgarh (94%) and Gujarat (91%).

3.13 Seven States and Six Union Territories, namely, J&K, Manipur, Mizoram, Nagaland, Rajasthan, Uttranchal, West Bengal, Andaman & Nicobar, Chandigarh, Daman and Diu, Dadar and Nagar Haveli, Lakshadweep and Pondicherry have idle capacity in their jails.

3.14 Undertrial prisoners constituted 70.10 % of the total prison population in the country as of December 31, 2004, which shows no significant improvement over the situation as of December 31, 2003 (70.70%). The proportion of UTPs was more than 80% of the total prison population in seven States/UTs. These are: Dadar & Nagar Haveli (100%), Meghalaya (93.1%), Manipur (91.8 %), Daman & Diu (89.3 %), J&K (87.4%), Bihar (83.6%) and U.P (82.40 %). Delhi, which was also in this category in the analysis of prison population as of December 31, 2003, has registered a drop from 81.05% to 80.0%.



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**3.15** Women comprised 3.7% of the total prison population in the country as compared to 3.35% as of December 31, 2003. Mizoram with 9.9 % was at the top of list followed by Tamil Nadu (6.9%), Punjab (5.9%), Chandigarh (5.6 %), Andhra Pradesh (5.5 %), West Bengal and Manipur (5.4 % each)

**3.16** A total of 1,570 children upto the age of 5-6 years were staying in jails with their mothers. UP with 279 accounted for the largest number of children kept in jails followed by West Bengal (181), Maharashtra (169), Jharkhand (135) and Madhya Pradesh (118).

**3.17** Every day, hundreds of people come face to face with one or other agency of the criminal justice system, which is basically comprised of the **police, the courts, and the prisons**. These are persons who are alleged to have violated the criminal laws of the country and who are then required to be taken through the due processes of the criminal justice system to establish their guilt or innocence. These processes are carefully laid out in the form of specific **(criminal) laws and procedures** prepared by the State; they are also contained in international codes and standards universally agreed by all democratic countries the world over to ensure the observance of such standards that ensure basic human rights and dignity to all persons in a democracy.

**3.18** In recent years, more and more cases of violence in custody have been highlighted and exposed, prompting urgent demands for **accountability, transparency and reform of law enforcement agencies that are entrusted with the task of maintaining standards in custodial institutions**. These demands have been made by legal functionaries, human rights groups, non-government organisations, women's rights activists, and concerned citizens generally. Law enforcement authorities too have admitted to the many flaws and weaknesses in their methods.

### Visits to Jails

**3.19** Improving Jail conditions has been a major concern of the Commission since its inception in fulfillment of its obligation u/s 12 (c) of the Protection of Human Rights Act, 1993. The Custodial Justice Cell of the Commission carried out study of jail conditions in Chhattisgarh and Karnataka during the period of report.

### Chhattisgarh

**3.20** Shri Justice Y. Bhaskar Rao, Member, NHRC accompanied by Shri Chaman Lal, Special Rapporteur and Chief Coordinator, Custodial Justice Cell of the Commission visited the Central Jail, Raipur (Chhattisgarh) on February 14, 2006. Before this, the Special Rapporteur had carried out a detailed study of the Central Jail, Raipur (11 Feb), District Jail, Durg (12 Feb.) and Sub-Jail, Sanjari Balod (13 Feb.) followed by a detailed discussion with the DG Prisons, Chhattisgarh on infrastructure, administration and management of the Jail Department. The team's report submitted to the Commission presented a broad assessment of the strengths and weaknesses of jail administration in the State. Chhattisgarh State is experiencing an alarmingly high level of overcrowding in jails. While the overall overcrowding is 88.9 %

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against the All India figure of about 40%, the extent of overcrowding is actually much higher (even more than 200% at some places) in 11 jails including three Central and two District Jails out of a total of 27 jails in the State. Although some steps have been taken to reduce the congestion by constructing new jails and creating additional capacity under the modernisation grant, the flow of funds from the Government of India has slowed-down because of poor utilisation of the grants by the State.

**3.21** The State can be credited for having brought down the overall proportion of UTPs in jails to less than 60% (56.17% as of December 31, 2004) against All India figure of 70.08% by taking a series of measures to improve the rate of production of UTPs in courts.

**3.22** The incidence of death due to T.B. is found to be high in the jails of Chhattisgarh. Jail Hospitals are ill equipped to provide effective health care because of huge vacancies of doctors (eight in sanctioned strength of 14) and compounders (26 in a sanctioned strength of 31). Some improvement has been effected recently in health care facilities because of intervention of the High Court of Chhattisgarh, which ordered attachment of a lady medical officer and a nurse each to all the Central Jails.

**3.23** Education and Vocational training of prisoners are strong points of the jail administration in Chhattisgarh. Work programmes are being executed in a number of trades in the Central Jails and District Jails. A progressive idea of compensating the victims' families out of wages earned by convicted prisoners suggested by the Supreme Court is also being implemented, although the deduction of 50% of wages for this purpose is rather high. Non-payment of wages to UTPs working in jail factories constitutes a violation of their fundamental rights. The team explained to the Jail authorities the Constitutional obligation of paying them the prescribed wages.

**3.24** While commending the Government of Chhattisgarh for strictly adhering to the provisions of Sec.433 (A) Cr.PC in ordering pre-mature release of prisoners and judicious use of the provision of Article 161 of the Constitution, the Commission requested the State Government to streamline the procedure for pre-mature release in accordance with the guidelines issued by the NHRC on November 8, 1999 and September 26, 2003.

## **Karnataka**

**3.25** Shri P.C. Sharma, Member accompanied by the Special Rapporteur visited the Central Prison, Parappana Agrahar, Bangalore on April 25, 2006. Before the Member's visit, the Special Rapporteur had carried out detailed studies of the Central Jail, Bangalore (20 Feb.), Open Air Jail, Koramangla (21 Feb.), Taluk Sub-Jail, Chickaballapur (21 Feb.) and District Jail, Mangalore (22 Feb.) followed by discussion with the Additional D.G Police-cum-IG Prisons, Karnataka on February 23 and 24, 2006. The report of the NHRC team gives a broad assessment of the strengths and weaknesses of the jail set-up, while identifying areas for improvement.

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**3.26** While a number of new jails have come up in Karnataka since independence, the jail infrastructure needs up-gradation to provide proper District Prisons at all the District HQs and remove the anomaly of having 42 Taluk Sub-Jails presently under the control of revenue authorities. Although overall overcrowding in Karnataka (19.8%) is less than the national average of 40%, a number of jails, particularly Sub-Jails are experiencing very high overcrowding. Some Sub-jails/Special Jails are packed to more than five to six times the authorised capacity with consequent adverse effect on the standard of sanitation and hygiene. However, the State Government is taking effective measures to solve this problem by constructing new jails and creating additional capacities at existing ones with efficient utilisation of modernisation grant released by the Government of India.

**3.27** Health-care facilities provided at various jails are, however, inadequate despite significant improvement registered during the last five/six years. All the Central Prisons and District Prisons have regular jail doctors. District HQs, Sub-Jails, which are functioning as District Prisons are without this essential facility. The arrangement of visiting doctors for Sub-Jails also needs closer supervision.

**3.28** While basic needs for prisoners, such as food, water and clothing are being met satisfactorily, not much regard is being given to their needs of entertainment and education. Even the supply of newspapers and magazines is highly restricted. Subordinate jail staff is found lacking in sensitivity towards such needs of prisoners.

**3.29** The team found that NHRC's directions regarding the detailed probe into each case of death in jail are not being followed strictly. Similarly, the Commission's guidelines about premature release of life convicts have not been given effect. The team felt that the ongoing practice of releasing a male convict after 10 years and female after 5 years of actual incarceration by using the Constitutional provision of Article 161 in a routine manner needs a thorough review in the light of the Commission's guidelines dated November 8, 1999 and September 26, 2003 aimed at bringing about uniformity in this vital matter of justice administration.

**3.30** Excellent facilities for vocational training and gainful employment to convict prisoners have been developed at all Central Jails. There is good scope to extend this facility further and make them effective in ensuring rehabilitation of the released prisoners. Small size factory units need to be started at the District Prisons also.

**3.31** The UTPs situation has shown some improvement in Karnataka with the introduction of video linkage facilities and regular holding of Jail Adalats. However, production of UTPs to the lower courts is still not satisfactory. Although some involvement of civil society in the affairs of prisoners is noticed from the occasional visits of the members of religious, philanthropic and academic bodies, the extent of NGOs involvement in matters like counseling, legal aid, education and health-care of prisoners needs improvement.

**3.32** The time tested system of Board of Visitors is seen to have gone defunct and needs to be revived by nominating committed and dedicated persons as non-official members.

3.33 The Commission considered the above reports and issued appropriate recommendations to State Governments.

### Visits to Jails in Orissa and Jharkhand

3.34 Shri A.B. Tripathy, Special Rapporteur for Orissa and Jharkhand visited Sub-Jail, Khuntee (Jharkhand) on May 28, 2005. The Jail was found highly overcrowded to the extent of 572% (roughly seven times its authorised capacity). A new building with a capacity to house 300 prisoners constructed two years back could not be put to use because of defects in water supply and the drainage system. The sanctioned post of Jail Medical Officer is also lying vacant. The arrangement of a visiting medical officer from the Sub-Divisional Hospital, the jail hospital is not able to provide adequate health-care to prisoners. A commendable feature of this Sub-jail is the education and vocational training facilities provided by the Rama Krishan Ashram.

3.35 Shri A.B. Tripathy visited Sub-Jail, Rayagada (Orissa) on September 23, 2005. The Jail was found overcrowded to the extent of 169%. The jail building needs extensive repairs. Health care facilities are totally inadequate. The proposal to up-grade this jail into a District Jail is pending with the Government since long.

### 'Action Taken Reports' Received from States

3.36 During the period under review, Action Taken Reports were received from the State Government concerned on the Commission's directions in respect of visits to Jails in Tripura (June 10 to 13, 2004 by Shri Justice Y. Bhaskar Rao, Member, and Special Rapporteur), Jails in Andhra Pradesh (December 4 to 6, 2004 by Shri Justice Y. Bhaskar Rao, and Special Rapporteur) and Jails in Kerala (October 29, 2004 to November 2, 2004) by Special Rapporteur. Revised ATR was also received in respect of Jails in Himachal Pradesh visited by the Special Rapporteur from September 21 to 24, 2003).

3.37 ATRs were duly considered by the Commission after scrutiny by the Custodial Justice Cell. The Commission has noticed with satisfaction the following improvements effected as a result of the above visits:

### Himachal Pradesh

3.38 Measures are in progress to reduce overcrowding by constructing new jails and creating additional capacity in existing ones, improve sanitation and increase housing facilities for the staff. Vacancies in various ranks pointed out by the Commission have been filled to the extent of 70%. The policy of pre-mature release of prisoners has been modified in accordance with the guidelines issued by the NHRC on November 8, 1999 and September 26, 2003. Work facilities in jails for providing the vocational training and gainful employment to convicts are being expanded. The Board of Visitors has been constituted for two Central Jails, two District Jails, four Sub-Jails and the Open air Jail.

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Efforts are on to provide Boards at all the remaining jails. In response to the Commission's observation, the age eligibility-criteria for admission to the Open Air Jail has been modified to ensure full utilisation of the facility.

### **Tripura**

**3.39** Measures are in progress to tackle the problem of overcrowding by constructing five additional jails and creation of additional capacity of 394 in the existing jails. Action has been initiated to fill up vacant posts. A committee has been constituted to revise the rate of wages to prisoners. Board of visitors for all the jails and sub-jails have been reconstituted vide notification dated September 23, 2004. A committee has been constituted by the Health Department, Government of Tripura for fixing the scale of special diet for patients and children. The Jail Work Programme facilities are being expanded as recommended by the Commission.

### **Kerala**

**3.40** Action is in progress to construct four additional Sub-Jails to create more capacity in existing jails, improve sanitation and housing facilities. Vacancies of warders have been filled. A proposal for revision of wages of prisoners, finalised by a high level committee is under consideration of the Government. Health-care facilities are being improved at Open Air Prison, Nettukaltheri. Regular visit of Medical Officer to Women Prison, Neyyattinakara is being ensured. Additional land has been acquired by transfer from the Revenue Department to create additional capacity at District Jail, Kollam. Shortage of items of clothing and bedding pointed out in the visit report has been met. Steps have been taken to ensure regular visits of part time medical officers to Sub-Jails. Recreational facilities have been improved at Sub-Jail, Pathanamthitta.

**3.41** Second Open Air Jail is being constructed at Cheemeni Kasargode. Involvement of NGOs in matters relating to education, recreation, welfare, and rehabilitation of prisoners has increased. Special Rapporteur pointed out that pending of cases of life convicts for pre-mature release for long times was not proper. The Prison Review Committee met on October 25, 2005 and examined 251 cases of pre-mature release. However, intimation about the final orders was not received in the period of this report. The State Government has requested that such studies should be carried out at a few more jails in Kerala.

### **Andhra Pradesh**

**3.42** Steps have been taken to improve water supply at the Central Jail, Cherlapalli. Board of Visitors for Jails has been constituted vide D.O. No. 566/Home(Pri.B.) dated April 27, 2005. The Government has issued notification sanctioning special diet as per their nutritional requirements for children separately for age groups (i) up to one year, (ii) from one to two years (iii) above two years.

3.43 A proposal for amendment in the scale of clothing and bedding for prisoners is pending Government orders after receiving clearance from the Finance and Law Departments. A proposal for up-grading the health-care facilities at Central Prison Cherlapalli on the pattern of 50 bedded Taluka Hospital is also under consideration.

3.44 The pre-mature release procedure is being streamlined in accordance with the guidelines of the Commission. Meal timings have been slightly changed at District Jail, Karimnagar to accommodate the prisoners' request. The recommendations of the Expert Committee constituted in July, 2002 for revision of scale of diet to prisoners have been referred to the Manual Review Committee for examination and incorporation in the revised Manual.

### **Sensitization of Jail Staff**

3.45 The sensitization programme for Jail Superintendents, Jailors and officers of the Correctional Services introduced in 2000-01 continued during the period under review. One day workshops were held at Madhuban, Karnal (Haryana) on September 23, 2005, Thiruvananthapuram (Kerala) on November 2, 2005 and Agartala (Tripura) on March 24, 2006. The workshops were conducted by the Chief Coordinator, Custodial Justice Cell in collaboration with DG/IG Prisons of the State concerned.

3.46 The sensitization workshop held at Haryana Police Complex, Madhuban (Karnal) was attended by IG Prison, Haryana, 14 Jail Superintendents and four District Probation Officers. Justice Y. Bhaskar Rao, Member, NHRC inaugurated the workshop. Prof (Dr.) Versha Rajdan, Law Department, Kurukshetra University addressed the participants on important Judgments of the Supreme Court regarding prisoners' rights and jail conditions.

3.47 Dr. Justice Shivaraj V. Patil, Member, NHRC inaugurated the workshop conducted at Thiruvananthapuram (Kerala) on November 2, 2005. 38 Superintendents, two Deputy Superintendents and 14 other Jail officials attended the workshop. Shri Upendra Verma, IPS, Director Vigilance, Anti-corruption Bureau was also associated with the programme.

3.48 The workshop for the Jail Superintendents, of Tripura was held at Agartala on March 24, 2006. Shri R.K. Mathur, Chief Secretary, Tripura inaugurated it. Shri B.K. Ray, Commissioner and Secretary (Home), Tripura, Shri G.M. Srivastava, DGP, Tripura and Shri Amitabha Kar, IG (P), Human Rights were present at the inaugural session. Besides Superintendents of all the 11 jails of Tripura, three Police Officers including one lady officer attended the workshop.

3.49 The programme of the workshop was carefully designed to explain to the Jail officials' compatibility of the basic human rights of prisoners with requirements of security and discipline. The participants were also apprised of the various initiatives taken by the Commission to improve jail conditions in the country. One session was devoted to discussing the prison infrastructure of the State concerned, which helped in identifying the areas of possible improvement. Each workshop concluded with an interaction session in which the participants were encouraged to

freely express problems and difficulties related to their working and living conditions. This helped in resolving doubts and misgivings troubling many of them about the role of the Commission and constitutional obligation of Jail staff to protect and uphold the right of prisoners.

### **C] Custodial Violence and Custodial Deaths**

**3.50** The most fundamental of all rights is undeniably the Right to life and liberty. Denial of this basic right to a human being or impediments brought in the way of attainment of this right, in any manner, is cause for concern for the society as a whole. Therefore, when the State apparatus is accused of being the cause of custodial violence or death, it would not be wrong to say that it is wilfully abdicating its most basic and fundamental duty towards the citizens in a democratic system. The very core of a democratic philosophy rests on the presumption that the State shall not do anything that impedes or denies the right to life of any individual except by the due process of law.

**3.51** The National Human Rights Commission has, since its inception, been grappling with the problem of the custodial justice system in the country. In particular, it has focused on the most serious of its manifestations - custodial deaths. It is to bring an element of deterrence and accountability on those upon whom the law has vested the responsibility of managing the custodial institutions, that the Commission has issued directions, which make it incumbent and mandatory for all district authorities to report to the Commission any incident of custodial death, within a period of twenty-four hours of its occurrence.

**3.52** There are many dimensions to the problem relating to custodial justice management. In order to crystallize the views and opinions on the issue, a two-day Seminar on custodial justice was held on March 30-31, 2006 at Vigyan Bhawan, New Delhi organized by the Commission in collaboration with the PRAJA (Penal Reforms and Justice Association). The objectives of the two-day seminar were based on the following perspectives:

- ▶ The safety of the people in custody called for focusing on two interrelated areas, i.e., police and prisons.
- ▶ Awareness about human rights can prevent and avoid custodial violence.
- ▶ The Government must move towards ratifying the Convention Against Torture (CAT), signed on October 4, 1997.

**3.53** That, the Seminar was inaugurated by the Home Minister of the country, showed that at the highest levels of governance of the country, there is a sensitivity and a sense of urgency, to tackle the problem of custodial violence. The Home Minister, in his speech, which was characterized by frankness, had also made several observations like the importance of modern technology in the investigation of crime and the increased use of forensic sciences, etc. He stressed on the need for sensitization of the police personnel to ensure that illegal measures are not adopted while dealing with individuals in the custody of the police.

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**3.54** Dr. Justice A.S. Anand, Chairperson of the Commission, while acknowledging the fact that custodial torture was a naked violation of human rights, regarding it as a dehumanizing aspect of crime. He emphasized improvement in infrastructure, equipments and, above all, training, lack of which hampered the efficiency of the policemen and had suggested the creation of a post of police Ombudsman to hear the complaints against policemen.

**3.55** The sessions covered in the seminar included violence in police custody relating to arrest and investigation, a case study presentation, improving investigation methods and procedures, the issue of overcrowding in prisons and remedies and prison conditions. The objective of the Commission through this collaborative seminar was to ensure that apart from the complaints of custodial violence and death, which are dealt by the Commission, the larger systemic issues are also addressed. The seminar highlighted the twin facts that custodial violence is preventable and that it is the responsibility of the State to protect the life and dignity of the people taken in custody.

**3.56** The seminar was attended by State functionaries from police, prisons as also by persons from the Central organizations like BPR&D, CBI and the NGOs. At the conclusion of the seminar, various recommendations were drawn up (already enumerated in Para 2.44), which were forwarded to the Central and State Governments. The recommendations of the Seminar are being followed up with the various authorities.

**3.57** The Commission since its inception, in October, 1993, has received intimations of 13,281 deaths having occurred till date both in police and judicial custody. While, many of these cases were attributable to deaths due to natural causes like illness and old age, cases of custodial deaths were brought to the notice of the Commission resulting from illness aggravated due to medical negligence or due to violence by public servants or between prisoners or even suicide. During the period under review, the Commission recommended payment of interim relief, in 14 cases of custodial deaths, to the kith and kin of the victims, amounting to Rs. 8,50,000/-; the break-up being eight cases of deaths in judicial custody and six cases of police custody. These are besides 1,245 cases of Punjab Mass Cremation, where, till the end of October, 2006, a total amount of Rs. 23.24 crores has been recommended by way of monetary relief to the next of kin of the deceased\*.

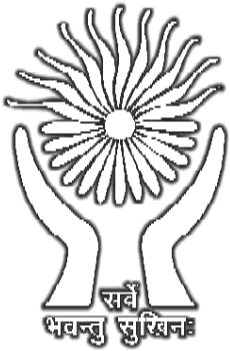
**3.58** The figures of custodial deaths reported to the Commission w.e.f. April 1, 2005 to March 31, 2006 were 139 deaths in police custody and 1,591 deaths in judicial custody making a total of 1,730 (State wise details are given in **Annexure 2**). The Commission finalized 1,468 cases of judicial and 224 cases of police custody, i.e., in all, 1,692 cases of custodial deaths, in addition to scrutinizing 3,908 such cases, during the period under review.

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\* As the issue is of great importance, status at the time of writing and printing of this report is given.







# Chapter-4

## Civil and Political Rights

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### A] Number and Nature of Complaints

**4.1** During the year under review, the Commission had a total number of 1,23,992 cases to consider (**Annexure 1 & 2**), which included cases brought forward from previous years as well as fresh institution during the current year (74,444) (**Annexure 2**). During the period from April 1, 2005 to March 31, 2006, the Commission disposed of 80,923 cases (**Annexure 3**). The State-wise and Category-wise details of cases are shown in **Annexures 4 (a) to (c)**.

**4.2** At the end of the reporting period, i.e. as on March 31, 2006, the total number of cases pending with the Commission was 43,069, which included 3,989 cases awaiting preliminary consideration and 39,080 cases in respect of which reports were either awaited from the authorities concerned or the reports had been received and were pending further consideration within the Commission itself (**Annexure 5**).

**4.3** The total number of cases registered in the Commission during 2005-2006 was 74,444, while the corresponding figure for the year 2004-2005 was 74,401. Of the cases that were registered during the year under review, 72,548 cases were complaints of alleged human rights violations besides 1,734 cases related to intimations of custodial deaths, 5 cases of custodial rapes and 157 relating to police encounters. In accordance with the guidelines issued by the Commission, every death in police and judicial custody is to be reported to the Commission for its scrutiny irrespective of such death being natural or otherwise. Of the custodial deaths that were reported in the course of the year 2005-2006, four deaths occurred in the

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custody of defence / para-military forces, 139 deaths occurred in police custody, while 1,591 in judicial custody, most of the latter resulting from illness, old age or similar factors. (Annexure 2).

**4.4** The details in respect of complaints registered last year again confirm the assessment made by the Commission in the preceding annual reports that, after successive years of rapid increase, the number of complaints received by the Commission now appears to have stabilized. As in the past, the largest number of complaints registered was from the State of Uttar Pradesh; they numbered 44,186 or 59.3 per cent of the total number of complaints registered by the Commission. Delhi followed Uttar Pradesh, with 4,984 complaints, while Bihar coming third with 4,297 complaints. It would again appear that the establishment of State Human Rights Commissions has not, so far, led to any significant reduction in the number of complaints being received by the National Human Rights Commission from Uttar Pradesh.

**4.5** Of the total number of 80,923 cases disposed off in 2005-2006, 39,691 were dismissed 'in limini', while 21,947 were disposed off with directions to the appropriate authorities for remedial measures. 1,691 intimations relating to custodial deaths, 60 cases of encounter deaths and 17,534 other cases were also disposed off after calling for reports from the concerned authorities. In the latter group, 19 cases pertained to alleged disappearance, 924 cases to illegal detention / illegal arrest, 606 cases of alleged false implication, seven cases of alleged custodial violence, 45 cases of alleged 'fake encounters', 3,397 instances related to failure to take appropriate action and 4,245 complaints related to other alleged police excesses. During the period under review, the Commission dealt with a number of complaints relating to rights of women. 196 cases alleging violation of the dignity of women, 281 cases alleging sexual harassment of women, 783 cases alleging abduction, rape and murder, 1,196 cases relating to dowry deaths, 644 cases of dowry demand, 250 cases alleging exploitation of women and 453 cases alleging rape of women were disposed off. The Commission also disposed off 24 cases concerning child labour, 32 cases relating to child marriages and 136 cases of bonded labour. The Commission also dealt with complaints relating to conditions in prisons. 152 cases alleging harassment of prisoners, 61 cases alleging lack of medical facilities in jails and 106 cases relating to other aspects of conditions in jails were disposed off by the Commission with appropriate recommendations. In addition to the above, 274 cases alleging atrocities against members of the Scheduled Castes/Scheduled Tribes were disposed off by the Commission, as also five cases of communal violence and 3,675 cases of other categories. The State-wise position in respect of these cases may be seen at Annexures IV (a) to (c).

**4.6** Since its establishment in October 1993, the Commission recommended interim relief to the victims/next of kin of deceased victims in appropriate cases, details of which are given in the previous reports. During the year 2005-2006, the Commission has recommended interim relief amounting to Rs. 26,54,000 to be paid in 71 cases, including 14 cases of deaths in police/judicial custody.

4.7 In addition, while considering the Punjab Mass Cremation case remitted by the Supreme Court of India, the Commission has recommended compensation of rupees 2.5 lakhs to the next of kin of 148 deceased by the end of the year 2005-2006 (compensation has been recommended in favour of the next of kin of 194 deceased who were in actual or deemed custody of the police prior to their death and cremation at the time of the writing of the report).

4.8 Besides, in certain cases, either in response to the notice issued to the State Authorities or notice issued to them u/s 18(3) of the Protection of Human Rights Act, 1993 to show cause as to why interim relief should not be recommended in favour of the victim/next of kin of the deceased victim, the concerned authorities of their own, informed the Commission about their decision to pay compensation/provision of other relief. Summaries of some such cases have been included in the list of selective cases given hereafter.

## **B] Selective Cases 2005-2006**

4.9 As in the previous years, the Commission received a wide range of complaints relating to human rights violations from various parts of the country. The complaints included cases alleging custodial deaths, torture, police high-handedness, fake encounter killings, violations committed by security forces, prison conditions, rights of women and children and other vulnerable sections of the society, bonded labour, negligence of public authorities, etc. In the light of the guidelines issued by the Commission, the Commission received and considered intimations received from the State Authorities regarding deaths in police and judicial custody as well as deaths of children and other inmates in various institutions across the country. In accordance with its mandate, the Commission has also taken up *suo-motu* cognizance of many important incidents of violation of human rights, which received media attention. Such interventions by the Commission included (i) **Violation of Child Rights** – allegations of sexual abuse of mentally and physically challenged children in an orphanage in Gurgaon, Haryana; tying of disabled children in the care home founded by Mother Teresa in Kolkata, West Bengal; large number of deaths reported in Kalavati Saran Children Hospital in Delhi; death of a 11 year old school girl after beating by a teacher in a Government school in Samastipur, Bihar. (ii) **Right to Health** – levy of charges / revision of charges by the All India Institute of Medical Sciences, AIIMS, New Delhi for test, medical investigation and surgical / operative procedure aid and appliances; denial of treatment to a HIV+ patient at Rajendra Institute of Medical Sciences, Ranchi, Jharkhand. (iii) **Atrocities on Women / Dalits** – chopping of hand and burning of a jhuggi of a dalit rape victim in Madhya Pradesh for making complaint to the police against upper caste people; commission of sati by a 75 years old woman in Bahundari Village in Banda District of UP; cutting of hand of a woman supervisor for campaigning against child marriages in Madhya Pradesh; intimidation and social ostracism of dalits in Badhram, Palwal, Haryana; burning of several houses of dalits in Balmiki Colony, District Sonapat, Haryana; suicide by nine persons in Khiri, Uttar Pradesh due to caste harassment.

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(iv) **Police Atrocities** on agitating workers of Honda Motorcycles and Scooters, India in Gurgaon, Haryana; Killing of 11 students and injury to 90 others in a police firing in Meghalaya; atrocities by police on boys and girls found together at a public place (park) in Meerut, UP, during operation Majnu; police atrocities on tribals protesting against non payment of dues for land acquired in Orissa; (v) **Exploitation** of five hundred labourers in Rampur, Bihar, rescue of four hundred child labourers from Madanpura, Central Mumbai, Maharashtra; (vi) **Earthquake in J&K**; (vii) **Environmental pollution** and hazardous habitation in Daurala, District Meerut, UP.

4.10 Summaries of 64 representative cases is as follows:

### **B.1. Civil and Political Rights**

#### **a) Human Rights Violation by Custodial Institutions**

##### **1. Death of Shri Trilochan Singh in Tihar Jail, Delhi (Case No: 103/30/2001-2002-CD)**

4.11 The Commission received an intimation from Superintendent, Central Jail No. 3, Tihar stating that Shri Trilochan Singh S/o Amarjeet Singh, undertrial prisoner (UTP) who was lodged in Tihar Jail on April 11, 2001, died on April 12, 2001 around 4.45 p.m. in Jail Hospital, Tihar due to hanging from tree in Central Jail, No.3, Tihar, New Delhi.

4.12 The Commission also received a complaint dated June 12, 2001 from Amarjeet Singh s/o Pritam Singh, father of the deceased requesting for judicial probe since he suspected the role of jail authorities in the death of his son.

4.13 On consideration of the reports received in response to Commission's directions dated April 25, 2001, the Commission, on February 7, 2005 observed that the complete inquest report submitted by Shri Vijay Khanna, SDM vide communication dated 28.12.2001, has concluded that this is a clear case of negligence on the part of jail authorities or there has been hiding of facts. The Commission directed inter- alia issue of notice u/s 18 (3) of the Protection of Human Rights Act, 1993 to the Chief Secretary, Government of National Capital Territory of Delhi to show-cause within four weeks why 'interim relief' was not granted to the next of kin of the deceased, Trilochan Singh.

4.14 In its detailed proceedings dated October 24, 2005, the Commission considered the reply dated July 26, 2005 received from Deputy Secretary, Home (Jail), Government of NCT of Delhi and rejected the contention of the State and observed that the State has failed to show any legally tenable or acceptable explanation against the recommendation to pay 'interim relief' to the next of kin of the deceased, Trilochan Singh and recommended the NCT of Delhi through its Chief Secretary to pay a sum of Rs.50,000/- to the next of kin of the deceased and the compliance report to be submitted to the Commission within six weeks.

4.15 The Supdt. of Jails, PHQ, Delhi vide endorsement of his letter dated 21.2.2006 informed the Commission that the requisite amount had been sent to Shri Amarjeet Singh,

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 father of the deceased, vide cheque No.727242 dated January 19, 2006 for Rs.50,000/- drawn on State Bank of India, East Patel Nagar, New Delhi.

4.16 The case stands closed by the Commission vide order dated April 4, 2006.

**2. Death of Gaddam Mohan Reddy in Distirct Jail, Karim Nagar, Andhra Pradesh (Case No.919/1/2000-2001-CD)**

4.17 The Commission received intimations dated March 5, 2001 and March 6, 2001 from the Superintendent, Distt. Jail, Karim Nagar informing that on March 5, 2001 at about 5.20 p.m., the deceased UTP Gaddam Mohan Reddy was found hanging to the ventilator rod with his lungi and moving his legs. As per advise of the Jail Medical Officer, by 5.30 p.m. he was shifted to the District Headquarters Hospital where he was declared dead by the doctors.

4.18 The Commission has also received a complaint dated June 11, 2002 from Gaddam Sathamma, wife of the deceased, alleging false implication, illegal detention, harassment and ill treatment of her husband by the jail authorities. She requested for proper investigation into the unnatural death of her husband and award of compensation for loss of her husband at a young age, as she is unable to maintain her and her family consisting of two children.

4.19 Taking cognizance, the Commission vide proceedings dated March 13, 2001 directed Secretary, General Admn. (HRC) Department, Government of Andhra Pradesh to send a report together with postmortem and inquest report.

4.20 Pursuant to Commission's directions, inquest, post mortem and magisterial inquiry reports were received from the Principal Secretary, Home (Prisons) Department vide letter dated December 10, 2002. The post mortem report, while referring to two slight abrasion injuries on the neck, indicated the cause of death as 'asphyxia due to hanging'. The Revenue Divisional Officer & Sub-Divisional Magistrate, Karim Nagar who conducted the magisterial inquiry opined that the cause of death of Gaddam Mohan Reddy was due to hanging as he was a *mental crack*. He had set fire to a heap of grass belonging to his brother-in-law for which the police registered a case u/s 447/435 IPC against him and sent him to the District jail. The deceased had developed a sense of guilt and insult and committed suicide.

4.21 Principal Secretary, Home (Prisons) Department, Government of Andhra Pradesh vide Order No.G.O.Rt.No.1482 dated December 10, 2002 accepted the aforesaid magisterial inquiry report.

4.22 On consideration of the matter on August 13, 2003, the Commission observed that admittedly, the deceased was a person of unsound mind. The State was bound to pay special attention to inmates of such category. It appears that no proper arrangements were made to pay special attention to the deceased, who was mentally challenged. It shows negligence

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on the part of the jail authorities. The State is, therefore, liable to compensate for the death of the deceased. The Commission directed State of Andhra Pradesh through its Chief Secretary to show cause within six weeks why immediate interim relief be not granted u/s 18 (3) of the Protection of Human Rights Act, 1993 to the next of kin of the deceased.

**4.23** In response, D.G. & Inspector General of Prisons & Correctional Services, Andhra Pradesh submitted that the records of the Prisons indicated that the deceased was normal. He had three interviews with his family members during the period from November 21, 2000 to March 5, 2001 and attended the court five times and no abnormality was noticed. The Government Order dated December 10, 2002 did not say that he was mentally unsound, while he was in jail and that he committed suicide on account of mental illness. He committed suicide on account of his feelings of guilt and insult on being remanded to jail and there was no evidence whatsoever of mental illness. The question of negligence on the part of the prison officials did not arise. Hence, there is no case for payment of any relief to the next of kin of the deceased, as there was no negligence on the part of any jail official.

**4.24** Principal Secretary, Home (Prisons.C) Department, Government of Andhra Pradesh vide letter dated May 4, 2005 submitted a copy of the letter from Director General & Inspector General of Prisons & C.S., Andhra Pradesh dated March 11, 2005. The report of DG & IG (Prisons), AP dated March 11, 2005 indicated as under:

*".....The Magisterial Inquiry Report is obtained from the Government. The conclusion arrived at by the Sub-Divisional Magistrate is as under:*

*"As per medical examination report, the cause of death of Sri Gaddam Mohan Reddy, undertrial prisoner, was Asphyxia due to hanging."*

*"In view of the above, I opined that the cause of death of Sri Gaddam Mohan Reddy was due to hanging as he was Mental Crack and insult as he set fire to grass heap of his brother-in-law and the police registered a case against him and sent for remand to the District Jail."*

*Thus, the Sub-Divisional Magistrate agreed that the prisoner died due to asphyxia due to hanging. However, the subsequent sentence in the report is rather confusing and gives an impression that the prisoner committed suicide because he was mental crack.*

*As seen from the sworn statements given by the father of the deceased, the prisoner had burnt the haystack of his (Prisoner's) brother-in-law after having lost mental balance and landed in the Criminal Case. He committed suicide on account of a sense of guilt and insult on being arrested by the police. As also seen from the sworn statement of the wife of the deceased prisoner, the view is the same.*

*Thus, the deceased prisoner committed the offences u/s 435 and 447 IPC, while he lost balance of his mind and landed in Cr.No.84/2000 of Allapur Police Station and, consequently, was remanded to District Jail, Karim Nagar Munsiff Magistrate Court, Metpally and was admitted in the District Jail, Karimnagar on November 21, 2000.*

*Subsequently, he was working in the prison kitchen and did not show any signs of mental imbalance.*

*Thus, it appears that what the Sub-Divisional Magistrate wanted to convey in his Enquiry Report is that the deceased prisoner lost the balance of his mind and burnt the haystack of his brother-in-law. He committed suicide with a feeling of shame in having landed in jail and a sense of remorse for having destroyed the property of his brother-in-law.*

*The whole confusion is on account of the expression used by the Sub-Divisional Magistrate.*

**4.25 The Commission considered the matter on 27/7/2005 and observed that the explanation offered by State of Andhra Pradesh to show cause u/s 18 (3) of the Protection of Human Rights Act, 1993 and the subsequent clarification was untenable. Admittedly, Gaddam Mohan Reddy was in custody at the time of his death. Therefore, the jail authorities were under legal obligation to protect his life and limb and also ensure that he may not cause self-harm while in custody. Since, the jail authorities have failed in the aforesaid duty of care to protect the life of the deceased, Government of Andhra Pradesh being the employer, is vicariously liable for the wrong done. Accordingly, the Commission recommended to the Government of Andhra Pradesh to pay a sum of Rupees Fifty Thousand to the next of kin of the deceased and to submit proof of payment to the Commission.**

**4.26 Compliance report is awaited.**

### **3. Death of Roop Kishore in judicial custody in Bareilly, UP (Case No.6194/24/2000-2001-CD)**

**4.27** The Commission on June 8, 2000 received an intimation dated June 6, 2000 from the Supdt. District Jail, Bareilly, UP stating that Convict Roop Kishore who was admitted in the said jail on September 17, 1999 got injured in the scuffle amongst prisoners, jail staff and police and expired while undergoing treatment in the District Hospital on June 6, 2000.

**4.28** Pursuant to the directions of the Commission dated June 13, 2000 the Deputy Inspector General of Prisons, Uttar Pradesh vide letter dated June 23, 2000 submitted post mortem report, which indicated six injuries, including two fire arm wounds on the dead body and cause of death was given as “**shock and haemorrhage due to ante-mortem left lower limb injury**”.



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**4.29** The Commission on July 21, 2004 considered reports submitted by Addl. DG (Admn.), UP, State CB/CID and Addl. District Magistrate, City, Bareilly along with the report of the action taken against the delinquent jail officials submitted by Dy. Inspector General of Prisons. While holding that there was negligence on the part of jail authorities, which led to the death of Roop Kishore, the Commission directed issue of a notice u/s 18 (3) of the Protection of Human Rights Act, 1993 to Chief Secretary, Government of Uttar Pradesh to show cause why compensation by way of 'interim relief' be not granted to the next of kin of the deceased for the dereliction of duty on the part of jail authorities, which resulted in the death of convict Roop Kishore.

**4.30** The matter was further considered by the Commission on April 4, 2005, when the Commission concluded that human rights of Roop Kishore were violated both due to the acts of commission and omission on the part of the jail authorities. The Commission noted that since the response to the show cause notice has not been received from Chief Secretary, UP, the State Government has no cause to show against the recommendation to pay interim relief to the next of kin of the deceased. The Commission, therefore, recommended payment of a sum of Rupees One lakh as 'interim relief' to the next of kin of the deceased within six weeks and submission of proof of payment.

**4.31** A report dated September 26, 2005 received from State Government of UP indicates that State Government has accorded sanction for payment of Rupees One lakh to the next of kin of the deceased. It has further been informed that the claim could not be settled due to non furnishing of succession certificate and that the next of kin of the deceased Javitri Devi had requested for 4-6 months time to enable her to produce the succession certificate.

**4.32** The matter is still under consideration of the Commission.

### **4. Custodial Death of Jagdish in Lucknow, UP (Case No. 15286/96-97)**

**4.33** Superintendent of Prisons, Lucknow vide communication dated January 18, 1997 informed the Commission that UTP Jagdish, who was admitted in the Jail in the evening of January 17, 1997 had many fresh injuries on his head and body. He died in the night of January 17, 1997 in Medical College Hospital, Lucknow during the course of treatment.

**4.34** Upon perusal, the Commission directed to issue a notice to Home Secretary, Government of UP and called for a detailed report in the matter. The State Government of UP accordingly forwarded copies of report of the Supdt. of Jail, Lucknow, a copy of the post mortem examination report and that of Inquest proceedings. The report of the Supdt. Jail, Lucknow brought out that the deceased was admitted in District Jail, Lucknow on January 17, 1997 at about 1700 hrs and at that time there were a number of bleeding injuries on his person. As the condition of the UTP became serious, he was taken to medical college hospital, and got admitted in the emergency ward where he died on the

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same day. The post mortem examination report showed as many as 12 ante-mortem injuries on the body of the deceased including a number of incised wounds on his head and face. The cause of death is reported to be coma due to ante-mortem injuries.

**4.35** The Commission considered the materials/reports on record on February 22, 2000 and observed that there was gross negligence on the part of the concerned police official(s) in not affording timely and adequate medical aid to UTP Jagdish, which he badly needed, being seriously injured and fighting for life. It appeared to the Commission that an attempt was made by the concerned police officers responsible for the arrest of the deceased to wash off their hands by lodging him in the jail. This conduct of the police officials, to say the least, was most reprehensible. The fact that the MLC recorded at Primary Health Centre showed only six injuries and the post mortem examination report showed 12 injuries is also indicative of the fact that further violence was perpetrated on the deceased, while he was in police custody. **The Commission, therefore, concluded that there has been gross violation of human rights of the deceased and recommended to State Government of UP:**

- (i) **to initiate action for identification of the police and of other officers responsible for causing injuries to the deceased Jagdish and, thereafter, to get a case registered against the errant officials for the offences, which may be disclosed against them as a result of such an inquiry.**
- (ii) **to pay a sum of Rupees Two lakhs to the next of kin of the deceased within a period of one month from the date of communication of this order. Out of the awarded sum of Rs. 2 lakhs, Rs.50,000/- (Rupees fifty thousand only) shall be paid immediately to the next of kin and the balance amount shall be deposited in a nationalised bank and interest accruing thereon shall be payable to the next of kin of the deceased.**

**4.36** Vide letter dated March 17, 2004, Home Department Government of UP informed the Commission about the payment of Rs. 50,000/- to the wife of the deceased as well as deposit of Rs. 1.5 lakhs in fixed deposit. A separate report received from the SP, Crime branch, CID, UP indicated that charge sheet had been filed against the guilty public servants, Shyam Lal and Babu in case FIR No. 15A of 1997. However, they were acquitted by the Spl. Judge, Lucknow.

**4.37** As the recommendations of the Commission were complied with, the case was closed on August 3, 2005.

#### **5. Death of T. Veeraswamy in judicial custody in Andhra Pradesh (Case No. 7/1/1997-1998-CD)**

**4.38** The Commission received an intimation from Supdt. Sub-Jail, Puttur, Chittoor, Andhra Pradesh regarding death of one remand prisoner T. Veeraswamy who was involved in criminal case No.235/96-97, AP Excise Act, on April 9, 1997, while on way to the hospital from the jail.

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**4.39** Pursuant to the notice issued to the Home Secretary, Government of Andhra Pradesh, detailed report along with post mortem report received in the Commission was considered vide proceedings dated August 4, 2000, when the Commission noticed that there were a large number of injuries on the person of the deceased (23 external ante-mortem wounds all over the body) and five internal wounds including contusions on the body. The cause of death was stated to be "Paralysis of vital centres in brain as a result of subdural haemorrhage". As the case appeared to be one of extreme brutality on the part of the police, resulting in the death of T. Veeraswamy, the Commission directed State of Andhra Pradesh to get the case inquired through the CB/CID and to take necessary action against the errant officers. The Commission also directed issue of notice u/s 18(3) of the Protection of Human Rights Act, 1993 to the State of Andhra Pradesh to show cause as to why 'immediate relief' be not granted to the next-of-kin of the deceased.

**4.40** The Government of Andhra Pradesh informed the Commission that a sum of Rs. 50,000/- was paid to the next of kin of the deceased and that a case crime No. 61/97 was registered against the erring public servants of Naggri Excise Police Station. They were arrested and the case was pending trial in the Court. Considering the payment of Rs. 50,000/- as inadequate, the Commission on September 23, 2002 recommended to Government of Andhra Pradesh to pay a sum of Rupees One lakh to the next of the kin of the deceased in addition to the amount already paid.

**4.41** The Collector, Chittoor, vide communication dated January 10, 2005, has informed the Commission that an amount of Rupees One lakh was drawn and paid to T. Jyothi, wife of deceased T. Veeraswamy, on September 27, 2004 as ex-gratia relief.

**4.42** As the compliance report was received, the case was closed on June 9, 2005.

### **6. Death of Sukumar Panja in the custody of police in Mayurbhanj, Orissa (Case No. 825/18/97-98-CD)**

**4.43** SP, Mayurbhanj, vide communication dated 18 March 1998, intimated that in the intervening night of March 17-18, 1998, accused Sukumar Panja committed suicide by hanging by means of saree available inside the hazat. It was further stated that out-post watch Constable 1018 N.N. Dash, who was supposed to stay at out-post in the night was not present and was in his quarter.

**4.44** The Commission vide proceedings dated 24 March 1998 directed issue of notice to SP, Mayurbhanj, Orissa calling for copies of inquest, postmortem and magisterial inquiry report within six weeks.

**4.45** The Commission considered the reports received from the State authorities including the report of the Collector & District Magistrate, Mayurbhanj and observed that "the fact remains that Sukumar Panja died while he was in the custody of the police. It was their responsibility to see that no harm of any kind is caused to him while he was in their

custody. It shows negligence on their part in performance of their duties and they failed to protect his human rights". Accordingly, the Commission directed issue of notice to Chief Secretary, Government of Orissa u/s 18(3) of the Protection of Human rights Act, 1993 to show cause as to why immediate interim relief be not given to the next of kin of the deceased.

**4.46** In response, Additional Secretary, Home Department, Government of Orissa, vide letter dated March 24, 2005 stated that there is no material to show that the deceased committed suicide due to any kind of torture by the police or due to violation of his Human Rights in any manner. As such, there appeared to be no reason for grant of any immediate interim relief to the next of kin of the deceased.

**4.47** **The Commission considered the response of State of Orissa on August 31, 2005 and in the light of the law settled by the Hon'ble Supreme Court in Nilabati Behera vs. State of Orissa –1993 (2) SCC 746, reiterated that the State is liable to compensate for the negligence of the police officers on duty and observed that the State has failed to show any acceptable, logical or reasonable cause against the recommendation to pay interim relief to the next of kin of the deceased. The Commission, accordingly, recommended to the State Government through its Chief Secretary to pay a sum of Rs. 50,000/- (Rupees fifty thousand only) to the next kin of the deceased and to submit compliance report along with proof of payment. The Commission directed Chief Secretary, Orissa to report outcome of disciplinary proceedings initiated against SI Rabindranath Biswal, ASI, Adikanda Kalia and Sentry Constable N.N. Das.**

**4.48** In response, Government of Orissa, Home Department, has reported that it has issued sanction dated October 25, 2005 for payment of Rs. 50,000/- to the next kin of the deceased. However, the proof of payment is awaited.

**4.49** As regards outcome of departmental inquiry, it has been submitted that on its culmination, ASI A.K. Kalia was given a black mark entry while Sentry Constable N.N. Das and SI Rabindra Nath Biswal were exonerated of the charges.

**4.50** The matter is under consideration of the Commission.

#### **7. Death of Ram Udit Naryan Singh in custody of police at Begusarai Bihar (Case No. 263/4/1999-2000-CD)**

**4.51** District Magistrate, Begusarai, Bihar intimated the Commission that on April 29, 1999, accused Ram Udit Naryan Singh, arrested in a criminal case of committing suicide by hanging himself, while in custody of the police.

**4.52** Pursuant to the directions of the Commission dated May 5, 1999 relevant reports were submitted by Home Secretary, Government of Bihar. The Commission considered these reports on May 18, 2004. According to the reports, Ram Udit Narayan Singh was arrested on April 28, 1999 and he committed suicide by hanging himself while in police

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custody on April 29, 1999. Post mortem report of the deceased indicated as many as 11(external) injuries and that the death was attributed to “shock due to injury caused by blunt and hard substance”. The postmortem report also disclosed that the ligature mark over the neck was **post mortem** in nature. The Magisterial Inquiry conducted into the death of the deceased, while in the police custody, also came to the conclusion that death had been caused due to external injuries. The Commission observed and said that;

*“convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 of the Constitution and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. The precious right guaranteed by Article 21 of the Constitution cannot be denied to under-trials or other prisoners, including convicts in custody, except according to procedure established by law. There is a great responsibility on the police and prison authorities to ensure that the citizen in its custody is not deprived of his right to life. Death in police custody is, perhaps, one of the worst crimes in a civilized society. A death in custody at the hands of those who are supposed to protect the life and liberty of the citizen is enough to lower the flag of civilization to fly half-mast.”*

**4.53** The Commission went on to observe that what was worst in the present case is that the medical evidence belies the police assertion that the deceased died by hanging himself. The presence of 11 external injuries and a post-mortem ligature mark undoubtedly show the barbaric attitude of the police and a crude attempt to fabricate false clue and create false evidence so as to screen the offence. The State has, after taking into consideration the Magisterial Inquiry report and other material, punished SHO concerned after a departmental enquiry by recommending his compulsory retirement vide order dated February 4, 2003. We view it with great concern that in this age and time, death in custody should at all take place. In the established facts and circumstances of the case, this is a fit case for award of ‘interim relief’ to the next of kin of the deceased u/s 18(3) of the Protection of Human Rights Act, 1993. Accordingly, show cause notice was issued to Chief Secretary, Government of Bihar.

**4.54** No response to show cause was received from the Chief Secretary, Bihar despite reminders.

**4.55** The Commission considered the matter on March 14, 2005 when it directed as under:

*“Let a final reminder be issued to the Chief Secretary enclosing therewith a copy of the response from the DG & IGP, Bihar, Patna for sending his reply to the show-cause notice. The Chief Secretary shall be informed that the response be sent to the Commission within one week and that the Commission will examine this case also on April 7, 2005 on which date the Chief Secretary has already been summoned in another matter.”*

4.56 Shri Girish Shankar, Home Secretary, Government of Bihar appeared before the Commission on April 7, 2005 on behalf of the Chief Secretary when he submitted that he shall have the case finalized and appropriate response sent to the Commission within one month.

4.57 Shri Girish Shankar, Home Secretary, Government of Bihar, vide communication dated May 3, 2005 stated that the Government of Bihar has sanctioned a sum of Rs. 50,000/- by way of interim relief to the next of kin of the deceased Ram Udit Narayan Singh. Further, Government of Bihar, Home Department vide communication dated October 25, 2005 has also submitted proof of payment.

4.58 The Commission vide proceedings dated July 13, 2005 considered the report received from Government of Bihar and closed the case.

**8. Death of Banja Pillow Gawale in the custody of Wardha District Prison, Maharashtra (Case No.840/13/2002-2003- CD/FC)**

4.59 The Supdt. District Prison, Wardha, Maharashtra vide communication dated August 31, 2002 (p.1/c) intimated the Commission that Convict Banja Pillow Gawale was lodged in the District prison Wardha on July 4, 2002. While standing against the wall of the separate cells outside the barrack near electric connection through iron pipe cover, on August 31, 2002, he touched the iron pipe. On hearing his loud cries, other prisoners immediately caught him with the help of cotton towel and he fell down in a lying position receiving some minor injury on his forehead and became unconscious. He was immediately taken to General Hospital with the help of jail guard, but expired enroute to the hospital.

4.60 The Commission on consideration of the inquest and postmortem reports and the magisterial inquiry report took the view that the prisoner had undoubtedly died due to electrocution and that the State prima facie was negligent in protecting his life by not ensuring proper electric wiring in the jail premises. The Commission accordingly issued a notice u/s 18(3) of the Protection of Human Rights Act, 1993, to the State to show-cause why payment of interim relief be not recommended in favour of the next of kin of the deceased.

4.61 Under Secretary, Government of Maharashtra, Home Department, in response to the show-cause notice, vide letter dated 29 June, 2004, while denying their liability, submitted that the jail authorities had reported the fault in electric fittings in the jail premises, which was attended to by the Public Works Department, Electric Sub-Division, Wardha from time to time and last rectification of fault in wiring was done on 22 August, 2002. It was further stated that Magisterial Inquiry report suggests that death of the prisoner was not caused due to negligence on the part of the jail authorities and it was treated as accidental death by the Sub-Divisional Magistrate, Wardha, who conducted the inquiry.

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4.62 The Commission while considering the matter on February 17, 2006 observed that the position taken by the State authorities in response to the show-cause notice was untenable. A careful perusal of the Magisterial Inquiry, Post mortem and the inquest reports indicates that undoubtedly the convict died as a result of electrocution due to leakage of current from the electric wiring. The doctrine of *res-ipsa loquitor* (thing speaks for itself) is squarely attracted to the present case.

4.63 The MER further revealed that electricity fault at the isolation cell of the prison was rectified on 22nd August, 2002. Obviously, on 22nd August, 2002, some stop-gap repairs were undertaken by cutting some portions of deteriorated wires and joining them and insulating with the tape, whereas what was expected from the officials of PWD (Electrical) Division was that they should have replaced the deteriorated wires with a proper new wiring to ensure that electrical fittings were in proper state and there was proper earthing so as to eliminate any possibility of leakage of current in future. Thus, there had been negligence on the part of the authorities in not ensuring proper repairs of electric wiring, which has resulted in the unfortunate death by electrocution of Badya Pilo Gawade.

4.64 In above view of the matter, the Commission was of the opinion that the unfortunate death by electrocution of the victim occurred due to sheer negligence on the part of the jail authorities to get the electric wiring in the jail premises in a proper state of maintenance and repairs despite the fact that leakage of current in the wall of the prison was detected much earlier to the unfortunate incident. Thus, this is a clear case of violation of human rights of the victim. Therefore, his next of kins are entitled to 'interim relief'.

4.65 Accordingly, the Commission recommended to the State of Maharashtra through its Chief Secretary to pay a sum of Rs. 50,000/- as 'interim relief' u/s 18(3) of the Protection of Human Rights Act, 1993 to the next of kin of the deceased within a period of six weeks and submit compliance report along with the proof of payment to the Commission.

4.66 The compliance report is, however, still awaited.

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

#### **9. Alleged death of Chityala Sudhakar in police custody in Karim Nagar, Andhra Pradesh (Case No. 381/1/98-99-AD)**

4.67 The Commission received a complaint dated December 8, 1998 from one Chityala Venkatamma @ Pochamma stating that her son Chityala Sudhakar was whisked away by police personnel of Hasanparthy Police Station on September 23, 1998, detained un-lawfully, beaten up mercilessly and ultimately taken to hospital on September 28, 1998 where he succumbed to the injuries. She has prayed to the Commission for an enquiry and to render justice.

4.68 Taking cognizance, the Commission on December 21, 1998 directed issue of notice to Home Secretary, Government of Andhra Pradesh calling for relevant reports. Explanation was also called for, for not reporting death in custody to the Commission in accordance with the guidelines.

4.69 Joint Collector and ADM, Warangal submitted a magisterial inquiry report dated July 26, 2000 in which he concluded that Chityala Sudhakar had died due to head injuries, which could have been caused due to falling from police station staircase and hitting a sharp edge of one of the projected parts of the staircase. There is no direct evidence that the deceased had died due to the fatal blow of the police beating, though there is enough evidence to prove that the deceased was beaten to such an extent that he was unable to walk freely on his own. The post mortem report indicated 19 ante-mortem injuries on the body of the deceased and the cause of death was indicated as 'head and spinal injury'.

4.70 Vide proceedings dated December 10, 2002 the Commission considered the reports received and took note of the communication dated September 19, 2002 received from the General Administration (L and O.I.) Department, Government of AP wherein DG and IG, Police, AP was requested to fix responsibilities and take departmental action against those police officers who were responsible for causing grievous hurt to the deceased. The Commission observed as under:

*"It is unambiguous that the deceased was arrested by the police on September 23, 1998 and was brutally tortured in the police custody and was unlawfully detained up to September 28, 1999. When he was being taken to the court, he fell down from the stairs, as he was unable to walk due to injuries caused by the police. He was shifted to the hospital and declared dead. There is ample evidence to come to the conclusion that it is a case of custodial death."*

4.71 The Commission directed Chief Secretary, Government of Andhra Pradesh to show cause as to why immediate interim relief may not be awarded to next of kin of the deceased, as contemplated by sub section (3) of section 18 of the Protection of Human Rights Act, 1993, Government of AP was also called upon to intimate the Commission about action taken against errant police officials.

4.72 Vide letter dated December 23, 2004 General Administration (L and O.I.) Department, Government of Andhra Pradesh, informed that a sum of Rs. 20,000/- was paid to the mother of the deceased as ex-gratia payment vide demand draft dated January 4, 1999. A copy of the receipt from the complainant was also submitted.

**4.73 While considering the matter on August 3, 2005 the Commission took note of the payment of Rupees twenty thousand to the mother of the deceased but considered the amount given as ex-gratia to the mother of the deceased too meagre and inadequate. Accordingly, the Commission recommended to State of AP to pay an additional amount of Rupees fifty thousand to the mother of the deceased.**



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4.74 The Government of Andhra Pradesh vide letter dated November 14, 2005 has submitted a copy of the sanction order dated September 27, 2005 in respect of payment of Rupees fifty thousand to the mother of the deceased.

4.75 However, proof of payment is still awaited.

4.76 The matter is under consideration of the Commission.

### **10. Police excesses inside the Dargah of Hazrat Khwaja Moinuddin Chishti, Ajmer Sharief: Rajasthan (Case No. 1964/20/97-98)**

4.77 Syed Gulam Kibareiya, through Dr. G.S. Sangwan, Advocate sent a complaint to the Commission detailing certain events, which took place at Dargah of Hazrat Khwaja Moinuddin Chishti at Ajmer Sharief on February 17, 1998. He has stated that certain miscreants looted some shops, and police on reaching the spot, opened fire causing injuries to several persons. During curfew, people could neither offer prayers, nor procure food items or medicines.

4.78 The Commission requested Shri Chaman Lal, Special Rapporteur to visit the spot and submit a report in the matter.

4.79 After perusing the report dated March 20, 1998 submitted by Special Rapporteur, the Commission on March 24, 1998 called for comments of Government of Rajasthan through its Chief Secretary on the following aspects of violation of human rights, which emerged from the report:

- (i) The excess committed by the police in the Ander Kot area on February 20, 1998; by several policemen forcibly entering into and ransacking several houses and breaking and damaging household goods like TV sets, washing machines, furniture, etc. and beating up and manhandling inmates of the houses including women and the need to assess the losses and damages in this incident for the purpose of suitably compensating the victims.
- (ii) Appropriate enquiry into the death of Shamshad, son of Mohd. Rafiq, caused allegedly on account of denial of timely treatment due to stringent curfew regulations.
- (iii) Arrest of a large number of residents of the Ander Kot area and the need for screening their cases so as to ensure that the innocent amongst them are immediately released either by filing final/cancellation reports in the cases registered against them or withdrawing the cases if charge-sheets have already been filed.

4.80 On consideration of facts detailed in the reports received from Secretary (Home), Government of Rajasthan, the Commission, on March 22, 1999 made the following recommendations:

- (i) **The losses suffered by the shopkeepers whose shops were looted during the period of curfew in Ander Kot area and the residents of Ander Kot whose houses were ransacked and household effects damaged should be assessed by the DM, Ajmer by publicly inviting and examining claims within a period of two months from the date of receipt of the recommendations. The State Government will issue detailed instructions for the same under intimation to the Commission.**
- (ii) **Shri Rafeeq Mohammad, father of deceased Shamshad should be paid a monetary compensation of Rupees One lakh without any prejudice to other claims admissible to him under the normal civil law.**

**4.81** Communication dated December 12, 1999 was received from Dy. Secretary (Home), Government of Rajasthan detailing therein that a sum of Rs. 97,500/- was paid as compensation to 12 persons for damages caused to their shops and properties. It has further been stated that sum of Rupees One lakh was paid to Shri Mohd. Rafiq, father of the deceased.

**4.82** In view of the compliance report received, the Commission closed the case on August 3, 2005.

#### **11. Illegal detention torture and false implication by Jehanabad police in Bihar (Case No. 1762/4/2002-2003)**

**4.83** The Commission received a complaint dated September 3, 2002 from one Mohd. Harun Khan, r/o Village Dharnai, District Jehanabad, Bihar stating that his brother Hasmi Khan, a driver was picked up on August 8, 2002 by Amarendra Kumar Jha, Officer Incharge, Kurtha Bazar Police Station on the allegation that he was carrying a dead body of an unknown lady in his jeep. He has further stated that his brother was allegedly subjected to torture for six days by the said police officer and later on falsely implicated in crime case No. 299/2002 u/s 302/201/34 IPC on August 8, 2002. The complainant has prayed for suitable compensation for the unlawful detention of his brother and action against errant policemen.

**4.84** The Commission called for and obtained a report from Superintendent of Police, Jehanabad. The report received indicated that the victim was brought to the Police Station Kurtha Bazar on August 3, 2002 and was produced in the court on August 6-7, 2002. The Investigating Officer of the case was suspended for negligence in producing the accused (brother of the complainant) without case diary and the memo of evidence resulting in his illegal confinement in the police lock-up. The police officer was also punished under the service rules for dereliction of his official duty.

**4.85** The Commission, considered the report on September 30, 2003 and directed issue of notice to State of Bihar through its Chief Secretary to show cause as to why immediate interim relief u/s 18(3) of Protection of Human Rights Act, 1993 be not granted to the victim.

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**4.86 The Commission vide proceedings dated March 3, 2006 considered a communication dated May 12, 2005 received from Government of Bihar in which the State Government recommended/suggested for payment of Rs. 25,000/- as interim relief. The Commission approved the payment of Rs. 25,000/- by way of interim relief to the victim and the case was closed.**

### **12. Illegal detention and torture of a minor by Haryana Police (Case No.1453/7/2005-2006/FC)**

**4.87** A News report, published in the Chandigarh edition of 'Dainik Tribune' (Hindi) captioned 'Bachon ko Yatnay: CID Jaanch ke Aadesh' (Torture of Children: CID Enquiry ordered), wherein it was reported that a 12 year old child, namely, Mukesh, resident of Jhugi colony, situated in the compound of Mansa Devi was picked up and tortured by the Police. More reports that appeared on the TV channel, had shown that both hands of the victim were tied and he was hanged from a tree and beaten up by two Policemen.

**4.88 As the news item prima facie disclosed violation of rights of children, the Commission vide proceedings dated October 13, 2005 took cognizance and observed that no civilized State could allow such brutalities to go unpunished.** It directed to transmit copies of the press report and transcript of the TV Channel report to Director General of Police, Government of Haryana to look into the matter and send his report within three weeks.

**4.89** As response was not received within the stipulated period of time, a reminder was issued to the DGP, Haryana for his comments.

### **13. Illegal detention and torture by Karnal Police, Haryana (Case No.2447/7/2002-2003/FC)**

**4.90** The Commission received a complaint from one Ram Kishan of Karnal, Haryana alleging that his son Pratap Singh was arrested on February 6, 2003 and illegally detained for three days by Ajmer Munshi and Ramesh of CIA Staff, Karnal. The victim, on February 20, 2003 committed suicide due to the alleged police action against him. The deceased in his suicide note stated that during police custody, he was mercilessly beaten up by the two above named policemen and falsely implicated in a case.

**4.91** The Commission taking cognizance of the complaint directed to transmit a copy of the complaint to SP, Karnal to look into the allegations contained therein and submit his comments.

**4.92** In response to the Commission's directions, a report was received from SP, Karnal, which stated that a magisterial inquiry was conducted into the matter.

**4.93** Upon perusal of the report, the Commission, on April 23, 2004 observed that during magisterial inquiry, it had been proved that the three named accused were kept in illegal

detention by the CIA staff, Karnal. The Commission further observed that it is a fit case for grant of immediate interim relief, and directed to issue notice to the Chief Secretary, State of Haryana to show cause as to why immediate interim relief u/s. 18 (3) of the Protection of Human Rights Act, 1993 be not paid to Pawan, Bijendra Singh and the next of kin of the deceased Pratap Singh.

**4.94** In response to the show cause notice, the Under Secretary Home, Government of Haryana informed the Commission that the concerned S.I. and the constable who had illegally detained Pratap Singh, the deceased, had been proceeded against and punishment of stoppage of one increment without cumulative effect had been imposed on them. It was further mentioned that the punishment imposed on the policemen should be considered as sufficient and the State Government should not be made liable for payment of compensation. A request had, therefore, been made to review and drop the proceedings for grant of 'interim relief' u/s 18(3) of the Protection of Human Rights Act, 1993, to the next of kin of the deceased, Pratap Singh.

**4.95** While considering the matter on January 17, 2005, the Commission gave its careful consideration to the stand of the State Government and inter alia observed as under:

**“That Pratap Singh had been illegally detained has not only been established by the Magisterial Inquiry, but also accepted by the State Government, which has proceeded against the delinquent police officials departmentally. To deprive a citizen of his liberty without any authority, illegally, cannot be permitted by a civilized society. The very fact that the deceased had been kept in illegal detention by the CIA staff, Karnal would immediately invite a recommendation from the Commission for ‘immediate relief’ to the next of kin of the deceased for the illegal detention, though not for the death of the deceased.”**

**4.96** The Commission, therefore, recommended that a sum of Rs. 25,000/- be paid to the next of kin of the deceased, Pratap Singh, as 'interim relief' within six weeks and compliance report be submitted to the Commission.

**4.97** The Under Secretary (Home) for Financial Commissioner & Principal Secretary to Government of Haryana, Home Department submitted a compliance report with a copy of the receipt in proof of payment of Rs. 25,000/- made to Shri Ram Kishan, the father of the deceased, Pratap Singh.

**4.98** The Commission considered the matter on August 22, 2005 and closed the case.

#### **14. Illegal detention by Faridabad Police (Case No. 328/7/2001-2002)**

**4.99** Complainant in his complaint dated May 25, 2001 has stated that on December 28, 2000 on the eve of Id, his son Inkalab was picked up by a police party and produced before the Magistrate as a proclaimed offender in a case in which his son was already

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acquitted in the year 1990. He alleges that Rs. 780 and a Titan watch was also snatched by policemen from his son. His son remained in unlawful confinement till January 5, 2001. He has prayed for an inquiry and action against errant policemen.

**4.100** Pursuant to the directions of the Commission, DGP, Haryana submitted report, which disclosed that as per record of the police, son of the complainant Inkalab, alongwith another, was arrested in Cr. No. 7 dated January 4, 1986 u/s 160 IPC P.S. Hodal. Report further disclosed that during the trial, son of the complainant absconded and was declared as proclaimed offender by the then SDJM Shri R.K. Bisnoi on November 18, 1990. Son of the complainant was arrested on December 29, 2000 and was produced before the Court.

**4.101** The Commission considered the material on record on August 8, 2002 and found that the complainant alongwith his complaint has submitted a copy of the order of SDJM Palwal dated January 5, 2001 wherein it has been stated that “accused Inkalab has already been acquitted vide judgment October 26, 1990 by the Court of R.K. Bisnoi, the then SDJM Palwal and in fact co-accused, namely Ayub Khan was declared a proclaimed offender on November 18, 1989 and Inkalab was never declared a proclaimed offender. This shows that SHO P.S. Hodal had wrongly arrested the accused without verifying the facts, which has resulted in the illegal detention of Inkalab. Accordingly, the Commission directed that a letter be written to SP, Faridabad for taking appropriate department action against SHO PS Hodal and ASI Ram Lubhaya, who moved the application for remanding Inkalab to judicial custody”. The Commission also observed that it is a fit case for award of immediate interim relief u/s 18(3) of the Protection of Human Rights Act, 1993 and directed State of Haryana through its Chief Secretary to show cause why immediate interim relief be not granted to Inkalab.

**4.102** In response, the Financial Commissioner & Principal Secretary to the Government of Haryana has reported that the victim was arrested inadvertently by the local police without any malafide intention, ill-will or vindictiveness. He requested the Commission to review the case and to drop the grant of interim relief.

**4.103** The matter was considered by the Commission on April 13, 2005 when it observed as under:

*“The Commission finds no justification in the contention of the State for dropping the proceedings u/s 18(3) because of the fact that Inkalab was arrested inadvertently by the local police due to human error on the part of Naib Court, Dhan Singh, who had made wrong entry in the record. Complainant has forwarded a copy of the order of SDJM, Palwal dated January 5, 2001 which indicates that Inkalab was acquitted by the court in the relevant matter vide order dated October 26, 1990 and his co-accused Ayub Khan was declared proclaimed offender on November 18, 1989. However, in the same matter, Inkalab was again arrested without verifying the facts, which resulted in his*

*illegal detention from the date of his arrest till 5 January, 2001. His illegal detention is also admitted by the State authorities in their response. Thus, it is obvious that the human rights of Shri Inkalab were violated and his freedom was curtailed without any reason. Even if it is accepted that Inkalab was arrested because of a wrong entry made by Naib Court, Dhan Singh and there was no ill-will on the part of the arresting authority, the fact remains that his right of freedom has been violated for which the State is vicariously liable to compensate him.*

*Therefore, we are of the view that this is a fit case for recommendation of 'interim relief' u/s 18(3) of Protection of Human Rights Act, 1993 to the victim, Inkalab. Accordingly, we recommend a payment of Rs. 5,000/- as 'immediate interim relief' to the victim, Inkalab within four weeks. Chief Secretary, State of Haryana is requested to send compliance report along with proof of payment within four weeks.*

**4.104** DGP, Haryana vide letters dated July 18, 2005 and July 11, 2005 informed the Commission that SP, Faridabad deputed Shri Shiv Narayan, ASI to give the interim amount of Rs. 5,000/- to Shri Inkalab. Accordingly, ASI visited the village on July 2, 2005 and July 5, 2005 to hand over Rs. 5,000/- to Shri Inkalab. Shri Inkalab was not available in the village Shri Yasin Khan father of the complainant refused to accept the amount of Rs. 5,000/-, as he stated that they have no intimation from NHRC regarding the interim relief and that he will not accept the amount through the police. The Sarpanch of the village has also verified the visit of the ASI. It was further stated in the report that whenever Shri Inkalab is found present in the village, amount of interim relief will be given to him and a report will be sent to the Commission.

**4.105** The Commission considered the compliance report of DGP, Haryana on August 3, 2005 and closed the case.

**15. Illegal detention and torture by Maharashtra Police.**  
(Case No. 1220/13/1999-2000)

**4.106** The Commission received a complaint from Shri M.P. Shetty of Wadala, Mumbai, Maharashtra, along with a copy of a press report that appeared in a Marathi Daily newspaper regarding police atrocities. It was alleged that on September 18, 1999 Shri Ramachandra Pujari and Damodar Shetty were picked up by the police from a restaurant and taken to Dharavi Police Station where they were beaten up and Shri Pujari was sexually abused in the filthiest and beastly manner.

**4.107** The Commission, on November 22, 2000 after considering a report received in this regard from the office of Deputy Commissioner of Police, Zone-VIII, Bandra(E), Mumbai directed to issue a notice to Director General of Police, Maharashtra to show cause as to why a sum of Rs. 50,000/- to each of the two

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**victims be not paid as immediate interim relief u/s 18(3) of the Protection of Human Rights Act, 1993.**

**4.108** In response, Joint Secretary, Home Department, Government of Maharashtra vide fax message dated March 22, 2006 intimated that State Government has decided to pay compensation of Rs. 50,000/- to each of the two victims as per the recommendation dated November 22, 2000 of the Commission. It was further reported that the payment of compensation would be made to the victims before March 29, 2006 and proof of payment will also be furnished to the Commission.

**4.109** Proof of payment is awaited.

### **16. Unlawful detention and torture by police in Karnataka (Case No.137/10/2000-2001)**

**4.110** People's Democratic Forum (PDF), through its Convener on May 17, 2000 referred a case relating to illegal detention and subsequent death of one Mohan on February 7, 2000 due to torture in police custody in Malleshwaram Police Station in State of Karnataka. It was alleged that the victim was picked up in the morning of February 6, 2000 while coming back from K.C. General Hospital after serving breakfast to his hospitalized father and taken to Malleshwaram Police Station, where he was subjected to severe torture. After his release, he was admitted to K.C. General Hospital and shifted to Victoria Hospital where he expired on February 7, 2000. A prayer was made for registration of a case against the delinquent police officials and compensation of at least Rupees Two lakhs to the family as well as government job for the wife and free education for the two daughters.

**4.111** The Commission received a report from the DGP, Karnataka, which revealed that the concerned police officials were immediately put under suspension on February 7, 2000 and departmental enquiry was also ordered against them. The State Government has paid Rs. 10,000/- to the family of the deceased as compensation.

**4.112** The Commission considered the matter and recommended a sum of Rs.25,000/- as interim relief to the family of the deceased. Since the State Government has already paid a sum of Rs. 10,000/- to the family of the deceased, the Commission recommended that the balance amount of Rs. 15,000/- be paid to the family of the deceased within six weeks and called for compliance report together with the proof of payment.

**4.113** The compliance report is awaited.

### **17. Non-registration of FIR by Tamil Nadu Police in a suspicious death case (Case No.763/22/2001-2002/FC)**

**4.114** The complainant stated that one B. Nagarajan, a student of B.E. in Noorul Islam Engineering College in Kumarakovil, Kanyakumari District, Tamil Nadu was threatened

on October 4, 2001 by some strangers in the college and, therefore, he lodged a complaint with the local Police Station through the college management, but allegedly no FIR was recorded. Thereafter, on October 10, 2001, Nagrajan went to college, but never returned and on October 23, 2001 his dead body was found hanging on a tree. He suspects that ragging by senior students of the College might be the real cause of death and prayed that the investigation of the case be entrusted to CBI.

**4.115** Pursuant to the directions dated December 4, 2001, DGP, Tamil Nadu forwarded a copy of the report dated March 19, 2002 of SP, Kanyakumari in which it was admitted that Thikkalay Police Station officers did not take sincere steps when the first complaint was made by the deceased on October 4, 2001. According to the report, if the police had investigated the matter on proper lines, the death could not have occurred. The report further stated that as there were some other doubts, the matter has been transferred to DIG, Tirunalvali for further investigation. A further report received from SP, Kanyakumari disclosed that the deceased probably committed suicide due to poor performance in a series of tests conducted in the Engineering College.

**4.116** The Commission considered both the reports of SP, Kanyakumari and observed that the final report did not inspire confidence and was merely a cover up. The Commission, therefore, recommended that the case be handed over to state CBCID. The Commission also directed issue of a notice to the State of Tamil Nadu to show cause as to why 'immediate interim relief' u/s 18(3) of the Protection of Human Rights Act be not granted to the next of kin of the deceased.

**4.117** After perusing the response to the show cause notice, the Commission vide proceedings dated April 20, 2005 recommended to the Government of Tamil Nadu to pay 'interim relief' of Rs. 50,000/- to the next of kin of the deceased and to forward proof of payment.

**4.118** In response to the proceedings of the Commission dated October 17, 2005, the Home (Pol-19) Department Government of Tamil Nadu conveyed to the Commission that the amount of Rs. 50,000/- as recommended by the Commission was drawn by the SP, Kanyakumari Dist. and disbursed to Thiru Balakrishnan, father of the deceased, Thiru B. Nagarajan on November 16, 2005. Proof of payment had also been enclosed with the report.

**4.119** On receipt of the compliance report, the Commission closed the case on November 23, 2005.

### **18. Killing of Dalits during indiscriminate police firing, Bihar (Case No. 3116/4/98-99)**

**4.120** The Commission on January 27, 1999 took *suo-motu* cognizance of a news item about killing of 21 Dalits in Jehanabad, Bihar, which appeared in *The Indian Express* dated January 27, 1999 and other National Dailies.



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**4.121** After perusing the news item, the Commission directed issue of notice to Chief Secretary and DGP, Government of Bihar. **The Commission also directed that immediate steps be taken for investigation of the matter with a view to bringing to book the guilty persons and to take immediate steps to prevent recurrence of such incidents and also to provide relief to the members of the families of the deceased and the injured.**

**4.122** In response, DGP, Bihar vide communication dated February 5, 1999 informed the Commission that 22 persons were killed and 11 were injured in the incident in Village Rupsagar Tola, Shankarbiga in Mehandia PS District Jehanabad on January 25, 1999. All the deceased were not Dalits. Report further disclosed that Case No. 5/99 has been registered in Mehandia PS under various sections of IPC and SC/ST Act against 24 named accused and many unknown persons.

**4.123** **Additional Home Commissioner, Special Secretary, Bihar forwarded a letter dated December 15, 2002 submitted to him by DM, Jehanabad stating that a total sum of Rs. 28,10,000/- had been disbursed as compensation to the next of kin of the deceased and the injured persons. Report further disclosed that a sum of Rs. 20,000/- had been paid as compensation plus special compensation of Rs. 5,000/- to the next of kin of each of the 22 deceased for performance of their last rites. As regards the injured, it was informed that each of the 11 injured persons had been paid Rs. 10,000/-.**

**4.124** DIG (HR), Bihar vide communications dated October 5, 2004 and July 11, 2005 informed the Commission that CB/CID after investigation in the said crime case had submitted charge sheet No. 12/99 dated April 10, 1999 and charge sheet No. 37 dated August 15, 2003 besides the supplementary charge sheet No. 67/2000 dated June 26, 2000 in the court of Divisional Judicial Magistrate, Jehanabad against the accused.

**4.125** On being satisfied with the reports and the case being sub-judice, the Commission directed closure of the case.

### **19. Killing of innocent persons by Meghalaya Police (Case No.11/15/2005-2006)**

**4.126** The Commission on October 7, 2005 received an E-mail referring to the news, which appeared in *The Morung Express*, dated October 7, 2005 indicating that five suspected NSCN (IM) Cadres were gunned down on October 5, 2005 by a Special Operation Team (SOT), Meghalaya Police at Mawlyngade, Sohryngkham, East Khasi Hills District. According to the Meghalaya Police, the incident occurred at 6 a.m. when the police, acting on an intelligence input, intercepted the heavily armed militants proceeding to an unknown destination in two separate vehicles. On being confronted, the militants suddenly opened fire on the police team who retaliated to firing, killing five, while about three cadres managed to escape. The police recovered from the possession of the slain militants arms and ammunition and also seized one of the vehicles. Denying the

police statement, however, the newspaper report mentioned that an examination of the bodies by a highly placed source indicated that the suspected NSCN (MI) Cadre had been arrested, tortured and then beaten to death after which bullets were pumped into their bodies.

4.127 The Commission also received a complaint from Mr. M. J. Vijayan, Coordinator, Civil Society Initiative, and representing an organisation, namely, The Other Media, Safdarjung Enclave, New Delhi alleging killing of five Naga's people by Meghalaya Police in a fake encounter.

4.128 Upon perusal of the e-mail and the press report, the Commission vide proceedings dated October 7, 2005 directed to call for a report from Chief Secretary, Meghalaya.

4.129 As no response was received from the Government of Meghalaya despite reminder, the Commission, on March 9, 2006, impressed upon the Chief Secretary, Meghalaya to furnish the report within four weeks.

**20. Assault on agitating workers of Honda factory by Haryana Police (Case No.681/7/2005-2006/FC & L.F.No.741/7/2005-2006)**

4.130 Taking *suomotu* cognizance of a news item widely publicised both by the print and electronic media, about the alleged brutal assault on the agitating workers of Honda Motorcycle and Scooters India (HMSI) by the Haryana Police at Gurgaon on July 25, 2005, the Commission on July 26, 2005 observed that in order to instil public confidence in the rule of law, an impartial investigation by an agency, independent of the State, into the police assault and the related incidents is called for. **The Commission recommended to the Government of Haryana to take effective steps for getting an independent investigation commenced, preferably by CBI, at the earliest. Chief Secretary, Haryana was also directed to send an action taken report in this behalf to the Commission within ten days. The Commission also appealed to all concerned to maintain peace and calm so that the investigation can be held fairly, impartially and expeditiously.**

4.131 Subsequent to the *suo motu* cognizance, in the matter, the Commission received a communication signed by representatives of some Trade Unions, Civil Activists and Women Groups, on the alleged police excess against the agitating workers. The Commission, subsequently, received another complaint dated July 26, 2005, from one Shri Sunil Kumar alleging that his brother, Kanwar Pal Singh was injured during the lathi charge on the workers of Honda Motor Cycles and Scooters, India by the Haryana Police on July 25, 2005. The Commission on July 29, 2005 directed the SSP, Gurgaon and DGP, Haryana to submit factual report. The Commission also directed to link these complaints with *suo-motu* cognizance /pending case under consideration.

4.132 In response, Chief Secretary, Government of Haryana; and SP, Gurgaon submitted their reports denying any death in the incident. The report further stated that certain cases

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were registered at Police Station arising out of the incident and State Government had sanctioned payment of Rs. 20,000/- to each of the persons injured in the incident and DRO, Gurgaon had been made the Nodal officer to ensure disbursal of the compensation.

**4.133** Upon perusal of the reports, the Commission vide proceedings dated August 8, 2005 directed Chief Secretary and DGP, Haryana to furnish the following information:

- (a) Whether the compensation of Rs. 20,000/- has been paid to the injured? And if so, to how many? Proof of payment in this regard may be furnished to the Commission;
- (b) The comments with regard to the allegations of Shri Sunil Kumar regarding his brother Kanwar Pal Singh be sent to the Commission; and
- (c) The name of the agency, which is investigating into the cases arising out of the incidents of July 25, 2005.

**4.134** In response, DGP, Haryana vide communication dated January 9, 2006 has furnished the following information:

- a) Kanwar Pal Singh, the brother of the complainant has not yet received compensation of Rs. 20,000/-.
- b) The complainant does not have a copy of the complaint, which he sent to the Commission, alleging injuries to his brother during the incident.
- c) Justice G. C. Garg, (Retd.) has been conducting a judicial inquiry into the incident of lathicharge on workers of HMSI on July 25, 2005.

**4.135** The matter is under consideration of Commission.

### **21. Death due to beating by Police in Maharashtra (Case No. 1886/13/2002-2003)**

**4.136** Complainant in his complaint dated December 27, 2002 has stated that on November 1, 2002, Police Inspector Shri Vikas Totawar, In-charge P.S. Patan, Zari Tehsil, Yavatmal, beat up one Mahadev Gedam, husband of Devkabai. He has further stated that Mahadev Gedam succumbed to the injuries inflicted upon him by Police Inspector named above. He has prayed for compensation and for any other relief considered appropriate by the Commission.

**4.137** Pursuant to the directions of the Commission dated May 7, 2003, Inspector General of Police, Human Rights, Maharashtra, Mumbai had submitted report. According to the report, a case vide Patan P.S. Cr. No. 22/02 u/s 302/201/34 IPC was registered against PSI Totawar and P.C. Kisan Sankuwar No. 841. Both were arrested on March 12, 2003 and released on bail as per orders of Hon'ble High Court, Mumbai Bench, Nagpur. The report further disclosed that Investigating Officer on completion of investigation has submitted charge sheet u/s 304, 201 IPC against two policemen named above on June 24, 2003 in the court of JMFC, Maregaon vide C.C. No. 47/2003. The case was pending trial.

4.138 The Commission considered the report on September 29, 2004 and felt strongly that it was a case of violation of human rights of the deceased by PSI Totawar and Constable Samkamar. Accordingly, State of Maharashtra, through its Chief Secretary, was asked to show cause as to why the Commission should not grant interim relief u/s 18(3) of the Protection of Human Rights Act, 1993 to the next of kin of the deceased.

4.139 Pursuant to the directions of the Commission, Joint Secretary to the Government of Maharashtra, Home Department vide report dated November 18, 2004 had reported that the Government of Maharashtra had decided to grant relief of Rs. 50,000/- to the next of kin of the deceased. The report further disclosed that necessary steps shall be taken for release of payment to the next of kin of the deceased after the approval of the Commission.

4.140 After considering the facts and circumstances of the case, the Commission vide proceedings dated December 29, 2004 observed that there had been a gross violation of the human rights of the deceased at the hands of the concerned police officials, which stood established by the reports received from the State authorities itself. A precious life has been lost. Though it was not possible to assess the loss in terms of money, the Commission while recommending grant of interim relief u/s 18(3) of the Protection of Human Rights Act, 1993, attempted to mitigate immediate suffering of the next of kin of the deceased by application of some balm to their wounds. The amount of Rs. 50,000/- as relief decided by State Government was grossly inadequate. The Commission, therefore, recommended payment of Rupees One Lakh as 'interim relief' be made to the next of kin of the deceased.

4.141 State of Maharashtra through its Joint Secretary vide communication dated April 12, 2005 informed the Commission that the State Government has sanctioned an 'interim relief' of Rupees One lakh to the next of kin of the deceased Mahadeo Yadav Geddham vide Government Resolution dated February 24, 2005. It was further reported that the sanctioned amount had been paid to the next of kin of the deceased.

4.142 Since recommendations of the Commission contained in the proceedings dated February 29, 2004 had been accepted, the case was closed.

## 22. False implication by Panipat Police (Case No.1062/7/1999-2000/FC)

4.143 The Commission received a complaint from one Sona of Panipat, Haryana. The complainant has stated that one Sitara, daughter of Nasheer alias Nisha, Kakor, Baghat was killed on September 2, 1999 regarding which a case was registered. The police officials were allegedly threatening to falsely implicate her husband in the above-mentioned case, if the bribe of Rs. 20,000/- was not paid to them. Intervention of the Commission, action against the erring police officials and justice was prayed.

4.144 In response to the Commission's direction, a report was received from SP, Panipat stating that regarding the incident, a case NO. 402/99 u/s.302/201/34 IPC was registered

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at P.S. Town, Panipat. During investigation of this case, Bira (Husband of the complainant) was arrested on December 4, 1999 by the police. During further investigation, Bira was found innocent and was wrongly arrested by Shri Rajender Singh, SHO, PS Town Panipat. Therefore, action was being taken against Rajender Singh, Inspector, SHO, PS Town Panipat.

**4.145** The Commission, after considering the report, by proceedings dated April 2, 2002, observed that it was **prima facie** found that arrest of Bira, was wrong. It clearly amounted to violation of his human rights and negligence on the part of SHO Rajinder Singh in preventing such abuse of power by the police. Thereafter, the Commission was of the opinion that there were grounds for the grant of **immediate interim relief** to Bira for being harassed by the police. Accordingly, the Commission directed issue of notice to Chief Secretary, State of Haryana to show cause as to why immediate interim relief u/s 18(3) of Protection of Human Rights Act, 1993 be not granted to the victim.

**4.146** In response, the Financial Commissioner and Principal Secretary (Home) Government of Haryana sent a report dated October 7, 2002 stating that the complainant's husband Bira was arrested by the police on the basis of confession of co-accused in case Cr.No.402. During the course of investigation, he was found to be innocent and the court was requested to discharge him. A show cause notice was issued to Inspector, Rajender Singh, who had arrested him and after inquiry, he was exonerated from the charges. There was, therefore, no justification for making payment of immediate interim relief.

**4.147** While considering the matter on September 22, 2004, the Commission found the stand taken by the State Government to be based on an incorrect appreciation of the proper construction and scope of Section 18(3) of Protection of Human Rights Act, 1993. The Commission observed that:

*'Immediate Interim Relief' envisaged by Section 18(3) of the Act has to be correlated to the established violation of human rights of the citizen by public servants. By no stretch of imagination can it be argued that award of this 'immediate interim relief' is dependent upon the strict establishment of criminal liability after a full dress court trial or departmental proceedings. If the view given by the State is accepted, the relief envisaged by Section 18(3) of the Act would then neither be 'immediate' nor 'interim'. A meaningful and harmonious construction of Section 18(3) of the Act leaves no doubt that the Commission is entitled to invoke its benevolent sweep on a prima facie view of the matter, irrespective of whether there is any litigation – civil or criminal pending relating to the matter. In taking this view, the Commission relies upon the Preamble of the Act, which makes manifest about Parliament's anxiety to provide an additional forum for 'better protection' of human rights and, therefore, it is futile to argue that exoneration from the criminal court or departmental proceedings can operate as a limiting factor or influence on the scope of the jurisdiction of the Commission to recommend 'immediate interim relief, u/s*

*18(3) of the Act in cases of distress. A welfare State is obliged to afford 'relief' to its citizens in distress, particularly, those who are victims of violation of their human rights by public servants. The Commission has, in a number of cases, repelled the arguments similar to the one raised by the State in this case and opined that limiting of the statutory relief u/s 18(3) of the Act only to cases in which criminal liability of the offending public servants is established in a Court of law beyond reasonable doubt by standards of criminal evidence is, "to thwart an otherwise civilized piece of legislation by importing totally irrelevant limitations."*

**4.148** The Commission, therefore, observed that the ground urged by the State was not relevant in denying 'immediate interim relief' to the victim whose wrongful arrest has been established by Addl. Supt. of Police, Panipat in his report. The Commission, therefore, found that since no logical, relevant or legal cause had been shown to the notice as to why 'immediate interim relief' u/s 18(3) of the Act be not granted to the victim by the State. It is recommended that the State pay to the victim a sum of Rs 20,000/- and the compliance report submitted to the Commission within four weeks.

**4.149** Under Secretary, Home for Financial Commissioner and Principal Secretary to the Government of Haryana had forwarded a copy of letter dated March 24, 2005 addressed to the DGP, Haryana according sanction for the payment of Rs. 20,000/- to Bira, r/o Village Nurmala Distt. Panipat and asked him to send the receipt of disbursement to the Government of Haryana.

**4.150** Proof of disbursement is awaited.

### **23. Kidnapping of minor girls from outside BSF camp in Bihar (Case No. 2610/4/2005-2006-WC)**

**4.151** The Commission received a complaint dated October 5, 2005 from one Smt. Shiv Devi, w/o Jai Singh, 10<sup>th</sup> Battalion BSF, Distt. Kishanganj, Bihar alleging that her two daughters namely Radha and Neetu aged 17 and 13 years, respectively, had been kidnapped from outside the camp of BSF 10<sup>th</sup> Battalion on September 19, 2005. When her husband approached the police at police station, Kishanganj, initially they refused to register the case, but later they registered the FIR as per their convenience and did not include the relevant sections of the law on account of their connivance with the accused. They made her husband sign the report. As the senior officers did not take any action on their complaint, apprehension of the abuse of the children/their sale was, therefore, raised. The complainant further alleged that on an earlier occasion on July 13, 2005, her daughter Radha, under influence of drugs, had been abducted by the accused Parminder Monu s/o Lekh Raj Sharma alongwith Pawan and others from Punjab and sold for Rs. 70,000/-. She was later recovered by the local police with the help of Mumbai police, but the Punjab police did not register any case. A prayer was made before the Commission for action against the accused and restoration of her two daughters.

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**4.152** Taking cognizance, the Commission directed spot investigation by its investigation team. While the matter was pending consideration in the Commission, Shri Jai Singh submitted another complaint alleging that his daughters had been sold out at red light area in Varanasi raising doubts about the presence of the girls at Varanasi on the basis of photographs of rescued girls that appeared in the newspaper on October 26, 2005. The Investigation Team of the Commission was, therefore, also directed to conduct investigations at Varanasi.

**4.153** As a result of the timely intervention by the Commission and the lead provided by the investigating team of the Commission, the two girls were recovered from Mumbai and Pratapgarh on December 14, 2005 and December 17, 2005, respectively, by Kishan Ganj Police.

**4.154** The report dated March 28, 2006 submitted by the Fact Finding Team of the Commission is pending further consideration with the Commission.

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

#### **24. Death of four persons in indiscriminate firing by RPF Constable at the Railway Station (Case No.2252/12/2001-2002-FC)**

**4.155** The Complainant, Shri R.H. Bansal, resident of Rohini, Delhi while referring to a case of indiscriminate firing by one R.P.F. Constable, Sh. Arvind Srivastava, on the public at the Bhopal Railway Station on March 11, 2002, resulting in the death of three persons and injuries to 11 persons, prayed before the Commission for grant of compensation for the dead and injured victims and punishment for the delinquent constable.

**4.156** The Commission took cognizance of the complaint and called for a report from Railway Board. In response, the Railway Board confirmed the incident of indiscriminate firing on March 11, 2002 by Sh. Arvind Srivastava, PC killing three persons, namely, (1) S/ Shri Mahaveer Prasad Singh, Head Constable, (2) Dalchand Ken, Constable and (3) K.B. Singh, CGS and injuring 11 persons. It was also intimated that one of the injured, namely, Shri P. Satya Narayan, Asstt. Driver, also succumbed to injuries on April 2, 2002. It was further reported that the accused constable Shri Arvind Srivastava was dismissed from service w.e.f. April 10, 2003 and a criminal case No.123/2002 u/s 307/332/302 of IPC and 145 of Railways Act was registered against him. He was arrested and sent to judicial custody.

**4.157** Upon consideration of the aforesaid report, the Commission issued a show-cause notice to the Railway Board u/s 18(3) of the Protection of Human Rights Act 1993 and also called for the status report of the case registered against the accused. In reply to the Show Cause Notice, the Railway Board intimated that, under section 18 (3) of the Protection of Human Rights Act, RPF being an Armed Force of the Union, NHRC only can seek a report from the Central Government and on receipt of the said report, it can send its recommendations to the government and likewise Central Government shall inform

the Commission of the action taken. Since Section 19 is having overriding effect on Section 18 (notwithstanding anything contained in the Act), the provision of interim relief u/s 18 (3) is not applicable, while dealing with the complaint of violation of human rights by a member of an Armed Force of the Union.

**4.158** As regards status of criminal case no. 12/3/2002, the report mentioned that it was still under trial in the Special Court of Bhopal.

**4.159** The Commission vide its proceedings dated November 29, 2004 considered the above report and observed that the issue, i.e., whether the Commission can recommend payment of interim relief in respect of cases relating to Armed Forces, stands settled in an earlier matter (Cases No. 1060/20/2000-2001 and No. 1061/20//2000-2001), wherein communication dated October 31, 2003 from Director (HR), MHA clarified that interim compensation can be recommended by the Commission in respect of cases relating to armed forces also. The Commission sent relevant documents to the Railway Board for its information and called for the response to the show cause notice.

**4.160** The Commission vide its proceedings dated March 6, 2006 considered the submission made by the Railway Board, in response to the show cause notice that there was no scheme for granting financial relief to non-railway personnel for the incident. The Commission observed that four innocent persons lost their lives because of wrongful act committed by RPF constable on duty. Therefore, the Railway Board cannot avoid its vicarious liability to pay interim relief to the next of kin of unfortunate victims who lost their lives. Accordingly, keeping in view the overall facts and circumstances of the case, the Commission recommended payment of Rupees one lakh each to the next of kin of the four victims 1) S/Shri Mahavir Prasad 2) Dal Chand Ken, Constable 3) K. B. Singh, CGS and 4) P. Sathya Narayanan, Asstt. Driver.

**4.161** The compliance report is awaited.

**25. Death of Fl. Lt. Abhijit Gadgil in Air Crash at Surajgarh, Rajasthan  
(Case No. 1867/20/2004-2005)**

**4.162** The Commission received a complaint from one Kavita Gadgil stating that her son Ft. Lt. Abhijit Gadgil died in an air crash involving MIG -21 at Surajgarh, Rajasthan. She had received a letter dated March 12, 2003 from the Inspector General, Air Headquarters stating that the accident was due to disorientation during a dark night take off. It was further mentioned in the letter that records indicated that her son was weak in certain aspects of flying which was monitored. She challenged the correctness of the letter and stated that while the air crash occurred due to technical failure, Indian Air force allegedly was trying to hide the true facts and blamed her son for the crash. She had sought relief in the form of an apology from Chief of the Air Staff for the trauma caused to her besides withdrawal of offending letter of the Inspector General and for expunction of remarks made against her son.

**4.163** Upon consideration, the Commission vide proceedings dated December 22, 2004



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directed that a copy of the petition be forwarded to Secretary, Ministry of Defence for his comments within four weeks.

**4.164** While the comments of the Secretary, Ministry of Defence were awaited, Mrs. Kavita Gadgil vide communication dated July 7, 2005 informed the Commission that Air Chief Marshal S.P. Tyagi in his letter addressed to her has apologized for the hurt caused and has further stated that the letter of the then I.G. dated March 12, 2003 **stands withdrawn and will be expunged from the official records**. Smt. Gadgil expressed her gratitude to the Commission for pursuing the case and vindicating her honour.

**4.165** Since appropriate action was taken to the satisfaction of the complainant, the Commission vide proceedings dated July 27, 2005 closed the case.

### *d) Human Rights Violation by other States Agencies*

#### **26. Death of Kailash Chandra Sharma due to electrocution, in Muradabad, Uttar Pradesh (Case No.11789/24/1999-2000)**

**4.166** The Commission received a complaint dated September 23, 1999 from Smt. Ramarani R/o Muradabad, UP, alleging that her 33 year old husband, Kailash Chandra Sharma, who was the only earning member of the family, was electrocuted on September 24, 1998 when he touched an electric pole, while going to the market. A report in respect of the incident was lodged at Chandausi PS. She prayed for proper compensation and justice, since only an interim compensation of Rs. 20,000/- was paid to her by the officials of the Electricity Board.

**4.167** Vide proceedings dated October 31, 2000, the Commission considered a report received from the General Manager, Electricity Board stating that the matter was enquired through the Executive Engineer. The inquiry revealed that on the day of the incident, due to heavy rain, suddenly the electric current passed through electric pole and the complainant's husband was electrocuted. A compensation of Rs. 20,000/- had been paid to the next of kin of the deceased. **While holding that this was a clear case of negligence on the part of the electricity authorities, the Commission directed the Chairman/G.M. of the Electricity Board to show cause why a sum of rupees one lakh be not awarded to the next of kin of the deceased as immediate interim relief. As the UP Power Corporation Ltd. did not show any cause against the award of compensation, vide proceedings dated July 30, 2001, the Commission directed for payment of rupees one lakh as compensation to the next of kin of the deceased.**

**4.168** Vide proceedings dated June 28, 2004, the Commission considered a report received from the General Manager, UP Power Corporation Ltd., which indicated that after adjusting Rs. 20,000/- already paid, a sum of Rs. 80,000/- was paid to the wife of the deceased on March 13, 2003. The Commission, however, observed that it had directed the Corporation to pay Rupees One lakh, which was in addition to Rs. 20,000/- paid by the

Corporation as ex-gratia. There was, therefore, no reason to deduct the said amount from the immediate interim relief recommended by the Commission. The General Manager, UP Power Corporation, Lucknow was asked to pay the balance of Rs. 20,000/- to Smt. Ramarani.

**4.169** As the authorities submitted a further communication dated March 24, 2005 confirming the payment of Rs. 20,000/- also and proof of payment was furnished, the case was closed on June 8, 2005.

**27. Death of Jagrup due to Electrocutation in Khiri, UP  
(Case No.37670/24/2001-2002)**

**4.170** The Commission took cognizance of a complaint dated 28.1.2002 received from Smt Jairani, r/o Gram Kishunpur, P/s. Jamuni, Distt. Mohammadi Khiri. It was alleged that on June 22, 2001, when her husband was working in the fields, the live electricity cable fell on him as a result of which he was seriously injured. He was taken to Shahjahanpur hospital, but the head injury received by him was so grievous in nature that he succumbed to injuries. Post mortem was also conducted on June 24, 2001. She approached the Commission for taking an appropriate action in the matter, so that she may get compensation.

**4.171** The Commission considered a report received from the District Magistrate Lakhimpur Kheri, which indicated that during inquiry, it was found that the deceased was himself responsible for the accident. He was cutting the branch of a tree and before doing so, he should have informed the Electricity Department so that the flow of electricity could be stopped. As such, there was no fault on the part of the Electricity Department. However, upon re-consideration of the matter, District Magistrate Kheri submitted a report dated April 28, 2005 in which he stated that the officials of UP Power Corporation were prima facie responsible for the incident.

**4.172** While considering the matter on October 17, 2005, the Commission considered a report submitted by the General Manager (Commerce), Madhyanchal Vidyut Vitaran Nigam Ltd., which indicated that compensation amount of Rs. 20,000/- had been recommended to be paid to the next of kin of the deceased. The Commission observed as under:

*“.....The Commission is distressed with the approach taken by the officials of the transmission Company.*

*Payment of Rs. 20,000/- for the loss of a human life is not only grossly inadequate, but even borders on adding insult to injury. Loss of human life, by factors other than natural cause of death, is not capable of being calculated in terms of rupees. The object of granting ‘immediate interim relief’ u/s 18(3) of the Act for violation of Constitutional human right – right to life is only in the nature of helping the next of kin, in their hour of distress, by applying*

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*balms to their wounds. Grant of 'interim relief' is only a palliative for the act of instrumentalities of the State, which result in infringement of the fundamental right of the citizen to life. Grant of 'relief' is only a step to enable the State and its instrumentalities to repair the damage done to the victim's rights. We must emphasize that this Commission, which was set up by the Parliament 'for better protection of human rights' has been empowered under the aforesaid provision to grant relief of monetary compensation for contravention of the guaranteed basic and indefeasible rights of the citizen. It is a remedy in public law proceedings and is aimed not only to civilize public power, but also to assure the citizen that they live under a legal system, which aims to protect their interests and preserve their rights. 'Immediate interim relief' is in the nature of making monetary amends, in public law, for the wrong done due to breach of public duty of not protecting the indefeasible fundamental rights of the citizen.*

*The Commission would also like to bring to the notice of the General Manager, Madhyanchal Vidyut Vitharan Nigam Ltd. (who is the supplier of electricity) that even in cases of motor vehicle accident, deaths under Motor Vehicles Act, 1988, the Legislature in its supreme wisdom has now fixed a much higher amount of Rs. 50,000/- as compensation to next of kin of the deceased victim and Rs. 25,000/- to the victim who suffers permanent disability as 'no fault liability' i.e. without any proof of negligence on the part of motor vehicle driver. In that light also, compensation of Rs. 20,000/- in the event of death by electrocution provided under the Rules of the Transmission Company, therefore, sounds rather unrealistic and warrants a fresh look and an upwards appropriate revision, keeping in view the present day cost of living.*

*The Commission, therefore, requests the General Manager, Madhyanchal Vidyut Vitharan Nigam Ltd. to examine the matter personally with a humane approach, overlooking the technicalities and legalities and not only grant adequate relief to the next of kin of the deceased in this case, but also rationalize the rules for grant of compensation in cases of electrocution accidents in the future."*

**4.173** A further report dated December 9, 2005 submitted indicated that on reconsideration of the case, Chairman, UP Power Corporation Ltd. has directed that an amount of Rs. 50,000/- as interim relief may be paid and the amount of Rs. 20,000/- already paid be adjusted from Rs. 50,000/-. The report was taken on record vide proceedings dated February 22, 2006 and proof of payment called for.

**4.174** The proof of payment from the Corporation is, however, still awaited.

**28. Death of Satyabrata Narain Singh due to Electrocution in Palamu,**

**Jharkhand—(Case No.2010/4/98-99)**

**4.175** The Commission received a complaint dated September 18, 1998 from Smt. Ranjana Singh @ Ranju, w/o Shri Satyabrat Narain Singh R/o Daltonganj, Palamu alleging that on August 2, 1996 her husband Satyabrat Narain Singh came in contact with a live electric wire lying in front of gate of Morehouse, Patna as a result of which he was electrocuted and died.

**4.176** This Commission vide its proceeding dated August 24, 1999 considered a report received from the Home (Police) Department, Government of Bihar admitting the fact of death due to electrocution, registration of a case No. 16/96 dated August 5, 1996 at Kadam Kuan Police Station as well as non payment of any compensation for the death. The Commission made following recommendations:

- (i) **The State Government of Bihar to pay a sum of Rupees Two lakhs to the complainant by way of immediate interim relief.**
- (ii) **The Bihar State Electricity Board shall institute an inquiry into the circumstances, which led to the breaking of the live wire of transmission/distribution line.**
- (iii) **The Bihar State Electricity Board shall frame adequate regulations/guidelines to take appropriate and prompt measures to prevent the recurrence of such incidents involving human lives.**

**4.177** The Chief Engineer, Bihar Electricity Board vide his letter dated April 13, 2004 has informed the Commission about compliance of payment of Rupees Two lakhs to the next of kin of the deceased. By a subsequent communication dated November 12, 2005, Secretary, Bihar State Electricity Board, Patna has intimated compliance on the remaining two recommendations of the Commission. The Commission was informed that the Board re-constituted two Committees vide O.O. No. 1835 dt. June 27, 2005 comprising of technical and legal officers to (i) enquire into the circumstances, which led to breaking of live wire of distribution line causing death of Sri Satyabara Narain Singh on August 2, 1996 and fix responsibility for such laxity of officials and (ii) to frame adequate regulations/guidelines and appropriate measures to prevent the recurrence of incidents involving loss of human lives by electrocution.

**4.178** As the compliance report had been sent to the Commission, the case was closed.

**29. Prolonged detension of undertrial prisoner Jagjivan Ram Yadav in UP  
(Case No.35741/24/2005-2006)**

**4.179** The Commission came across a distressing news item under the caption '38 years in jail, without trial' published in the *Pioneer* dated January 24, 2006. Wherein it was reported that Jagjivan Ram Yadav had killed his neighbour's wife with a hammer and then surrendered to the police in the year 1968, when he was 32. He has been undergoing imprisonment

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for the last 38 years and has been rotting in a mental asylum. All the records relating to the murder committed way back in 1968 by Jagjivan Ram Yadav are missing. Jagjivan Ram Yadav was produced before the Court on July 5, 2005 when the Court sought records from the Khandaga Police Station where the case was registered. Several trips to the Court followed, but everytime, the Judge got the same reply – records were missing.

**4.180** On January 18, 2006, Jagjivan Ram again moved the Court for bail, but the response from the police was that Crime Case No.15/68 had been registered against him and the same was pending. No more information could be provided to the Court as the records could not be found.

**4.181** After perusing the contents of the news report, the Commission observed that if the contents of the report are true, it raises a serious issue concerning human rights of mentally challenged, under-trial prisoners as well as the right of an accused to a speedy trial and directed that the news item be sent to Chief Secretary and DGP, UP for their comments.

**4.182** A report dated March 28, 2006 submitted by the office of the DGP, Uttar Pradesh indicates that the record of the case is not available. However, the accused had been released on personal bond on February 14, 2006 by the Addl. Sessions Judge, Faizabad. He is presently staying in his house.

### **30. Unjustified continued detention of Undertrial Prisoner Shankar Dayal in UP (Case No.37484/24/2005-2006)**

**4.183** A news item under the caption ‘44 years in jail, no trial’ published in the *Amar Ujala* and *The Asian Age* dated February 13, 2006. The news item report indicated that Shankar Dayal, an under trial prisoner, had spent 44 years in jail (including 43 years in an asylum) and his family believed that he was dead.

**4.184** It was further reported that Shankar Dayal spent 43 years in the mental asylum and it was only in November last year that the asylum authorities finally wrote to the Unnao Jail authorities that Shankar was fit and could be returned to jail. The Jail authorities did not even bother to respond to the letter from the asylum. As the records relating to the case of Shankar were untraceable, hence the delay occurred. The Jail officials stated that as soon as the case records of Shankar were traced, they will start proceedings to bring him out of the asylum.

**4.185** Upon perusal, the Commission observed that if the contents of news item were true, it constituted gross violation of human rights of under trial prisoners and directed that a copy of the news item be sent to the Chief Secretary and DGP, UP for their comments.

**4.186** Response is awaited.

**31. Release of a discharged person from Mental Hospital after 35 years in Assam. (Case No. 31/3/2005-2006)**

**4.187** Shri Chaman Lal, Special Rapporteur, NHRC had, during his visit to L.G.B. Regional Institute of Mental Health, Tezpur, Assam on 31 March and 1 April 2005, found a prisoner, Khalilur Rehman, who had been admitted in the Institute on December 1, 1969 from Nagaon Dist. Jail, and since then was in custody. As per records, his conviction u/s 302 IPC was set aside by the High Court on April 30, 1968, i.e., before his admission to mental hospital. However, he had remained in the Mental Hospital for 35 years even after gaining fitness for discharge.

**4.188** **Vide proceedings dated May 31, 2005, the Commission observed that the prison authorities had failed to release the convict after his conviction u/s 302 I.P.C. was set aside by the High Court on April 30, 1968 and he was wrongly treated as a prisoner instead of a free person during the period of his treatment for mental illness in the hospital. As a result, the victim remained in the mental hospital, although cured for over two decades, in violation of his human rights. The Commission, therefore, issued notice to the IG Prison and Chief Secretary, Assam calling for a report.**

**4.189** In response, a report dated July 2, 2005 received from IG (Prisons), Government of Assam indicated that the released, Khalilur Rehman, was handed over to his sister on June 24, 2005. In view of the action taken report submitted by the State Government, the case was closed on October 3, 2005.

**32. Prolonged detention of Under Trial Prisoner in Tezpur Mental Hospital for 33 years in Assam (Case No. 26/3/2005-2006)**

**4.190** Shri Chaman Lal, Special Rapporteur, NHRC had submitted his report in regard to one Anil Kumar Burman, who had been admitted in LGB Regional institute of Mental Health, Tezpur on December 9, 1972 from Dhubri Jail after he was acquitted of his charges vide judgment dated July 15, 1969. It was reported that Shri Anil Kumar Burman has been released only on March 30, 2005 even though he was fit to be released on April 20, 1974 onwards. It was submitted that the detention of Shri Anil Kumar Burman in Mental Hospital as a prisoner for 33 years was a sad commentary on the state of human rights of a mentally ill person of our country.

**4.191** The Commission vide its proceedings dated December 31, 2005 issued notice to the Chief Secretary, Assam and IG (Prisons), Assam for their respective reports.

**4.192** IG (Prisons) Assam in his response dated July 2, 2005 has submitted that the fact of Anil Kumar Burman continuing in Mental Hospital even after becoming fit for discharge, came to the notice of the Prison Head Quarters on receiving a list of Jail-patients from the Director LGB Regional Institute of Mental Health on January 7, 2002. The Director was

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requested on February 2, 2002 to furnish the relevant details along with the statutory certificate of fitness in terms of Section 338 Cr. P.C., which was furnished on March 18, 2002. Thereafter, the officer in-charge, Bijni Police Station was requested on April 5, 2002 to find out the nearest relatives of Anil Kumar Burman and to obtain and forward the written consent of such relatives to receive him in his/her custody and care. He had since been discharged from the institute on March 30, 2005.

**4.193** The Commission on perusal of record on March 17, 2006 held it as a case of gross negligence on the part of the concerned officers. A man who was acquitted of his criminal charges in the year 1969 and was fit to be released from the Mental Hospital in year 1972 was detained in the Mental Hospital for 33 long years as a prisoner. **The Commission observed that it is a sad reflection of total apathy and lack of concern of the concerned officials. There had been prima facie gross violation of the human rights of Anil Kumar Burman. The Commission, accordingly, directed to issue notice to Chief Secretary, Assam to show cause as to why immediate interim relief u/s 18(3) of the Protection of Human Rights Act, 1993 be not given to the victim.**

**4.194** The response to the show cause notice from Chief Secretary, Assam was, however, awaited.

### **33. Under trial lady prisoner in detention for 32 years. Released at the instance of NHRC - Assam (Case No. 32/3/2005-2006)**

**4.195** Shri Chaman Lal, Special Rapporteur, NHRC, had during his visit to L.G.B. Regional Institute of Mental Health, Tezpur, Assam on March 31 and April 1, 2005 found a prisoner, Ms. Parbati Mallik, who was admitted there on May 9, 1977 when she was 21 years old. As per the record, sometimes she was declared fit and sometimes unfit. A lot of correspondences between Jail Department and Mental Institute had, however, yielded no results. She had, therefore, remained as an Under Trial Prisoner for 32 years.

**4.196** The Commission issued notice to IG prisons and Chief Secretary Assam calling for a report.

**4.197** IG (Prisons), Government of Assam, intimated that the prisoner was brought back to Central Jail, Silchar on June 30, 2005 and produced before the Sessions Judge, Cachar. Her case was fixed for July 4, 2005 for her production and orders.

**4.198** Considering the above report, the Commission directed the I.G. (Prisons), Government of Assam to send further report regarding release of the victim.

**4.199** A report dated November 3, 2005 received from the office of the IG Prisons, Assam indicates that the Session Judge, Cachar had, on July 4, 2005, further remanded the under trial prisoner to jail custody till July 19, 2005. However, on the basis of petition filed by her elder brother before the Court on July 6, 2005, the Court passed orders giving her custody to her brother on the execution of a bond of Rs.1,000/- only. Accordingly, on the basis

of execution of the bond by the brother and its acceptance by the Court, Parbati Mallik was handed over to her brother in the presence of her two other brothers and the President of the Gram Panchayat on the same day, i.e., July 6, 2005.

4.200 The matter is still under consideration of the Commission.

**34. Release of under trial prisoner after 54 years in Assam  
(Case No. 28/3/2005-2006)**

4.201 Shri Chaman Lal, Special Rapporteur, NHRC, during his visit to L.G.B. Regional Institute of Mental Health, Tezpur, Assam on 31 March and 1 April 2005 found a prisoner, **Machang Lalung**, who was admitted in the L.G.B. Regional Institute of Mental Health, Tezpur on April 14, 1951 at the age of 23 years as an Under Trial Prisoner of Guwahati jail u/s 326 IPC. He had remained as UTP in that Institute for 54 years.

4.202 The Commission issued a notice to the IG Prisons and Chief Secretary Assam calling for a report. **In response, the IG (Prisons), Assam, reported that the requisite action for his release was taken after the Chief Judicial Magistrate, Kamrup passed orders on July 1, 2005 for his release on a token personal bond of Re. One/-.** He was handed over to his nephew, **Badan Pator, on the same day.**

4.203 The Commission took note of the action taken by the State Government and closed the case on October 3, 2005.

**35. Release of Sonamani Deb after 33 years in Prison in Assam  
(Case No.27/3/2005-2006)**

4.204 Shri Chaman Lal, Special Rapporteur, NHRC, during his visit to L.G.B. Regional Institute of Mental Health, Tezpur, Assam on 31 March and April 1, 2005 came across a prisoner, Sonamani Deb, who was admitted on July 5, 1972 at the age of 16 years. According to the judgment delivered on November 8, 1971 by the Sessions Judge, Lakhimpur in a case u/s 302 IPC, Sonamani Deb was found 'not guilty' on account of being insane at the time of occurrence. The order said that he should be lodged in jail for treatment and observation. Since he was not convicted, he was to be admitted as a free person and not as a prisoner.

4.205 The Commission issued a notice to I.G. Prisons, Assam and Chief Secretary, Government of Assam calling for a report.

4.206 **In response, a report dated July 2, 2005 received from IG (Prisons), Government of Assam indicated that the State Government had taken necessary action and that Shri Sonamoni Deb was discharged and handed over to his brother Subodh Deb on July 2, 2005.**

4.207 The Commission, after considering the action taken report received from the IG (Prisons), Government of Assam, closed the case on October 3, 2005.



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### e) *Repatriation of two Pakistani Prisoners Kept in Jail*

#### 36. **Repatriation of two Pakistani Prisoners Kept in Jail:Rajasthan** (Case No. 390/20/2004-2005)

**4.208** Ms. Asma Jahangir, AGHS Legal Aid Cell, Lahore, Pakistan, vide her reference dated May 26, 2004 invited attention of the Commission to the illegal detention of two Pakistani Nationals, Ikhlq s/o Mohammed Ameer Bhatti and Mohammed Suleman s/o Mohammed Ismail Bhatti in District Jail Ganganagar, Rajasthan after their release on April 20, 2004 on completion of the term of imprisonment. The two boys had crossed the border and taken into custody by the Indian officials on August 30-31, 2000.

**4.209** The Commission called for reports from the Ministries of Home Affairs and the External Affairs, Government of India on the allegations.

**4.210** A report dated August 8, 2005 submitted by the Ministry of Home Affairs indicated that the two Pakistani nationals, namely, Ikhlq and Mohammed Suleman, who were lodged in the jail in the State of Rajasthan had been accepted for repatriation by the Pakistan Government. The Ministry of Home Affairs, Government of India had received their travel documents for endorsement of Exit permission. The Ministry of Home Affairs had sought information from the Government of Rajasthan as to whether any other case was pending against the two boys. The report further mentioned that the two Pakistani nationals would be repatriated to Pakistan immediately after receiving confirmation from the State Government of Rajasthan regarding their non-involvement in any other case.

**4.211** The Commission considered the report on September 21, 2005 and closed the case.

### f) *Some Other Important Cases.*

#### 37. **Mass grave discovered in Gujarat (Case No.403/6/2005-2006/FC)**

**4.212** The Commission on December 27, 2005 took *suo-motu* cognizance of a news report telecast by the CNN/IBN News T.V titled *Mass Grave Discovered at Gujarat Riot Site*.

**4.213** The report alleged that a mass grave has been discovered in Lunawada village of Panchmahal District, near Godhra, Gujarat in which eight skulls, allegedly belonging to the victims of post-Godhra riots of 2002 have been recovered. The bodies were reportedly discovered by the relatives of riot victims, who claim that there are atleast 21 bodies in the grave. The State Government confirmed the discovery.

**4.214** *The Commission considered the matter on December 27, 2005 and directed Director, CBI and DGP, Gujarat to furnish their comments within two weeks.*

4.215 Meanwhile, further complaints on the subject were received from Ms. Teesta Setalvad, Secretary, Citizen for Justice and Peace, Mumbai. The Commission while considering these complaints directed to send an urgent reminder to the Director, CBI and DGP, Gujarat for their response within two weeks.

4.216 In response, the Joint Director (SC.II), CBI, New Delhi, has reported (i) that a CBI Team visited Lunawada area in Godhra District where some local people had unearthed the mass grave of persons on December 29, 2005 and held a meeting with DM and District Superintendent of Police, Godhra, to ascertain the facts. (ii) that a **Crime No.11/02 dated March 1, 2002** was registered at Khanpur PS u/s 302, 307 and 120 B IPC regarding murder of 21 persons in the post Godhra riots.

4.217 During the course of investigation by the local police, inquest and post mortems were conducted. The dead body of a victim Yusuf Ahmed Shaikh was handed over to his wife. Out of the remaining 20 dead bodies, 12 were identified and 8 remained unidentified. In the absence of the claimants, these 20 dead bodies were handed over to the Nagar Palika, Lunawada. The Nagar Palika buried these dead bodies in a Government waste land at survey No.69, Village Jaisinghpura, Lunawada on March 2, 2002 and March 3, 2002. Later, the remaining eight dead bodies were also identified. Thus, all the 21 bodies were identified. (iii) that another case in **Crime No.13/02** was registered on March 3, 2002 at P.S. Khanpur u/s.302, 307 and 120-B IPC regarding murder of 14 persons in Lunawada. After inquest, 13 dead bodies were sent for post mortem. One dead body of a 3-4 month old infant was not brought for post mortem. Out of the 13 bodies, five were identified, claimed and handed over to the respective relatives. The remaining eight bodies were buried by the Nagar Palika, Lunawada. Later on, these bodies were exhumed and handed over to the relatives.

4.218 On December 27, 2005 about 10 persons led by Shri Ghulambhai Ganibhai Kharadi went to the site at Survey No.69, Jaisinghpur village, where the 20 dead bodies of **Crime No.11/02** were buried. They dug out a few skeletons and buried them back. This process was videographed and aired by the 'Sahara Samay news' channel. It was alleged by the relatives of the victims in the interview with the news channel that as the request for handing over bodies of the relatives had not been considered by the District Administration, they had to take recourse to this action. The District Administration has, however, denied having received such a request.

4.219 One Smt. Ameenaben Habib Rasul and Citizens for Justice and Peace, a Mumbai based NGO, filed a Spl. Criminal Application No.1875/2005 in the Hon'ble High Court of Gujarat on December 28, 2005 praying for the sealing of entire remains unearthed by relatives of the deceased of Crime No.11/2002 in the presence of the relatives who could be treated as complainant and panch witnesses, and to despatch them for DNA testing to Red Hills Laboratory, Hyderabad and also to hand over the investigation of this matter to the CBI.

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**4.220** It is also reported that the Hon'ble High Court of Gujarat, on December 30, 2005, ordered that in the presence of responsible officers of the CBI, sample from each dead body be dugged out, taken, sealed and sent to Red Hill Laboratory, Hyderabad, for analysis and DNA testing along with the samples drawn in the same manner from the body of the close relatives of the deceased. The report of test, in turn, be sent to CBI and copy thereof, be sent to the Hon'ble Court.

**4.221** It is further reported that on receipt of the orders of the Hon'ble High Court, a team of experts from AIIMS and CFSL headed by Dr. T.D. Dogra, Professor and HOD, Forensic Medicine visited the site for collection of samples for DNA examination. It was decided to conduct this exercise in the presence of DIG, SCR, Chennai. SP, SCB, Mumbai and the State authorities. The local Judicial and Executive Magistrates were requested to grant permission for exhumation, as the mortal remains that were dug out were buried again. They were also requested to make arrangements for identification of dead bodies by making available the close relatives of the deceased for drawing of the blood samples.

**4.222** The Hon'ble High Court of Gujarat was moved later by the CBI to modify the order to the extent that the samples so collected be sent to the Centre for DNA Fingerprinting and Diagnostic, Nacharam, Hyderabad, instead of Red Hill Laboratory, Hyderabad.

**4.223** The Hon'ble High Court of Gujarat agreed to the prayer of CBI to send the samples to Centre for DNA Finger Printing and Diagnostic (CDFD), Hyderabad, instead of Red Hills Laboratory, Hyderabad and the same were handed over to the said laboratory on January 17, 2006.

**4.224** The Commission considered the matter on March 13, 2006 and after perusing the report of CBI closed the case with the following directions:

*'On perusal of the report, it transpires that CBI has already taken over the investigation and even Hon. High Court of Gujarat is seized of the matter.'*

*In view of what is stated above, no further action by the Commission is called for. The report is taken on record and the file is closed.*

### **38. Punjab Mass Cremation Case**

**4.225** This case has already been reported in the Annual Report for 2004-2005.

**4.226** The Commission vide its proceedings dated November 11, 2004 had recommended 'interim relief' of Rs. 2.50 Lakhs each to the next of kin of the 109 deceased. During the year 2005-2006, the Commission received and considered objections from the counsel for State of Punjab as well as the petitioner in respect of the names included/excluded from the list of the deceased. On the basis of the material placed before the Commission, one of the deceased Gurbachan Singh was identified to be in the custody of the police

before his death. The Commission, therefore, on September 9, 2005 directed DC, Amritsar to disburse relief of Rs. 2.50 lakhs to the next of kin of the deceased.

**4.227** For facilitating identification of the deceased, the Commission directed the State of Punjab to file affidavits in respect of the remaining deceased, permitted inspection of record with the CBI as well as the secretariat of the Commission and also allowed making of field inquires for the identification of deceased. On the basis of a submission made by the Learned Solicitor General representing the State of Punjab about filing of information in respect of each of the 593 deceased already identified, the Commission permitted the counsel to submit the factual information in respect of each of the deceased.

**4.228** While considering the matter on March 8, 2006 the Commission found that 38 persons were in the deemed custody of police before their death. Accordingly the Commission directed State of Punjab to pay compensation of Rs. 2.50 lakhs to the next of kin of these 38 deceased keeping in view the parameters earlier laid down by the Commission.

“It was also found that the names of 38 persons had appeared twice in the three lists A, B and C.”

**4.229** Thus, out of 2,097 (on recheck 2,059) deceased, the Commission recommended compensation to the next of kin of 148 deceased by the end of the year 2005-2006.

## **B.II Economic, Social and Cultural Rights**

### **(g) Violation of the Rights of the Women and Children**

#### **39. Commission of rape on a Dancing Girl by Police Sub-Inspector in Bihar (Case No.660/4/2002-2003-WC)**

**4.230** A news item captioned ‘Protector charged with rape’ appeared in the *Statesman* on May 29, 2002. Wherein it has reported that Sub-Inspector Ramdeo Rai of Hussainganj Police Station, Bihar, alongwith his three associates, was deputed to guard a Barat Party in which a dancing girl was part of the Suraj Music Troupe. The dancing girl was allegedly raped by the SI and his associates, after the dance performance was over.

**4.231** Pursuant to the directions of the Commission, DGP, Bihar, the DIG (Human Rights) in the office of the Director General of Police, Bihar submitted a report, which indicated that Crime No. 90/2002 u/s 366/376/354/34 IPC had been registered against Sub-Inspector Ramdeo Rai and three others.

**4.232** The Commission considered the report on October 17, 2003 and directed the Superintendent of Police, Siwan, Bihar to submit outcome/status report of Cr. NO. 90/02 u/s 366/376/254/34 IPC; and details of departmental action, if any, initiated against the delinquent officer.

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**4.233** The Commission also directed that a notice be issued to Chief Secretary/DGP, Bihar to show cause as to why the Commission should not recommend payment of appropriate 'interim relief' u/s 18(3) of the Protection of Human Rights Act, 1993 to the victim.

**4.234** In response, Home (Police) Deptt., Bihar reported that a chargesheet had been filed against the accused SI, Ramdeo Rai. Further, departmental action was being initiated against him. Government of Bihar agreed to pay a sum of Rs. 50,000/- (Rupees Fifty thousand only) as 'interim relief' and to make payment to the victim after receipt of recommendation of the Commission.

**4.235** Vide proceedings dated August 24, 2005, the Commission recommended State Government of Bihar to pay a sum of Rs. 50,000/- as interim relief to the victim within a period of four weeks and to send proof of payment.

**4.236** However, compliance report is awaited.

### **40. Acid Thrown on minor girl for objecting to policeman's advances in Orissa (Case No.: 122/18/2001-2002-WC)**

**4.237** The Commission received a complaint from Shri Ashok Shankaram, National President, Janadhikar, an NGO, who forwarded a newspaper clipping captioned 'Girl spurns cop's advances, has acid thrown on her' published in the *Hindustan Times* on April 23, 2001. According to the newspaper report, on April 13, 2001, 16 years old Kumari Budha Boi was severely hurt by Amir Khan, a Constable of the armed Police Reserve, Sambalpur, by throwing acid on her face. The report further mentioned that constable Amir Khan wanted to have physical relationship with the victim and attempted to commit rape on her, which was objected to. Failing in his attempt, the Police constable threw acid on her face causing complete defacement.

**4.238** Report further disclosed that FIR had been registered on the basis of information provided by the uncle of the victim and the accused constable was absconding. A prayer was made for directions to the Government of Orissa for rehabilitation of the victim and severe punishment to the accused.

**4.239** Pursuant to the directions of the Commission, Director General of Police, Orissa forwarded a copy of the report of Superintendent of Police, Sambalpur, which indicated that APR Constable 401 Amir Khan of Sambalpur had been dismissed from service with effect from January 22, 2003 on being found guilty in Sambalpur District Proceeding No.13 dated May 15, 2001. The report further mentioned that Sambalpur District Proceedings No. 21 dated December 27, 2002 instituted against the above Constable for his involvement in the present case, had been kept in abeyance and will be reopened in case he is reinstated in service in future.

4.240 As the report did not throw light on the factual aspect of the matter and was also silent about the outcome of the investigation in the criminal case registered against the Constable u/s 341/354/307/326/506IPC, a further report was called for from Director General of Police, Orissa. Thereafter, the Commission was informed that in Padampur P.S. case No. 29/2001, chargesheet had been submitted against the accused constable, after completion of investigation. The case was sub-judice.

4.241 The Commission after perusing the reports on record, vide proceedings dated September 20, 2004, observed that the life of a young girl has been completely ruined by the sexual passion of a uniformed man, who was supposed to act as a guardian of the law. Her sufferings cannot be measured in terms of money. However, to mitigate her sufferings, the Commission directed Chief Secretary, Government of Orissa to show cause why 'immediate interim relief' U/S 18(3) of the Protection of Human Rights Act, 1993 be not paid to the victim. The Chief Secretary, Orissa was also directed to inform the Commission if the State has provided any medical treatment to the victim including plastic surgery.

4.242 In response, the Government of Orissa submitted that the victim was admitted in Government Hospital for about two months and provided treatment free of cost. However, due to the gravity of the burn injuries sustained, she had to undergo plastic surgery treatment at a private nursing home in Sambalpur, the expenses for which were met by the family. It was further mentioned that State Government had sanctioned Rs. 20,000/- as interim relief from the Chief Minister's Relief Fund and that the actual cost of plastic surgery will be reimbursed by State Government.

4.243 **Vide proceedings dated April 4, 2005, the Commission considered the submissions made by Government of Orissa and directed Additional Secretary to the Government of Orissa, Home Department to intimate to the Commission whether the amount of Rs. 20,000/- (Rupees twenty thousand only) as interim relief from the Chief Minister's relief fund has been paid to the victim and, if so, to furnish proof of payment. He was also directed to inform the Commission whether the actual cost of plastic surgery has been reimbursed to the victim by the State Government.**

4.244 **Government of Orissa, Home Department, vide letters dated March 10, 2006 and March 11, 2006 submitted that an amount of Rs. 77,300/- incurred on her treatment had been paid to her by the Government, apart from the interim relief of Rs. 20,000/-. While the accused was charge sheeted in Padampur PS case no. 29 dated April 15, 2001 and acquitted by the court on June 6, 2002, he had been dismissed from Government service w.e.f. January 22, 2003.**

4.245 As the directions of the Commission were complied with, the case was closed on March 29, 2006.

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### **41. Livelihood and Rehabilitation of bar girls in Maharashtra (Case No. 68/13/2005-2006-WC)**

**4.246** The Commission received a petition from the President, Bhartiya Bar Girls Union, Thane, Maharashtra stating that the decision of the Maharashtra Government to close dance bars in the State was likely to deprive 75,000 bar girls of their source of livelihood. It was further stated that the State Government has taken a unilateral and sudden decision without taking the responsibility of their rehabilitation on the ground that most of them have come from other States and not from Maharashtra. An apprehension was, therefore, raised that depriving these bargirls of their source of livelihood without proper rehabilitation may force them into prostitution.

**4.247** Taking cognizance, the Commission vide proceedings dated April 12, 2005 directed that the complaint be sent to the Chief Secretary, Government of Maharashtra for his comments within four weeks.

**4.248** In response, the Government of Maharashtra submitted a report to the Commission denying the allegations contained in the complaint and stated that the State Government has not taken any action, which was violative of human rights. The report further mentioned that since the Government already had many rehabilitation schemes, no new scheme was needed for rehabilitation of these bar girls. The Government had not undertaken any drive to evict the bar girls from the State.

**4.249** While the matter was pending consideration with the Commission, the Commission came across newspaper reports published in *The Times of India* dated August 20, 2005, which indicated that a writ petition had been filed before the Mumbai High Court challenging the validity of the Act Banning dance bars. An enquiry made by the Commission from the Registrar (Judicial), High Court of Mumbai, indicated that a Criminal Writ Petition No. 1971/2005 had been filed before the High Court of Mumbai by the For Rights Bar Owners Association, Mumbai alongwith some other petitions in which the amended provision of section 33-A of the Bombay Police Act, putting a ban on the Dance Bars has been challenged. A special Division Bench had been constituted to deal with these pending matters before the High Court.

**4.250** As the High Court of Mumbai was already seized of the matter, no further action by the Commission was considered necessary. The case was, therefore, closed.

### **42. Attack on Woman Campaigning against Child Marriages in Madhya Pradesh (Case No, 165/12/2005-2006-WC)**

**4.251** A news item captioned *Welfare Dept Official's Hands Cut Off, Shakuntala Attacked for Campaigning Against Child Marriage* appeared in the newspaper *The Times of India* dated May 12, 2005, wherein it has been reported that on Tuesday evening, a man forced entry into the house of Ms. Shakuntala Verma, Supdt. of the Madhya Pradesh

Women and Child Welfare Department with a sword in hand and cut off her hands with a violent blow. She paid the price for creating awareness among rural masses against child marriages with her arm. She was part of an awareness campaign conducted jointly by the district administration and the Department of Women and Child Welfare to oppose the practice of child marriage. Report further disclosed that she was now fighting for her life in a Indore hospital. Doctors had conducted a nine-hour operation to join her severed hands to her body, but her condition was stated to be critical.

**4.252** Pursuant to the directions of the Commission, Deputy Secretary to Government of Madhya Pradesh, Women & Child Development Department vide communication dated May 30, 2005 submitted a report, which disclosed that on May 10, 2005, an unidentified man attacked the victim with a sword and caused grievous hurt at Headquarters, Rajgarh. In this regard, crime No. 121/04 u/s 307/452 IPC was registered. The victim, in her statement, stated that an unidentified man attacked her and she has no rivals. Notably, on the occasion of *Akshya Tritya*, as per the directions of the High Court, a campaign was going on in the District since May 2, 2005 to stop child marriages. The report further disclosed that complaints were received through Revenue Department, Sardarpur that in village Bhangarh, some child marriages are going to take place and in this regard, Ms. Shakuntala had conducted enquiry, but no direct evidence was found. As the incident happened one day before the *Akhiya Teez* i.e. the day when the group marriages of children are performed, it was apprehended that the assault on the victim had some connection with persons who were opposing the campaign. Immediately after the incident, a reward of Rs. 10,000/- was announced for information with regard to the unidentified person, who attacked the victim and eight teams were dispatched to apprehend him. Thereafter, the accused was arrested and was taken on remand. Investigation in the case was under progress.

**4.253** The report further mentioned that the victim was admitted to a private hospital Gokuldas, Indore and an urgent surgery was performed to save her hand. A sum of Rs. 4.50 lakhs had been spent on her treatment, which will be borne by the State. Immediate financial assistance of Rs. 10,000/- had been provided by the District Red Cross; Rs. 20,000/- had been provided by Incharge Minister, and the Chief Minister had announced Rs. 1 lakh as financial assistance from his fund to the victim.

**4.254** Upon consideration of the report, the Commission directed Chief Secretary, Government of Madhya Pradesh to inform about payment to the victim, present state of physical health of the victim as well as medical report concerning her treatment and the condition of her health. DGP, MP was also directed to convey to the Commission the status of the criminal case registered in regard to the incident.

**4.255** In response, Under Secretary, Women & Child Development Department, Government of Madhya Pradesh submitted a report stating that a total amount of Rs 3,50,000/- has been allotted for payment in advance for treatment of the victim.



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

**43. Assault on Dalit woman Kamla Raisen, MP a victim of rape (Case No. 1807/12/2005-206/WC)**

**4.257** The Commission, on January 4, 2006 took suo-motu cognizance of a news item captioned *Dalit ne balatakar ki shikayat ki to kulhari se panja kat dala* which indicated that a Dalit woman, Kamla, in Madhya Pradesh was raped by persons belonging to the upper caste. When the victim reported the matter to police, the rapists became annoyed and chopped off her hands with an axe. They also burnt the jhuggi of the victim.

**4.258** Pursuant to the directions of the Commission, office of the DGP, MP, Bhopal submitted a report dated January 18, 2006, which disclosed that the victim had lodged a complaint at P.S. Ajak Raisen on December 2, 2005 stating that Prem Naryan Raghuvanshi and Ram Sevak Raghuvanshi had committed rape on her. On the basis of her complaint, FIR no. 58/5 u/s 376-2(G), 341/206/34 IPC and 3(1)12, 3(25) SC/ST Act was registered and the victim was medically examined. Both the accused persons were arrested. The report further mentioned that on December 7, 2005 at 9.30 a.m. the victim informed P.S. Silvani, stating that Prem Naryan Raghuvanshi, Manmod Mehra, Devi Singh Raghuvanshi and Ramesh Sevak Raghuvanshi came to her house on the previous night and asked her to change her statement. Accused also chopped off her right hand with an axe and when she raised an alarm, the accused Ram Sevak and Devi Singh sprinkled kerosene and set her house on fire. On the basis of her report, a case no. 162/05 u/s 262/436/147/148IPC and 3(2)(1)SC/ST Act was registered at P.S. Silvani. The victim was medically examined at Raisen and Bhopal. SP and District Collector also visited the place of occurrence. During investigation of the matter, statements of the victim and witnesses were recorded and the accused persons were arrested on December 12, 2005. The report also mentioned that a compensation of Rs. 80,000/- had been sanctioned under the SC/ST Prevention of Atrocities Act, 1989 for the victim in the above two cases and a sum of Rs. 40,000/- had already been paid to the victim and the balance shall be paid on the completion of trial of the cases.

**4.259** The matter is still under consideration of the Commission.

**44. Auction of Malti and other women in Muzaffarnagar, Uttar Pradesh (Case No. 36970/24/2004-2005-WC)**

**4.260** The complainant claims to be an Editor of *Human Rights Observer* and has stated that it has come to light that in Shamli, Muzaffarnagar, UP, women are being auctioned publicly. On October 26, 2004 one tribal woman was being auctioned. After villagers protested, police arrested seven women and produced them in the Court of SDM. He has prayed for an inquiry and necessary steps to stop this evil practice.

**4.261** Pursuant to the directions of the Commission, dated November 9, 2005, SP, Rural, Muzaffarnagar, vide communication dated March 31, 2005 has submitted a report. According

to the report, the complaint had been entrusted for inquiry to C.O. Kairana, Muzaffarnagar, UP. His report, dated March 26, 2005, disclosed that on October 26, 2004, some people from West Bengal along with their daughters came to attend a marriage in village Bhaishwal. The report further disclosed that they wanted to perform marriages of their daughter in the same village, which was objected to by the villagers. On getting information, a police party, along with a woman constable, reached village Bhaishwal and brought four girls along with their parents to Thana. All of them were produced in the Court of SDM on October 27, 2004. As per the orders of the Court, custody of four girls was given to their parents. Allegations regarding auction of girls has been denied in the report. The report further disclosed that appropriate instructions have been issued to all the Thanas that cases of auction of girls from Bengal must be dealt with seriously.

**4.262** After carefully considering the report and the allegations in the complaint, the Commission observed that the report of the SP (Rural) was not satisfactory. It concealed more than what it revealed. There was no indication in the report as to whose statements were recorded and what was the relationship of these girls with each other or with the persons who had come to perform their (girls') marriage. The allegations, if true, were a serious affront to the dignity of the females and a gross violation of their human rights.

**4.263** The Commission, therefore, considered it appropriate to have the matter, in the first instance, inquired into by a team of investigators of the Investigation Division of the Commission. The Director General (I) was, therefore, directed to depute a team of investigators to inquire into the entire issue and submit a report to the Commission within six weeks.

**4.264** An investigation team from the Commission thereafter conducted investigation into the matter and recorded statements of various persons, including the girls and their parents as also other connected persons and submitted a detailed report.

**4.265** Upon perusal of the report, which indicated that all the four girls mentioned in the complaint had since been married and were living with their husbands, the Commission did not consider it desirable to pursue the case any further. The case was, therefore, closed.

#### **45. Panchayat Decisions in Saharanpur District leading to Human Rights Violations (Case No. 16173/24/2005-2006-WC)**

**4.266** The Commission came across a distressing news item captioned *Rapists walk free after paying fine*, which appeared in the daily *The Hindustan Times* on August 29, 2005 regarding letting off alleged rapists on payment of fine. The report stated that in two separate incidents in Saharanpur District in Uttar Pradesh, Village Panchayat let off two alleged rapists after fining them and the victim families were not even allowed to go to the police. In one of the incidents in Shimlana village, a teenager allegedly tried to rape a physically challenged Dalit woman. Though the woman managed to escape, a Caste Panchayat ordered the offender's family to pay Rs. 25,000/- to the victim. However, the

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SHO of Bargaon Police Station said that no one had lodged any complaint, though he admitted of having heard about the incident.

**4.267** In the second incident in Deoband's Kohla Basti, another Panchayat freed a rapist after slapping a fine of Rs. 10,000/-. The girl, raped five months ago, was pregnant with the rapist's child.

**4.268** After perusing the news item, the Commission, vide proceedings dated August 31, 2005 directed that a copy of the same be sent to the Chief Secretary and Director General of Police, Uttar Pradesh for their comments.

**4.269** Pursuant to the directions of the Commission, office of the DGP (HR) vide their letter dated October 7, 2005 forwarded a copy of the report received from SSP, Saharanpur. According to the report, the complaint was entrusted for inquiry to Circle Officer, Deoband, Saharanpur. Report of C.O. Deoband Saharanpur disclosed that there was no Mohalla named Kohla Basti and that no such incident had taken place. As regard the second incident, it was reported that one Suman had gone to attend nature's call in the fields when one Bablu s/o Gajraj came that way, which was objected by her. The matter was settled in panchyat by instructing Bablu to be careful in future. Father of Suman and Village Pradhan have categorically denied happening of any such incident as reported in the newspaper.

**4.270** The matter is under consideration of the Commission.

### **46. Violation of Human Rights by Panchayat in Baghpat District, Uttar Pradesh (Case No. 16755/24/2005-2006-WC (FC))**

**4.271** Shri Y.P. Chhibbar, General Secretary, PUCL drew the attention of the Commission to a distressing news item captioned "*Law is an ass for this Panchayat*", which appeared in the *Hindustan Times* of August 8, 2005 relating to certain decisions of the Caste Panchayat of Village Johri, Distt. Baghpat, which involved violations of human rights.

**4.272** The report stated that Caste Panchayats had settled cases of rape and hushed up those of murder. In Johri Village, Baghpat Distt., a panchayat settled a case of rape of a girl by an upper caste boy on payment of a fine of Rs. 25,000/- by the rapist. In another case, a man sought the panchayat's help to escape police case, as his wife had poisoned her daughter who subsequently died. Panchayat Pradhan asked the parents to cremate the deceased quietly at night, which they did and no report was made to police and no case registered.

**4.273** In another incident, panchayat forbade the marriage of one Yash Pal's daughter, Sangeeta with Abhishek. However, Yash Pal went ahead and got Sangeeta married with Abhishek. The wedding was boycotted in response to panchayat's call. Sangeeta had left with Abhishek for his village, but her brother was now bearing the brunt of panchayat's wrath as villagers had been forbidden to deal with Yash Pal's family.

4.274 After perusing the news items, the Commission, vide proceedings dated September 2, 2005 directed that the same be sent to Chief Secretary and DGP, UP for their comments.

4.275 In response, the Commission received a communication dated December 16, 2005 from the office of DGP, Uttar Pradesh, which stated that in respect of two incidents mentioned in news clippings captioned *Law is an ass for this Panchayat* published in Hindustan times dated August 14, 2005, sent by Peoples' Commission for Civil Liberties, two cases 1112/05 u/s 302/201/309 IPC (murder of daughter by mother by poisoning) and 1113/05 u/s 354 IPC (alleged molestation/rape) at PS Binauli had been started and investigation taken up. The report further stated that during investigation of third incident, it was found that Laxman Singh, brother of Sangita has no problem.

4.276 However, no response has been received from the Chief Secretary, Government of UP, till the time of prepreation of this report.

4.277 The matter is under active consideration of the Commission.

**47. Torture and Inhuman treatment of Tribal Woman in Surguja District, Chattisgarh (Case No. 232/33/2005-2005-WC)**

4.278 The Commission received a complaint from Mr. Subhash Mohapatra, Director, Forum for Fact-finding Documentation Advocacy, Raipur, Chhattisgarh, seeking immediate intervention of the Commission against torture and inhuman treatment of a tribal woman. It was alleged that on September 11, 2005, the village panchayat directed and punished Anardshia Bai (22), a tribal woman, resident of Nawagai Village, under the jurisdiction of Raghunath Nagar Police Station of Surguja District. She was paralleled to a bullock and compelled to plough the agricultural land for five times on the ground that she had helped her husband in ploughing the agricultural land. She was accused of having touched the *Nangar* (wood machine to plough the land). It is alleged that the victim approached police for help, but they refused to take any action saying that it was a matter of 'traditional system of punishment'. Police finally accepted the complaint only when a group of women approached them, but no action had allegedly been taken so far.

4.279 After perusing the comments, the Commission observed that if the contents of the report were true, they raised serious issues of violation of human rights and were an affront to the dignity of women. Accordingly, the Commission directed the Chief Secretary, Government of Chhattisgarh and DGP, Chhattisgarh to submit their comments on the news item within two weeks.

4.280 Pursuant to the directions of the Commission, DGP, Chattisgarh vide communication dated November 7, 2005 forwarded a report dated October 31, 2005 of SP Surajpur. The report disclosed that during investigation, the victim stated that she was paralleled to a bullock on her own accord and she had not made any complaint for registration of the case. However, apprehending breach of peace in the village, case No. 78/05 u/s 106/116(3) Cr.P.C. was presented in the court. The report further revealed that there was no tension in the village.

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

**48. Auction of a Dalit Woman in Palamu, Jharkhand  
(Case No. 712/34/2005-2006-WC)**

**4.282** The Commission received a complaint from Mr. Suhas Chakma, Director, Asian Centre for Human Rights, New Delhi along with the newspaper clipping dated August 21, 2005 that appeared in *The Hindustan*, Patna regarding alleged auction of a 23-year-old Dalit woman of Chiro village under Chandwa Block in Palamu District, Jharkhand and her newborn daughter. It was reported that the victimized woman was allegedly gang raped by four youths of the same village, but due to shame and fear of being stigmatized, she did not disclose her ordeal to any one until the villagers came to know that she was pregnant.

**4.283** The village Panchayat was reportedly convened in order to inquire into the matter and on being asked by the Panchas to name the person who is father of her daughter, the Dalit woman stated about her gang rape by the four youths of the village. In the end, unable to ascertain as to who is the father out of the four youths, the Panchas reportedly decreed for auction of the Dalit woman and her new born daughter. In the absence of anyone willing to pay more, the mother-daughter duo were sold to a 60-year-old man from a village under Balumath police station for six rupees only.

**4.284** The hapless woman reportedly declined to accept the unjust decree of the panchayat, but following irresistible pressure, she had to agree to go and live with the old man.

**4.285** Upon perusal, the Commission vide proceedings dated September 5, 2005 directed that a copy of the complaint be sent to Chief Secretary and DGP, Jharkhand for their comments.

**4.286** In response, the Commission received a communication dated November 14, 2005, from the office of DGP, Jharkhand enclosing a report of Superintendent of Police, Latehara dated November 12, 2005, which stated that a crime case No. 81/05 was registered on July 24, 2005 u/s 376 IPC against the accused persons. Later, section 3(2) SC/ST Act was added. Report further stated that a grant of Rs. 25,000/- had been paid to the victim (Rampyari) by the Deputy Commissioner, Latehara. The victim had since been married to Shri Rajesh Lohra, r/o Village Balu.

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

**49. Death of Children in Gorakhpur, Uttar Pradesh due to Japanese  
Encephalitis (Case No.17749/24/2005-2006)**

**4.288** The Commission came across a distressing news item under the caption 'A Child dies every hour' published in *The Hindustan Times* dated September 5, 2005. Wherein it was reported that one child died every hour of Japanese Encephalitis at the BRD Medical College

in Gorakhpur. Japanese Encephalitis is caused by a virus that circulates in pigs and wading birds and gets transferred to humans by mosquitoes. Since July 29, 2005, 372 deaths have been confirmed due to the viral infection in Gorakhpur alone. In all, there have been 1,359 cases. (Of the children who survive the disease, most are left crippled for life.)

**4.289** The Killer viral fever – which is completely preventable through an indigenously made vaccine – has been killing children (mostly) every year in the Gorakhpur region for the past 28 years. Even 372 deaths in about five weeks period had not prompted Gorakhpur administration to declare it as an epidemic. All it has done this year is to count the number of pigs in the district – 1,279, for anyone who cares to know – and do some sporadic spraying to kill mosquitoes, which is clearly not enough. The administration discovered two days ago that 60 per cent of the fogging machines don't work and are beyond repair.

**4.290** Pursuant to the directions of the Commission dated September 8, 2005, Special Secretary, Government of Uttar Pradesh, UP vide communication dated September 20, 2005, submitted report. According to the report, there was no effect of Japanese encephalitis disease in the Gorakhpur district of Uttar Pradesh. News report contained aggravated version. Uttar Pradesh Government was fully prepared to contain this disease. Necessary steps had been taken to contain the spread of this disease.

**4.291** The matter is still under consideration of the Commission.

**50. Recruitment of school children by naxalites for naxal activities in the State of Jharkhand (Case No. 866/34/2004-2005)**

**4.292** A news item titled *Students in rural Jharkhand forced to desert schools ... as Naxals go on overdrive recruiting young blood* published in *The Pioneer* (Ranchi) on October 8, 2004 states that the naxalites have sent a message to villagers to send one boy or girl from each house, but villagers refused. Naxalites again sent similar messages to the schools as a result whereof a number of students stopped going to school and attendance came down to 10% of 450 students in the school. It is further stated that young students are being used by Maoist ultras for passing on information regarding police movement. Some of them are trained, taught the modern ideology and moulded in their culture to come up as the next generation of Maoist activists.

**4.293** As the reports indicated prima-facie violation of human rights and exploitation of children, the Commission vide proceedings dated October 13, 2004 directed Chief Secretary and DGP, Government of Jharkhand to send a factual report in the matter.

**4.294** The DIG(HR) Jharkhand, vide communication dated March 14, 2005 reported that no such incident was noticed in the reports received from Districts Deogarh, Jamshedpur, Dumka, Simdega, Kodarma, Bokaro, Sarai Kela-Kharsaon, Jamtara,

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Lohardagga, Pakur, Gumla, Gadwa and Sahebganj. However, as per report received from SP, Palamu, information regarding Naxalites campaigning for recruitment of one youth from each house and forcing the children from rural areas to quit the schools and join the movement had been substantiated.

**4.295 DIG (HR), Jharkhand in his final report dated September 13, 2005 had also informed that the following steps were being taken by the State Govt.:**

- (i) **To condemn the activities of Naxalites through publications in local dailies.**
- (ii) **In the Naxalites affected areas, long route patrolling is being carried out by the police. Further villages are being sensitized not to send their children to the Naxalites camps.**
- (iii) **Those children who are being arrested concerning Naxalite activities are being sent back to their parents instead of sending them to jail.**
- (iv) **State Education Department is also spreading social awareness programmes.**
- (v) **Police is keeping a close watch over the cultural activities of the Naxalites.**

**4.296 The Commission considered the report on November 28, 2005 and decided to close the case.**

### *h) Child Labour*

#### **51. Rescue of Child Labourers in Maharashtra (Case No.246/13/2005-2006/FC)**

**4.297** A news item captioned '*Over 400 child labourers rescued*' appeared in the newspaper *The Times of India* dated June 2, 2005, wherein it has been reported that during one of the largest ever raids in the country to rescue child labourers, police in co-ordination with NGO's rescued close to 400 child labourers from Madanpura in Central Mumbai. The raid, which has the result of over two weeks planning, was meticulous down to the last detail. Addl. CP, Subodh Jaiswal, DCP Zone III Santosh Rastogi and ACP Syed Mobin planned the entire operation with members of voluntary organizations including Pratham, Balprafulta and Saathi. About 150 policemen combed 220 workshops in two areas of Madanpura, Dagdi Chawl and Shirinbai Chawl. The rescued children were employed in zari, leather and steel workshops and came from Bihar, UP and even Nepal. The police arrested 42 employers and will charge them under the Juvenile Justice Act, the Child Labour Act (Prohibition and Regulation) and the IPC.

**4.298** After perusing the news item, the Commission, vide proceeding dated June 7, 2005, directed that a copy of the news item be sent to Chief Secretary, Maharashtra to look into it and submit his comments. The Commission further directed that Chief Secretary

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shall inform the action, if any, taken against the employers of the rescued children as well as send copies of the orders, if any, issued by child welfare committees, if the children were produced before such committees, within a period of two weeks.

**4.299** Pursuant to the directions of the Commission, Secretary Department of Women and Child Development, Government of Maharashtra vide communication dated September 8, 2005 had submitted a detailed report.

**4.300** According to the report, there were some reports in the local newspapers in early April, 2005 about beating up of a child worker aged 12 years by his employer. It was also reported that this resulted in his death on April 18, 2005. The Government of Maharashtra perceived this event very seriously and criminal action was initiated against the accused persons u/s 302/34 of IPC and Section 23, 24, 26 of Juvenile Justice Act. Thereafter, properly organized action was taken by different agencies of the State Government to detect child labour, particularly in the city of Mumbai.

**4.301** Report further disclosed that a number of raids were conducted in different localities for this purpose. Subsequently, a Task Force was constituted by the State Government under the leadership of the Labour Commissioner. This Task Force had representations from various Government departments, such as Home, Women and Child Development, Labour, Brihatmumbai Municipal Corporation and NGOs working in this field. The child workers found engaged in different activities by their employers were detected during these raids and were rescued from their employers, then they were taken to children's home, maintained by the Women and Child Development Department and accommodated there. Thereafter, they were produced before the Child Welfare Committee, their identity was established and they were sent to their respective places in different States with police escort, to be handed over to their respective families. Some of these identified children were also handed over to their respective parents at the children's home after the Child Welfare Committee completed its work.

**4.302** Eight hundred and ninety four children rescued in 13 raids were found to be mainly from States of West Bengal, Bihar, Uttar Pradesh and Nepal.

**4.303** As per the guidelines issued by the Supreme Court in the decision on Writ Petition case No. 465/1986 in *M.C. Mehta vs. State of Tamil Nadu and others*, employers of the rescued child labour during the raids have been served with notices for recovery of Rs. 20,000/- per child. So far notices have been served on 191 employers who were found to have employed 348 children. With respect to the raid carried out on June 1, 2005, it was informed that a total of 446 children were rescued from 115 employers. These children were produced before the Child Welfare Committee members and they allowed 160 children to be released when their parents/guardians approached. The remaining 286 workers were kept at two rescue homes, i.e., at Bal Sudhar Gruha, Chembur and Bal Kalyan Nagari, Mankhurd. However, out of these, 24 children fled from the Bal Kalyan Nagari Children's Home at Mankhurd. Thereafter, the CWC took up their identification and as



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per instructions of the CWC, 259 children were handed over to their respective parents/guardians who approached the CWC. Three children were sent with police escort to their native place in Bihar and West Bengal.

**4.304** Report also disclosed that during the raid on June 1, 2005, from the premises of the employers, 42 persons in charge of the premises were taken to the police station and after inquiry, out of them 26 persons have been arrested u/s 374 of IPC Section 23 and 26 of Juvenile Justice Act and u/s 3 and 14 of Child Labour [Prohibition & Regulation] Act. Investigation in these cases is in progress.

**4.305** The Commission on March 17, 2006 after considering the above report of the Government of Maharashtra directed the Chief Secretary, Maharashtra and Secretary, Labour, Government of Maharashtra to submit status report within four weeks.

**4.306** Response was however, still awaited.

**4.307** The matter is still under consideration of the Commission.

### *i) Starvation Death*

#### **52. 14 alleged starvation deaths in Jharkhand (Case No. 795/34/2004-2005)**

**4.308** A news item captioned '14 starvation deaths, says Congress', which appeared in the Ranchi edition of *The Pioneer* dated September 20, 2004, wherein it was reported that opposition in Jharkhand claimed that at least 14 starvation deaths had occurred in the State within a month and asked the Arjun Munda-led NDA-Government to spell out the difference between 'starvation' and 'malnutrition'. The press report further stated that people died because they neither had enough to eat nor any access to medical facilities. The Deputy Commissioner of Dumka and Palamu districts had denied the case of starvation deaths in these districts while denying any starvation deaths in these districts admitted wide spread malnutrition among the people particularly women and children.

**4.309** As the newspaper report raised serious issues of violation of human rights, the Commission called for the comments from the Chief Secretary, Jharkhand and DM, Dumka and Palamu.

**4.310** Pursuant to the directions of the Commission, Deputy Commissioner, Palamu submitted his comments vide letter dated November 19, 2004 informing that altogether 14 deaths had been reported in newspapers from time to time. Each and every such report was immediately investigated by local administrative officers and even by Sub-divisional Magistrates. They had contacted family members of the affected families and recorded their statement. In some cases post mortem was also conducted. It was found that no such death occurred due to hunger and starvation. Instead, these deaths occurred due to prolonged illness caused by certain diseases and in some cases, death was natural.

The report further disclosed steps taken by the district administration on each of the 14 deaths reported in newspapers.

**4.311 Home Secretary, Government of Jharkhand vide communication dated October 14, 2005 submitted detailed report wherein it was stated that the incidents of alleged starvation deaths were inquired into by the local administrative officers and, in some cases, through the Sub-Divisional Magistrate. Basing on the reports received from DM, Dumka and DM, Palamu, the Home Secretary, Government of Jharkhand had given the details and asserted that no person mentioned in the complaint had died of starvation and the deaths had taken place due to illness/disease and, in some cases, the deaths were natural.**

**4.312 The Commission considered the reports on November 14, 2005 and directed closure of the case.**

**53. Starvation Deaths of Children in Sonebhadra, Uttar Pradesh  
(Case No.21997/24/2003-2004)**

**4.313** Dr. Lenin, Convenor of People's Vigilance Committee on Human Rights, vide his reference dated August 27, 2003 expressed concern over the plight of Ghasia Tribals, one of the indigenous tribes of the area, who migrated in search of livelihood from their original habitats in deep forests in Tehsil Robertganj to Nai Basti. The land on which these families were settled belonged to the Forest Department and every now and then the staff harassed them to vacate this land. Since 1997, the forest department had been trying to chase away these people using all kinds of unscrupulous methods to evict them. Whenever these displaced people tried to fight for their rights, they were brutally crushed by the administration and entangled in false criminal cases. It was also mentioned that as a result of non-implementation of the agrarian reforms, hunger deaths had occurred. Complete erosion of the sources of livelihood had caused many deaths in most of the villages in District Sonebhadra. Particular mention had been made to the reported deaths of 18 kids belonging to Ghasia tribe due to starvation. Separately, fact finding surveys conducted in 43 villages in Varanasi District also indicated starvation deaths caused by sheer negligence of the District Administration.

**4.314** The Commission asked the Chief Secretary, Government of Uttar Pradesh to examine the allegations and send a report to the Commission.

**4.315** The reports received from DM, Sonebadhra and Chief Revenue Officer, Varanasi indicated that 18 children died during a period of 2½ years due to various diseases and none of them died due to starvation. The report also mentioned that ration cards had been issued to members of the Ghasia Community for ration and kerosene oil under 'Antyodaya' Scheme. Land had also been allotted to some families in village Makuri. Moreover, apart from medical treatment from time to time, the children were being provided free education and mid-day meal.

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**4.316** Separately, reports received from the Chief Revenue Officer, Varanasi also denied deaths due to hunger.

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

*j) Pollution caused by Industry*

**54. Pollution in residential area caused by industry in Burdwan, West Bengal (Case No. 53/25/2002-2003)**

**4.318** The residents of Afzan Hussain Lane, Pucca Bazar, Asansol, Dist Burdwan, West Bengal vide their complaint dated April 10, 2002 have alleged that one Md. Danish, resident of 2/2 Afzal Hussain Lane, Pucca Bazar, Asansol had been running a business of manufacturing 'Bidi' in the aforesaid premises, which was the cause of unbearable smoke and intolerable foul smell and pollution.

**4.319** Taking cognizance, the Commission sought a report from the District Magistrate, Burdwan.

**4.320** In response, a report dated August 21, 2002 was submitted by the DM, Burdwan. In his report, DM, Burdwan admitted the existence of a Bidi manufacturing unit and the pollution it was causing.

**4.321** The Commission, thereupon directed that a copy of the report together with the copy of the complaint be forwarded to the Secretary, State Pollution Control Board, West Bengal for conducting such inquiry/checks, as was warranted in the case and to send a report to the Commission.

**4.322** The West Bengal Pollution Control Board conveyed to the Commission in their endorsement, dated May 21, 2004 that certain directions had been issued by the State Pollution Control Board on the basis of inspection report dated May 7, 2004 to the unit for taking remedial measures.

**4.323** Vide proceedings dated October 13, 2004, the Commission sought information from the Secretary, West Bengal Pollution Control Board as to whether the directions issued by it had been complied with or not?

**4.324** A report received from the West Bengal Pollution Control Board vide letter dated February 17, 2005 conveyed to the Commission that the State Pollution Control Board had already issued closure order against the unit. The Board also forwarded a copy of the order for closure to the WBSEB for disconnection of electricity to the unit.

**4.325** Vide proceedings dated May 9, 2005 the Commission considered the report and directed that an enquiry should be made by the West Bengal Pollution Control Board whether the unit had actually been shut down or not and if not, why not?

4.326 In response, the Pollution Control Board, vide their letter dated May 30, 2005, informed the Commission that the unit has been closed since April, 2005. The unit was also found closed during inspection on May 25, 2005.

4.327 The Commission called for comments of the complainant on the report submitted by West Bengal Pollution Control Board, which had not been received.

4.328 The matter is still under consideration of the Commission.

*k) Natural Calamities*

**55. Earthquake in Jammu & Kashmir (Case No. 76/9/2005-2006)**

4.329 The news of the calamity arising from the devastating earthquake, which hit large areas in Northern India and particularly the State of J & K, resulting in unprecedented loss of life and property, caused great anguish and deep concern to the Commission. While expressing its deep sense of sorrow and expressing sympathy to the next of kin of the deceased and those who suffered injuries resulting from this catastrophic event, the Commission appealed for united efforts to be made by the Central Government, State Government and civil society to meet the consequences of the calamity.

4.330 The Commission noted that the Central Government and the State Governments had already initiated steps for providing immediate relief to the affected persons. The Commission appreciated that the daunting task of rehabilitation lied ahead. The Commission was of the opinion that it was essential that the Government machinery, involved in the grant of relief and rehabilitation, was able to take all necessary steps for equitable distribution of both relief as well as rehabilitation measures while maintaining transparency to ensure that the poor, destitute women, destitute children, old persons and other marginalized sections of the society, who would be in greater need of relief and rehabilitation measures, were not deprived of or made to suffer any further and were taken care of properly.

4.331 The Commission decided to monitor the relief and rehabilitation measures and, considered it expedient to direct Shri G.S. Rajagopal DG (Investigation), Shri Ajit Bharihoke, Registrar (Law) and Shri Anil Kumar Parashar, Deputy Registrar (Law), NHRC to immediately visit the affected areas of Kashmir and report about the relief and rehabilitation measures being taken to enable the Commission to take steps for issuing appropriate direction / guidelines to the concerned authority of the Central and State Government for the purpose of facilitating the performance of their task.

4.332 The NHRC Team, accordingly, visited Kashmir valley between October 11-13, 2005. The team held meeting with the Chief Secretary, the DGP, Additional DGP (HR) and other State officials besides the Corps Commander, the officials of the Central Government and some members of the Civil Society, including a sitting MLA and a former MLC. Apart from meeting officials of the Central agencies, security forces and the civil

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society, the team visited the areas of Tandhar and Uri for an on the spot assessment of relief and rehabilitation measures.

**4.333 After taking into account, the assessment made by the NHRC team during their site visits and their discussions with the Civil Society and government authorities, the Commission considered it appropriate to make the following recommendations with a view to facilitate the performance of the task of the State agencies arising out of the post-earthquake effects:**

- i) That with a view to ensuring equitable distribution of relief in kind, it is desirable that the State Government considers having centralized collection and distribution centres at various places in the affected areas where relief material could be received from the NGOs, Civil Society and other private agencies. The material so received could, thereafter, be distributed equitably to all affected families;**
- ii) Keeping in view that the winter is already setting-in, the Central Government and the State Government should take steps to ensure that building material required for repairing damaged property or restoring destroyed property is available at the affected places before the access to those areas is closed due to winter. This would enable the construction/reconstruction of the property to be undertaken at the earliest;**
- iii) That since the number of tents required is more than what is physically available or immediately procurable despite best efforts of the Central and State Governments, it is desirable that where tents cannot be made available, temporary shelters in those affected areas are provided to the local population, so that they may have relief from rain, snow and cold weather. These temporary shelters would be there till the buildings damaged or destroyed are restored. Essential amenities be provided in these temporary shelters for the local population;**
- iv) The Central and State Government shall consider feasibility of constructing houses in the affected areas with pre-fabricated building material, which obviously would expedite the job of providing permanent shelters to the earthquake victims;**
- v) In all such catastrophes, it is the experience of the Commission that children and women are the worst affected. It is, therefore, necessary that the State Government prepares a computerized list of children who have been rendered orphans as also widows and young girls, not only with a view to providing rehabilitation to them, but also to ensure that their vulnerability is not exploited by anyone. This computerized list can also assist the government and other agencies, who undertake the task of rehabilitation of the orphans/widows/young girls in their task; and**

- vi) **Similarly, a computerized list of dead and missing persons be also prepared to enable their next of kin to claim proper relief.**

**4.334** The recommendations were communicated to the Secretary, Ministry of Home Affairs and the Chief Secretary, Government of J&K for necessary action.

**4.335** While the matter rested thus, a newspaper report appeared in *The Times of India* dated October 20, 2005 under the caption *Two Sikh villages still await aid*. According to the newspaper report, even after nine days after the earthquake, no aid had reached Tarboni and Sambalpora, thereby adding to the misery of the inhabitants of those villages.

**4.336** The daily *Kashmir Times* also published a report in its issue of October 24, 2005 under the caption *Mann alleges discrimination of relief distribution*. According to the report, Shri Simranjit Singh Mann had complained that relief for earthquake-affected people had not been distributed in fair and proper manner and that the Sikh Community had been discriminated against with regard to the distribution of relief material.

**4.337** Vide proceedings dated November 9, 2005, the Commission directed that copies of the newspaper reports appearing in the *Times of India* dated October 20, 2005 and *Kashmir Times* dated October 24, 2005 be sent to the Chief Secretary, Government of J&K, Jammu for his comments within four weeks. The Commission also directed the Chief Secretary J & K to send Action Taken Report with regard to various recommendations made by the Commission in its proceedings dated October 14, 2005.

**4.338** While the Divisional Commissioner, Jammu submitted an endorsement office letter dated December 15, 2005 addressed to the Chief Secretary, J&K indicating steps for relief and rehabilitation taken in the Jammu Division, response from the MHA and Chief Secretary, J&K, were still awaited.

**i) Death of DJB workers in Sewer**

**56. Death of Delhi Jal Board workers in Sewer in Giri Nagar, Delhi (Case No. 716/30/2005-2006)**

**4.339** News items captioned *Two DJB Workers die in Sewer* dated May 25, 2005 in *Indian Express*; *Two DJB men killed in sewer mishap* dated May 25, 2005 in *The Times of India*; *Maut Ka Kuan Ban Rahen Rajdhani Ke Sewer* dated May 25, 2005 in the *Danik Jagaran* and *Sewar main Dam Ghutne se JE aur Majdoor ke Maut* dated 25/5/2005 in *Jansatta*, wherein it had been reported that two Delhi Jal Board employees died on May 24, 2005 in a sewer in Giri Nagar, Delhi. According to the reports, a Junior Engineer, D.C. Pant had taken Hari Kishan Bahadur, the labourer to get the sewer cleaned after receiving complaints from the residents of the area. Hari Kishan reportedly removed the cover and went inside. He was, however, suffocated by the strong smell of methane gas and fell down. Junior Engineer, Pant tried to save him, but was himself pulled inside. Thereafter, both of them were pulled out by the fire

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officials and rushed to Holy Family Hospital, where they were declared brought dead. Newspaper reports further disclosed that this is the 13<sup>th</sup> accident in the last 18 months.

**4.340** Upon perusing the news item, the Commission vide proceedings dated May 26, 2005 directed that a copy each of a news items be sent to the Chief Secretary, Delhi and Chairman, Delhi Jal Board, to look into the allegations contained in the news items and to submit their comments within two weeks. The Commission also called for information as to whether guidelines and safety codes for operation and maintenance of sewage issued by NHRC and conveyed to the Government of Delhi had been scrupulously followed. A report about the steps being taken by the State Government of Delhi on the recommendations of the Commission in this regard was also called for.

**4.341** A detailed report was received from Delhi Jal Board giving information about the incident and steps taken by them. The Delhi Jal Board also reported that an immediate relief to the family of the deceased, i.e. Rupees One lakh to the family of J.E. and Rs. 50,000 to the labourer's family was given. Other steps taken by DJB were circulation of safety guidelines issued by NHRC, appointment of a consultant (safety), procurement of jetting machines, etc.

**4.342** The matter is still under consideration of the Commission.

### *m) Protection of the Rights of the Disabled*

#### **57. Protection of the Rights of the Disabled**

##### **Case of Shri Shyam Saxena (Case No.4/0/2005-2006)**

**4.343** The Commission received a complaint dated November 11, 2005 from Shri Shyam Saxena, alleging that he met with a road accident and both his limbs got paralyzed due to spinal injury. Being 80% physically disabled, Shri Saxena can move only on wheel chair and is totally dependent on his driver to move in his car. He submitted before the Commission that the car manufacturing companies including Maruti Udyog Limited (MUL), a Public Sector Undertaking, have discontinued manufacturing vehicles for physically challenged persons, which is causing hindrance to those physically challenged persons, who want to be self-dependent. He also pointed out that MUL, being a public sector undertaking, should have some social responsibility towards physically challenged people and hence should not stop manufacturing such vehicles.

**4.344** The Commission vide its proceedings dated December 20, 2005 requested Ms. Anuradha Mohit, Special Rapporteur to examine the issue and advise further course of action. In pursuance of the request of the Commission, Ms. Anuradha, while referring to the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995, opined that the MUL is no longer a Public Sector Company and on acquiring private status, the MUL has stopped the manufacture of disabled friendly cars, as the same is not a profitable venture. She further added that the Government and Corporate

Sector can together share the cost of inclusion of the disabled either through the means of subsidies or by way of social corporate responsibility by investing a part of profit generated from government procurement on making available disabled friendly cars in the market. This will enable the disabled lead a self-reliant life.

**4.345** The Commission, vide its Proceedings dated January 13, 2006, called for the comments from the Secretary, Ministry of Heavy Industries, which were still awaited.

**n) Violation of Human Rights of SC/ST**

**58. Burning of houses of Dalits in Balmiki Colony, Gohana, Sonapat, Haryana (Case No.1031/7/2005-2006/FC)**

**4.346** A news item captioned 'Mob torches houses of Dalits' published in the newspaper *The Tribune* dated September 1, 2005 reported that a mob belonging to upper castes, most of them Jats, burnt several houses of the Dalits situated in Balmiki Colony, near Baroda Chowk in a violent backlash to the murder of Gharwal village youth Baljeet Siwach on Saturday night in Gohana, Sonapat. At least, 15 houses were gutted in the fire, whereas 28 others were reportedly partially burnt. It took several hours for fire tenders to extinguish the fire due to narrow lanes. While fire was put out in most houses by the evening, flames were seen emerging from some houses even later in the day. Officials of the administration claimed that the situation was tense, but under control.

**4.347** The Commission took cognizance of the news item on September 1, 2005 and directed Chief Secretary, Haryana and District Magistrate, Sonapat to send their comments.

**4.348** Pursuant to the aforesaid directions, an interim report No.10/51/2005-2HG-IV has been received from the Under Secretary, Home on behalf of the Chief Secretary to the Government of Haryana. The report *inter-alia* states as under:

*"On August 27, 2005, 7 Balmiki r/o Gohana assaulted Shri Baljeet Singh S/o Hawa Singh, Caste Jat of village Gharwal, who later died. FIR No.157 dated August 27, 2005 was registered in P.S. City Gohana against Seven accused and 10/12 others of Balmiki Basti, Gohana. Accused No. One, Shiv Lal was arrested on August 29, 2005 and three other accused were arrested on August 31, 2005. Balmiki families went underground on August 27, 2005 fearing that relatives of the deceased may attack them. A Panchayat on behalf of deceased's family was called on August 30, 2005 for arrest of the accused persons and a Committee of 51 persons was constituted to meet again on August 31, 2005 at Gohana and to decide the future course of action. Accordingly, Deputy Commissioner, Sonapat & Superintendent of Police, Sonapat went to Gohana Rest House to meet the Panchayat. SDM, DSP and SHOs of Police Station of Gohana were present to maintain law and order. Tehsildar and DSP Gohana contacted the Committee Members for consultation and the Panchayat told them that a memorandum would be given to DC and SP, Sonapat.*



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*"In the meanwhile, a group of miscreants joined the Panchayat. They walked out and reached Samta Chowk, near Balmiki Basti. The mob was advised not to take law in their hands. The crowd of 2000, ignoring the warning, split into splinter groups and entered the narrow lanes of basti from all sides and houses of Balmikis were set ablaze by opening gas cylinders lying in the kitchen of the houses. The flames from the burning houses also affected the adjoining houses. On the orders of D.M. and S.P. Sonapat, 12 rounds were fired in the air to disperse the mob. Seven fire tenders were called and adequate police force was deployed throughout the town.*

*"FIR No.159 dated August 31, 2005 for rioting, arson, attempt to murder and Section 3-4 of SC/ST Act was registered against 23 persons and efforts are being made to arrest them. In all, 54 houses were affected/damaged, which are being repaired by B & R Department. Efforts are being made to rehabilitate the victims.*

*"During the bandh in the State of Haryana on September 2, 2005, the agitators damaged public and private property in Panchkula. FIR No.410 dated September 2, 2005 was registered at PS, Sector-5, Panchkula under IPC and Public Property Damage Act, 1984.*

*Government has announced payment of compensation of Rupees One lakh per affected family. Houses destroyed in the fire are being rebuilt/repared by B & R Department, Haryana. The Government has entrusted the investigation of these three FIRs to the CBI. The then DSP, Gohana, the then SHO, P.S. City, Gohana and the then SHO, PS, Sector-5, Panchkula have been placed under suspension on account of dereliction of duty. Explanation of Shri S.K. Goyal, IAS, the then Deputy Commissioner and Shri Anil Kumar, IPS, the then Superintendent of Police, Sonapat has been called."*

**4.349** On further consideration of the matter, the Commission, vide its proceedings dated November 10, 2005, directed that the following information be obtained from Chief Secretary, Government of Haryana within four weeks:

- i) Whether the compensation of Rupees one lakh has been paid to the affected families, if so, the details thereof?
- ii) Whether investigation of three FIRs has been taken over by the CBI?
- iii) Status of re-building/repairing of the destroyed houses by B&R Department, Haryana; and,
- iv) Status of disciplinary proceedings initiated against delinquent public servant for dereliction of their duty.

**4.350** Pursuant to the directions of the Commission, Chief Secretary, Government of Haryana, Chandigarh, vide his letter dated January 27, 2006, has informed that cash compensation to the tune of Rupees one lakh has been paid to each of the 54 affected

families. Investigation in respect of the cases registered in relation to the unfortunate incident had been handed over to CBI on September 11, 2005. He also informed that 54 damaged/burnt houses had been reconstructed by the Government at the cost of Rs. 49 lakhs. Affected families were also given compensation for the damage to their house-hold articles. Besides, cash assistance of Rs. 5,000/- was also provided to 54 families immediately after the incident and a sum of more than Rupees two lakhs had been spent for providing free food, medicine, text books, TA/DA, etc. to the victims. Regarding the status of disciplinary proceedings, it is submitted that Shri Ronki Ram, the then DSP, Gohana and Shri Satpal Singh, SI, the then SHO, Police Station Sadar Gohana, have been placed under suspension and departmental action is being taken against them.

4.351 From the above report, the Commission noticed that the affected families had not only been paid monetary compensation, but the Government had got their damaged houses repaired/reconstructed. CBI investigation into the cases registered in relation to the incident had also been started; besides, the delinquent police officials had been suspended and departmental action against them were being initiated. The Commission further observed that it is expected that the State authorities will expeditiously complete the departmental proceedings and take appropriate action against the delinquent officials on the basis of the outcome of departmental enquiry.

4.352 The Commission appreciates the sensitivity and promptness shown by the State Government in dealing with the instant matter in awarding compensation to the victims – repairing or reconstructing their houses at State expenses; initiating CBI inquiry into the incident; and also initiating departmental proceedings against the errant officials. We hope and expect that other State Governments also will act promptly and with all sensitivity as regards the violation of human rights, wherever required.

4.353 No further action by the Commission is called for. The file is closed.

o) *Suicide by Farmers in Maharashtra*

59. *Suicide by farmers in Maharashtra (Case No. 668/13/2004-2005)*

4.354 The Commission took *suo-motu* cognizance of a press clipping captioned ‘22 Maharashtra farmers commit suicide’, which appeared in the *Deccan Herald* dated July 18, 2004 and directed the Chief Secretary, Government of Maharashtra to take such action as deemed appropriate and to submit action taken report in the matter.

4.355 Pursuant to the directions of the Commission, Desk Officer (Revenue and Forests Department) Mantralaya, Mumbai has submitted report vide communication dated December 23, 2004. Relevant part of his report reads as under:

*“In the Amravati Division, two farmers from Yavatmal District committed suicides in July, 2004. These two farmers, viz. Shri Arjun Dharma Rathod and Shri Praveen*

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*Krishna Wadekar committed suicides on July 16, 2004. On enquiry through the Commissioner, Amravati Division, it was revealed that these suicides were not owing to drought and indebtedness. During the period from April to July, 2004, 30 farmers from Nagpur Division committed suicides. It had been revealed that out of these, three farmers committed suicides due to drought and indebtedness. Hence, the legal heirs of these three farmers had been given assistance of Rupees One lakh each from the Chief Minister's Relief Funds.*

*During the period March, 2001 to November, 2004, a total of 575 farmers committed suicides in the State for various reasons, (i.e. incurable disease, family disputes, failure of crops, indebtedness, addictions, etc.). These cases were examined and out of these, 140 cases were found to be eligible for financial aid.*

*The legal heirs in all these cases, have been given financial assistance of Rupees one lakh per case from the Chief Minister's Relief Funds."*

**4.356** During the period from March, 2001 to November, 2004, it has been noticed that a total of 575 farmers have committed suicide in the State for various reasons, viz. incurable disease, family disputes, failure of crops, indebtedness, addictions, etc. These cases had been examined and out of these, 140 cases were found to be eligible for financial assistance. The legal heirs in all these cases have been given a financial assistance of Rupees One lakh per case from the Chief Minister's Relief Fund.

**4.357** The Commission on June 29, 2005, after taking into consideration the report submitted by the State Government, closed the case, with following remarks:

*"Indeed, the report from the Revenue and Forest Department, Mantralaya, Mumbai dated December 23, 2004 shows that suicides have been committed by farmers in the past on account of drought or indebtedness also. It is, therefore, desirable and appropriate that the State Government puts in place a mechanism to ensure that there is no recurrence of such events in future and take all appropriate steps to mitigate the hardships being faced by farmers due to drought or indebtedness."*

### p) Protection of Right to Health

#### 60. Levy of Charges by AIIMS, Delhi (Case No. 3153/30/2005-2006)

**4.358** The Commission has come across a distressing news item appearing in *The Hindu* dated November 30, 2005 under the caption 'A bolt from the blue for patients at AIIMS' and in several other news reports having a serious implication on the Right to Health, which is integral part of fundamental right to life guaranteed under the Constitution of India. The news report, inter-alia reads as under:

*"It was chaos and confusion all the way at the All India Institute of Medical Sciences (AIIMS) here on Tuesday with the country's premier public hospital levying charges*

*for many tests and medical investigations that were free so far and introducing 'revised hospital charges' in other cases without any prior public announcement. Coming into effect unannounced, the revision in charges for the various investigations and surgical/operative procedures, aids and appliances caught many patient unawares. The hikes resulted in long queues, delays in medical procedures, and in some cases even patients leaving without treatment.*

*"Hardest hit were those coming in from long distances for treatment and tests, who were told that the previously free-of-cost test including routine blood tests, sugar tests, malaria tests, liver tests, kidney tests. etc. ECG and blood gas level test would now come under the 'charged for category'."*

**4.359** After perusing the news report, the Commission observed as under:

*"Right to Health is a basic human right directly connected to the Right to life, which has been recognized by the international community in numerous international instruments.*

*Article 25(i) of UDHR affirms that everyone has a right to "Standard of living adequate for health for himself and his family including food, clothing, housing and medical care and necessary social services." ICESCR also, by Article 12 of the Covenant, provides that the state parties recognized the right of everyone to the enjoying of highest attainable standard of physical and mental health. Not only this, the Constitution of India has guaranteed fundamental right to life, which is possible by making quality health care accessible to everyone.*

*"AIIMS, New Delhi is one of the premier medical institutions in the country, which provides quality medical and health care. A substantive increase in the hospital charges in relation to various investigations and various procedures including surgical/operative procedures and aids and appliances in AIIMS, if true, would make the quality health services inaccessible to a large segment of society, in particular, marginalized and vulnerable sections and even the 'lower middle class' of the society. Such steps would amount to indirect denial of quality health services to the patients, not financially well off."*

**4.360** The Commission vide proceedings dated December 12, 2005 called for comments in the matter from Secretary, Health and Family Welfare and Director, AIIMS, New Delhi. They were also directed to inform the Commission about (i) the annual budget allocation to the AIIMS, (ii) how much finances, AIIMS is expecting to generate by the increase in the charges reported in the newspaper, (iii) if there is any scheme for providing free medical treatment to a patient who cannot afford to pay the charges and if so, the criteria for exemption from charges.

**4.361** Pursuant to the direction of the Commission, Director, AIIMS vide communication dated January 19, 2006, submitted a report, which indicated that AIIMS had undertaken

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rationalization of charges after due consideration by a Committee as well as the Standing Finance Committee and Governing Body of the Institute. Further, the charges for various diagnostic procedures are quite reasonable and are based on the cost of consumables used in the procedures. While charges have been increased in some cases due to increase in the cost of consumables, there has also been reduction in charges due to decrease in cost of consumables in certain cases.

**4.362** It was further mentioned that AIIMS caters to the people from all walks of life including poor patients. In addition, many patients who are otherwise undergoing treatment in private hospitals come to AIIMS for second opinion. This section of people can easily afford the charges levied by AIIMS.

**4.363** The report also mentioned that the basic idea behind the whole process was to evolve a progressive revenue model with focus on continued free treatment to larger number of poor and needy patients and affordable treatment to all. There is absolutely no question of quality health services getting denied to marginalized and vulnerable sections of the society.

**4.364** Secretary, Health and Family Welfare, Government of India also submitted a report highlighting the functioning of AIIMS as a premier institute. It is mentioned therefore that the exemption available to the poor and needy also continues as before. Therefore, revision of rate does not affect the interests of poor and needy in any way. In any case, the rates, even after revision, are way below the market rates in Delhi.

**4.365** The matter is still under consideration of the Commission.

### **61. Denial of proper treatment to Smt. Bihala Vati in District Hospital, Sidharth Nagar, Uttar Pradesh (Case No. 9608/24/1999-2000)**

**4.366** Shri Sant Ram, Dist. Secretary, Barabanki Unit of Janadhikar, Lucknow, UP vide his letter dated August 16, 1999 forwarded a press clipping that appeared in *Rashtriya Sahara* Lucknow dated August 14, 1999 indicating that one Smt. Bihala Vati w/o Ram Prakash was taken to Dist. Hospital Siddarth Nagar for delivery purpose. It was stated in the report that although Smt. Bihala Vati was suffering from labour pain, she was denied proper treatment and the nurse on duty, Smt. Vidhyavati Pandey demanded Rs. 250/- for her admission. The relatives of the patient arranged the demanded money. After admission she was not examined by any doctor for quite some time and later referred to Gorakhpur Hospital for treatment. She expired without treatment at the Hospital. This led to protest by the people present in the Hospital and after intervention by the Chief Medical Officer, an enquiry into the matter was ordered. The money taken by the nurse was returned and arrangements made for transportation of the dead body. It was alleged that the death had occurred due to the negligence and carelessness on the part of the doctors of the district hospital.

4.367 Pursuant to the notice issued to Health Secretary, Government of UP, a report dated July 4, 2000 received from the Health Department indicated that staff nurse Smt. Vidhyavati Pandey, with a view to making money, treated the patient and only after her condition deteriorated, called the doctor. As her condition had become critical, she was referred to Gorakhpur by the doctor. The nurse was found guilty of the negligence, but no doctor was found guilty. The report also mentioned that Dy. Magistrate, Shoragarh has also found the staff nurses Vidhyavati Pandey and Chandravati Devi, alongwith two pharmacists, guilty.

4.368 In view of the report received, the Commission found it a fit case for award of 'immediate interim relief' under Section 18(3) of Protection of Human Right Act and directed to issue show cause notice to the State of UP through its Chief Secretary to indicate as to why immediate interim relief be not granted to the next of kin of the deceased. The State Government was also directed to institute departmental inquiry against the delinquent staff and to take appropriate action.

4.369 The Government of UP vide letter dated November 25, 2004 submitted that a FIR was lodged against Smt. Vidya Pandey on December 4, 2001 and sanctioned for her prosecution was also given. She was now in Judicial custody. Her two increments were temporarily withheld and an adverse entry made in her record. A criminal case 1/2003 was instituted against the erring medical officers before the Court of Addl. District and Session Judge, Sidharth Nagar. As the Court found the medical officer and the staff guilty, the State Government had suspended Smt. Vidhyavati Pandey and initiated disciplinary action against her. The three medical officers had also been suspended and, a two member inquiry committee was constituted for inquiry in their case. Interim relief of Rs. 50,000/- had been sanctioned in favour of next of kin of the deceased. The amount was paid to the husband of the deceased on December 24, 2004.

4.370 Since the proof of payment called for by the Commission was received, the case was closed on July 20, 2005.

**62. Delay in restoring mentally retarded patient Chagan Kostur Begul to his family – Inaction by the State Government of Assam (Case No. 29/3/2005-2006)**

4.371 Shri Chaman Lal, Special Rapporteur, NHRC, during his visit to L.G.B. Regional Institute of Mental Health, Tezpur, Assam on March 31 and April 1, 2005, came across the case of one Chagan Kostur Begul alias 'Monkeyman' hailing from Dhule, Maharashtra who was admitted in the L.G.B. Institute on July 2, 2001 by local police as a wandering, mentally ill person of Sonitpur. In the very first report sent to the police, he was declared fit for discharge. As this man belongs to Maharashtra, the local police delayed restoring him to his family. Ultimately, he was sent to his family by special efforts of PSW staff of the Institute on May 19, 2004.

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4.372 While considering the matter on May 31, 2005, the Commission observed that prima facie, Chagan Kostur Bagur was discharged and handed over to his family after much avoidable delay, resulting in violation of his human rights. Accordingly, the Commission directed the Chief Secretary and Director General of Police, Assam to look into the matter and submit their comments within two weeks.

4.373 **The State Government of Assam vide letter dated 2/7/2005 indicated the steps taken by the L.G.B. Regional Institute of Mental Health for contacting his family members for his discharge from the Institute. It has been further reported vide letter dated July 21, 2005 that the Dy. Inspector General of Police (NR), Assam has suitably advised the Superintendent of Police, Sonitpur to take prompt action in all such cases in future to avoid such inordinate delay in restoring the mentally retarded patients to their family.**

4.374 The Commission took the report on record and closed the case on November 10, 2005.

### **63. Deaths of Tribals in Vishakhapatnam – due to lack of medical and health Care in A.P. (Case No.344/1/2004-2005)**

4.375 The Commission took cognizance of a news item that appeared in the newspaper *Ennadu* dated June 24, 2004 reporting deaths of hundreds of tribals in Vishakhapatnam due to unknown factor and lack of medical facilities. The news report further alleged that about 476 people had died over a three-month period. These deaths, it stated, had taken place despite the State Government setting up health camps. It was further reported that the condition of Primary Health Centres (PHC) and 187 sub-centres, hospitals in the area is not good and medicines are unavailable.

4.376 The Commission called for the comments from the Chief Secretary, Andhra Pradesh.

4.377 The Government of Andhra Pradesh submitted a report disclosing that there was no increase of fever and malaria in tribal areas compared to corresponding period of 2003 up to August 14, 2004. The report further mentioned about the various measures taken by the State Government to improve the situation including posting of medical officers and supply of medicines

4.378 **The Commission on May 30, 2005 considered the report received from the Government of Andhra Pradesh and expressed the hope that Government of Andhra Pradesh continues to take measures for providing medicare and to improve the health status of the tribals. The Commission also expected that the State should take all such measures as are available to it, to prevent death of the tribals due to causes mentioned in the news report. It has also pointed out that continuous monitoring of the facilities available in the sub-centres and PHCs, particularly in the tribal areas, would be useful. With these observations the case was closed.**

**64. Death of 42 Factory workers in Agra and violation of human rights  
(Case No. 8827/24/2002-2003)**

**4.379** Ms. Suparna Lahri, Coordinator, Centre for Education and Communication, Malviya Nagar, New Delhi referred a fact finding report in respect of devastating accident that took place in a foot wear manufacturing unit at Agra on May 24, 2002 killing 42 workers. The fact finding report covered various aspects relating to the incident including the working condition, sequence of events, contradiction about the number of dead and missing, steps taken by the local administration and suggestions for avoiding such fatal accidents in future. According to the fact finding report, there was laxity on the part of the administration to deal with the situation.

**4.380** In response to the notice issued to the Chief Secretary, Government of UP and Dist. Magistrate, Agra, a report received from the D.M. Agra indicated that the incident took place because of non-compliance of the guidelines regarding exit gates, non-availability of fire extinguisher, placing drums of chemicals in the main workshop and non-prohibition on smoking of cigarettes and bidis. The State Government of UP also submitted a report, which indicated that charge sheets had been filed in the court of Chief Judicial Magistrate, Agra on May 25, 2002 highlighting the violations against the factory owner. The report also mentioned that steps have been taken for fixing responsibility on the guilty personnel of the labour department as well as the fire fighting officer, who gave no objection certificate, despite the shortcomings, to the factory concerned. The Commission directed the Chief Secretary, Government of UP to show cause as to why interim relief under section 18(3) of the Protection of Human Rights Act, 1993 be not granted to next of kin of the deceased.

**4.381** The Government of UP informed the Commission of the proposed action against the erring officials of the labour department. The Commission was also informed that four charge sheets had been filed in the court of CJM on May 25, 2002 against the occupier of the factory and the matter was pending. Further an amount of Rs. 88,80,000/- had been paid by way of relief to the next of kin of the deceased labourers and 37 members from the families of deceased labourers also provided employment. The reports were taken on record and the case closed on June 20, 2005.

**C] Action taken report in respect of cases reported in the Annual Report 2004-2005**

**1. Death of Sher Mohammad in Police custody by torture: UP (Case No. 8924/95-96/NHRC)**

**4.382** This case relates to the death in custody of Sher Mohammad s/o Abdul Rashid, an under trial prisoner while on the way to the District Hospital, Badaun on 23 February 1996.



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**4.383** Upon consideration of the reports / response submitted by the State Government Authorities, the Commission had on December 29, 2004 **recommended payment of rupees one lakh as interim relief to the four brothers of the deceased. As the State Government submitted its compliance report, the case was closed.**

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

**4.384** This case relates to the commission of suicide by one Kantosh Prahlad Jadhav, aged 22 years in the police lock up on October 28, 1995 in PS MIDC, Latur, Maharashtra.

**4.385** The Commission considered and approved of the proposal by the Government of Maharashtra for payment of rupees fifty thousand, as interim relief, to the next of kin of the deceased. As the State Government submitted its compliance report in respect of the payment, the case was closed by the Commission on February 1, 2006.

**3. Custodial death of Haji Mohd. Nabuji Tentwala in police custody in Ahmedabad (Case No.7586/95-96/NHRC)**

**4.386** This case relates to the death of Haji Mohd. Nabuji Tentwala in police custody at G Haveli Police Station, Ahmedabad on July 12, 1995.

**4.387** The Commission had, upon consideration of the matter on September 22, 2004, recommended to the State for payment of rupees one lakh, as interim relief to the next of kin of the deceased. As the State Government submitted its compliance report, the case was closed on November 7, 2005.

**4. Death of Bhaiya Lall in judicial Custody in Uttar Pradesh (Case No. 9161/24/98-99-CD)**

**4.388** This case relates to the death of undertrial prisoner Bhaiya Lal S/o Dhanraj Yadav while undergoing treatment at Swaroop Rani Hospital on August 1, 1998.

**4.389** Upon consideration of the reports submitted by the Government of UP, the Commission held that there was violation of human rights of Bhaiya Lal while in custody. **The Commission on November 14, 2005, therefore, recommended payment of rupees one lakh as interim relief to the next of kin of the deceased and called for a report on departmental action taken against the errant public servants.**

**4.390** The Compliance report was still awaited.

**5. Death of Kolumbus in judicial custody in UP (Case No. 20143/24/2002-2003-CD)**

**4.391** This case relates to the death of Kolumbus, S/o Sudama, aged 26 years, an undertrial prisoner on September 8, 2002 during treatment for injuries sustained due to assault by three co-prisoners in the session lock up.

4.392 Upon consideration of the reports submitted by the State of UP, the Commission recommended to the State Government to pay a sum of Rs. 50,000/- to the next of kin of the deceased as interim relief u/s 18 (3) of the Protection of Human Rights Act, 1993. Compliance report from the State Government is still awaited.

6. **Death of Chander Prakash in Judicial Custody (Case No. 5237/24/2000-2001-CD)**

4.393 This case related to the death of Chander Prakash aged 25 years, an undertrial prisoner of District Jail Bareilly, during treatment at District Hospital, Bareilly on May 27, 2000.

4.394 Upon consideration of the reports/response submitted by the State of UP along with the response to the show cause notice issued to the State, the Commission held that the deceased was brutally beaten by the jail authorities, which resulted in his death. **The Commission, therefore, directed the State of UP to pay rupees one lakh as immediate interim relief to the legal heirs of the deceased and to submit compliance.** The compliance report is, however, still awaited.

7. **Exploitation of Children by the Great Roman Circus in Gonda District of Uttar Pradesh (Case No. 7993/24/2004-2005)**

4.395 This case was earlier reported in the Annual Report for the year 2004-2005.

4.396 The Commission obtained reports from the concerned authorities. Cases under Bonded Labour Act and Indian Penal Code have been registered against Shri Shafiq Khan and Raza Mohd. and other people of the circus. The Commission, after perusing the compliance report from the State of UP directed closure of the case on May 16, 2005.

8. **Illegal Detention and Injury to Rajesh Saini in Muzaffarnagar, Uttar Pradesh (Case No. 6454/24/97-98)**

4.397 This case was earlier reported in the Annual Report for the year 2004-2005.

4.398 The Commission obtained a report from the SSP, Muzaffarnagar. The Commission, after perusing the report, **concluded that the incident had happened due to the negligence of the police officials and on May 25, 2004 directed the State of UP to pay Rupees One lakh to the complainant as immediate interim relief.**

4.399 The compliance report is still awaited from the State of UP.

9. **Illegal Detention and Torture of Zamir Ahmed by Police at Sayana, Bulandshahr, Uttar Pradesh (Case No. 14071/24/2001-2002)**

4.400 This case was earlier reported in the Annual Report for the year 2004-2005.

4.401 **The Commission, upon consideration of the report from the State of UP that disciplinary action has been initiated against the delinquent police personnel and that the interim relief of Rs. 20,000/- has been paid to the victim, closed the case on July 12, 2004.**

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### **10. Atrocities on Adivasi Families by Forest Officials of Wynad District, Kerala (Case No. 199/11/2002-2003)**

**4.402** This case was earlier reported in the Annual Report for the year 2004-2005.

**4.403** This case relates to death of 16 Adivasis and injuries to many others including women and children during firing by Kerala Police on February 19, 2003.

**4.404** The Commission was informed that the writ petition Civil No. 35533 / 2004 had been filed before the High Court of Kerala in the matter in which a prayer was made for an independent investigation, making NHRC a party in the petition. As the matter was pending consideration before the High Court and since CBI had already investigated the matter in accordance with the Code of Criminal Procedure, investigation by the Commission under the provision of the Act was not considered possible. The other prayers made by the petitioners were also held to fall exclusively within the jurisdiction of the High Court.

### **11. Allegations of death, rape and torture of tribals as a result of actions of the Joint Task Force set up by Government of Tamil Nadu and Karnataka to apprehend Veerappan and associates (Case No. 222/10/97-98)**

**4.405** This case was earlier reported in the Annual Report for the year 2004-2005.

**4.406** The Commission on, October 19, 2005 considered the responses received from the Government of Karnataka and Tamil Nadu on the report received from Justice Sadashiva Panel and called for the comments of the complainant in the matter. The matter is still pending consideration with the Commission.

### **12. Displacement of Farmers and Agricultural Labourers by construction of a barrage across the river Nagavalli (Case No. 667/1/2002-2003)**

**4.407** This case was earlier reported in the Annual Report for the year 2004-2005.

**4.408** The Commission had called for a status report from the Government of Andhra Pradesh relating to the relief and rehabilitation package proposed for the persons affected by displacement on account of construction of a barrage across the river Nagavalli, Vizianagaram District, Andhra Pradesh. Upon consideration of the detailed report submitted by the Principal Secretary, Government of Andhra Pradesh vide letter dated October 7, 2005, the Commission has called for the progress of implementation of relief and rehabilitation package detailed in the report. The matter is still under consideration by the Commission.

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

**4.409** This case was earlier reported in the Annual Report for the year 2004-2005.

4.410 This case relates to rehabilitation and resettlement of 154 tribal families displaced due to construction of Kabini Reservoir and formation of Bandipur Project Tiger National Park. **The Commission was satisfied with the steps taken by the State Government for rehabilitation of 154 tribals families, as reported vide letter dated September 5, 2005 of the Deputy Commissioner, Mysore.** The report was taken on record and case closed on January 23, 2006.

**14. Suicide of farmers in Andhra Pradesh and Kerala (Case No. 208/1/2004-2005 and Case No. 488/1/2004-2005)**

4.411 This case was earlier reported in the Annual Report for the year 2004-2005.

4.412 This case relates to suicide by farmers in the State of Andhra Pradesh.

4.413 Action taken report submitted by the Revenue Department, Government of Andhra Pradesh on the report of the Farmer's Welfare Commission was still under consideration.

**15. Suicide by farmers in Karnataka (Case No. 180/10/2003-2004)**

4.414 This case was earlier reported in the Annual Report for the year 2004-2005.

4.415 This case relates to commission of suicide by farmers in Karnataka due to hunger as a result of poverty.

4.416 The Commission had requested its Special Rapporteur Shri K. R. Venugopal to conduct spot inquiry and submit his report. Upon consideration of the report, the Commission called for comments of the State Government on the report submitted. In the light of actions initiated by the Government of Karnataka, the case was closed on December 7, 2005.

**16. Devastation caused by Tsunami in coastal areas of South India (Case No. 1054/22/2004-2005)**

4.417 This case was earlier reported in the Annual Report for the year 2004-2005.

4.418 This case relates to the devastation caused by the Tsunami waves in large areas of coastal India. The Commission continued to monitor the relief, rehabilitation and reconstruction measures being undertaken in the Tsunami affected areas.

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

4.419 This case was earlier reported in the Annual Report for the year 2004-2005.

4.420 This case relates to commission of suicide on August 6, 1998 by Vinod Kumar Rajput due to harassment and torture at police station after he was robbed of rupees 2.5 lakhs while returning from bank.

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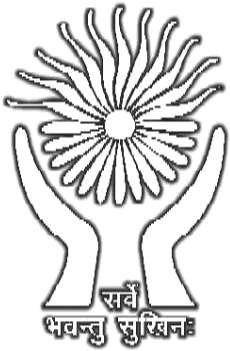
**4.421** The Government of Madhya Pradesh vide letter dated 20/9/2005 submitted compliance report in respect of payment of an additional amount of Rs. 50,000/- as interim relief to the next of kin of the deceased. In view of the compliance received, the case was closed on October 10, 2005.

**18. Case of Jalal Andrabi, Advocate- Jammu & Kashmir (Case No. 9/123/95-LD)**

**4.422** This case has been included in the earlier reports.

**4.423** This case relates to alleged abduction and subsequent killing of Jalil Andrabi, an advocate of Srinagar by the security forces.

**4.424** The Commission considered an order dated May 14, 2005 passed, by the CJM, Badgam in relation to the case FIR No. 139/96. Since the accused army officer had not appeared in the court, the Secretary, Ministry of Defence and the Chief of the Army Staff were requested to look into the matter and ensure that Major Avtar Singh appeared in the court of CJM, Badgam for undergoing trial in the case.



# Economic, Social and Cultural Rights

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5.1 In democratic societies, fundamental human rights are broadly classified into civil and political rights on the one hand and economic, social and cultural rights on the other. The object of both sets of rights is to make an individual an effective participant in the affairs of the society. Unless both sets of rights are available, neither full development of the human personality can be achieved nor can it be said that true democracy exists. Unfortunately, however, protection of economic, social and cultural rights compared to the protection of civil and political rights, both at the national and international level, has been poor and irregular.

5.2 The UN Committee on Economic, Social and Cultural Rights (CESCR) is taking a robust attitude towards practical implementation of economic, social and cultural rights. It was recognised by the UN in 1986 when it acknowledged the Right to Development as a human right. The right to development as formulated in the 1986 UN Declaration is a synthesis of the two sets of rights. The distinction, long made, between civil and political rights on the one hand and the economic, social and cultural rights on the other, was put to rest by the Vienna Declaration and Programme of Action, which affirms that “all human rights are universal, indivisible and inter-independent and inter-related”. The Declaration, however, will amount to a little more than an aspiration so long as economic, social and cultural rights are not protected and promoted. The National Human Rights Institutions have a great role to play to correct

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## Economic, Social and Cultural Rights

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the fallacy of treating one set of rights as inferior to the other set of rights so that they can implement economic, social and cultural rights in the political and social contexts in which they operate.

**5.3** In developing countries there exist massive inequalities, which render the enjoyment of Human Rights rather illusory. The political freedom would not have much of significance or meaning for the teeming millions of people in various countries who suffer from poverty and all social evils flowing from it unless economic, social and cultural rights are assured to them.

**5.4** The Commission has been forcefully addressing issues relating to violations of economic, social and cultural rights. With over one-fifth of the world's population continuing to suffer from hunger, poverty, lack of health-care facilities and illiteracy, the Commission recognizes that there is an urgent need to seek means by which these rights can be enforced if the States fail to comply with the obligations they have voluntarily undertaken.

**5.5** The Commission is also of the firm view that we must accept indivisibility and inter-related nature of the two sets of rights for full development of human personality. To effectively implement economic, social and cultural rights, we need to adopt a rights based approach.

### **Right to Health**

**5.6** The Commission has been deeply concerned with several issues relating to human rights. Under this the Commission has taken the issue of 'Right to Health' as one of its major concerns. The World Health Organisations endorses health as a state of physical, mental and social wellbeing. The Right to Health has been enshrined in the Universal Declaration of Human Rights under Article 25 stating, "Everyone has a right to standard of living, adequate for the health and well being of himself and of his family including food, clothing, housing and medical care and right to security in the event of sickness and disability. Further, the International Covenant on Economic, Social and Cultural Rights too under Article 12 recognises "The right of everyone to the enjoyment of highest attainable standard of physical and mental health".

### **Core Group on Health and Public Hearing on Health**

**5.7** The Commission's efforts in the area of public health and human rights have been guided by the realization that the right to life with human dignity, enshrined in the Constitution, must result in strengthening of measures to ensure that people of this country, and particularly those belonging to economically disadvantaged sections of the society, have access to better and more comprehensive health facilities.

**5.8** In order to fulfill its obligation, the Commission has also constituted a Core Group on Health, headed by Dr. N.H. Antia to assist it on matters relating to 'right to health'.

## Economic, Social and Cultural Rights

Ever since the Core Group was constituted by the Commission, it has sought and obtained its advice on some of the following matters:

- 1) Children affected by leprosy or living in endemic environment;
- 2) Lack of availability of anti-snake venom in PHCs;
- 3) Issues relating to prevention of burn injuries;
- 4) Issues relating to prevention and control of fluorosis;
- 5) Illegal trade in human organs;
- 6) Issues relating to HIV/AIDS;
- 7) Availability of blood in blood banks and blood transfusion;
- 8) NHRC leads Public Hearings on 'Access to Health Care' and other issues related to Public Health;
- 9) Issues relating to 'Female Foeticide: Legislation, Ethics and Empowerment'.

**5.9** In order to take stock of the status of implementation of the recommendations made by the NHRC on different issues relating to right to health, the Commission convened a review meeting on the 'Recommendations of the Core Group on Health and Public Hearing on Health' on March 4, 2006 at Vigyan Bhawan, New Delhi. This meeting was meant to evaluate the implementation of NHRC's recommendations on the issue of Public Health in relation to realizing health as basic human right.

**5.10** There are three major challenges that the country needs to address in the health sector. These are: acceptability, availability and affordability. The need is:

- (i) to upgrade the existing health care facilities at all levels;
- (ii) forge private public partnership;
- (iii) adopt a right-based approach for protecting and promoting the survival and developmental needs of children and focus on preventive aspects of health care, such as nutritional value of food, first aid, hygiene and sanitation.

**5.11** The Commission, on the above issues, has listed the following recommendations to ensure the right to health.

**(i) Upgrade Existing Health Care Facilities at All Levels**

1. The health care facilities are provided at Primary Health Centre (PHC), Community Health Centre (CHC) and District Hospitals, Medical Colleges and specialised hospitals. The main hindrance to ensure acceptability and affordability is lack of manpower and medicines. Even though the statistics may show sufficient number of trained man-power in the country as a whole, but the micro analysis clearly reflects lack of trained doctors and even para-medical staff at PHCs and CHCs, the cutting edge to provide the health services;



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2. The time has come to have a fresh thinking to ensure availability of trained manpower. Medical Council of India (MCI) should seriously contemplate to recognise a three-year course for training doctors on basic preventive and curative health services, so that the paucity or non-availability of man-power is taken care of. Another alternative is to have one year bridge course for doctors of Indian System of Medicine and post them at the CHCs and PHCs;
3. Another issue is non-availability of women doctors. The time has come to give recognition to mid-wife course by selecting local woman. A 2-3 year course will enable her to ensure good pre-natal, ante-natal care and also institutional deliveries thus, directly contributing to reduction of Maternal Mortality Rate (MMR);
4. The para-medical staff in terms of Auxiliary Nurse Midwife (ANM) and more so a local trained person who can guide; the concept of ASHA needs to be strengthened and streamlined.

### **(ii) Forge Public-Private Partnership**

The spread of private practitioners and 56% of the treatment still attended by non-qualified doctors need conscious efforts to involve private practitioners in the delivery of health services. The attempt made in Gujarat for institutional delivery is the case, which needs to be replicated. Another area of collaboration can be to make medicines of all national programmes available with private practitioners and then graduate to develop health insurance sector;

1. The need is also to have a regulatory mechanism to ensure quality standards and costs of care in the private sector.

### **(iii) Adopt a Rights Based Approach for Protecting and Promoting the Survival and Developmental Needs of Children**

1. Universal immunisation is the right of the child and no reluctance on the part of parents or inefficiency of delivery system should stand in way of achieving anything less than 100% immunisation;
2. The rural health worker and panchayat need to be actively involved to ensure the same.

### **(iv) Focus on Preventive Aspects of Health Care such as Nutritional Value of Food, First Aid, Hygiene and Sanitation**

1. The spread of knowledge of first aid, hygiene and sanitation does not require paraphernalia of health workers. Need is to have one person responsible for 200 population and to have him trained to spread awareness and empower them. The need is to ensure availability of such manpower in both rural areas and urban slums. The reorganization of existing staff in health itself will provide

sufficient number of these trained personnels; (Department of Health and Family Welfare)

2. The delivery system of Integrated Child Development Services (ICDS) for pregnant mothers, lactating mothers and children till 5 years of age needs constant monitoring. The monitoring should be of outputs, i.e., uplift malnutrition levels (For Department of Women and Children).

**(v) Non-availability of Drugs**

1. The Central and State governments make adequate budgetary provision for supply of drugs in public hospitals. However, due to unscientific procurement policies, the non-availability of drugs results in poor health services. The private practitioners resort to 'over-subscription' of drugs. Thus, there is strong need to:
  - a) Adopt drug procurement policy for public sector, based on experiment done in the state of Tamil Nadu.
  - b) WHO standards for prescription of drugs should be advocated.

**(vi) Emergency Medical Care (EMS)**

Nearly 40,000 persons loose their lives every year due to injuries caused by accidents. The present EMS is functioning sub-optimally and requires upgradation.

Thus, there is need for:

1. All States should take action on setting up of Centralised Trauma Services and for having National Accident Policy. There is also need to have one toll-free number for the whole country;
2. Having a Central coordinating, facilitating, monitoring and controlling committee for Emergency Medical Services under the aegis of Ministry of Health and Family Welfare;
3. MCI to consider developing 'Emergency Medicine' as a specialty.

## **Mental Health**

**5.12** The Commission has been deeply concerned at the unsatisfactory conditions prevailing in mental hospitals in the country, many of which function as custodial rather than therapeutic institutions. In the light of such problems as overcrowding, lack of basic amenities, poor medical facilities, little or no effort at improving the awareness of family members about the nature of mental illness, or of the possibilities of medication and rehabilitation, the Commission realized that there was great need for it to take up the cause, as otherwise, it would result in continuing violation of the rights of those greatly in need of understanding and support.

### **Quality Assurance in Mental Health**

**5.13** The Commission continued to oversee the functioning of the Ranchi Institute of Neuro Psychiatry and Allied Sciences (RINPAS) Ranchi, the Institute of Mental Health and Hospital (IMHH) Agra and Gwalior Mansik Arogyashala (GMA) under the Supreme Court order dated November 11, 1997, reference to which has been made in the previous reports. The Commission has been monitoring the performance of these Institutions in regard to clearly specified tasks given by the Supreme Court while granting autonomy to these Institutions. The Chairperson Dr. A.S. Anand accompanied by Shri Chaman Lal, Special Rapporteur visited the IMHH Agra on January 30, 2006. He reviewed the working of the Institution for the year 2005-06. The Special Rapporteur reviewed the working of the GMA at Gwalior on March 27, 2006 and RINPAS on March 30-31, 2006.

### **IMHH Agra**

**5.14** The performance of IMHH Agra has been consistently good ever since the NHRC started reviewing its achievements systematically in the year 2000. The execution of all the tasks given by the Supreme Court related to improvement of hospital facilities and care of patients, development of infrastructure for their social and occupational rehabilitation, development of training, research facilities and extension of mental health sciences at community level by running satellite clinics has been progressing satisfactorily. Diagnostic and therapeutic facilities have been improved considerably with the addition of the state-of-art equipment and techniques. A distinct improvement is noticed in the availability of treatment and care of patients. Occupational therapy facilities for female patients have been expanded. An encouraging albeit modest beginning has been made in developing the occupational therapy facilities for male patients, which are required to be upgraded.

**5.15** The community outreach programme has received good attention and the deficiencies pointed out in the previous reports have been removed. The IMHH Agra has earned all round appreciation for the standard of sanitation and hygiene and beautification of the campus. A marked improvement is noticed in the general atmosphere in the wards, which is very much relaxed with no signs of morbidity commonly encountered in mental hospitals. While the progress in a vital component of the mandate given by the Supreme Court, viz starting of P.G and Diploma Classes remains slow as before, the Institute is doing a commendable job in imparting training to the students in Allopathic, Ayurvedic, Homeopathic, Nursing Psychology and Social Work deputed from different Institutions, Government as well as private. The Chairperson urged the State Government to appreciate the budgetary constraints of the Institute and clear the proposal of the Management Committee to enhance the annual grant. Only after this is done, the Institute can fill up the faculty posts, procure required equipments and facilities and start the professional courses. The IMHH has a tremendous potential to develop as an Institution of excellence for education and research in the field of mental health. It is sad that the available talent remains unutilized because of financial constraints.

**GMA Gwalior**

5.16 The Special Rapporteur reviewed the working of the Institution on March 27, 2006 for the year 2005-06. The performance of GMA has been consistently unsatisfactory since the first review made in March 2001. It has further deteriorated in the period of report. No worthwhile improvement is seen in hospital facilities for achieving the objective of upgradation of diagnostic and therapeutic facilities spelt out in the Supreme Court directions, while granting this Institution an autonomous status. Rationalisation of staffing pattern remains pending as before. All the sanctioned posts in the discipline of Clinical Psychology and Psychiatric Social Work have been lying vacant from the date of sanction. While a qualified psychiatrist has been posted as Director, GMA in response to repeated observations made by the Commission, the arrangement is still not satisfactory because the incumbent is holding the charge of Director GMA in addition to his responsibilities as Supdt. Government Mental Hospital, Indore.

5.17 Occupational Therapy, an essential component of Mental Health Care, is totally missing in the Male Section of the Hospital. The occupational therapy facilities introduced on a moderate scale in the Female Section two years back need upgradation. While some progress has been shown in community outreach programmes, the directions of the Apex Court in regard to development of training and research facilities for medical and paramedical personnel remain totally unimplemented. The Commission feels that the Institution, in its present form, has neither the capability nor the means to take up any education programme in Mental Health, let alone become a centre of excellence in the field of training and research in mental health.

5.18 The Management Committee seems reluctant to function as an autonomous body vested with sufficient administrative and financial powers. It has not been holding its mandatory quarterly meetings regularly. The Commission feels that the intervention of the Supreme Court, leading to the involvement of NHRC has not made any significant change in the efficiency and quality of services at the GMA.

**RINPAS Ranchi**

5.19 The annual review carried out by the Special Rapporteur presented a happy picture of the steady march of RINPAS towards the realization of the goals set for it by the Supreme Court while granting it an autonomous status. RINPAS can now be rated as one of the most advanced Mental Health Institutions in terms of diagnostic and therapeutic facilities, treatment and care of patients and quality of administration and management. Greater attention to the human rights aspects of the indoor patients has been a significant development of the period of report. The occupational therapy facilities have been further developed and the scope and reach of the community outreach programme have also been expanded.

5.20 A significant achievement of the year 2005-06 has been introduction of an ambitious computerization programme, which will be fully operationalised within three to four months.

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RINPAS is the only Institution out of the three entrusted to the Commission by the Supreme Court, which has fulfilled the expectations of the Supreme Court in becoming a center of Training and Research in Mental Health, although this is one area, where a lot more remains to be achieved. While M. Phil and Ph.d courses are in the full swing in the discipline of Clinical Psychology and Psychiatric Social Work, the more essential and much awaited target of starting MD (Psychiatry), Diploma in Psychiatric Medicines (DPM) and Diploma in Psychiatric Nursing (DPN) courses is yet to be achieved.

5.21 The Commission compliments the Government of Jharkhand for the material and financial support it has been giving to the Institution. Establishment of a Half Way Home is an urgent need of the Institution. A proposal submitted by an NGO Sanjeevani Gram Trust, Ranchi is pending consideration with the Ministry of Social Justice and Empowerment.

### **Visit to Government Mental Health Centre Thiruvananthapuram and the Government Hospital for Mental Care Visakhapatnam**

5.22 The Commission has enlarged the scope of its monitoring of the Quality Assurance in Mental Health (NIMHANS Report) on the State Government Mental Hospitals, reference to which was made in the previous report. Dr. Justice V. Patil accompanied by Shri Chaman Lal, Special Rapporteur visited the Government Mental Hospital Centre, Thiruvananthapuram on November 3, 2005 and the Government Hospital for Mental Care, Visakhapatnam on November 19, 2005 for this purpose. The Commission is pleased to note a significant improvement in all aspects of functioning of these Institutions although a number of recommendations made in the NIMHANS report are yet to be implemented.

### **Government Mental Health Centre, Thiruvananthapuram**

5.23 The Mental Health Centre Thiruvananthapuram was visited by NIMHANS Committee in 1998. Its report mentions major inadequacies/deficiencies of Hospital infrastructure, diagnostic and therapeutic facilities, admission and discharge procedure and the living conditions of the inmates. The report had specifically recommended abolition of Cell admissions, gradual conversion of closed wards into open wards, streamlining of admission and discharge procedures in accordance with the provisions of the Mental Health Act, 1987, upgradation of investigation facilities, development of occupational therapy and rehabilitation facilities.

5.24 A significant improvement has been noticed in the level of various services and their operation. Although quality of hospital services has improved and patients' care is receiving more attention, most of the major recommendations of the NIMHANS report are still awaiting implementation. Cell admissions have not been totally abolished. Conversion of closed wards into open wards is found to be slow and needs to be speeded up. While diagnostic and therapeutic facilities have been upgraded and occupational therapy facilities have also been improved, recreational facilities remain poor as before. Rehabilitation of

cured, but destitute/abandoned patients needs more attention and participation of the voluntary sector. The death rate and incidence of suicide are a serious cause for concern. While the admission procedure has been streamlined and brought in conformity with the Mental Health Act, 1987, the discharge procedure in respect of admissions under court orders suffers from serious infirmities and needs a thorough review. The intervention of the High Court of Kerala through PILs filed by the Social Action Groups is seen to be a major factor responsible for improvement in the quality of treatment and living conditions of patients.

### **Government Hospital for Mental Care, Visakhapatnam**

5.25 The NIMHANS report on the Government Hospital for Mental Care Visakhapatnam had pointed out major deficiencies in hospital infrastructure, diagnostic and therapeutic facilities, admission and discharge procedure and the living conditions of inmates. The absence of essential posts of Clinical Psychologist and Psychiatric Social Worker in the staffing pattern and lack of psychological testing facilities and psycho social and behavioural intervention techniques were also pointed out. The report recommended abolition of Cell admissions, construction of new wards of shorter capacity (not more than 20) for use as open wards, opening of a Day Care Centre, development of occupational therapy facility, improvement in the supply of water and electricity and fixing of a nutritive diet scale of 3,000 calorie per day.

5.26 The most significant development after the receipt of the NIMHANS report has been the construction of a new Hospital building, which can accommodate 400 patients and has almost all the facilities required by a teaching hospital. Admission and discharge procedure has been streamlined. However, most of the major recommendations of NIMHANS report are awaiting implementation. The staffing pattern is still without sanctioned posts of Clinical Psychologist and Psychiatric Social Worker. Cell Admissions continue as before, although on a reduced and well regulated scale. There has been hardly any progress in conversion of closed wards into open wards. Very little has been done to develop the occupational therapy facilities. Rehabilitation facilities are totally missing. Recreational facilities remain poor as before. The death rate and incidence of suicide are a serious cause for concern. While admission procedure has been streamlined and brought in conformity with the Mental Health Act 1987, a number of patients continue to languish even after getting fit for discharge because of non-availability of police escort to take them to their homes. However, with improvement of diagnostic and therapeutic facilities and the standard of care and treatment, the average length of stay (ALS) has come down considerably.

5.27 The diet scale revised in 1,999 to ensure 3,000 calorie daily intake is not being implemented and, in fact, cannot be implemented because of the monetary ceiling of (Rs. 20 per patient per day) imposed on expenditure under this head. The ATR received at the time of writing of this report shows that the ceiling has been raised to Rs. 28 per patient per day.

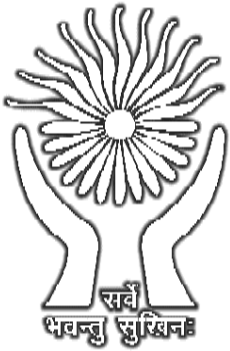
## Economic, Social and Cultural Rights

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**5.28** The reach and range of community services need to be expanded. The Government Hospital for Mental Care Visakhapatnam has a lot of untapped potential. The Commission urged the State Government to remove the organizational inadequacies and help the Institution in realizing its full potential to become a centre of excellence in the field of mental health care and teaching and expects the State Government to react positively. Results are still awaited.

### **Expert Group on Rehabilitation of Long Stay Patients**

**5.29** A meeting of the Expert Group constituted by the Commission on December 31, 2001 for rehabilitation of destitute/abandoned Long Stay Patients languishing in the Mental Hospitals at Agra, Gwalior and Ranchi, was held on July 6, 2005 under the Chairmanship of Dr. Justice Shivaraj V. Patel, Member, NHRC. The Directors of Ranchi Institute of Neuro-Psychiatry & Allied Sciences (RINPAS), Ranchi, Gwalior Mansik Arogyashala, (GMA), Gwalior and the Institute of Mental Health and Hospital, Agra presented current status of the Long Stay Patients in their respective Institutions. The presentation revealed a remarkable reduction in the number of LSPs over the last three years, indicating an effective check on the problem of chronicity. The meeting evaluated the programme of sensitisation workshops, numbering 11, conducted by Action Aid, India at the three Institutions for the benefit of 300 members of the subordinate staff. A proposal of Action Aid, India for formulating (a) a scheme of protective community living and (b) a pension scheme for the abandoned and destitute Long Stay Patients, was discussed. A special Committee comprising Director, NHRC, one representative of Action Aid, India and one representative of the Ministry of Social Justice and Empowerment was constituted to scrutinise these schemes and work out financial implications after collecting relevant data for all the Government Mental Hospitals, which the representative of the Ministry of Health and Family Welfare promised to furnish. Dr. Justice Shivaraj V. Patil expressed unhappiness over the delay in the sanction of Half-Way Home Schemes for Gwalior and Ranchi pending with the Ministry of Social, Justice and Empowerment since long and requested the representative of the Ministry for immediate action.



# Rights of Persons with Disabilities

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6.1 According to the Census 2001, there are 21.9 million persons with disabilities in India who constitute 2.13 per cent of the total population. Today, as it stands, their rights are more a myth than reality. Fifty one per cent of them have no access to education and 66 per cent of the disabled are unemployed.

6.2 The National Human Rights Commission (NHRC) was shocked to learn that blind students routinely receive their Braille textbooks towards the fag end of the academic session or worse still, a majority do not have access to these books at all. Upon delving deep into the matter, it was found that many States and UT administrations have not even set up a single Braille press. Recognizing that children with disability have a right to receive an education in an appropriate environment, **the Hon'ble Chairperson, NHRC vide letter dated April 8, 2005 to the Chief Ministers of all the States and Union Territories stated that there is a need to ensure that the printing of books in Braille go simultaneously with the printing of regular books (Annexure 7).** In order to ensure timely availability of Braille text books, the services of high speed computerized Braille presses could be utilized. This would ensure education in an appropriate environment for blind students, in accordance with Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

6.3 Responding positively, about 12 states and UT administrations assured the Commission of providing timely availability of the Braille books. The

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## Rights of Persons with Disabilities

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government of Harayana, Madhya Pradesh, Uttar Pradesh, Rajasthan, Jammu and Kashmir and Manipur have initiated positive steps. West Bengal, Gujarat and Karnataka are also amongst those States, which have developed the necessary infrastructure for the availability of Braille books.

**6.4** The Commission was astonished to find that the deaf children generally do not receive education through the medium of sign language. Reason being non-availability of child centered sign language in the country and the absence of sign language training from the teacher education programmes for the deaf. To remove this injustice, the Commission advised Ministry of Social Justice and Empowerment and the Human Resource Development to support a project for standardization of the sign language for the deaf children in age range of 0-14. Towards this end, the Commission facilitated a series of meetings and workshops involving a number of institutions and experts. These consultations were useful in developing a project outline in a multi-partite mode. We note with satisfaction that Ministry of Social Justice and Empowerment has extended the necessary financial and technical assistance to the Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai (NIHH). The institute has been designated as a nodal agency for the implementation of the sign language project. However, the Ministry of HRD could not arrive at any decision for strengthening sign linguistic component within the linguistic division of Jawaharlal Nehru University. Under the Biwako Millennium Framework India is obliged to develop and coordinate a standardized sign language, finger Braille, tactile sign language. **Salamanca Statement** emphasized the importance of sign language as the medium of education for the deaf and encourages the State to ensure that all deaf persons have access to education in their National Sign Language.

**6.5** High correlation between disability and poverty has been a cause of serious concern for the Commission. It is believed that people with disability are very vulnerable to poverty, if they are not already poor, since disability often results in loss of income and demands additional expenditure. The cost of living also increases with the imposition of barriers to access public goods, utilities and services. The Commission in partnership with the National Association for the blind undertook a study to estimate the precise cost of disability – both direct and indirect.

**6.6** The expenditure on additional facilities and services as brought out in the study is around Rs. 9,000/- per person with disability per annum. The Commission firmly believes that it the duty of the State to relieve the disabled and their families of this extra cost. The study also confirms that, “gains emanating from providing economic opportunities to persons with disabilities and relieving the care givers for taking up alternative productive vocations is a staggering Rs. 25,000/- crore per annum.”

**6.7** Employment related provisions comprise the core element of the Persons with Disabilities Act, 1995. However, these have been visiting court-rooms leading to the largest number of judicial pronouncements around them with the aim to identify factors leading to gross violations

## Rights of Persons with Disabilities

of the right to work, some fifteen hundred cases and complaints were analyzed and it was found that lack of awareness and sensitivity on the part of government functionaries is the key obstacle including negative mindset. Socio-Legal Information Centre, Delhi, assisted the Commission in consolidating the findings in the shape of a Handbook on Employment of Persons with Disability in Government of India. The book has been arranged in fifteen chapters and is a response to most frequently asked questions in the light of relevant laws, by-laws, rules, executive orders and instructions. For proper consideration of court law, examples of jurisprudence have also been cited. During the course of this study, many inconsistencies in the service rules came under sharp focus, and, therefore, Central and State Governments have been asked to undertake a systematic review of service rules to ensure their compatibility with the act.

**6.8** Disability is an emerging area in the field of human rights. In order to improve the capacity of Human Rights Commissions of India and Canada including their associated partners and to cooperatively address major disability issues from a human rights perspective, a project was initiated in the year 2003. For grounding firmly the human rights perspective on disability, the project worked towards effecting change in the programmes of legal and human rights studies. It has also prepared a small cadre of master trainers capable of serving formal and non-formal programmes of human rights education and awareness. To facilitate effective delivery of disability and human rights component in the study programmes, an impressive body of reference and resource materials has been compiled and widely shared, which is as under:

- A) **‘Disability Manual 2005’ (Compilation of International and Domestic Laws and Disability Jurisprudence),**
- B) **‘Handbook on Employment of Persons with Disabilities in Government of India’,**
- C) **‘Disability and Law’ (Compilation of cases on disability issues),**
- D) **Report by Disability Rights Promotions International (Providing an overview of human rights training programme and training resources from around the world.**

**6.9** Apart from these, a curriculum design for a course in Human Rights Disability and Law has also been evolved and the Bar Council, National Law Schools and their leading Universities have been asked to introduce an optional paper in Disability at the graduate level.

**6.10** As a measure to improve inhouse capacity for the efficient handling of disability issues the Commission deputed three of its officers for an internship Programme with the Human Rights Commission of Canada (CHRC) which possesses vast experience in the protection and promotion of rights of persons with disability. The officers from the Law, Programme and Research Division of the Commission attended the internship that familiarized them with Canadian

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legal and policy frameworks, the alternative complaints handling system of CHRC and the Canadian Programme initiatives for non-discrimination and reasonable accommodation in public facilities and employment.

**6.11** On June 23, 2005, a National Conference on Human Rights and Disability was hosted by the Commission. The objective was to crystallize strategies for mainstreaming disability in the development agenda of the country. The conference brought together all the major stakeholders like senior officials of concerned Ministries in the Government of India, NGOs working in the Disability Sector, persons with disabilities, heads of Apex Institutions such as State Commissioners for Persons with Disability, State Welfare Secretaries and Vice Chancellors of universities. To keep disability under the spotlight, the participants endorsed establishment of independent Department of Disability and Development (DDD) on the lines of Department of Women and Child Development, Government of India.

**6.12** The deliberations of the Conference were incorporated in the recommendations, which were communicated to the Government. These are arranged in three parts:

**Part I** recommends broad policy changes for systemic improvements and sustainable development.

**Part II** recommends specific measures by Apex Institutions for improving capacity of public administrators, field level functionaries and other service providers.

**Part III** recommendations are addressed to various ministries and departments for incorporating human rights awareness component in the training programmes for persons with disabilities and rehabilitation workers.

**6.13** To promote judicial intervention and activism on disability rights and related issues, a **Judicial Colloquium on Disability & the Law** was convened in December, 2005 at Delhi. It was attended by 52 judges from 15 High Courts of the country and included the Chief Justices of Tamil Nadu and Jammu and Kashmir. The Colloquium was organized in partnership with Human Rights Law Network, which is a national network of legal aid centres in the country. The Colloquium provided a useful opportunity for the members of the judiciary to analyze some provisions of the Disabilities Act, 1995 for clarity and uniform interpretation. The participating judges and human rights experts also examined international standards on disability with a view to identifying areas for policy and law reform. In that sense, the Colloquium acted as a catalyst. The suggestions as extracted from the deliberations of the colloquium were as follows:

- 1. Such Colloquiums should also be organized at the State level so that the members of the lower courts could also be sensitized.**
- 2. Such Colloquiums should be organized at regular intervals so that an on going process of debate and information sharing can be established. The Registrars of**

**High Courts have also expressed their views that such Colloquiums should also be organized for judicial officers of all High Courts.**

- 3. Finally, the judges expressed that they feel more sensitized to the issue of Dalits and the disabled through this Colloquium.**

**6.14** In the elaboration of the Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities the Commission has been playing a significant role. Our Special Rapporteur, Ms. Anuradha Mohit was once again appointed by the Office of High Commissioner for Human Rights as a Global Representative of the International Coordinating Committee of the National Human Rights Institutions. During its reporting year the UN Ad Hoc Committee convened two sessions, and a large measure of agreement has been reached. There are a number of issues on which wide support is available. During its Seventh Session, the committee completed an exhaustive reading of the draft text presented by the Chair incorporating the results of the discussions from the fourth, fifth and sixth sessions. In total some 34 Articles were discussed of which 18 Articles remaining with no significant issues; 11 Articles where some issues are remaining; and 5 Articles can be termed as difficult. These include:

- Legal Capacity (Art 12).
- Involuntary Treatment (Art 17).
- Right to Health (Art 25).
- National Implementation and Monitoring (Art 33).
- International Monitoring (Art 34).

**Developments of particular interest to NHRC were:**

1. The discussions on national and international monitoring.
2. The nature of obligations in respect of Economic, Social and Cultural Rights.
3. Provision on national remedies under General Obligations.
4. Obligations of the States in relation to private entities.

**The current text on national monitoring, draft Article 33, addresses the key concerns of the Commission, which include:**

- a. Establishment of two distinct mechanisms, one for policy and implementation within the government and the other for monitoring by an independent agency,
- b. States to designate or establish a body consistent with Paris Principles, and
- c. Civil society participation in the process of monitoring and implementation.

**6.15** Many of these issues were also addressed by Ms. Louise Arbour, the UN High Commissioner for Human Rights. Underscoring the valuable role of National Human Rights Institutions in effective national monitoring, she encouraged the States to adopt an independent and effective strategy at the national level. In sum, the seventh session

## Rights of Persons with Disabilities

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made significant progress and in all likelihood the treaty elaboration will be completed by the next session scheduled for August 2006. There after, the draft Convention would be referred to a Drafting Committee for fine-tuning and technical amendments, for adoption during the 61<sup>st</sup> session of the General Assembly.

**6.16** Apart from contributing to the disability convention, the National Human Rights Commission also provided an input to the World Summit on Information Society (WSIS). The Summit was convened in two phases, first phase took place in Geneva from 10 to 12 December, 2003 and the second phase took place in Tunis, from 16 to 18 November, 2005. Prior to the first phase UNESCO invited the commission on the expert group constituted to outline a brief set of recommendations to include a disability dimension in the outcome document. Towards this end, we were requested to contribute a position paper on the Right To Information, ICTs and persons with disability. In the final phase of the summit at Tunis, our Special Rapporteur, Disability, participated in a panel discussion where she emphasized that in the information age the investment in human capability and the creation of an accessible information infrastructure is vital to democracy. The summit has produced a path breaking policy document that has the potential to bridge the information divide based on individual capability, economic status, language, culture, gender and other factor.

**6.17** In its resolution 2005/65 of 20 April 2005, the Commission on Human Rights requested the Office of the High Commissioner for Human Rights (OHCHR) to prepare an expert paper, focusing on the lessons learned from existing monitoring mechanisms, possible relevant improvements and possible innovations in monitoring mechanisms for a comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities, and to make the paper available to the Ad Hoc Committee at its seventh session. From 24 to 25 November 2005, OHCHR convened a meeting of a small group of experts on disability and human rights and the Commission had the honour to serve this body. In the preparation of the paper for the Ad Hoc Committee, OHCHR took into account the expert discussion, as well as the broad range of proposals that were put forward by different participants in the Ad Hoc Committee and the Office's own experience learned from existing monitoring mechanisms.

**6.18** A number of the worlds leading academic institutions invited the Commission to share its experience in the field of monitoring of the national and international laws. In this respect seminars hosted by Trinity College, Dublin in partnership with Irish Human Rights Commission, and by the Harvard Law School, Boston were of particular significance as they provided an excellent opportunity to discuss the concept of proactive monitoring body that acts as a catalyst to leverage international cooperation and facilitate change as opposed to reactive supervision. It should encourage dialogue rather than judgment and work in partnership over the current adversarial approach. In fact, the

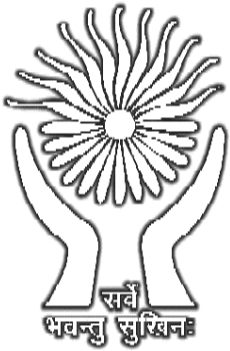
## Rights of Persons with Disabilities

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Commission's input to these seminars generated wide interest in the idea of 'Monitoring' as a change enabler—a body that helps translate values and ideals into concrete reform strategies in the countries where people with disabilities live.

**6.19** The Commission has always worked in close co-operation with civil society organizations in affording better protection to the human rights of those subjected to routine and systematic discrimination. Advancing this trend during the period under review, a number of activities were undertaken in partnership with Disable People's Organizations. In October 2005, the Commission facilitated a joint training programme for disabled rights activists from 19 countries of South Asia hosted by Asia Pacific Center on Disability (APCD, Bangkok). Similarly the training programme on 'Poverty and Disability' by the World Bank and the Government of Pakistan received an input from based on the findings of the research study to Estimate Precise Cost of Disability. In November, 2005, the Commission contributed a paper on reproductive rights of women with disabilities during the Asia Pacific conference at Kualalampur. Later this paper served as an advocacy tool in securing a forward-looking provision on the right to family under the Disability Convention. Likewise in June 2005, the Commission provided a disability input within the broad discussion on administration of justice in the 21<sup>st</sup> century. This was the key theme of the Intellectual Retreat hosted by National Judicial Academy, Bhopal for the Honourable, Chief Justice and other judges of the Supreme Court of India. On the cultural front, the Special Rapporteur, Disability, of the Commission inaugurated the International Film Festival in Chennai, organized by Ability Foundation. The Festival screened over 65 films on the theme of disability. On this occasion, she highlighted the need for accessible media and information whose achievement is possible by complying with the international standards developed by International Telecommunication Union (ITU) and other standard setting bodies.





## Right to Food

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7.1 The National Human Rights Commission has consistently maintained that the Right to Food is inherent to living a life with dignity. It also believes that Article 21 should be read along with Articles 39(a) and 47 of the Constitution to effectively understand the nature of the obligations of the State and in order to ensure the effective realization of this right. Article 39(a), one of the Directive Principles of the Constitution, requires the State to direct its policy towards securing that all individuals have the right to an adequate means to livelihood. Article 47 makes clear that one of the State's primary responsibilities is to raise the level of nutrition and the standard of living of its people. Article 21, which decrees the citizen's right to be free from hunger, when read together with the obligations placed on the State by Articles 39(a) and 47, highlights the importance of food security. The Right to Food, therefore, is a guaranteed Fundamental Right, enforceable by Constitutional remedy provided under Article 32 of the Constitution. The requirements of the Constitution mentioned above are consonant with the obligations of the State under the 1966 International Covenant on Economic Social and Cultural Rights to which India is a party. The Covenant, in Article 11, expressly recognizes the right of each individual to an adequate standard of living, including adequate food.

### **A] The Commission's Activities Concerning the Right to Food**

7.2 The Commission has expressed that the Right to Food includes nutrition at an appropriate level. It also implies that the quantum of relief to those in distress must meet those levels in order to ensure that the Right to Food is actually secured and does not remain a theoretical concept. The Commission

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## Right to Food

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is of the view that mortality alone should not be considered as the impact of starvation but destitution and the continuum of distress should be viewed as indicators demonstrating the prevalence of starvation. There is, thus, an accompanying need for a paradigm shift in public policies and relief codes in this respect.

7.3 On 3rd December 1996, the Commission took cognizance of a letter from Shri Chaturanan Mishra, the then Union Minister for Agriculture, regarding starvation deaths due to the drought in the Bolangir district of Orissa. In similar matter, a Writ petition was filed on December 23, 1996 by the Indian Council of Legal Aid and Advice and others before the Supreme Court of India under Article 32 of the Constitution. The petition alleged that deaths by starvation continued to occur in certain districts of Orissa. The National Human Rights Commission also sent a team in 1996 to the State of Orissa to inquire into the problem of starvation that was responsible for an exhaustive inquiry. The importance of the inquiry by the NHRC was that it was not limited to the working of the Right to Food, but included access to livelihood, i.e., access to forest resources by the Scheduled Tribes. Other topics covered by the inquiry included tenural insecurity, food insecurity, access to health care, data on child and infant mortality and a range of other issues that can affect the well being of the community affected by starvation. Since the Government of India and the State of Orissa represented that a Development Plan was to be implemented in the affected region, they should be provided the opportunity to eliminate these conditions within which starvation was engendered. Towards this end, the Commission appointed a Special Rapporteur whose role was not only to enquire into the implementation of the Plan, but their relevance for furthering the Right to Food and the Right to Livelihood.

7.4 The Supreme Court of India, on 26 July 1997, directed that since NHRC is seized with the matter and it is expected to deliver some order, the petitioner can approach the Commission. Realizing the urgency of the matter, the Commission acted quickly and initially prepared an interim measure for the two years period and also requested the Orissa State Government to constitute a Committee to examine all aspects of the Land Reform question in the KBK Districts. The Commission observed that as starvation deaths reported from some pockets of the country are invariably the consequence of mis-governance resulting from acts of omission and commission on the part of the public servant. The Commission strongly supported the view that to be free from hunger is a Fundamental Right of the people of the country. Starvation, therefore, constitutes a gross denial and violation of this right.

7.5 The Commission organized a meeting with leading experts on the subject, in January 2004 to discuss issues relating to Right to Food. The Commission approved the constitution of a Core Group on Right to Food to advise on issues referred to it and also suggest appropriate programmes, which could be undertaken by the Commission. By this decision, it firmly established in the context of India that economic, social and cultural rights are

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treated at par with the civil and political rights before the Indian Courts and the Commission.

## **B] Status of Nutrition**

7.6 The National Sample Survey Organisation found that in 17 of India's most populous states, the average calorie intake declined between 1972 and 1994. The decline was particularly sharp in rural areas.

7.7 The Survey data showed that per capita consumption of cereals declined in every State except for Kerala in both urban and rural areas. A shift was noticed from the cereals to other food items of lesser nutrition among the poor. This exacerbates under nourishment.

7.8 The nutrition survey done by the National Nutrition Monitoring Board confirmed the inadequacy of food (and cereals) intake by large parts of the population well below the recommended intake of 460 grams. Referring to 'hidden hunger', it found an inadequate intake of micronutrients, which plays a critical role in body functioning.

## **Government Schemes and Programmes**

7.9 In the matter of People's Union for Civil Liberties (PUCL) vs. Union of India & Others, the Hon'ble Supreme Court gave directions to the States and the UTs for proper implementation and transparency of schemes and programmes relating to allotment of foodgrain. Schemes and Programmes include the Targeted Public Distribution System (TPDS), Antyodaya Anna Yojna, Mid-day Meals Scheme, the National Old Age Pension Scheme, the Integrated Child Development Scheme, National Maternity Benefit Scheme and the National Family Benefit Scheme.

7.10 The Hon'ble Supreme Court directed that "in order to ensure transparency in the selection of beneficiaries and their access to these Schemes, the Gram Panchayats will also display a list of all beneficiaries under the various Schemes. Copies of the Scheme and the list of beneficiaries shall be made available by the Gram Panchayats to members of the Public for inspection".

## **Recommendations on Food Security**

7.11 The National Human Rights Commission has consistently maintained that the Right to Food is inherent in the right to life as enshrined in Article 21 of the Constitution of India. It also believes that Article 21 should be read along with Article 39(a) and Article 47 of the Constitution to effectively understand the nature of obligations of the State and to ensure the effective realization of this right.

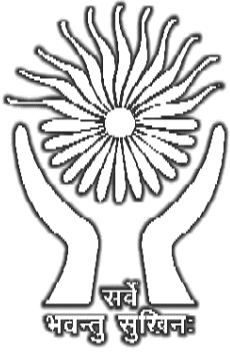
7.12 In order to ensure that every one is free from hunger, the Commission constituted Core Group on Right to Food on January 2, 2006. The Commission also recognized that there was a need for constituting a Small Group, which would crystallize the suggestions made by the Core Group. Accordingly a Small Group was constituted on February 16, 2006 and meeting of the Group was held on February 21, 2006.

## Right to Food

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**7.13** The recommendations, which came out of the meeting of this Group, are as follows:

1. There is a need to define concepts like, 'Right to Nutrition'; 'Malnutrition'; 'Starvation'; so that there is a paradigm shift from 'welfare' approach to 'rights based approach' to the issue of malnutrition and starvation.
2. There is, therefore, the need to identify 200 (government and public sector) organizations with expertise to deal with malnutrition across the country to independently monitor the distribution mechanism. The role of 200 organizations would not be a day-to-day monitoring, but to see at ground level that things are moving properly. 'Independent Evaluators and Facilitators' is the expression, which can be used for 200 organisations. These will be short-listed by NHRC and the NHRC will recommend the State governments to help these organizations in performing their monitoring work.
3. In order to see that things are proceeding according to schemes, the State governments would be requested that panchayats should cooperate with these organizations for providing them information under different schemes.
4. It is mandatory not to just have food as matter of right, but also to ensure proper nutrition. Schemes are already available, we have to see what are the discrepancies in existing schemes. Providing food should not be based on quantity, but on calories of energy. Ensuring that the nutrition level is maintained; food available locally must be utilized; to clarify, instead of insisting on uniform pattern, flexibility to use local coarse grains like ragi, etc. should be permitted.
5. The system of delivery be firmed up by active involvement of panchayati raj institutions, with zero tolerance, i.e., ensure that there is no case of malnutrition and starvation in a panchayat. All Gram Panchayats must be held accountable under all the schemes. People should know what are the schemes and benefits available to them. Panchayats should notify it by displaying billboards in their office/prominent places.
6. There is need to dovetail with employment generation schemes and other interventions to ensure sustainable livelihood.



# Rights of Women and Children

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**8.1** Dr. Justice Shivaraj V. Patil, Member of the Commission continued to serve as the Focal Point on Human Rights of Women, including Trafficking. In the course of the year under review, the Commission dealt with a number of issues pertaining to rights of women including prevention and combating of trafficking in women and children.

## I Rights of Women

### A] *Trafficking in Women and Children*

#### 1) **Plan of Action to Prevent and End Trafficking in Women and Children in India**

**8.2** It has been reported in the earlier Annual Reports of the Commission that ever since the Focal Point on Human Rights of Women, including Trafficking was set up in the Commission in the year 2001, it **undertook several activities, which included among others, an Action Research on Trafficking in Women and Children in India and a National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy.**

**8.3** The Report of the Action Research on Trafficking in Women and Children in India, that was conducted in collaboration with UNIFEM and the Institute of Social Sciences, New Delhi and the Report of the National Workshop to Review the Implementation of Laws and Policies Related to

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## Rights of Women and Children

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Trafficking: Towards an Effective Rescue and Post-Rescue Strategy, that was conducted in collaboration with PRAYAS, a field Action Project of the Tata Institute of Social Sciences, Mumbai, had made a number of recommendations and suggestions whereby trafficking in women and children could be prevented and combated. It was also reported that these Reports were released to the public in August, 2004. Copies of both the Reports were later forwarded to concerned officials in all the States/Union Territories for compliance. So far, very few States had reported back to the Commission with regard to the action taken by them.

**8.4 In order that the recommendations and suggestions of both the Reports were implemented in true spirit, the Commission was of the view that it was necessary to have a comprehensive Plan of Action to Prevent and End Trafficking in Women and Children in India. Accordingly, it has formulated a comprehensive PoA and intends to disseminate the same to all concerned in the Central Government, State Governments/Union Territory Administrations, non-governmental organizations and the civil society at large for guiding and facilitating their actions to prevent and end trafficking in women and children in India. A copy of the Plan of Action is appended as Annexure 8.**

**8.5 The Commission firmly believes that implementation of the Plan of Action by all stakeholders would go a long way in preventing and ending trafficking in women and children in India.**

### 2) National Seminar on Trafficking in Human Beings

**8.6** Of late, trafficking in human beings has acquired serious dimensions. It is no longer confined to commercial sexual exploitation; it is carried for other purposes as well, such as domestic service, labour in small factories/establishments, begging, marriage, adoption, public sport, organ trade, etc., In fact, with each passing day, trafficking is acquiring altogether new dimensions in the wake of economic reforms brought forth by globalisation.

**8.7** In order to look into new dimensions of trafficking in human beings, especially the human rights violations caused by the overall process of trafficking, the Ministry of Home Affairs in association with the National Human Rights Commission and the United Nations Office on Drugs and Crime organised a two-day National Seminar on Trafficking in Human Beings at the India Habitat Centre, New Delhi on 27<sup>th</sup> and 28<sup>th</sup> of October 2005. The main objective of the National Seminar was to sensitise the law enforcement officers and other stakeholders to the problem of trafficking as well as draw upon a National Plan of Action to address the various issues relating to trafficking in human beings in the country.

**8.8** Shri Shivraj Patil, Hon'ble Minister of Home Affairs, Government of India inaugurated the National Seminar and the keynote address was delivered by Dr. Justice A.S. Anand, Hon'ble Chairperson, NHRC. Members of Juvenile Justice Boards, Members of Child Welfare Committees, judicial officers, police officers, public prosecutors,

government officers, subject matter specialists and senior representatives from international/national and non-governmental organisations attended the seminar.

**8.9** Some of the important recommendations made by the National Seminar were:

- Need to have a proper and comprehensive definition of trafficking and the same needs to be incorporated in the relevant legislation.
- Need to focus prevention strategies on economic empowerment, education, advocacy and awareness raising. It should also entail targeting adolescents who are both potential victims and clients.
- Need to constitute a specialised nodal agency/anti-trafficking structure – a National Bureau for Prevention of Trafficking in Human Beings on the pattern similar to the Narcotics Control Bureau.
- Need to devise necessary mechanisms for concerted coordination between the police, judiciary, government institutions and other governmental and non-governmental organisations with regard to prevention, rescue and rehabilitation strategies.
- Need to follow the practice of appointment of two Nodal Officers (one from the police and the other from the social welfare/child welfare department), as per the directions of NHRC.
- Need to bring about changes in the Immoral Traffic Prevention Act as well as other laws relevant to the crime of trafficking in consonance with international standards/treaties signed/ratified by the Government of India.
- Pending above amendments, need to strictly enforce all current legislations dealing with the problem of trafficking. In particular, there was need to implement Section 13 of Immoral Traffic Prevention Act, which dealt with the appointment of Special Police Officers and a Non-Official Advisory Body.
- Need to set-up Special Courts to deal with cases of trafficking in a speedy manner.
- Need to enforce stringent and deterrent punishments on traffickers including attachment/confiscation of their properties and assets.
- Safeguards to be created for witness protection in crimes of trafficking.
- Need to sensitise and train judicial officers, law enforcement personnel (police, immigration and custom officials), border control officials, labour inspectors and other concerned government officials. Simultaneously, there was need to develop training modules and training material consisting of good practice models, applicable treaties and laws, important judgments, rescue procedure, rehabilitation of victims, etc., so that the knowledge/information imparted to trainees was of uniform nature.

### **3) Follow-up of the Recommendations of the Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions on the Issue of Trafficking**

**8.10** It was reported in the preceding Annual Report that the Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions that met in New Delhi in the year 2002, had deliberated on the issue of trafficking at its Seventh Annual Meeting. The Council had later forwarded its Final Report wherein it had made a number of recommendations for preventing and combating trafficking. The Commission, in its meeting held on September 3, 2003, also adopted these recommendations. The Commission had desired that the Final Report forwarded by the Council be also sent to the Ministry of Women and Child Development (erstwhile Department of Women and Child Development) and the Ministry of Home Affairs, Government of India for appropriate action. Accordingly, the final Report was sent to the concerned Ministries with the request that action taken on the recommendations be reported to the Commission.

**8.11** While response from the Ministry of Home Affairs was still awaited, the Ministry of Women and Child Development had provided some information about the initiatives taken by them to prevent and combat trafficking. When the Commission examined the same, it was noticed that most of the initiatives reported by them were already in existence. As such, the Ministry of Women and Child Development was again requested to send in their action taken report on the recommendations.

**8.12** The Commission regrets to note that despite several reminders, neither the Ministry of Home Affairs nor the Ministry of Women and Child Development has so far responded, in spite of the fact that the issue of trafficking was a major concern of both the Ministries of the Government of India.

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

**8.13** The Commission has been continuously monitoring the implementation of the Vishaka guidelines issued by the Apex Court (No. 1997 (6) SCC 241) in the year 1997 with regard to preventing and combating sexual harassment of women at the work place in all the States and Union Territories. Accordingly, since 2000-01, the Commission has been detailing out in its Annual Reports the steps taken by it on this subject to eliminate the problem of sexual harassment among working women. It was reported that in pursuance of the Supreme Court judgment in the case of Vishaka vs. State of Rajasthan, the Central Government (Department of Personnel and Training) has amended the Central Civil Services (Conduct) Rules, 1964 to incorporate provision for prohibition of sexual harassment of working women. Similarly, the State Governments have also amended the Conduct Rules for their employees. Complaints Committees have also been constituted in different Departments in the Ministries/Department in the Central

Government, State Governments and Union Territories. **However, information on amendment to Conduct Rules was awaited from the State of Manipur regarding constitution of Complaints Committees was awaited from the State of Sikkim.**

**8.14 The Commission has written to the concerned Departments of these States on several occasions to do the needful and intends to monitor the same till each one of them amends the Conduct Rules for their employees and sets up a complaints mechanism so that women are no longer subjected to gender discrimination at the work place.**

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

**8.15** The Commission has been concerned about the sexual harassment of female passengers in trains and has taken steps towards the eradication of this nuisance in co-operation with the Ministry of Railways and JAGORI, a Delhi based NGO. It was reported in the Annual Report of the Commission for the year 2004-05 that action taken report on the decisions taken in the meeting held on 23<sup>rd</sup> of August 2004 was awaited from the Ministry of Railways. However, during the year under report, the Ministry of Railways has reported some actions. The status stands as detailed below:

(i) Availability of FIR forms in other regional languages

**8.16** FIR forms in Hindi, English and regional languages, namely, Telugu, Marathi, Kannada, Malayalam and Tamil have been made available with the running and stationary staff. Information regarding availability of FIR forms in other regional languages is awaited from the Ministry of Railways.

(ii) Preparation and display of messages in the railway coaches

**8.17** The Ministry of Railways has issued instructions to all Zonal Railways to provide Unified Notice in all MG and BG coaches incorporating the graphics on eve teasing and detailing the process of lodging FIR on running trains.

(iii) Preparation and display of graphics and other publicity materials at the railway platforms

**8.18** Announcement shall be made at all major railway stations to the effect that if any woman passenger faces any harassment, she should immediately bring it to the notice of the Coach Attendant/TTE or to the RPF/GRP personnel on duty; and that they will facilitate in taking remedial and legal action. However, the suggestion of putting such notice on the Close Circuit TV at the railway stations was found not practicable as the Close Circuit TV arrangements are not existing at most of the stations. The railway staff on duty at stations and on trains, including RPF have been sensitised to passenger expectations in the training imparted at various Railway Institutes.

(iv) Printing of the message on the back of the ticket saying that sexual harassment of women in trains is a crime

**8.19** Action is awaited in this regard.



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- (v) Preparation of power point presentation that could be telecasted by close circuit television showing briefly the issue and its implications

**8.20** The Ministry of Railways has stated that Close Circuit TV arrangements do not exist at most of the stations.

**8.21** The Ministry of Railways also reported that a couple of complaints had been brought to their notice in Western Railways. Consequently, drives against harassment of women passengers was conducted and those found guilty were prosecuted under section 162 of the Railways Act, 1989. Currently, it was being ensured by the Ministry of Railways that most of the passenger trains were being escorted by GRP/RPF. Plain-clothed police personnel were also being deployed in trains to control incidents of sexual harassment in trains. The vacant posts in the RPF were being filled up and it was being ensured that more and more women constables were recruited, so that RPF could assist the efforts of the State Governments in their efforts to curb the crime against women. As of now, special women squads like Surakshini, Tejaswani, Durgavahini and Bhairavi had been constituted for the safety and security of women passengers.

**8.22** In order to further enhance gender sensitivity among the railway officers and staff, in addition to the existing programmes, a new capsule course of five days duration has been evolved and training based on this new module was also being imparted to the RPF/RPS personnel.

**8.23** Another important recommendation that was made by the Commission was that the Ministry of Railways formed State Level Coordination Committee with representatives of RPF and GRP in order to periodically review the progress of implementation of the measures taken for the safety of women passengers. Since law and order is a State subject, the Ministry of Railways wrote to the Zonal Railways to take up the matter with the States/Union Territories. It was of the view that the safety of the passengers, especially that of the women passengers could get due attention of the various agencies only if the States/Union Territory Administrations took initiative and convened Coordination Committee meetings. On the request of the Ministry of Railways, the Union Home Ministry and also the Commission requested the States/Union Territories to cooperate with the Ministry of Railways in this regard. In response, only a handful of States, namely, Gujarat, Jammu & Kashmir, Tamil Nadu, Nagaland NCT of Delhi, Chandigarh Administration have replied positively. At the time of reporting, reply from most of the States was awaited.

**8.24** The Commission would like to urge all the remaining States/Union Territories to extend cooperation to the Ministry of Railways in constituting State Level Coordination Committees to oversee the progress of implementation of the measures taken for the safety of women passengers.

**D] Misbehaviour of Doctors and their staff with the rape victims in the hospitals**

**8.25** It was brought to the notice of the Commission by the Delhi Police that victims of rape were being ill-treated by the Doctors and staff of certain Government Hospitals in Delhi. The Delhi Police, on its own, also took up the issue with the Medical Superintendents of Bara Hindu Rao Hospital, R.M.L. Hospital, Aruna Asaf Ali Hospital and L.N.J.P.N. Hospital, Delhi. Such misbehavior by the doctors and their staff discourage the rape victims to complain against the accused persons and they become reluctant even to undergo medical examination. This defeats the very purpose of the criminal law justice system. The Delhi Police impressed upon the Medical Superintendents of these hospitals, the need for polite and courteous behaviour by the doctors and other medical staff towards the rape victims, so that their sentiments were not hurt and they could give evidence against the accused and the accused thereby got the punishment.

**8.26** Taking cognizance of the issue, the Commission too requested the Medical Superintendents of the above-mentioned hospitals to let it know the action taken by them in this regard. The actions taken, as reported by the hospitals are as under:

Name of Hospital	Action Taken
Aruna Asaf Ali Hospital	Hospital authority has instructed all Heads of Departments, Doctors, staff nurses and other staff to be humble and polite with rape victims and attendants accompanying them. Doctors doing medico-legal case of rape victims have been directed to record each and every fact related to the case, which will help law.
Hindu Rao Hospital	Instructions issued by the Government of NCT of Delhi detailing the procedure to be followed by Doctors during medico-legal examination of victims of sexual assault are being followed in letter and spirit. These instructions were communicated/circulated to all doctors for strict compliance. The doctors have also been sensitised through departmental meetings and discussions.
Lok Nayak Hospital	Orders have been issued to all the doctors and other hospital staff to be polite and courteous towards the victims of rape so that their sentiments are not hurt and they are able to stand and give evidence against the accused persons to put them behind the bars. A meeting was also held in this regard on 22.03.2005 under the chairmanship of the Medical Superintendent. Concerned senior doctors attended the meeting. The matter was discussed at length and the following suggestions were offered by the participants for suitable action and compliance by the concerned medical officers: (1) Specific instructions to doctors and para-medical staff be issued by the Head of Department (Obst. & Gynae) & CCMO (Casualty & Emergency) in the form of a circular, to all concerned under their control, clearly directing

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Name of Hospital	Action Taken
	<p>them to be more polite and sympathetic towards rape victims and their attendants. Preferential attention may be provided to rape victims as far as possible.</p> <p>(2) Workshop for doctors/staff concerned be organised to apprise them with guidelines/procedures.</p> <p>Complaint/Suggestion boxes be installed at the main entrance of Gynae, Casualty &amp; OPD, which will be monitored by respective Head of Departments to take requisite action on the complaints/suggestions received.</p>
Dr. Ram Manohar Lohia Hospital	<p>Instructions were issued in pursuance of Inquiry Report received from National Commission for Women in respect of alleged rape of a minor girl by an Intern of Safdarjung Hospital. The instructions pertain to regular monitoring and surprise checks in resident doctors hostel, provision of adequate protections to nurses on duty and to the women visitors and patients especially during the night and for taking adequate precaution while preparing Medico Legal Report in rape cases. In order to put a check on alleged complaint of misbehaviour by the doctors and other hospital staff who are dealing with the rape victims, instructions have been issued, especially to the doctors and staff posted in the Casualty as well as doctors from the Department of Gynecology who are called to examine rape victims so that the victim is not discouraged or shows reluctance for medical examination and the culprits are brought to book.</p>

**8.27** The Commission appreciated the action taken by the hospital authorities towards victims of rape and requested them to deal with complaints of misbehaviour, if any, promptly and effectively and simultaneously inform the Commission of the action taken in such cases.

### ***E] Rehabilitation of Marginalised and Destitute Women including Widows in Vrindavan***

**8.28** The Commission is continuously monitoring the implementation of its recommendations by the Ministry of Women and Child Development, Government of India and Government of Uttar Pradesh regarding rehabilitation of marginalised and destitute women including widows living in Vrindavan. Since the progress was very slow, the Commission held a review meeting on 19 April 2005 under the chairmanship of the Secretary General. Representatives from the Ministry of Women and Child Development, Government of India and Government of Uttar Pradesh participated in the meeting. The following decisions and suggestions were made in the meeting:

- i) The construction work of the proposed shelter home on the new site located at Chaitanya Vihar Yojana under the Mathura-Vrindavan Development Authority should start immediately and be completed within six months' time.

## Rights of Women and Children

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- ii) Till the construction of proposed shelter home was completed, the Government of Uttar Pradesh should acquire more residential accommodation on rental basis under the SWADHAR scheme to accommodate these women.
  - iii) Conduct of a fresh survey to assess the actual number of destitute/marginalised women staying in Vrindavan.
  - iv) The Ministry of Women and Child Development, Government of India to conduct a survey in order to assess the number of such women residing in other religious places all over the country.
  - v) There was need to provide psychiatric counseling to them along with health camps already being organised for them. For this purpose, the Government of Uttar Pradesh could make use of the SWADHAR scheme, as there was a provision for part-time Medical Doctor, full-time/part-time Counsellor, full-time Trained Nurse.
  - vi) Need to provide rations cards to all such women who till date have not been provided the same.
  - vii) There was need to identify a credible non-governmental organisation working for rehabilitation of destitute/marginalised women under the SWADHAR scheme to work in Vrindavan. For this purpose, the Ministry of Women and Child Development, Government of India was requested to identify one or two such NGOs, who already have a network in other States/UTs and would, thereby, be willing to associate themselves with this cause in Vrindavan also.

**8.29** The Government of Uttar Pradesh has informed that construction of shelter home at Chaitanya Vihar Phase-II was on the verge of completion. The Municipal Corporation, Vrindavan had also carried out a fresh survey. According to that survey, there were a total of 3105 destitute women in Vrindavan. Out of these, there were around 2000 women above the age of 60 years, 690 women between the age group 40-60 years, 385 women between the age group 21-40 years and 30 women were found to be below 21 years of age. Regarding the provision for psychiatric counselling, it was informed that a full-time woman counsellor had been appointed under SWADHAR scheme. Part-time doctor and full-time nurse had also been engaged by them.

**8.30** Regarding (iv) above, the Ministry of Women and Child Development, Government of India informed that they had requested the State Secretaries to make an assessment and submit their reports. As regards (vii), they informed that a proposal was received from Guild of Service, an NGO for construction of Swadhar Shelter Home in Vrindavan and the said proposal was approved by the PSC.

### **F] Population Policy – Development and Human Rights**

**8.31** There is no denial of the fact that population policies framed by some of the State Governments have coercive approach through use of incentives/disincentives that is inconsistent

## Rights of Women and Children

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with the spirit of the National Population Policy, 2000 (NPP). Such an approach, undoubtedly, violates the rights of a large section of population, especially the marginalised and the vulnerable, including women and children. In order to address the issue, the Commission in January 2003 had organised a two-day Colloquium on Population Policy – Development and Human Rights in collaboration with the Ministry of Health and Family Welfare (Department of Family Welfare) and the United Nations Population Fund. The details of the Colloquium, the recommendations made and the declaration adopted at the Colloquium have been reported in detail in the Commission's Annual Report for the year 2003-04. The Colloquium, inter alia, had recommended that the State Governments/ Union Territories who had already framed their Population policies should exclude all discriminatory and coercive measures reflected therein. Simultaneously, the other States/ UTs who had so far not framed their Population Policies should ensure that discriminatory and coercive measures were kept out of its reach. For example, adoption of two-child norm, which was found in most of the population policies of the State Governments and Union Territories should be discontinued, as it disempowered women both directly and indirectly. The Colloquium had also recommended that adoption of two-child norm was a blatant violation of human rights of the women.

**8.32** On 30 July 2003, the Supreme Court, upheld the constitutional validity of disqualification of candidates with more than two children under the Haryana Panchayati Raj Act, 1994 [No. JT 2003(6) SC 283]. This issue was also discussed in the Statutory Full Commission meeting held on 18 September 2003. The NHRC reported to the Full Commission that it was yet to make an analytical study of the Supreme Court judgment before it could express its opinion on the issue.

**8.33** The Delhi High Court also, on 6 July 2005, issued notices to the Union Government – Ministry of Health and Family Welfare, National Population Commission and Census Commissioner seeking a direction from the Government to frame a two-child norm and debar people violating it from contesting elections to Parliament, Assemblies and local bodies.

**8.34** Despite these two developments taking place, the Commission is of the view that the coercive measures should be removed from the population policies framed by the State Governments/Union Territories. The Commission would like to bring on record that the first meeting of the reconstituted National Commission on Population (NCP) was held in New Delhi on 23 July 2005 under the chairmanship of the Hon'ble Prime Minister when expressing concern over the growing population, the Prime Minister too emphasised on a target-free, voluntary and informed choice and objected to the adoption of any coercion or incentives and disincentives to achieve population stabilization, indicating that such measures often proved to be counter productive. He stated that our emphasis should not only be on fertility reduction but also on the upgradation of human skills, so that our population would not be viewed as a liability, but as an asset.

8.35 At the end of that meeting, the Hon'ble Prime Minister announced the following two decisions:

- (i) There should be an Annual Health Survey of all districts to be published annually, so that health indicators at district level are periodically available, monitored and compared against benchmarks.
- (ii) The Ministry of Health & Family Welfare should set up five groups of experts for studying the population profile of the States of Bihar, Uttar Pradesh, Rajasthan, Madhya Pradesh and Orissa in order to identify weaknesses in the health delivery system and to suggest measures that could be taken to improve the health and demographic status of the States.

8.36 Meanwhile, the National Human Rights Commission has decided to constitute a Working Group to examine the whole issue of population policy. It has requested Shri A.K. Shivakumar, Advisor to UNICEF India, to be the Convener of the Working Group. It has also requested the National Commission for Women and the National Commission for Minorities to suggest one nominee each for inclusion in the Working Group, if they so desired. All concerned have given their acceptance to be part of the Working Group, the details of which are being finalised.

## II Rights of Children

### A] Status of Juvenile Justice in India

8.37 The emergence of the concept of juvenile justice in India owes much to the developments that had taken place in Western countries, especially in the perception of children and human rights jurisprudence in Europe and America. The Apprentices Act, 1850 was, in fact, the first legislation, which laid the foundation of juvenile justice system in the country. The concept seems to have gained momentum with the enactment of the Indian Penal Code (1860), Code of Criminal Procedure (1898) and recommendations made by the India Jails Committee (1919-20). The India Jails Committee categorically mentioned that the child offender should be given an altogether different treatment from that given to an adult offender. It also held that imprisonment of child offenders should be prohibited and recommended provision of Remand Home and Juvenile Courts. Since then, legislative provisions relating to children in the country had gone through various shades of orientation and emphasis.

8.38 In this context, two Acts, namely the Central Children Act, 1960 and the Juvenile Justice Act, 1986 deserve special mention. The former because it enunciated the basic philosophy of care, protection, maintenance, welfare, training, education and rehabilitation of the neglected and delinquent children and the latter for bringing out a uniform juvenile justice system in the country by consolidating all related legislations in the country. The Juvenile Justice Act, 1986, in fact, could be said to be the first all-India child welfare enactment seeking to promote 'the

## Rights of Women and Children

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best interests of the juveniles' by incorporating into its fold not only some of the major provisions and clauses of the Indian Constitution and National Policy Resolution for Children, but also universally agreed principles and standards for the protection of juveniles, such as, the United Nations Declaration of the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (commonly known as 'Beijing Rules'). The basic ideology for adopting this differential approach has been to save children from devastating ill-effects of criminalisation, penalization and stigmatization.

**8.39** The ratification of the Convention on the Rights of the Child (1989) by the Government of India in the year 1992 and the changing social attitudes towards criminality by children reflected in the judgments of the Apex Court and the need for a more child-friendly juvenile justice system led to the passing of the **Juvenile Justice (Care and Protection of Children) Act, 2000**. The Preamble to the Act states that it is an Act to consolidate the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment, by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through their various established institutions under this enactment.

**8.40** **The Commission, too, ever since it was set up in October 1993, has been concerned about the plight of juveniles who come in conflict with law and those who are in need of care and protection.** While the Law Division of the Commission has been dealing with complaints of juveniles as well as collecting information about the status of implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 from all the States and Union Territories, in the year 2004 the Research Division of the Commission in collaboration with the Socio-Legal Information Centre, New Delhi also undertook a research study with the aim of reviewing the extent of implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000. The study is on the verge of completion and details relating to its objectives could be seen in Chapter 12 of this Annual Report. Simultaneously, in October 2005, when the Registrar General, High Court of Patna informed the Commission that the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 was extremely poor in Patna, the Commission once again directed that the matter of juvenile justice be reviewed expeditiously in each State and Union Territory. Accordingly, **letters have been addressed to the Secretaries of the Departments of Social Welfare of all the States and Union Territories to furnish detailed information.**

**8.41** **The Commission is pained to report that till date, information has been received only from the States of Andhra Pradesh, Arunachal Pradesh and the National Capital Territory of Delhi. In these States too, on the basis of information received, it could be gauged that the level of implementation of the Juvenile Justice**

Act, 2000 is far from satisfactory. The Commission intends to monitor with other State Governments and Union Territories regarding the status of the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000. However, it would like to reiterate that Juvenile Justice Boards, Child Welfare Committees, Special Juvenile Police Units as well as other institutions required under the Act be constituted at the earliest by all the State Governments and Union Territory Administrations, so that the best interest of children is protected.

#### **B] Prevention and Combating of Child Marriage**

**8.42** The Commission had dealt in detail with the issue of child marriage in Chapter 17 of its preceding Annual Report including the course of action taken by it to prevent and combat this social evil.

**8.43** During the year under report, the Commission focused on the need for public awareness to end this evil practice, especially the mass child marriages that take place on the occasion of 'Akshya Tiritiya'. Accordingly, it wrote to all concerned agencies to organise mass-scale awareness programmes/campaigns, in association with the Integrated Child Development Services (ICDS), local self-governments/Panchayats and Legal Service Authorities, so as to educate and sensitise people about the negative fallouts of child marriages. A few State Governments/Union Territory Administrations have reported action, details of which could be seen at **Annexure 9**. The Government of Madhya Pradesh reported that in order to bring the State to the 'Zero Child Marriage' level, it had undertaken intense and coordinated awareness campaigns against child marriages on the occasion of Akshya Tiritiya. All the Anganwadi workers engaged in Integrated Child Development Scheme were also involved in preventing child marriages. In spite of the preventive steps taken by the Government of Madhya Pradesh, the Commission was deeply hurt by the horrible incident that took place in Dhar District of the State in which both the hands of Smt. Shakuntala Verma, an ICDS Supervisor, were chopped off when she tried to prevent organisation of mass child marriages and launched a mass awareness campaign against such marriages.

**8.44** It was also reported in the preceding Annual Report that 'the Prevention of Child Marriage Bill, 2004', was introduced in the Rajya Sabha on 20 December 2004. In the said Bill, almost all the amendments proposed by the Commission were also incorporated. The Bill was under examination of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. The Standing Committee had presented its report on 29<sup>th</sup> November 2005. The report was also tabled in the Lok Sabha on the same day.

**8.45** The Commission hopes that the proposed Bill would soon become an Act to serve as an instrument to prevent and end child marriages.

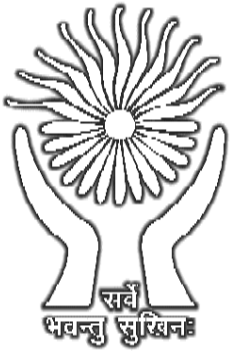


### **C] Guidelines for Speedy Disposal of Child Rape Cases**

**8.46** The then Member of Parliament and President of All India Democratic Women's Association, AKG Centre, Thiruvananthapuram, Kerala brought to the notice of the Commission a series of incidents in which minor girls were subjected to sexual assault and rape. Briefly the incidents were – (i) a 15-year old girl in Idukki district was abducted and detained for about 42 days during which she was gang-raped by 40 miscreants including people in high positions; (ii) a 14-year old mentally retarded girl in Thiruvananthapuram district was rounded up and assaulted by two groups; and (iii) two girls in Kannur district were driven to suicide because of harassment by blue film mafia. These incidents had shaken the conscience of the Commission and it called for factual reports of the incidents from the Government of Kerala.

**8.47** The Government of Kerala reported that the first case was transferred to the Crime Branch and a Special Team headed by Narcotics Cell, CB CID, Thiruvananthapuram was constituted for investigation of the case. Out of 42 persons involved, 38 had been arrested and report submitted to the Court. The Kerala Government had also paid Rs.50,000/- from the Chief Minister's Distress Relief Fund to the girl's family for meeting the expenses of treatment of the girl. In the second case, the accused were arrested and produced before the Court. As regards third incident, a case of 'Unnatural Death' was registered at Kannur Town Police Station. The investigation of the case was done by the police, who declared that both the girls had committed suicide for personal reasons like deprivation of love and affection from their parents and out of apprehension that they might not fare well in their pre-degree examination.

**8.48** After considering the report of Government of Kerala, the Commission directed that a set of suitable instructions be prepared to serve as guidelines. In pursuance of that direction, the guidelines for speedy disposal of child rape cases are under preparation.



## Bonded Labour and Child Labour

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**9.1** Bonded labour is probably the most notorious form of slavery today, and yet it is the most widely used method of enslaving people. In India, it took root in the caste system and continues to flourish in feudal agricultural relationships. Poverty, and people, prepared, without the slightest hesitation, to exploit the desperation of others, lies at the heart of bonded labour. Often without land or education, the need for cash just for daily survival forces people to sell their labour in exchange for a lump sum of money or loan. Bonded labour, which includes beggars and immoral traffic in women as defined by Art 23(1) of Indian Constitution, till independence of the country was regarded as vestige of feudal culture. Even after independence the state machinery and public awareness has remained inert to the lot of these depressed people. With the rising of awareness level and the vigil exercised by the judiciary and human rights organizations on the increase, the task of releasing and rehabilitating bonded labour assumes greater significance.

**9.2** Article 23 (1) of the Constitution prohibits 'Begar' (Bonded labour) and other similar forms of forced labour and adds that any contravention of this provision shall be an offence punishable in accordance with law. The Bonded Labour System (Abolition) Act, 1976 (BLA) traces its origin to this provision of the Constitution.

**9.3** The problem of migrant bonded labourers from Tamil Nadu, who were being subjected to exploitation in Madhya Pradesh, came under the scrutiny of the Hon'ble Supreme Court through Public Interest Litigation (PIL) Writ

# Chapter-9

## Bonded Labour and Child Labour

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Petition (Civil) No.3922/85. The Hon'ble Court, vide its Order dated May 13, 1994 had issued detailed directions to the State Governments for identification, release and rehabilitation of bonded labour in their respective States. Vide its Order dated November 11, 1997, the Hon'ble Supreme Court requested NHRC to take over the monitoring of the implementation of the directions of the Supreme Court and also the BLA.

9.4 The Commission has been continually monitoring the Bonded Labour Child Labour situation in various states in the country through its Special Rapporteurs. The prosecution rate under the Child Labour (Prohibition and Regulation) Act, 1986 is very low. Most of the states have not furnished the information about the prosecutions launched against the offending employers and where they provide the information, the action is very slow.

### *A] Abolition of Child Labour and Bonded Labour*

9.5 Reviewing the Bonded Labour and Child Labour situation in various States continued to be an important activity of the Commission during the period of report. The succeeding paras will deal with the Child Labour and Bonded Labour situation in the states of Haryana, Chhattisgarh, Uttar Pradesh and Jharkhand.

### *B] Child Labour: Efforts in the States of Haryana, Chhattisgarh, Uttar Pradesh and Jharkhand*

9.6 Dr. Justice A.S. Anand, Chairperson, NHRC, assisted by Shri Chaman Lal, Special Rapporteur reviewed the child labour situation and the enforcement of Child Labour (Prohibition and Regulation) Act, 1986 in the State of Haryana on October 21, 2005. Justice Y. Bhaskar Rao, Member, NHRC assisted by the Special Rapporteur carried out the review for the State of Chhattisgarh at Raipur on February 14, 2006. The Special Rapporteur carried out two reviews for the State of U.P. with focus on the districts of carpet weaving belt from 2 to 7 September, 2005 and 4 to 7 March, 2006. He reviewed the situation in Jharkhand on March 30, 2006.

## **Haryana**

9.7 The survey of 1996-97 ordered by the Supreme Court in its judgment dated December 10, 1996 in M.C. Mehta vs. State of Tamil Nadu and others had resulted in detection of only six children employed in hazardous and 2,813 in non hazardous occupations/processes in the entire State. All the six children were withdrawn from hazardous occupations/processes. However, their admission to schools - formal or non-formal in compliance with the directions of the Supreme Court could not be confirmed. No effort seems to have been made to rehabilitate the families of the children withdrawn from the hazardous establishments/processes under the Wage Employment Scheme of Rural Development Department, as directed by the Apex Court. The sum of Rs. 1,20,000 recovered from the offending employers in respect of the detected child labourers was required to be deposited in the Child Rehabilitation Welfare Fund to be created in all

districts. Confirmation about creation of this fund and utilisation of the amount recovered from the offending employers could not be furnished. Information about prosecution of employers was also not furnished.

**9.8** In a survey conducted in the year 2000 at the instance of the NHRC, 109 hazardous and 3,284 non-hazardous units were visited and 345 children were found working in non-hazardous establishments. Despite recurring reports about engagement of children at brick-kilns in Haryana, which is a hazardous process prohibited under the Act, the survey did not result in a single detection in the hazardous category in the entire State. In fact, there has been no detection of child labour in hazardous establishments in Haryana after the survey of 1996-97.

**9.9** Three districts of Haryana, namely Gurgaon, Faridabad and Panipat were sanctioned the National Child Labour Project (NCLP) in November, 2003 under the 10<sup>th</sup> Five Year Plan. The operationalisation of these projects has been extremely slow. While the Union Labour Ministry was very prompt in releasing funds for the establishment of the Project Society and Survey Work, the funds were received by the DMs concerned in August, 2005 but there action was not at all satisfactory. No progress has been made in the survey work till the end of the period of report.

## Chhatisgarh

**9.10** The review was carried out by Justice Y. Bhaskar Rao, Member, NHRC assisted by the Special Rapporteur at Raipur on February 14, 2006. The 1996-97 survey ordered by the Supreme Court had resulted in the detection of 992 children employed in hazardous and 643 in non-hazardous occupations/processes. Follow-up in respect of children in hazardous occupations/processes in accordance with the directions of the Supreme Court was found to be incomplete/unsatisfactory. Only 316 children out of a total of 992 (31.8%) withdrawn from hazardous occupations were admitted to schools. The number of affected families was given as 390 with no information about Raipur (detection 68), Durg (detection 94) and Janjigir Champa (detection nine). Out of 390 affected families required to be economically rehabilitated only 189 (48.4%) were given some benefit of Government Schemes. A negligibly small amount of Rupees four lakh only was actually collected against the total amount of Rs. 1,98,40,000 required to be realised from the offending employers in respect of 992 children withdrawn from hazardous work. No information could be furnished about the prosecutions launched against the offending employers. The review made a shocking revelation that there had been no detection of child labour in the State after the initial survey of 1997 ordered by the Supreme Court.

**9.11** Six districts, out of a total of 16, in Chhattisgarh are covered by the National Child Labour Project. Presently, only 214 schools against the sanction of 229 schools are being run by 97 NGOs. The review brought out serious discrepancies about enrolment in excess of authorisation in NCLP, Bilaspur and NCLP, Sarguja. The performance of the

## Bonded Labour and Child Labour

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project measured by the number of students cleared for admission to 6<sup>th</sup> class after completion of three years is found to be very poor. The component of vocational training is found to be absent or inadequate. The Government of India has sanctioned NCLP for two more districts, namely Korba and Dantewada. Action is in progress for the survey work and selection of NGOs.

### Uttar Pradesh

**9.12** Two reviews were carried out by the Special Rapporteur during the period of report. He visited Varanasi, Mirzapur, Bhadoi, Allahabad and Kanpur from 2 to 7 September, 2005 and reviewed the situation district-wise for all the districts of carpet belt viz. Varanasi, Jaunpur, Bhadoi, Mirzapur, Sonebhadra and Allahabad. He held separate meetings with the NGOs working in the field of child labour at Varanasi, Bhadoi, Allahabad and Mirzapur. The review covered the period from April 1, 2004 to June 30, 2005. In the second review made at Varanasi and Kanpur, he reviewed the situation for the period of report, i.e., 2005-06 (upto January 31, 2006).

**9.13** The Annual Report of the Commission for the year 2004-05 mentions a circular issued by the State Government on August 29, 2003 declaring end of the 'Inspector Raj'. This had the effect of suspending enforcement of the Child Labour Act in U.P. The review of March, 2006 revealed a slight improvement in the situation as a result of the modification of the earlier circular, which allowed properly regulated visits and inspections by the enforcement staff to detect child labour. A total of 221 children were identified and withdrawn from hazardous occupations/processes during the period of report (April 1, 2005 to January 31, 2006) against 'nil' in the entire period of 2004-05. With this, the total number of children withdrawn from the hazardous work since the survey of 1996-97 comes to 29,949. 24,663 out of a total of 29,949 children identified and withdrawn from hazardous occupations/processes have been admitted to formal or non-formal system of schooling, which gives a fairly satisfactory percentage of 82.3. The number of affected families relating to detection of 29,949 children employed in hazardous establishment is 24,360. Only 5,004 of these, i.e., 20.54% have received rehabilitatory grant from the Government. The number of employers involved in the total detection of 29,949 children in hazardous work is 10,822. 7,649 prosecutions have been launched in this connection. On account of constant monitoring by the NHRC, recovery from the offending employers has increased from Rs. 99,49,579 to Rs. 1,07,06,134 indicating recovery of Rs. 7,56,555 during the period of report. A total of 10,716 prosecutions have been launched under the Child Labour (Prohibition and Regulation) Act. A total of 3,272 of these have been decided so far – 406 cases resulted in conviction and 2,866 cases resulted in acquittal. This gives a conviction rate of 12.4%. Pendency has also come down from 8,720 mentioned in the last report to 7,444. It is distressing to find that conviction rate over the past three years under the Child Labour Act is almost 'zero'.

**9.14** NCLP was in operation in two districts, namely, Aligarh and Ferozabad when the NHRC monitoring began in 1998. By March, 2004 NCLP was in operation in 11 districts with sanction of 530 schools. 15 additional projects were sanctioned in February 2004 and 21 in October, 2004. With the operationalisation of the project in 19 out of 36 additional districts, the NCLP is now in operation in 30 districts of U.P with a total of 1,611 sanctioned schools. 327 schools are being run under the INDUS project. The number of NCLP schools in operation in UP has gone up to 1,136 from 456 mentioned in the last report. The number of children attending the schools has increased from 20,327 to 49,570. NCLP schools in five districts, numbering 343, namely Aligarh, Allahabad, Ferozabad, Moradabad and Kanpur have been brought under INDUS. A total of 327 schools under INDUS project are imparting primary education to 10,685 child labourers. 4,885 children have been identified in 14 to 17 years age group in five districts of INDUS Project for vocational training. However, only 737 children are actually receiving vocational training. Implementation of the INDUS Project in respect of vocational training is inadequate although significant progress has been shown during the period of review.

### **Jharkhand**

**9.15** As mentioned in the last year report, a total of 59 child labourers including 11 girls were detected in hazardous occupations/processes as a result of 3,706 inspections conducted during the period from April 2004 to February 2005. Admission of 44 out of a total of 59 children to schools, grant of financial assistance under Indira Awas Yojna to eight families, sanction of old-age pension to two families, issue of Antyodaya Cards to 10 families were mentioned in the last report. There has been no progress during the period of review regarding the admission of balance number of children to schools and rehabilitation of affected families. Similarly, the recovery of Rs. 20,000 per child labour from the offending employers in respect of 59 child labourers remains 'nil' as before. No progress has been received in 41 prosecutions launched against the offending employers. 2,892 inspections of non-hazardous occupations/processes led to detection of 941 child labourers. Two Hundred and forty three children were admitted in non-formal schools and 158 prosecutions launched during the period of review. No case of detection of children engaged in hazardous occupations/processes figured during the period of report.

**9.16** Five districts of Jharkhand, namely West Singhbhoom, Pakur, Garhwa, Dumka and Sahibganj are covered by the National Child Labour Project. One hundred and fourteen schools with a total capacity of 5,700 children have been sanctioned. However, the actual number of children attending the schools is 5,692 as reported in the last report. Seventy six schools are being run by NGOs and 38 by the Project Societies (District Sahibganj and Dumka). The component of vocational training is totally missing in NCLP schools in Pakur (19) and Sahibganj (4). Only 24 out of a total of 38 schools of NCLP, West Singhbhoom have vocational training facilities. The administration of Supplementary Nutrition Programme and Health-care has shown appreciable improvement during the period of report. NCLP cover has been extended to four more districts, namely, Hazaribagh

## Bonded Labour and Child Labour

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and Ranchi, Palamu and Gumla. The Government of India has approved the opening of 31 schools each in Hazaribagh and Palamu and released first instalment of the financial grant also. Survey work is in progress in Ranchi and Gumla.

**9.17** After consideration by the Commission, these review reports were sent to the State Government concerned with appropriate recommendations.

**9.18** While continuing its efforts to eradicate Child Labour, the Commission has no hesitation in admitting that its achievements are disproportionately small in comparison with the magnitude of the problem. Child Labour persists in most of the States of India despite several pronouncements of the Supreme Court and sincere efforts of the Social Action Groups and activists. The Commission has been urging the Government of India to re-write the Child Labour laws by viewing the issue from the perspective of the Convention of the Rights of the Child, 1989, which has been ratified by India and our own constitutional provisions of Art. 21, 39(e), 39(f) and 45. Now that free and compulsory elementary education has been made a fundamental right of every child up to the age of 14 years, the Commission hopes that all State Governments will ensure cent per cent enrolment and retention of school going children, which alone can provide a lasting solution to the problem of child labour.

### **C) *Bonded Labour: Efforts in the States of Haryana, Chhattisgarh, UP and Jharkhand.***

**9.19** The Commission continued monitoring the implementation of the Bonded Labour System (Abolition) Act, 1976 under the directions dated November 11, 1997 of the Supreme Court passed in writ petition (civil) No. 3922 of 1985. The Chairperson Dr. A.S. Anand assisted by Shri Chaman Lal, Special Rapporteur, reviewed the Bonded Labour situation in Haryana in the meeting held in Chandigarh on October 21, 2005. Justice Y. Bhaskar Rao assisted by the Special Rapporteur reviewed the Bonded Labour situation in Chhattisgarh at Raipur on February 14, 2006. The Special Rapporteur carried out review of the bonded labour situation in Uttar Pradesh with focus on carpet belt districts from 2 to 7 September 2005 and 4 to 7 March 2006, and Jharkhand on March 30, 2006. The salient points emerging from these reviews are given below:

### **Haryana**

**9.20** 11 out of a total of 19 districts of the State have been identified as bonded labour-prone districts. Vigilance Committees have been formed at all the 32 districts and 188 Sub-Divisional HQs. Vigilance Committees at eight Sub-HQs were constituted during the period of report. The review revealed that while executive magistrates of all the Sub-Divisions have been conferred judicial powers under the provisions of Section 21 of the Bonded Labour System (Abolition) Act, 1976, such orders have not been issued in respect of the District Magistrates. The omission was accepted by the Principal Secretary, Labour and corrective action was promised. No meeting of the State-level monitoring committee was

held for the last three years. In fact, the Committee constituted in 2000 is awaiting reconstitution since 2002 after the term of non-official members expired. A total of 393 bonded labourers were reported as identified, released and rehabilitated in Haryana during the years 1996 to 2005 - 6 in 1998, 122 in 1999, 232 in 2000, 2 in 2001 and 31 in 2003. There has been no identification of bonded labour in the State in 2004 and 2005. All the 393 identified bonded labourers were of migrant category, who reportedly went back to their home States after being released. Principal Secretary, Labour stated that all of them were paid Rs. 20,000 each under the Centrally Sponsored Scheme. This could not be accepted in view of the fact that as per the information received by the Commission from the Union Labour Ministry, no funds were obtained by the State Government from the Union Labour Ministry for rehabilitation of bonded labour since 1996-97. Principal Secretary, Labour was asked to furnish district-wise details of receipt and disbursement of rehabilitatory grant at the sources from which the money was drawn and the proof of payment to the released bonded labourers.

**9.21** In the ATR received from the State Government vide their letter No. 1658 dated January 23, 2006, the number of bonded labourers identified, released and rehabilitated was brought down to 203 from the earlier figure of 393. The ATR was found lacking in details of rehabilitation also. The Commission decided to call the Principal Secretary, Labour for a discussion, which was held in May, 2006 and would be reflected in the next annual report for 2006-07.

**9.22** The State received Rs. 16 lakh from the Union Labour Ministry for conducting survey on bonded labour in eight sensitive districts of the State, namely, Panchkula, Faridabad, Gurgaon, Mahendergarh, Bhiwani, Hissar, Sirsa and Fatebad. It was reported by the State that the surveys conducted through NGOs/academic institutions did not reveal a single case of bonded labour in Haryana. The Chairperson found it difficult to accept this finding in view of the fact that the State was having around 3,000 brick-kilns/stone crushers with credible reports about incidence of bonded labour in many of the brick kilns. The State Government had not shown interest in availing of the offer of Rs. 10 lakh per annum for Awareness Generation of Bonded Labour available under the Centrally Sponsored Scheme.

## **Chhatisgarh**

**9.23** The State of Chhattisgarh carved out of Madhya Pradesh on November 1, 2000 has not yet identified bonded labour-prone districts and the occupations and trades where bonded labourers are generally employed. The Principal Secretary, Labour stated that Vigilance Committees are in place in all the districts and Sub-Divisional HQs, but references of the Gazette Notifications could not be furnished. He was requested to provide the copies of the gazette notification in respect of the districts and Sub-Divisional Hqs. These were not received during the period of report. Similarly the conferment of judicial powers on Executive Magistrates as provided u/s 21(1) of the Bonded Labour System (Abolition) Act, 1976 could not be confirmed.



## Bonded Labour and Child Labour

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**9.24** A total of 1,007 released bonded labourers were required to be rehabilitated in Chhattisgarh since its creation in 2000. Of these, only 14 were identified in District Durg of Chhattisgarh in 2001. The remaining 993 were received after release in other States (U.P., Bihar, Madhya Pradesh, Karnataka, Himachal Pradesh and Dadar & Nagar Haveli). All the 1,007 released labourers were required to be rehabilitated under the Centrally Sponsored Scheme. The Union Labour Ministry released a sum of Rs. 12.4 lakh for rehabilitation of 124 bonded labourers in Chhattisgarh in 2002-03. This amount forms the Central share of Rs. 10,000 each for rehabilitation of 124 bonded labourers. An equal amount was required to be provided by the State Government. The Principal Secretary, Labour could not confirm whether the State share was released. No more information could be obtained about rehabilitation of released bonded labourers. In any case, no proof of rehabilitation of these labourers was furnished.

**9.25** A shocking revelation of the review was that a grant of Rs. 32 lakh received from the Union Labour Ministry was utilised in carrying out bonded labour survey in eight districts by engaging a single Bhilai-based NGO with the net result of the survey as 'zero'. The Commission has asked the Principal Secretary, Labour to furnish a detailed report indicating the criteria for selection of the NGO and the methodology followed. Since the Principal Secretary, Labour regretfully admitted the state of unpreparedness on the part of his Department, the Commission gave the State Government six months' time to complete records so that a fresh review could be made.

### Uttar Pradesh

**9.26** With the constitution of Vigilance Committees at five more Sub-divisional HQs during the period of report, Vigilance Committees are now in place at all the 70 District HQs, and 297 Sub-Divisional HQs. A total of 305 bonded labourers were identified and released in UP during the period from April 1, 2005 to January 31, 2006. With this, the number of bonded labourers identified and released in UP since the first survey of 1996-97 ordered by the Supreme Court comes to 2,859. Eighteen hundred and six of these were migrant labourers, who went back to their native places. One thousand and fifty three were required to be rehabilitated in U.P. Thirtynine bonded labourers were received in U.P. from other States for rehabilitation during this period, which includes seven of the period of report. The Government of U.P. was, thus, required to rehabilitate 1,092 bonded labourers. The Labour Department found only 967 cases fit for rehabilitation. The remaining 27 are reported to have died or become untraceable. The review presented a very satisfactory picture of rehabilitation of the released bonded labourers. As many as 870 out of a total of 967 have been fully rehabilitated under the Centrally Sponsored Scheme, which includes 87 rehabilitated during the period of report. One bonded labour released in District Bhadoi during the period of review was provided part assistance this year. Funds under the Centrally Sponsored Scheme have been provided to the D.Ms. concerned in full for rehabilitation of 43 and for part rehabilitation of one (relating to Bhadoi). Financial assistance has been sought from the Government of India for

## Bonded Labour and Child Labour

rehabilitation of 32 labourers. Twenty One cases are pending rehabilitation for want of physical verification of the released labourers. Shri Sharda Prasad, Labour Commissioner UP has been taking personal interest in processing the pending cases of rehabilitation.

**9.27** A saving of Rs. 6,02,291 was effected out of a grant of Rs. 10 lakh received for survey of bonded labourers in districts of Mirzapur, Allahabad, Kannauj, Meerut and Gautambudh Nagar. After obtaining clearance from the Union Labour Ministry, an amount of Rupees Six lakh out of this saving was utilised in carrying out additional surveys in districts Sonebhadra, Sant Ravidas Nagar, Basti, Sidharth Nagar from April 1, 2005 to April 25, 2005. The Commission has noticed with satisfaction that the survey work carried out in U.P. resulted in actual identification of 63 bonded labourers, while saving an amount of Rs. 2,89,750. Similarly, the utilisation of Rs. 10 lakh received for Awareness Generation Programme and Rupees Five lakh for Evaluation Studies has been efficient and result-oriented. The Government of India has released an additional grant of Rs. 25 lakh on February 3, 2006 for Awareness Generation (Rs. 10 lakh), Survey and Evaluation Studies. It is proposed to conduct surveys in Districts Chitrakoot, Varanasi, Kaushambi, Faizabad and Kanpur and Evaluation Studies in Muzafarnagar, Bhadoi, Aligarh, Bulandshar and Urai (Jalaun).

**9.28** A total of 274 prosecutions have been launched under the Bonded Labour System (Abolition) Act, 1976 during the period 1996-97 to December 31, 2005. 193 of these pertain to the districts of carpet belt. Mirzapur tops the list with 65 followed by Bhadoi (53) and Allahabad (46). However, only 13 cases out of these, including 12 from the carpet belt, have been decided so far, all in acquittal. The Labour Commissioner, UP has been requested to examine and identify the causes for almost cent per cent acquittal rate of cases registered under the Bonded Labour System (Abolition) Act, 1976.

### Jharkhand

**9.29** Vigilance Committees are in place at all the District HQs (22) and Sub-Divisional HQs (35) of the State. These Committees are now meeting more regularly than before. In the year 2005-06, 31 meetings at the District-level and 46 at Sub-Divisional level were held. As mentioned in the report, orders authorising the Executive Magistrates to exercise judicial powers as provided u/s 21 of the Bonded Labour System (Abolition) Act, 1976, have not yet been issued in Jharkhand. This matter is still pending despite a clarification issued by the NHRC and the clearance given by the High Court of Jharkhand in September 2005.

**9.30** In the Commission's report for 2004-05, it was stated that 185 out of a total of 196 bonded labourers have been rehabilitated. The review brought out the following status of these cases:

**9.31** Three released bonded labourers belonging to District Garhwa have died and one is untraceable. One released labourer was found belonging to District Gaya in Bihar. D.M. Gaya has been approached for his rehabilitation. One child bonded labourer of District Palamu,

## Bonded Labour and Child Labour

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released in Allahabad along with six others has not yet returned to his village. The remaining five cases were pending for want of full particulars, which have been received from Labour Commissioner, UP. Their rehabilitation has been taken up.

**9.32** Only one bonded labourer named Ganesh Rabani s/o Gogo Rabani was identified and released on January 26, 2006 in District Deoghar, Jharkhand during the period of report. He has been rehabilitated under the Centrally Sponsored Scheme.

**9.33** Despite the low figures (just one) of detection of bonded labourer in the State, the Government of Jharkhand deserves to be complemented for extending to all the released bonded labourers rehabilitated under the Centrally Sponsored Scheme, an additional benefit of Social Security Pension Scheme.

**9.34** These reports were considered by the Commission and forwarded to the State Government concerned with appropriate directions.

**9.35** The issue of Bonded Labour remained neglected for several years after the surge of initial enthusiasm following the enactment of the Bonded Labour System (Abolition) Act, 1976. The Commission's involvement has brought it into focus and made the District Magistrates aware of their special responsibilities under the Act. Vigilance Committees are now in place in all the Districts and Sub Divisions in the Bonded Labour Prone Districts. They meet more regularly than before, although their contribution in terms of identification of bonded labourers is still not very significant. Rehabilitation of the released bonded labourers under the Centrally Sponsored Scheme is receiving greater attention than before. A notable feature of the period of report is the progress made in rehabilitation of migrant bonded labourers belonging to Bihar and Jharkhand, who were sent back to their native States after identification and release in other States. The Commission has also noted with satisfaction the efforts of the Union Labour Ministry, especially its Secretary Shri K.M. Sahni and the Director General (Welfare) Shri Manohar Lal in visiting various State HQs and interacting with the field functionaries on issues of Bonded Labour and Child Labour.

### **Workshops on Bonded Labour**

**9.36** The Expert Group on Bonded Labour constituted by the Commission on 22<sup>nd</sup> September 2000 had, in its report dated January 13, 2001, recommended the holding of Workshops for sensitizing and educating the DMs, Superintendents of Police, NGOs and other field functionaries involved in the implementation of the Bonded Labour Act. Four such Workshops were held in 2003-04 and four in 2004-05 as mentioned in the previous reports. Two workshops were held in the period of this report jointly by Shri Chaman Lal, Special Rapporteur and Shri Manohar Lal, Director General (Labour Welfare), Government of India. First workshop was held in Uttaranchal at Dehradun on February 1, 2006. It was inaugurated by Justice Y. Bhaskar Rao, Member NHRC. Shri Hira Singh Bisht, Labour Minister Uttaranchal, in his presidential address, expressed the commitment of

## Bonded Labour and Child Labour

his Government towards eradication of Bonded Labour in the State. The participants numbering 36 included one Divisional Commissioner, three DMs, five Chief Development Officers and four ADMs. The workshop proved useful in clarifying for the benefit of the District Officers of the newly created State the definitional aspects of Bonded Labour Act and removing their misgivings on the issue.

**9.37** The second Workshop was organized in collaboration with Maharashtra Institute of Labour Studies Mumbai at Yashwant Rao Chavan Centre, Mumbai on March 10, 2006. It was inaugurated by Dr. Justice A.S. Anand, Chairperson, NHRC. The participants numbering 41 included one Collector, one Addl. Collector and four Deputy Collectors. The Chairperson expressed his unhappiness over the poor attendance of Collectors for whom this workshop was specially designed. However, the presence of Deputy Labour Commissioners and Assistant Labour Commissioners, who are Member Secretaries of the District Vigilance Committees, proved useful in interacting with the authorities at functional level about the implementation of the Bonded Labour Act. The workshop helped in identifying the problems of migrant bonded labourers including child labourers detected in Maharashtra in recent years due to the initiative of some committed NGOs.

### **D) Bonded Labour and Child Labour: Efforts in the States of Andhra Pradesh, Karnataka and Tamil Nadu**

**9.38** During the year 2005-06 from the 1 April 2005 to 31 March 2006, Shri K. R. Venugopal, Special Rapporteur, NHRC for the Southern Region undertook 27 visits to the villages, districts and the state capitals of the States of Karnataka, Tamil Nadu and Andhra Pradesh to further the mandate of the Honourable Supreme Court of India on the implementation of Bonded Labour and Child Labour laws in these States and to carry out investigations into specific complaints referred by the Commission on human rights violations in these States. During these visits, reviews at the highest levels with the Governments of Andhra Pradesh, Karnataka and Tamil Nadu were held through meetings with Chief Secretaries, Secretaries to the Governments and Heads of Departments, who have nodal responsibility for the eradication of Bonded Labour and Child Labour practices in their respective States, and Collectors and District Magistrates and District officers of select Districts at the District level. The total number of such review meetings held in these three States during the year was 19. The Special Rapporteur visited villages in the Districts of Gulbarga in Karnataka and Vizianagaram in Andhra Pradesh and personally verified and detected the existence of cases of Bonded Labour and Child Labour at the field level. Similarly, he also verified the quality of rehabilitation at the village level in Nalgonda District in Andhra Pradesh and Mandya District in Karnataka. In addition to these, the Special Rapporteur remained in touch with a large number of NGOs and social rights activists working in the area of Human Rights in all these three States.

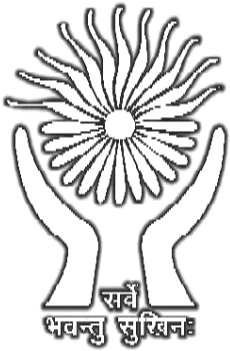
**Comment :** *Visits to villages and reviews are no doubt useful, but what is far more useful is the outcome. There is no information about number of bonded labourers identified, released and rehabilitated in the four Southern States of AP, KN, TN and KL.*

## Bonded Labour and Child Labour

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**9.39** During the year, the Special Rapporteur investigated into three important complaints referred to him by the Commission and submitted detailed reports on them. These pertained to the existence of bonded labour practices in certain villages in the Yadgiri Taluq of Gulbarga District in Karnataka; suicides by coal miners of the Singareni Collieries in the coal belt area of Adilabad District in Andhra Pradesh and the large scale deaths of tribals owing to Malaria in the Paderu Agency area of Visakhapatnam District in Andhra Pradesh. Investigation into these cases involved extensive field visits by the Special Rapporteur to several interior villages and interaction with bonded labourers and men, women and children living in those far flung areas.

**9.40** The Special Rapporteur organized and convened during the year two special high level review meetings on Bonded Labour and Child Labour issues, one at Mysore and another at Hyderabad, both presided over by Honourable Members of the NHRC, New Delhi. The one at Mysore in February 2006 was a Review Workshop attended by the nodal Secretaries of the Government of Karnataka, district and other field level officers and NGOs to evaluate the progress of follow up work relating to decisions taken in an earlier Workshop in 2003. The other one, also in February 2006, was held in Hyderabad and attended by the nodal Secretaries and other senior officers of the Government of Andhra Pradesh in the Social Welfare, Education and Labour Departments to review the progress in Bonded Labour and Child Labour work in the State and to plan further strategies to improve performance.



# Chapter-10

## Rights of Vulnerable

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**10.1** Ever since the Commission came into existence in the year 1993, it has been concerned about the rights of the vulnerable sections of society, i.e., women, children, disabled, old persons, Scheduled Castes, Scheduled Tribes, people belonging to minority communities as well as all those living in abject poverty. Though the Indian Constitution provides for equal rights for all these categories of people, yet not a day passes when they are not exploited and humiliated by the society at large because of the low social status they occupy in the society as also on account of their crippling disabilities, which make them vulnerable and prone to exploitation of all kinds. Internally displaced persons are another category, which could also be termed as vulnerable along with the Nomadic and Denotified Tribes.

**10.2** While the actions initiated by the Commission with regard to women, children, the disabled, internally displaced persons and Nomadic and Denotified Tribes have already been dealt in detail in other chapters, this chapter primarily focuses on Commission's efforts to mitigate the problem of manual scavenging and elderly persons.

### **A] Manual Scavenging**

**10.3** The Central Government notified the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 on January 24, 1997. The NHRC has been vigorously pursuing the need to end the degrading practice of manual scavenging in the country. It has taken up this matter at the highest echelons of the Central and State Governments through a series of personal interventions by the Chairperson of NHRC.

## Rights of Vulnerable

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**10.4** On 12 August 2002, the Chairperson wrote a letter to the Hon'ble Prime Minister of India to consider the desirability of making an announcement on the forthcoming Independence Day, so that a general awareness is created among the people and concerned authorities to put an end to the degrading practice of manual scavenging forthwith. Hon'ble Prime Minister, vide his letter dated August 21, 2002 informed that he has included the Chairperson's request as part of the 15 point initiative on the Independence Day. In keeping with the Prime Minister's announcement, the Planning Commission formulated a National Action Plan for total Eradication of Manual Scavenging by 2007. The salient features of the Plan are:

- (1) Identification of Manual Scavengers;
- (2) The 1993 Act should be adopted by all the States where manual scavenging exists;
- (3) Involvement of NGOs;
- (4) Ministry of Finance should issue necessary instructions to Nationalized Banks for providing loans Incentives for Implementation.

**10.5** The Chairperson, NHRC during May, 2003 wrote to the Prime Minister stating "Despite your assurance that the need to end the outraging practice of Manual Scavenging was included as part of 15-point initiative on August 15, 2002, it is a sad commentary that the inhuman practice still continues in several states."

**10.6** The Commission has been pursuing with the States and concerned Ministries in the Central Government to take steps to end the practice of manual scavenging. The Commission has held a number of meetings with the State Governments in this regard. The last such meeting was held on February 23, 2006 on Eradication of Manual Scavenging under the Chairmanship of the Hon'ble Chairperson, NHRC with the representatives of Central and the State Governments and other stakeholders.

**10.7** In the meeting, Chairperson, NHRC emphasized that with a view to be able to eradicate the evil, not only a survey is essential, but what is more important is to impart training to those who are identified scavengers and descendants and have been liberated. He pointed out that in many states, a very tardy method is adopted and those who have been identified and liberated are being given training not in other vocations, but effort is to shift them from scavenging to sanitation. He said that the States need to set targets and suggested six months targets for i) Converting the Dry Latrines, ii) Constructing the Wet Latrines, and iii) for making efforts to rehabilitate the identified scavengers. He said that imparting of education at the primary level has been made Fundamental Right in the Constitution. Steps will have to be taken by the States to ensure that this segment of the society is a part of us and is not deprived of primary education. He has stated that the role of the NGOs is very important, especially to change the mindset of the society and the ministries must make full use of their service.

**10.8** The representative of Sulabh International Social Service Organisation emphasized on the crucial issue of completing the work of liberation and rehabilitation of scavengers within a time frame. He also stressed on the involvement of NGOs in the implementation of programme to motivate people and make the programme more efficacious. He expressed difficulty with regard to the financial pattern of the low cost sanitation scheme and suggested that the level of subsidy should be raised to 50% of the cost of super structure uniformly to all the families having bucket privies. He suggested that besides HUDCO, loan for the conversion of dry latrine might also be made available from the nationalized banks. Accordingly, following action points emerged:

- 1. States should set six-monthly targets for converting the dry latrines into wet latrines and for making efforts to rehabilitate the identified scavengers.**  
(Action: MUD & E/ State Govts/ UTs)
- 2. Steps have to be taken by the States to impart education at the primary level.**  
(Action: States/UTs)
- 3. The Ministries may also explore the possibility of involving NGOs in the process of identification and rehabilitation of manual scavengers.**  
(Action: MUD, MSJ & E, MRD, MHRD)
- 4. There is a need to examine the existing subsidy scheme to make it more feasible.**  
(Action: MUD/HUDCO)

**10.9** Secretary General, NHRC, in his concluding remarks, emphasized that:

- a) The survey and identification should cover the rural areas as well.
- b) The process of identification needs to be carried out by the States since they have their own social structure. Unless the findings of the survey are accurate, the State Governments cannot precisely determine the magnitude of the problem.
- c) The Prime Minister has indicated 2007 as the target year for eradicating Manual Scavenging; therefore it should strictly be followed.
- d) The training of Scavengers and their dependents should be in all such vocations, which are in demand.
- e) The Ministry should look into the subsidies issue mentioned by the States.
- f) In regard to regulation, the States were requested to amend the local bye-laws suitably so that new constructions should have only wet latrines.

**10.10** The following points of action have emerged:

- The survey and identification should cover the rural areas.
- The process of identification of people engaged in Manual Scavenging is to be carried out by the States at the earliest and for each individual rehabilitation plan be executed and monitored.



## Rights of Vulnerable

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- The training of Scavengers and their dependents should be in all such vocations which have market value and will lead to sustainable employment
- There is a need to construct more public toilets.
- All States should adhere to the target date of 2007 for the eradication of Manual Scavenging.

**10.11** The representative of the Ministry of Urban Employment and Poverty Alleviation stated that the States have problems in the low cost sanitation scheme particularly with regard to the level of subsidies. She said that the scheme needs to be modified, as it does not cover the super structure, whereas a toilet without super structure is meaningless. She said that they are in the process of modifying the scheme. Secretary General in his concluding remarks affirmed that the States were requested to amend the local bye-laws suitably, so that new construction should have only wet latrines. Accordingly following action point emerged:

1. **There is a need to amend the existing regulation so that new constructions should have wet latrines.**

(Action: MSJ & E)

### **B] Rights of the Elderly**

#### **(i) Welfare of Older Persons (Senior Citizens)**

**10.12** The Commission is deeply concerned about the protection of rights of older persons. Two rounds of discussions were held in the Commission on October 19, 2000 and December 8, 2000 with some representatives of non-governmental organisations working for the rights of the older persons, who made a number of suggestions in this regard. In its meeting held on March 8, 2002, the Commission noted the details of the implementation of the Old Age Pension Scheme by the Central and State Governments and desired that the matter may be sent to Shri K. B. Saxena, IAS (Retd.), Former Advisor, Planning Commission for an in-depth study and recommendations. Accordingly, a request was made to Shri Saxena on March 22, 2002. The Secretariat of the Commission assisted Shri Saxena by making available the source material and data base on the subject from various quarters, including the Ministry of Rural Development, National Institute of Rural Development, Hyderabad, etc. The Ministry of Social Justice & Empowerment is still finalizing the bill on Older Persons (Maintenance, Care and Protection) Bill 2005.

**10.13** Shri K. B. Saxena has submitted a Report to commission on the “National Old Age Pension Scheme - Issues of Policy and Governance”, which are under process. He is requesting to permit NIRD to publish the same.

#### **Health Week**

**10.14** The Commission had organized “Health Week” Awareness Programme for the elderly people (senior citizens) in collaboration with HelpAge India from 20 to 24 March, 2006 at

New Delhi. Lectures on following topics were delivered by the specialists in the field, which were found to be very informative with regard to the health care of older persons.

Date	Topic	Experts
20.3.2006	Cardio-vascular Disease: How to Prevent Heart Attacks and Strokes	Dr. Ashok Seth, Max Heart
20.3.2006	Cardio-vascular Disease: How to Prevent Heart Attacks and Strokes	Dr. G.S. Meena, MAMC
20.3.2006	Cardio-vascular Disease: How to Prevent Heart Attacks and Strokes	Dr. K. Srinath Reddy, AIIMS
21.3.2006	Diabetes in the Elderly - Myths and Reality	Dr. Nikhil Tandon, AIIMS
21.3.2006	Diabetes in the Elderly - Myths and Reality	Dr. Jugal Kishore, MAMC
22.3.2006	Vision Problems in the Elderly	Prof. (Dr.) Atul Kumar, AIIMS
22.3.2006	Arthritis and Bone Management	Dr. Ambrish Mithal Indraprastha Apollo Hospitals
22.3.2006	Arthritis and Bone Management	Prof.(Dr.) Surya Bhan, AIIMS
23.3.2006	Disease of the Prostat Gland	Prof. (Dr.) N.P. Gupta, AIIMS
23.3.2006	Specific Health Concerns of Older Women	Col. (Dr.) Sanjiv Chopra, Armed Forces Clinic
23.3.2006	Specific Health Concerns of Older Women	Dr. Neeraja Bhatla, AIIMS
24.3.2006	Mental Health	Dr. Avdesh Sharma Rahat Charitable Trust
24.3.2006	Nutrition for the Elderly	Dr. Rekha Sharma (AIIMS)
24.3.2006	Nutrition for the Elderly	Dr. Prema Ramachandran, National Institute of Nutrition

## (ii) Security of Senior Citizens

**10.15** A report appeared in *The Hindu* dated June 22, 2004 regarding setting up of Special Cell to monitor security of senior citizens in Delhi. The Cell has been set up in the wake of the gruesome murder of Lieutenant General (Retd.) Harnam Singh Seth and his wife at their Vasant Enclave residence. A meeting was held at the instance of Lt. Governor of Delhi, Shri B. L. Joshi in which the decision to set up Special Cell was taken.

**10.16** The Special Cell would function directly under the supervision of Shri Sudhir Yadav, Additional Commissioner of Police (Crime Branch). However, the modalities of its functioning were yet to be worked out.

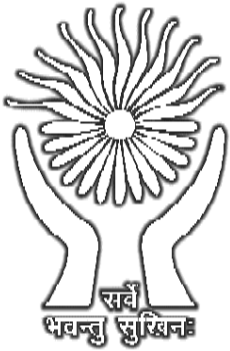
## Rights of Vulnerable

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**10.17** The Delhi Police have also decided to take the following steps to ensure safety and security of senior citizens in Delhi:

- To give wide publicity to the dedicated helpline numbers for senior citizens (1091 and 1291);
- To contact on the above numbers in case the names of senior citizens do not figure in the list of senior citizens prepared by the Delhi Police;
- To verify the character and antecedents of servants before their employment;
- To collect at least two references from their domestic helps to facilitate proper verification;
- To reduce the dependence on unknown persons, the Delhi Police have launched “Adoption of Senior Citizens by School Students” programme. Under the scheme, Students from various schools visit senior citizens living away from their children to share their problems and to extend to them emotional support;
- Delhi Police have also issued some guidelines in newspapers instructing the Senior Citizens to install grills on the door, cover transparent windows with curtains, keep lights on throughout the night, instal alarm bells linking with neighbours, etc.

**10.18** The Commission felt that the issue of senior citizens needs to be taken up in a wider perspective for the entire country by the Commission. It was decided that a Core Group be constituted to go into the issues relating to security, health and housing requirements, etc., of the senior citizens. The Core Group is being set up.



# Chapter-11

## Internally Displaced Persons

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### **A] National Policy on Resettlement and Rehabilitation**

**11.1** The Commission reviewed the provisions of the National Policy on Resettlement and Rehabilitation sent to it by the Ministry of Rural Development. The Commission has noted that the rehabilitation policy has not been made a part of the Land Acquisition Act of 1894. The Commission is of the firm view that resettlement and rehabilitation be incorporated in the legislation proposed to be enacted by the Ministry of Rural Development, so that it becomes justiciable. Keeping in view human rights aspects and related public interests involved, the Commission has also sought a copy of the draft legislation in this regard for a critical review.

**11.2** The Ministry of Home Affairs in the Action Taken Report on the Annual Report of the Commission for the year 2002-2003 has mentioned that a national policy on the subject has been notified. The draft bill proposed to be introduced for legislative approval is being processed in accordance with the procedure established by Law.

### **B] Human Rights Situation in cases arising out of Natural Disasters**

#### **(a) Monitoring of Cyclone Reconstruction Work in Orissa**

**11.3** The Commission had taken *suo motu* cognizance of the situation arising from the devastating cyclone, which affected large areas of the State of Orissa in

## Internally Displaced Persons

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October, 1999. After considering the reports of Shri N. Gopaldaswami, Secretary General and Shri Chaman Lal, Special Rapporteur who made a detailed assessment of the situation in the affected districts, the Commission issued some specific directions and recommendations relating to relief and rehabilitation work vide its proceedings dated December 8, 1999.

**11.4** Special Rapporteur of the Commission visited the cyclone affected districts from March 13-19, 2000 and reviewed the implementation of the Commission's directions/recommendations. A copy of his report, along with the recommendations of the Commission, was sent to the Chief Secretary, Government of Orissa by the Secretary General, NHRC on March 31, 2000.

**11.5** The Commission considered the report of the Special Rapporteur who again visited the cyclone affected districts from July 10-14, 2000 and submitted a detailed report on implementation of the Commission's directions/recommendations issued on December 8, 1999 and March 31, 2000.

**11.6** The Commission notes with satisfaction the implementation of its directions/recommendations regarding (a) enumeration of casualty and disbursement of ex-gratia; (b) enumeration of widows, destitute senior citizens, orphans and their rehabilitation; (c) disbursement of house building grant; (d) repair of primary school buildings and health institutions; (e) initiation of action for construction of cyclone shelters; and (f) the allotment of houses.

**11.7** The Commission, however, finds follow-up action rather slow in the matter of (a) operationalisation of ICDS projects already sanctioned by the Government of India; (b) grant of mandatory compensation to fishermen's families for loss/damage of boats and nets; and (c) the establishment of Ham Radio clubs.

**11.8** While the Commission is satisfied with the probe into the allegations of professional lapses on the part of some District Collectors and CEO, Cuttack Municipal Corporation, it feels that the probe into the allegations about the delay in opening of gates of three irrigation projects needs to be more extensive. The Commission noted with some reservation the finding of the Expert Committee leading to the suspension of a Junior Engineer without ascertaining and fixing the responsibility on any higher authorities.

**11.9** A copy of the proceedings along with a copy of the report of the Special Rapporteur was sent to the Chief Secretary, Government of Orissa, demi-officially by the Secretary General with the request that monthly progress reports on the outstanding points listed in the report of the Special Rapporteur should be sent to the Commission by the tenth of every month till the process of compliance with all the observations was complete.

**11.10** The Commission again considered the report received from the Government of Orissa in its meeting held on February 18, 2002 and desired that the Chief Secretary, Government of Orissa be requested to send a quarterly report of the progress.

## Internally Displaced Persons

11.11 The Commission has been receiving quarterly progress report from the Government of Orissa on a regular basis. The reports are received by the PRP&P Division and the Special Rapporteur of the Commission has been monitoring the progress.

11.12 The progress made by the State Government as on March, 2006 is as under:

1. **Construction of Multipurpose Cyclone Shelters:** Out of 60 MCSs, with CMRF Fund, all the MCSs have been completed. Out of 37 MCS taken up with WB assistance, 35 have been completed. Out of 37 MCS with K.F.W. German Assistance (Phase-II revised), 10 have been completed.
2. **Construction of School Buildings:** Out of 1,152 taken up High School Buildings, 1,148 have been completed and out of 5,774 taken up primary school buildings, 5,750 have been completed.
3. **Operationalization of ICDS Projects:** Out of 41 ICDS Projects, 40 have been made operational. Out of 5,057 Anganwadi Workers and 5,057 Anganwadi Helpers, the posts of 4,914 and 5,036, respectively are filled up.

11.13 As regards the action taken against the supervisory staff responsible for the delay in opening of sluice gates, it has been stated that necessary departmental proceedings have been initiated against Shri Sridhar Behera, Ex-Executive Engineer (Civil) and Shri L. Mallick, Ex.Asstt. Engineer (Civil). Besides, proceedings have also been initiated against Shri R. Rout, Ex.S.E (Civil) and Shri N. N. Mohanty, Ex. E.E. (Civil). The delinquent officers have already submitted their statement of defence and it has already been examined and submitted for Government Orders.

**(b) Expansion of Orissa Disaster Rapid Action Force (ODRAF)**

11.14 Following the Commission's recommendations, the State Government has formed a specialised outfit called Orissa Disaster Rapid Action Force (DDRAF) within the Orissa State Armed Police to take up the restoration of essential services like Power, Water, Telephone-communication, etc., in the wake of natural disaster. Starting with three battalions initially, these units are now available in five out of a total of eight Armed Police Battalions of Orissa. These have been strategically located at Balasore, Cuttack, Chatrapur, Jharsuguda and Koraput. It is proposed to create three more units of ODRAF to be stationed at Charbatia, Bhubneswar and Rangamatia.

**(c) Monitoring of Post Earthquake Measures in Gujarat**

11.15 The Commission took *suomotu* cognizance of the national calamity that arose from the devastating earthquake, which hit large areas in the State of Gujarat on January 26, 2001. Keeping in mind the precedent of monitoring of relief and rehabilitation work in the super cyclone-affected areas and the generally perceived efficacy of the Commission's intervention in Orissa, the Commission engaged itself in this task in Gujarat in the aftermath of devastating earthquake.

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**11.16** In order to monitor closely the follow-up action taken by the State Governments to impact its directions, the Commission set up a Group consisting of Shri PGJ Nampoothiri, Special Rapporteur, NHRC; Shri Gagan Sethi, Managing Trustee of Jan Vikas Trust; Smt. Annie Prasad, President of Kutch Mahila Sangathan and Prof. Anil Gupta, IIM, Ahmedabad.

**11.17** The Special Rapporteur submitted a preliminary report of the Group in February, 2003 regarding the monitoring of the relief of persons disabled in the earthquake. A detailed report from the Special Rapporteur was received during the period under report. The highlights of the report are as under:

- (i) There are several complaints of irregular payments to widows due to inadequate funds at the disposal of District Officers.
- (ii) A number of houses constructed by outside agencies are lying un-occupied because there are no takers. The beneficiaries are not willing to accept relocation. The result is a colossal waste of scarce funds.
- (iii) There are a number of complaints regarding payment of housing assistance and classification of damaged houses, since as many as 15,000 persons in Kutch area alone have been denied any assistance though their houses either fell in G-5 category or had to be demolished.
- (iv) There are instances where the instructions given by the Lokpal had not been complied with. Some of the cases have been quoted by the Special Rapporteur.
- (v) The main issue in all these and similar cases is the tendency on the part of the Officers to be too technical and treat such matters in a routine unsympathetic manner.
- (vi) Draft town planning schemes have been finalized for four towns, namely, Bhuj, Anjar, Bhachau and Rapar. A Board of Appeal with District Judge as Chairman has been constituted to hear and dispose off objections. This process is likely to take considerable time.
- (vii) The victims of earthquake, who were tenants, are facing lot of difficulties since they have either lost their documents, either due to passage of time or in the quake. They have no proof to establish their tenancy rights. There are 1,000 such families who are awaiting decision of the Government for allotment of land.
- (viii) The relocated sites are neither attached to the Municipalities or village panchayats. The area development authorities have no democratic dispensation or responsibilities. One common complaint is that the money raised by the sale of property in the towns was not being used for development.
- (ix) It is feared that the new Town Planning Schemes do not take care of the Gujarat High Court order that no construction should be permitted to interfere with the water bodies.

## Internally Displaced Persons

- (x) Under the new Scheme, there is no provision for shops in residential areas selling daily requirements. These are proposed to be relocated at designated areas only.
- (xi) While physical rehabilitation of the victims has made reasonable progress, economic improvement has not taken place.
- (xii) Under the scheme of assistance to Professionals, 34 advocates in Kutch have been left out, while others have received the subsidy.
- (xiii) Regarding updating the building bye-laws, some action has been taken, but a lot more remains to be done. There is no qualification required to become a Builder. The structural engineers hardly verify whether the structures are properly put up. They do not have the time to check the quality and adequacy of the materials used.

**11.18** The report submitted by the Special Rapporteur was considered by the Commission in its meeting held on January 24, 2006 and it directed that the report received from the State Government should be incorporated in the report received from the Special Rapporteur. The Special Rapporteur, NHRC has submitted another report and the same is being placed before the Commission alongwith the report obtained from the State Government.

### *d) Monitoring of Post-2002 Gujarat Riots Situation*

**11.19** The Commission has issued several instructions in the wake of post Godhra riots of 2002, which is being monitored by the Special Rapporteur. The two critical areas are pursuing criminal cases arising out of the disturbances and rehabilitation of families displaced.

**11.20** With regard to the rehabilitation of families displaced, a few volunteers attached to some NGOs, especially the Center for Social Justice, Ahmedabad had conducted an extensive survey of resettlement colonies occupied by victims and prepared a detailed report along with photographs, etc., The Special Rapporteur has been associated with this as Shri Gagan Sethi of the CSJ is one of the members of the monitoring Committee. He had also visited seven of these colonies located at Ahmedabad, Halol and Kalol. Of special concern is the fact that even four years after the tragic events, more than 4,500 families remain displaced from their normal locations and put up in temporary/semi-permanent structures erected by the NGOs, Community Organizations, etc. Even more disturbing is the fact that around 500 families live in camp-like locations in tents, exposed to the elements. Even the colonies supported by the NGOs lack elementary facilities like water supply, sanitation, etc.

**11.21** In the matter of Justice to the victims, perfunctory investigation in many of the over 4,000 cases registered, has been a major roadblock. It needed the intervention of the



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Supreme Court for the Police to constitute a high level Committee to scrutinize around 2,000 cases closed by the Police. The Special Rapporteur has been closely associated with some of the NGOs, who are pursuing such cases. In the Bilkis case, he had maintained close liaison with the investigating Officers of the CBI, Special Public Prosecutor, important witnesses and some NGOs who are assisting the victims. In this connection, the Special Rapporteur has submitted two reports to the Commission during March 2006.

### **C] Problems of Denotified and Nomadic Tribes**

**11.22** The Commission has been concerned about the violation of the human rights of communities designated as Denotified Tribes (DNT) and Nomadic Tribes (NT). They had, earlier in pre-Independence India, been identified as 'Criminal Tribes'. Though the Criminal Tribes Act, 1871 was annulled soon after independence, prejudice against them persisted. The police, as well as members of the public, frequently treat persons belonging to these communities as 'born criminals' and 'habitual criminals'.

**11.23** The Commission constituted an Advisory Group to examine the matter who submitted its report in August, 1998, which made several recommendations to improve the condition of the communities. Following are the main recommendations.

1. A retired senior police officer of high reputation may be appointed in every state by the Commission to watch the cases of atrocities against DNCs and to report them to the Commission. Where there is a concentration of an old settlement existing, a separate officer may be appointed at the district level;
2. Since the police training is still faulty in this respect, the National Police Academy and other institutions imparting training to police officers may be advised to reorient their syllabi;
3. NHRC may take necessary steps leading to the repeal of the Habitual Offenders Act;
4. Central/State Governments may be directed to make proper enumeration of the DNCs;
5. The DNCs may be provided educational, employment and other infrastructural facilities;
6. State Government may be asked to work out action plans for DNCs with specific provisions in the plans. The Planning Commission may be advised in this regard;
7. To launch a massive information campaign aimed at bringing about change in the general attitude towards the DNCs;
8. The National Sample survey Organization should be directed to make a special survey of the socio-economic conditions of the DNCs.

**11.24** The Commission is monitoring the response from the State Governments/UTs on the recommendations. The report received from some of the States was considered by

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the Commission and the Secretary General of the Commission was asked to prepare a note. Before preparing a note, the then Secretary General of the Commission requested the State Governments to furnish the following information relating to the plight of the Denotified and Nomadic Tribal communities:

1. Whether the Denotified and Nomadic Tribes, which formed part of the Criminal Tribes Act 1871 in your state have been included in the list of SC/ST/OBC? If so, a list of the tribes/communities and the category under which they have been listed may be provided;
2. Whether there are specific settlements in your State where these Nomadic and Denotified Tribes are located or whether these have since merged with the rest of the population in the village/town?
3. What are the basic facilities for schooling, primary health etc., being extended to these communities? and
4. Whether there are specific instances reported of the Denotified and Nomadic Tribes being perpetrators or victims and whether these have been inquired into? If so, what were the findings thereof?

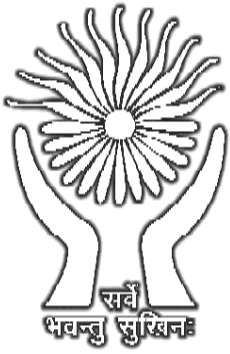
**11.25** 'NIL' information has been received from the States of Arunachal Pradesh, Assam, Goa, Jammu & Kashmir, Manipur, Mizoram, Nagaland, Sikkim, Tripura, Uttaranchal and Union Territories of Chandigarh, Dadra and Nagar Haveli, Daman & Diu, Lakshadweep and Pondicherry.

**11.26** The State of Andhra Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal and Union Territory of Andaman & Nicobar Islands have furnished the relevant information.

**11.27** The Information from the remaining States is still awaited.

**11.28** Further, with a view to ascertaining the socio-economic conditions of the DNTs/NTs, the Commission has approved a research project on "a Study of the Human Rights Status of Denotified and Nomadic Communities of Delhi, Gujarat and Maharashtra" received from the DNT/NT People's Action Group headed by Shri G. N. Devy. The study has been completed and the draft report will be submitted by Shri Devy by the end of July, 2006.





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**12.1** The Statute of the Commission requires it to undertake and promote research in the field of human rights [Section 12 (g)]. Ever since the Commission was constituted, its endeavour has been to ensure that its overall efforts in the area of research are not only of greater depth and relevance, but also have a practical outcome. In the previous reports, the Commission highlighted the need to link research with themes that have practical worth for the better protection of human rights. The research studies, thus, undertaken by the Commission are not only directed to ascertain ground realities, build database, etc., but also to evolve some kind of a mechanism in the country that can be used to promote and protect human rights and combat violations of such rights. The main effort of the Commission has been to help develop a culture for respect of human rights in the country. The Action Research on Trafficking in Women and Children in India has been one such effort in this direction. The details of such research studies and projects, a few of which have been completed and the other on-going ones are given below:

### **I] Completed Studies**

#### **A] Study on Complaints made by Women at Police Stations in Bangalore**

**12.2** It was reported in the Annual Report for the year 2004-05 that the Commission had approved the above-mentioned study that was submitted by

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## Research Studies and Projects

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Vimochana – Forum for Women’s Rights, an NGO based at Bangalore. The objectives of the study were to:

- make an overall assessment of the kind of complaints that are made at police stations by women;
- evaluate the manner in which these complaints are being handled by police personnel;
- know the extent of knowledge the complainants have about their legal rights;
- ascertain as to who assists the complainants when they lodge their complaints in the police stations; and
- suggest measures that may be adopted within police stations and outside with regard to improving citizen’s access to FIRs, the procedure of drafting complaints and follow-up on the investigation and prosecution of complaints.

**12.3** Vimochana completed the study and submitted its Report. The study has clearly brought out the fact that women are victims of domestic violence, but are reluctant to take any action against those who perpetrated violence on them. Women reported the matter to the police only as a last resort, when they were no more able to bear the torture. The police, on the other hand, were apathetic towards the issue and lacked gender sensitivity to deal with cases of domestic violence. For all their efforts hovered around compromise even if it amounted to use of coercive tactics over the women complainants. The study has also brought forth the point that there was need to sensitise the police on such issues so as to bring about attitudinal and behavioural change within the police institution to deal with problems like domestic violence. Further, there was need to explore alternatives like community networks or neighbourhood networks and committees who could come to the rescue of women.

**12.4** The Commission has desired that the report would be used as training material for sensitising the police on the issue of domestic violence.

### ***B] Study on Domestic Violence Against Women in India: Nature, Causes and Response of Criminal Justice System***

**12.5** The Commission had reported in its preceding Annual Report that it had approved financial assistance for a research study on “Domestic Violence Against Women in India: Nature, Causes and Response of Criminal Justice System” submitted by Sardar Vallabhbhai Patel National Police Academy, Hyderabad.

**12.6** The objectives of the research were to study the:

- nature of domestic violence against women in the country;
- extent and types of violence committed against women by family members;
- causes of domestic violence in the country;

- entrenched attitudes and stereotypes held by people, which lead to domestic violence;
- attitudes and stereotypes held by police personnel of various ranks about domestic violence, which make them to react to instances of domestic violence in a specified manner;
- effectiveness of the legal provisions regarding domestic violence; and
- recommend suitable interventions for reducing the incidence of domestic violence on the basis of the findings of the study.

**12.7** The draft Report of the research study has been submitted by the Academy. Its findings broadly reveal that women were vulnerable to domestic violence and continue to be so even today. The menace of domestic violence towards women has also increased. The police assign little or no priority to cases relating to domestic violence. One of the reasons cited for this is that the police are found to be too dogmatic towards women and their related problems. There is, thus, need to bring about a change in their overall attitudes through training and sensitisation programmes.

### **C] Operation Oasis—A Study Related to Mentally Ill Persons in West Bengal**

**12.8** The Commission entrusted the Sane and Enthusiast Volunteers' Association of Calcutta (SEVAC), a Kolkata based NGO, to carry out the 'Study Related to Mentally ill Persons Languishing in Jails, Vagrant Homes and Juvenile Homes of West Bengal'. The duration of the project was initially for a period of one year for which Rs. 3,10,000/- were sanctioned by the Commission.

**12.9** The main objective of the study was to identify the percentage of mentally ill and mentally disabled persons in prisons and other correctional and custodial institutions in West Bengal as well as assess their overall human rights situation, so that arrangements could be made for their release and restoration.

## **II] On-going Studies**

### **A] Study of the Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000**

**12.10** The Commission had approved a research proposal for undertaking a study of the Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 in February 2004 that was submitted by the Socio-Legal Information Centre, New Delhi. The aim of the study was to review the extent of implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 by carrying out the following:

- interaction with the nodal Government agencies to ascertain the status of the institutions/Committees/Boards that ought to be set up under the Act;

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- interaction with the nodal government agencies to ascertain the status regarding framing of rules, appointment of judges, staff, etc.;
- find out the different kinds of homes set up or identified for the reception of children failing within the ambit of the Act;
- interviews with key institutions/academicians and child rights groups on their opinion on the proper implementation of the Act;
- examining the obligations cast on the government and NGOs under the Act and ascertain the status of its implementation;
- examining the status of the special juvenile police unit to be created under the Act;
- collecting statistics on the number of children who have been covered by the Act; and
- compiling information with respect to the public interest litigation filed for the implementation of the Act.

**12.11** The study has collected data from 16 States, viz. Andhra Pradesh, Bihar, Delhi, Goa, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Uttaranchal, Uttar Pradesh and West Bengal. At the time of writing this report, the Socio-Information Legal Centre, New Delhi, was in the process of drafting the final report of the research study.

### ***Bj Pilot Study of the Socio-Economic, Political and Cultural Status of Dalit Women in Haryana***

**12.12** The Commission had reported in its preceding annual report that it had approved a Pilot Study entitled “Socio-Economic, Political and Cultural Status of Dalit Women in Haryana” submitted by Maharshi Dayanand University, Rohtak (Haryana). The objectives of the study are to:

- survey the socio-cultural and economic status of dalit women through field studies in selected districts in the State of Haryana;
- identify the impediments faced by the dalit women in attaining all round development in social, economic and political field;
- survey the impact of Government’s special protective provisions in providing economic, political and judicial relief to Dalit women;
- assess the role of elected representatives in creating awareness among the dalits in general and women belonging to this section in particular; and
- make recommendations for the improvement of the social, economic and political status of dalit women.

12.13 The data for the study has been collected and computed. As of now, its final report was being written.

**C] *Feminization of Poverty and Impact of Globalization-A Study of Women Construction Labourers in Delhi, Uttar Pradesh and Haryana***

12.14 The Commission had approved in August 2004 a research proposal for a study entitled “Feminization of Poverty and Impact of Globalization – A Study of Women Construction Labourers in Delhi, Uttar Pradesh and Haryana, submitted by Sarojini Naidu Centre for Women’s Studies (SNCWS), Jamia Millia Islamia, New Delhi. The study aims to project the appalling conditions of women construction labourers and suggest measure for improving them by:

- studying the nature and extent of women’s involvement in construction work in the selected districts;
- studying the socio-economic profile of women construction labourers;
- studying and analysing the human rights violations faced by them;
- finding out the possibility and extent of sexual harassment faced by them;
- assessing the incidence of migration and displacement among them and to study the problems associated with it;
- analysing disabilities, discrimination and deprivation faced by them;
- finding out the impact of new technologies on their status;
- studying the legal frame of reference governing women construction labourers and its relevance; and
- suggesting measures for improving their existing conditions.

12.15 The data for the study was to be collected from the States of Uttar Pradesh, Haryana and Delhi by interviewing a total sample size of 4,500 respondents consisting of construction labourers, contractors, experts, policy makers, government officers and representatives of non-governmental organisations. During the year under report, data for the study had been collected and computed from all the three States. On the basis of its analysis, the Centre was preparing the report.

**D] *CHRC-NHRC-IGNOU Linkage Project on Disability***

12.16 The Commission is deeply concerned about the rights of the persons with disability. In order to build capacity for better protection of rights of persons with disability, the Commission launched a project in partnership with the Canadian Human Rights Commission (CHRC) and the Indira Gandhi National Open University (IGNOU) in 2003.



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Initially NHRC-CHRC linkage project was conceived on commission-to-commission basis. It was later changed to a tripartite project with Indira Gandhi National Open University (IGNOU) as the 3rd partner for financial management. The MOU between the parties was signed on August 26, 2003 at New Delhi and was counter signed by CHRC on September 19, 2003.

**12.17** In accordance with the revised Project Implementation Plan (PIP), out of the original five elements, the focus concentrated on the following:

1. Raise Awareness of Human Rights of Persons with Disabilities.
2. Improve the Technical Capabilities of INHRC and CHRC.
3. Strengthen Project Management Capabilities of INHRC and CHRC.

**12.18** For raising awareness of human rights of persons with disabilities, strategic interventions were planned. The thrust remained on improving the capacity of academic and advocacy organizations for better application of domestic and international human rights law in the promotion and protection of the rights of disabled. For grounding firmly the human rights perspective on disability, the project worked towards effecting change in the programmes of legal and human rights studies. It has also prepared a small cadre of master trainers capable of serving formal and non-formal programmes of human rights education and awareness. To facilitate effective delivery of disability and human rights component in the study programmes, an impressive body of resource materials and references have been compiled and widely shared. These materials present:

- a) An in-depth analysis of legal frameworks and their relevance in the disability context;
- b) Examples of jurisprudence - disability specific or those which are helpful in clarifying the content of rights, obligations of the State and the broad human rights principles;
- c) Critical information and data on endemic areas.

**12.19** Under this project, a training of trainers programme at NLSIU, Bangalore (July 2004), National Workshop at NALSAR (October 2004) and five Outreach programmes were organized during July 2004-March 2005.

**12.20** In concrete two manuals, 17 research papers make up the resource kit, which also includes a curriculum design for a course in Human Rights Disability and Law as well as a Bibliography.

**12.21** These programmes culminated in a National Conference on Disability held on June 23, 2005 at New Delhi. Vice Chancellors of Universities, Union Secretaries, State Welfare Secretaries, State Disability Commissioners, NGOs, representative from NCERT, NCTE, RCI and other apex institutions attended the conference. The one-day National Conference was divided into two sessions. The first Session was devoted to "Human

Rights Education and Disability” while the second Session was on “Systemic improvements for better protection of Human Rights of persons with disabilities”.

12.22 The following recommendations were made at the conclusion of the National Conference on Disability. These recommendations were sent to Union Ministries, States/ Union Territories, Universities, Bar Council of India etc.:

- **The Government may consider instituting a National Task Force on accessible infrastructure by persons with disabilities ensuring that all public places, transport systems, media and public information are redefined and delivered on disability inclusive norms. [Union Ministry of Social Justice & Empowerment]**
- **To keep disability under the spotlight, the GOI may consider instituting an independent Department of Disability and Development (DDD) on the lines of Department of Women and Child with the Union Minister having an independent charge. [Union Ministry of Social Justice & Empowerment]**
- **The Central Coordination Committee and the State Coordination Committees, under the Disability Act, 1995, in pursuance of their mandatory obligations, should elaborate a National/State Disability Policy and Action Plan to enable persons with disabilities to effectively enjoy all rights and benefits guaranteed under the law, and at the same time, it should enable the Government at all levels to perform its mandatory functions and effectively utilize budget allocated for the disability sector. [Union Ministry of Social Justice & Empowerment/All States/UTs]**
- **Developmental ministries and departments in GOI, State Governments and UT Administrations, including training institutions should designate a nodal officer on disability assisted by a panel of experts from the disability sector to ensure inclusion of a disability perspective in all aspects of their functioning, such as planning, executing and monitoring, keeping in view the human rights perspective. [Union Ministries of Social Justice & Empowerment, Human Resource Development, Health & Family Welfare, Rural Development, Urban Affairs, Department of Personnel & Training, Tribal Affairs, Women and Child Development/ All States/UTs]**
- **The Government of India and their counter parts in the States should introduce a disability component in all their training initiatives aimed at public administrators and all the field functionaries. [Union Ministry of Personnel & Training, All States/UTs]**
- **Bar Council, the Law Schools and the leading Universities should urgently coordinate action towards incorporating disability perspective in all the**

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**formal and non-formal courses in law and human rights. Simultaneously, an optional paper in Disability, Human Rights and Law should be introduced at the graduate level. [Bar Council of India, UGC, VC of Universities]**

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

***E] Estimating precise costs and providing level playing field to Persons with Disabilities (PWDs) both as Consumers (Users of Social Services) and as Producers (Contributors to Economy) – a case study by the National Association for the Blind***

**12.23** The Commission approved a proposal of the National Association for the Blind for promoting the cause of People with Disabilities (PWDs) in general, and the visually impaired, in particular. The objectives of the study are as follows:

- To enlist the additional cost of living and for additional inputs needed for PWDs;
- To quantify the additional costs, across different regions, of the country and for different types/degree of disability;
- To disseminate information among International bodies, Central Government organizations, State Governments, NGOs on the additional costs for living by PWDs and additional inputs needed;
- To assess the gap between the minimum support needed by PWDs as producers and consumers with what is being provided presently;
- To recommend steps to bridge the gap through better utilization of existing schemes, introduce new schemes (if needed), utilize the community resources and individual professional skills.

**12.24** The final report has been received on 19 May 2005. In the light of the objectives of the project, the report is being examined.

***F] A study on efficacy of district level mechanism for securing the rights and entitlements of people with disabilities as guaranteed in the National Trust Act, 1999.***

**12.25** The Commission and National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities jointly took up the above research

study. The objectives of the study are to find out:

- The factors that facilitate the implementation of a national level policy at the district level;
- The factors that impede the successful implementation of a national level policy for the district level;
- The linkages between different level/tiers of service and care providers;
- The strategies of reaching the unreached;
- The barriers that impede integration;
- The strategies to utilize limited resources;
- Ways and means of putting disability issues higher on the lists of priorities of District Magistrates.

**12.26** The study proposes to cover 15 districts in different states and is presently underway.

**G] A Study to Assess the Degree of Realization of Economic, Social and Cultural Rights in India.**

**12.27** The Commission had entrusted a study that will assess the human rights situation in India with particular reference to economic, social and cultural rights to a Pune based NGO, the National Centre for Advocacy Studies (NCAS).

**12.28** The study was conducted in three states of India: Maharashtra, Karnataka and Chhattisgarh. Field surveys were conducted in one development block of each state. The blocks were chosen where the majority of the population belong to the Scheduled Castes and Scheduled Tribes. The field study focused on:

- Collection of list of the Below Poverty Level (BPL) families from the identified villages;
- Sampling for selection of sample families for the study;
- Collection of primary data from the sample families;
- Visit to ICDS, Government hospitals, fair price shops, schools run by both government and NGOs to verify the primary data;
- Visit to different NGOs in the selected blocks to cross-examine data as well as their contribution to Economic, social and cultural rights.

**12.29** The final report has been received. The project is being examined in the light of the objectives of the project.

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### **Hj) *Role of Civil Administration In the Protection of Human Rights in Strife-torn areas of Jammu and Kashmir***

**12.30** The Commission had entrusted a study to the Lal Bahadur Shastri National Academy of Administration, Mussoorie with the following objectives:

1. To understand the human rights situation in J&K;
2. To critically comprehend the role played by State administration, police and para-military forces to restore human rights;
3. To analyze the reasons behind the alienation of common public;
4. To understand the role played by the NGOs in highlighting the human rights violation;
5. The remedial measures to avoid human rights violations;
6. The role of SHRC in protection of human rights.

**12.31** This study concluded that human rights violations are inevitable and rampant in a disturbed area, and the administration still has to play its role in ameliorating the miseries of the common man. Good governance is possible only if corruption is totally rooted out. It is of utmost importance that law enforcement agencies should be empowered so that they are able to assist the judiciary in protecting the rights of the common man. Lastly, the welfare state will have to create funds to remove the economic misery of the victims of terrorism.

### **(I) *A study of the underlying causes of Human Rights violations as a result of insurgency in North East, the nature of state response, the use of special laws, violations by non-state actors, and practical suggestions/recommendations for improvement in the situation – A research study in Tripura***

**12.32** The study was entrusted to the Lal Bahadur Shastri National Academy of Administration, Mussoorie. The objectives of the study were as follows:

1. To understand the human rights situation in Tripura;
2. To analyse the role of insurgency in perpetuation of human rights violation;
3. To comprehend the role-played by the State actors (Administration, Police and Para Military) to restore human rights;
4. To see if any non-government organization is involved in the human rights related activities;
5. To suggest remedial Measures to improve the situation.

12.33 According to the study, the panacea to the violation of human rights in Tripura is the end of insurgency. The study has suggested a number of remedial measures to end insurgency, which include development (trickle-down), administrative planning, education, awareness and conscious security measures and policing.

**J] *Dependency on Forests for Livelihood and Its Impact on Environment: A case of the Baiga Tribe of Mandla District, MP***

12.34 The study was entrusted to the Lal Bahadur Shastri National Academy of Administration, Mussoorie. The objectives of the study were to:

1. Understand the changes in livelihood system of Baiga people with special reference to dependence on forests.
2. Understand the conditions, which impact such dependency and their impact on the nature of forest cover in the area.
3. Understand the relationship between land and forest use in order to see how the Baiga may get gainful employment.
4. See the relationship between Baiga livelihood patterns and government schemes.
5. Study the impact of the implementation of these schemes with special reference to forests.
6. Analyse the impact of laws and policies on the Baiga people.
7. Suggest measures by which the Baiga's can benefit through a sustainable use of their local natural resources.

12.35 The report of the study concludes that the land based activities reduce dependence on forests and, therefore, a viable and sustainable model of agriculture is necessary. The report recommends that urgent steps should be taken to provide employment opportunities and access to credit and infrastructure support for enhancing the capabilities of the Baiga people.

### **III] On-going Projects**

#### **i] Rights of Children**

##### **A] *Current Trends in Child Labour in Beedi Industry***

12.36 The Commission has entrusted the research study on 'Current Trends in Child Labour in Beedi Industry' to Surul Centre for Services in Rural Area (CSRA), an NGO based in Birbhum District of West Bengal during March 2004. The main objective of the study is to examine the magnitude as well as the current trends in child labour in the beedi industry, especially the socio-economic realities that force young children to start beedi rolling at an early age.

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**12.37** The study has been undertaken in Bharatpur – II Block of Murshidabad District in West Bengal. It has primarily focused on children in the age group of 5 to 7 years engaged in beedi processing activities and those falling in the age group of 8 to 14 years engaged in beedi rolling activities from 10 villages which covers about 40% of the villages where beedis are being made. In addition to this, information has also been elicited from the parents of child labourers, contractors, employers, panchayat functionaries, school teachers, block development authorities, sub-divisional officials and district social welfare officials.

**12.38** The CSRA has submitted its interim report to the Commission. Some of the highlights of the interim report are that children are the worst sufferers as they get minimum wages of Rs.5/- for making 1,000 beedis per day. Most of the families whose children make beedis live below the poverty line. The principal employers work through their contractors who in turn employ workers in a village or a cluster of villages. About 10% of the beedis rolled by the children are arbitrarily taken away as ‘standard deduction’ by the contractor on the pretext of replacing defective beedis made by children. This results in reduction of daily wages of children. For this research, the NHRC has sanctioned financial assistance of Rs. 1,88,000/-.

**12.39** The draft of final report and executive summary of the report has been received in November 2005 and March 2006 respectively and is being examined in the Commission.

### ***B] Freedom Mortgaged and Future Abandoned: Bonded Child Labour in Karnataka’s Silk Industry***

**12.40** The Commission has entrusted the above research study to the Institute of Social and Economic Change (ISEC), Bangalore during May 2004. The main aim of the research is to analyse the household conditions contributing to the occurrence of bonded child labour in the silk industry of Karnataka and thereby make an overall assessment of the magnitude of bonded child labour engaged in sericulture in Karnataka. In addition to this, it would analyse the policies and programmes of the Government and non-governmental organisations in promoting child rights and eliminating bonded child labour in the silk industry. The total cost of the study would be Rs. 3,60,367/-. An amount of Rs. 2,71,126/- has been released to ISEC in two instalments. The study is in progress and the draft final report is expected shortly.

### **ii] Economic, Social and Cultural Rights**

### ***C] Action Research Project on ‘Land, Labour and Human Rights Violation in Bundelkhand and Sonbhadra Region of Uttar Pradesh’***

**12.41** The Commission in August 2004 entrusted to Dr. K. Gopal Iyer, retired Professor in Sociology from Punjab University, Chandigarh to undertake the action research project on ‘Land, Labour and Human Rights Violation in Bundelkhand and Sonbhadra Region of Uttar Pradesh’. For this action research, the Commission has agreed to provide financial

assistance of Rs.6,92,000/-. The main aim of the action research is to understand in depth the intensity of violations of legal, labour and other human rights of the people in Bundelkhand and Sonbhadra region, thereby evolving an action strategy for taking remedial measures. The focus is to improve the overall basic conditions of the vulnerable sections in the region, especially dalits, tribals and women. The duration of the project is 24 months. The Commission has released first instalment of Rs. 2,70,000/- on 3.11.2004. Dr. Iyer has submitted a brief progress report in respect of Bundelkhand Region and Sonebhadra District of U. P. They have to collect/study 320 samples cases for the study from Bundelkhand District out of which 185 cases have been completed. And in Sonebhadra District out of 710 samples cases 220 cases have been completed. The project is in progress and the same is being monitored.

**D] A Study of the 'Status of Tendu Leaf Pluckers in Orissa'.**

**12.42** The above research study has been entrusted by the Commission to Human Development Society, which is based in New Delhi during March 2004 at the total cost of Rs. 3,06,000/-. The objectives of the project are as under:

- Find out the socio-economic background of the tendu leaf pluckers;
- Analyze the dynamics of the tendu leaf trade - the role of different actors, the process and the economics of the trade;
- Examine the extent of bonded labour system in tendu leaf trade - relationship between the pluckers and their employers, wages, working conditions etc. in the light of various statutory provisions and guidelines and orders of the Supreme Court, NHRC, etc.;
- Examine the extent of child labour in tendu leaf trade;
- Find out the social, economic and other problems faced by the pluckers and their families;
- Suggest remedial measures that can be taken up to address the problems; and
- Create a database on pluckers with a view to helping the policy makers and others concerned with the conditions of the marginalized people, especially the tendu leaf pluckers.

**12.43** For the purpose of the study, five Tendu leaf divisions of Orissa, viz., Nawarangpur, Jeypore, Padampur, Patnagarh and Angul have been selected. Each of these divisions have further been divided into four zones and from each of these zones five villages have been randomly selected for collecting data. The field work for the study has been completed. The HDS submitted the Draft report in April 2005, which was placed before the Commission in its meeting held on 21.2.2006. The Commission desired to have a critical analysis of the report. Joint Secretary has examined the report critically. The report has to be placed before the Commission alongwith the comments of the Joint Secretary.



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### ***E] A Study of the Human Rights Status of Denotified and Nomadic Communities of Delhi, Gujarat and Maharashtra***

**12.44** The 'Study of the Human Rights Status of Denotified and Nomadic Communities of Delhi, Gujarat and Maharashtra' has been entrusted by the Commission to Bhasha Research and Publication Centre (BRPC), Baroda during March 2004 at the total cost of Rs. 4,21,000/-.

**12.45** The objectives of the proposed study are as under:

- (i) To study the economic status and occupational patterns of the communities selected for study;
- (ii) To study the patterns of encounter with the police department;
- (iii) To study incidents of custodial deaths of persons belonging to the communities selected for study;
- (iv) To study the levels of legal awareness and legal literacy among these communities; and
- (v) To study the engagement of these communities with the electoral processes.

**12.46** In each of the three States, two to three denotified and nomadic communities have been identified. For instance in Delhi, Gadia Lohar/Gaddi Lohar and Sansis, in Gujarat Bahurupis, Chamthas and Sansi/Chhara and from Maharashtra, Banjara, Ramoshi and Pardhi have been selected for the study. BRPC has informed that the project has been completed and they will be able to submit the report shortly.

### ***F] Right to Health: Programmatic Intervention in Mental Hospitals in India; Efforts Towards Humanizing Institutions and Community-based Habilitation***

**12.47** In order to rehabilitate cured mentally ill patients languishing in the mental hospitals located in Agra, Gwalior and Ranchi, the Commission in collaboration with the ActionAid India decided to make a programmatic intervention by way of building-up and strengthening the organisational cadre employed in these mental hospitals by imparting them necessary knowledge and skills required for dealing with mentally ill patients. The project was sanctioned in February 2004 and is for a duration of 2 years. For this project the Commission has sanctioned financial assistance of Rs. 5,40,250/-. ActionAid India informed that due to large size of the programme the expenses were incurred out of its foreign funds and funds provided by NHRC remain un-utilized. As per the guidelines of the NHRC project, the funds can be utilized only for the purpose for which the amount is sanctioned. Therefore, the ActionAid India is returning the amount sanctioned by the Commission.

**12.48** So far, 11 sensitisation workshops have been organised for the Nurses, Attendants and other hospital staff of the three mental hospitals mentioned above. The main objective of

these workshops was to bring about an attitudinal change among the hospital staff towards mentally ill patients. In all, a total of 300 staff members have been trained through these sensitisation workshops.

### **G] Human Rights Education**

#### **i) Human Rights Education in School Level**

**12.49** The importance of human rights education has long been realized by the international community and calls upon every individual and every institution of society to strive, by teaching and education, to promote respect for human rights and to secure their universal and effective recognition and implementation. Human Rights education needs the strong support of an individual, as well as partnership and collaboration with organisations, to fulfill its mission. As such the Commission is constantly developing innovating ways to integrate human rights education into the teaching and learning process.

**12.50** With a view to assess the level of Human Rights Education at the School level an in house study was undertaken to prepare a Status paper on human rights education in schools. The study revealed that Human Rights education is not taught as a separate subject. However, the NCERT and SCERT have integrated human rights concepts in various subjects from the primary level to the higher secondary level. Further, the study also revealed that a wide range of issues related to human rights is covered in the school curriculum. Thus, the focus needs to shift on the methodology of imparting the concepts to the students and an analysis of the perception and understanding of the human rights issues by the students. In order to plug the loopholes, the Commission constituted a task force with the representatives from NCERT, SCERT, NCTE and CBSE.

#### **ii) Human Rights Education at University Level**

**12.51** A task force has been constituted by the Commission comprising of representatives of the University Grants Commission, Vice Chancellor/Director Law Schools and Educationists to review the existing curriculum on human rights and duties education developed by the University Grants Commission, New Delhi way back in the year 2001 and formulate a common syllabus on Human Rights Education leading to UG, PG degree, PG certificate and diploma, foundation course and also for Ph. D Programme. The first meeting of the Task Force was held on September 8, 2006. In this meeting it was decided to organize five regional workshops in the different regions of the country. The main objectives of the workshop would be to come up with a curriculum for the listed levels of education on human rights, which will be adopted by the UGC and implemented by the Universities.

#### **iii) Project Proposal Received from Karnataka Women's Information and Resource Centre (KWIRC)**

**12.52** Karnataka Women's Information and Resource Centre (KWIRC), Bangalore had submitted a project proposal for developing source material on human rights education in

## Research Studies and Projects

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Indian Universities. The proposal was a follow up on the Round Table on human Rights education organized by the KWIRC in collaboration with the NHRC on 10-11 October, 2002.

**12.53** KWIRC informed the Commission in December, 2002 that it has prepared seven dossiers on the following subjects for the University level which were placed before the UGC Advisory Committee meeting on Human Rights held in November, 2002:

1. Dossiers on Right to Information.
2. Dossiers on Home Based Workers in India.
3. Dossiers on fish workers Struggle for Human Rights.
4. Dossiers on Environment and Human Rights.
5. Dossiers on Dalit Rights.
6. Dossiers on Land and Housing Rights.
7. Dossiers on Child Rights.

**12.54** The consolidate abridged version has been brought out as a Manual on “Human Rights Education for Beginners – Narratives of Human Rights Movements in India”.

**12.55** The Commission organized a meeting on 20 February, 2006 with authors at New Delhi to discuss the revision of dossiers on Human Rights Narratives prepared by KWIRC under a project funded by the Commission. The revised dossiers on the following subjects have accordingly, been prepared and ready to be released on 10 December, 2006:- \*

- |  |                        |
|--|------------------------|
| 1. Rights of the Disabled  | - Ms. Anuradha Mohit   |
| 2. Housing and Land Rights   | - Shri Milloon Kothari |
| 3. Dalit Rights  | - Mr. Martin Macwan    |
| 4. Rights of Home Based Workers  | - Ms. Shalini Sinha    |
| 5. Women’s Rights to Health  | - Ms. N.B. Sarojini    |
| 6. Environment and Human Rights  | - Mr. Ashish Kothari   |
| 7. The New Environmentalism –<br>The Struggle in Narmada Valley              | - Mr. Sanjay Sangvai   |
| 8. Coasts, Fish Resources and the<br>Human Rights of the Fish Workers Rights | - Ms. Nalini Nayak     |
| 9. Children in India and their Rights  | - Dr. Savita Bhakhry   |

**12.56** In addition to the above dossiers, the dossiers on the following subject is also being prepared:

- |  |                       |
|--|-----------------------|
| 1. Gandhian struggle for rights such<br>as Bhoodan and Gramdhan; | - Dr. D. Jeevan Kumar |
| 2. Right to Information  | - Aruna Roy           |

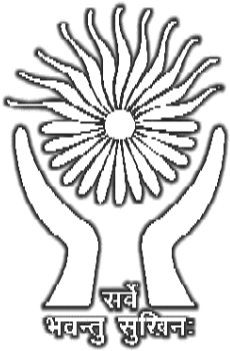
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*\*As the issue is of great importance, status at the time of writing and printing of this report is given.*

(iv) **Sensitization Workshops for Judicial Officers on Human Rights**

**12.57** On 24 February 2004, the Commission has entrusted to the National Institute of Human Rights at the National Law School of India University, Bangalore a responsibility to carry out the above research study. An amount of Rupees 8,00,000/- (Eight Lakhs) was sanctioned for conducting four workshops for judicial officers (Rupees two lakhs per workshop), one each in the States of Tamil Nadu, Kerala, Andhra Pradesh and Karnataka. The workshops could not be conducted due to non-finalization of dates with judicial academies of respective states. The Commission is in touch with NLSIU in this regard.





# Promotion of Human Rights Literacy and Awareness

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## A] The Media and Legal Issues of Freedom of the Press

13.1 The Commission has shared a special relationship with the media. Based on reciprocity in highlighting issues of human rights, the Commission has found a key ally in the media in generating public awareness. The Commission has frequently taken cognizance of human rights violations on the basis of media reports. It has benefited substantially from the editorials, letters and articles that feature in the media. The media has indeed acted as a watchdog for the Commission on many an occasion. The diverse opinions across the country and the world find a voice through the media and it is this, which has prompted the Commission on a daily basis to scan 24 newspapers — regional, national and international. In order to have a close interaction with the Media, the Commission had a meeting with the Senior Editors and Columnists of reputed Newspapers, Periodicals and News Agencies on 14 October, 2005. The opportunity was used to outline the Commission's key concerns like Starvation Deaths, Manual Scavenging, Prison Reforms, Police Reforms etc. and appeal to the Media to give even wider coverage to these issues from human rights point of view. The occasion was also used to ascertain the media's views on the Commission's role, functioning etc.

# Chapter-13

## Promotion of Human Rights Literacy and Awareness

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### **B] Meeting with Information & Broadcasting Officials**

**13.2** The National Action Plan for Human Rights Education 2001 identifies the Ministry of Information and Broadcasting as the nodal agency for the success of raising mass awareness on human right values.

**13.3** The Commission took up the issue with the Ministry of Information and Broadcasting and it was decided that an Expert Committee be constituted for formulating long term and short term plans for creating human rights. The Committee which has officers from I&B units of DD, AIR, PIB & DAVP and officials from the Commission met on 17 May 2005. Representatives of Doordarshan and All India Radio apprised that in fulfilment of their duties towards generating human rights awareness they have been airing programmes on human rights issues. The participants from all the media units agreed that efforts from all concerned are needed to broad base awareness on human rights.

**13.4** The meeting considered various suggestions/options and decided, among others, the following:

- All India Radio and Doordarshan agreed to dovetail the human rights perspectives in their existing programmes on socially relevant issues.
- All India Radio and Doordarshan, whenever they plan for workshop(s) for their producers/programme executives, will block a one day/half day session for human rights sensitization. The NHRC will provide resource persons for the purpose.
- On the occasion of Human Rights Day i.e., 10<sup>th</sup> December every year, Doordarshan and AIR besides airing programme(s) dedicated to the 'Day' will also have human rights issues and perspectives incorporated in all their programmes, wherever possible, so as to highlight the message on human rights.
- Director, DAVP will be requested by the Commission to take up campaigns on human rights issues *suo motu*. As part of NHRC media campaign to spread Human Rights awareness the Commission in collaboration with the DAVP, Government of India, published quarter page advertisement in Newspapers in all major Indian languages across the country on 10 December 2005.
- PIB will liaise with their regional units to facilitate wider coverage by inviting local press, to the programmes of the Commission and/or visits by the Chairperson and Members, NHRC to various States/UTs.

**13.5** The Joint Secretary, NHRC, participated in a panel discussion on Human Rights aired by All India Radio on 10 December 2005.

## Promotion of Human Rights Literacy and Awareness

**13.6** On the eve of Republic Day, PIB issued a write up from Dr. Justice A.S.Anand, Chairperson, NHRC, titled 'Upholding Human Rights of Citizens' for publication in newspapers across the country.

**13.7** AIR, Delhi conducted a workshop in the month of September 2005 wherein Sr. Director (Training), NHRC, was invited to address the participants on 'Human Rights Awareness & Programme Planning'.

### **C] Publications**

**13.8** The Commission brought out a series of booklets titled 'Know Your Rights' on eight human rights themes in 2004-05. These booklets are intended to assist a wide audience to achieve a better understanding of the basic human rights and of the international and national machinery available to help realize those rights. The booklets were well received from all quarters. As a result these had to be reprinted.

**13.9** The booklets were also printed in four South Indian Languages, namely Tamil, Telugu, Kannada and Malayalam around the same period. The Hindi version of the booklets was published during the year.

**13.10** In a meeting of the Commission with the State Human Rights Commissions in May 2005, it was decided to have its translations in all major Indian languages.

**13.11** Accordingly, State Human Rights Commissions of Orissa, West Bengal, Assam, Manipur, Maharashtra, Jammu & Kashmir and Punjab were requested to assist the Commission in its publication in the respective languages.

**13.12** The booklets in Marathi and Assamese languages are being published shortly in association with the State Human Rights Commissions of Maharashtra and Assam respectively. Punjabi and Manipuri versions of the booklets are also in advanced stage of preparation. The Urdu and Gujarati versions of the booklets are also being taken up for translation.

**13.13** Apart from the above the Commission also brought out the following publications during the year:

- Journal of National Human Rights Commission Vol. IV 2005;
- Hindi Journal 'Nai Dishayen' Vol.II 2005;
- Human Rights Education for Beginners;
- Report on the Prevention of Atrocities against Scheduled Castes (Hindi);
- Report of the National Conference on Human Rights and HIV/AIDS (Hindi);  
and
- Annual Report 2003-2004.



## Promotion of Human Rights Literacy and Awareness

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**13.14** At least three books namely i) A Handbook on Employment of Persons with Disabilities in Government of India; ii) From Bondage to Freedom: An Analysis of International Legal Regime on Human Trafficking; and iii) A Compilation of International Human Rights Instruments (Hindi)-Vol. I & II are in the advanced stage of production and will be released shortly.

**13.15** Two other books titled 'Quality Assurance in Mental Health' and 'A Handbook on Human Rights for Judicial Officers', are being updated for reprint.

### **D] Calendar on Human Rights**

**13.16** For the 5<sup>th</sup> successive year the Commission brought out a Desk Calendar on Human Rights themes in Hindi and English. The Calendar for the year 2006 encompassed some of the key concerns of the Commission like Right to Health, Right to Food, Child Marriage, Safe Motherhood, Rights of the Elderly, Emergency Medical Care, Rights of Persons with Disabilities, Trafficking in Women and Children, Human Rights and HIV/AIDS, Environmental Degradation, Bonded and Child Labour, Humans Rights of Prisoners and the Unethical Medical Practices.

### **E] Photo Exhibition on Human Rights Day**

**13.17** On the occasion of Human Rights Day on 10 December 2005, at the venue of the main function of the Commission, an exhibition was organized. In the exhibition photographs on various human rights themes and paintings by abled and differently abled students of various age groups on human rights themes, were also put on display. These photographs were obtained after countrywide appeal for participation in highlighting human rights issues through the lens.

**13.18** As part of media campaign to spread Human Rights awareness the Commission in collaboration with the DAVP, Government of India, published a quarter page advertisement in 122 Newspapers in 15 Indian languages i.e., Hindi, English, Urdu, Telugu, Assamese, Gujrati, Sindhi, Kannada, Malyalam, Marathi, Oriya, Punjabi, Tamil, Bangla, Mizo across the country on 10 December 2005.

### **F] Media Post**

**13.19** Media Post was one medium used by the Commission in creating Human Rights Awareness amongst the masses. It was decided to utilize the medium of printing social messages on Human rights on the postal stationery. Orders were given to Department of Posts, Government of India, for printing of Human Rights themes, in multi colour, in Hindi on one million Inland Letter Cards and one million Post Cards. These Post Cards and Inland Letters covering human rights message were distributed for sale to public during the course of the year. The message printed in Hindi on the Inland Letter Card was "Manav adhikar paramadhikar - larka larki ek samaan, sabko shiksha aur samman" and on the Post Card was "Bal shram gair kanooni hai and Viklango ke manvadhikar ki raksha karein".

## **G] Human Rights Training**

**13.20** Independent Training Division was established in the Commission in Sep 2003, since then the activities of the Training Division of NHRC have expanded manifold. It is imparting training to the officials of the Central and the State Governments, field functionaries and representatives of NGOs etc. Training Division of National Human Rights Commission imparts diverse training on various human rights issues in collaboration with National level Institutes, State level Institutes, Law Universities and NGOs of repute and standing working in the area of Human Rights. The main objectives remain to sensitize the participants of various levels/ groups on Human Rights and equip them to work with more sensitivity in their respective field(s). The methodology adopted in the seminars/workshops/trainings is lecture method and group discussions etc. The participants are exposed to International and National levels Human Rights Conventions, Law and Culture to create a culture of human right in the country through core groups of people.

**13.21** As the Frenchman Michel de Montaigne said, “The most universal quality is diversity.” Diversity training equips participants and individuals to deal with such a diverse world with greater sensitivity.

### **a) Aims and Objectives**

- To impart specialized training programmes for different grades of officers from cutting edge level to grass root level, so as to enable and enlighten them on Human Rights issues. So that they perform their duties more effectively and shoulder greater responsibilities in the future, by increasing their professional competence on issues of human rights values and culture;
- To assess the training needs at various levels in the Society as well as the related field organizations and to organize training programmes to meet these needs;
- To create and foster among the participants a positive and innovative outlook on Human Rights to work and to create sensitivity and team spirit;
- To provide financial support to National /State Level Institutes & NGOs and assist them in designing their training courses and also to provide them various NHRC publications as training materials/reading materials;
- To inculcate the awareness of Human Rights among the trainees so that there could be no violation of Human Rights and the participants may respect dignity and potential of other persons to make this world more lively and a better place to live in.

## Promotion of Human Rights Literacy and Awareness

### Training in NHRC shall strive to achieve the following objectives:

- Keeping up-to-date on development in the Human Rights issues, International Conventions and enhancing professional knowledge and skills needed for better performance of National level Training organizations and NGOs in spreading human rights awareness;
- Promoting sensitization to the organizational requirements as well as the professional, socio-economic, cultural and political environment in which work is done; and bringing about right attitudinal orientation among participants through various collaborative programmes on Human Rights issues through Seminars/ Workshops etc.;
- To make them responsive to the challenging human rights needs and expectations of the citizens;
- To make them committed to human rights values and concept of partnership with various training institutions in the concerned field.

**13.22** In order to accomplish the mandates the training division of NHRC has formulated 25 training programmes on various human rights issues for the year 2005-06. Out of these, 22 training programmes have been completed. These programmes are listed below:

Sl No	Name of the Institute	Name of the Programme/ Workshop/Training	Participants/Category of Officers Attended	Period & No. of Participants
1	RCVP Noronha Academy, MP Conducted three programmes	1. Training Programme on human rights & Weaker Sections held at Bhopal	Class I & II officials of MP & Chhatisgarh States, representatives of NGOs	5 days 16 Aug. – 20 Aug 05 71 participants
		2. Human Rights & Child Rights held at Bhopal	Class I & II officials of MP & Chhatisgarh States, representatives of NGOs	5 days 26-31 Dec.-2005 57 participants
		3. Rights of persons with disability held at Indore	Class I & II officials of MP & Chhatisgarh States, representatives of NGOs	2 days 28-29 Mar.-2006 47 participants
2	Indian Institute of Public Administration (IIPA), Delhi Conducted one programme	Capacity building Workshop on ESCR	Civil Administrators, officials of State Government SHRC & ATIs	2 days 20-21 Sep.-2005 30 participants
3	National University of Juridical Sciences (NUJS), Kolkata Conducted one programme	Workshop on Human Rights	Public Prosecutors of West Bengal	2 days 24-25 Sep.-2005 34 participants

## Promotion of Human Rights Literacy and Awareness

Sl No	Name of the Institute	Name of the Programme/ Workshop/Training	Participants /Category of Officers Attended	Period & No. of Participants
4	Tata Institute of Social Sciences, Mumbai	1. Workshop on Human Rights Education for University /College teachers held at Mumbai	University/College Teachers of Mumbai region	2 days 26-27 Sep.-2005 25 participants
		2. Workshop on Police Civil Society Interface for promotion of Human Rights held at Mumbai	Police, State govt. Officials, NGOs & Community leaders	2 days 22-23 Mar.-2006 35 participants
5	Multiple Action Research Group (MARG), New Delhi	1. Workshop to Spread Legal Literacy Amongst the Women from marginalised Sections  Held at Bhopal, MP	Social Activists from community including young lawyers, representatives of NGOs	2 days 28-30 Sep.2005 35 participants
		2. Seminar for lawyers to Spread Legal Literacy in the Community  Held at Patna	Social Activists from community including young lawyers, representatives of NGOs	3 days 1-3 Oct.-2005 40 participants
		3. Training to Spread legal literacy  Held at Jamshedpur	Social Activists from community including young lawyers, representatives of NGOs	3 days 22-24 Mar.-2006 36 Participants
6	SVP National police Academy Hyderabad	1. Workshop on Human Rights of concern to the police  Held at Hyderabad	Two District SSPs from each State, officials from CPOs & Correctional services  Two District SSPs from each State, officials from CPOs & Correctional services	3 days 5-7 Oct.-2005 35 participants  3 days 27-29 Mar.-2006 35 participants
		2. Sensitization training of police officers on human rights  Held at Hyderabad		
7	Deptt. of Law Gulbarga, Karnataka	Workshop on Human Rights Awareness & Training  Held at Gulbarga	Judicial Officials, Lawyers, prosecutors/police /prison officials, NGOs, Human Rights Activists & Academic community	Two days 8-9 Oct.-2005 50 participants

## Promotion of Human Rights Literacy and Awareness

Sl No	Name of the Institute	Name of the Programme/ Workshop/Training	Participants/Category of Officers Attended	Period & No. of Participants
8	SEVAC Mental Hospital & Rehab Centre, Kolkata  Conducted one programme	Training on Mental Health Education  Held at Guwahati	Supdt. & Asst. Supdt., jailors, Medical Officers, Medical Staff working in NE States	2 days 27-28 Oct.-2005 27 participants
9	Joint Women Programme, New Delhi  Conducted one programme	Seminar on Combating Trafficking in Women & Children  Held at Ahmedabad	Judicial officers, police officers, social welfare Dept officials & social activists	2 days 18-19 Nov.-2005 30 participants
10	North Eastern Police Academy, Meghalaya  Conducted one programme	Training programme on Professional Policing & HR  Held at Umiam, Meghalaya	OC/ Addl OC and their supervisory officials (Dy SP)	5 days 24-28 Jan.-2005 45 participants
11	Citizenship Development Society, Delhi  Conducted one programme	Training programme on Human Rights Awareness  Held at New Delhi	Kendriya Vidyalaya Teachers	2 days 2-4 Dec.-2005 43 participants
12	LNJP NICFS, Delhi  Conducted one programme	Sensitization programme on Human Rights in Criminal Justice System  Held at Delhi	Senior Criminal Justice Functionaries	5 days 12-16 Dec.-2005 47 participants
13	Maharashtra State Human Rights Commission, Mumbai  Conducted one programme	Training programme on Awareness Creation on Human Rights Standards & Code of Conduct  Held at Pune	SHOs & Supervisory officers (Dy SP) & SHRC officers	2 days 6-7 Jan.-2006 40 participants
14	Indian Social Institute, New Delhi  Conducted one programme	Training on Human Rights & Fact Finding & Interviewing Techniques  Held at Bhubaneswar	NGOs/CBOs, young lawyers, social activists	3 days 8-10 Feb.-2006 35 participants

## Promotion of Human Rights Literacy and Awareness

Sl No	Name of the Institute	Name of the Programme/ Workshop/Training	Participants /Category of Officers Attended	Period & No. of Participants
15	Indian Institute of Public Administration (IIPA), Bangalore  Conducted one programme	Training programme on Human Rights  Held at ATI Mysore	Civil administrator, Judicial Officials, Lawyers, prosecutors/ police /prison officials, NGOs, Human Rights Activists & Academic	3 days 5-7 Jan.-2006 50 participants
16	Indian Social Sciences, New Delhi  Conducted one programme	Trafficking in Women & Children  Held at Kolkata	Judicial Magistrates, Police officers, NGOs, BSF, Prosecutors & Prison Officers	1-1/2 days 6-7 Mar.-2006 35 participants
<b>Total Programmes Conducted</b>		<b>22</b>	<b>Total Number of participants</b>	<b>880</b>

**NB :**

1. **RCVP Academy** : **03**
2. **MARG** : **03**
3. **SVP Police Academy** : **02**
4. **TISS** : **02**
5. **Other Institutes** : **12 ( one programme each)**

### b) Summary of Training places

(Places where training/seminars/workshop conducted by NHRC during 2005-2006)

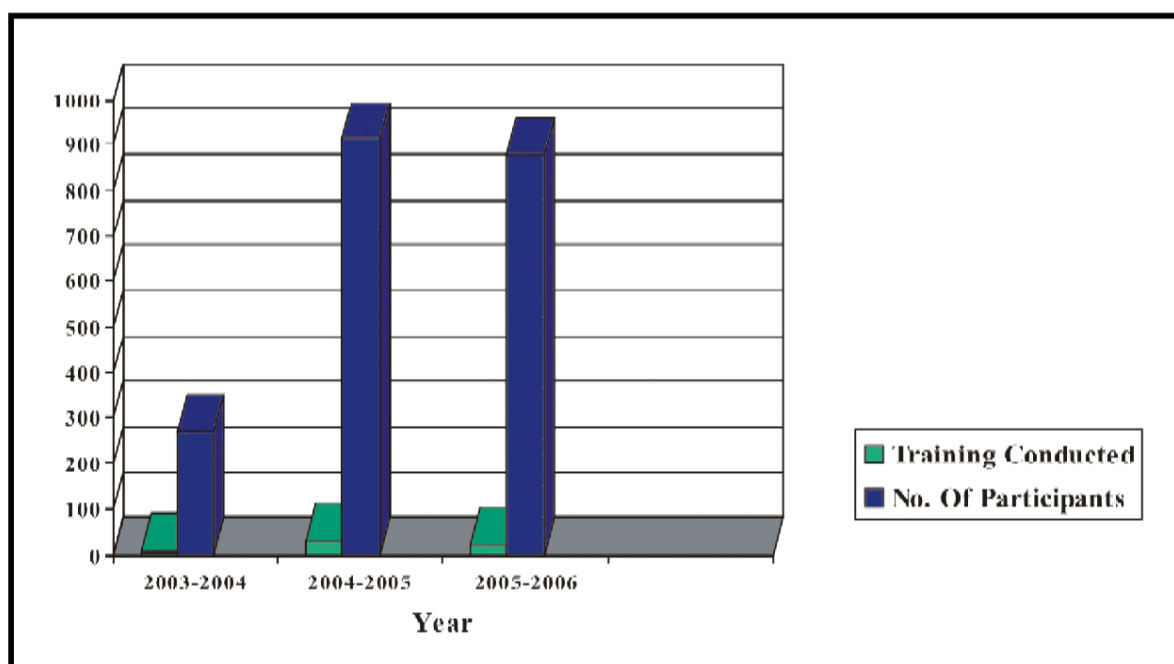
<b>April 05-March 06</b>			
Sl No	Place	Organising Institutes	No. of Programmes
1	Bhopal	RCVP, MARG	3
2	Mumbai	IIPA Delhi, TISS	3
3	Bangalore	IIPA Bang	1
4	Kolkata	NUJS, ISS	2
5	Patna	MARG	1
6	Jamshedpur	MARG	1
7	Hyderabad	SVP NPA	2
8	Gulbarga	Gulbarga University	1
9	Guwahati	SEVAC	1
10	Ahmedabad	JWP	1
11	Umiam, Meghalaya	NEPA	1
12	Delhi	CDS, NICFS	2
13	Indore	RCVP	1
14	Bhubaneshwar	ISI	1
15	Pune	MSHRC	1
<b>Total</b>			<b>22</b>

## Promotion of Human Rights Literacy and Awareness

### c) Comparative summary of trainings held during 2003-2006

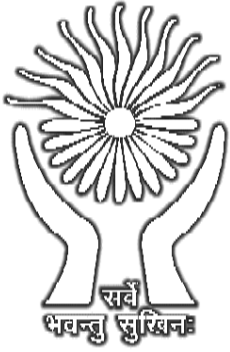
Year	Trainings conducted	No of participants
2003-04 Sep 03-Mar 04	08	272
2004-05 Apr 04-Mar 05	30	915
2005-06 Apr 05-Mar 06	22	880

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### d) Feedback

**13.23** At the end of the training programme, carefully designed evaluation proforma to elicit the feedback, positive and negative, is circulated among the participant to get quantitative and qualitative analysis. An analysis of the evaluation by participants stands for the success of the programme. Feedback received at the end of the training programme is given due weightage in improving the Training Programmes.



# International Cooperation

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## **A] Meetings of the International Coordination Committee (ICC) and the Commission on Human Rights**

**14.1** The 61<sup>st</sup> Session of the Commission on Human Rights and the meeting of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC), was held in April, 2005, in Geneva, Switzerland. Dr. Justice A.S. Anand, Chairperson and Dr. Justice Shivaraj V. Patil, Member of the Commission attended the meetings. The Chairperson made a Statement on behalf of the Commission. A copy of the statement is at **Annexure 10**.

## **B] Annual Meeting of the Asia Pacific Forum**

**14.2** The tenth annual Meeting of the Asia Pacific Forum of National Human Rights Institutions was held in Ulaanbaatar, Mongolia from 24-26 August, 2005. The NHRC was represented at the Forum meeting by a delegation led by Dr. Justice A.S. Anand, Chairperson, Member, Shri R.S. Kalha and Secretary General, Shri Nirmal Singh were other Members of the delegation.

**14.3** Participants from the member institutions of the Asia Pacific Forum (APF) viz., Mongolia, Afghanistan, Australia, Fiji, India, Indonesia, Jordan, Malaysia, Nepal, New Zealand, Palestine, Philippines, Qatar, Republic of Korea, Sri Lanka, Thailand and Timor-Leste, attended the meeting.

# Chapter-14



## International Cooperation

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**14.4** The Forum considered the formal applications for membership and their compliance with the Paris Principles and revised the associate membership status of the Afghanistan Independent Human Rights Commission to become a full member, the forum also admitted the Provedor for Human Rights and Justice of Timor-Leste as a candidate member and the National Human Rights Committee of Qatar as an associate member of the Forum. The overall membership of the Forum, during the period of report, stands at seventeen.

**14.5** A copy of the Concluding Statement of the Tenth Annual Meeting is at **Annexure 11**.

**14.6** The Commission has remitted an amount of US \$ 100,000 as its contribution to the Asia Pacific Forum during the year 2005-06.

### ***Coordination and Cooperation with Other APF Member Institutions***

**14.7** The Commission continued its endeavour to share information and expertise with other APF member institutions. The Commission has developed an Internet based Complaint Management System (CMS), by which it is possible for a complainant to track the progress of his complaint lodged with the Commission through the internet. The Commission has been privileged to share its expertise with the Jordan National Centre for Human Rights and Nepal Human Rights Commission including training of the concerned personnel in handling the software.

### **C] International Round Table on National Institutions Implementing Economic, Social and Cultural Rights**

**14.8** The Commission in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) organized a three-day International Round Table on National Institutions implementing Economic, Social and Cultural Rights at New Delhi, from 29 November to 1 December, 2005. The principal objective of the Round Table was to discuss and strengthen the role and capacity of National Institutions in protecting and promoting economic, social and cultural rights (ESCR). Its specific objectives were to:

- (a) Familiarize national institutions with ESCR including the key international and regional mechanisms available for their protection and promotion;
- (b) Explore the 'new dimension' of ESCR in the changing political, economic and social scenario;
- (c) Provide a forum for national institutions to meet and exchange best practices on ESCR including the best ways to implement them.

**14.9** Twenty Four National Institutions from countries in Americas, Africa, Europe and Asia-Pacific participated in the Round Table.

**14.10** A copy of the New Delhi Statement adopted in the meeting is at **Annexure 12**.

**D] Visits, Seminars and Workshops Abroad**

**14.11** Shri A.K.Parashar, Deputy Registrar (Law) and Shri Shashikant Sharma, PSA, NIC visited Amman, Jordan from 6-11 August, 2005 as consultant/trainer for conducting a 7 day workshop to assist Jordan National Centre for Human Rights (JNCHR) to develop their own complaints management system.

**14.12** Dr. Justice A.S.Anand, Chairperson, visited Beijing, China from 29 August to 2 September, 2005 on the invitation of the President, China Society for Human Rights Studies.

**14.13** Shri S.K.Valiathan, Under Secretary (Coord.), visited Beijing, China from 29 August-2 September, 2005 to attend the 13<sup>th</sup> Annual Meeting of Asia Pacific Regional Framework meeting at Beijing, China organized by the Office of the UN High Commissioner for Human Rights

**14.14** Dr. Justice A.S.Anand, Chairperson, visited London, U.K. from 11-15 September, 2005 to attend the 14<sup>th</sup> Commonwealth Law Conference organized by the Commonwealth Lawyers Association, London, U.K.

**14.15** Shri D.K.Sharma, Presenting Officer and Ms. Lakshmi Dubey, Inspector visited Colombo, Sri Lanka from 22-24 September, 2005 to attend a workshop on Conflict Prevention jointly organized by the the United Nations System Staff College, the NGO Fahamu and the OHCHR

**14.16** Smt. Aruna Sharma, Joint Secretary and Dr. K.C.Pathak, Director (Research) visited Colombo, Sri Lanka from 26-28 October, 2005 to attend the Workshop on Internally Displaced Persons and National Human Rights Institutions jointly organized by APF/ Brookings-Bern Project on Displacement and the Human Rights Commission of Sri Lanka.

**14.17** Ms. Neena Krishna Bansal, Presenting Officer and Shri Sudhir Chowdhary, Deputy Inspector General visited Jakarta, Indonesia from 15-17 November, 2005 to attend a workshop on Prevention of Torture organized by the United Nations Office of the High Commissioner for Human Rights (OHCHR) in association with the Association for the Prevention of Torture, the NGO Fahamu.

**14.18** Dr. Savita Bhakhry, Senior Research Officer visited Sydney, Australia during 21-23<sup>rd</sup> November, 2005 to attend the APF workshop on Trafficking organized by the Asia Pacific Forum of National Institutions.

**E] Exchanges and Other Interactions**

✦ Mr. M. Runacres, Deputy High Commissioner, British High Commission visited the Commission on May 18, 2005.

✦ Mr. Menendez del Valle, Rapporteur for the European Union Parliament's Own initiative Report visited the Commission on May 26, 2005.

## International Cooperation

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- ✦ Mr. Denis Broun, Country Co-ordinators, UNAIDS visited the Commission on August 12, 2005. A group of members of European Parliament from the South Asia Delegation (SAD) in the European Parliament visited the Commission on November 2, 2004.
- ✦ Ms. Carol Batchelor, Acting Chief, UNHCR visited the Commission on August 18, 2005.
- ✦ Mrs. Cherie Booth accompanied by a delegation from United Kingdom visited the Commission on September 7, 2005.
- ✦ A delegation from the Kenyan National Commission for Human Rights (KNCHR) visited the Commission from September 12-14, 2005.
- ✦ Mr. Paul Hunt, UN Special Rapporteur visited the Commission on September 27, 2005.
- ✦ The EU Troika delegation comprising Sir Michael Arthur, British High Commissioner, Mr. Fransisco da Camara Gomes, Head of Delegation at the European Commission, Dr. Jutta Stefan-Bastl, Ambassador, Austrian Embassy, Ms. Anna-Kaisa, Attache, Finnish Embassy and Ms. Sarah Lampert, First Secretary (Political), British Commission visited the Commission on October 13, 2005.
- ✦ Ms. Inga Erickson, Ambassador of Sweden and Ms. Charlotte Erickson, First Secretary, Development Corporation visited the Commission on October 19, 2005.
- ✦ Mr. Tony McNulty, UK Minister of Immigration, Citizenship and Nationality visited the Commission on November 8, 2005.
- ✦ A 26 member delegation of overseas diplomats undergoing training course in the Foreign Service Institute, Ministry of External Affairs visited the Commission on November 24, 2005 and were briefed on roll of the National Human Rights Commission.
- ✦ A delegation of Law Teachers from Afghanistan visited the Commission on February 27, 2006.
- ✦ A delegation led by Mr. Frans Weisglas, Speaker of the Netherlands House of Representatives visited the Commission on March 21, 2006.

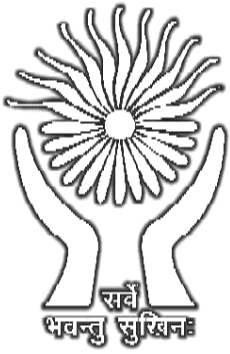
### **F] Other Visits to the Commission**

**14.19** During the year 2005-06, trainees/students from the following institutions visited the Commission for learning more about the working of the Commission, its mandate as well as the human rights issues dealt by it:

- ✦ A delegation of 10 students led by Dr. B.P. Panda, Deptt. of Law, Berhampur University, Orissa visited the Commission on April 1, 2005.
- ✦ A delegation of senior level officers trainees including District & Session Judges, Addl. District and Sessions Judges, DIGP, SSP, SP and senior officers from Prison and Welfare Services undergoing training at LNJN National Institute of Criminology and Forensic

- Science, MHA, Delhi visited the Commission on April 13, 2005.
- ✦ A delegation of 50 students from Dr. Ambedkar College, Nagpur, Maharashtra visited the Commission on April 28, 2005.
  - ✦ A delegation of IDES Probationers of the National Institute of Defence Estates Management, Delhi Cantt. Visited the Commission on October 18, 2005.
  - ✦ A delegation of 60 students from Hooghly Mohsin College, Chinsurah, Hooghly, W.B. visited the Commission on September 15, 2005.
  - ✦ A delegation of 52 students and the two teachers from University of Burdwan, West Bangal visited the Commission on September 22, 2005.
  - ✦ A delegation of 43 students along with their Lecturer from Dr. Babasaheb Ambedkar College of Law, Nagpur visited the Commission on September 23, 2005.
  - ✦ A delegation of 17 students from Saurashtra University, Rajkot visited the Commission on September 12, 2005.
  - ✦ A delegation of 11 students from Bangalore Institute of Legal Studies, Bangalore visited the Commission on September 28, 2005.
  - ✦ A delegation of 23 students along with two Professors from Gopaldas Advani Law College, Mumbai visited the Commission on October 5, 2005.
  - ✦ A delegation of 24 participants of 3-week Refresher Course in Human Rights' at the UGC Academic Staff College, Jamia Millia Islamia, New Delhi visited the Commission on October 5, 2005.
  - ✦ A delegation of 50 students from N.B.Thakur Law College, University of Pune, Maharashtra visited the Commission on November 24, 2005.
  - ✦ A group of 29 students along with the Principal and four Professors from Government Law College, Church Gate, Mumbai visited the Commission on December 5, 2005.
  - ✦ A group of 34 students led by three Professors from Navjeevan Law College, CIDCO, Nashik visited the Commission on December 14, 2005.
  - ✦ A group of 20 students from College of Catehrine, St Paul, Minnesota (USA) visited the Commission on January 6, 2006.
  - ✦ A delegation of 73 students/Officers from Department of Political Science, Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur visited the Commission on February 1, 2006
  - ✦ A group of 30 students from Jamia Millia Islamia, New Delhi visited the Commission on February 15, 2006.
  - ✦ A group of 36 students and four staff members from Dr. Ambedkar College, Nagpur visited the Commission on February 22, 2006.
  - ✦ A delegation of 44 students and two staff members from Gulbarga University, Gulbarga visited the Commission on March 21, 2006.





## Non-Governmental Organisations

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**15.1** Encouraging the efforts of the non-governmental organizations (NGOs) working in the field of human rights is a statutory responsibility of the Commission under Section 12(i) of The Protection of Human Rights Act, 1993. The promotion and protection of human rights cannot gather momentum without the fullest cooperation between the Commission and the NGOs. Even since its inception the Commission has been encouraging NGOs and holding meetings with them from time to time.

**15.2** The Commission provides financial assistance to well-reputed NGOs for organizing seminars, workshops, etc. associated with spreading human rights awareness amongst the people. During the period of report, the following organizations were given financial assistance for conducting workshops, seminars, etc. for spreading human rights awareness:

- ✦ An amount of Rs. 94,800/- was sanctioned to Family Planning Association of India, Panchkula Branch, Haryana for organization of State Level Workshop for creating awareness of “Human Rights and HIV/AIDS” in Chandigarh.
- ✦ An amount of Rs. 1,00,000/- to Indian Institute of Advance Study, Shimla for organizing a “National Seminar on Human Rights: Policy Issues for India” at the Seminar Hall, Nehru Memorial Museum and Library, New Delhi.

# Chapter-15

## Non-Governmental Organisations

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- ✦ An amount of Rs. 15,000/- was sanctioned for conducting one-day workshop for Jail Superintendents of Haryana at Madhuvan, Karnal.
- ✦ An amount of Rs. 20,000/- was sanctioned for conducting one-day workshop for sensitization of Jail Superintendents of Kerala at Thiruvananthapuram, Kerala.

**15.3** The Commission continues to receive complaints relating to serious violations of human rights from NGOs, who act as the eyes and ears of the Commission in the remotest corners of the country.

**15.4** A Core Group of NGOs has been constituted under section 12(i) of the Protection of Human Rights Act, 1993, to encourage the efforts of the Non-Governmental Organizations (NGOs) and institutions engaged in the field of human rights. The Core Group provides the Commission with crucial inputs regarding the hopes, aspirations and expectations of the civil society from the Commission.

**15.5** The Commission has also had several significant partnerships with the non-governmental organizations during the year on various critical areas of human rights concerns. In the area of Human Rights Education, a constructive outcome fructified in the form of a publication on 'Human Rights Education for Beginners'. This publication was brought out by the **Karnataka Women's Information and Resource Centre (KWIRC)**, an NGO based in Karnataka, for the National Human Rights Commission. The Commission's involvement in the project has been out of growing realization that human rights cannot be taught only from formal documents. Indigenisation of human rights education has to be made one of the crucial components of human rights education in India. The publication was released by the Hon'ble Speaker, Lok Sabha, on the 10 December 2005, on the occasion of Human Rights Day.

**15.6** The efforts of the Commission to abolish the abominable practice of manual scavenging has been continuing. A meeting was held at the India Habitat Centre on 25.2.2006 on Eradication of Manual Scavenging under the Chairmanship of the Hon'ble Chairperson, NHRC. The Commission's view has been that the action of the State towards eradication of manual scavenging has been painfully slow and that there is a need for total commitment and absolute dedication in order to tackle this degrading practice. While reviewing the progress with the Central and state Government representatives, the Commission, inter-alia, stressed the importance of utilizing the services of the NGOs who could give valuable assistance as they are aware of the ground realities. Keeping in view the efforts of **Sulabh International**, an NGO, which has done considerable work in the area the former, was also associated in the meeting. The Commission has stressed the need for the involvement of genuine NGOs in the implementation of programme to motivate people in the direction of making sincere efforts to abolish the practice of manual scavenging more efficacious.

**15.7** In November 2003, the Commission partnered with **Jan Swasthya Abhiyan**, an NGO based in Pune, for holding a series of **regional public hearings on Right to Health Care**, covering all the regions of the country. The regional hearings culminated with the holding of a national level consultation in New Delhi, on 16-17 December, 2004 in which a set of recommendations was adopted. The recommendations were transmitted to the Central and State Governments on 11.3.2005 for appropriate action. The progress of the implementation of the recommendations on Health were reviewed in a meeting held on March 4, 2006, which was attended by representatives of the State Governments as well by the representatives of **Jan Swasthya Abhiyan** besides the Core Group on Health constituted by the Commission.

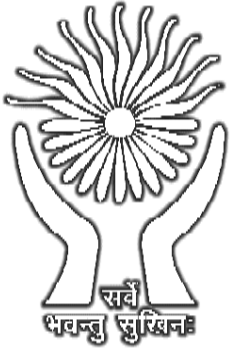
**15.8** The Commission organized a ‘**Health Week**’ targeted for benefit of the elderly people (senior citizens), in collaboration with **HelpAge India**, an NGO, from 20-24 March, 2006 at New Delhi. Lectures on, prevention of heart attack and strokes; diabetes; vision problems; arthritis and bone management; diseases of the prostate gland; specific health concerns of older women; mental health and nutrition for the older people etc. were delivered by medical specialists in the field. The Commission believes that generating awareness amongst the elderly on health related issues, is important given the fact that this category of citizens have been neglected, to a great extent by the society at large.

**15.9** The Core Group on the Right to Food constituted by the Commission has two of its members representing the NGO sector, namely, Dr. (Mrs) **Amrita Rangasami**, **Centre for the Study of Administration of Relief (CSAR)** and **Shri Babu Mathew**, **Country Director, Action Aid India, New Delhi**. The Commission has stressed that the primary aim is to invite suggestions from experts in the field for a Plan of Action for smooth distribution of food grains in the country. It is hoped that the involvement of NGOs would enable getting crucial field level realities, thus making the deliberations of the Core Group much more effective.

**15.10** The Commission in collaboration with **Penal Reform and Justice Association (PRAJA)**, an NGO organized a two-day seminar on Custodial Justice on 30 & 31 March, 2006 at Vigyan Bhawan, New Delhi. The objective of the Seminar was the welfare of the people in custody which called for focusing on two interrelated areas, police and prisons, generating awareness, disseminating information about human rights, with the aim of preventing and avoiding custodial violence.







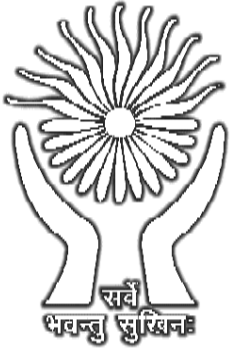
## State Human Rights Commission

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**16.1** State Human Rights Commissions have been set up in 15 States viz. the States of Andhra Pradesh, Assam, Chhattisgarh, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal. The state of Karnataka has also notified setting up of SHRC in that State. The Commission has been reiterating its view that the 'better' protection of human rights can be ensured only if all the States set up a human rights Commission each.' The Commission would also emphasize that the State Human Rights Commissions, which have already been set up or are proposed to be set up should be in compliance with the 'Paris Principles'.

**16.2** The Commission, on its part, has endeavoured to assist and guide the State Commissions in whatever manner possible, whenever requests for such assistance or guidance has been received. The strengthening of the State Commissions, is an important agenda in the Commission's activities. With this end in view, the Commission has taken the initiative to have annual interactions with all the State Human Rights Commissions, where mutual discussions take place. The Commission places great importance to these interactions especially keeping in view the social, cultural and linguistic diversity that is the quintessence of Indian society. Institutionalizing the mechanism of these annual interactions is one of the ways the Commission hopes to keep up. It is thus, all the more important that all the states expeditiously set up human rights Commissions.





# Chapter-17

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

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### A] Review of Laws

#### 1. Protection of Human Rights Act, 1993

17.1 The Commission had referred a proposal to the Government, in March 2000, for amendments to the statute. As reiterated, over the years, the Commission is of the considered view that the amendments, as proposed by the Commission, are necessary to ensure the independence and effectiveness of the Commission for the fulfilment of its mandate.

17.2 The Commission has come across the copy of the Protection of Human Rights Act (Amendment) Bill, 2005, which is proposed to be introduced by the Government in the Rajya Sabha. The amendments proposed in the Bill are under examination in the Commission.

#### 2. Food Safety and Standard Bill 2005

17.3 The Commission expressed its concern regarding the reported repeal of the Infant Milk Substitute (IMS), feeding bottle and Infant Foods Act (IMS Act)

as proposed by its inclusion in schedule one of the Food Safety and Standard Bill 2005.

**17.4** The Chairperson of the Commission in his letter dated 15 March 2005 to the Minister of State, Ministry of Food Processing Industries conveyed the concern of the Commission in this regard. In particular, he pointed out that the IMS Act is not a routine food law, nor does it have anything in common with the other Acts in the repeal list. It is a special Act to protect, promote and support breastfeeding and it focuses on marketing practices and other practices which interfere with breastfeeding, and thereby jeopardize the well being of baby and mother. The Commission observed that the protection of breastfeeding is vital for saving the lives of millions of children in India every year. The Commission urged that to keep the above facts in view and to take appropriate action in order to protect the 'best interests' of children. The IMS Act should not be repealed.

**17.5** In response, the Ministry of Food Processing Industries vide their letter dated 18 August 2005 informed the Commission that the Group of Ministers had decided that IMS Act would not be repealed but only amended so as to substitute reference to the Prevention of Food Alteration (PFA) Act with reference to the proposed bill. The proposed bill has incorporated this and being approved by the cabinet. The bill is expected to be introduced in the Parliament at the earliest.

## **B] Implementation of Treaties and Other International Instruments**

### **1) *The Hague Convention on the Civil Aspects of International Child Abduction***

**17.6** The Commission felt concerned when it took cognisance of a news item under the caption 'Time for India to Sign Hague Convention on Child Abduction' that appeared in *The Assam Tribune* on 16 September 2005. As per the clipping, Sir Mathew Thorpe, Head of Britain's International Family Law and Deputy Head of Family Justice had stated during the 50<sup>th</sup> Annual Conference of Commonwealth Lawyers Association, held in London on 15 September 2005 that "Considering the size of the Indian population, the size of the sub-continent and the expanding expatriate community, I feel it is time for India to sign the Hague Convention". He also hoped that India would accede to the Convention.

**17.7** The Convention on the Civil Aspects of International Child Abduction (also known as the Hague Convention on Abduction) was concluded on 25 October 1980 and came into force on 1 December 1983. The scope of the Convention is to protect the best interests of children in matters relating to their custody including prompt return of children who have been wrongfully removed or retained as well as secure protection for rights of access. The Convention aims at

*Foot Note: At the time of writing of the Report, the Protection of Human Rights (Amendment) Bill has been passed by the Rajya Sabha on August 03, 2006 and Lok Sabha on August 26, 2006. The Bill is awaiting Presidential assent. The Bill is being examined by the Commission.*

.....  
 speedy return of abducted or wrongfully retained children from countries that are party to the Convention.

**17.8** With the increasing number of Non-Resident Indians (NRIs) abroad and multiple problems arising on account of their marriage with their spouses have often led to family conflicts of various kinds, including child removal from India to a foreign country or vice versa by one of the estranged parents. This menace is now becoming very common. Till the time India does not become a signatory to the Hague Convention, there would be no respite to children who are wrongfully removed or retained. This is because one of the most difficult and frustrating elements for a parent of a child abducted abroad is that Indian laws and court orders are not automatically recognised abroad and, therefore, are not directly enforceable. The ratification of this Convention by the Government of India is likely to bring some respite to the affected parents/parties to secure the prompt return of their children who have been wrongfully removed to or retained in any State.

**17.9** Accordingly, as directed by the Commission in its meeting held on 24 January 2006, the Ministry of External Affairs was requested to furnish status report regarding signing and ratification of the Hague Convention. However, at the time of writing this Annual Report, no information has been received from the Ministry of External Affairs, Government of India. It is hoped that the concerned Ministry would expedite looking into the matter so that the people at large could be apprised about the status of the Hague Convention.

## 2) *Optional Protocols to the Convention on the Rights of the Child*

**17.10** The Commission in its last Annual Report for the year 2004-05 had conveyed that it had recommended that the Government of India should ratify the Optional Protocols 1 and 2 to the Convention on the Rights of the Child dealing with the involvement of children in armed conflicts; and the sale of children, child prostitution and child pornography. During the year under review, the Commission was pleased to know that its persistent efforts had yielded rich dividends when it was informed by the Ministry of External Affairs that the Government of India had ratified both the Optional Protocols. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict was ratified on **30 November 2005** with the following Declaration:

*“Pursuant to article 3(2) of the Optional Protocol to the Convention on the Rights of the child on the involvement of children in armed conflict, the Government of the Republic of India declares that:*

- (i) The minimum age for recruitment of prospective recruits into Armed Forces of India (Army, Air Force and Navy) is 16 years. After enrolment and requisite training period, the attested Armed Forces personnel is sent to the operational area only after he attains 18 years of age;

- (ii) The recruitment into the Armed Forces of India is purely voluntary and conducted through open rally system/open competitive examinations. There is no forced or coerced recruitment into the Armed Forces.”

**17.11** The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography was ratified by the Government of India on **16 August 2005**.

### **3) *Convention Against Torture***

**17.12** In the previous reports, the efforts of the Commission in favour of India signing the Convention Against Torture have been mentioned in detail. It was on the basis of the Commission’s recommendation that the Government of India signed this Convention on October 14, 1997. However, Government of India is yet to ratify the Convention. In the past few annual reports, the Commission had repeatedly expressed its concern over the delay in ratification of this Convention. The Commission was informed that the matter was engaging the attention of the Ministry of Home Affairs and the Ministry of Law and Justice. As soon as they complete action with regard to the amendment of the existing legislation, it was stated that the Ministry of External Affairs would be in a position to process early ratification. Last year again the Commission took up this matter with the Ministry of External Affairs. In response, the Commission has been informed that the draft Cabinet Note for ratification of Convention Against Torture has been forwarded for examination by the Ministry of Home Affairs, who will be piloting the necessary procedures for an eventual ratification. The Commission, therefore, took up the matter with the Ministry of Home Affairs on May 2, 2005 and September 7, 2005.

**17.13** The Ministry of Home Affairs vide their letter dated 19 September 2005 informed the Commission that the Ministry of External Affairs have constituted an Inter-Ministerial Group under the chairmanship of AS (UN), comprising of representatives from Ministry of Home Affairs, Ministry of Law and L&T Division of the MEA to go into the question of early ratification and steps required for this purpose.

**17.14** Thereafter MEA vide their letter dated 24 January 2006 have informed the Commission that the Inter-Ministerial Group has met recently and it was agreed that L&T Division of MEA would take a lead to prepare a draft enabling legislation for MHA to pilot the ratification process including the legislation to be enacted.

### **4) *The 1977 Protocol additional to the Geneva Convention of 1949***

**17.15** India ratified the four Geneva Conventions of 1949 in 1959 and enacted the Indian Geneva Conventions Act in 1960 thereby incorporating them in the Indian legal system. The four Geneva Conventions of 1949 were considerably supplemented by two additional protocols adopted in 1977. Protocol I contains new rules on international armed conflicts while Protocol II develops the rules on international humanitarian law governing non international

armed conflicts. These protocols contain elaborate norms and provisions concerning protection of human rights in times of armed conflicts – both international as well as national.

**17.16** The Ministry of External Affairs has, vide letter dated 29 December 2003, stated that:

*“ ... all matters relating to International Humanitarian Law (IHL) including Geneva Conventions were extensively discussed during the recent Conference of the Parties to the Red Cross Movement and the Geneva Conventions in Geneva. The changing nature of armed conflict in the contemporary period (Afghanistan, Iraq, conflicts in Africa, etc.), their impact on IHL and the Geneva Conventions and the related issues are under review at the international level. In the light of these developments, it is felt that the concerned Ministries and Agencies of the Government including Ministry of Defence, Ministry of Home Affairs, Ministry of External Affairs and Ministry of Law should take stock of the current realities and of our response.”*

**17.17** The Commission perused the reply received from the Ministry of External Affairs and desired to know from the Ministry the specific responses on its part regarding signing of the two additional protocols to the Geneva Convention 1949.

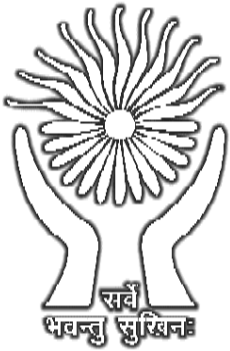
**17.18** The Ministry of External Affairs has informed that a thorough examination of substantive aspects of these protocols is needed and their Ministry is consulting the concerned agencies. In this regard Inter-Ministerial Meeting was convened by MEA on 22 July 2004. The Ministry of Home Affairs and the Ministry of Defence were requested to study the subject.

**17.19** The issue of accession to the Geneva Convention was discussed in the meeting of the Commission and the Commission has desired that the issue be taken up again after a jointed meeting of MEA, MHA and Ministry of Defence.

**17.20** In this context, a letter dated 14 July, 2005 and 23 January 2006 was addressed to the Joint Secretary (UNP), Ministry of External Affairs with the request to send the status note.







## Administration and Logistic Support

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**18.1** The total sanctioned strength of the staff of the Commission remained at the level of 341 posts. As of March 31, 2006, 326 officers and staff were in position. Under Section 32 of the Protection of Human Rights Act, 1993, the Commission is granted financial assistance by way of grants-in-aid after due appropriation made in this behalf by the Parliament. During 2005-2006 the Commission received Rs.1,228 lakhs under Non-plan funding as grants-in-aid. The actual expenditure during the year under Non-plan was Rs.1,119.82 lakhs

### **A] Special Rapporteurs**

**18.2** As in the previous years, the Commission continued with the scheme for engaging eminent persons as Special Rapporteurs to function as representatives of NHRC for the concerned State(s) in the area of civil and political rights and human rights violations and to provide guidance to citizens regarding the provisions of the Protection of Human Rights Act, 1993 for seeking redressal from the Commission. The Special Rapporteurs are drawn from among eminent persons who have had a meritorious record of service and have retired from senior positions, both in the Indian Administrative Service and in the Indian Police Service with a commitment for human rights concerns.

**18.3** Shri Chaman Lal continued to serve as Special Rapporteur for issues such as Custodial Justice, Prison Reforms, Bonded Labour, Child Labour,

# Chapter-18

## Administration and Logistic Support

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monitoring of the functioning of the Agra Protective Home and the three Mental hospitals in Agra, Gwalior and Ranchi and monitoring cyclone reconstruction work in Orissa.

**18.4** Shri K.R. Venugopal, as the Special Rapporteur for the States of Karnataka, Andhra Pradesh, Tamil Nadu, Kerala, Andhra Pradesh and UT of Pondicherry, continued to look after the issue of bonded labour.

**18.5** Shri P.G.J. Nampoothiri has continued to serve as Special Rapporteur to primarily look after the matters relating to Civil and Political Rights in the State of Gujarat such as Gujarat Earthquake and events that occurred in Gujarat after the Godhra tragedy. He also assisted the Commission in coordinating with the State Government and reporting on all matters relating to the communal disturbance in Gujarat on the directions of the Commission.

**18.6** Shri A. B. Tripathy also continued to serve as Special Rapporteur to look after the issues on Custodial Justice, Civil and Political Rights in the States of Orissa and Jharkhand.

**18.7** Ms. Anuradha Mohit has continued to serve as Special Rapporteur on issues relating to Disability and is looking after the issues relating to Disability. She also functioned as a representative of the national human rights institutions in the deliberations on the proposed International Convention on Disability, having been nominated by the International Coordinating Committee of human rights institutions (ICC).

### **B] Core Groups**

**18.8** The Core Groups of experts set up by the Commission continued to function and advise the Commission on complex technical issues. The Members of the Core Groups showed their concern for the cause of human rights by sparing their valuable time to advise on the issues referred to them by the Commission.

**18.9** Some of the important Core Groups that have been set up by the Commission are:

- A Core Group on Rehabilitation of Long Stay Mentally Ill Patients Cured of their Illness has been set up under the chairmanship of a Member of the Commission;
- A Core Group has been set up on the Right To Food to advise the Commission on issues relating to Right to food in the context of India;
- An Expert Group has been set up on Refugees by the Commission with a view to have an expert opinion on the subject before formulating its views on the Model Law on Refugees;
- A Core group has been set up on Disability related issues with a view to consider the problems faced by the disabled people in the country from a human rights perspective and to enable the Commission to have regular consultation with experts in the field;

- An Expert group has been set up to go into the issue of unsafe drugs and medical devices which have not been addressed so far and to examine the effectiveness of licensing and monitoring systems;
- A Core group of lawyers has been set up to enable the Commission to draw upon the expertise and experience of eminent lawyers in matters having legal implications.

## **C] Use of Official Language**

**18.10** The Official Language section is responsible for translation of the Annual Report, Monthly Newsletter and Budget documents of the Commission in Hindi. The section also translates complaints/reports received in Hindi/Regional languages into English language. This year, about 2,200 complaints/reports received in Hindi and other Regional languages from different States/UTs were translated into English.

**18.11** The Commission took the initiative of getting the following International Instruments translated in Hindi and published:

- (i) Human Rights: A Compilation of International Instruments  
Vol.I (Part-I) – Universal Instruments;
- (ii) Human Rights: A Compilation of International Instruments  
Vol I(Part II) – Universal Instruments;
- (iii) Human Rights: A Compilation of International Human Rights –  
Vol.II - Regional Instruments.

**18.12** The following publications of the Commission were also got translated and published in Hindi:

- (i) National Conference on Human Rights and HIV/AIDS
- (ii) Report on Prevention of Atrocities against Scheduled Castes

**18.13** In addition to the above publications 8 booklets on “Know your Rights” were also translated in Hindi and published and released during the year.

### ***National Seminar***

**18.14** A National Seminar on the concept of “Human Rights in Indian Culture and importance of Human Rights Education in India” was organised by the Commission in Delhi on 2-3 March, 2006. Eminent personalities from all over India participated in the seminar.

### ***Publication of Annual Hindi Magazine***

**18.15** The Commission had taken a decision to bring out a Hindi Journal, ‘Nai Dishayen’ annually to create awareness among the masses about Human Rights. The Second issue of the Journal ‘Manav Adhikar – Nai Dishayen’ was published and released on 10 December 2005, the Human Rights Day.

## Administration and Logistic Support

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### *Miscellaneous work*

**18.16** The Commission has instituted an award for creative writing in Hindi on Human Rights issues. Out of the 61 entries received 48 were evaluated and three awards were given.

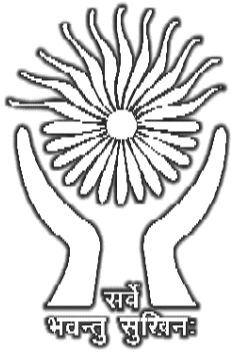
**18.17** The Commission had published an English-Hindi Glossary during the last year. Work on preparation of a Hindi-English Glossary on Human Rights terms has also been initiated and the glossary is likely to be published by the first half of 2006.

### **D] Library**

**18.18** The Library of the Commission is meant for research and reference purposes, primarily by those working in the Commission. It is being increasingly used by Interns, Research scholars, and others working in the field of human rights. The staff of the library maintain liaison with almost all of the libraries in New Delhi through inter-library loan facilities and also institutional membership of DELNET and British Council Library. At present, the library has 12,160 books, 44 journals and subscribes to 26 magazines and 23 newspapers (including 4 regional newspapers). The library has an extensive collection of books, Journals and Reports covering a wide spectrum of Human Rights related subjects, Supreme Court Judgments and Digests. Project reports on different topics prepared by Interns are also available in the library. A list of books added in the library is also compiled and circulated to the officials from time to time. During the year 2005-2006, the library added 932 new books on Human Rights, or having relevance to human rights to the titles that it had acquired in earlier years. The library is also equipped with SCC online (Supreme Court Case Finder CD-ROM) and Library Management System (Software package developed by the Computer Cell, NIC).

### **E] Manavadhikar Bhavan**

**18.19** The Commission is to have its own office building named “Manavadhikar Bhavan” commensurate with its status as an independent and autonomous National Human Rights Institution. The land for the purpose has been allotted in the office complex premises in INA, New Delhi area. Despite the passage of more than three years since the allotment of space for the construction of the Bhavan, Ministry of Urban Development is yet to obtain necessary clearances leading to delay in commencement of the construction work. The Commission views this with concern and urges the Ministry of Urban Development to obtain necessary clearances from the concerned authorities and ensure that the construction work is started soon.



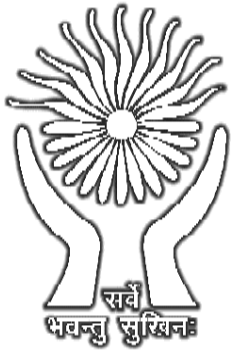
## Right to Information Act 2005

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**19.1** After the Right to Information Act 2005 came into force, this office designated a Public Information Officer (PIO) with the appellate authority for RTI being the Joint Secretary. Nodal officers in various divisions have also been named. The first application for information under RTI 2005 was received by the NHRC on October 21, 2005. Thereafter nearly 39 applications have been received so far. Most of the requests relate to the Law Division. The information sought has been provided promptly.

# Chapter-19





# Summary of Principal Recommendations and Observations

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## *General*

**20.1** The Annual Reports of the Commission serve as essential sources of information on the human rights situation in the country. The Commission, as in the past, expressed its concern over the delay in placing the annual reports before the Parliament. The Government has given a positive response to the concern of the Commission and, resultantly, the eleventh Annual Report of the Commission, for the period April 1, 2003 to March 31, 2004 was tabled in the Lok Sabha and the Rajya Sabha together with the Memorandum of Action Taken on March 7 and 8, 2006, respectively and the twelfth Annual Report of the Commission, for the period from April 1, 2004 to March 31, 2005 was also tabled in the Lok Sabha and the Rajya Sabha on August 22 and 23, 2006, respectively, alongwith the Memorandum of Action Taken Report.

## *International Conventions and Treaties*

### *Optional Protocols to the Convention on the Rights of the Child*

**20.2** The United Nations General Assembly adopted two Optional Protocols to the Convention on the Rights of the Child on May 25, 2000. They are:

- a) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and
- b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.



## Summary of Principal Recommendations and Observations

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**20.3** The Commission recommended to the Government of India that it should examine and become a party to these two Optional Protocols. These Optional Protocols were signed on November 15, 2004 by the Government of India. As a result of the Commission's persistent efforts, the Government of India ratified both the Optional Protocols. Optional Protocol (1) was ratified on November 30, 2005. The Optional Protocol (2) was ratified by the Government of India on August 16, 2005. **(Para 2.30)** While the Commission appreciates the steps taken by the government in the ratification of the above international instruments, it would like to draw attention of government, to the other key international instruments that are yet to be ratified. The Convention Against Torture is one of the conventions that is yet to be ratified despite the fact that the government signed it in the year 1997. The Commission, had, in fact, on the request received from the government, forwarded its comments on the draft Cabinet note. It hopes that the government would expedite the process that has already been for long delayed.

### ***Custodial Justice***

**20.4** The primary responsibility of the police is to protect life, liberty and property of citizens. Criminal Justice System is to ensure protection of these rights. When an individual is in custody, it means that he is in the custody of the State and, therefore, to ensure that his human rights are protected, is the direct concern and responsibility of the State. The individuals are kept in custody in police station, in judicial custody in jail, juvenile homes and mental homes. The National Human Rights Commission (NHRC), in collaboration with Penal Reform and Justice Administration (PRAJA), organized a two-day Seminar on Custodial Justice on March 30-31, 2006, at Vigyan Bhawan, New Delhi. The main objective of the Seminar was to highlight the fact that Custodial Torture is preventable and that it is the responsibility of the State to protect the rights of people in custody.

**20.5** The main recommendations that emanated from the aforesaid Seminar after the deliberations can be placed under two heads, one relating to Police set up and the other relating to Prisons:

### ***Police Set-up***

- ✦ The violations in police custody are reported during investigations, resulting in deaths and physical torture.
- ✦ NHRC, as a monitoring body over deaths and violence in police custody, has emphasized scientific, professional and humane approach towards persons detained for investigations.
- ✦ NHRC recommends that the investigations need to be carried out expeditiously and in a given time frame. The guidelines for arrest, set out in the **D. K. Basu vs. West Bengal case** by the Supreme Court have emphasized time and again for compliance from appropriate state authorities. Besides, it has urged upon senior leadership to involve themselves in the task of investigations and custodial

# Summary of Principal Recommendations

management of the detainees. Full use of appropriate resources should be made to obviate resorting to interrogations. Training given to staff should be by the police.

On analyzing statistics, it has been revealed that children and women need special attention and it is needed to monitor these cases every fortnight.

There should be zero tolerance for any violation of cases where misconduct or guilt of police personnel is ensured that the penalties imposed should be misconduct/guilt.

There is a strong need to differentiate the police wings one relating to investigation and the other. Accordingly, the personnel should be trained to procedures. This will definitely help in speedy procedures.

The impeding above practices, training is to be taken learning and to be used with the purpose of changing of the police personnel.

## Prisons

NHRU has observed that the number of under increasing day by day and the period for which the very long one in few cases. NHRU has found for 24-34 years, which is far beyond the punishment under the penal law.

NHRU recommends an urgent review of the U.P. the prisoners who have undergone their terms of detaining the prisons in addition to the following: Working out a system of holding of regular appeal for early disposal of cases.

The judicial officers have to be exhorted to carefully, observing any possibility of torturing ensuring a speedy trial should be the main thrust including summing up and examination of witnesses. Agency should make special efforts to provide necessary.

The visit to the prison by District Magistrate, should be not merely a routine exercise; and it

## Summary of Principal Recommendations and Observations

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made for speedy disposal of cases. Innovative methods, like release of Under Trial Prisoners on bonds, if the prisoners have completed one half or two thirds of their punishment period, should be adopted.

- ✦ For the convicted persons, the Reformation-correction and Rehabilitation should be worked out with the development departments, to expose them to the skills, which will find them better employment opportunities, once they are outside the custody. There have been good examples tried out in different parts of the country and there is a need to encourage this. In specific kind of cases where reformation is the main motive, the State Government should be urged to have special provisions to impart skills, which will enable better rehabilitation opportunities.
- ✦ The prison conditions should be made more humane for the women, the aged and mentally ill prisoners.
- ✦ Regular check ups and special provision for the mentally ill prisoners has been taking a back seat in the arrangements made in the jails so far. NHRC would like to draw the attention of the State Governments to ensure that the mentally ill prisoners are kept separately and necessary medical treatment is provided to them. (Paras 2.42 & 2.43)

### *Human Rights Violation by other States Agencies*

#### **Prolonged detention of Under Trial Prisoner Anil Kumar Burman in Tezpur Mental Hospital for 33 years in Assam (Case No. 26/3/2005-2006)**

**20.6** In this case, a man who was acquitted of his criminal charges in the year 1969 and was fit to be released from the Mental Hospital in year 1972 remained detained in the Mental Hospital for 33 long years as a prisoner. The Commission observed that it was a sad reflection of total apathy and lack of concern of the concerned officials. There had been prima facie gross violation of the human rights of Anil Kumar Burman arising out of the negligence of the State Officials. The Commission, accordingly, directed to issue notice to Chief Secretary, Assam to show cause as to why immediate interim relief u/s 18 (3) of the Protection of Human Rights Act, 1993 be not recommended in favour of the victim.

**20.7** The Commission had in the past proposed certain guidelines for undertrial mentally ill patient, which were accepted by the Hon`ble Delhi High Court in the case of one Charanjit Singh (Case No. 3628/30/2001-2002) and by the Hon`ble Punjab and Haryana High Court in the case of one Jai Singh (Case No.736/19/2003-2004). These guidelines have already been enumerated in the Annual Report of the Commission for the year 2004-2005 (Para 4.184). (Para 4.193 AR 2005-06)

## Summary of Principal Recommendations and Observations

### *Punjab Mass Cremation Case*

**20.8** On receipt of a remittance from the Supreme Court of India, the Commission examined the issue of cremation of 2,097 dead bodies by the Punjab Police in the districts of Amritsar, Majitha and Tarantaran, Punjab. On the basis of the material placed before the Commission, out of a total of 2,097 (on recheck 2,059) cases of deceased, the Commission recommended an amount of Rs. 23.24 Crores as relief to the next of kin of 1,245 identified deceased till October 10, 2006 who were found to be in actual or deemed custody of the police prior to their death and cremation. (Para 3.17)

### *Starvation Deaths in KBK Districts of Orissa*

**20.9** Dealing with a remittance from the Supreme Court of India, the Commission examined the incidence of scourage and suffering due to starvation deaths in the KBK Districts of Orissa. The Commission strongly supported the view that to be free from hunger is a Fundamental Right of the people of the country. Starvation, therefore, constituted a gross denial and violation of this right. The Commission noticed that the expression 'right to life' contained in Article 21 of the Constitution has been judicially interpreted as not merely a life of survival or animal existence but a 'life with human dignity'. It therefore, observed that the State was obliged to provide at least those minimum requirements which are essential to enable a person to live with human dignity and right to food is inherent to live with dignity. While identifying short term and long term measures for dealing with the problems, the key areas of concern for the Commission included rural water supply and sanitation, primary health care, social security schemes, soil conservation, rural development, afforestation, land reforms, SC/ST development and school education.

**20.10** The Commission monitored implementation by the Government of Orissa the short term and long-term measures of development to end the scourage of deprivation, malnutrition and cyclical starvation in the KBK Districts of Orissa. (Para 2.18)

**20.11** The Commission reviewed the provisions of the National Policy on Resettlement and Rehabilitation sent to it by the Ministry of Rural Development and noted that the rehabilitation policy has not been made a part of the Land Acquisition Act of 1894 and accordingly recommended incorporation of the same be included in the legislation proposed to be enacted by the Ministry of Rural Development, so that it becomes justiciable. It was confirmed by the Ministry of Home Affairs in its Action Taken Report that a national policy on the subject has been notified.

### *Earthquake in Jammu & Kashmir (Case No. 76/9/2005-2006)*

**20.12** The news of the calamity arising from the devastating earthquake, which hit large areas in Northern India and particularly the State of J & K, resulting in unprecedented loss of life and property, caused great anguish and deep concern to the Commission. While expressing its deep sense of sorrow and expressing sympathy the next of the kin of the deceased and those

## Summary of Principal Recommendations and Observations

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who suffered injuries resulting from this catastrophic event, the Commission appealed for united efforts to be made by the Central Government, State Government and civil society to meet the consequences of the calamity.

**20.13** The Commission has always been concerned about ensuring that there is no discrimination against vulnerable during relief and rehabilitation. After taking into account, the assessment made by the NHRC team during their site visits and their discussions with the Civil Society and government authorities, the Commission considered it appropriate to make the following recommendations on November 9, 2005 with a view to facilitate the performance of the task of the State agencies arising out of the post-earthquake effects:

- i) That with a view to ensuring equitable distribution of relief in kind it is desirable that the State Government considers having centralized collection and distribution centres at various places in the affected areas where relief material could be received from the NGOs, Civil Society and other private agencies. The material so received could thereafter be distributed equitably to all affected families;
- ii) Keeping in view that the winter is already setting-in, the Central Government and the State Government should take steps to ensure that building material required for repairing damaged property or restoring destroyed property is available at the affected places before the access to those areas is closed due to winter. This would enable the construction/reconstruction of the property to be undertaken at the earliest;
- iii) That since the number of tents required is more than what is physically available or immediately procurable despite best efforts of the Central and State Governments, it is desirable that where tents cannot be made available, temporary shelters in those affected areas are provided to the local population, so that they may have relief from rain, snow and cold weather. These temporary shelters would be there till the buildings damaged or destroyed are restored. Essential amenities be provided in these temporary shelters for the local population;
- iv) The Central and State Government shall consider feasibility of constructing houses in the affected areas with pre-fabricated building material, which obviously would expedite the job of providing permanent shelters to the earthquake victims;
- v) In all such catastrophes, it is the experience of the Commission that children and women are the worst affected. It is, therefore, necessary that the State Government prepares a computerized list of children who have been rendered orphans as also widows and young girls, not only with a view to providing rehabilitation to them, but also to ensure that their vulnerability is not exploited

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by any one. This computerized list can also assist the government and other agencies, who undertake the task of rehabilitation of the orphans/widows/young girls in their task; and

- vi) Similarly, a computerized list of dead and missing persons be also prepared to enable their next of kin to claim proper relief. (Para 4.333)

### **Other Natural Calamities**

**20.14** The Commission in its continued crusades for resettlement of the persons rendered homeless and hopeless in other natural calamities like **Tsunami** that hit the costal India including Andaman & Nicobar Island, Pondichery, Tamil Nadu, Andhra Pradesh and Kerala, **cyclone** hit areas of Orissa and devastating earthquake of Gujarat is continuously monitoring the efforts being made by the concerned State Agencies. In the process reports sent by these Agencies vis-à-vis several related petitions from the effected individuals and NGOs are examined and suitable guidelines for relief and rehabilitation work are issued. The issues were continuously under observation of the Commission.

### **Child Labour**

**20.15** During 2005-06 Dr. Justice A.S. Anand, Chairperson, NHRC assisted by Shri Chaman Lal, Special Rapporteur reviewed the Bonded Labour/Child Labour situation in Haryana on 21 October 2005. Justice Y. Bhaskar Rao, Member, NHRC assisted by the Special Rapporteur carried out the review for the State of Chhattisgarh at Raipur on 14.2.2006. The Special Rapporteur also carried out two reviews for the State of U.P. with focus on the districts of carpet weaving belt from 2 to 7 September 2005 and 4 to 7 March 2006. He reviewed the situation in Jharkhand on 30 March 2006.

**20.16** The matter related to minor children working in various establishments was placed before Hon'ble Chairperson by the Registrar (Law) on 16.12.2005. The Chairperson has directed to place the matter before the commission as Administrative agenda for the purpose of framing guidelines for NGOs. Accordingly a meeting was held on 2.6.2006 with heads of NGOs working in the field of the abolition of Bonded Labour/Child Labour under the Chairmanship of Shri Chaman Lal, Special Rapporteur, NHRC to discuss strategies and formulate guidelines for effective implementation of Government schemes directed at identifications, release and rehabilitation of Bonded Child labour.

### **Burning of Houses of Dalits in Balmiki Colony, Gohana, Sonapat, Haryana (Case No.1031/7/2005-2006/FC)**

**20.17** The Commission has a focal point for Dalit Issues headed by a Member. The Commission is always concerned of ensuring proper protection of rights of Dalits. Pursuant to the directions of the Commission, Chief Secretary, Government of Haryana, Chandigarh, vide his letter dated January 27, 2006, has informed that cash compensation to the tune of Rupees one lakh has been paid to each of the 54 affected families. Investigation in respect of

## Summary of Principal Recommendations and Observations

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the cases registered in relation to the unfortunate incident had been handed over to CBI on September 11, 2005. He also informed that 54 damaged/burnt houses had been reconstructed by the Government at a cost of Rs. 49 lakhs. Affected families were also given compensation for the damage to their house-hold articles. Besides, cash assistance of Rs. 5,000/- was also provided to 54 families immediately after the incident and a sum of more than Rupees two lakhs had been spent for providing free food, medicine, text books, TA/DA, etc. to the victims. Regarding the status of disciplinary proceedings, it is submitted that Shri Ronki Ram, the then DSP, Gohana and Shri Satpal Singh, SI, the then SHO, Police Station Sadar Gohana, have been placed under suspension and departmental action is being taken against them.

**20.18** In its proceedings, the Commission noticed that from the above report, it transpired that the affected families had not only been paid monetary compensation, but the government had got their damaged houses repaired/reconstructed. CBI investigation into the cases registered in relation to the incident had also been started; besides, the delinquent police officials had been suspended and departmental action against them were being initiated. The Commission further observed that it is expected that the State authorities will expeditiously complete the departmental proceedings and take appropriate action against the delinquent officials on the basis of the outcome of departmental enquiry.

**20.19** The Commission appreciated the sensitivity and promptness shown by the State Government in dealing with the instant matter in awarding compensation to the victims – repairing or reconstructing their houses at State expenses; initiating CBI inquiry into the incident; and also initiating departmental proceedings against the errant officials. We hope and expect that other State Governments also will act promptly and with all sensitivity as regards the violation of human rights, wherever required. (Para 4.350, 4.351 & 4.352)

### **Suicide by Farmers in Maharashtra (Case No. 668/13/2004-2005)**

**20.20** The Commission took *suomotu* cognizance of a press clipping captioned “22 Maharashtra farmers commit suicide”, which appeared in the Deccan Herald dated July 18, 2004 and directed the Chief Secretary, Government of Maharashtra to take such action as deemed appropriate and to submit action taken report in the matter. In response to notices issued by the Commission, reports were submitted during the period from March, 2001 to November, 2004, it was noticed that a total of 575 farmers have committed suicide in the State for various reasons, viz. incurable disease, family disputes, failure of crops, indebtedness, addictions, etc. These cases had been examined and out of these, 140 cases were found to be eligible for financial assistance. The legal heirs in all these cases have been given a financial assistance of Rupees one lakh per case from the Chief Minister’s Relief Fund.

**20.21** The Commission on June 29, 2005, after taking into consideration the report submitted by the State Government, closed the case, with following remarks:

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*“Indeed, the report from the Revenue and Forest Department, Mantralaya, Mumbai dated December 23, 2004 shows that suicides have been committed by farmers in the past on account of drought or indebtedness also. It is, therefore, desirable and appropriate that the State Government puts in place a mechanism to ensure that there is no recurrence of such events in future and take all appropriate steps to mitigate the hardships being faced by farmers due to drought or indebtedness.”*  
(Para 4.356 & 4.357)

### Levy of User Charges by AIIMS, Delhi (Case No. 3153/30/2005-2006)

**20.22** After perusing the news report, the Commission observed as under:

*“Right to Health is a basic human right directly connected to the Right to life, which has been recognized by the international community in numerous international instruments. Article 25(i) of UDHR affirms that everyone has a right to “Standard of living adequate for health for himself and his family including food, clothing, housing and medical care and necessary social services.” ICESCR also, by Article 12 of the Covenant, provides that the state parties recognized the right of everyone to the enjoying of highest attainable standard of physical and mental health. Not only this, the Constitution of India has guaranteed fundamental right to life, which is possible by making quality health care accessible to everyone.*

*“AIIMS, New Delhi, is one of the premier medical institutions in the country, which provides quality medical and health care. A substantive increase in the hospital charges in relation to various investigations and various procedures including surgical/operative procedures and aids and appliances in AIIMS, if true, would make the quality health services inaccessible to a large segment of society, in particular, marginalized and vulnerable sections and even the ‘lower middle class’ of the society. Such steps would amount to indirect denial of quality health services to the patients, not financially well off.”* (Para 4.359)

### Core Group on Health and Public Hearing on Health

**20.23** The Commission’s efforts in the area of public health and human rights have been guided by the realization that the right to life with human dignity, enshrined in the Constitution, must result in strengthening of measures to ensure that people of this country, and particularly those belonging to economically disadvantaged sections of the society, have access to better and more comprehensive health facilities.

**20.24** In order to take stock of the status of implementation of the recommendations made by the NHRC on different issues relating to right to health, the Commission convened a review meeting on the ‘Recommendations of the Core Group on Health and Public Hearing on Health’ on March 4, 2006 at Vigyan Bhawan, New Delhi. This meeting was



## Summary of Principal Recommendations and Observations

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meant to evaluate the implementation of NHRC's recommendations on the issue of Public Health in relation to realizing health as basic human right.

**20.25** There are three major challenges that the country needs to address in the health sector. These are: acceptability, availability and affordability. The need is:

- i) to upgrade the existing health care facilities at all levels;**
- ii) forge private public partnership;**
- iii) adopt a right-based approach for protecting and promoting the survival and developmental needs of children and focus on preventive aspects of health care, such as nutritional value of food, first aid, hygiene and sanitation.**

The Commission, on the above issues, has listed the following recommendations to ensure the right to health.

### **(iv) Upgrade Existing Health Care Facilities at All Levels**

1. The health care facilities are provided at Primary Health Center (PHC), Community Health Center (CHC) and District Hospitals, Medical Colleges and specialised hospitals. The main hindrance to ensure acceptability and affordability is lack of manpower and medicines. Even though the statistics may show sufficient number of trained man-power in the country as a whole, but the micro analysis clearly reflects lack of trained doctors and even para-medical staff at PHCs and CHCs, the cutting edge to provide the health services;
2. The time has come to have a fresh thinking to ensure availability of trained manpower. Medical Council of India (MCI) should seriously contemplate to recognise a three-year course for training doctors on basic preventive and curative health services, so that the paucity or non-availability of man-power is taken care of. Another alternative is to have one year bridge course for doctors of Indian System of Medicine and post them at the CHCs and PHCs;
3. Another issue is non-availability of women doctors. The time has come to give recognition to mid-wife course by selecting local woman. A 2-3 year course will enable her to ensure good pre-natal, ante-natal care and also institutional deliveries thus, directly contributing to reduction of Maternal Mortality Rate (MMR);
4. The para-medical staff in terms of Auxiliary Nurse Midwife (ANM) and more so a local trained person who can guide; the concept of ASHA needs to be strengthened and streamlined.

## Summary of Principal Recommendations and Observations

### (v) Forge Public-Private Partnership

1. The spread of private practitioners and 56% of the treatment still attended by non-qualified doctors need conscious efforts to involve private practitioners in the delivery of health services. The attempt made in Gujarat for institutional delivery is the case, which needs to be replicated. Another area of collaboration can be to make medicines of all national programmes available with private practitioners and then graduate to develop health insurance sector;
2. The need is also to have a regulatory mechanism to ensure quality standards and costs of care in the private sector.

### (vi) Adopt a Rights Based Approach for Protecting and Promoting the Survival and Developmental Needs of Children

1. Universal immunisation is the right of the child and no reluctance on the part of parents or inefficiency of delivery system should stand in way of achieving anything less than 100% immunisation;
2. The rural health worker and panchayat need to be actively involved to ensure the same.

### (vii) Focus on Preventive Aspects of Health Care such as Nutritional Value of Food, First Aid, Hygiene and Sanitation

1. The spread of knowledge of first aid, hygiene and sanitation does not require paraphernalia of health workers. Need is to have one person responsible for 200 population and to have him trained to spread awareness and empower them. The need is to ensure availability of such manpower in both rural areas and urban slums. The reorganization of existing staff in health itself will provide sufficient number of these trained personnel (Department of Health and Family Welfare);
2. The delivery system of Integrated Child Development Services (ICDS) for pregnant mothers, lactating mothers and children till 5 years of age needs constant monitoring. The monitoring should be of outputs i.e., uplift malnutrition levels (For Department of Women and Children).

### (viii) Non-availability of Drugs

The Central and State governments make adequate budgetary provision for supply of drugs in public hospitals. However, due to unscientific procurement policies, the non-availability of drugs results in poor health services. The

## Summary of Principal Recommendations and Observations

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private practitioners resort to 'over-subscription' of drugs. Thus, there is strong need to:

- a) Adopt drug procurement policy for public sector, based on experiment done in the state of Tamil Nadu.
- b) WHO standards for prescription of drugs should be advocated.

### (ix) Emergency Medical Care (EMS)

**20.26** Nearly 40,000 persons lose their lives every year due to injuries caused by accidents. The present EMS is functioning sub-optimally and requires upgradation.

Thus, there is need for:

1. All States should take action on setting up of Centralised Trauma Services and for having National Accident Policy. There is also need to have one toll-free number for the whole country;
2. Having a Central coordinating, facilitating, monitoring and controlling committee for Emergency Medical Services under the aegis of Ministry of Health and Family Welfare;
3. MCI to consider developing 'Emergency Medicine' as a specialty. **(Para 5.10)**

### *Rights of Persons with Disabilities*

**20.27** The National Human Rights Commission (NHRC) was distressed to learn that blind students routinely receive their Braille textbooks towards the fag end of the academic session or worse still, a majority do not have access to these books at all. Upon delving deep into the matter, it was found that many States and UT administrations have not even set up a single Braille press. Recognizing that children with disability have a right to receive education in an appropriate environment, the Hon'ble Chairperson, NHRC vide letter dated April 8, 2005 to the Chief Ministers of all the States and Union Territories stated that there is a need to ensure that the printing of books in Braille go simultaneously with the printing of regular books (**Annexure-7**). In order to ensure timely availability of Braille Text Books, the services of high speed computerized Braille presses could be utilized. This would ensure education in an appropriate environment for blind students, in accordance with Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. **(Para 6.2)**

**20.28** To promote judicial intervention and activism on disability rights and related issues, a Judicial Colloquium on Disability & the Law was convened in December, 2005 at Delhi. It was attended by 52 judges from 15 High Courts of the country and included the Chief Justices of Tamil Nadu and Jammu and Kashmir. The Colloquium was organized in partnership with Human Rights Law Network, which is a NGO having network of legal aid centers in the country. The Colloquium provided a useful opportunity for the members

## Summary of Principal Recommendations and Observations

of the judiciary to analyze some provisions of the Disabilities Act, 1995 for clarity and uniform interpretation. The participating judges and human rights experts also examined international standards on disability with a view to identifying areas for policy and law reform. In that sense, the Colloquium acted as a catalyst. The suggestions as extracted from the deliberations of the colloquium were as follows:

1. Such Colloquiums should also be organized at the State level so that the members of the lower courts could also be sensitized.
2. Such Colloquiums should be organized at regular intervals so that an on going process of debate and information sharing can be established. The Registrars of High Courts have also expressed their views that such Colloquiums should also be organized for judicial officers of all High Courts.
3. Finally, the judges expressed that they feel more sensitized to the issue of Dalits and the disabled through this Colloquium. (Para 6.13)

### **Recommendations on Food Security**

**20.29** The National Human Rights Commission has consistently maintained that the Right to Food is inherent in the right to life as enshrined in Article 21 of the Constitution of India. It also believes that Article 21 should be read along with Article 39(a) and Article 47 of the Constitution to effectively understand the nature of obligations of the State and to ensure the effective realization of this right.

**20.30** In order to ensure that every one is free from hunger, the Commission constituted Core Group on Right to Food on January 2, 2006. The Commission also found that there was a need for constituting a Small Group, which would crystallize the suggestions made by the Core Group. Accordingly, a Small Group was constituted on February 16, 2006 and a meeting of the Group was held on February 21, 2006.

**20.31** The recommendations, which came out of the meeting of this Group, are as follows:

1. There is a need to define concepts like, 'Right to Nutrition'; 'Malnutrition'; 'Starvation'; so that there is a paradigm shift from 'welfare' approach to 'rights based approach' to the issue of malnutrition and starvation.
2. There is, therefore, the need to identify 200 (government and public sector) organizations with expertise to deal with malnutrition across the country to independently monitor the distribution mechanism. The role of 200 organizations would not be a day-to-day monitoring, but to see at ground level that things are moving properly. 'Independent Evaluators and Facilitators' is the expression, which can be used for 200 organisations. These will be short-listed by NHRC and the NHRC will recommend the State governments to help these organizations in performing their monitoring work.

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3. In order to see that things are proceeding according to schemes, the State governments would be requested that panchayats should cooperate with these organizations for providing them information under different schemes.
4. It is mandatory not to just have food as matter of right, but also to ensure proper nutrition. Schemes are already available, we have to see what are the discrepancies in existing schemes. Providing food should not be based on quantity, but on calories of energy. Ensuring that the nutrition level is maintained; food available locally must be utilized; to clarify, instead of insisting on uniform pattern, flexibility to use local coarse grains like ragi etc. should be permitted.
5. The system of delivery be firmed up by active involvement of panchayati raj institutions, with zero tolerance, i.e., ensure that there is no case of malnutrition and starvation in a panchayat. All Gram Panchayats must be held accountable under all the schemes. People should know what are the schemes and benefits available to them. Panchayats should notify it by displaying billboards in their office/prominent places.
6. There is need to dovetail with employment generation schemes and other interventions to ensure sustainable livelihood. **(Para 7.13)**

### ***Research Studies and Projects***

**20.32** A National Conference on Disability was held on June 23, 2005 at New Delhi under CHRC-NHRC-IGNOU Linkage Project. During the conference, the issues concerning Human Rights Education and Disability and Systemic Improvement for better protection of Human Rights of persons with disabilities were extensively discussed. The National Conference recommended that to keep disability under the spotlight, the Government of India may consider instituting an independent Department of Disability and Development and the Government may also consider instituting a National Task Force on the issue of accessibility by persons with disabilities in all public places, transport system, media and public information systems.

**20.33** The following recommendations were made in the National Conference on Disability, which were sent to Union Ministries, States/Union Territories, Universities, Bar Council of India etc:

- The Government may consider instituting a National Task Force on accessible infrastructure for persons with disabilities ensuring that all public places, transport systems, media and public information are redefined and delivered on disability inclusive norms. [Union Ministry of Social Justice & Empowerment]
- To keep disability under the spotlight, the GOI may consider instituting an independent Department of Disability and Development (DDD) on the lines

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of Department of Women and Child with the Union Minister having an independent charge. [Union Ministry of Social Justice & Empowerment]

- The Central Coordination Committee and the State Coordination Committees, under the Disability Act, 1995, in pursuance of their mandatory obligations, should elaborate a National/State Disability Policy and Action Plan to enable persons with disabilities to effectively enjoy all rights and benefits guaranteed under the law, and at the same time, it should enable the government at all levels to perform its mandatory functions and effectively utilize budget allocated for the disability sector. [Union Ministry of Social Justice & Empowerment/All States/UTs]
- Developmental ministries and departments in GOI, State Governments and UT Administrations, including training institutions should designate a nodal officer on disability assisted by a panel of experts from the disability sector to ensure inclusion of a disability perspective in all aspects of their functioning, such as planning, executing and monitoring, keeping in view the human rights perspective. [Union Ministries of Social Justice & Empowerment, Human Resource Development, Health & Family Welfare, Rural Development, Urban Affairs, Department of Personnel & Training, Tribal Affairs, Women and Child Development/All States/UTs]
- The Government of India and their counter parts in the States should introduce a disability component in all their training initiatives aimed at public administrators and all the field functionaries. [Union Ministry of Personnel & Training, All States/UTs]
- Bar Council, the Law Schools and the leading Universities should urgently coordinate action towards incorporating disability perspective in all the formal and non-formal courses in law and human rights. Simultaneously, an optional paper in Disability, Human Rights and Law should be introduced at the graduate level. [Bar Council of India, UGC, VC of Universities]
- UGC, RCI, NCTE and NCERT should actively assist the institutions under their jurisdiction to reform the course curriculum in the fields of law, management, social work, education, architecture, medicine, nursing, engineering, statistics, history, sociology, developmental economics, etc. with a view to incorporating a disability component keeping in view the human rights perspective. [UGC, RCI, NCTE and NCERT] (Para 12.22)

### ***Role of Civil Administration in the Protection of Human rights in Strife-torn areas of Jammu and Kashmir***

**20.34** The Commission had entrusted a study to the Lal Bahadur Shastri National Academy of Administration, Mussoorie. This study concluded that human rights violations are

## Summary of Principal Recommendations and Observations

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inevitable and rampant in a disturbed area, and the administration still has to play its role in ameliorating the miseries of the common man. Good governance is possible only if corruption is totally rooted out. It is of utmost importance that law enforcement agencies should be empowered so that they are able to assist the judiciary in protecting the rights of the common man. Lastly, the welfare state will have to create funds to remove the economic misery of the victims of terrorism. (Paras 12.30 & 12.31)

**A study of the underlying causes of Human Rights violations as a result of insurgency in North East, the nature of state response, the use of special laws, violations by non-state actors, and practical suggestions/recommendations for improvement in the situation – A research study in Tripura**

**20.35** According to the study, the panacea to the violation of human rights in Tripura is the end of insurgency. The study has suggested a number of remedial measures to end insurgency, which include development (trickle-down), administrative planning, education, awareness and conscious security measures and policing. (Para 12.33)

**Dependency on Forests for Livelihood and Its Impact on Environment: A case of the Baiga Tribe of Mandla District, MP**

**20.36** The study was entrusted to the Lal Bahadur Shastri National Academy of Administration, Mussoorie.

**20.37** The report of the study concludes that the land based activities reduce dependence on forests and, therefore, a viable and sustainable model of agriculture is necessary. The report recommends that urgent steps should be taken to provide employment opportunities and access to credit and infrastructure support for enhancing the capabilities of the Baiga people. (Paras 12.34 & 12.35)

### **Rights of Women and Children**

#### **Trafficking in Women and Children**

##### **1) *Plan of Action to Prevent and End Trafficking in Women and Children in India***

**20.38** As has been reported in the earlier Annual Reports of the Commission that ever since the Focal Point on Human Rights of Women, including Trafficking was set up in the Commission in the year 2001, it undertook several activities, which included among others, an Action Research on Trafficking in Women and Children in India and a National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy. (Para 8.2)

**20.39** In order that the recommendations and suggestions of both the Reports were implemented in true spirit, the Commission was of the view that it was necessary to have a comprehensive Plan of Action (POA) to Prevent and End Trafficking in Women and Children

## Summary of Principal Recommendations and Observations

in India. Accordingly, it has formulated a comprehensive POA and intends to disseminate the same to all concerned in the Central Government, State Governments/Union Territory Administrations, non-governmental organizations and the civil society at large for guiding and facilitating their actions to prevent and end trafficking in women and children in India. **(Para 8.4)**

**20.40** The Commission firmly believes that implementation of the Plan of Action (**Annexure 8**) by all stakeholders would go a long way in preventing and ending trafficking in women and children in India. **(Para 8.5)**

**20.41** It was reported in the preceding Annual Report that the Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions that met in New Delhi in the year 2002, had deliberated on the issue of trafficking at its Seventh Annual Meeting. The Council had later forwarded its Final Report wherein it had made a number of recommendations for preventing and combating trafficking. The Commission, in its meeting held on September 3, 2003, also adopted these recommendations. The Commission had desired that the Final Report forwarded by the Council be also sent to the Ministry of Women and Child Development (erstwhile Department of Women and Child Development) and the Ministry of Home Affairs, Government of India for appropriate action. Accordingly, the final Report was sent to the concerned Ministries with the request that action taken on the recommendations be reported to the Commission. **(Para 8.10)**

**20.42** The Commission regrets to note that despite several reminders, neither the Ministry of Home Affairs nor the Ministry of Women and Child Development has so far responded, in spite of the fact that the issue of trafficking was a major concern of both the Ministries of the Government of India. **(Para 8.12)**

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

**20.43** The Commission has been continuously monitoring the implementation of the Vishaka guidelines issued by the Apex Court (No. 1997 (6) SCC 241) in the year 1997 with regard to preventing and combating sexual harassment of women at the work place in all the States and Union Territories. Accordingly, since 2000-01, the Commission has been detailing out in its Annual Reports various steps taken by it on this subject to eliminate the problem of sexual harassment among working women. It was reported that pursuant to the Supreme Court judgment in the case of Vishaka vs. State of Rajasthan, the Central Government (Department of Personnel and Training) had amended the Central Civil Services (Conduct) Rules, 1964 to incorporate provision for prohibition of sexual harassment of working women. Similarly, the State Governments have also amended the Conduct Rules for their employees. Complaints Committees have also been constituted in some of the Departments in the Ministries/Department in the Central Government, State Governments and Union Territories. However, information on amendment to Conduct Rules was awaited from the State of Manipur and that on constitution of Complaints Committees was awaited from the State of Sikkim. **(Para 8.13)**



## Summary of Principal Recommendations and Observations

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**20.44** The Commission has written on several occasions to the concerned Departments of these States to do the needful and intends to monitor the same till each one of them amends the Conduct Rules for their employees and sets up a complaints mechanism so that women are no longer subjected to gender discrimination at the work place. **(Para 8.14)**

**20.45** The Commission would like to urge all the remaining States/Union Territories to extend cooperation to the Ministry of Railways in constituting State Level Coordination Committees to oversee the progress of implementation of the measures taken for the safety of women passengers. **(Para 8.24)**

**20.46** Meanwhile, the National Human Rights Commission has decided to constitute a Working Group to examine the whole issue of population policy. It has requested Shri A.K. Shivakumar, Advisor to UNICEF India, to be the Convener of the Working Group. It has also requested the National Commission for Women and the National Commission for Minorities to suggest one nominee each for inclusion in the Working Group, if they so desired. All concerned have given their acceptance to be part of the Working Group, the details of which are being finalised. **(Para 8.36)**

### ***Status of Juvenile Justice in India***

**20.47** The Commission, too, ever since it was set up in October 1993, has been concerned about the plight of juveniles who come in conflict with law and those who are in need of care and protection. While the Law Division of the Commission has been dealing with complaints of juveniles as well as collating information about the status of implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 from all the States and Union Territories, in the year 2004, the Research Division of the Commission in collaboration with the Socio-Legal Information Centre, New Delhi, also undertook a research study with the aim of reviewing the extent of implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000. The study is on the verge of completion and details relating to its objectives could be seen in Chapter 12 of this Annual Report. Simultaneously, in October 2005, when the Registrar General, High Court of Patna informed the Commission that the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 was extremely poor in Patna, the Commission once again directed that the matter of juvenile justice be reviewed expeditiously for each State and Union Territory. Accordingly, letters have been addressed to the Secretaries of the Departments of Social Welfare of all the States and Union Territories to furnish detailed information. **(Para 8.40)**

**20.48** The Commission is pained to report that till date, information has been received only from the States of Andhra Pradesh, Arunachal Pradesh and the National Capital Territory of Delhi. In these States too, on the basis of information received, it could be gauged that the level of implementation of the Juvenile Justice Act, 2000 is far from satisfactory.

## Summary of Principal Recommendations and Observations

The Commission intends to monitor with other State Governments and Union Territories regarding the status of the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000. However, it would like to reiterate that Juvenile Justice Boards, Child Welfare Committees, Special Juvenile Police Units as well as other institutions required under the Act be constituted at the earliest by all the State Governments and Union Territory Administrations, so that the best interest of children is protected. (Para 8.41)

### *Mental Health*

**20.49** The Commission has been deeply concerned at the unsatisfactory conditions prevailing in mental hospitals in the country, many of which function as custodial rather than therapeutic institutions. In the light of such problems as overcrowding, lack of basic amenities, poor medical facilities, little or no effort at improving the awareness of family members about the nature of mental illness, or of the possibilities of medication and rehabilitation, the Commission realized that there was great need for it to take up the cause, as otherwise, it would result in continuing violation of the rights of those greatly in need of understanding and support. (Para 5.12)

### *Complete Rehabilitation of Manual Scavengers*

**20.50** The review of status of progress on eradication of manual scavengers highlighted the crucial issue of completing the work of liberation and rehabilitation of scavengers within a time frame. Stress was made on the involvement of NGOs in the implementation of programme to motivate people and make the programme more efficacious. Difficulty was also expressed with regard to the financial pattern of the low cost sanitation scheme and suggested that the level of subsidy should be raised to 50% of the cost of super structure uniformly to all the families having bucket privies. It was suggested that besides HUDCO, loan for the conversion of dry latrine might also be made available from the nationalized banks. Accordingly, following action points emerged:

- ✦ The survey and identification should cover the rural areas.
- ✦ The process of identification of people engaged in Manual Scavenging is to be carried out by the States at the earliest and for each individual rehabilitation plan be executed and monitored.
- ✦ The training of Scavengers and their dependents should be in all such vocations which have market value and will lead to sustainable employment
- ✦ There is a need to construct more public toilets.
- ✦ All States should adhere to the target date of 2007 for the eradication of Manual Scavenging. (Para 10.10)

## Summary of Principal Recommendations and Observations

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**20.51** There is a need to amend the existing regulation so that all new constructions should have only wet latrines. (Para 10.11)

### ***State Human Rights Commission***

**20.52** The Commission, on its part, has endeavoured to assist and guide the State Commissions in whatever manner possible, whenever requests for such assistance or guidance has been received. The strengthening of the State Commissions, is an important agenda in the Commission's activities. With this end in view, the Commission has taken the initiative to have annual interactions with all the State Human Rights Commissions, where mutual discussions take place. The Commission places great importance to these interactions especially keeping in view the social, cultural and linguistic diversity that is the quintessence of Indian society. Institutionalizing the mechanism of these annual interactions is one of the ways the Commission hopes to keep up. It is thus, all the more important that all the states expeditiously set up human rights Commissions. (Para 16.2)

Sd/-  
(A. S. Anand)  
Chairperson

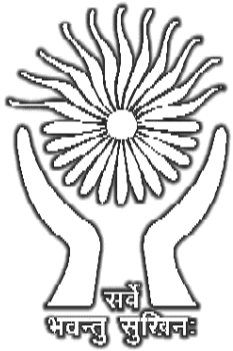
Sd/-  
(Shivaraj V. Patil)  
Member

Sd/-  
(Y. Bhaskar Rao)  
Member

Sd/-  
(R.S.Kalha)  
Member

Sd/-  
(P.C.Sharma)  
Member

New Delhi  
October 31, 2006



## Annexures- Charts and Graphs

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### Annexures

1. Statement showing state-wise number of cases pending as on April 1, 2005. **(Para 4.1)**
2. Statement showing state-wise number of cases/intimations registered during the year 2005-2006. **(Paras 3.18, 4.1 & 4.3)**
3. Statement showing State-wise disposal of cases by the Commission during the year 2005-2006. **(Para 4.1)**
4. State/Union Territory-wise statement of category of report cases disposed off during the year 2005-2006 [(a) (b) & (c)]. **(Paras 4.1 & 4.5)**
5. Statement showing state-wise number of cases pending as on March 31, 2006. **(Para 4.2)**
6. Intervention on behalf of National Human Rights Commission of India on 'Right To Development' at first session of the United Nations Human Rights Council by Dr. Justice A.S. Anand, Chairperson National Human Rights Commission of India (former Chief Justice of India) on 26 June, 2006 at Geneva. **(Para 2.31)**
7. Letter of the Chairperson, NHRC dated April 8, 2005 to the Chief Ministers/Administrators of all States/Union Territories regarding a need

# Annexure-Charts and Graphs

## Annexures - Charts and Graphs

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to ensure that the printing of books in Braille go simultaneously with the printing of regular books. **(Para 6.2)**

8. Plan of Action to Prevent and end Trafficking in Women and Children in India. **(Para 8.4)**
9. Campaign Against Child Marriage (Action taken by the State Governments/Union Territories. **(Para 8.43)**
10. Statement of Chairperson, NHRC at the 61st Session of the Commission on Human Rights under Agenda item 18 (b) (National Institutions and Regional Arrangements) Geneva, April 13, 2005. **(Para 14.1)**
11. Concluding Statement of the 10th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Ulaanbaatar, Mongolia. **(Para 14.5)**
12. New Delhi Concluding Statement - International Round Table on National Institutions Implementing Economic, Social and Cultural Rights. **(Para 14.10)**
13. Concluding statement and plan of action – Regional Workshop on Human Trafficking and NHRIs: Cooperating to end impunity for traffickers and to secure justice for trafficked to the people. Sydney, Australia November 20-23, 2005. **(Para 2.29)**

### Charts & Graphs

1. List of cases registered during the last three years.
2. State-wise list of cases registered during 2005-2006.
3. State-wise list of intimations registered relating to Custodial Death/Rape during the year 2005-2006.
4. Nature and categorization of cases disposed off by the Commission during the year 2005-2006.
5. Cases disposed off/pending disposal by the Commission during the year 2005-2006.
6. Cases dismissed in limini during the year 2005-2006 States/UTs with a dismissal rate of more than 1%.
7. Cases disposed off with directions during the year 2005-2006 States/UTs with a dismissal rate of more than 1%.

## Annexure 1

## Para 4.1

Statement Showing State-Wise Number of Cases Pending  
As on 1/4/2005

S.No.	Name of the State / Union Territory	Cases awaiting preliminary consideration				Pendency of cases where reports have either been received or waited from the State Authorities			
		Intimation about				Complaints	Custodial Death Cases	Encounter Death Cases	Total
		Complaints	Custodial Deaths	Encounter Deaths	Total				
1	2	3	4	5	6	7	8	9	10
1	Andhra Pradesh	21	6	0	27	783	369	21	1173
2	Arunachal Pradesh	0	0	0	0	31	8	0	39
3	Assam	1	0	0	1	252	70	9	331
4	Bihar	181	1	0	182	4222	469	8	4699
5	Goa	1	0	0	1	27	4	0	31
6	Gujarat	18	0	0	18	589	192	5	786
7	Haryana	78	1	0	79	1471	132	2	1605
8	Himachal Pradesh	8	0	0	8	108	3	0	111
9	Jammu & Kashmir	7	0	0	7	503	4	2	509
10	Karnataka	11	1	0	12	443	203	5	651
11	Kerala	3	2	0	5	170	116	1	287
12	Madhya Pradesh	43	1	0	44	1028	115	9	1152
13	Maharashtra	58	1	1	60	1525	272	29	1826
14	Manipur	2	0	0	2	105		2	107
15	Meghalaya	0	0	0	0	17	17	1	35
16	Mizoram	0	0	0	0	13	4	0	17
17	Nagaland	0	0	0	0	29	1	0	30
18	Orissa	19	1	0	20	685	108	0	793
19	Punjab	25	1	0	26	1175	187	0	1362
20	Rajasthan	114	1	0	115	1377	104	33	1514
21	Sikkim	0	0	0	0	4	0	0	4
22	Tamil Nadu	69	6	0	75	875	326	9	1210
23	Tripura	1	0	0	1	51	6	0	57
24	Uttar Pradesh	1216	2	0	1218	20442	677	175	21294
25	West Bengal	34	0	0	34	719	122	6	847
26	A & N Islands	0	0	0	0	11	1	0	12
27	Chandigarh	7	0	0	7	48	10	0	58
28	D & Nagar Haveli	0	0	0	0	6	0	0	6
29	Daman & Diu	0	0	0	0	4	0	0	4
30	Delhi	215	2	0	217	4045	87	18	4150
31	Lakshadweep	0	0	0	0	1	0	0	1
32	Pondicherry	2	0	0	2	19	3	0	22
33	Chhattisgarh	12	0	1	13	181	44	0	225
34	Jharkhand	53	0	0	53	1156	147	3	1306
35	Uttaranchal	52	0	0	52	895	37	14	946
36	Foreigners	9	0	0	9	60	0	0	60
	<b>Total</b>	<b>2,260</b>	<b>26</b>	<b>2</b>	<b>2,288</b>	<b>43,070</b>	<b>3,838</b>	<b>352</b>	<b>47,260</b>
<b>2,288+47,260=49,548</b>									

**Statement Showing State-Wise Number of Cases/Intimations  
Registered During the Year 2005-2006**

S.No.	Name of the State / Union Territory	Com-plaints	Intimation received about Custodial Deaths				Intimation received about Encounter Deaths	Total
			Police Custody	Judicial Custody	Defence/ Para-military	Custodial rapes		
1	2	3	4	5	6	7	8	9
0	All India	9	0	0	0	0	0	9
1	Andhra Pradesh	688	11	134	1	0	3	837
2	Arunachal Pradesh	17	1	0	0	0	0	18
3	Assam	151	7	27	1	1	5	192
4	Bihar	4297	1	246	0	1	0	4545
5	Goa	34	1	4	0	0	0	39
6	Gujarat	563	20	52	0	0	0	635
7	Haryana	2934	4	58	0	0	5	3001
8	Himachal Pradesh	148	0	5	0	0	0	153
9	Jammu & Kashmir	160	1	0	1	0	0	162
10	Karnataka	451	5	67	0	0	6	529
11	Kerala	181	5	44	0	1	0	231
12	Madhya Pradesh	2413	4	44	0	0	4	2465
13	Maharashtra	1441	20	115	1	1	8	1586
14	Manipur	30	0	0	0	0	0	30
15	Meghalaya	23	0	4	0	0	1	28
16	Mizoram	27	0	0	0	0	0	27
17	Nagaland	2	0	0	0	0	0	2
18	Orissa	705	2	42	0	0	4	753
19	Punjab	921	6	100	0	0	2	1029
20	Rajasthan	2590	7	50	0	0	0	2647
21	Sikkim	5	0	0	0	0	0	5
22	Tamil Nadu	812	7	101	0	0	0	920
23	Tripura	30	1	4	0	0	1	36
24	Uttar Pradesh	44,186	18	259	0	1	96	44560
25	West Bengal	779	8	76	0	0	2	865
26	A & N Islands	23	0	2	0	0	0	25
27	Chandigarh	132	0	3	0	0	0	135
28	D & Nagar Haveli	5	0	0	0	0	0	5
29	Daman & Diu	11	0	0	0	0	0	11
30	Delhi	4984	3	29	0	0	11	5027
31	Lakshadweep	0	0	0	0	0	0	0
32	Pondicherry	31	0	1	0	0	0	32
33	Chhattisgarh	436	2	52	0	0	1	491
34	Jharkhand	1474	4	62	0	0	0	1540
35	Uttaranchal	1770	1	10	0	0	8	1789
36	Foreigners	85	0	0	0	0	0	85
	<b>Total</b>	<b>72,548</b>	<b>139</b>	<b>1,591</b>	<b>4</b>	<b>5</b>	<b>157</b>	<b>74,444</b>

**Statement Showing State-Wise Disposal of Cases  
During the Year 2005-2006**

S.No.	Name of the State / Union Territory	Dismissed in Limini	Disposed off with Directions	Concluded After Receipt of Reports			Total
				Complaints Cases	Custodial Death cases	Encounter Death Cases	
1	2	3	4	5	6	7	8
0	All India	3	1	1	0	0	5
1	Andhra Pradesh	413	118	162	122	2	817
2	Arunachal Pradesh	12	2	4	2	0	20
3	Assam	104	14	45	55	2	220
4	Bihar	2896	812	973	186	3	4870
5	Goa	18	8	11	2	0	39
6	Gujarat	362	86	193	63	0	704
7	Haryana	1556	698	1010	77	1	3342
8	Himachal Pradesh	98	25	44	4	0	171
9	Jammu & Kashmir	103	25	130	2	0	260
10	Karnataka	292	69	102	59	2	524
11	Kerala	128	24	40	94	0	286
12	Madhya Pradesh	1710	343	440	55	3	2551
13	Maharashtra	654	248	620	203	6	1731
14	Manipur	11	8	12	0	0	31
15	Meghalaya	11	3	4	11	1	30
16	Mizoram	16	6	3	1	0	26
17	Nagaland	1	1	6	0	0	8
18	Orissa	447	100	198	52	0	797
19	Punjab	567	172	449	132	0	1320
20	Rajasthan	1655	550	527	88	0	2820
21	Sikkim	3	1	1	0	0	5
22	Tamil Nadu	470	147	263	51	0	931
23	Tripura	18	3	6	0	0	27
24	Uttar Pradesh	22056	16321	9077	157	34	47645
25	West Bengal	515	107	223	129	0	974
26	A & N Islands	19	2	6	1	0	28
27	Chandigarh	84	28	23	2	0	137
28	D & Nagar Haveli	4	1	0	0	0	5
29	Daman & Diu	9	2	1	0	0	12
30	Delhi	3007	1167	2276	38	3	6491
31	Lakshadweep	0	0	0	0	0	0
32	Pondicherry	23	3	6	1	0	33
33	Chhattisgarh	298	71	62	41	0	472
34	Jharkhand	1022	247	305	53	2	1629
35	Uttaranchal	1050	514	308	10	1	1883
36	Foreigners	56	20	3	0	0	79
	<b>Total</b>	<b>39,691</b>	<b>21,947</b>	<b>17,534</b>	<b>1,691</b>	<b>60</b>	<b>80,923</b>



**State/Union Territory-Wise Statement of Category of Report Cases  
Disposed off During the Year 2005-2006**

S.No.	Name of the State/Union Territory	Disappearance	False implication	Custodial Violence	Illegal Arrest	Unlawful Detention	Failure in Taking Action	Alleged Fake Encounters	Other Police Excesses	Total
1	2	3	4	5	6	7	8	9	10	11
0	All India	0	0	0	0	0	0	0	0	0
1	Andhra Pradesh	0	6	0	5	6	25	3	38	83
2	Arunachal Pradesh	0	0	0	0	0	1	0	0	1
3	Assam	1	2	0	0	2	5	1	15	26
4	Bihar	2	62	0	1	11	279	3	161	519
5	Goa	0	1	0	0	0	2	0	2	5
6	Gujarat	0	17	0	3	6	17	0	51	94
7	Haryana	1	42	0	18	50	353	0	178	642
8	Himachal Pradesh	0	1	0	0	0	8	0	7	16
9	Jammu & Kashmir	0	2	0	1	7	7	1	32	50
10	Karnataka	0	5	0	2	6	13	0	28	54
11	Kerala	0	0	1	0	0	3	0	10	14
12	Madhya Pradesh	0	14	0	3	8	97	1	81	204
13	Maharashtra	0	22	0	1	13	76	2	68	182
14	Manipur	0	0	0	0	2	0	0	0	2
15	Meghalaya	0	0	0	0	0	0	0	2	2
16	Mizoram	0	0	0	0	0	1	0	0	1
17	Nagaland	0	1	0	0	0	1	0	1	3
18	Orissa	0	7	0	0	4	36	0	27	74
19	Punjab	0	20	0	5	30	85	0	98	238
20	Rajasthan	1	22	1	3	14	82	0	96	219
21	Sikkim	0	0	0	0	0	0	0	1	1
22	Tamil Nadu	1	12	0	7	16	33	0	64	133
23	Tripura	0	0	0	0	0	0	1	2	3
24	Uttar Pradesh	10	226	4	103	358	1662	29	2218	4610
25	West Bengal	0	10	0	2	3	44	0	54	113
26	A&N Islands	0	0	0	0	0	3	0	0	3
27	Chandigarh	0	2	0	0	0	6	0	3	11
28	Dadra & Nagar Haveli	0	0	0	0	0	0	0	0	0
29	Daman & Diu	0	0	0	0	0	1	0	0	1
30	Delhi	2	98	1	21	181	444	1	819	1567
31	Lakshadweep	0	0	0	0	0	0	0	0	0
32	Pondicherry	0	0	0	0	0	1	0	1	2
33	Chhattisgarh	0	4	0	0	1	9	0	11	25
34	Jharkhand	0	25	0	2	23	61	2	70	183
35	Uttaranchal	1	5	0	6	0	42	1	110	165
36	Foreigners	0	0	0	0	0	0	0	0	0
	<b>Total</b>	<b>19</b>	<b>606</b>	<b>7</b>	<b>183</b>	<b>741</b>	<b>3397</b>	<b>45</b>	<b>4248</b>	<b>9246</b>

**State/Union Territory-Wise Statement of Category of Report Cases  
Disposed off During the Year 2005-2006**

S.No.	Name of the State / Union Territory	Indignity to Women	Sexual Harassment	Abduction Rape & Murder	Dowry Death or its attempt	Dowry Demand	Exploitation of Women	Rape of Women	Total
12	13	14	15	16	17	18	19	20	21
0	All India	0	0	0	0	0	0	0	0
1	Andhra Pradesh	1	2	1	5	3	3	3	18
2	Arunachal Pradesh	0	0	0	0	0	0	0	0
3	Assam	0	0	0	0	0	0	0	0
4	Bihar	10	10	27	85	14	8	35	189
5	Goa	0	0	0	1	0	0	0	1
6	Gujarat	1	0	1	5	0	4	1	12
7	Haryana	7	10	42	31	32	8	15	145
8	Himachal Pradesh	0	0	1	1	0	0	1	3
9	Jammu & Kashmir	1	0	1	0	1	0	2	5
10	Karnataka	1	0	1	5	1	2	0	10
11	Kerala	0	0	1	0	0	1	2	4
12	Madhya Pradesh	6	2	10	33	10	4	8	73
13	Maharashtra	3	4	4	6	4	2	2	25
14	Manipur	0	0	0	0	0	0	0	0
15	Meghalaya	0	0	0	0	0	0	0	0
16	Mizoram	0	0	0	0	0	0	0	0
17	Nagaland	0	0	0	0	0	0	0	0
18	Orissa	5	3	3	7	8	1	2	29
19	Punjab	2	2	5	7	6	4	3	29
20	Rajasthan	6	3	24	40	16	10	25	124
21	Sikkim	0	0	0	0	0	0	0	0
22	Tamil Nadu	4	3	4	5	9	1	7	33
23	Tripura	1	0	0	1	0	0	0	2
24	Uttar Pradesh	129	208	586	894	488	171	308	2784
25	West Bengal	0	0	3	8	3	2	0	16
26	A&N Islands	0	0	0	1	0	0	0	1
27	Chandigarh	0	0	0	0	0	1	0	1
28	Dadra & Nagar Haveli	0	0	0	0	0	0	0	0
29	Daman & Diu	0	0	0	0	0	0	0	0
30	Delhi	12	26	48	33	41	21	17	198
31	Lakshadweep	0	0	0	0	0	0	0	0
32	Pondicherry	0	1	1	0	1	0	0	3
33	Chhattisgarh	0	1	3	2	2	3	1	12
34	Jharkhand	4	2	2	17	7	0	16	48
35	Uttaranchal	3	4	15	9	17	4	5	57
36	Foreigners	0	0	0	0	1	0	0	1
	<b>Total</b>	<b>196</b>	<b>281</b>	<b>783</b>	<b>1,196</b>	<b>664</b>	<b>250</b>	<b>453</b>	<b>3,823</b>

**State/Union Territory-Wise Statement of Category of Report Cases  
Disposed off During the Year 2005-2006**

S.No.	Name of the State / Union Territory	Child Labour	Child Marriage	Bonded Labour	Harassment of Prisoners	Lack of Medical Facilities in Jails	Jail Conditions	Atrocities on SC/ST	Communal Violence	Others	Total	Grand Total (11+21+33)
22	23	24	25	26	27	28	29	30	31	32	33	34
0	All India	0	0	0	0	0	0	0	0	1	1	1
1	Andhra Pradesh	2	0	0	1	1	2	1	0	54	61	162
2	Arunachal Pradesh	0	0	0	0	0	0	0	0	3	3	4
3	Assam	0	0	0	1	0	1	0	0	17	19	45
4	Bihar	2	0	1	15	8	15	29	1	194	265	973
5	Goa	0	0	0	5	0	0	0	0	0	5	11
6	Gujarat	0	0	1	7	4	2	3	1	69	87	193
7	Haryana	2	2	30	0	2	3	10	0	174	223	1010
8	Himachal Pradesh	0	0	0	1	0	0	1	0	23	25	44
9	Jammu & Kashmir	0	0	0	2	0	1	1	0	71	75	130
10	Karnataka	2	1	1	0	2	2	2	1	27	38	102
11	Kerala	0	0	0	10	0	1	2	0	9	22	40
12	Madhya Pradesh	1	2	4	14	1	4	10	0	127	163	440
13	Maharashtra	1	1	0	0	3	14	4	1	389	413	620
14	Manipur	0	0	0	0	0	0	0	0	10	10	12
15	Meghalaya	0	0	0	0	0	1	0	0	1	2	4
16	Mizoram	0	0	0	0	0	0	0	1	1	2	3
17	Nagaland	0	0	0	0	0	0	0	0	3	3	6
18	Orissa	0	0	2	1	0	7	2	0	83	95	198
19	Punjab	0	1	62	8	3	1	7	0	100	182	449
20	Rajasthan	0	2	6	12	2	12	28	0	122	184	527
21	Sikkim	0	0	0	0	0	0	0	0	0	0	1
22	Tamil Nadu	1	0	2	2	2	4	12	0	74	97	263
23	Tripura	0	0	0	0	0	1	0	0	0	1	6
24	Uttar Pradesh	4	23	26	33	19	24	134	0	1420	1683	9077
25	West Bengal	0	0	0	4	1	0	0	0	89	94	223
26	A&N Islands	0	0	0	0	0	0	0	0	2	2	6
27	Chandigarh	0	0	0	1	0	0	1	0	9	11	23
28	D & Nagar Haveli	0	0	0	0	0	0	0	0	0	0	0
29	Daman & Diu	0	0	0	0	0	0	0	0	0	0	1
30	Delhi	6	0	1	33	13	6	12	0	440	511	2276
31	Lakshadweep	0	0	0	0	0	0	0	0	0	0	0
32	Pondicherry	0	0	0	0	0	0	0	0	1	1	6
33	Chhattisgarh	0	0	0	1	0	2	2	0	20	25	62
34	Jharkhand	3	0	0	1	0	3	10	0	57	74	305
35	Uttaranchal	0	0	0	0	0	0	3	0	83	86	308
36	Foreigners	0	0	0	0	0	0	0	0	2	2	3
	<b>Total</b>	<b>24</b>	<b>32</b>	<b>136</b>	<b>152</b>	<b>61</b>	<b>106</b>	<b>274</b>	<b>5</b>	<b>3,675</b>	<b>4,465</b>	<b>17,534</b>

**Statement Showing State-Wise Number of Cases Pending  
As on 31/3/2006**

S.No.	Name of the State/Union Territory	Cases Awaiting Preliminary Consideration				Pendency of cases where reports have either been received or waited from the State Authorities			
		Intimation About				Complaints	Custodial Death Cases	Encounter Death Cases	Total
		Complaints	Custodial Deaths	Encounter Deaths	Total				
1	2	3	4	5	6	7	8	9	10
1	Andhra Pradesh	15	3		18	782	390	22	1194
2	Arunachal Pradesh	1			1	29	7	0	36
3	Assam	1	1		2	231	53	12	296
4	Bihar	291			291	3737	523	6	4266
5	Goa	1			1	22	7	0	29
6	Gujarat	46	2		48	510	200	5	715
7	Haryana	274	1		275	1082	119	6	1207
8	Himachal Pradesh	6			6	82	4	0	86
9	Jammu & Kashmir	13			13	403	5	2	410
10	Karnataka	5	2		7	433	213	10	656
11	Kerala	1	1		2	158	73	1	232
12	Madhya Pradesh	21	2		23	925	107	10	1042
13	Maharashtra	133	5	1	139	1349	205	30	1584
14	Manipur	0			0	103	2	2	107
15	Meghalaya	1			1	21	10	1	32
16	Mizoram	3			3	13	3	0	16
17	Nagaland	0			0	23	1	0	24
18	Orissa	8			8	630	98	3	731
19	Punjab	110	1		111	833	159	0	992
20	Rajasthan	208			208	1167	73	33	1273
21	Sikkim	0			0	4	0	0	4
22	Tamil Nadu	18	2		20	814	384	9	1207
23	Tripura	0			0	55	11	1	67
24	Uttar Pradesh	1873	8	2	1883	16307	796	231	17334
25	West Bengal	103	2		105	606	75	8	689
26	A & N Islands	1			1	6	2	0	8
27	Chandigarh	7			7	48	11	0	59
28	D & Nagar Haveli	0			0	5	0	0	5
29	Daman & Diu	1			1	3	0	0	3
30	Delhi	643			643	2346	82	26	2454
31	Lakshadweep	0			0	1	0	0	1
32	Pondicherry	0			0	20	3	0	23
33	Chhattisgarh	34	1		35	178	57	2	237
34	Jharkhand	84	2		86	1011	158	1	1170
35	Uttaranchal	48			48	761	38	19	818
36	Foreigners	3			3	69	0	0	69
	<b>Total</b>	<b>3,953</b>	<b>33</b>	<b>3</b>	<b>3,989</b>	<b>34,771</b>	<b>3,869</b>	<b>440</b>	<b>39,080</b>
<b>3,989+39,080=43,069</b>									

**Intervention on behalf of National Human Rights Commission of India on 'Right To Development' at first session of the United Nations Human Rights Council by Dr. Justice A.S. Anand, Chairperson National Human Rights Commission of India (former Chief Justice of India) on 26 June 2006 at Geneva.**

Mr. President,

I speak on behalf of the National Human Rights Commission of India in my capacity as its Chairperson. May I thank you for giving me the floor at the first session of the Human Rights Council, from which, the world community has high expectations.

Mr. President,

Human dignity is the spine of human rights. Human dignity is, infact, the very foundation on which Human Rights rest. Emphasis on human dignity is enshrined in the UN Charter, the Universal Declaration of Human Rights and several covenants as also in the Constitution of India, which proclaims 'dignity of individual' as a core value in its Preamble. Human dignity is, by its nature, indivisible and, therefore, violation of one human right cannot be compensated by enhancement of another. The aim of human rights is empowerment of people through human development. Human rights are inter-dependent and inter-related and have a direct relationship with human development. Universality of human rights demand eradication of global inequities and to achieve this end, the importance of 'Right to Development' cannot, but, be emphasized.

Human development has come to be accepted as an enhancement of capabilities, widening of choices and an expansion of freedoms. On the recognition of Human Development Index as a new measure of development, the Human Development Reports of the past decade have emphasized the integration of human rights with human development as a true measure of progress.

It is important to appreciate that development, which has to be equitable, cannot brook any discrimination in the sharing of the benefits and in the activities producing the benefits between different people, irrespective of gender or caste, religion or geographical boundaries. The wide global disparities in different parts of the world are shown to be linked with varying level of human development. Global disparities must be minimized to ensure that the minimum needs of everyone throughout the world are met. Strategies must be developed to achieve this result. It is only when the potential of all human beings is fully realized that we can talk of true human development. Empowerment of the people through human development is the aim of human rights.

Poverty is the biggest violator of human rights. Its eradication is vital for development. Poverty should not be treated as merely a developmental project. The agenda must include provisions of all such basic amenities like health care, safe drinking water, adequate nutrition, educational facilities, etc. Prof. Amartya Sen, in his *Development as Freedom* claims that "poverty must be seen as deprivation of basic capabilities rather than merely as low incomes, which is the standard criterion of poverty. Poverty can be traced to inadequacies and inequalities in the distribution of opportunities - economic, social, cultural and political - between women and men, across regions, within communities and between rural and urban areas. Poverty has to be eradicated through the process of human development.

For a programme of eradication of poverty, one has to look at a number of indices together, and a right to development approach would imply considering improvement in each of the indices through schemes that have to be implemented following the rights approach where the beneficiaries are empowered to participate in the decision making and executing the different schemes, transparently and accountably, and sharing the benefits equitably.

Statistics provided by The Human Development Reports demonstrate that there exist massive inequalities, more particularly in the developing countries, which render the enjoyment of human rights rather illusory. Political freedom would not have much significance or meaning for millions of poverty stricken people in various countries, who suffer the social evils flowing from poverty, unless economic, social and cultural rights are assured to them.

The linkage between the realization of ESCR and the development debate cannot be underscored. Similarly, the linkage between good governance and human rights cannot be denied. Essentially, we are talking of a situation where none of these above factors can be tackled in isolation without concurrently addressing the other issues as well. The Indian Commission has taken the view that the Right to Development is inherent to a life with dignity under Article 21 of the Constitution, which is an enforceable right. Recognizing the importance of the ESCR, the OHCHR and the Indian Commission had organized a Round Table on Economic, Social and Cultural Rights in New Delhi in November-December 2005.

One other important factor having a bearing on the development debate is the issue of corruption as a violator of human rights. Good governance is not possible unless it is free from corruption. To bring the issue of corruption to the forefront, the NHRC, India recently organized a conference on the 'Impact of corruption on good governance and human rights'. The idea behind the conference was to highlight the importance of tackling this issue as it is seen to be one of the biggest drains on the resources of a country. No country can afford to close its eyes to this malaise.

## Annexure 6

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These are deeply troubled times in which we live. Everywhere the pervasive threat of terrorism has cast a pall on efforts to promote and protect human rights, for terrorism is deeply hostile to human rights, including the most fundamental of all rights, the right to life itself. Terrorism hinders development and, thereby, affects human rights. The Indian Commission has consistently held the view that the actions, which any State takes to fight and triumph over this evil must themselves fall within the parameters of the Rule of Law and conform to the high standards that we have set for ourselves - in our Constitutions, our laws, and in the great human rights treaties adopted since the founding of the United Nations. The Indian Commission firmly believes that there can be no selective approach while dealing with terrorism and there has to be a united and concerted effort to fight the menace, without chilling the civil liberties of the citizens.

With the formation of the Human Rights Council, we need to address the imbalances that exist and which threaten the values and, thus, cause inequalities. It would be in the fitness of things that we aim at ensuring distributive justice in the national as well as the global context. To achieve that, there has to be a paradigm shift from Human Development as seen merely in terms of economic growth, to Human Development as a basic human right. Human Rights Council needs to move towards bringing the Rights perspective on the centre stage in the debate over equality of opportunities.

The universality of human rights with focus on human dignity and concern for accountability, makes them uniquely appropriate for re-shaping development, cooperation, fostering good governance and combating discrimination, disease and despair with the ultimate aim of reaching the goal of achieving 'human rights for all'.

Thank you.

**Letter of the Chairperson, NHRC dated April 8, 2005 to the Chief Ministers / Administrators of all States/Union Territories regarding a need to ensure that the printing of books in Braille go simultaneously with the printing of regular books**

D.O.No.11/9/2002-PRP&P

8 April 2005

Dear Chief Minister,

The Commission is deeply concerned about the reported non-availability of books in Braille for blind students studying under the State Education Board.

The Commission deliberated on this issue. The Commission is of the view that there is a need to ensure that the printing of books in Braille go simultaneously with the printing of regular books. In order to ensure timely availability of Braille Text Books, the services of high speed computerized Braille presses could be utilized. This would ensure education in an appropriate environment for blind students, in accordance with Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Besides, the Commission would also like to recommend that the State Education Board may take steps to print books in Braille and work on proper distribution systems, so that books prescribed by the State Board (SCERT) are available to visually-challenged persons at the beginning of each academic session and such students do not suffer any hardship on that account.

With regards,

Yours sincerely,

Sd/-  
(A.S. Anand)

**To**

**Chief Ministers/Administrators of all States/UTs**



### **Plan of Action to Prevent and End Trafficking in Women and Children in India**

Trafficking in women and children, both male and female, is a grave violation of several human rights. Given the existing trafficking scenario in India and as a 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 then United Nations High Commissioner for Human Rights had requested each National Institution in the region to nominate an appropriate individual to serve as a Focal Point on Human Rights of Women, including Trafficking. Accordingly, in the year 2001, the National Human Rights Commission designated one of its Members to serve as the Focal Point on Human Rights of Women, including Trafficking. The Focal Point undertook several activities, which included an Action Research on Trafficking in Women and Children in India and a National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy.

2. Both the Report of the Action Research on Trafficking in Women and Children in India, that was conducted by the National Human Rights Commission in collaboration with UNIFEM and the Institute of Social Sciences and the Report of the National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy, that was conducted by the Commission in collaboration with PRAYAS, a field Action Project of the Tata Institute of Social Sciences, Mumbai have made a number of recommendations and suggestions whereby trafficking in women and children could be prevented and combated. These Reports were released to the public in August, 2004. Copies of both the Reports were forwarded to concerned officials in all the States/Union Territories for compliance. So far, very few States have reported back to the Commission with regard to the action taken by them.

3. In order that these recommendations and suggestions are implemented in true spirit, the Commission is of the view that it is necessary to have a comprehensive Plan of Action (PoA) to prevent and end trafficking in women and children.

4. The main objectives of the Plan of Action are to:

- Operationalise the recommendations and suggestions of the 'Action Research on Trafficking in Women and Children in India' and the 'National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy' in true spirit.
- Promote steps/activities at the Centre, State, District, Block and Village levels to prevent and end trafficking by involving all stakeholders.

5. Keeping in view the objectives, the PoA presented below consists of action points grouped under the following broad heads:

- Promotion and Protection of Human Rights
- Formulation of an Appropriate Legal Framework
- Protection and Support
- Prevention of Trafficking
- Training, Education and Awareness

### **Promotion and Protection of Human Rights**

- Adoption of a 'human rights perspective' in all measures taken to prevent and end trafficking in women and children.
- Development of standard minimum guidelines for all officials and service providers with regard to pre-rescue, rescue and post-rescue operations including rehabilitation, repatriation and reintegration of trafficked victims. These guidelines should be gender-responsive and lay emphasis on the primacy of human rights of those who have been trafficked, including referral to other service providers in order to prevent revictimisation. These could be prepared in the form of information kits or booklets or handbooks or do's and don'ts or be made part of the rules issued under the concerned law and should also specify the accountability of the agencies concerned in providing services. This would enable all officials and service providers - judicial officers, prosecutors, lawyers, law enforcement officials, medical and psycho-social professionals, functionaries manning homes/agencies of different kinds and others, to discharge their functions and duties effectively.
- Ensure that trafficked children, including girl children, are dealt with separately from adult trafficked women in terms of laws, policies, programmes and interventions. The best interest of the child should be of prime consideration in all actions concerning trafficked children. Steps should also be initiated to ensure that children, who are victims of trafficking, are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.

### **Formulation of an Appropriate Legal Framework**

- The Government of India having ratified the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the two Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts; and on the Sale of Children, Child Prostitution and Child Pornography and having signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, 2000, there is a need to

## Annexure 8

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bring a new national law or amend the existing law in consonance with international standards. The new or amended law should be comprehensive enough to address all forms of trafficking including provision for stringent punishments and effective penalties. For example, incorporating legislative provision for confiscation of the assets and proceeds of trafficking and related offences. Wherever possible, the legislation should specify that the confiscated proceeds of trafficking would be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a Compensation Fund for victims of trafficking and the use of confiscated assets should finance such a fund.

- The new or amended law should ensure that trafficked victims are prevented from being prosecuted, detained or punished for they are victims of situation beyond their control. Likewise, it should be ensured that protection of trafficked victims is built into the anti-trafficking legislation itself. The protection offered in no way should be made conditional upon the willingness of the trafficked victim to cooperate in the legal proceedings.
- The Central and State Governments/Union Territory Administrations should review current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as a cover for trafficking, such as marriage bureaus, employment agencies, travel agencies, hotels and escort services.
- The law enforcement machinery should take effective measures to investigate, prosecute and adjudicate trafficking, including its related activities, irrespective of the fact whether these are committed by governmental or by non-state actors.
- In the light of international commitments made by the Government of India, the Union Ministry of Women and Child Development should review the Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children prepared by them.
- The services of nodal officers - one representing the police department dealing with investigation, detection, prosecution and prevention of trafficking, and the other representing the welfare agencies dealing with rescue, rehabilitation and economic/social empowerment of the victims and those at risk - appointed by the State Governments/Union Territories with the suggestion of NHRC should be utilised for all purposes.

### **Protection and Support**

#### **Rescue**

- The Central and State Governments should take effective measures to plan and rescue all victims of trafficking in the country, who are being victimised for varied purposes, such as, commercial sexual exploitation, domestic service, begging, child labour, public sports, etc.

- While conducting rescue operation(s), it should be ensured that the rescue team consists of both men and women police officers and representatives of non-governmental organisations/local inhabitants. This apart, due care should be taken by all concerned to ensure that trafficked victims are not unnecessarily harassed or intimidated during the course of rescue operations. Adoption of humane and rights based approach would go a long way in building the faith of the victims in the criminal justice system. This would also facilitate the overall rehabilitation and reintegration of the victims.
- On being rescued, all trafficked victims should be provided access to legal, medical and counselling services irrespective of their age. It should also be ensured that they are treated with dignity and not humiliated by the police, medical personnel or the court.
- It should be ensured by all concerned that any victim who is rescued is examined by a Registered Medical Practitioner for the purpose of determination of age and for the detection of injuries/diseases.
- In cases, where the victim rescued is not a child, she should not be prima facie treated as a criminal accused of 'soliciting' clients. Steps should be taken to ensure that correct provisions of law are applied and that the FIR is not stereotyped.
- All efforts should be made to ensure anonymity and privacy of the victims during and after rescue.

### **Rehabilitation and Reintegration**

- Rehabilitation and reintegration of rescued victims being a long-term process, efforts should be made to consider the specific short and long-term needs of each individual victim based on their age, education, skills, etc. Efforts as far as possible should be non-punitive and aimed at protecting their rights.
- The Central and State Governments should declare names of fit persons and fit institutions for providing safe custody to victims of trafficking. This list should be made available to the police, courts, non-governmental organisations and civil society.
- Accordingly, rescued victims should be placed either in an institutional or non-institutional setting with access to legal, medical and counseling services in order to restore their self-confidence and self-esteem. Special provision should be provided to those who have contracted HIV/AIDS.
- The Central and State Governments should enable victims of trafficking to access both formal and non-formal education structures. Formal education should be made available to those victims, who are still within the school going age, while non-formal education should be made accessible to adults.

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- The Central and State Governments, in partnership with non-governmental organizations, should provide gender sensitive market driven vocational training to all those rescued victims, who are not interested in education. Government and non-governmental organisations should also work together to develop partnership with public and private sector employers in order to provide training/facilitate work placement as part of the reintegration process. Due care should be taken to give ample choice to victims, so that rehabilitation and reintegration becomes a holistic process, which respects their human rights.
- Involvement of the community in the rehabilitation and reintegration process of trafficked victims. This means involving the families of victims and the community by enhancing their awareness about trafficking in general and the impact of trafficking on the individual.
- It is imperative on the part of the Central and State Governments to monitor the rehabilitation and reintegration of the rescued victims.
- The Central and State Governments should make available to rescued victims various developmental and anti-poverty schemes meant for the general population, both in the rehabilitation and reintegration phase.
- Upgradation of the conditions and capacities of institutions/homes run by the Government and an increase in the number of such institutions/homes not only in the cities, but also at the district and taluka levels, are of utmost necessity.
- Recruitment of adequate number of trained counsellors and social workers in institutions/homes run by the government independently or in collaboration with non-governmental organisations.
- Appointment of trained social workers and counsellors at police stations, courts and homes/institutions of different kinds meant for accommodating victims of trafficking.
- Anti-trafficking cells/units should be set up at the Centre, State and District level to facilitate and monitor the process of rescue, rehabilitation, reintegration and repatriation.

### **Prevention of Trafficking**

- Empowerment of the vulnerable sections living in remote corners of the country by extending to them various welfare, development and anti-poverty schemes of the Government of India, such as, Swadhar, Swayamsidha, Swa-Shakti, Swawlamban, Balika Samridhi Yojana, Support to Training and Employment Programme for Women (STEP), Kishori Shakti Yojana, etc. This would provide scope for ample economic opportunities for the women and other traditionally disadvantaged groups in their native place itself and would reduce their vulnerability to trafficking.
- Improvement of children's access to schools, especially those affected or dependents, in particular the girl children, in remote and backward parts of the country. Efforts

should also be made to incorporate sex-education and gender sensitive concerns in the school curriculum, both at the primary and secondary levels.

- Awareness generation and legal literacy on economic rights, particularly for women and adolescent girls should be taken up. Presently, there seems to be insufficient knowledge and information among the people to make informed decisions that affect their lives.
- Particular attention should be paid to the adolescents, who are both potential victims and clients. It would be useful if appropriate information and value clarification is given to them on issues related to 'sexuality' and 'reproductive health'. This exercise would be beneficial in view of the growing evidence of increased pre-marital sexual activity among adolescents and the looming threat of HIV/AIDS within this group.
- Device of necessary mechanisms for concerted coordination between the judiciary, police, government institutions and non-governmental organisations/civil society groups with regard to prevention and combating strategies. This kind of a government-public network would make the non-governmental organisations/community responsible to act as watchdogs and informants on traffickers and exploiters.
- Setting up of a national database/web portal under the aegis of National Crime Records Bureau. The main purpose of this kind of a mechanism is to create a help desk in providing information on missing persons including women and children, alert notice on suspected traffickers, anti-trafficking networks, do's and don'ts to be followed while dealing with victims of trafficking, etc.
- Culturally sanctioned practices like the system of devadasis, jogins, bhavins, etc. which provide a pretext for trafficking of women and children for sexual exploitation should be addressed suitably.
- Adequate publicity, through print and electronic media including childlines and women helplines about the problem of trafficking and its ramifications.

### **Training, Education and Awareness**

- Deepen knowledge and understanding through sensitisation and training programmes for judicial officers, law enforcement personnel (police, immigration, border control, customs officials, medical professionals/ personnel and labour inspectors) and other concerned government officials on the issue of 'trafficking' as well as 'gender and human rights'. These training programmes could be organised in conjunction with the Ministries of Home Affairs, Health, Social Justice and Empowerment, Ministry of Women and Child Development and the National Human Rights Commission.
- In order to ensure uniformity and quality in these sensitisation and training programmes, standardised specialized modules for each category of officials should be developed, taking into consideration their different roles and responsibilities.

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- The module of anti-trafficking should form a core component of the curriculum of National Police Academy, Hyderabad; Lal Bahadur Shastri National Academy of Administration, Mussoorie and all police training institutes. This would enable all probationers to know about the problem of trafficking and its ramifications.
- Build up and strengthen the capacity of non-governmental organisations that are currently involved in rescue, rehabilitation, reintegration and repatriation work.
- Till such time, a new law to deal with the problems of trafficking is framed or amendments are made in the existing law, the police officers, prosecutors and lawyers should be sensitized to invoke provisions of the Immoral Traffic (Prevention) Act, 1956 in conjunction with the Indian Penal Code, the Juvenile Justice (Care and Protection of Children) Act, 2000 and other laws.
- Development of training material consisting of good practice models, applicable treaties and laws, important judgments, rescue procedure, case studies on rehabilitation of victims, etc. to ensure that the knowledge, information imparted in various training/sensitization programmes is of uniform nature.
- Records should be maintained regarding the officials/personnel who have been trained and the type of training received, so that later refresher courses could be organised for them to update them on latest information and techniques.
- Mass scale information campaigns on the issue of trafficking for the general public should be organised. The tourism industry including airlines, hotels, travel agencies, beer bars, holiday resorts, etc. should also be sensitized to the problem of trafficking.
- The media should play an important role in informing and educating the public through newspaper, radio and other modes of communication, and should be targeted as a key partner in preventing and ending trafficking. It would be ideal if media practitioners were first sensitized about the issue of trafficking and its complexities, as this would ensure appropriate reporting on facts rather than sensationalizing the issue.

Many of the action points spelled out above have also been reflected in the final Concluding Statement and Plan of Action that emanated out of the Regional Workshop on Human Trafficking and National Human Rights Institutions: Cooperating to End Impunity for Traffickers and to Secure Justice for Trafficked People that was organised by the Asia Pacific Forum of National Human Rights Institutions (APF) in collaboration with the Human Rights and Equal Opportunity Commission of Australia (HREOC) in Sydney, Australia from 20 to 23 November, 2005. For example, action points spelt out under the head 'Education' in Sydney Workshop's Plan of Action, have also been enumerated in NHRC's Plan of Action under the head 'Training, Education and Awareness'. Similarly, both the Action Plans have suggested 'formulation or amendment of laws relating to trafficking in conformity with the international standards and local requirements'. Likewise, both the Action Plans talk about 'needs for a comprehensive human rights based approach for repatriation, rehabilitation and reintegration of trafficked victims'. A copy of the Sydney Workshop's Plan of Action is appended as **Annexure 13**.

### Campaign Against Child Marriage

(Action taken by the State Governments/Union Territories)

Sl.No.	Name of the State/UT	Action Taken
(1)	(2)	(3)
1.	Andhra Pradesh	<b>The Collector &amp; District Magistrate, Karimnagar</b> has informed that in order to curb the practice of child marriage, they have conducted rallies at District, Project, Mandal & Village levels, organised Workshops on social issues like Child Marriages, Dowry menace, Trafficking, etc. and supplied posters to display in the important places from village level to district level. The Superintendent of Police, Karimnagar is booking cases under the Child Marriage Abolition Act.
2.	Assam	The <i>Chief Minister</i> has issued necessary instructions for organising awareness programmes/campaigns for the eradication of child marriage.
3.	Chhattisgarh	<p>The <i>Chief Minister</i> was getting the needful done in this regard.</p> <ol style="list-style-type: none"> <li>1) Appeals for prevention of child marriage have been made by the Chief Minister and the Minister for Women and Child Development and Social Welfare.</li> <li>2) The Chief Secretary and the Secretary, Women and Child Development have instructed all the District Collectors to undertake mass awareness programmes for prevention of child marriage.</li> <li>3) Action has been initiated from Additional Chief Secretary, Home Department to issue instructions for prevention of child marriage to the Superintendents of Police of all the Districts and Incharge of the Police Stations.</li> <li>4) All Child Development Programme Officers have been instructed to take appropriate action to prevent child marriage in their respective areas.</li> <li>5) District Collectors have written letters to the Sarpanches about the evils of child marriage and legal provisions in this regard.</li> </ol>



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		<p>6) Police Superintendents of the Districts often write to all the Police Stations of the Districts to prevent the evil practice of child marriage and instruct them to take appropriate legal action against this practice.</p> <p>7) On the ground level, general people has been made aware of the evil effects of child marriage through organisation of women awareness camps and information communication camps.</p> <p>8) In the village level, Panchayat Pradhans have been made aware of the punishable provisions of the child marriage and slogans have been written against this practice.</p> <p>9) Messages have been circulated through posters and pamphlets against this evil.</p> <p>10) Comic dramas have also been organised to spread awareness.</p>
4.	Gujarat	<p><b>Minister, Social Justice &amp; Empowerment, Scheduled Caste Welfare, Welfare of Socially &amp; Educationally Backward Class, Labour &amp; Employment</b> has informed that Government of Gujarat intimated all concerned Government authorities to be alert and to take immediate preventive steps and to do needful to prevent child marriages on the Akha Teej. They have also circulated the order of the Hon'ble Supreme Court issued on February 28, 2005 in the Civil Writ Petition No.212/2003 regarding prevention of child marriages to all District Collectors and Superintendent of police of the State.</p> <p>The Directorate of Social Defence has been implementing the Child Marriage Restraint Act, 1929 right earnest and specific implementation machinery has been created district-wise since 1971 in a phased manner. The Child Marriage Prevention Officers have created awareness in public against child marriage by wide publicity of the Act and its rules and by arranging awareness camps and are trying to control and eradicate this evil from society in restraining child marriage.</p> <p>The State Government is considering bringing legislation for compulsory registration of marriage.</p>
5.	Himachal Pradesh	<p>The <i>Chief Minister</i> has informed that child marriages do not usually take place in the State. He has stated that Himachal Pradesh has fairly good literacy rate and the State Government is spending about 46% of its budget on social</p>

		sector. People are made conscious about the positive effect of late marriages through education and by way of awareness camps and campaigns launched by Government and non-Governmental agencies. The State will continue its endeavour to sustain this campaign in future as well with a view to check the evil of child marriage.
6.	Jammu & Kashmir	The <i>Chief Minister</i> has issued instructions to the concerned departments to take necessary action.
7.	Madhya Pradesh	<p>In order to bring the State to the 'Zero Child Marriage' level, Madhya Pradesh Government has undertaken very intense and coordinated awareness campaigns against child marriage on the occasion of Akshya Tritiya. On this occasion, special programmes have been prepared and sent to all the districts, on which the Chief Secretary; Principal Secretary and Secretary, Department of Women and Child Development; Principal Secretary, Home Department have instructed all the District Collectors for strict implementation. The Chief Minister and the Minister for Women and Child Development have also appealed to the Members of Parliament belonging to the States, Members of Legislative Assembly, Chairpersons of District Panchayats and other representatives of the public to cooperate in the prevention of child marriage.</p> <p>The Commissioner, Women and Child Development has also appealed to all the one lakh Anganwadi workers engaged in Integrated Child Development Scheme by issuing demi-official letters, so that child marriages do not take place in their areas. All these activities have had great impact on the prevention of child marriage.</p>
8.	Maharashtra	The <i>Chief Minister</i> was initiating appropriate action in this regard.
9.	Manipur	The <i>Chief Minister</i> has issued suitable instructions to the concerned officers for taking up necessary steps in this regard. Office of the IGP (Crime) has informed that the State does not have any reported case of child marriage.
10.	Nagaland	The State does not have any reported case of child marriage.

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11.	Punjab	The <i>Chief Minister</i> has asked the Department of Social Security to take necessary measures in this regard.
12.	Rajasthan	<ul style="list-style-type: none"> <li>➤ The <i>Chief Minister</i> has directed the Principal Secretary, Women &amp; Child Development <b>Department</b> to look into the matter and take further necessary action.</li> <li>➤ <b>Department of Women &amp; Child Development</b> has issued instructions to the District Collectors and other district level officials to take appropriate measures to prevent child marriages.</li> <li>➤ <b>The Addl. Chief Secretary, Department of Home Affairs &amp; Justice</b> has issued instructions to the Collectors and District Magistrates of the Districts vide letter dated February 18, 2005 to the effect that no child marriage be allowed to take place. Emphasis is also laid on educating the people of the desirability of marriages only after reaching the required age level.</li> </ul>
13.	Tamil Nadu	<b>Department of Social Welfare &amp; NMP</b> has informed that appropriate instructions have been issued to all the field level functionaries of ICDS programme to spread awareness against child marriage.
14.	West Bengal	The <i>Chief Minister</i> has issued instruction to all the concerned departments of the Government to further intensify the campaigns to educate the people against the evils of child marriage.
15.	Chandigarh	The <i>Administrator</i> has assured that the UT of Chandigarh would do everything possible to eliminate the practice of child marriage. They are also launching a four-pronged strategy to counter the tendency to female foeticide and that endeavour has generated a very positive response.
16.	Dadra & Nagar Haveli and Daman & Diu	No case of child marriage has been noticed in the village area where Anganwadi Centre under ICDS are running in the Daman District.
17.	Delhi	<b>Department of Social Welfare</b> has informed that appropriate directions have been issued to CDPOs, Supervisors and Anganwari workers working in ICDS projects, JJ clusters, villages and resettlement colonies to educate people as well as sensitize people against child marriage. A similar direction has been issued to the Officer Incharge of (RTE) Branch of the Department to plan out media campaigns on the same issue.

18.	Department of Women & Child Development, Government of India	<p><b><u>Joint Secretary (Dr. Loveleen Kacker)</u></b></p> <ol style="list-style-type: none"> <li>1) They have asked the State Governments to strictly implement the Child Marriage (Restraint) Act, 1929;</li> <li>2) State Governments have been asked to take necessary measures to prevent child marriages in their States;</li> <li>3) The proposal for amendment to the Child Marriage (Restraint) Act, 1929 is presently under consideration of a Parliamentary Standing Committee.</li> <li>4) They are launching a strong media campaign especially to target prevention of child marriages in the forthcoming festival season of Akshaya Teej.</li> </ol> <p>During 2004-05, a video spot on child marriage was telecast 120 times on Aaj Tak and 39 times on NDTV India private TV Channels by DAVP at the instance of DWCD for generating awareness among the people. Five episodes on prevention of child marriages were also produced and broadcast from 40 stations of Vividh Bharati and 15 primary channels of All India Radio through DWCD's weekly sponsored radio programme 'Akash Hamara Hai' in Hindi and regional languages for awareness generation across the country. Some more new video/audio spots on prevention of child marriages are being produced for airing from Doordarshan and All India Radio.</p> <p><b><u>Joint Secretary (Shri Chaman Kumar)</u></b></p> <p><b>Issued instructions to the States/UTs (Secretaries in-charge of ICDS Scheme) requesting them to issue suitable instructions to the concerned ICDS functionaries to organise awareness programme, campaigns, etc. to educate the adolescent girls/boys in particular and their parents and community in general against child marriage.</b></p>
19.	National Commission for Women	<p>The NCW was collaborating with the State Governments and the respective State Commissions for Women, particularly in the Northern States, for launching of <b>Bal Vivah Virodh Abhiyan</b>. They were also to launch media campaigns in the States and had also requested the Information and Broadcasting Ministry to generate awareness against the social evil in the rural areas. They have also requested the State Governments to gear up their state machinery to combat against the child marriages and create awareness about its adverse impact.</p>

**Statement of Dr. Justice A.S. Anand, Chairperson, NHRC of India  
at the 61<sup>st</sup> Session of the Commission on Human Rights  
under Agenda Item 18(b) (National Institutions and  
Regional Arrangement(s) Geneva, 13th April, 2005.**

Mr. Chairman,

Thank you for giving me the floor.

I rise to speak on behalf of the National Human Rights Commission of India of which I hold the Chair.

On behalf of the Indian Commission, I wish to place on record our deep sense of sorrow and grief on the loss of life and property in South and South-East Asia, including India, due to the calamity caused by the tsunami, which struck on December 26, 2004. We extend our heartfelt sympathies to the next of kin of those who lost their lives and to the victims who have been deprived of their basic needs, such as clean drinking water, food, shelter, clothing, means of livelihood and medical care. Keeping in view the rights issues raised in the wake of this calamity, the Commission took *suo motu* cognizance and issued notices to all concerned State Governments and the Central Government regarding equitable distribution of relief to the tsunami victims, maintenance of transparency and ensuring that those in the greatest need of relief and rehabilitation measures like the poor, destitute women and children are well taken care of. In order to protect and safeguard against trafficking and sexual abuse of young widows, girls and children, the Commission recommended that a computerized list of such persons, who have been rendered destitute by the disaster, be prepared. The repercussions of the tragedy present significant human rights challenges for all the affected countries. The situation calls for foresight, monitoring and an appropriate response from us all.

Mr. Chairman,

Our Commission renews its commitment to act in defence of the range of civil and political rights, as also economic, social and cultural rights, pertinent to the circumstances of our country. Our efforts are documented at some length in our Annual Reports to the Parliament, the monthly Newsletters that we publish and, increasingly, postings on our website.

The Commission is of the view that neglect of economic, social and cultural rights can drive the vulnerable sections of the society to the margins of human existence. It has, therefore, been making efforts to create an environment in which economic, social and cultural rights can be better promoted and protected. The decisions taken by the Commission on individual

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 complaints, its programmes and projects, aim to build a culture of human rights in the country.  
 By way of illustration:

The Indian Commission has consistently taken the view that the right to a life with human dignity, enshrined in India's Constitution, must result in the strengthening of measures to ensure that citizens, particularly those belonging to disadvantaged sections, have access to better and more comprehensive health care facilities. In furtherance of this ideal, the Commission held five regional Public Hearings in various parts of the country on the **Right to Health Care**. In these hearings, individuals or groups who have been denied this right or have not received mandated health care from a public health facility, presented their case before a panel consisting of the NHRC and the State level public health officials. Similarly, violation of health rights due to structural deficiencies at any health facility were presented. These regional hearings culminated in the National Public Hearing on Right to Health Care in December, 2004 following which a National Action Plan to operationalise the Right to Health Care was discussed. The Core Group of Doctors set up by the Commission provides very useful inputs on different aspects of health care.

**HIV/AIDS is another major public health challenge. Deeply concerned about the violation of human rights of those affected/infected by HIV/AIDS, the Commission has been recommending measures to all concerned authorities. The Commission recently addressed letters to the Union Ministers for Human Resource Development and Health and also to the Chief Ministers of all States/Union Territories urging them to take steps to prevent discrimination against such children in access to education and health care.**

**The Commission has, inter alia, asked them to:**

- ❖ **Enact and enforce legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from school;**
- ❖ **Provide care and protection to those children whose parents are unable to care for them due to HIV/AIDS;**
- ❖ **Provide all children, both in and out of school, with comprehensive, accurate and age-appropriate information about HIV/AIDS.**

**The response so far has been encouraging. The Commission has taken up multimedia campaign to spread awareness about human rights and HIV/AIDS.**

The Commission has been consistently emphasising a shift of focus from 'welfare' to 'rights' of the disabled. In addition to redressing individual complaints of human rights violations faced by persons with disability, the Commission has been reviewing existing laws and proposed legislations from the perspective of rights of persons with disabilities. The Commission noted that the National Employment Guarantee Scheme announced by the Union Finance Minister in

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his Budget Speech for 2004-2005 restricted the employment guarantee only for 'able-bodied persons'. The Commission, therefore, addressed letters to the Union Finance Minister and the Labour Minister pointing out this anomaly created by exclusion of persons with disability and asked them to correct it. As a result of the Commission's efforts, the subsequent National Rural Employment Guarantee Bill 2004 did not restrict the guarantee to 'able-bodied persons'. The Commission also addressed letters to the Chief Justices of all High Courts regarding certain problems faced by the disabled, in particular when they are produced before the Courts.

**The Commission organised a Training for Trainers Programme on Disability in Bangalore in July 2004, wherein training on conceptual foundations was provided by a distinguished panel of resource persons. Five Capacity-building Programmes on Disability have been organized in different regions of the country between January and March 2005. A National Conference on Disability is scheduled to be organised in New Delhi in 2005.**

Mr. Chairman

One other related issue that has been engaging the attention of the Commission is the increase in trafficking in women and children, which is a gross violation of their human rights and an affront to the supreme dignity of the females. The problem of trafficking has acquired the dimensions of an organised crime. Steps for preventing trafficking in young women and children have continued to occupy a prominent place on the agenda of the Commission. The Action Research Programme on Trafficking in Women and Children that was undertaken jointly by the National Human Rights Commission of India, the UNIFEM and the Institute of Social Sciences, New Delhi, has been completed. The report has made a number of recommendations and suggestions in the areas of preventing trafficking, protection of victims and survivors, prosecution of traffickers and other exploiters and proposed changes in relevant domestic legislation. It has been sent to the Government for their consideration. The Manual for the Judiciary on Trafficking in Women and Children to sensitise judges on the issues related to trafficking has been completed.

In order to protect and promote the rights of persons belonging to the Scheduled Castes, a Dalit Cell has been established in the NHRC under the charge of a Member of the Commission. A Report on 'Prevention of Atrocities against Scheduled Castes' sponsored by the Commission was released on 19 October 2004. A copy of the Report has been sent to all concerned authorities urging them to take action on certain important recommendations contained in the Report. The Commission is also holding seminars and organising sensitisation camps and workshops to spread awareness amongst police personnel, other State functionaries, media persons and NGOs in this regard so that the human rights of this vulnerable section of the society are protected and promoted.

.....  
 Mr. Chairman,

Human rights violations in India stem as much from the abuse of power by public servants as by dereliction of their public duties. Section 12(a) of the Protection of Human Rights Act, 1993 has conferred powers on the Commission to receive and initiate investigation into complaints alleging violation of human rights by public servants, both *suo motu* or on a petition presented to it by a victim or any person on his behalf and make appropriate recommendations under Section 18 of the said Act after inquiry.

A clear indication of the trust reposed in the Commission by the people of the country - and an equally clear indication of their yearning for an accessible mechanism to redress their human rights grievances - is to be found in the number of complaints addressed to the Commission over the years. This number has increased exponentially. The total number of complaints registered in the last year till March 31, 2005 was 74,553 as against 6,987 in 1994-95; 40,724 in 1998-99; 68,779 in 2002-2003 and 72,990 in 2003-04.

In spite of the bar contained in Section 19 of the Act relating to inquiries into allegations of violation of human rights by the armed forces, the Commission achieved a significant success in the matter. While inquiring into complaints received from widows of two residents of Ganganagar District, Rajasthan, whose husbands had admittedly lost their lives at the hands of a Constable of the Border Security Force, the Commission made recommendations for grant of interim relief to the next of kin of the deceased. The Ministry of Home Affairs reconsidered its earlier decision and on August 31, 2002 concurred with the Commission that it could recommend grant of interim relief, even in cases relating to armed forces, where violation of human rights stand established.

The Commission took up the issue of the allegations of violations of human rights by the armed forces with the Chief of Army Staff who, appreciating the viewpoint of the Commission, conveyed to it on May 24, 2004 that with a view to further sensitise the Indian Army, it had been decided to appoint officers of the rank of Colonel in various headquarters to monitor cases relating to human rights. The Commission considers it as an appropriate step.

Mr. Chairman,

Permit me to refer to one other aspect, which affects human rights of innocent people the world over and has been a cause of concern in our country for more than three decades. The spectre of terrorism continues to haunt us globally. Human rights recognise the essential worth of a human being and acknowledge the dignity inhering



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**in all human beings, irrespective of their race, sex or economic level of living. While this is a historical fact, it is also a reality that the cult of terrorism strikes at the very root of human rights of innocent people. Terrorism and human rights are natural enemies and no person, who supports human rights, can support terrorism. There can be no alibis and justification for terrorism as nothing can ever justify terrorism. The menace of terrorism has to be curbed and the war against terrorism fought relentlessly. However, the Commission is firmly of the view that no democratic society can be permitted to chill civil liberties of the citizens while taking measures against the terrorists. In the fight against terrorism, sensitisation level of human rights cannot be allowed to be sacrificed. The State cannot be permitted to go over board and in effect declare a war on the civil liberties of people because the rationale of anti-terrorism measures is aimed at protecting human rights and democracy. Counter-terrorism measures should, therefore, not undermine democratic values or subvert the rule of law. It is during anxious times when care has to be taken to ensure that the State does not take recourse to bend the rule of law. The Indian Commission shares the view expressed by the United Nations High Commissioner for Human Rights, Ms. Louise Arbour, in her address at the opening of the 61st Session of the Commission that the State security and Human security can no longer be viewed in isolation of the other.**

**Mr. Chairman,**

**The Indian Commission is firmly of the view that there is need for complementarity between the judiciary and the national institutions. Judiciary in every country has an obligation and a statutory role to protect human rights of citizens. The national institutions are also engaged in the task of protecting human rights of the citizens. Complementarity between the two would go a long way in giving a shot in the arm of the national institutions to perform their functions relating to protection of human rights in a more effective way.**

**The Indian Commission has successfully approached the Supreme Court and the High Courts in a number of cases for ‘better protection’ of human rights of the concerned citizens. The Supreme Court of India as well as the High Courts have also reposed great faith and confidence in the Commission and a number of cases, which were under their consideration, particularly involving group rights, were remitted to the Indian Commission with various mandates. Some of the remits made to the Commission by the Supreme Court are:**

- cases arising out of allegations of deaths by starvation in the KBK districts of Orissa; [1]
- the monitoring of programmes to end bonded and child labour in the country; [2]

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[1] Case No.37/3/97-LD(FC)

[2] File No.2/6/2002-PRP&P

- the handling of allegations relating to the mass cremations of persons declared unidentified in certain districts of Punjab; [3]
- the proper management of institutions for the mentally challenged in Ranchi, Gwalior and Agra; and of the Protective Home for Women in Agra [4] and
- lifting the ban on the sale of non-iodised salt.

**So much has been the confidence reposed in the Commission by the Supreme Court of India that in the Punjab Mass Cremation case, while making the remit to the Commission, the Supreme Court observed:**

“.....The Commission would function pursuant to the directions issued by this Court and not under the Act under which it is constituted. NHRC is given free hand and is not circumscribed by any conditions. Therefore, the jurisdiction exercised by the NHRC in these matters is of a special nature not covered by enactment or law, and thus acts *sui generis*.”

**The Commission is of the firm view that whenever and wherever human dignity of a citizen is violated, while he is in the ‘custody of the State’, the flag of civilization must fly half-mast. On November 11, 2004, the Commission made an order holding the State of Punjab vicariously liable for the death of 109 people while in police custody during the period of heightened terrorism in that region (1984-99) and directed it to pay compensation of Rs. 2,50,000 each to the next of kin of the victims. This is the first instance of award of compensation by the Commission in the ‘Mass Cremations case’ remitted to it by the Supreme Court. The proceedings in the case are still continuing.**

**In a Special Leave Petition filed by the Commission against the acquittal of the accused in what has come to be known as Best Bakery case of Gujarat, the Supreme Court by its order dated April 12, 2004 set aside the judgment of acquittal of all the accused in the above case and directed fresh investigation into the case and its retrial, which is going on outside the State of Gujarat.**

**Similarly, in the gang-rape case of Ms. Bilkis Yakub Rasool of Gujarat, to whom the Commission had extended full assistance for approaching the Supreme Court, the Supreme Court made an order directing investigation by the Central Bureau of Investigation and the case has been transferred from the State of Gujarat to Mumbai, where it is being tried by a competent court.**

**The Commission recently intervened in the case of Mr. Charanjit Singh, a seventy year old person, who was in detention for 20 long years as an undertrial prisoner because**

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[3] Case No. 1/1997/NHRC

[4] Case No.40/2/2003-2004/NHRC

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he was mentally ill and his physical and mental condition did not allow him to defend himself at the trial. As a result, his trial could not proceed further. He was even abandoned by his own relatives. The Commission moved a Criminal Writ Petition (Cr.W.P. No. 1278/04) for quashing criminal proceedings against him and suggested a set of guidelines to deal with cases of similarly situated undertrial prisoners. The Delhi High Court, by an order dated March 4, 2005, allowed the Writ Petition and quashed the proceedings. It also asked the Government of National Capital Territory of Delhi to evolve an appropriate scheme based on the guidelines suggested by the NHRC and, inter alia, establish Half-way homes for cured mentally ill persons and also called upon the Delhi Judicial Academy to sensitise its judicial officers through training to deal with such cases.

The Commission has also a statutory obligation under Section 12(f) of the Protection of Human Rights Act, 1993 to study treaties and other international instruments on human rights and make recommendations thereon. Following the Commission's efforts, the Government of India has recently approved the signing of the two Optional Protocols to the Convention on the Rights of the Child, namely - (i) on the involvement of children in armed conflicts; and (ii) on the sale of children, child prostitution and child pornography.

In order to strengthen and consolidate the relationship between the Commission and NGOs, the Commission has been holding a series of consultations with them on a regional basis. This has proved to be of considerable value both to the Commission and to the NGOs reinforcing their understanding of each other and their capacity to work together in furtherance of rights across the country.

Mr. Chairman,

Keeping in view the need to build capacity, sensitise public servants and, thereby, create a culture of human rights, the Commission established a Training Wing in September 2003. During 2004-2005, a series of training programmes were conducted on various human rights issues. Response to these programmes from various stakeholders including from community-based organisations/NGOs was overwhelming in terms of participation. These training programmes were primarily organised for the police, the judiciary, civil servants, NGOs, university teachers and other key stakeholders. At regular intervals, a number of in-house training programmes have also been conducted for officers and staff of the Commission. With a view to securing better coordination with State Human Rights Commissions, the Indian Commission held a meeting with the Chairpersons and Secretaries of all the State Commissions last year. Our Commission plans to make it an annual feature and also proposes to take concrete steps to build their capacity.

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**During the past year, the Commission took a number of initiatives to spread human rights education and awareness. The Commission has brought out seven booklets under a series entitled ‘Know your rights’ on various facets of human rights and an English-Hindi glossary of human rights terms. Efforts are also on to use the advertising space provided on postal stationery of the country to ensure that the social message on human rights issues reaches out to the common man. The Commission also proposes to produce a number of films on human rights with a view to harnessing the potential of this medium to spread human rights awareness.**

Mr. Chairman,

Every year, the struggle for human rights gets more complex with new threats rearing their heads and bringing with them different kinds of challenges. Disasters like the tsunami remind us of the importance of solidarity and the immense potential of cooperation at regional and international levels in human rights. All of us have much to learn from each other. We must share our unique experiences and perhaps learn from each other’s mistakes.

Permit me to conclude by reminding ourselves of the caution administered by the Secretary General of the UN, Mr. Kofi Annan, in his address to the UN General Assembly on March 21, 2005. He said: “We will not enjoy development without security, we will not enjoy security without development and we will not enjoy either without respect for human rights.” Thank you.

## **Concluding Statement of the 10th Annual Meeting of the Asia Pacific Forum**

Ulaanbaatar, Mongolia

24-26 August 2005

### **Introduction**

1. The Asia Pacific Forum of National Human Rights Institutions (the Forum), consisting of the National Human Rights Institutions of Mongolia, Afghanistan, Australia, Fiji, India, Indonesia, Jordan, Malaysia, Nepal, New Zealand, Palestine, Philippines, Qatar, Republic of Korea, Sri Lanka, Thailand and Timor-Leste, held this Tenth Annual Meeting in Ulaanbaatar, Mongolia from 24 to 26 August 2005.
2. The Forum Councillors expressed their gratitude to the National Human Rights Commission of Mongolia for hosting the meeting, to the Office of the High Commissioner for Human Rights (OHCHR) for its co-sponsorship and to all the Forum's donors for their financial support. The Forum Councillors expressed their appreciation for the efforts of the Commissioners and staff of the National Human Rights Commission of Mongolia and the secretariat of the Forum for their work in the organisation of the meeting.
3. The Forum particularly welcomed the participation of the Advisory Council of Jurists, appreciated and thanked them for their work. The Forum also welcomed representatives, as observers, from the institutions of the Maldives, Iran, Uzbekistan and Saudi Arabia, thirty five international, regional and national non-governmental organizations, the representatives of Australia, Canada, France, Mongolia, New Zealand and Taiwan, and the OHCHR, UNHCR, UNESCO, UNICEF and ILO.
4. Mr. Enkhbayar Nambar, President of Mongolia, Mr Tserendorj Suren, Chief Commissioner, National Human Rights Commission of Mongolia and the Chairperson of the Forum and Ms Pratibha Mehta, United Nations Resident Coordinator (Mongolia) who participated in her capacity as Resident Coordinator and on behalf of Mrs Louise Arbour, High Commissioner for Human Rights, addressed the inaugural session. In their opening statements, the distinguished speakers congratulated the Forum on its 10th anniversary.

### **Conclusions**

#### **The Forum, during its closed business session**

5. Discussed the issue of 'observers' at the closed session of the Forum and requested the secretariat to develop guidelines on this issue and submit it to Forum Councillors for their consideration and decision.

6. Noted the activity report of the Forum since its last annual meeting and expressed their appreciation for the work of the secretariat. Forum Councillors considered the secretariat's report of the Forum's finances and administration and adopted the Directors, Financial and Audit report of the Forum for the period ending 31 March 2005. Forum Councillors highly appreciated the financial contributions made by (i) member institutions; (ii) the governments of Australia, India, New Zealand, Republic of Korea, Thailand, United Kingdom and the United States; (iii) donor institutions, including the British Council, Brookings Institution, MacArthur Foundation and the National Endowment for Democracy; and (iv) intergovernmental agencies, including the Commonwealth Secretariat, and United Nations agencies (OHCHR, UNDP, UNESCO, UNICEF).
7. Agreed to form a working group of the Forum to develop draft guidelines to strengthen the application of the Principles Relating to the Status of National Institutions adopted by the United Nations General Assembly (Resolution 49/134) commonly referred to as the 'Paris Principles' on the method of appointment of members of national human rights institutions and the security of their tenure for consideration and decision by Forum Councillors at the 11th Annual Meeting.
8. Approved the Forum's annual plan for 2006 and agreed to form a working group of the Forum to develop a new three year strategic plan for the period 2007 to 2009 for the consideration of Forum Councillors at a full day 'closed session' at the 11th Annual Meeting.
9. Considered the training needs of national human rights institutions and welcomed the outcomes of the training needs analysis. Forum Councillors requested that the secretariat develop a training plan based on these outcomes for the consideration and approval of Forum Councillors and seek donor funding for its implementation.
10. Reaffirmed that the structure and responsibilities of national institutions should be consistent with the 'Paris Principles'. After considering formal applications for membership and their compliance with the Paris Principles, they revised the associate membership status of the Afghanistan Independent Human Rights Commission to become a full member, and admitted the Provedor for Human Rights and Justice of Timor-Leste as a candidate member and the National Human Rights Committee of Qatar as an associate member of the Forum. This increased the Forum's overall membership to 17 institutions.
11. Forum Councillors called upon States in the Asia Pacific region to establish and strengthen national human rights institutions to ensure their full compliance with the Paris Principles.
12. Decided to make a reference to the Advisory Council of Jurists on the legal obligations of States for the implementation of economic, social and cultural rights and requested that the secretariat develop a draft reference for the consideration and approval of Forum Councillors.
13. Welcomed the report of the Fiji Human Rights Commission, the Forum's representative to the accreditation sub-committee of the International Coordinating Committee of National

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Institutions (ICC), and thanked the Forum's representative for her work. Forum Councillors re-nominated the current Forum representatives to the ICC.

14. Agreed to advocate a joint approach at the 13th Annual UN Workshop of the Framework on Regional Cooperation and Protection of Human Rights in the Asia-Pacific Region, to be held in Beijing, China, from 30 August to 2 September 2005 based on a 'sustainable partnership' between the Forum and the OHCHR.
15. Welcomed the United Nations Commission on Human Rights (CHR) resolution at its 61st session (2005/74) deciding to develop modalities for the further enhancement of the participation of national human rights institutions in CHR deliberations. Forum Councillors endorsed the need for a periodic review of compliance with the Paris Principles. Forum Councillors noted the ongoing debate regarding UN reform, including reform of the CHR, and agreed to monitor and discuss developments. Forum Councillors agreed to work with governments and the OHCHR to ensure that the important role of national human rights institutions is incorporated in these reform deliberations and that outcomes regarding any successor body to the CHR maintain and further enhance, as appropriate, the participation and engagement of national human rights institutions.
16. Welcomed the continued role of APF member institutions in the negotiations to develop a new United Nations Convention on Disability and agreed on the need to ensure that national human rights institutions play a formal role in both the implementation and monitoring of the proposed Convention. Forum Councillors agreed to raise with their national governments, the possible role that national human rights institutions could play in this regard and encourage their governments to support such proposals at the 7th session of the Ad Hoc Committee of the UN General Assembly, to be held in January 2006. Forum Councillors also requested their disability working group to work in partnership with Disability Rights Promotion International to develop a tool to collect and categorise disability rights cases.
17. Commended the efforts of the Senior Executive Officers to assist in the effective and efficient functioning of national institutions. The Forum requested that the Senior Executive Officers continue to increase their cooperation and requested that they provide a report to the 11th Annual Meeting of the Forum on their activities and cooperation projects.
18. Unanimously elected the National Human Rights Commission of Mongolia (as the current host institution of the annual meeting) to the position of Chairperson of the Forum. The National Human Rights Commission of the Republic of Korea (as the host institution for the last annual meeting) and the Fiji Human Rights Commission (as the host institution for the next annual meeting) were also elected unanimously to the two positions of Deputy Chairpersons.

## The Forum, during its open plenary sessions

19. Expressed appreciation and commended the OHCHR for its continuing commitment to strengthen sustainable partnerships with the Forum and requested the OHCHR and the secretariat to jointly explore how this may be realised in the context of the Forum's strategic plan and the UN framework on regional cooperation for the promotion and protection of human rights in the Asia Pacific region and to report back to the Forum's 11th Annual Meeting. The Forum also called upon Member States to increase their support, including financial support, for the important work of the OHCHR, particularly with regard to national human rights institutions.
20. Appreciated the constructive contribution of non-governmental organisations to the work of the Forum. The Forum thanked non-governmental organisations for their submissions, collective participation and advocacy in the meeting. The proposals put forward by non-governmental organisations will be carefully considered by Forum Councillors in the development of the Forum's new three year strategic plan. The Forum requested non-governmental organisations to continue to work in partnership in the implementation of the Forum's activities
21. Welcomed the reports of Forum members, relevant institutions and governments, which shared measures to protect and promote human rights. The Forum stressed the need for constructive and practical engagement with governments and thanked them for their active participation and constructive contributions to the meeting. The Forum agreed that future reports of Forum members should have a thematic, best practice or 'major challenge' focus.
22. Discussed and encouraged national human rights institutions to establish effective partnerships with their educational authorities when developing and implementing formal human rights education programmes. The full realisation of the right to education should include the provision of human rights education for all, including for the disadvantaged sectors of society and those living in remote or rural areas.
23. Affirmed that it is the responsibility of national human rights institutions, in accordance with the Paris Principles, to promote human rights and combat discrimination. National institutions should use the media as a powerful tool for human rights education and, in that regard, congratulated the secretariat for the development and implementation of a training programme on this issue. Forum Councillors also requested that the secretariat explore the use of the Senior Executive Officers intranet to network on media and communication strategies and share best practice strategies on human rights education.
24. Expressed deep concern over the increasing phenomenon of internally displaced persons (IDPs) in the region and called on all Forum members to take effective steps to protect and promote the rights of IDPs in line with the UN Guiding Principles on IDPs. Forum



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Councillors therefore expressed their appreciation of the Forum and the Brookings Institution's project on internally displaced persons (IDPs) and requested that the Forum continue its efforts on this issue. In particular, the Forum welcomed the development of draft guidelines on protecting the rights of IDPs in situations of natural disasters.

25. Reported on their implementation of the recommendations of the Advisory Council of Jurists' reports on the death penalty, trafficking and terrorism. A number of Forum Councillors specifically cited the successful implementation of the Advisory Council's recommendations.
26. Called on governments of Forum member institutions to continue to ensure their independence, adequate resourcing and institutional capacity so as to enable them to carry out their mandates more effectively.
27. Considered the issue of torture, including the views of international experts and non-governmental organisations, and the interim report of the Advisory Council of Jurists. The Forum warmly thanked the jurists of the Advisory Council for their expertise and the comprehensive scope of their report. Forum member institutions would carefully consider the potential role of national human rights institutions under the Optional Protocol to the Convention Against Torture and Other Forms of Cruel, Inhumane and Degrading Treatment or Punishment and recommend that their governments sign and ratify both the Convention and its Optional Protocol.
28. Noting the special challenges they are facing, Forum Councillors expressed their commitment to supporting the institutions in Iran and the Maldives in the protection and promotion of human rights.
29. Gratefully accepted the kind offer of the Fiji Human Rights Commission to host the Eleventh Annual Meeting in 2006.

### **New Delhi Concluding Statement-International Round Table on National Institutions Implementing Economic, Social and Cultural Rights**

The principal objective of the Round Table was to discuss and strengthen the role and capacity of national institutions in protecting and promoting economic, social and cultural rights (ESCR). Its specific objectives were to:

- (a) Familiarize national institutions with ESCR including the key international and regional mechanisms available for their protection and promotion;
- (b) Explore the 'new dimension' of ESCR in the changing political, economic and social scenario;
- (c) Provide a forum for national institutions to meet and exchange best practices on ESCR, including the best ways to implement them.

Keeping the objectives in view, the deliberations of the Round Table were inclusive, informal and participatory in nature. All present emphasized the importance of the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) adopted by the United Nations General Assembly on 20 December 1993, and called on States to respect these principles and ensure that national human rights institutions are established in accordance with them. They also called on their national institutions to be adequately resourced to enable them to deal with ESCR.

Participants used as points of reference the International Covenant on Economic, Social and Cultural Rights and the general comments of the Committee on Economic, Social and Cultural Rights, the Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. It was reaffirmed that all human rights being universal, indivisible and interdependent, national institutions should adopt a comprehensive approach to the promotion and protection of human rights, which includes ESCR.

It was reiterated that national institutions must adopt a rights-based approach to ESCR. Due emphasis was placed on particular challenges faced by national institutions including ensuring respect for ESCR in relation to rationalizing resources among various institutions and addressing ESCR in situations of conflict and in relation to globalisation. It was highlighted that neglect of ESCR can lead to conflicts resulting in violations of human rights, thus posing a threat to peace and security. The view was expressed that despite the development of a universal human rights framework there remain inequities and injustices requiring more proactive strategies to realise the enjoyment of ESCR.

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During the three-day deliberations, delegates were able to exchange best practices and enhance their understanding of ESCR. The Round Table deliberated in the following substantive sessions:

- Key international instruments on ESCR and the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.
- General principles of ESCR - State obligations to promote, protect and fulfil.
- Justiciability of ESCR and legal protection.
- Implementing ESCR-modes and modalities: Advocacy and other means.
- General principles of ESCR-roles and responsibilities of national institutions.
- New challenges and dimensions to ESCR.
- A review of the Limburg Principles and the Maastricht Guidelines .
- A plan of action for national institutions regarding ESCR.

The participants at each session noted the importance for national institutions, under the following points, to:

### **I. KEY INTERNATIONAL INSTRUMENTS ON ESCR AND THE OPTIONAL PROTOCOL TO THE COVENANT**

- (a) Monitor and promote State compliance with the International Covenant on Economic, Social and Cultural Rights and where the State is not a party to the Covenant call for its ratification;
- (b) Engage with the working group in drafting an optional protocol to the Covenant and encourage States to adopt it;
- (c) Ensure independent access to the international treaty body system;
- (d) Assist in ensuring that domestic legislation that may impact on the enjoyment of ESCR is in compliance with international human rights norms and provides for sufficient protection of ESCR;
- (e) Use the existing tools and interpretations, including those developed by the United Nations, the Committee on Economic, Social and Cultural Rights and its general comments, as well as the Limburg Principles and the Maastricht Guidelines;
- (f) Ensure that the Millennium Development Goals process is consistent with State obligations under international human rights instruments and that their implementation is undertaken from a rights-based perspective;

### **II. GENERAL PRINCIPLES OF ESCR - STATE OBLIGATIONS TO PROMOTE, PROTECT AND FULFIL**

- (a) Ensure a rights-based approach to ESC issues;
- (b) Encourage States to establish, where appropriate, governmental institutions to guide planning for, and implementation of, ESCR;

- (c) Ensure that government officials, including those in economic and planning ministries, the judiciary, parliamentarians and other partners know their international obligations in relation to ESCR;
- (d) Ensure, where national plans of action are developed, that ESCR are taken into full consideration;
- (e) Find ways to enforce ESCR - including through departments of social welfare, the courts and civil society - to ensure better awareness of the justiciability and enforceability of ESCR;
- (f) Work with bodies, within their prescribed mandates, to combat corruption, which has a direct impact on the enjoyment of ESCR;
- (g) Coordinate with their Governments in programme planning, including budgetary allocations to ensure respect for ESCR, so that everybody lives with dignity;
- (h) Assist their States to prioritise the implementation of ESCR to ensure their progressive realisation within a given time frame;
- (i) Work within their States with representatives of international financial institutions to help the State to ensure that their policies and practices do not impact negatively on the enjoyment of ESCR;
- (j) Help inform about, and where they do not exist to help in developing, minimum standards to ensure implementation of ESCR;
- (k) Ensure that essential services, which lead to the enjoyment of ESCR are provided at a minimum and affordable level. Where these are privatised, the State remains obligated to ensure that the provision of such services do not contravene international ESCR.

### III. JUSTICIABILITY OF ESCR AND LEGAL PROTECTION

- (a) Use, where possible, quasi-judicial powers in implementing ESCR including, for example, the presentation of amicus briefs to the judiciary, thereby assisting it in developing appropriate jurisprudence harmonising civil and political rights with economic, social and cultural rights;
- (b) Ensure that national institutions have adequate powers and competency to undertake investigations;
- (c) Use the complaints-handling functions of a national institution to provide effective redress for those who have suffered violations of ESCR and engage with other partners where the national institutions may not be mandated to address specific ESCR;
- (d) Seek by means of innovation and interpretation, ways to ensure legal protection of rights even where they may not be explicitly provided for in their national constitutions or legislation.

**IV. IMPLEMENTING ESCR RIGHTS-MODES AND MODALITIES: ADVOCACY AND OTHER MEANS**

- (a) Provide a voice for those whose ESCR have been violated to ensure the effective provision of remedies;
- (b) Raise awareness about the international human rights standards of ESCR;
- (c) Encourage and actively support advocacy, education and training on ESCR by a variety of means for rights-holders and public authorities, including the judiciary, and civil society;
- (d) Be aware of, and advise on, legal instruments and human rights norms to prevent violations of ESCR, including regional mechanisms, and the need for effective policy development and implementation;
- (e) Ensure public education concerning ESCR;
- (f) Develop public information campaigns and engage the media, and devise effective media strategies, to raise awareness of ESCR and violations thereof;
- (g) Use the range of reporting strategies and mechanisms, including annual, parliamentary and extraordinary reports.

**V. GENERAL PRINCIPLES OF ESCR-ROLES AND RESPONSIBILITIES OF NATIONAL INSTITUTIONS**

- (a) Develop a strong research capacity to be able to deal with ESCR effectively;
- (b) Monitor activities and develop minimum standards to ensure the implementation of ESCR for use by government agencies;
- (c) Ensure, while supporting a richness of cultural practices, that such practices do not contravene international human rights law.

**VI. NEW CHALLENGES AND DIMENSIONS TO ESCR**

- (a) Pay attention to areas, which impact on the enjoyment of ESCR, including trade, the environment, corruption and the activities of non-State actors;
- (b) Pay particular attention to ESCR in situations of conflict and recognise that a lack of respect for ESCR is a root cause of conflict;
- (c) Assess the positive and negative consequences of globalisation, including migration, and its impact on the enjoyment of ESCR.

**VII. INTRODUCTION TO THE LIMBURG PRINCIPLES AND THE MAASTRICHT GUIDELINES**

Follow the Limburg Principles and the Maastricht Guidelines for the promotion and protection of ESCR.

## VIII. A PLAN OF ACTION FOR NATIONAL INSTITUTIONS REGARDING ESCR

In addition to striving to implement the various action points within this Concluding Statement, national institutions, particularly, commit themselves within their different mandates and circumstances under which they operate to:

- (a) Strengthen their capacity institutionally to be more effective in promoting and protecting ESCR;
- (b) Establish ESCR units or focal points and develop substantive policy capacity so as to engage effectively on ESCR issues;
- (c) Develop new and innovative strategies, including through community dialogue, on ways of gathering information beyond traditional forms of complaints-handling processes;
- (d) Develop particular strategies to address the ESCR of vulnerable groups and women and children;
- (e) Assess the enforceability, including through judicial procedures, of ESCR in their states and report on this at the next international conference of national human rights institutions;
- (f) Encourage the development of national plans of action which implement ESCR;
- (g) Request that this Concluding Statement be submitted to the next session of the United Nations Commission on Human Rights.

### Expression of Appreciation

Participants expressed their appreciation to the National Human Rights Commission of India and the Office of the United Nations High Commissioner for Human Rights for convening and organizing the Round Table.

**Adopted at New Delhi, India**

**1 December 2005**

## CONCLUDING STATEMENT AND PLAN OF ACTION

### **Regional Workshop on Human Trafficking and National Human Rights Institutions: Cooperating to End Impunity for Traffickers and to Secure Justice for Trafficked People**

Sydney, Australia, 20 - 23 November 2005

#### **Introduction**

1. The Asia Pacific Forum of National Human Rights Institutions ('APF') held a regional workshop on 'Human Trafficking and National Human Rights Institutions ('NHRIs'): Cooperating to End Impunity for Traffickers and to Secure justice for trafficked people' (the '**Workshop**') from 20 to 23 November 2005 in Sydney, Australia;
2. The Workshop was attended by the NHRIs and related bodies of Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, Republic of Korea, Sri Lanka and Thailand; the United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-Region ('UNIAP'), the International Organisation for Migration ('IOM') and Asia Regional Cooperation to Prevent People Trafficking ('ARCPPT'); regional and national civil society organisations from Australia, Nepal and Thailand; and the Government of Australia;
3. Participants expressed their sincere appreciation to the Commissioners and staff of the Australian Human Rights and Equal Opportunity Commission ('HREOC') for hosting the Workshop. They also thanked the organisers (APF, HREOC and ARCPPT) and the financial donors (HREOC and ARCPPT) for their support.

#### *The participants of the Workshop*

#### **Key Issues**

4. Noted with concern, the diverse dimensions of human trafficking for various purposes including forced and exploitative labour, sexual exploitation, forced marriage and adoption in the Asia-Pacific region, both within countries and across international borders and the challenges in responding effectively to this complex, clandestine phenomenon;
5. Acknowledged that human trafficking is a serious violation of human rights and encouraged States to place the protection of all human rights at the centre of any measures taken to prevent or respond to trafficking. Special care also needs to be taken to ensure that anti-trafficking measures and policies do not adversely affect the human rights and dignity of trafficked persons and those who are vulnerable to trafficking. In particular, trafficked persons should not be detained, charged or

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prosecuted for status-related offences. Their right to freedom of movement should be respected by the State and by service organisations;

6. Emphasised the need to effectively combat human trafficking by addressing factors, which contribute to vulnerability to trafficking, including, but not limited to, inequalities within and between countries; violence and discrimination, especially on the basis of sex and race; underdevelopment; and the demand for, and exploitation of, vulnerable persons;
7. Recognised that trafficking is difficult to combat effectively in the context of tension between increased human migration and increased restrictions on the legal movement of people. States should be encouraged to review and modify policies that may compel people to resort to irregular and vulnerable labour migration. They should also examine ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms, in countries of origin and destination, to protect the rights of migrant workers;
8. Further recognised that there are linkages between migration, trafficking and HIV/AIDS in the region and that any responses to trafficking should consider these linkages;
9. Noted, with concern, the strong link between trafficking and corruption and confirmed the obligation on all States to respond quickly and effectively to public sector complicity in trafficking and related exploitation;
10. Confirmed that States have a responsibility under international law to criminalise trafficking and provide for appropriate penalties; to investigate and prosecute trafficking with due diligence; to assist and protect trafficked persons; to provide trafficked persons with access to remedies; to work to prevent trafficking and related exploitation; and to cooperate with other countries to end trafficking. States are also under an obligation to ensure that their responses to trafficking do not violate established rights of both victims and accused persons including the right to a fair trial, the prohibition on arbitrary detention and the prohibition on discrimination;
11. Further confirmed that States have special obligations when it comes to responding to trafficking of children and dealing with child victims of trafficking. The best interests of the child must be a primary consideration in all actions concerning trafficked children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs;
12. Noted that NHRIs play a very important role in assisting State agencies to develop a victim-centred and human rights-based approach to their counter-trafficking work and that without such an approach, counter-trafficking work will not ultimately be



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effective. A human-rights based approach involves respect for substantive and procedural rights contained in international human rights treaties and particularly includes promotion of gender equality;

13. Recognised that NHRIs within the Asia Pacific region, working in cooperation with Governments and civil society, are uniquely placed to contribute to national, regional and cross-border efforts to eliminate trafficking. The critical link between trafficking and human rights makes NHRIs, especially relevant in relation to this issue.

### **Researching and Understanding Trafficking**

14. Accepted that effective and realistic strategies to combat trafficking must be based on accurate and current information, experience and analysis. All research on trafficking should be firmly grounded in ethical principles including an understanding of the rights and needs of trafficked persons.

### **Ending Impunity and Securing Justice**

15. Noted the importance of a strong legal framework around trafficking based on international standards including those contained in human rights law and the United Nations Protocol to Suppress, Prevent and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol). States, which have not yet done so, are encouraged to ratify the relevant UN instruments, which address human trafficking as well as those, which address related issues including forced labour, child labour and exploitation and gender-based discrimination;
16. Emphasised the need to strengthen the criminal justice response to trafficking to ensure that States are in a position to discharge their legal obligation to investigate and prosecute trafficking. Law enforcement officials, prosecutors and judicial officers should be sensitised to their roles and responsibilities in relation to trafficking and the State should ensure that criminal justice agencies are adequately empowered and resourced to undertake this work;
17. Acknowledged that a criminal justice system, which protects and supports all victims regardless of their initial willingness to cooperate in criminal proceedings, promotes a more effective criminal justice response in which victims are more likely to want to be involved;
18. Recognised the need for processes that aid victims' recovery including access to compensation and co-ordinated repatriation programmes. Safe (and to the extent possible, voluntary) return should be guaranteed to trafficked persons. Trafficked persons should be offered legal and practical alternatives to repatriation in cases where it is reasonable to conclude that such return would pose a real risk to their safety and/or the safety of their family or in other special circumstances;
19. Identified an important role for NHRIs in monitoring aspects of the national criminal justice response in order to encourage adherence to international criminal justice and human rights standards. The fight against trafficking should not, in any circumstances,

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 be used to justify deviations from internationally accepted standards relating to the rule of law and the right to a fair trial;

20. Confirmed the importance of effective and realistic strategies to prevent trafficking. Such strategies should take into account the factors that generate demand for exploitative commercial sexual services and exploitative labour. They should also take into account the factors that increase vulnerability to trafficking.

### **Internal, Cross-Border and Regional Collaboration**

21. Acknowledged the importance of working with civil society, specially victim support agencies who can bring an important dimension to the work of national human rights institutions on the issue of trafficking;
22. Welcomed the development of bilateral and sub-regional agreements on trafficking involving States of the Asia-Pacific region to address trafficking, including the ASEAN Declaration in Trafficking in Persons (2004); the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002); the Coordinated Mekong Ministerial Initiative against Trafficking process and its Memorandum of Understanding and Sub-regional Plan of Action (2004); and bilateral agreements, such as those concluded between Thailand and Cambodia and Thailand and Lao PDR;
23. Encouraged the implementation of the commitments contained in these agreements as well as further steps to strengthen cooperation between countries on the issue of trafficking;
24. Noted the need to ensure that the legislative framework supports mutual legal assistance and extradition in trafficking cases;
25. Noted the importance of informal cooperation and information exchange between countries and the potential role that NHRIs could play in this area;
26. Appreciated and supported the initiative of Komnas Perempuan (Indonesia) to organise a workshop on “The Role of National Human Rights Institutions in Protection of Women Labour Migration” in 2006. The link between trafficking and labour migration has been well established and the proposed workshop will be an important opportunity to further explore how national human rights institutions can, individually and collectively, address these issues;
27. Welcomed the offer of the National Human Rights Commission of Malaysia to host, in 2006, a regional seminar for national human rights institutions on the issue of trafficking legislation.

## PLAN OF ACTION AND RECOMMENDATIONS

*The participants agreed on the following action strategies and recommendations*

### Education

1. NHRI should ensure that their own Commissioners and relevant staff are trained and sensitised to the complexities of trafficking and to its human rights aspects.
2. Where States have National Human Rights Action Plans, NHRI should advocate the inclusion of trafficking in these Plans. Where there is a Trafficking National Action Plan, it should be based on human rights principles.
3. NHRI should advocate that officials of relevant State agencies receive training on the sensitivities and complexities of trafficking and on their role and responsibilities with respect to the response to trafficking. Where appropriate, NHRI should have input into the development and/or implementation of training packages and advocate that they include a degree of international consistency to encourage cross-border understanding and co-operation.
4. Due to their specific role, immigration officials, border control officials, labour inspectorates, police, prosecutors and the judiciary require separate and specific training on an ongoing and regular basis. Specifically:
  - (a) training for law enforcement officers should advocate investigatory techniques and processes, which do not rely exclusively on the evidence of victim witnesses. NHRI should emphasise that training for law enforcement officers and prosecutors include information about the effects of giving evidence on victim witnesses;
  - (b) NHRI should ensure that training emphasises the need for police and prosecutors to examine a range of laws to secure a successful prosecution of traffickers (for example, money laundering, sexual assault, forced labour laws);
  - (c) NHRI should promote awareness-raising for the judiciary that is based on peer learning through the use of both domestic and, where relevant, international judicial experts. NHRI should consider developing or assisting in the development of judicial officers' handbooks or bench books on good practices for handling trafficking cases. These materials should emphasise the need to provide appropriate protections for victim witnesses and outline the human rights principles relating to trafficking.
5. NHRI should advocate and/or implement public awareness raising campaigns around trafficking. This should also include targeted community education campaigns that, for example, focus on vulnerable groups or users of the services of trafficked people.

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6. NHRI should work with the mass media to encourage awareness raising and an appropriate reporting of trafficking cases, which is based on respect for victims' privacy, an understanding of the gender and human rights parameters of trafficking and the responsibilities of the State and that such reporting does not further victimise or stigmatise trafficked persons or place them or others in their situation at risk of harm.
  7. NHRI should specifically include trafficking as an issue in general human rights and discrimination in awareness raising materials directed at groups vulnerable to trafficking.

## **Monitoring and Advocacy**

### **Research**

1. NHRI should conduct or support research on trafficking that will inform government responses and ensure that a human rights approach to trafficking is adopted. NHRI should encourage that all research into trafficking protects the safety and privacy of trafficked people and does not further traumatise victims. NHRI should ensure that all research that they support or conduct is outcomes focused and strategic. Where appropriate, research should be coordinated across the region.
2. Wherever possible and appropriate, trafficked people should be involved in the design and conduct of research.

### **Legislation and legal processes**

3. NHRI should review trafficking and related laws and policies to determine their conformity with international human rights standards and should recommend amendments as needed. In particular, NHRI should review legislation and legal processes to ensure that evidentiary rules for trafficking reflect the most sensitive practices developed in, for example, child abuse or sexual assault trials.
4. NHRI should encourage States to enact laws that allow taking of evidence for use out of jurisdiction and the use of that evidence recorded out of jurisdiction in prosecuting countries. NHRI should recommend strong, consistent national laws and international agreements on this issue. NHRI should also encourage States to develop bilateral agreements for witness protection developed specifically for trafficking cases.
5. NHRI should recommend comprehensive bilateral extradition arrangements for trafficking prosecutions.
6. NHRI should advocate for a comprehensive human rights based approach to repatriation and reintegration.
7. NHRI should advocate that victims have access to supportive reintegration programmes, based on a timely risk assessment. Such programmes should include adequate follow-up processes. NHRI should seek to be included in the planning and monitoring of repatriation and reintegration programmes.

## Annexure 13

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8. NHRI should recommend and advocate for the development of procedural guidelines around raids and rescues that protect and promote human rights. These guidelines should ensure that raids do not occur without adequate planning for the protection and support of trafficked people in advance of the raid. They should ensure that adults identified as victims in the raid are willing to be removed from their situation and, in the case of children, that the best interests of the child are primary. NHRI should advocate that they are consulted during the development of these guidelines and encourage police to consult with NHRI before raids occur.
9. NHRI should monitor the counter-trafficking work of law enforcement agencies and advocate for changes to procedures and other aspects as appropriate to ensure that the human rights of all persons including both trafficked persons and suspects are respected.
10. NHRI should consider making recommendations to government to ensure that law enforcement agencies are adequately empowered and resourced to undertake counter-trafficking work.
11. Those NHRI that do not have a specific power to seek leave to intervene in court cases should consider advising government to amend their governing legislation to include such a power.

### **Immigration Law and Practice**

12. NHRI should ensure that immigration laws and policies respect human rights and take account of the particular needs of trafficked people.
13. NHRI should review migration law and policy, or encourage States to do so, to ensure that trafficked people are explicitly recognised as victims of crime, who have suffered significant breaches of their human rights in that country. In particular NHRI may review migration policies and programs to ensure that they do not unfairly restrict freedom of movement of targeted groups, but provide information to all travellers.
14. NHRI should advise government to provide alternatives to immigration detention for people who have been trafficked, recognising that the detention environment can in itself breach the human rights of trafficked people and is counter productive from a law enforcement perspective. NHRI should regularly visit detention centres with a view to assisting in the identification of victims of trafficking.

### **Whole of government response**

15. NHRI should seek to be routinely consulted about the human rights implications of draft criminal laws, especially relating to trafficking.
16. NHRI should promote ratification, as well as signature, of all human rights instruments.
17. The United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking should be incorporated into the legislative and programmatic environment of all States. NHRI could assist this process by advocating for the formal

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 adoption by of this framework by States and by using the Principles and Guidelines in their own monitoring and advocacy work.

18. NHRI should establish agreements with agencies of the criminal justice system (for example, the police), which clearly define their respective roles and responsibilities in relation to trafficking responses. These agreements should be supported with regular high level face-to-face meetings to review the success of the cooperation.
19. NHRI should undertake regular monitoring and evaluation of government responses to trafficking and to ensure that all government processes relating to trafficking respect the rights of trafficked people.

### **Support, Recovery and Repatriation**

20. NHRI should encourage States to provide trafficked people with a minimum period of residency in the destination country. That residency should include work permits that allow the person to undertake any legal form of work without restriction.
21. NHRI should advocate for safe and, to the extent possible, voluntary repatriation of trafficked persons.
22. NHRI should monitor and review cases of repatriation to ensure that appropriate consideration is given to the human rights and safety of the repatriated person and may consider conducting a review of repatriation cases to ensure that they meet this standard.
23. NHRI should, as appropriate, assist victims to consider legal options for longer term residency in the destination country, including taking refugee applications on the basis of gender based violence.
24. NHRI should advocate for, and assist in developing, minimum human rights based standards for victim identification and assistance and should advocate that Victim Support Agencies (VSA) are also consulted in that process; these minimum standards should encompass, in addition to identification guidance, standards on shelter, medical care, psychological care, legal advice, vocational training and reintegration assistance. These minimum standards could be prepared in the form of information kits for all relevant government officials and specify the accountability of the agencies concerned.
25. NHRI should encourage States to implement comprehensive birth registration for all people in their jurisdiction where they do not already exist.
26. NHRI should advocate that trafficked people are able to engage in employment or government funded education, before repatriation, as a matter of course.
27. NHRI should remind governments of their international legal obligation to treat all children within their jurisdiction equally - irrespective of race or national origin, particularly, when it comes to right of access to protection, support and education.

### **Legal Processes**

28. NHRI should encourage court processes to include victim impact statements in sentencing of traffickers and, where appropriate, to appoint a separate representative to advocate for the trafficked person.

### **Investigation and Complaint Handling**

29. NHRI should conduct outreach to raise awareness of their complaint handling function to assist trafficked people, as appropriate.
30. In the absence of receiving complaints from trafficked persons, NHRI should consider using their proactive powers to investigate trafficking cases.
31. NHRI should develop their capacity to provide a comprehensive complaint service that encompasses a specific response to trafficking, through training of complaint handling staff on issues specific to trafficking, including the importance of confidentiality of complaints, as complainants often face considerable personal risk.
32. NHRI should develop and maintain strong relationships with VSAs working with trafficked people.
33. NHRI should consider the potential for VSAs to make complaints on behalf of people who have been trafficked.
34. NHRI should develop follow up mechanisms for tracking outcomes once complaints have been finalised.
35. NHRI, particularly those in which the complaint handling function does not extend to dealing with allegations related to trafficking, should consider using other powers, for example in relation to inquiries or policy work.
36. NHRI should consider requesting States to amend their governing legislation to extend the powers of NHRI to more effectively deal with cases of trafficking.

### **Working in Cooperation**

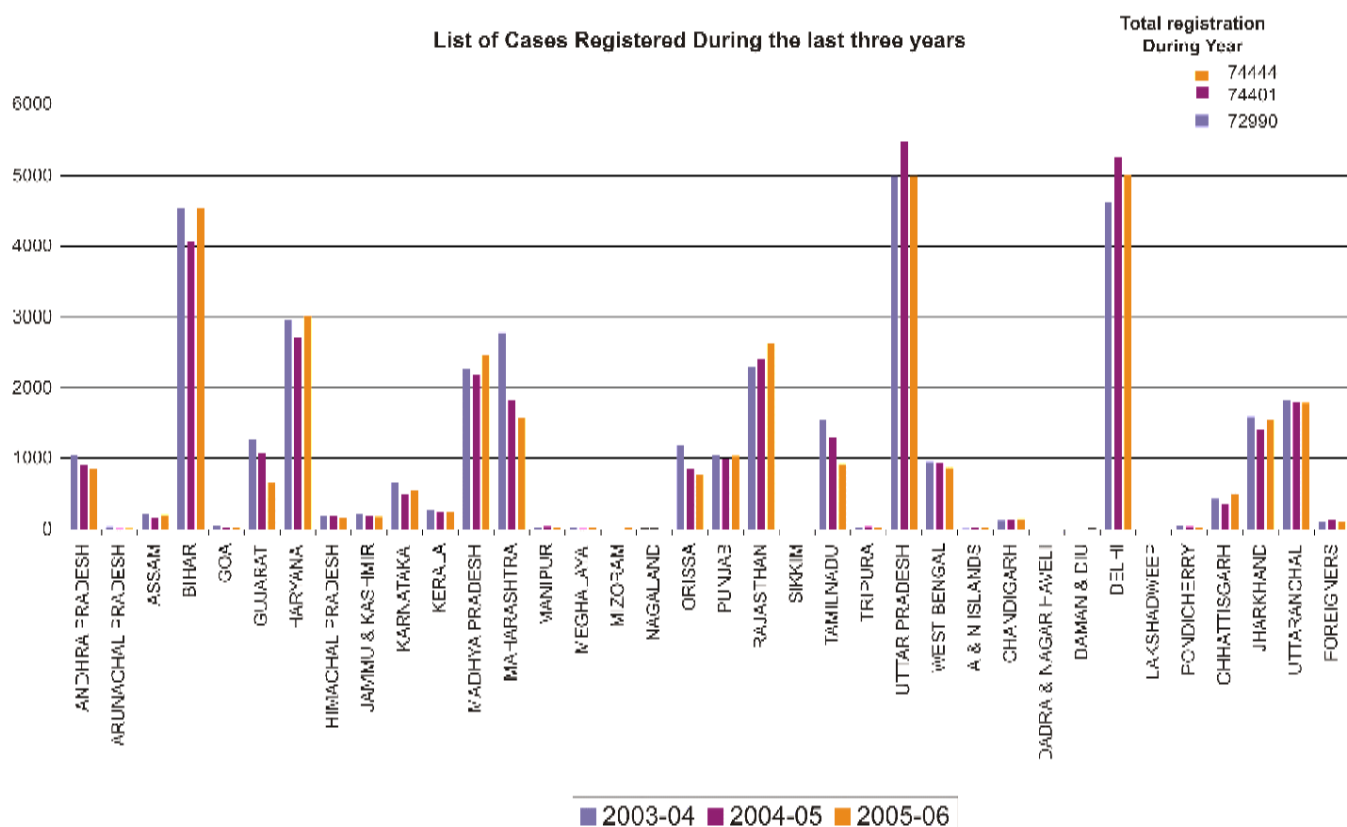
37. NHRI should work in partnership with VSAs in appropriate cases.
38. NHRI should consider developing or participating in protocols or memorandum of understanding with State agencies working on trafficking, especially criminal justice agencies including police.
39. The APF should explore the potential for staff exchanges between NHRI to further expand their capacity and cooperation in protecting the human rights of trafficked persons.
40. The APF should facilitate and strengthen the Trafficking Focal Point Network drawn from NHRI. NHRI that have not already done so are requested to nominate a Trafficking Focal Point from within its institution to become part of the APF Trafficking Focal Point Network. The Focal Point Network should be used to share

resource materials from each country, in particular, for training. Good practices should be identified, documented and distributed among the network.

41. The APF should call on the international community and donors to strengthen support for the continued regional promotion and protection of the human rights of trafficked persons and development of programmes to reinforce the work of the APF in this area.
42. NHRIs should consider recommending that government enter bi-lateral and multi-lateral agreements with countries in the trafficking chain to ensure appropriate information exchange on trafficking, repatriation and reintegration. Any such agreements should ensure that data exchanges operate within a human rights framework and respect privacy. Such agreements may include mechanisms by which the NHRI focal point is notified when a trafficked person has been identified and is to be repatriated.
43. NHRIs should consider using their own networks to facilitate information exchange in appropriate cases.
44. The APF should consider developing an Asia-Pacific Regional or Sub-Regional instrument or protocol, for example, between NHRIs, on trafficking. This instrument should draw upon the UN principles and Guidelines and on the report of the APF Council of Jurists on trafficking.
45. The APF should consider promoting, overseeing or otherwise supporting the development of a best practice trafficking law to assist those countries, which are working to strengthen the legal framework around trafficking and to promote common understandings and approaches throughout the region.
46. The APF should continue to provide focused and outcome oriented workshops and training on trafficking that build on previous activities.
47. The APF should consider making representations on trafficking issues to regional groups, such as ASEAN to promote a human rights-based, comprehensive and regional response to trafficking.
48. The APF could consider establishing working groups drawn from the Focal Point Network to consider particular issues in detail and develop resources and information including information on VSA contacts for use by all APF members.

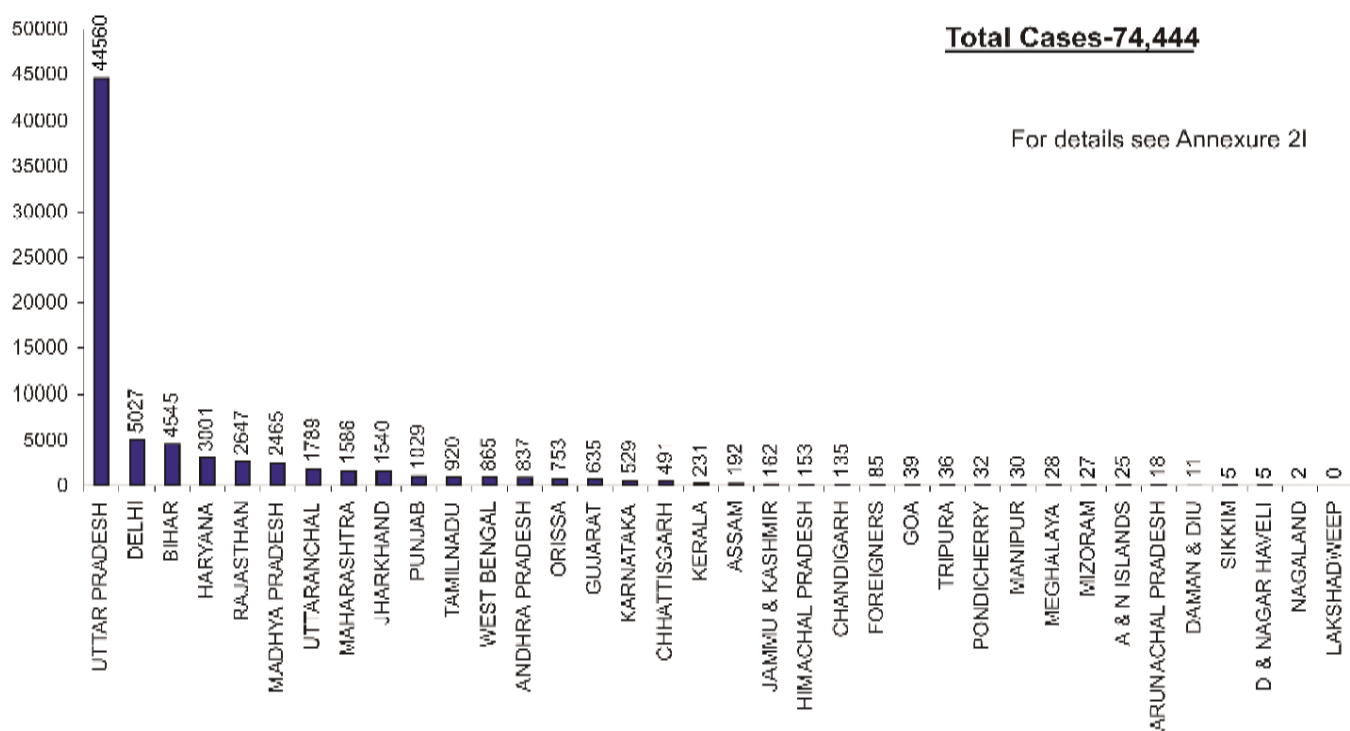


## List of Cases Registered During the Last Three Years



## State Wise List of Cases Registered During 2005-2006

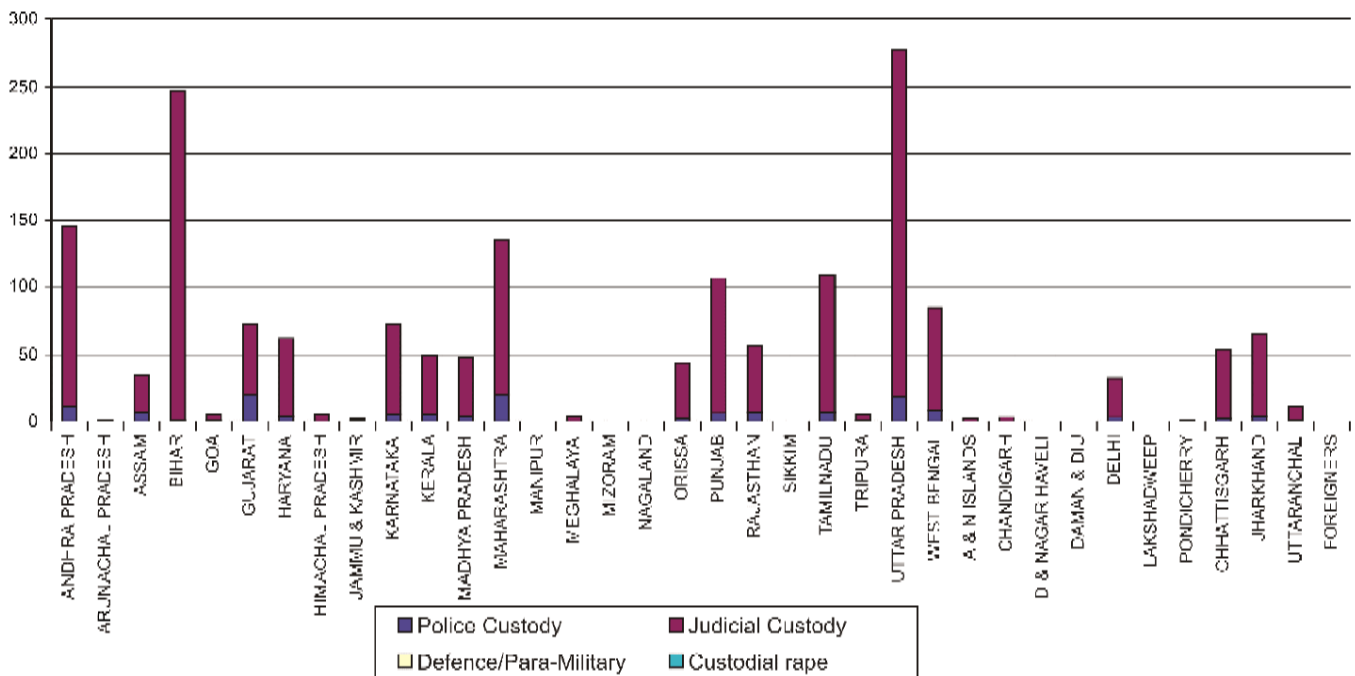
State Wise List of Cases Registered During 2005-2006



# State wise list of intimations registered relating to Custodial Death/Rape During the Year 2005-2006

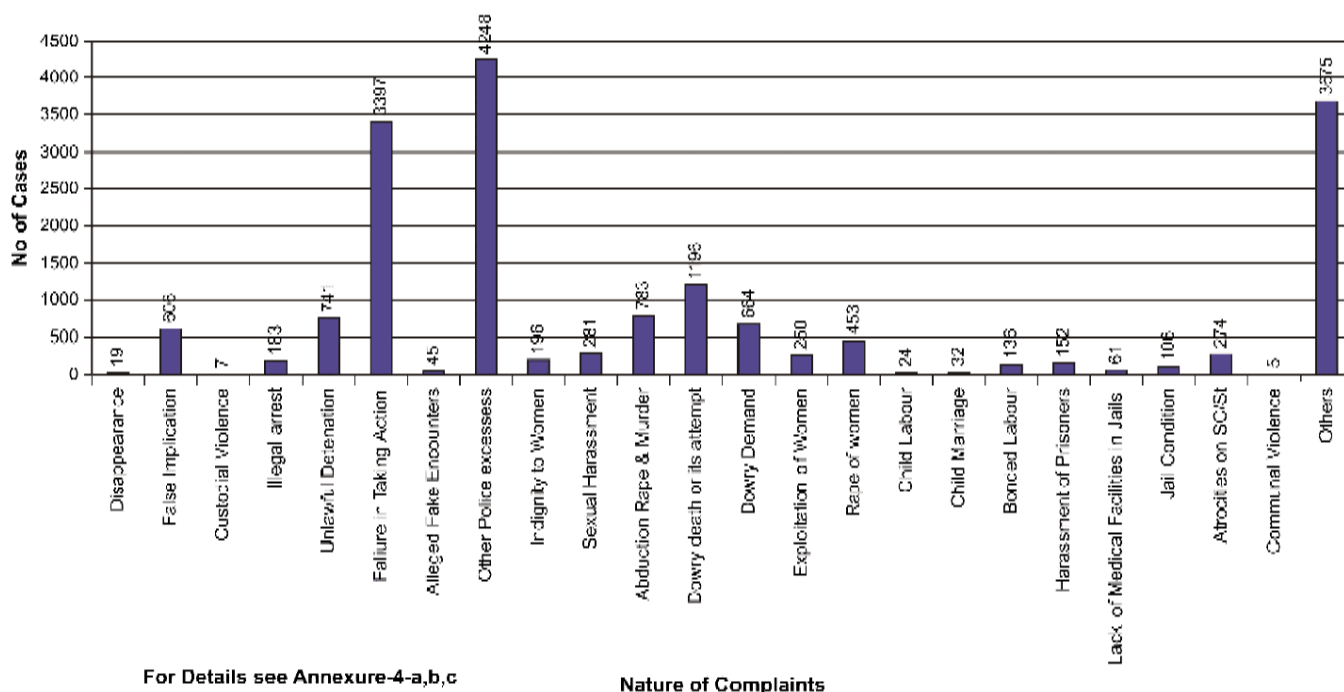
(For Details see Annexure-2)

State wise list of Intimations registered relating to Custodial Death/Rape during the Year 2005-2006 (For Details see Annexure-2)



## Nature and Categorisation of the Cases Disposed off by the Commission During the year 2005-2006 (Total Cases : 17,534 )

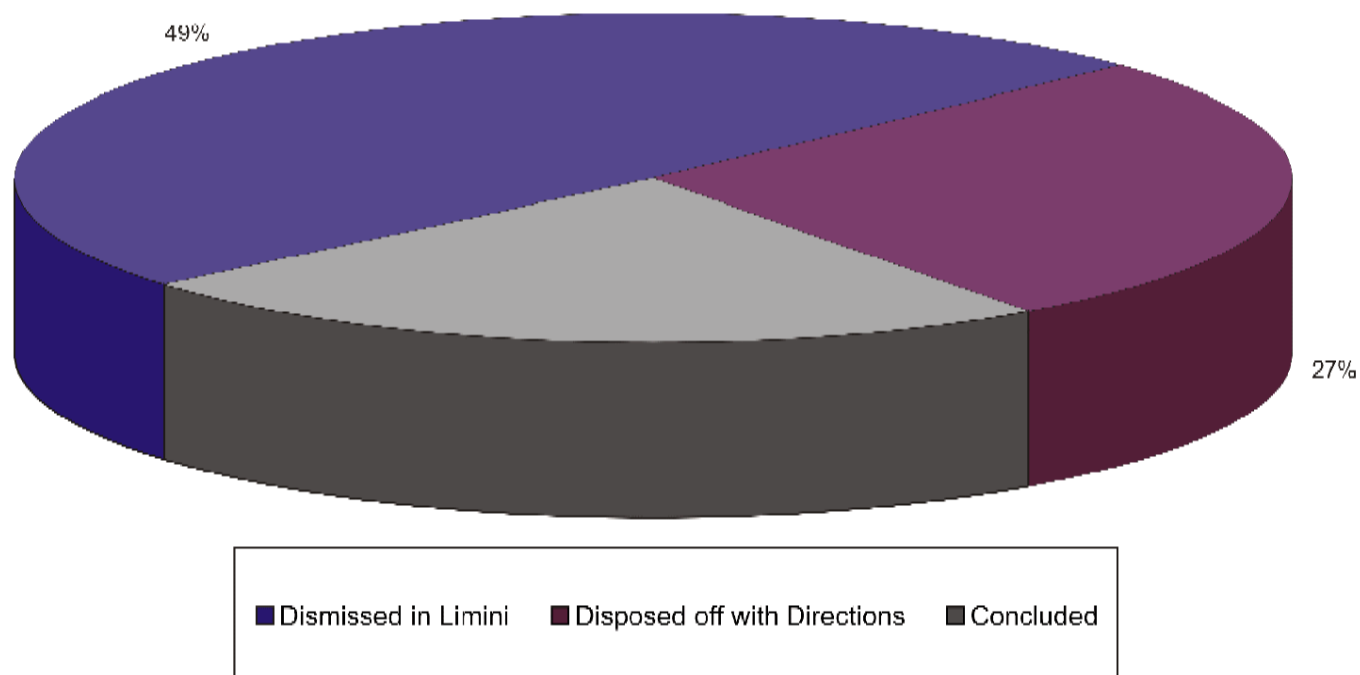
**Nature and Categorisation of the cases Disposed off by the Commission During the  
year 2005-2006(Total Cases:17,534 )**



## Cases disposed off/pending disposal by the Commission during the Year 2005-2006

(For Details see Annexure-3)

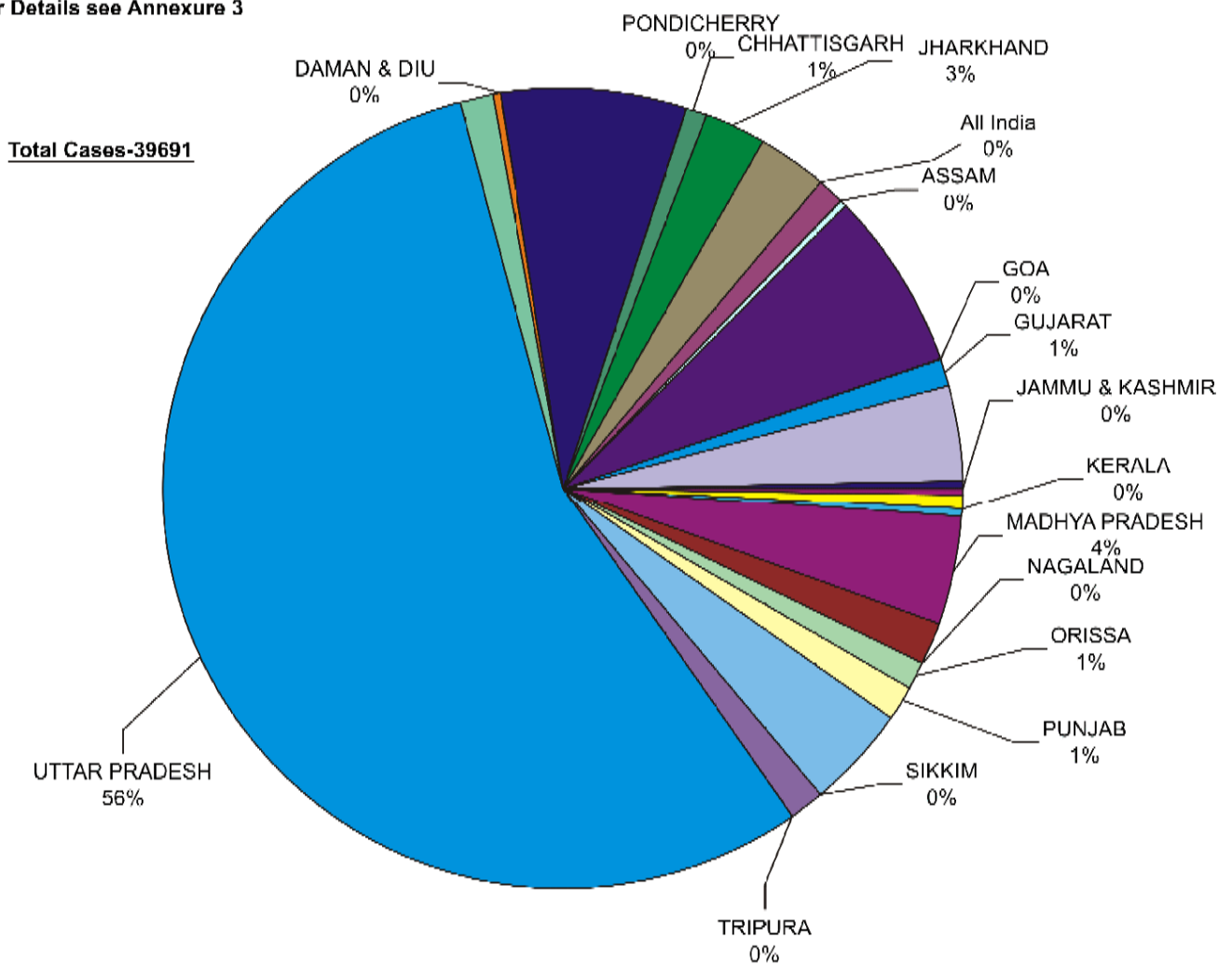
Cases disposed off/pending disposal by the Commission during the Year 2005-2006  
(For Details see Annexure-3)



## Cases dismissed *in limini* During the Year 2005-2006 States/UTs with a dismissal rate of more than 1%

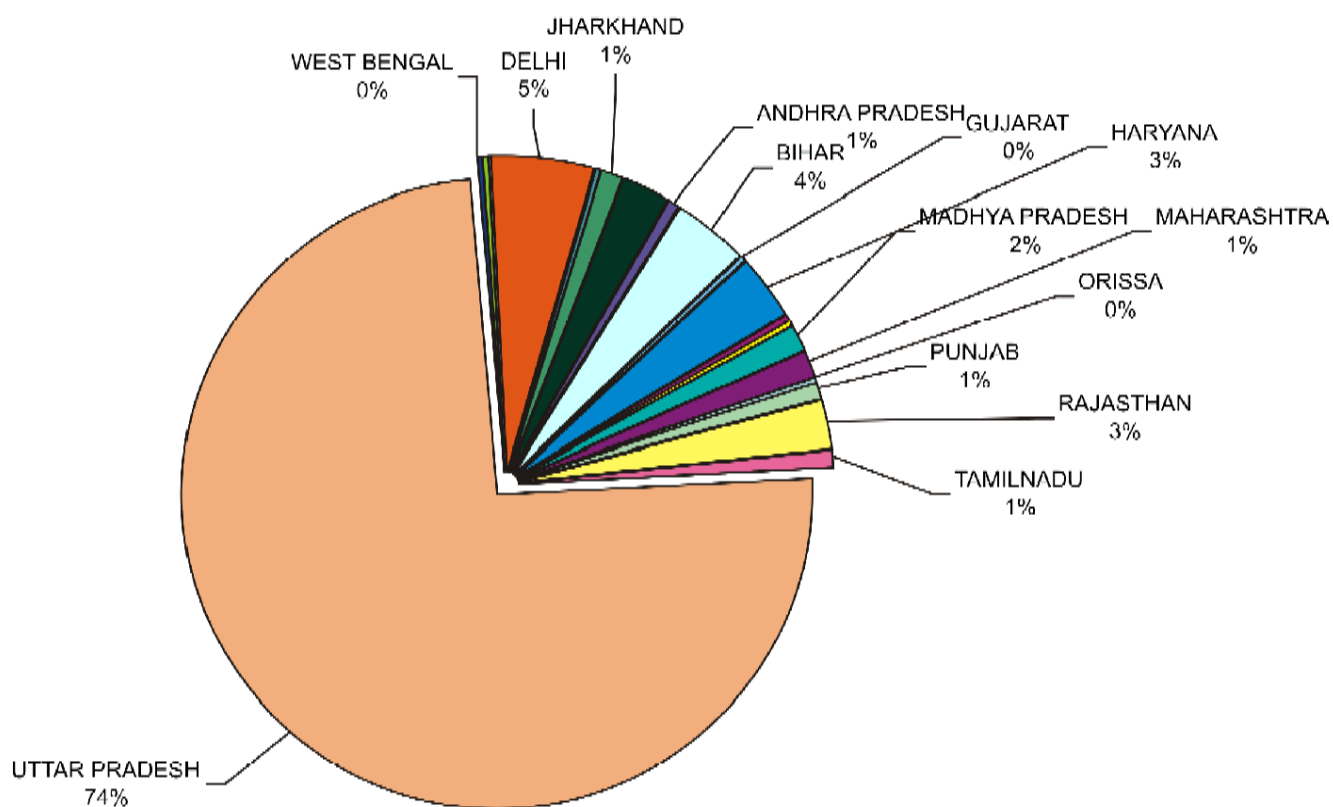
For Details see Annexure 3

For Details see Annexure 3



## Cases Disposed off with directions during the year 2005-2006 States/UTs with a dismissal rate of more than 1%

(For Details see Annexure-3)









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