

National Human Rights Commission

ANNUAL REPORT 2001-2002



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Contents

Preface	1
1 Introduction	6
2 Experience of the Working of the Protection of Human Rights Act, 1993	8
3 Situation in Gujarat	20
4 Civil Liberties	24
A] Human Rights in Areas of Insurgency and Terrorism	24
B] Custodial Death, Rape and Torture	32
C] Encounter Deaths	34
D] Video Filming of Post-Mortem Examination and Revision of Autopsy Forms	35
E] Systemic Reforms: Police	36
F] Human Rights and Administration of Criminal Justice System	39

G]	Custodial Institutions	40
	1) Visits to Jails	40
	2) Prison Population	42
	3) Medical Examination of Prisoners on Admission to Jail	42
	4) Mentally Ill Patients Languishing in Jails	43
	5) Sensitisation of Jail Staff	43
	6) Visits to Other Correctional Institutions/Protection Homes	45
H]	Improvement of Forensic Science Laboratories	45
5	Review of Laws, Implementation of Treaties and Other International Instruments of Human Rights (Section 12(d), (f) and (j) of the Protection of Human Rights Act, 1993)	48
A]	Prevention of Terrorism Ordinance, 2001	48
B]	Child Marriage Restraint Act, 1929	50
C]	Protection of Human Rights Act, 1993	51
D]	Implementation of Treaties and other International Instruments	52
	1) Protocols to the Convention on the Rights of the Child	52
	2) Protocols to the Geneva Convention	52
	3) Convention Against Torture	53
	4) Convention and Protocol on the Status of Refugees	53
E]	Freedom of Information Bill, 2000	55
F]	Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995	56
6	Right to Health	58
A]	Public Health and Human Rights	59
	1) General Recommendations	59
	2) Recommendations on Access to Health Care	60
	3) Recommendations on Tobacco Control	60
	4) Recommendations on Nutrition	61
B]	HIV/AIDS and Human Rights	62
C]	Maternal Anaemia and Human Rights	63

7	Rights of Women and Children	64
A]	Trafficking in Women and Children	64
	1) Trafficking in Women and Children: Manual for the Judiciary	64
	2) Information Kit on Trafficking in Women and Children	65
	3) Prevention, Rescue and Rehabilitation of Women and Children Trafficked into Prostitution in Delhi	65
B]	Combating Sexual Harassment of Women at the Work Place	66
C]	Harassment of Women Passengers in Trains	69
D]	Rehabilitation of Widows in Vrindavan	70
E]	Nomenclature to be used in Official Documents for Addressing Wives of Persons who have Died	72
F]	Sale of Female Children of Lambada Tribals in Telengana Region, Andhra Pradesh	73
G]	Women's Human Rights Cell in National Human Rights Commission	74
8	Rights of the Vulnerable	76
A]	Abolition of Bonded Labour and Child Labour	76
	1) Bonded Labour	76
	2) Child Labour	81
B]	Rehabilitation of People Displaced by Mega Projects	88
C]	Rights of the Disabled	89
D]	Rights of the Elderly	92
E]	Problems of Denotified and Nomadic Tribes	94
F]	Manual Scavenging	95
G]	Human Rights in Situations of Natural Disasters	97
	1) The Orissa Cyclone Affected	97
	2) The Gujarat Quake Affected	99
H]	Racism: World Conference in Durban	102
9	Research Programmes and Projects	106
A]	Preventing Employment of Children by Government Servants: Amendment of Service Rules	106
B]	Quality Assurance in Mental Hospitals	107
	1) Mental Hospitals in Ranchi, Agra and Gwalior	107
	2) Mentally Ill Patients in Dargahs/Private Hospitals	109

C]	Action Research on Trafficking in Women and Children	111
D]	Research Programmes on Women's Rights	112
	1) Rights of Women Prisoners in Indian Jails: A Sociological Study	112
	2) Complaints made by Women at Police Stations in Bangalore	113
E]	Research Project on 'Impact, Community Response and Acceptance of Non Formal Education under the National Child Labour Project — A Case study of Carpet-Weaving belt of Mirzapur — Bhadhoi and Glass-Bangle region of Ferozabad'	113
F]	Research study on the Mushar Community of Bihar	115
G]	Research Project on Mentally Ill Persons in Jails of West Bengal	116
H]	Key Thrust Areas	116
 10 Promotion of Human Rights Literacy and Awareness		118
A]	National Action Plan for Human Rights and Action Plan for Human Rights Education	119
B]	National Institute of Human Rights	121
C]	Human Rights Training for Civil Servants	121
D]	Human Rights Training for Police Personnel	122
E]	Human Rights Education for Para-Military and Armed Forces	124
F]	Internship Programme	125
G]	Seminars and Workshops	125
H]	Publications and the Media	126
I]	Visits on Behalf of the Commission to Various States	129
J]	Visits Abroad	130
 11 Non-Governmental Organisations		132
 12 State Human Rights Commissions and Human Rights Courts		136

13	Complaints before the Commission	138
A]	Number and Nature	138
B]	Investigation of Cases	140
C]	Complaint Management System	142
	1) Computerisation of Complaint Handling Mechanism	142
	2) 'MADAD'	144
D]	Illustrative Cases 2001-2002	144
	POLICE EXCESSES	
a)	Custodial Deaths	145
1	Death of Sanjay Sitaram Mhasker due to custodial violence: Maharashtra (Case No.210/13/98-99-ACD)	145
2	Custodial death of Mohammad Irshad Khan (Case No.2387/30/2000-2001-CD)	146
3	Custodial death of Ram Kishore — Complaint by Uttar Pradesh Parjapati Samaj Vikas Parishad (Case No.483-LD/93-94)	147
4	Death of Lallan due to negligence in providing medical treatment: Uttar Pradesh (Case No.28302/24/1999-2000)	148
5	Death of Manoj Kumar due to torture by police: Uttar Pradesh (Case No.7955/96-97/NHRC)	149
6	Death of Shishu Rebe due to torture in police custody: Arunachal Pradesh (Case No.74/96-97/NHRC)	149
7	Death of Nageshwar Singh due to illegal detention and torture: Bihar (Case No.7482/95-96/NHRC)	150
8	False implication of Madhukar Jetley: Uttar Pradesh (Case No.2385/24/2000-2001)	151
b)	Torture	152
9	Torture of Dayashankar by police: Uttar Pradesh (Case No.791/24/2000-2001)	152
10	Illegal detention and torture of Anil Kumar: Maharashtra (Case No.517/13/98-99)	153
11	Illegal detention and torture of D.M. Rege: Maharashtra (Case No.1427/13/98-99)	154
c)	Police Harassment	154
12	False implication of Manoj Kumar Tak and Narender Tak: Madhya Pradesh (Case No.667/12/98-99-FC)	154

13 False implication of Rajinder Singh: Haryana (Case No.810/7/98-99)	156
14 Illegal detention by Police: Uttar Pradesh (Case No.13161/24/98-99)	157
DEATH BY NEGLIGENCE IN JUDICIAL CUSTODY	
15 Reference from Human Rights Court, Kanpur Nagar, in respect of death of Jasveer Singh in Judicial custody due to negligence in providing timely medical aid: Uttar Pradesh (Case No.5190/24/1999-2000-CD)	158
16 Death of Dhirender Singh in Jail: Uttar Pradesh (Case No.21808/24/99-2000/CD)	159
VIOLATION OF RIGHTS OF CHILDREN/WOMEN	
17 Sexual harassment in the work place: Suicide of Sangeeta Sharma, Advocate: Andhra Pradesh (Case No.203/1/2000-2001)	160
18 Rape of a minor Dalit girl; failure to comply with the law: Haryana (Case No.390/7/98-99/NHRC)	161
19 Death of 12 years old child worker, Naushad: Bangalore (Case No.452/10/2000-2001)	162
20 Commission of Rape by a Minister of State in the Government of Assam (Case No.113/3/2000-2001)	163
VIOLATION OF THE RIGHTS OF THE VULNERABLE SECTIONS OF SOCIETY	
21 Killing of 7 Dalits by Upper Castes: Karnataka (Case No.628/10/99-2000)	164
22 Harassment and illegal detention of farmers: Uttar Pradesh (Case No.9480/24/1999-2000)	165
HUMAN RIGHTS VIOLATIONS BY SECURITY FORCES	
23 Procedure with respect to complaints against Armed Forces: Disappearance of Mohammed Tayab Ali, who was last seen in the company of para-military forces (Case No. 32/14/1999-2000)	166
24 Death in firing by Armed Forces: Manipur (Case No.25/14/99-2000)	175
25 The Case of Jalil Andrabi, Advocate: Jammu and Kashmir (Case No.9/123/95-LD)	175
OTHER IMPORTANT CASES	
26 Death due to Electrocutation — strict liability of the State: Jharkhand (Case No.1509/4/2000-2001)	176
27 Killing of Mohinder Singh in police firing (Case No.253/9/2000-2001)	177

28	Death in police firing: Bihar (Case Nos.2489/4/1999-2000 and 2314/4/1999-2000)	178
29	Protection of Human Rights Defenders: False implication of Lalit Uniyal, Uttar Pradesh (Case No.773/24/1999-2000)	179
30	Rights of Persons with Disabilities: Commission provides assistance to Shri C.S.P. Anka Toppo, a blind medical student to enable him complete MBBS Course (Case No. 1754/30/2000-2001)	180
31	Cases where decision of the Commission has been upheld by Court — Shri Mohammed Khan (Case No.7/21/96-LD)	182
32	Jurisdiction of NHRC under Section 36(1) of the Act in relation to State Human Rights Commission (Case No.624/25/2000-2001)	183
33	Harassment of M. Karunanidhi and others by police: Tamil Nadu: Jurisdiction of NHRC (Case No.280/22/2001-2002) (Linked Case No.275/22/2001-2002)	186
E]	Action Taken on the Cases Reported in the Annual Report of 2000-2001	188
1	Illegal Detention, Torture and Death of Shah Mohammed in Police Custody and Negligence on the Part of Doctors for not Conducting a Thorough Post Mortem: Madhya Pradesh. (Case No.3855/96-97/NHRC)	188
2	Torture in Police Custody Results in the Death of Kartik Mahto: Bihar (Case No.8903/95-96)	188
3	Harassment by Police Leads to Suicide of Surinder Singh: Uttar Pradesh (Case No. 1929/96-97/NHRC)	189
4	False Implication of the Complainant and Others and Torture by Police: Delhi (Case No.3069/30/1999-2000)	189
5	Allegations of Death, Rape and Torture of Tribals as a Result of Actions of the Joint Task Force set up by the Government of Tamil Nadu and Karnataka to Apprehend Veerappan and Associates. (Case No.222/10/97-98, Case No.534/22/97-98, Case No.795/22/97-98, Case No.249/10/97-98, Case No.79/10/1999-2000)	190
6	Mistreatment and Torture of Prabhakar Mehta by the Officers of Enforcement Directorate: Maharashtra. (Case No.1208/13/97-98)	190
7	Illegal Detention, Torture and False Implication by Police: Uttar Pradesh (Case No. 21883/24/98-99)	191
8	Illegal Detention and Torture of an ISRO Scientist: Kerala. (Case No.235/11/98-99)	191

9	Fracture Sustained by Sheshrao Rayasing Rathod Following Police Mistreatment: Maharashtra. (Case No.1299/13/98-99)	191
10	Death of a Labourer in a Fake Encounter: Bihar (Case No.3879/4/98-99)	192
11	False implication by police: Bihar (Case No.3321/4/97-98)	192
12	Acts of Police High-Handedness Against Agitating Farmers in Ten Villages of C.R. Pattna Taluk, Hassan District: Karnataka. (Case No.91/10/98-99)	193
13	Acts of Police High-Handedness Against Dalits in Ogalur Village: Tamil Nadu (Case No.772/22/98-99)	193
14.	Unjustified Arrest and Detention of Farmers to Recover Arrears of Land Revenue: Uttar Pradesh. (Case No.19265/96-97)	193
15	Atrocities on Dalit women by forest officials: Uttar Pradesh (Case No. 2731/96-97/NHRC)	194
16	Seven Boys from Balmiki Community Paraded Naked by Police: Haryana (Case No.393/7/1999-2000)	194
17	Attacks on Members of the Christian Community in Several States (Case Nos.289/6/1999-2000; 351/6/1999-2000; 295/6/1999-2000; 481/6/1999-2000; 1873/4/1999-2000; 1933/4/1999-2000)	195
18	Inhuman Treatment of Mentally Ill Patients at Sultan Alayudeen Dargah: Tamil Nadu (Case No.427/22/98-99)	195
19	Rape of four Scheduled Caste and Scheduled Tribe women in West Godavari District, Andhra Pradesh. (Case No.343/1/98-99)	197
20	Custodial Rape of a Disabled Girl Lodged in Observation Home: Maharashtra. (Case No.1027/13/97-98)	197
21	Rape of a ten year old Girl Child in Juvenile Observation Home: Andhra Pradesh (Case No.32/1/1999-2000)	197
22	Negligence on the Part of Jail Authorities Leads to the Death of an Inmate: Bihar (Case No.3165/4/1998-99)	198
23	Negligence on the Part of Police Leads to the Killing of Mahendra Pal Singh: Uttar Pradesh. (Case No.39/24/97-98/ACD)	198
24	Death of a girl in VVIP Movement: Uttar Pradesh (Case No. 13881/24/97-98)	199
25	Victim of medical negligence: Orissa (Case No.359/18/1999-2000)	199
26	Release of Bonded Labourers and Their Rehabilitation: Punjab. (Case No.663/19/1999-2000)	200
27	Exploitation of Bonded Labour: Maharashtra (Case No.1173/13/1999-2000)	200
28	Release of Bonded Labourers and their Rehabilitation: Uttar Pradesh (Case No. 15178/24/98-99)	201

29 Release of 13 Bonded Child Labourers from a Carpet Factory in Allahabad District: Uttar Pradesh. (Case No.20183/24/1999-2000)	201
30 Exploitation of Migrant Labour: Punjab. (Case No.700/19/97-98)	202
31 Mass Cremation of Unidentified Dead Bodies by Punjab Police: Referral by Supreme Court. (Case No.1/97/NHRC)	202
32 Killing of 35 members of Sikh community in Anantnag District of Jammu and Kashmir by militants (Case No.206/9/99-2000)	203
33 Measures to Prevent Deaths due to Starvation: Orissa. (Case No.36/3/97-LD)	204
14 Administration and Logistic Support	208
A] Staff	208
B] Special Rapporteurs/Representatives	208
C] Core Groups	209
D] Use of Official Language	210
E] Library	210
F] Funds	210
G] Manav Adhikar Bhavan	211
15 Summary of Principal Recommendations and Observations	212
Annexures	
1] Recommendations of the NHRC for Amendments to the Protection of Human Rights Act, 1993	238
2] Proceedings of the Commission on Gujarat: 1 April 2002	268
3] Proceedings of the Commission on Gujarat: 31 May 2002	284
4] Opinion: The Prevention of Terrorism Bill, 2000	320
5] The Child Marriage Restraint Bill, 2002 (A Bill to restrain the solemnisation of child marriages)	336
6] Recommendations on HIV/AIDS	350
7] Statement showing details of custodial deaths reported by the state governments	360

8a]	Statement showing number of communications in respect of police encounters as reported by the State Governments	362
8b]	Statement showing number of complaints received from sources other than State Governments, including the media, in respect of deaths allegedly in fake encounters	364
8c]	Statement showing number of complaints received/registered in respect of deaths in police firing	366
9]	Statement showing number of cases registered, number of cases considered by the Commission, and number of cases processed but pending consideration by the Commission during the year 2001-2002	368
10]	State-wise list of cases disposed of/pending disposal by the Commission during the year 2001-2002	370
11]	State-wise statement of category of cases admitted for disposal during the year 2001-2002	372

Charts and Graphs

1]	Custodial deaths during the year 2001-2002	374
2]	State wise list of cases registered during 2001-2002	375
3]	List of cases registered during the last three years	376
4]	Cases disposed off/pending disposal by the Commission during the year 2001-2002	377
5]	Cases dismissed <i>in limini</i> during the year 2001-2002. States/UTs with a dismissal rate of more than 1%	378
6]	Cases disposed off with directions during the year 2001-2002. States/UTs with a dismissal rate of more than 1%	379
7]	Nature and categorisation of the cases considered by the Commission during the year 2001-2002	380

Preface

This report of the National Human Rights Commission, the ninth since it was established in October 1993, covers perhaps the most challenging year in the life of this institution.

Everywhere in the world, including India, the pervasive threat of terrorism radically altered the environment in which human rights had to be promoted and protected. It was not a climate favourable to the defence of such rights. Yet, paradoxically, and precisely for this reason, it was a year when the maximum effort had to be made by those whose duty it was to protect such rights, and to do so with a sense of integrity and conviction.

It had been hoped, at the dawn of the new millennium, that the period ahead would bring issues relating to the dignity and worth of the human person to the centre of the social and political agenda; that the advent of the twenty-first century would see a focus on human rights and human development; on issues of equity and justice; and that the true purpose of good governance would be to open the doors of freedom and opportunity to those who had been disadvantaged by circumstances of birth, or for reasons of economic and social exclusion.

Instead, the new millennium was darkened by the shadow of terrorism and, with it, a compulsion to fight that evil with the entire arsenal of the international community and of all States. On 28 September 2001, the United Nations Security Council adopted Resolution 1373, requiring all States to adopt

a wide range of legislative, procedural, economic and other measures to prevent, prohibit and criminalise terrorist acts. A global war against terrorism was declared. And India, which had been the victim of vicious acts of terrorism since the 1980s, and had often fought that war alone, found itself in the centre of the conflict, in a battle that had to be fought and won. This, the Commission fully understood and recognised; for the right to life — which terrorists hold in contempt — is the most basic of all rights, without which human beings can exercise no other right.

It was not always easy, however, given the compulsion of circumstances, for those in authority to hold steadfastly to the view that the purpose of anti-terrorism measures must be to protect democracy and human rights and not undermine them, even inadvertently. For its part, the Commission held to its position that the Constitution of our country had, as its core values, both the defence of national integrity and of individual dignity; that the security of the State and the security of the individual were not incompatible as objectives, but entirely consistent with each other; that there was need to balance the two; and that any law or measures devised to combat terrorism had to be in harmony with the Constitution, the international treaties to which India was a party, and respectful of the principles of necessity and proportionality.

The virtue of periods of challenge is that they compel both individuals and institutions to define their true character and purpose. The year 2001-2002 was such a period in the life of the National Human Rights Commission.

In addition to the position of principle that it took in opposing the Prevention of Terrorism Ordinance 2001, the Commission had to define the position that it should take on other issues of considerable societal and political importance to the country.

Notable among these issues was the stance that the country should take in respect of Dalits at the World Conference against Racism, Racial Discrimination, Xenophobia and All Related Forms of Intolerance held in Durban between 31 August – 8 September 2001. The Commission expressed the view that it was not the ‘nomenclature’ of the form of discrimination that must engage our attention, but the fact of its persistence that must cause us concern and compel us to act. The Constitution of India, in Article 15, expressly prohibits discrimination on the grounds both of ‘race’ and ‘caste’ and that constitutional guarantee had to be vigorously implemented. The Commission held the view that the instruments of governance in our country, and the energetic and committed non-governmental sector of society

that existed, could unitedly triumph over historical injustices that had hurt the weakest sections of our country, particularly Dalits and Adivasis. The Commission added that this was, above all, a national responsibility and a moral imperative that can and must be honoured.

As the year under review was drawing to a close, the situation in Gujarat, beginning with the Godhra tragedy and continuing with the violence that ensued, greatly preoccupied the Commission. The tragic events that occurred had serious implications for the country as a whole, affecting both its sense of self-esteem and the esteem in which it was held in the comity of nations. In the view of the Commission, grave questions arose of fidelity to the Constitution and to treaty obligations. There were obvious implications in respect of the protection of civil and political rights, as well as of economic, social and cultural rights. But most of all, in the view of the Commission, the events raised questions regarding the violation of the Fundamental Rights to life, liberty, equality and dignity of citizens of India as guaranteed in the Constitution.

It is a statutory responsibility of the Commission to uphold the Fundamental Rights guaranteed in the Constitution and the treaties to which our State is a party. It is therefore also a duty of the Commission to contribute to the jurisprudence on human rights in a manner that is consistent with that role. In respect of the situation in Gujarat, therefore, the Commission held that:

‘... it is the primary responsibility of the State to protect the right to life, liberty, equality and dignity of all those who constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence.’

The Commission added that:

‘... it is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-State players acting within its jurisdiction. The State is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights.’

In all of its nine years, the Commission has had to work under a Statute, the Protection of Human Rights Act, 1993, that is less than perfect and that, in various

ways, has lent itself to the subversion of the very Objects and Reasons leading to the adoption of the Act. The Commission, accordingly, has made a series of proposals for amending the Act, but action on those proposals is still awaited. In the meantime, since the Commission must fulfil its responsibilities to the best of its capacity, it has construed the provisions of its Statute in ways most compatible with its Objects and Reasons. Recently, for instance, the Commission made clear its construction of Section 19 of the Act, which deals with the procedure to be followed with respect to the armed forces in relation to complaints of human rights violations which may be brought against them.

On all of these matters, the report that follows provides details of the views of the Commission on the actions that it has taken in the course of the year 2001-2002. As in the past, the present report deals, in particular, with a range of issues relating to civil liberties; the review of laws and the implementation of treaties; the right to health; the rights of women and children, including such serious issues as trafficking; the rights of vulnerable sections of society, particularly Dalits and Adivasis; those displaced by mega projects, and those entrapped in child labour or bonded labour; the rights of those with disabilities; the efforts being made to widen an awareness of human rights and the role of non-governmental organisations and others in furthering this process. The report also contains a description of some of the principal cases decided recently by the Commission, which gives an idea of the range of complaints received by the Commission and the manner in which it has attended to them.

The vision of a Commission must, however, always be greater than a mere aggregate of its responses to individual cases and issues. For this Commission, the defence of human rights has been the defence of democracy itself, a democracy that is inclusive in character and caring in respect of its most vulnerable citizens. By its very nature, a National Institution for the promotion and protection of human rights must constantly be vigilant and outspoken in the defence of such rights. This is a responsibility that requires it, as a duty, to draw attention to the acts of the State and its agents that result in the violation of human rights — whether through acts of commission, omission, abetment or negligence. It requires the openness and freedom of a democratic polity, however, to ensure that such criticism, which is essential to the well-being of society, is received with respect, even if not always with agreement, and that the dialogue for the better protection of human rights is sustained as an objective of all elements of the State and civil society. As the report for the year 2001-2002 indicates, the National Human Rights Commission has frequently had to take positions at variance with those of the Central and State Governments. It is a great

tribute to the strength and resilience of the Indian polity that the Commission has never lacked the democratic space in which to function, and to express its views as it thought fit and appropriate.

In its report for the preceding year, the Commission had indicated that it had drawn inspiration in its work for human rights from Mahatma Gandhi's extraordinary observation:

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

Given the climate and events of the current year, the Commission has had reason to keep in mind another of Gandhiji's thoughts:

'Peace will not come out of a clash of arms, but out of justice lived and done.'

It is with these comments that the Commission places its annual report for the year 2001-2002 before those who are interested in the promotion and protection of human rights in this country.

Sd.
(J. S. Verma)
Chairperson

Sd.
(K. Ramaswamy)
MemberMember

Sd.
(Sujata V. Manohar)
Member

Sd.
(Virendra Dayal)

New Delhi
3 July 2002

Introduction

CHAPTER 1

1.1 This is the ninth annual report of the National Human Rights Commission. It covers the period 1 April 2001 to 31 March 2002.

1.2 The eighth annual report of the Commission, for the period 1 April 2000 to 31 March 2001, was submitted to the Central Government on 31 December 2001. As of the time of writing the present annual report, the eighth such report had not been placed before each House of Parliament, together with a Memorandum of Action Taken, in accordance with the procedure envisaged under section 20(2) of the Protection of Human Rights Act, 1993.

1.3 The seventh annual report of the Commission, for the period 1 April 1999 to 31 March 2000, was submitted to the Central Government on 29 March 2001. It was tabled before the Lok Sabha, together with the Memorandum of Action Taken, on 23 April 2002 and before the Rajya Sabha, together with that Memorandum, on 24 April 2002 — over a year after the report was submitted to the Government. The cycle of delay has thus, once again, been repeated. Worse still, the delay in tabling the annual report before Parliament has resulted in a corresponding delay in releasing its contents to the public. In the process, both the elected representatives of the people of India and the people of India themselves have, in effect, been denied timely and comprehensive information on the work and concerns of the Commission.

1.4 During the period under review, Shri Justice Jagdish Sharan Verma continued to serve as Chairperson of the Commission, with Dr Justice K. Ramaswamy, Smt. Justice Sujata V. Manohar and Shri Virendra Dayal serving as its Members. The term of Shri

Sudarshan Agarwal as a Member came to an end on 18 June 2001, upon his attaining the age of seventy years. As of the time of writing this report, twelve months later, no appointment had been made under the provisions of section 4 of the Statute of the Commission to fill the vacancy resulting from his retirement. In accordance with section 3(3) of that Statute, Shri Justice Mohammed Shamim, Chairperson of the National Commission of Minorities, continued to serve as an ex-officio Member of the Commission. The terms of office of the two other ex-officio Members of the Commission, however, came to an end during the period under review. Shri Dilip Singh Bhuria, Chairperson of the National Commission for Scheduled Castes and Scheduled Tribes completed his term of office on 16 December 2001 and Smt. Vibha Parthasarathi, Chairperson of the National Commission for Women completed her term of office on 17 January 2002. They were succeeded by Dr Bizay Sonkar Shastri and Dr Poornima Advani, who were appointed to serve, respectively, as Chairperson of the National Commission for Scheduled Castes and Scheduled Tribes and Chairperson of the National Commission for Women.

1.5 Shri P.C. Sen assumed the responsibilities of Secretary-General and Chief Executive Officer of the Commission on 6 August 2001, succeeding Shri N. Gopalaswami. Shri Y.N. Srivastava continued to serve as Director General (Investigation) of the Commission during the period under review, while Shri S.C. Verma joined as Registrar (Law) on 12 July 2001.

Experience of the Working of the Protection of Human Rights Act, 1993

CHAPTER 2

2.1 Over the past nine years the Commission has daily endeavoured to give meaning and reality to the Objects and Reasons that led to the adoption of the Protection of Human Rights Act, 1993. It has sought to use to the full the opportunities provided to it by that Act to promote and protect human rights in the country. But it has also had to deal with the infirmities of the Act and the opportunities that these, in turn, have provided to frustrate the efforts of the Commission and, on occasion, the very purposes of the Act itself.

2.2 It would thus be useful, in the light of the experience of the Commission, to reflect briefly on the Objects and Reasons of the Act and to examine how these have, in reality, been served.

2.3 The over-arching intent of the Act was to provide for the 'better protection of human rights' in the country and 'for matters connected therewith and incidental thereto.' Read with the 'Functions of the Commission' contained in section 12 of the Act, this was indeed a broad and far-reaching purpose. The Statement of Objects and Reasons amplified the need for the Act. It expressly noted 'the growing concern in the country and abroad about issues relating to human rights' and, while observing that the rights embodied in the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights of the same year were 'substantially protected' by the Constitution, nevertheless observed that there were 'changing social realities and emerging trends' that required the Government to review 'existing laws, procedures and the system of administration of justice, with a view to bringing about greater accountability and transparency in them, and devising efficient and effective methods of dealing with the situation'.

2.4 Implicit in the Statement of Object and Reasons therefore were the following ideas:

First, while the Constitution ‘substantially protects’ the range of human rights covered by the two international human rights covenants mentioned in the Act, there was need for the ‘better protection’ of these rights through the creation of additional instrumentalities that would be complementary to those that already existed. These new instrumentalities were to be the National Human Rights Commission, State Human Rights Commissions and, at the district level, Human Rights Courts.

Second, the Statement clearly implied that a new era had begun, both within the country and internationally, in which issues pertaining to human rights were of ‘growing concern’. In other words the days were over when the walls of ‘national sovereignty’ or the ‘domestic jurisdiction of a State’ could be used to protect those responsible for the violation of human rights from the ‘growing concern’ and scrutiny of those interested in the protection of such rights, whether they were within the country or abroad. Likewise, with the adoption of the Act, it became impossible to argue with any measure of credibility that, because certain forms of human rights abuse or violations had long-persisted in the country — whether for societal, behavioural or any other reason — these should continue to be acquiesced in or tolerated in the future.

Third, while the Act defined ‘human rights’ as the rights to life, liberty, equality and dignity of the individual guaranteed by the Constitution and embodied in the International Covenants and enforceable by Courts in India, the fact of the matter was that the Act was passed soon after the 1993 World Conference on Human Rights and that Conference had, in its unanimously adopted Declaration and Programme of Action, ‘strongly recommended that a concerted effort be made to encourage and facilitate the ratification of and accession or succession to international human rights treaties and protocols adopted within the framework of the United Nations system with the aim of universal acceptance.’ There are now some seventy international instruments that have been adopted under the auspices of the United Nations, covering a range of subjects relating to human rights and ‘matters connected therewith or incidental thereto.’ Further, these instruments include some sixteen Conventions/Covenants to which India is a State Party and six of those instruments have themselves established treaty bodies expressly to oversee their proper observance and implementation.

Fourth, the Statement of Objects and Reasons also made clear that there was need for greater ‘accountability’ and ‘transparency’ in the administration of laws and

procedures germane to the 'better protection' of human rights. In other words, that it was necessary to hold accountable and to bring to justice those who had been responsible for the violation of such rights, to redress the grievances of those who had been wronged, to provide them — when needed — with immediate interim relief, and to do away with the shroud of secrecy and lack of information behind which violators of human rights had historically, and in all societies, sought refuge.

Fifth, the Statement saw the need for the devising of methods that would be more 'efficient and effective' in furthering the 'better protection' of human rights. It recognised that existing laws, procedures, and the system of administration of justice needed to be reviewed. The fulfilment of these high purposes thus became the legitimate concern of the Commission under the provisions of the Act.

2.5 By the sixth year of its functioning, it became increasingly clear to the Commission that certain provisions of the Act required to be re-examined as they were, in fact, tending to militate against the purposes of the Act itself and lending themselves to being used, on occasion, to thwart the endeavours of the Commission to provide for the 'better protection' of human rights in the country. The Commission therefore requested a former Chief Justice of India to head a high-level Advisory Committee to assess the need for structural changes and amendments to the Act. The advice of that Advisory Committee was given to the Commission in October 1999 and considered by the Commission in February 2000. After a clause by clause discussion of the Act, the Commission formulated its views on the amendments that were required to be made to the Act, keeping in view the major impediments and structural inadequacies experienced by the Commission over a course of seven years in operating the Act. Only then, in March 2000, did the Commission transmit its proposals regarding the amendments required to the Act to the Central Government.

2.6 It is a matter of deepest regret to the Commission that, over two years later, those proposals are still pending consideration before the Central Government, despite the Chairperson having personally drawn attention to this matter, both publicly and privately, at the highest reaches of Government. The formal position thus far taken by the Central Government is contained in its Memorandum of Action Taken of April 2002, which was submitted to Parliament in respect of the Commission's annual report for the year 1999-2000. In that Memorandum, it is stated:

'The suggested amendments are very sensitive and have far reaching consequences. Therefore they have to be examined by the Government

thoroughly from various angles in view of the internal security situation in the country, widespread politicisation of human rights issues, socio-political and economic conditions. Accordingly, a Committee of Joint Secretaries headed by a Special Secretary in MHA was set up. The Committee in its four meetings held on 20.7.2000, 1.11.2000, 16.2.2001 and 13.7.2001 considered the amendments proposed by the Commission. The Committee will shortly finalise its recommendations for the consideration of the Government.'

2.7 Despite the fact that the position of the Central Government has yet to be finalised, the Memorandum of Action Taken of April 2002 nevertheless has this to say in respect of section 19 of the Act which sets down the procedure to be followed in relation to the armed forces:

'the present system of enquiry by the forces and punishment of the guilty persons has been working satisfactorily and, in view of this, it is felt that there is no need at the present stage to change the procedure that has already been spelt out in the Protection of Human Rights Act, 1993 for dealing with armed forces. It is reiterated that the Government of India is transparent in dealing with complaints and there is no apprehension on this account.'

2.8 For the Commission, chaired by a former Chief Justice of India and having the kind of membership required by its Statute, such a method of responding to its recommendations is incomprehensible. This is especially so since the daily experience of the Commission, now in the ninth year of operating under the present provisions of the Act, points to a totally different conclusion. It is not the view of the Commission that the 'present system' of enquiry into allegations of human rights violations by the armed forces is working satisfactorily. The Government is fully aware that section 19 of the Act, as at present worded, prevents the Commission from itself initiating an inquiry into, or investigating, the violation of human rights by the armed forces and that this provision has been widely criticised both at home and abroad. Yet, spokespersons of the Government, even at the highest levels, have frequently referred to the existence of the Commission and its powers under the Act as a sure defence against the violation of human rights by the armed forces when allegations of such violations are brought against them. The Commission finds this tendency to use it to provide an alibi for possible wrong-doing by the armed forces disturbing, to say the least. This is more so since the Commission clearly considers the 'present system'

unsatisfactory, and the existing definition of ‘armed forces’ — which includes not only the ‘naval, military and air forces’ but also ‘any other armed forces of the Union’ — excessively wide.

2.9 Despite the existing inadequacies of the Act in this respect, however, the Commission has made clear to the Central Government that the power of the Commission to make ‘recommendations’ under section 19 must mean, as a corollary, that it has the power to do all that is necessary for the proper discharge of its responsibility. The Commission has thus taken the view that the ‘report’ that it seeks from the Central Government under section 19(1) of the Act must satisfy this requirement and contain all the material that is necessary to enable the Commission to decide objectively whether to accept the Government’s report, and not proceed further in respect of the allegations contained in a complaint, or to make ‘recommendations’ in respect of that complaint. In the view of the Commission, the ‘report’ must therefore contain a statement of all of the facts and all of the occurrences relating to the alleged violation of human rights contained in a complaint; it must not merely be confined to the findings or conclusions reached by the Central Government on the basis of facts that are not disclosed to the Commission. The Commission has also made clear that only such a construction of section 19 would promote the ‘better protection’ of human rights, which is the principal object of the Protection of Human Rights Act, 1993 and that such a construction must be preferred, since it is in consonance with a settled canon in the interpretation of statutes.

2.10 In actual practice, the Commission has therefore taken the position that in the case of unnatural death caused by the use of force, or ‘disappearance’ from custody, as soon as it is proved or admitted that the victim was in the custody, for instance, of the armed forces, the burden would be on the latter to prove how the detainee was dealt with, and unless it can satisfactorily be shown that the custodian is not responsible for the harm done in custody, or ‘disappearance’ from custody, the initial presumption of accountability will remain un rebutted. The relevant extracts of the opinion of the Commission, spelling out its construction of section 19 of the Act, may be seen on pages 249 to 263 of this report; it deals with the complaint of Smt. Mina Khatoon alleging the ‘disappearance’ of her husband, Mohammed Tayab Ali, who was last seen in the custody of the armed forces.

2.11 This is not the place to repeat in detail the text of each of the amendments that the Commission had proposed over two years ago to the Act. Those recommendations are annexed in full to the annual report of 1999-2000 and, for ease of reference, they

are also attached to the present report (see **Annexure 1**). However, it is worthwhile here to highlight some of those proposals for, if they are not acted upon, the purposes of the Act will continue to lend themselves to subversion.

2.12 These proposals have, *inter alia*, related to the following matters:

- The definition of ‘armed forces’ [**section 2.1(a)**]: the Commission has proposed that the definition should include only the ‘naval, military and air forces’ and exclude the para-military forces. As indicated above, the present wording of the Act, both in respect of section 2.1(a) and in respect of section 19, has been seriously criticised in a variety of forums, including treaty bodies. This has had an adverse effect on the credibility of the Government of India and on its commitment to protect human rights. The limitations imposed on the Commission by virtue of these provisions of the Act have also been widely and repeatedly commented upon.
- The definition of ‘International Covenants’ [**section 2.1(f)**]: this is at present limited to the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966. The Commission has proposed that the wording be expanded to include ‘and any other Covenant or Convention which has been, or may hereafter be, adopted by the General Assembly of the United Nations.’ Such a change would also be in keeping with the law of the land as laid down in the landmark judgement of the Supreme Court in which it was held:

‘Any international convention not inconsistent with the fundamental rights and in harmony with their spirit must be read into these provisions to enlarge the meaning and content thereof... regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic laws’ [Vishaka vs. State of Rajasthan 1997(6)SCC 241]

- In respect of the provisions relating to the ‘Constitution of a National Human Rights Commission’ [**sections 3-11**], the Commission has made specific recommendations in order to further clarify the qualifications needed in respect of its non-judicial members and to underline the need to reflect the pluralistic character of the polity of the country in the composition. These

recommendations have gained greater importance as, nine years after the adoption of the Act, the experience of the State Human Rights Commissions has, too often, pointed to a lack of concern in respect of these matters. There is need to protect the National Commission from such dangers and to ensure the right composition of the State Commissions as well. The recommendations made by the Commission also suggest an enhancing of the role of the Chairperson.

- A key recommendation relates to the ‘Procedures with respect to armed forces’ [section 19, and section 19(2) in particular]. As indicated above, the Commission is of the view that the present wording of section 19 and especially of section 19(2) has not always resulted in an increase in accountability or transparency. Instead, it has resulted in instances of a lack of accountability and, indeed, opacity in respect of complaints relating to the violation of human rights by members of the armed forces. In certain instances, the reports submitted under section 19(1) have lacked clarity. Efforts of the Commission, thereafter, to examine the full records of proceedings on the basis of which the reports have been filed have been blocked, the Act itself being used to justify such conduct. Yet again, on occasion, no coherent reasons have been recorded for the inability to comply with recommendations made by the Commission. It is because of such impediments, which undermine the Objects and Reasons leading to the adoption of the Act, that the Commission has proposed that section 19(2) be amended to read:

- (i) Upon receipt of the report with the recommendation of the Commission, the Central Government if it considers itself unable to comply with the same or any part of it, shall communicate its reasons for inability to the Commission within a period of three months, or such further extended period as may be given for this purpose by the Commission.
- (ii) The Commission shall thereafter consider the same and make such recommendations as it deems fit.
- (iii) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.’

In the meantime, as indicated above, pending action on these proposals, the Commission is construing section 19 in such a way that the principal Objects and Reasons of the Act are served as constructively as possible.

- A repetitive problem has arisen because the present wording of **section 20** of the Act has permitted delays to occur in the tabling of annual reports of the Commission before Parliament, together with the Memorandum of Action Taken. The report for 1997-98 was transmitted to the Central Government on 8 March 1999. It was tabled in Parliament in March 2000, a year later. The report for 1998-99 was transmitted to the Central Government on 9 November 1999. It was tabled in Parliament in December 2000, over a year later. The report for 1999-2000 was transmitted to the Central Government on 29 March 2001. It was tabled in Parliament in April 2002, again over a year later. While the Memorandum of Action Taken of April 2002 states that delays have occurred because printed copies of annual reports were received late by the Central Government, the regrettable fact remains that successive annual reports of the Commission have not been made available to Parliament or the public in a timely manner. This has not furthered the 'better protection' of human rights, or greater accountability or transparency. Nor do such delays indicate that greater effectiveness and efficiency are being brought to bear in dealing with the human rights situation. The delays, in fact, have also amounted to a denial of the Right to Information of the people of this country. The annual reports of the Commission are widely read by human rights activists, scholars and others, both at home and abroad, as also by international human rights bodies, including treaty bodies. It was for this reason that, consistent with the purposes of the Act, the Commission had recommended that **section 20(2)** of the Act be amended to read:

'The Central Government and the State Government as the case may be, **shall within a period of three months from the date of receipt of such report** cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a Memorandum of Action Taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any. **Provided that where such report is not laid before the Houses of Parliament or the State Legislature, as the case may be, within that period, it shall be open to the Commission to publish such reports**'

- The Commission has observed that, nine years after the Act was passed, the provisions of **section 30** providing for the 'speedy trial of offences arising out of violation of human rights' through the notification of a Court of Session in each

district as a Human Rights Court have not had the desired effect, section 30 in its present form lacking clarity. The Commission had therefore proposed that this provision be amplified and clarified and had recommended a specific amendment to achieve this end. In the absence of any reaction to this proposal, too, the purposes of the Act are not being fulfilled, the infirmity being built into the present text.

- The provisions of the present Act also need to be reviewed in order to reinforce the financial and administrative autonomy of the Commission — a cardinal feature of the ‘Paris Principles’ that should be reflected in the wording of the statutes of National Institutions for the Promotion and Protection of Human Rights. Specific proposals have been made by the Commission in respect of **sections 32 and 33** of the Act which also need to be acted upon without delay in order to ensure that the National Human Rights Commission and State Human Rights Commissions are assured of adequate means and autonomy to function properly. Regrettably, the experience of more than one State Human Rights Commission has already shown how easy it is to subvert the purposes of the Act by withholding the means and denying the autonomy required for the proper functioning of such institutions.
- Experience has also shown that there is need to radically amend the present wording of **section 36** of the Act, dealing with ‘matters not subject to the jurisdiction of the Commission,’ as it has lent itself to efforts to thwart the purposes of the Act. On occasion, this has been done by bringing a matter before a State Human Rights Commission or some other Commission in similar, or slightly modified manner, in order to seek to block the jurisdiction of the National Human Rights Commission. On other occasions, this has been done by setting-up a Commission under the Commission of Inquiries Act after the National Human Rights Commission has already taken cognisance of a matter and then questioning the jurisdiction of the National Commission, in a court of law, to proceed with its efforts or monitor a situation. The Commission has made specific proposals to amend section 36(1) of the Act in order to provide the National Human Rights Commission with an over-arching ability to oversee issues of human rights violations and their remedies. The Commission has, additionally, observed that other Commissions have taken disparate positions on fundamental issues of human rights, including serious social issues such as bonded labour, the rights of women and children, and that this has resulted in a lack of clarity in respect of the jurisprudence of human rights. It therefore

considers it essential that certain powers of judicial superintendence, and powers similar to those under Article 136 of the Constitution, are provided to the National Human Rights Commission in order to prevent the adoption of erroneous positions in respect of violations of human rights, or the taking of actions by a variety of Commissions in ways that are contrary to established principles of human rights law and jurisprudence.

- The Commission also believes that the provisions of **section 36(2)** need to be modified in the interests of justice where, for any reason, the National Commission or a State Commission is satisfied, for reasons that should be recorded, that there are good and sufficient reasons for taking cognisance of a matter after the expiry of one year. In respect of this provision, too, the Commission has made a specific suggestion as to the wording of the amendment that is required.
- The Commission has, further, taken the view that the present **section 37** of the Act should be omitted. Instead, it has proposed the inclusion of a provision similar to Article 139A of the Constitution, as that would enable the National Human Rights Commission in appropriate cases, to establish uniformity in respect of the handling cases that raise similar issues.

2.13 The indication given above of the provisions of the present Act to which amendments have been proposed by the Commission is not exhaustive. As indicated earlier, the entire list of amendments submitted to the Central Government is annexed to this report. But the illustrations provided in this narrative relate to provisions that have been used, in the past nine years, to frustrate the deeper purpose of the Act itself, and, on occasion, to block the endeavours of the National Human Rights Commission. It is for this reason that the anomalies in the Act and its working have been elaborated in this report. A qualitative change is required both in the Act and in the sensitivity with which the Central and State Governments view their responsibilities under it. The same applies to the nature of the manner in which they extend their cooperation to the National and State Human Rights Commissions.

2.14 The succeeding chapters of this Report will, as needed, dwell on these matters further, illustrating the situation with specific instances of the efforts of the Commission and the difficulties faced by it.

2.15 Suffice it to say, at this stage, that the language of the Statute must be such as to

prevent those who have violated human rights from escaping its net. When there is an attempt at concealment, the Commission should find it possible to pierce the veil of evasion and reach the truth. It is a well established principle relating to the wording of statutes that their texts must not lend themselves to interpretations that defeat the very intention of the legislation and lead to unreasonable and untenable consequences. The Commission, therefore, calls upon the Central Government once again to respond positively to the proposals it has made for the amendment of the Protection of Human Rights Act, 1993. It also expresses the hope that, before the position of the Central Government is finalised, if there should be any matters requiring clarification or an exchange-of-views with the Commission, such discussions take place, with a view to ensuring that the high Objects and Reasons of the Act are indeed served in the manner that they require and deserve.

Situation in Gujarat

CHAPTER 3

3.1 The human rights situation in Gujarat, beginning with the tragedy that occurred in Godhra on 27 February 2002 and continuing with the violence that ensued subsequently, was of the deepest concern to the Commission as the year under review drew to a close.

3.2 The Commission took *suo motu* action on this matter on 1 March 2002, on the basis of media reports, both print and electronic. In addition, it had also received a request by e-mail, asking it to intervene.

3.3 In its Proceedings of 1 March 2002, the Commission *inter alia* observed that the news items reported on a communal flare-up and, more disturbingly, suggested inaction by the police force and the highest functionaries in the State to deal with the situation. The Commission added:

‘In view of the urgency of the matter, it would not be appropriate for this Commission to stay its hand till the veracity of these reports has been established; and it is necessary to proceed immediately assuming them to be *prima facie* correct. The situation therefore demands that the Commission take note of these facts and steps-in to prevent any negligence in the protection of human rights of the people of the State of Gujarat irrespective of their religion.’

3.4 Notice was accordingly issued on 1 March 2002 to the Chief Secretary and Director General of Police, Gujarat, asking:

‘for their reply within three days indicating the measures being taken and in contemplation to prevent any further escalation of the situation in the State of Gujarat which is resulting in continued violation of human rights of the people.’

3.5 Meeting again on 6 March 2002, the Commission noted, *inter alia*, that it had requested its Secretary-General, on 4 March 2002, to send a copy of its 1 March notice to its Special Representative in Gujarat, Shri Nampoothiri, for his information. The latter was also asked to send a report to the Commission on the situation, involving in that exercise other members of the Group constituted by the Commission to monitor the rehabilitation work in that State after the recent earthquake in Kutch.

3.6 In its Proceedings of 6 March 2002, the Commission further noted that:

‘a large number of media reports have appeared which are distressing and appear to suggest that the needful has not yet been done completely by the Administration. There are also media reports attributing certain statements to the Police Commissioner and even the Chief Minister which, if true, raise serious questions relating to discrimination and other aspects of governance affecting human rights.’

3.7 Instead of a detailed reply from the State Government to its notice of 1 March 2002, the Commission observed that it had received a request dated 4 March 2002, seeking a further 15 days to report:

‘as most of the State machinery is busy with the law and order situation, and it would take time to collect the information and compile the report.’

3.8 The Commission’s Proceedings of 6 March 2002 accordingly stated:

‘May be, preparation of a comprehensive report requires some more time, but, at least, a preliminary report indicating the action so far taken and that in contemplation should have been sent together with an assurance of the State Government of strict implementation of the rule of law.’

3.9 The Commission recorded its disappointment that even this had not been done by the Government of Gujarat in a matter of such urgency and significance. It added that it ‘expects from the Government of Gujarat a comprehensive response at the earliest.’

3.10 A 'Preliminary Report' dated 8 March 2002 was received by the Commission from the Government of Gujarat on 11 March 2002. However, it was perfunctory in character. In the meantime, the Commission had received a fairly detailed report on the situation from its Special Group in Gujarat, comprising its Special Representative, Shri P.G.J. Nampoothri, former Director General of Police, Gujarat; Smt. Annie Prasad, IAS (Retd.) and Shri Gagan Sethi, Director, Jan Vikas, an NGO in Ahmedabad. With violence continuing, it was in such circumstances that the Commission decided that the Chairperson should lead a team of the Commission on a mission to Gujarat between 19 - 22 March 2002. And it was pursuant to this that the detailed report of the State of Gujarat was received on 28 March 2002, in response to the Commission's notice of 1 March 2002 and the discussions held with the team.

3.11 Having considered that report of the State of Gujarat carefully, the Commission, in its Proceedings of 1 April 2002, made a series of Preliminary Comments and Recommendations on the situation in that State. The Commission also directed that a copy of those Proceedings, together with a copy of the Confidential Report of the team of the Commission that visited Gujarat from 19 - 22 March 2002, be sent by the Secretary-General to the Chief Secretary, Government of Gujarat and to the Home Secretary, Government of India, requesting them to send the response/comments of the State Government and the Government of India within two weeks. As a visit of the Hon'ble Prime Minister to Gujarat had been announced for 4 April 2002, the Chairperson was also requested to send a copy of the Proceedings and of the Confidential Report to him.

3.12 Given the gravity of the human rights issues arising out of the situation in Gujarat, the Proceedings of the Commission dated 1 April 2002 and 31 May 2002 are attached to this report as **Annexures 2 and 3**. Though these Proceedings were recorded after the completion of the year under review, the Commission has considered it appropriate to annex them to the present report in order to provide, readily, an up-to-date account of the views of the Commission on this important matter, on which it had initiated *suo motu* action on 1 March 2002.

3.13 As of the time of writing this report, the Commission had concluded that, in its opinion, there could be no doubt that there had been a comprehensive failure on the part of the State Government to control the persistent violation of the rights to life, liberty, equality and dignity of the people of that State. The Commission noted that there had been a decline in incidents of violence in recent weeks and that certain positive developments had taken place. However, while recognising that it was

essential to heal the wounds and look to a future of peace and harmony, the Commission emphasised that the pursuit of these high ideals must be based on justice and the upholding of the values of the Constitution and the laws of the land. The Commission remained deeply disturbed, in this connection, by persisting press reports stating that charge-sheets filed thus far in respect of certain grave incidents lacked credibility in as much as they were reported to depict the victims of violence as the provocateurs; that FIRs were neither promptly nor accurately recorded in respect of atrocities against women, including acts of rape; that compensation for damaged property was often set at unreasonably low amounts; that pressure was being put on certain of the victims to the effect that they could return to their homes only if they dropped or altered the cases they had lodged; while yet others were being pressured to leave the relief camps even though they were unwilling to do so in the absence of viable alternatives.

Civil Liberties

CHAPTER 4

A] Human Rights in Areas of Insurgency and Terrorism

4.1 Savage acts of terrorism convulsed the world in the year 2001-2002, compelling the international community to focus on ways of combating and triumphing over this evil.

4.2 Following the attacks in the United States of America on the World Trade Centre and the Pentagon on 11 September 2001, the Security Council of the United Nations adopted Resolution 1373 of 28 September 2001 requiring all States to take a wide range of legislative, procedural, financial, economic and other measures to prevent, prohibit and criminalise terrorist acts.

4.3 India itself, which had fought an often lonely battle against terrorism since the 1980s, continued to be the target of vicious acts of cross-border terrorism. Thus, on 1 October 2001, 38 persons were killed and 60 others injured in a 'fidayeen' attack on the State Assembly in Srinagar; on 13 December 2001, a national calamity was narrowly averted when a brazen terrorist attack was thwarted within the precincts of Parliament House by the valour of the guards on duty, of whom some sacrificed their lives in the cause of the nation.

4.4 These two attacks, on symbols of democracy, re-confirmed the view taken by the international community ever since the 1993 World Conference on Human Rights in Vienna that:

‘the acts, methods and practices of terrorism in all its forms and manifestations... **are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity and the security of States and destabilising legitimately constituted Governments,** and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism’ **(emphasis added).**

4.5 Terrorists are the sworn enemies of human rights and there can be no equivocation on this matter. Terrorism must be fought and defeated. This is essential for the protection of human rights themselves, for the right to life — itself a target of terrorists — is the most basic right, without which human beings can exercise no other right.

4.6 The question that arises, however, is in relation to the means to be adopted to achieve this goal. The United Nations General Assembly Resolution 56/160 of 19 December 2001, adopted some eleven weeks after Security Council Resolution 1373, is quite clear on this matter when, in operative paragraph 6, it:

‘Calls upon States to take all necessary and effective measures, **in accordance with relevant provisions of international law, including international human rights standards,** to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomever it is committed, and also calls upon States to strengthen, where appropriate, legislation to combat terrorism in all its forms and manifestations’ **(emphasis added).**

4.7 The Commission had precisely such considerations in mind when, in an Opinion dated 14 July 2000, it dwelt at length on various provisions of the Prevention of Terrorism Bill 2000, and opposed that Bill, *inter alia*, because it did not conform with international human rights standards. It reacted similarly on 19 November 2001 when, at the height of the fever occasioned by the ‘global war against terrorism,’ the Commission opposed the Prevention of Terrorism Ordinance, 2001 which had been

promulgated on 24 October 2001. While this matter is discussed more fully in Chapter V(A) of the present report, suffice it here to say that, in its Opinion of 19 November 2001, the Commission expressed its position of principle in the following terms:

‘Undoubtedly national security is of primary importance. Without protecting the safety and security of the nation, individual rights cannot be protected. However, the worth of a nation is the worth of the individuals constituting it. Article 21 [of the Constitution], which guarantees a life with dignity, is non-derogable. Both national integrity as well as individual dignity are core values in the Constitution, the relevant international instruments and treaties, and respect the principles of necessity and proportionality.’

4.8 The Commission is convinced that a proper observance of human rights is not a hindrance to the promotion of peace and security. Rather, it is an essential element in any worthwhile strategy to preserve peace and security and to defeat terrorism. The purpose of anti-terrorism measures must therefore be to protect democracy and human rights, which are fundamental values of our society, not undermine them, even inadvertently. Further, the nature and manner of implementation of such measures must be fully consistent with this purpose, regardless of whether the measures call for greater vigilance in surveillance, the prosecution of terrorist acts under the laws of the land, or the use of force by the police or armed forces of the country to control or destroy terrorists.

4.9 It is for these reasons that the Commission continued to remind the agencies of the State that they must act in conformity with the Constitution, the laws of the land, and the treaty obligations of the country. The Commission also continued to draw the attention of the armed forces to the need to observe the guidelines laid down by the Supreme Court in respect of the Armed Forces (Special Powers) Act, 1958, and to the implications and meaning of the provisions and principles laid down in the Indian Penal Code in respect of certain situations in which the use of force can extend even to the causing of death [see Indian Penal Code, Chapter IV, General Exception (acts which are not offences)].

4.10 Furthermore, as indicated in Chapter II of this report, despite the existing inadequacies of the Protection of Human Rights Act, 1993 the Commission made clear to the highest echelons of the Ministry of Defence, including Army Headquarters, and to the Ministry of Home Affairs, the manner in which it construes the provisions of

section 19 of that Act relating to the procedure to be followed with respect to the armed forces when allegations of human rights violations are brought against them. In brief, the Commission has taken the position that in the case of unnatural death caused by the use of force, or 'disappearance' from custody, unless it can satisfactorily be shown that the custodian is not responsible for the harm done in custody, or 'disappearance' from custody, the initial presumption of accountability of the custodian will remain un rebutted and the Commission will proceed to act accordingly.

4.11 In the course of the year under review, the human rights situation in Jammu and Kashmir remained fraught with difficulties, requiring the close attention of the Commission. According to figures released by the Government of India in respect of that State, despite a peace initiative during the holy month of Ramzan, there were 4,522 incidents recorded during the year involving militants; the number of civilians killed rose to 919 compared with 762 in the preceding year; the security forces themselves took 536 casualties, compared to 400 in the previous year; while 2,645 militants were killed, including 625 who were foreigners.

4.12 Throughout this period and despite this climate of continuous violence, the Commission pursued its responsibility to promote and protect human rights in Jammu and Kashmir. In the course of the year, it received a total of 342 complaints alleging human rights violations in that State, including 18 complaints relating to 314 incidents from the Director, Institute of Kashmir Studies, Srinagar, in which it was alleged that human rights had been violated by members of the police, para-military forces and army. Each of these complaints was processed with promptness. Whenever the Commission considered it necessary, notice was issued to the concerned authorities of the State Government, the Ministry of Home Affairs and the Ministry of Defence calling for the submission of detailed investigation reports. In other cases, the State authorities were themselves directed to look into the grievances, remedy them, and report back to the Commission on the action taken. In instances when the Commission reached the conclusion that the reports received were evasive, unconvincing or inadequate, it called for further information on the basis of a careful analysis of these reports, often by its own Investigation Division. On frequent occasions, the Commission interacted with the complainant, advising him of the efforts made and eliciting his responses in respect of the investigations conducted and the reports received. The complaints covered a wide range of allegations, including those of enforced disappearances, illegal detention and torture, custodial death, extra-judicial killings and fake encounters.

4.13 The Commission also continued to pursue matters of which it had taken cognisance earlier. Notable among these were the aftermath of the killing of 35 Sikhs in Chittisinghpora on 20/21 March 2000 and the killing of 5 persons in Patribal by the security forces on 25 March 2000, who were stated to be responsible for the killings in Chittisinghpora. In respect of these matters, the Commission had directed the State Government to furnish it with a copy of the report of the Commission of Inquiry headed by Shri Justice S.R. Pandian, as well as to keep it informed in respect of the case before the Chief Judicial Magistrate, Anantnag concerning the killing of the five persons in Patribal.

4.14 On 14 July 2001, the State Government informed the Commission that it had decided to accept the report and recommendations of the Pandian Commission of Inquiry in totality. It further informed the Commission that personnel of the Jammu and Kashmir police had been formally charge-sheeted and a full-fledged departmental inquiry had been instituted against them; that an FIR had been registered and a special team of investigators had been appointed to complete the investigation; and that, in so far as personnel of Central Security Forces were concerned, the Ministry of Home Affairs, Government of India had been requested to take appropriate action against them. It was further stated that *ex-gratia* relief of Rs.1.00 lakh had been paid to the next-of-kin of those who had been killed. The Commission, accordingly, in its proceedings of 25 July 2001, closed its consideration of this matter.

4.15 The Commission was, however, deeply disturbed to read press reports to the effect that those reportedly killed in encounters in Patribal were identified as villagers who had, according to the people of the area, been killed in 'fake encounters' and wrongly blamed for the Chittisinghpora killings. On further enquiries by the Commission, the Government indicated that samples had been taken for DNA testing in respect of those who had been killed in Patribal. It remained a matter of the gravest concern to the Commission, as expressed in its annual report for the year 2000-2001, that despite the passage of many months, the results of the DNA testing had not been made public. In its preceding report, therefore, the Commission had observed that the manner in which the Patribal incident had been handled:

‘... has done great harm to the cause of human rights in the State and to the reputation of the armed forces and the Governmental authorities, both at the Centre and in the State.’

The Commission went on to:

‘... urge the Government to disclose the facts relating to the deaths in Patribal and take appropriate action if wrong has been done. The long-term interests of the State and the security of the nation can never be advanced by the concealment of possible wrong-doing. It is a serious mistake to think otherwise.’

4.16 The Commission’s worst suspicions in respect of this matter gained credence when an article appeared in the Times of India of 6 March 2002 stating that officials had tampered with the DNA samples of the relatives of those killed in Patribal in order to prove the test results negative, and that for more than one year, the Jammu and Kashmir Government had ‘been sitting over a damning report from Hyderabad.’ The Commission therefore took up this matter again on 13 March 2002, directing the State Government, as well as the Ministry of Defence and the Ministry of Home Affairs, Government of India, to submit comprehensive up-to-date reports on the action taken in this matter, together with the action being contemplated, to correctly identify the five deceased persons. The reports were awaited. The Commission has every intention of pursuing this matter till justice is done.

4.17 Another case which is a source of continuing embarrassment to the country is that of Jalil Andrabi. The case remains exactly where it was a year ago. It is *sub judice* before the High Court of Jammu and Kashmir. However, despite a notice having been served on the army to produce the officer of the army suspected to be involved in the abduction and subsequent death of Jalil Andrabi, this has not been done. The persistence of such a situation reflects extremely poorly on the conduct of those who are failing to cooperate in ensuring justice in this most serious case. Here again, the Commission urges the Central Government to ensure that action is taken without further prevarication to bring to book those who were responsible for committing this heinous crime. It should not be said that the processes of our country protect those who are guilty of such grievous wrongs and human rights violations.

4.18 The Commission had also pursued the matter of the killing of Amarnath pilgrims and shopkeepers in Pahalgam on 1 August 2000 in respect of which a Commission of Inquiry had been appointed, headed by Lt. General J.R. Mukerjee. In contrast to the Patribal incident, those responsible for the deaths in Pahalgam were identified, whether they were terrorists or police personnel, lapses were identified and recommendations made to remedy them, criminal prosecutions and

departmental proceedings were also recommended in the light of the findings. The Commission had occasion to express its appreciation of the work done by the Mukerjee Commission of Inquiry and had asked to be informed of the measures taken in response to its findings. The Commission was subsequently informed that departmental action had been instituted against the erring police personnel of the Jammu and Kashmir police and that the Ministry of Home Affairs had been asked to take action, according to law, against the Central Reserve Police Force personnel implicated in the report submitted by the Committee to consider the recommendations made by the Commission of Inquiry.

4.19 In the course of the current year, the Commission also considered a complaint from Human Rights Watch concerning the brutal killing of innocent civilians by militants in various incidents in the Valley of Kashmir. The Commission sought and obtained reports in respect of these incidents from the State Government, which indicated that seven cases had been registered in various police stations in regard to the killings mentioned in the complaint. The Commission directed the State Government to take steps for the speedy investigation of these cases under the supervision of senior police officers, and to inform the Commission of the outcome of the investigations. The State Government was also asked as to whether compensation had been paid to the next-of-kin of the deceased and the nature of steps taken to rehabilitate the affected families.

4.20 The Commission continued to hold hearings in respect of the problems being faced by members of the Kashmiri Pandit community, of whom some 3,00,000 have had to leave the Valley since the insurgency began, together with over a 1,000 Muslim families and a number of Sikh families. In order to assist them in dealing with their problems, the Commission had encouraged the Government of Jammu and Kashmir to constitute a Committee at the State-level to examine their difficulties expeditiously and to help resolve them. The Special Rapporteur of the Commission was requested to serve as a Member of that Committee. While the Committee was initially able to help, in some measure, in providing some assistance to the aggrieved, it has not functioned with the regularity expected of it. This has been a matter of concern and anxiety to the Commission as also to the Kashmiri Pandits who continue to face great difficulties and hardships. The Commission finds the present situation unacceptable and deeply frustrating, not least since its Chairperson has personally had occasion to discuss these matters with the highest echelons of the State Government when he visited Jammu and Kashmir and was given the assurance that the problems facing the Kashmiri Pandits would receive priority attention. Regrettably, this has not been the

case. The Commission therefore urges the State Government to react with greater promptness and sensitivity to the concerns and grievances of members of the Kashmiri Pandit community, to re-activate the Committee that has been constituted and to ensure that it functions with regularity and a sense of purpose.

4.21 As regards the North-Eastern States, the Commission received a total of 384 complaints from there during the year 2001-2002, of which more than 60 per cent were from Assam. Of the total number of complaints, 24 related to the conduct of the police and 41 to the conduct of the armed forces. In each case, the Commission instituted immediate action, calling for reports and recommending action as appropriate.

4.22 Two particularly important cases deserve mention in this section of the report. The first, to which reference has also been made earlier in this report, related to the complaint brought by Smt. Mina Khatoon alleging the 'disappearance' of her husband, Mohammed Tayab Ali, who was last seen in the custody of the armed forces. The Commission elaborated its views on Section 19 of the Protection of Human Rights Act, 1993 when dealing with this case.

4.23 The second case related to a matter that was referred to this Commission by the Manipur State Human Rights Commission. The latter had, originally, taken *suo motu* cognisance of a press report alleging that five persons had been killed and three others injured as a result of indiscriminate firing by security forces in Churachandpur, as a retaliatory action undertaken by them in the aftermath of an attack on a colleague by underground elements. However, as the matter related to the conduct of personnel of the Central Reserve Police Force (CRPF), the State Human Rights Commission considered it appropriate to refer the case to the National Human Rights Commission, which had jurisdiction in such matters. Upon taking cognisance of this case, this Commission called for and received a report from the Ministry of Home Affairs, which it considered with care. In a Proceeding of 28 September 2001, the Commission, going on the basis of an on-the-spot study made by the Manipur Human Rights Commission prior to the referral of the case to the National Human Rights Commission, decided that this was an appropriate case in which to recommend the payment of Rs.2 lakhs as immediate interim relief to the next-of-kin of each of four persons who had died, and Rs.25,000 to each of the four persons who were injured.

B] Custodial Death, Rape and Torture

4.24 It has been a major priority of the Commission, ever since it was established, to curb custodial violence. Towards this objective, the Commission issued guidelines in December 1993 stating that it must be informed of any incident of custodial death or rape within 24 hours of any such occurrence. Information on custodial deaths was to be followed by a post-mortem report, a videography report on the post-mortem examination, an inquest report, a magisterial enquiry report, a chemical analysis report etc.

4.25 The Commission is gratified to note that, in accordance with its guidelines, the agencies of the State have been prompt, by and large, in informing the Commission whenever such incidents have occurred. An effort has, however, sometimes been made by a State Government and facilitated by a State Human Rights Commission to use section 36(1) of the Act, to block the jurisdiction of the National Human Rights Commission by asserting that it has taken cognisance of a custodial death prior to this Commission, despite the fact that the report of the State authorities on the incident had been sent to the National Commission in accordance with its guidelines of 1993, (which were issued long before any State Commission came into existence) and were merely copied to the State Commission. The latter also often lack the facilities that the National Commission has to scrutinise reports of custodial deaths. Such unnecessary complications clearly underline the need for the amendment of section 36(1) of the Act along the lines already recommended by the Commission. It has also been observed that the subsequent reports needed for the scrutiny of such incidents have often been delayed. To avoid inordinate delay, the Commission issued fresh guidelines in December 2001 enjoining the States to send the required reports within two months of the incident and that these reports were to include, *inter alia*, a post-mortem report that should be submitted in accordance with a new format that had been devised by the Commission.

4.26 In order to streamline the existing procedure relating to the scrutiny of incidents of custodial violence, the Commission created a separate cell within the Investigation Division. This cell was entrusted with the task of obtaining the relevant documents from the concerned authorities and then critically analysing that material with a view to assisting the Commission in deciding whether any further action was required to be taken in respect of such incidents.

4.27 In the year 2001-2002, the figures reported to the Commission were 165 deaths in police custody and 1,140 deaths in judicial custody making a total of 1,305, as against a total of 1,037 such deaths in 2000-2001, of which 127 occurred in police custody and 910 in judicial custody. The Commission is disturbed by this increase in the number of deaths both in police and in judicial custody in 2001-02. While the number of deaths in judicial custody has to be viewed in the context of the total number of prison inmates during a given period, the figures nevertheless reinforce the view of the Commission that there is need for better custodial management and a deeper orientation of police personnel in matters relating to human rights. The Commission is also of the view that the Human Rights Cells established by the State Governments need to play a more pro-active role in improving conditions in the prisons, including the provision of health and related facilities. It accordingly urges all State Governments to give greater attention to these matters.

4.28 As regards the deaths that occurred in police custody in the course of the year 2001-2002, the reports indicated that there was a decline in the number of such cases in the States of Gujarat, Madhya Pradesh, Punjab and Delhi. However, over the same period there was an increase in such deaths in the States of Andhra Pradesh, Maharashtra, Tamil Nadu and West Bengal.

4.29 The State-wise position indicating the number of custodial deaths reported to the Commission in 2001-02 may be seen at **Annexure 7**.

4.30 During the year under review, the Commission considered it essential to recommend the payment of interim relief under section 18(3) of the Protection of Human Rights Act, 1993 in respect of 7 cases of custodial death. It also called for the initiation of disciplinary/legal proceedings against delinquent public servants in 5 such cases.

4.31 Since the Commission was established in October 1993, it has received reports of 7,256 deaths having occurred in police or judicial custody. An analysis of some 5,500 such cases indicates that about 80 per cent of the deaths that occurred in judicial custody were attributable to causes such as illness and old age. The remaining 20 per cent occurred for a variety of reasons including, in certain cases, illness aggravated by medical negligence, violence between prisoners, or suicide. All of these point to the great need for the better maintenance and running of prisons, better trained and more committed staff, including medical staff, and an improvement in the capacity of prisons to deal with mental illness and morbidity among inmates. The

Commission recommends that all of these areas, too, receive the increased attention of the State Governments.

4.32 As deaths resulting from custodial torture in prisons has been found to be comparatively rare, the Commission in December 2001 modified its earlier guidelines requiring the videography of post-mortem examinations of custodial death occurring in jails. While the video-filming of post mortem examinations of all deaths occurring in police custody was to continue as before, this requirement was relaxed in regard to deaths occurring in judicial custody. In the latter cases, it was deemed to be necessary only when the preliminary inquest by a magistrate raised the suspicion of foul play, or where a complaint alleging foul play was made to the concerned authorities, or some other reason arose giving rise to a suspicion of foul play.

C] Encounter Deaths

4.33 The guidelines of the Commission in respect of the procedures to be followed by State Governments in dealing with deaths occurring in encounters with the police were circulated to all Chief Secretaries of States and Administrators of Union Territories on 29 March 1997. The Commission called for the acceptance of these guidelines and their faithful implementation. Letters were thereafter received from all State Governments/Union Territories conveying their acceptance of the guidelines.

4.34 During the course of the year 2001-02, the Commission received 58 communications from various State Governments in respect of police encounters. The details are mentioned in **Annexure 8(a)**. The Commission also received a total of 113 complaints from sources other than State Governments in respect of deaths that had allegedly occurred as a result of fake encounters. The largest number i.e. 74 were received from Utter Pradesh. The details are given in **Annexure 8(b)**. In addition, the Commission also received 78 complaints, in respect of deaths in police firing as reflected in **Annexure 8(c)**.

4.35 The allegation of an extra-judicial killing resulting from a 'fake' encounter is an extremely grave one. In respect of each of these complaints, therefore, the Commission has sought to ensure that enquiries were instituted and action taken in accordance with its guidelines. In all such cases, too, the Commission continues to monitor developments until it is satisfied that justice has been done.

4.36 The Commission continued to pay particular attention to reports of killings of members of the Peoples War Group, allegedly in 'fake' encounters involving the police of Andhra Pradesh. During the past three years, a series of communications have been received in this respect, notably from Shri S. R. Sankaran, Convenor, Committee of Concerned Citizens, Hyderabad, on which the Commission has called for investigation reports from the Director General of Police, in accordance with its guidelines. The reports of the Director General have been reviewed on a quarterly basis in order to monitor progress in respect of each of the complaints.

4.37 Given the serious human rights implications of the strife in Andhra Pradesh, the Chairperson has personally discussed the situation on frequent occasions with the Chief Minister of the State. As of the time of writing this report, it was gratifying to see that efforts were once again being made at the political level, to end the violence. The Commission urges all concerned to persevere in this endeavour and to cooperate in good faith to achieve this objective.

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

4.38 With a view to ensuring prompt and accurate reporting to the Commission in respect of cases of custodial death, the Commission had recommended that the post-mortem examination in respect of all such cases be video-filmed and that the film be transmitted to the Commission, along with all other relevant reports, so as to enable the Commission to make an independent assessment as to the cause of such deaths. In its last annual report the Commission had pointed out that the States of Maharashtra, Manipur and Uttar Pradesh, and the Union Territory of Andaman and Nicobar Islands, had not yet complied with the recommendation of the Commission pertaining to the video-filming of the post-mortem examination, while the States of Bihar, Gujarat, Nagaland and Kerala were still considering the adoption of the Model Autopsy Form prescribed by the Commission.

4.39 Acceptance of the recommendation relating to the videography of post-mortem examinations is still awaited from the States of Manipur and Uttar Pradesh, while the States of Bihar, Kerala and Nagaland are yet to respond favourably in respect of the Model Autopsy Form. The Commission urges these States to join all of the others, who

have responded positively to the recommendations of the Commission.

4.40 As indicated earlier in this report, in the course of the year under review, the Commission considered it essential to modify, in part, its standing instructions in respect of the videography of post-mortem examinations of deaths occurring in judicial custody. This was done through a letter dated 21 December 2001 from the Chairperson of the Commission to Chief Ministers/Chief Administrators of the States/Union Territories. In that letter, the Chairperson stated that the Commission had been happy to observe the significant impact of its standing instructions in respect of custodial violence in the country. He added, however, that an analysis of the cases of custodial deaths reported to the Commission over the past five years had highlighted the need for a re-examination of the instructions on the need for videography in respect of cases of deaths in jail, keeping in mind the utility of such videography and the practical difficulties that had been pointed out by some of the jail authorities. A scrutiny of the reports received by the Commission had indicated that while deaths in police custody were very often the result of custodial violence, the majority of deaths reported from jails were due to illness aggravated by negligence in providing timely and proper treatment. Although the Commission considered the post-mortem examination to be essential even in such cases, it felt that the requirement of videography of the examination could be relaxed to some extent.

4.41 In modification of its instructions, as mentioned earlier in this report, the Commission directed that, while its instructions regarding the videography of the post-mortem examination in respect of a death in police custody would remain in force as before, the requirement of videography of the post-mortem examination in respect of a death in jail would be applicable only when the preliminary inquest by the magistrate had raised suspicion of some foul play, or when a complaint alleging foul play had been made to the authorities concerned, or there was any other reason for suspicion of foul play.

E] Systemic Reforms: Police

4.42 For the past many years, the Commission has been emphasising with increasing urgency that there must be major police reforms in the country if the human rights situation is to improve, if the investigation work of the police is to be insulated from 'extraneous influences', and if the police is to be accorded the trust that it needs for the

proper discharge of its responsibilities to the people of this country.

4.43 The Commission has recorded, in its past reports, the details of its recommendations in this respect and noted that these recommendations had also been submitted to the Supreme Court in the matter of **Prakash Singh vs Union of India**, which relates to the question of police reform.

4.44 In the course of the year, the Commission continued to follow the proceedings before the Supreme Court in respect of that case. It also continued to impress upon the Central and State Governments that reforms along the lines recommended by the Commission, the National Police Commission and others, were absolutely essential to the future well-being of the country.

4.45 The Commission has already referred, in the present report, to the large-scale violation of the rights to life, liberty, equality and dignity of the people of Gujarat, starting with the tragedy in Godhra on 27 February 2002 and continuing for some two months thereafter as violence spread to other parts of the State. In that connection, the Commission had occasion to reflect, once again, on the necessity of police reform. As the Proceedings of the Commission in that context are annexed in full to the present report, (see **Annexure 2 and 3**), there is no need to repeat them here. Suffice it to say that the Commission urges both the Central and State Governments yet again, through this report, to take the situation in Gujarat as a warning and a catalyst, and to act with determination to implement the various police reforms recommended by the Commission in those Proceedings and in its earlier reports.

4.46 The Commission has noted, in this connection, that the Memorandum of Action Taken of April 2002, filed by the Central Government in respect of the Commission's annual report of 1999-2000 refers to certain measures being taken under the 'Police Modernising Scheme' to improve the police force in the States. The Commission welcomes these measures. It would like to point out, however, that these measures will not suffice; the heart of the matter relates to restoring the independence and integrity of the police so that it can conduct investigations without political and other 'extraneous influences' being brought to bear on it. It was to meet this major objective that the recommendations of the Commission, among others, were devised. It is these recommendations that must be acted upon, if the rot that has set-in is to be cured and if the rule of law is to prevail.

Working of Human Rights Cells in State Police Headquarters

4.47 The Commission has noted, with appreciation that, upon its recommendation, State Governments have established Human Rights Cells in the police headquarters of their respective capitals. These cells for which elaborate guidelines were devised by the Commission in consultation with the State Governments, were expected to function as vital links between the Commission and the State Government. The Commission has observed, however, that the cells are not being able to fulfil the roles assigned to them for a variety of reasons including the want of adequate infrastructure.

4.48 The Commission therefore urges the Governments of the States/Union Territories to review, once again, the infrastructural and personnel needs of the State Human Rights Cells, relating these to the number of complaints received and processed by them, and to take the action that is required to strengthen them accordingly, so as to ensure their effective functioning. While making this review, the State Governments should take into account not only the number of complaints that are received in the cell from this Commission, but also from the respective State Human Rights Commissions, where they exist. The efficacy of the Human Rights Cells is also dependent upon the quality and promptness of the replies that are sent to them from the district level. It has been observed, quite often, that the replies are incomplete and delayed. The Commission therefore recommends that the States should earmark one senior police officer, in each district, to function as a nodal officer with the State Human Rights Cell. This would ensure that replies are not only sent expeditiously, but also that they are properly vetted/scrutinised before being transmitted to the Cell.

4.49 In its preceding annual report, the Commission had emphasised that the value of Human Rights Cells will, in the long-term, depend on the quality and commitment of those who are appointed to head them and the support that they receive from the highest levels of the political and administrative leadership in each State. The Commission therefore recommended that special care be taken in regard to the appointments that are made in respect of those who are charged with the responsibility of heading these cells and that the fullest cooperation be extended to them. The Commission would like to reiterate this recommendation, for only if it is acted upon with sincerity will these Human Rights Cells function with the integrity, independence and capability required of them and serve the vital purpose that this Commission had in mind in urging that they be established.

F] Human Rights and Administration of Criminal Justice System

4.50 The Commission has in earlier reports, made extensive recommendations aimed at reforming certain aspects of the administration of the criminal justice system in the country, so as to make it more sensitive to human rights considerations.

4.51 The Commission is gratified to note, from the Memorandum of Action Taken on its annual report for 1999-2000, that a number of constructive measures have been taken to act upon the recommendations of the Commission. The Central Government has, for instance, forwarded the recommendations of the Commission to all the High Courts and State Governments for appropriate action. Further, State Governments have been requested to take note of the observations of the Commission in respect of the need to dispose cases speedily and they have been asked to intimate the action taken by them to the Central Government. The National Judicial Academy has also been asked by the Central Government to develop 'packages' of programmes that could be used for the speedy disposal of criminal cases and to evolve comprehensive programmes for the training of all judicial personnel and court administrators. In addition, 1,734 Fast Track Courts have been proposed to be set-up in various parts of the country to dispose of certain categories of long-pending cases. The Central Government has indicated in its Memorandum of Action Taken that some 1,015 such Courts have already been constituted, and that retired judicial officers and judicial staff have been engaged to handle this work.

4.52 The Commission has also noted with interest and appreciation other comments in the Memorandum of Action Taken on its report for the year 1999-2000. It appears from these that the 156th Report of the Law Commission, dealing with enhancement of the amount of fine and the substitution of the punishment of short-term imprisonment by fine, is being examined in consultation with the State Governments. With regard to other recommendations of the Law Commission relating, *inter alia*, to the inclusion of additional offences in the category of those that are compoundable offences, the Central Government has indicated that it is seized of this matter as well.

4.53 The Central Government has further informed the Commission of the action that it is taking in respect of yet other recommendations of this Commission. For instance, the recommendation proposing that honorary Judicial Magistrates be

appointed in adequate number is being processed in consultation with the State Governments, since it is essentially for the latter to avail of the provisions in the Cr.P.C. in respect of this matter. The Central Government has added that the Law Commission has, in its 154th, 156th and 172nd Reports comprehensively reviewed the Criminal Procedure Code, the Indian Penal Code and the laws relating to rape and that these are now being processed in consultation with the State Governments.

4.54 The Commission, is happy to see, in this connection, that the Central Government has set up a Committee, under the Chairmanship of Justice Shri V.S.Malimath, a former Member of this Commission, to look into the entire working of the Criminal Justice System and to suggest measures for its reform and improvement. This is certainly a most positive development which, the Commission hopes, will lead to the adoption of measures that not only result in radical improvements to the system, but also contribute to an overall improvement in the sensitivity of the system to human rights considerations. The Commission trusts that the Central Government will continue to pursue all of the matters to which it has referred in its Memorandum of Action Taken and that it will continue to keep this Commission informed of developments in respect of these matters.

G] Custodial Institutions

1) Visits to Jails

4.55 The Commission intensified its efforts to improve the living conditions in jails and other institutions under the control of State Governments where persons are detained or lodged for purposes of treatment, reformation or protection. Mention was made in the preceding annual report of the visit of the Chairperson to Tihar Central Jail, New Delhi on 29 August 2000. The recommendations made by the Commission on the report of that visit evoked an encouraging response from the Government of the National Capital Territory and Delhi High Court. A series of measures were initiated to reduce congestion, improve sanitation and hygiene standards and upgrade the facilities for the vocational training of inmates in Tihar Jail. Problems of the undertrials also received special attention from the judicial authorities and the Home Department. As directed by the Chief Justice of India, regular sittings of Lok Adalats were held within the jail premises and these proved to be of great value.

4.56 The Chairperson visited Central Jail, Arthur Road, Mumbai on 12 June 2001. He made a number of observations regarding overcrowding, health-care and the problems of women prisoners. He pointed out the need for greater involvement of NGOs in the education and rehabilitation of prisoners. His observations, with suggestions for improvement, were sent to the Chief Secretary, Government of Maharashtra on 31 July 2001.

4.57 Shri S.V.M. Tripathi, Special Representative of the Commission for Uttar Pradesh visited District Jail, Jhansi on 23 August 2001 and Central Prison, Naini on 10 November 2001. Shri A.B. Tripathy, Special Representative of the Commission for Orissa, visited District Jail, Balasore (25 July 2001), Special Jail, Baudh (16 August, 2001), Sub-Jail, Naupada (26 December 2001), Sub-Jail, Padampur (26 December 2001), Sub-Jail, Raikhol (13 January 2002) and Sub-Jail, Rourkela (19 February 2002). Both the Special Representatives have, in their reports, made useful observations regarding living conditions and medical facilities in the jails, and also in respect of the staff situation prevailing in them. A disturbing increase in cases of depression among the prison inmates was observed in reports on visits to jails in Orissa. The reports were duly considered by the Commission and appropriate recommendations were made to the State Governments for taking remedial action.

4.58 Shri Chaman Lal, Special Rapporteur of the Commission and Chief Coordinator, Custodial Justice Cell, carried out detailed inspections of Central Jail, Ranchi (22 - 23 July 2001), Sakshi Jail, Jamshedpur (26 - 27 September 2001), Central Jail, Raipur (30 August 2001), District Jail, Shillong (10 January 2002), District Jail, Guwahati (12 January 2002), Central Jail, Satna (4 - 5 March 2002) and District Jail, Meerut (18 March 2002). In addition to commenting on the living conditions, the state of sanitation and hygiene, medical facilities and the like, the Special Rapporteur identified specific problems being faced by undertrials which required to be taken up by District Magistrates in the meetings of the Monitoring Committee of the concerned district. He also identified, in consultation with the jail doctor, the patients who required surgical/specialised treatment from the district/referral hospitals. The incidence and nature of the death of prison inmates was another important matter which was examined in detail in these inspections. Recommendations were thereafter made by the Commission to the competent State Governments to take precise action in respect of the matters that had been commented upon. The responses received during the period covered by this report have been encouraging.

2) Prison Population

4.59 The Commission continued to analyse data relating to the prison population in various States/UTs, statistics being obtained as of 30 June and 31 December of each year. An analysis of the prison population as of 30 June 2001 in respect of all the States/UTs except Sikkim and UT Chandigarh, was considered by the Commission. It indicated that there were a total of 3,19,065 prisoners in the jails of the States/UTs as of 30 June 2001 against the authorised capacity of 2,19,880, i.e., an overall crowding of approximately 31.2 per cent. Overcrowding in jails was being experienced in 10 States, namely, Andhra Pradesh, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Jharkhand, Madhya Pradesh, Mizoram, Orissa, Uttar Pradesh, the UTs of Andaman and Nicobar Islands and Delhi. Jharkhand had the most over-crowded jails in the country (260%), followed by Delhi (192%), Haryana (165%) and Chhattisgarh (150%). Jails in nine States, namely, Himachal Pradesh, Jammu and Kashmir, Kerala, Manipur, Nagaland, Rajasthan, Tamil Nadu, Uttaranchal, West Bengal and Union Territories of Daman and Diu and Pondicherry had underutilised capacity.

4.60 Undertrials constituted 74.18 per cent of the total jail population in the country. In as many as eight States and three UTs more than 80 per cent of the jail population comprised undertrials. The Commission has noted with satisfaction that the percentage of undertrials in prisons is less than 60 per cent in Chattisgarh (53%), Himachal Pradesh (58%), Madhya Pradesh (57%), Tamil Nadu (31%), West Bengal (59%), Andaman and Nicobar Islands (38%) and Pondicherry (53%).

4.61 Women account for 3.12 per cent of the total jail population in the country. Mizoram has the highest percentage of women in jail (11.02%) followed by Chattisgarh (5.69%), Manipur (5.63%), Daman and Diu (5.55%), Delhi (4.45%), Maharashtra (4.29%) and Punjab (4.28%). Tripura has the lowest percentage of women in jails (1.46%) followed by Meghalaya (1.53%), Uttaranchal (2.03%) and Rajasthan (2.07%).

3) Medical Examination of Prisoners on Admission to Jail

4.62 As mentioned in the report for the year 2000-2001, the Commission has introduced a system of obtaining six-monthly consolidated reports from the jail authorities of all States/Union Territories regarding the medical examination of prisoners on admission to jail. Analysis of these reports reveals a fairly high incidence

of diseases like gastro-enteritis, scabies and various skin diseases. This has an obvious connection with poor hygienic conditions and an insufficient supply of clear water. The incidence of tuberculosis was also found to be high in some areas. Unfortunately, the reports from the States have been erratic or wanting. Only Andhra Pradesh, Goa, Haryana, Madhya Pradesh, Manipur, Orissa, Tamil Nadu and the Union Territories of Delhi and Chandigarh have been sending their reports regularly. The reports received have been carefully analysed and appropriate recommendations have been made to the Government of the States/Union Territories concerned for taking remedial action. The Commission urges those States that have not been adequately responsive to send the requested data to the Commission. The Commission would like to underline that the States have an obligation to ensure the medical examination of prisoners on admission to jail.

4) Mentally Ill Patients Languishing in Jails

4.63 The Commission has been greatly distressed by the reports it has received of the presence of mentally ill persons in prisons, in violation of the provisions of the Mental Health Act, 1987 and the specific directions given by the Supreme Court on the subject. Directions issued by the Commission through a letter addressed by the Chairperson to the Chief Ministers of all the States/UTs on 11 September 1996 was reiterated on 7 February 2000 and the Criminal Justice Cell has been monitoring compliance. A review made in January 2001 revealed the presence of mentally ill patients in jails in 10 States, namely, Rajasthan, Tamil Nadu, Sikkim, Delhi, West Bengal, Jammu and Kashmir, Karnataka, Manipur, Orissa and Assam. Efforts of the Commission have resulted in the situation being corrected in Rajasthan, Tamil Nadu, Sikkim, Delhi and Manipur. Further, the number of mentally ill patients in prisons came down from 24 to 15 in Jammu and Kashmir, 16 to 14 in Karnataka and 38 to 6 in Assam during the period covered by this report. The Commission is distressed to note, however, that as many as 112 mentally ill patients are still being held in Alipore Jail, Calcutta. The Commission has specifically requested the Chief Secretary, West Bengal to arrange for the proper treatment of these prisoners and their rehabilitation by involving a Calcutta-based NGO, 'SEVAK'. The matter is being pursued with the Government of West Bengal.

5) Sensitisation of Jail Staff

4.64 Sensitisation of jail superintendents and jailors in respect of the human rights of prisoners was an important activity undertaken by the Commission in the discharge of its responsibilities under section 12 (c) of the Protection of Human Rights Act, 1993. One-day workshops were held in Lucknow (12 May 2001), Agra (23 June 2001), Dehradun (12 July 2001), Bhubaneswar (9 November 2001) and Varanasi (24 March, 2002). A total of 137 jail officials, including two Inspectors General of Prisons, seven Deputy Inspectors General of Prisons and 94 Senior Superintendents/Superintendents of Jails attended these workshops. The workshops were conducted by the Chief Coordinator of the Custodial Justice Cell with the assistance of the Special Representatives of the Commission for Uttar Pradesh and Orissa. In addition to informing on matters relating to the human rights of prisoners, the workshops specifically apprised them of important judgements of the Supreme Court, on subjects relevant to the rights of prisoners and conditions in jails. The workshops also devoted time to issues concerning jail reform, including matters arising from the UN Standard Minimum Rules for the Treatment of Prisoners, the recommendations of the Mulla Committee Report on jail reforms and measures initiated by the Commission to improve conditions in jails. The workshops in Lucknow, Dehradun and Bhubaneswar were inaugurated by the Chairperson of the Commission. Justice Smt. Sujata V. Manohar, Member, inaugurated the workshop in Varanasi.

4.65 The concluding session of each workshop was devoted to a discussion on the problems of administration, finance, security and discipline being experienced by jail officials. This proved to be useful in identifying certain serious inadequacies of infrastructure and logistics in prison administration which are responsible for mal-administration and poor conditions in jails.

4.66 The Chief Coordinator, Custodial Justice Cell and the Special Representative, Uttar Pradesh undertook a review of the jail infrastructure and connected facilities in that State. They submitted a detailed report on the subject, covering issues that included the staffing pattern, buildings, medical facilities, education and vocational training of prisoners, arrangements for production of undertrials in courts, and housing facilities for jail staff. Precise suggestions were made to bring about the desired improvement. The report was considered by the Commission on 7 August 2001 and forwarded to the Government of Uttar Pradesh for follow-up; this will be monitored. Similar exercises will be undertaken in certain States in 2002-2003.

6) Visits to other Correctional Institutions/ Protection Homes

4.67 Shri A.B. Tripathy, Special Representative for Orissa, visited the Children Home, Sonepur (17 August 2001), Shishu Sadan, Choudwar (24 August 2001) and the Observation-cum-Special Home Rourkela (19 February, 2002). Shri S.V.M. Tripathi, Special Representative for Uttar Pradesh/Uttaranchal visited the Women's Protection Homes, Juvenile Homes and Observation Homes in District Haldwani, Uttaranchal (6 May 2001), Lalitpur (22 August 2001), Meerut (30 August 2001), Jhansi (31 August 2001), Gonda (25 September 2001), Muzaffarnagar (24 October 2001), Rai Bareilly (17 November), Kanpur (17 March 2002) and Unnau (18 March 2002). His reports contained many useful comments on the infrastructure and functioning of these institutions and suggested several improvements. His recommendations were thereafter forwarded to the concerned State Government after consideration by the Commission.

4.68 Justice Smt. Sujata V. Manohar visited the Women's Protection Home, Juvenile Home and Observation Home in Varanasi, on 22 March 2002. The Director, Social Welfare Department, Uttar Pradesh was also present. In her report, which was forwarded to the Government of Uttar Pradesh for necessary action, the Member made a number of recommendations to improve the living conditions, health-care, education and vocational training of the inmates in these institutions and also for the better maintenance of the institutions. She emphasised the importance of transparency in the functioning of these institutions and pointed out the need for the greater use of trained social workers and the closer involvement of NGOs.

H] Improvement of Forensic Science Laboratories

4.69 The Commission remained in touch with the Ministry of Home Affairs in regard to the implementation of the recommendations contained in the report entitled 'State of the Art Forensic Sciences: For Better Criminal Justice', prepared by a Core Group constituted by the Commission. In its annual report for the year 1999-2000, the Commission had urged the Ministry of Home Affairs to initiate early and comprehensive action on that report as the failure to improve forensic science services was gravely affecting the administration of criminal justice in the country and

leading to the serious violation of human rights.

4.70 The Commission has noted with appreciation that the Ministry of Home Affairs has taken steps to implement a number of the recommendations contained in the report of the Core Group. Thus,

- It has decided to create a separate Directorate of Forensic Science under the direct charge of the Ministry of Home Affairs. The Forensic Science Division and six laboratories, namely the Government Examiners of Questioned Documents at Chandigarh/Shimla, Hyderabad and Calcutta and the Central Forensic Science Laboratories at Calcutta, Hyderabad and Chandigarh, presently under the Bureau of Police Research and Development (BPR&D), will now come under the Directorate of Forensic Science. Orders for the creation of the Directorate of Forensic Science have been issued and administrative details in this respect are being worked out;
- Each State has been advised to establish a State Forensic Science Directorate. The States have also been advised to set up a State Forensic Science Development Board to monitor the development of Forensic Science Services in the State in a time-bound manner;
- The Director, National Institute of Criminology and Forensic Science (NICFS) has been asked to prepare a draft syllabus for a course in criminology. Similarly, the Chief Forensic Scientist, Bureau of Police Research and Development (BPR&D) has been asked to submit a draft syllabus for the post-graduate study of Forensic Science which can be circulated to Universities; and
- The BPR&D has been asked to submit a proposal for amending the police manuals of all State Governments/UT Administrations in order to incorporate the relevant provisions.

4.71 The Memorandum of Action Taken, prepared by the Ministry of Home Affairs, was considered by the Commission in a meeting held on 15 February 2002. The Commission desired that the Ministry be requested to apprise it of the progress of implementation of the decisions taken, so that the matter could be properly monitored. A letter was, accordingly, addressed to that Ministry on 13 March 2002, in pursuance of the Commission's directive.

Review of Laws, Implementation of Treaties and Other International Instruments of Human Rights (Section 12(d), (f) and (j) of the Protection of Human Rights Act, 1993)

CHAPTER 5

A] Prevention of Terrorism Ordinance, 2001

5.1 Earlier in this report, an account has been provided of the efforts of the Commission to sustain a respect for human rights in the country despite the grave challenges posed to the country by wanton and provocative acts of terrorism.

5.2 In the course of the year under review, it became essential for the Commission to take a position on the Prevention of Terrorism Ordinance, 2001 which was promulgated by the President on 24 October 2001.

5.3 Given the gravity of this matter, the Opinion of the Commission dated 19 November 2001, is being reproduced in full. The Opinion reads as follows:

‘The National Human Rights Commission in its opinion dated 14 July, 2000 dwelt at length on the various provisions of the Prevention of Terrorism Bill, 2000 as proposed by the Law Commission of India in its 173rd Report. This opinion is on the web site of NHRC www.nhrc.nic.in and was also forwarded to the Government of India, Ministry of Home Affairs. The Commission had also earlier opposed the continuance of TADA. A letter dated 20 February 1995 to this effect was sent by the then Chairperson to all Members of Parliament. This letter is also included in the annual report of the Commission for the year 1994-95 in Annexure I. The present opinion

in respect of the Prevention of Terrorism Ordinance, 2001 is in continuation of the Commission's earlier opinions, and the Commission's views on such a measure remain unchanged.

Undoubtedly, national security is of paramount importance. Without protecting the safety and security of the nation, individual rights cannot be protected. However, the worth of a nation is the worth of the individuals constituting it. Article 21, which guarantees a life with dignity, is non-derogable. Both national integrity as well as individual dignity are core values in the Constitution, *and are compatible and not inconsistent. The need is to balance the two. Any law for combating terrorism should be consistent with the Constitution*, the relevant international instruments and treaties, and respect the principles of necessity and proportionality.

The National Human Rights Commission, therefore, reiterates its earlier view in respect of the Ordinance also.'

5.4 For ease of reference, the Opinion of the Commission on the Prevention of Terrorism Bill 2000, is also being attached to the present report in full, as **Annexure 4**.

5.5 Subsequent to the promulgation of the Prevention of Terrorism Ordinance, 2001, an effort was made to replace it by a Prevention of Terrorism Bill, 2001. That Bill, however, could not be introduced and considered by the Lok Sabha during its winter session before Parliament was adjourned *sine die* on 19 December, 2001. The Prevention of Terrorism (Second) Ordinance, 2001 was therefore promulgated on 30 December, 2001. Thereafter, on 26 March 2002, the Prevention of Terrorism (Second) Ordinance, 2001 was enacted into a Law following a Joint Session of Parliament.

5.6 The Commission would like to observe that it respects and honours the constitutional process leading to the adoption of this Act, even if it has made known its opposition to the contents of the Act. The Commission retains, however, the responsibility under its own Statute to ensure that the Act is not implemented in a manner that is violative of the Constitution and the treaty obligations of the country. The Commission will, therefore, monitor the use of this Act carefully.

B] Child Marriage Restraint Act, 1929

5.7 The widespread persistence of child marriage in certain parts of the country, especially in Rajasthan, has continued to be of great concern to the Commission. The efforts of the Commission to deal with the problem have been dealt with in detail in earlier annual reports.

5.8 In order to curb the practice of child marriage in the country, the Commission had taken the view that the Child Marriage Restraint Act, 1929 should be recast so as to provide for higher penalty for the violations of the provisions of this Act and also to make the offence cognisable and non-bailable. Further, it was of the view that a provision should be made in the amended Act to take action against organisers/associations who organise child marriages on a mass-scale.

5.9 The Commission accordingly requested Justice Smt. Sujata V. Manohar, Member of the Commission, to study the Child Marriage Restraint Act, 1929 and offer her comments. She was of the view that it was necessary, first of all, to provide for registration of all marriages — whether religious or civil. Further, just as there were registers of births and deaths, there should be registers of marriages where any marriage in any form, performed within the area must be registered. This would provide an authentic record of the marriage and put an end to all disputes regarding the performance of the marriage. Since marriage affects the status and legal rights not just of the parties to the marriage but also others including their children, it was essential that an authentic record of marriages should be maintained by the State.

5.10 In her comments, Justice Smt. Sujata V. Manohar also stressed that, if at the time of the marriage one party or both parties to the marriage are minors, the marriage needs to be made voidable at the instance of the party who was a minor at the time of the marriage. For this, it should be possible to file a petition at any time, but before completion of two years of attaining majority. Further, in order to safeguard a minor girl's position, an amendment proposed by Justice Smt. Sujata V. Manohar, suggested that the husband or his guardian (if he was a minor at the time of marriage) shall pay maintenance to the minor girl until her remarriage. All gifts and dowry received at the time of marriage were also required to be returned. Marriages through force or fraud would be void. A child marriage in contravention of an injunction order of the Court would also be void. In the proposed amendments, punishment for contravention of any provision of the Act would have to be made more stringent (up to two years of

imprisonment instead of three months and increased fine which may extend to one lakh rupees). Organisers of mass marriages where child marriages were performed could also be punished. There would also be provision for Child Marriage Prevention Officers and their duties.

5.11 The above amendments suggested by Justice Smt. Sujata V. Manohar with regard to the Child Marriage Restraint Act, 1929 were subsequently discussed in a meeting organised under the Chairmanship of Justice Shri J.S. Verma on 6 February, 2002 in the presence of the Secretary, Department of Women and Child Development, the Secretary-General and senior officials of the Commission. In this meeting, the amendments proposed by Justice Smt. Sujata V. Manohar were approved with minor modifications and they are now enclosed as **Annexure 5**. The meeting also suggested that there should be a law to provide for the compulsory registration of marriages. However, until such time as a law was framed, a simplified system should be evolved whereby the existing machinery in every State should take care of registration of marriages for those who desire to register their marriages. The Commission also stressed the need to initiate social action by networking with the NGOs in the areas where child marriages were prevalent so as to sensitise the community leaders against such marriages.

5.12 The amendments were placed before a meeting of the Full Commission (where the ex-officio Members were also invited) and were approved. It was further decided to forward the proposed amendments to the concerned Ministry.

C] Protection of Human Rights Act, 1993

5.13 The working of the Protection of Human Rights, 1993, and the amendments proposed by the Commission to that Act, are of such importance to the promotion and protection of human rights in the country and to the efforts of this Commission, that this report has devoted Chapter II exclusively to an examination of these matters. There is no need, therefore, in this section of the report, to repeat those considerations.

D] Implementation of Treaties and Other International Instruments

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

5.15 During the period under review, the Commission regrets to note that little substantial progress has been made in respect of the treaties/instruments to which it had drawn attention in its annual report for the year 2000-2001. These included the following:

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

5.16 The Commission had recommended that Optional Protocols 1 and 2 to the Convention on the Rights of the Child, dealing respectively with the sale of children, child prostitution and child pornography and the involvement of children in armed conflicts, be examined by the Government of India. Specifically the Department of Women and Child Development and the Ministry of External Affairs were requested to take the appropriate action. The Memorandum on Action Taken, however, indicates no further developments in regard to this matter, though the Optional Protocol 2, concerning children in armed conflict, came into force on 12 February 2002. The Commission therefore considers it necessary to reiterate its recommendation that both the Optional Protocols be adopted by the Government of India and appropriate action taken to this end.

2) Protocols to the Geneva Convention

5.17 There has been no substantive response from the Government of India in respect of the 1977 Protocols to the Geneva Convention of 1949 despite reminders. The Commission therefore once again urges the Government to examine these Protocols expeditiously and to offer its comments to the Commission at the earliest.

3) Convention Against Torture

5.18 In its last annual report of 2000-2001 the Commission had urged the Government to fulfil its promise to ratify the Convention Against Torture which it had signed as long ago as 14 October 1997 on the recommendation of the Commission. The Commission has noted that, in its Memorandum of Action Taken on the annual report of the NHRC for the year 1999-2000, the Government has now stated that ‘the Ministry of External Affairs has initiated action in the matter and has emphasised to the authorities concerned the need for effecting changes in domestic legislation in order to bring its provision in conformity with the UN Convention Against Torture.’

5.19 The Commission is of the view that the process of ratification must proceed with far greater speed and clarity of purpose than has hitherto been the case. The lapse of nearly five years since the Government of India signed this treaty has not gone unnoticed either within the country, or in major external forums, including treaty bodies, when the commitment of India to the promotion and protection of human rights is considered. Indeed, failure to ratify the Convention has even affected the capacity of the country to secure the extradition of persons wanted by the law-enforcement agencies of India. The irony is all the greater because Article 21 of the Constitution already covers this area effectively. Further, as has repeatedly been pointed out by the Commission, the Right against Torture has been judicially recognised by the Apex Court as a Fundamental Right, making that right and the corresponding obligation of the State and its agencies a fundamental entrenched right. The Commission therefore urges the Government, once again, to take the action that is needed to complete the process of ratification without further embarrassing delay.

4) Convention and Protocol on the Status of Refugees

5.20 In its annual report for 2000-2001, the Commission had expressed its firm opinion that there was need for comprehensive national legislation to deal with the refugee situations facing this country and that this law should be devised keeping in view the decisions of the Supreme Court as well as the relevant international instruments on this subject, notably the 1951 Convention relating to the Status of Refugees and the 1967 Protocol on that subject.

5.21 The Government of India has, in response, informed the Commission that the Ministry of External Affairs has ‘initiated the process of examining the question of

treatment of refugees, including the different possibilities such as enactment of national refugee law and/or possibility of signing the Convention on Refugees and the related protocol, in consultation with other Ministries/Departments concerned of the Government. This process is likely to take time.’

5.22 The Commission is happy to note that the process has been initiated. It is less happy to note that the ‘process is likely to take time,’ especially since no time frame whatsoever has been mentioned by the Government. It has been the experience of this Commission, when it has considered it necessary to intervene on behalf of refugees, that there is an area of arbitrariness in the present practice that must be corrected if the rights of bona fide refugees are to be properly and consistently protected. India has every reason to be proud of the generosity of its historical tradition in granting protection to those who have sought refuge within its territory. Indeed, when this Commission considered it essential to file a writ petition before the Supreme Court in 1995 in order to ensure that the rights of Chakmas in Arunachal Pradesh were protected, the Apex Court took the view that the protection of Article 21 of the Constitution, which ensures the right to life and liberty, is applicable to all, irrespective of whether they are Indian citizens or otherwise. In effect, this brought in the requirement of fair procedure in dealing with refugees, and thereby the concept of equality. Despite this great tradition, however, there is now need, especially in a time of growing population movements and demographic pressures, to establish a system that works uniformly and systematically to distinguish between the bona fide refugee and the economic migrant, between those who seek asylum in our country because of a fear of persecution, and those who would seek to enter it to cause harm, even through acts of violence or terrorism.

5.23 The Commission therefore hopes that the action now initiated by the Central Government will be completed within a time-frame that is clear and reasonable, so that this important matter, touching upon the human rights of an extremely vulnerable group of persons, is expeditiously acted upon in a manner that is consistent with the dictates of our Constitution, the decisions of our Supreme Court and the international instruments on this subject.

E] Freedom of Information Bill, 2000

5.24 The Commission undertook an in-depth examination of the Freedom of Information Bill 2000, pursuant to its statutory responsibility under Section 12 (d) of the Protection of Human Rights Act, 1993. It received comments and suggestions in this regard from the Commonwealth Human Rights Initiative and from Dr Rajeev Dhawan, Senior Advocate, Supreme Court. Thereafter, based on the Commission's own examination and deliberations, it finalised its comments on the Bill and sent them to the Ministry of Information and Broadcasting for appropriate action.

5.25 The Commission took the view that the title of the Bill should be changed from 'The Freedom of Information Bill' to 'The Right to Information Bill' in order to make the proposed Bill conform to articles 19(1)(a) and 19(2) of the Constitution. The Preamble of the Bill, proceeded on the basis that the Bill conferred, for the first time, the freedom to access information. Instead, according to the Commission, the Preamble should have conveyed that the Bill provides a system for access to a right which already exists. The Commission stated that the Bill should be examined in the light of Article 19 (1)(a) which guarantees to every citizen the right to freedom of speech and expression as a fundamental right and, in particular, that Section 8 of the Bill should be re-examined to ensure that the provisions are within the ambit of permissible restrictions under Article 19(2).

5.26 According to the Commission's opinion, it has been judicially recognised that the right to freedom of speech and expression in Article 19 (1)(a) includes the right to acquire information. The State is not merely under an obligation to respect the fundamental rights guaranteed by Part III of the Constitution but is also under an obligation to operationalise the meaningful exercise of these rights. Thus, the State is under an obligation not only to respect but also to ensure conditions in which the right of acquiring information, which is part of freedom of speech and expression, can be meaningfully and effectively enjoyed. The Supreme Court held in **S.P. Gupta vs. Union of India AIR 1982 SC 149** that the right to know is implicit in the right to freedom of speech and expression guaranteed in Article 19(1)(a) of the Constitution, and reiterated this in **Reliance vs. Indian Express (1988) 4 SCC 592** in which it said that the 'Right to know is a basic right which citizens of a free country aspire to in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution'. Since the right to information is an integral part of the fundamental right of freedom of speech and expression under Article 19 (1)(a), any restrictions on this right must fall within the permissible parameters of Article 19(2).

5.27 The Commission thus stated that the aims and objectives of any law on the subject have to be to regulate and operationalise the right to information and facilitate the enjoyment of this right by citizens. The question therefore was whether and to what extent the Freedom of Information Bill, 2000 introduced in Parliament in 2000, and on which the Standing Committee of Parliament had recently submitted its report, met these aims and objectives.

5.28 The Commission gave its opinion only on the salient features of the Bill, observing that the consideration of details should be undertaken in the light of the basic premise indicated above.

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

5.29 The Commission has been strongly urging that a higher level of attention be given to the full and proper implementation of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 by the Central as well as the State Governments. Accordingly, when the Commission learnt that the Government of India was proposing to amend the Act in order to make it a more powerful instrument for promoting equality and protecting the rights of disabled persons, it requested the Ministry of Social Justice and Empowerment to send it a copy of the draft Bill for examination. On receipt of the draft, a clause by clause analysis was made of it by the Research Division and placed before the Commission on 3 August 2000. The Commission then directed that the matter be further examined by Prof. Amita Dhanda of the National Academy of Legal Studies and Research University, Hyderabad. Subsequently, the Committee directed that the gist of the suggestions received from Prof. A. Dhanda be sent to the Ministry of Social Justice and Empowerment for their response. On receipt of the response from the Ministry, the matter has been examined once again and is, at present, under the consideration of the Commission.

Right to Health

CHAPTER 6

6.1 Intrinsic to the dignity and worth of the human person is the enjoyment of the right to health. The International Covenant on Economic, Social and Cultural Rights, to which India is a State Party, specifically recognises that ‘the enjoyment of the highest attainable standard of health’ is the right of every human being. It must therefore be treated as a State responsibility, with the latter having an obligation to ensure that this right is respected. Indeed, in the Indian context, the provisions of Article 21 of the Constitution have been judicially interpreted to expand the meaning and scope of the right to life to include the right to health and to make the latter a guaranteed fundamental right which is enforceable by virtue of the constitutional remedy under Article 32 of the Constitution. For the Commission it has been important to link the issue of health to that of human rights. When linked together, more can be done to advance human well-being than when health, and human rights, are considered in isolation.

6.2 To widen and deepen its own understanding of the issues involved in matters relating to health as a human right, the Commission constituted a Core Advisory Group on Health, headed by its Chairperson and comprising Professor V. Ramalingaswamy, Dr Shanti Ghosh, Dr Prema Ramachandran, Professor Pravin Visaria, Professor N. Kochupillai, Professor K. Srinath Reddy and Professor L.M. Nath. The Group was specifically requested to prepare a plan of action for systemic improvements in the health delivery systems of the country. In addition, the Group has been advising and assisting the Commission on a considerable range of health-related issues and programmes.

6.3 In the course of the year, the country and the Commission suffered a great loss in the passing away of Professor V. Ramalingaswamy. Professor N.H. Antia has since then joined the Core Group, which has continued to make most valuable contribution to the ideas and work of the Commission on issues relating to health as a human right.

A] Public Health and Human Rights

6.4 It will be recalled that, in the year 2000-2001, the Commission organised two major gatherings on issues relating to Health and Human Rights. The first was a Workshop on Maternal Anaemia, which was organised on 26-27 April 2000 and the second was a National Conference on Human Rights and HIV/AIDS, which was held on 24-25 November 2000.

6.5 On 10-11 April 2001, the Commission organised the third of its major gatherings on Public Health and Human Rights. The Regional Consultation was arranged in collaboration with the Ministry of Health and Family Welfare and the World Health Organisation (WHO). Representatives of NGOs, public health experts and human rights activists attended the Consultation, as did jurists, policy makers, scientists and other interested members of civil society. The Consultation focused on three vital issues concerning public health i.e. Access to Health Care, Tobacco Control and Nutrition. The recommendations generated at the Consultation were considered and adopted by the Commission and forwarded to the Ministry of Health and Family Welfare for further action. The major recommendations are listed below:

1) General Recommendations:

- A State Public Health Regulatory Authority should be established in each of the States as well as a National Public Health Advisory Body to regulate public health practices and monitor the implementation of public health programmes.
- Capacity should be enhanced, at national and regional levels for inter-disciplinary learning and research on linkages between public health and human rights to promote policy development and public health action. To this end, partnerships should be promoted between academic/research institutions

of law, public health and social sciences as well as health NGOs and relevant government agencies. Such networks may be established and supported in countries of the South East Asia Region to serve national and regional public health needs.

2) Recommendations on Access to Health Care:

- Decentralisation of authority in health care systems of the country, through Panchayati Raj and other local institutions, by devolution of appropriate financial, administrative and supervisory powers and implementation of all relevant national programmes of Ministries/Departments of Health, Family Welfare, Women and Child Development, Social Justice and Empowerment.
- Standardisation and quality-assurance in the training of the various cadres of health care personnel.
- Effective linkage of the primary, secondary and tertiary systems for dependable delivery of essential health care (acute as well as chronic).
- Regulation of irrational or unethical medical practice in the public and private health care sectors of the country, through the development of guidelines for use of drugs, diagnostics and therapeutic procedures, with a regulatory framework for monitoring and enforcement.
- Availability of quality life saving drugs to the population. There should be a price control policy for essential drugs, including all patented drugs, with the prices linked to purchasing capacity of the population.

3) Recommendations on Tobacco Control:

- All States should be addressed to take steps for passing resolutions for adopting provisions relating to control of all other tobacco products (other than cigarettes) which are presently in the State list. As of now, only four States have passed such resolutions.
- A comprehensive national tobacco policy should be evolved at the highest level in consultation with all the stakeholders in Public Health.

- A multi-sectoral national level nodal agency should be established for tobacco control with strong representation from legal, medical and scientific communities.
- The right of the people to access correct information related to the effects of tobacco consumption must be promoted through programmes of information, education and communication. Such programmes should be adequately supported.
- Assistance for smoking cessation should be integrated into health care services.
- There was a need to review the provision of various incentives for tobacco industry under different Acts including the Tobacco Board Act, 1975, and for doing away with all subsidies (direct and indirect) being provided to the industry.

4) Recommendations on Nutrition:

- Access to iodised salt should be made available to all sections of population, on a sustained and affordable basis.
- The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production Supply and Distribution) Act, 1992 should be reviewed with specific reference to violations.
- The Food Corporation of India should be asked to provide a Report of losses of significant portions of food grains procured/stored by it over the last three years and the steps taken to monitor and reduce such losses.
- Media guidelines should be prepared to promote best practices of nutrition.
- The implementation of the recommendations of the NHRC sponsored workshop on Maternal Anaemia (April 2000) should be reviewed to evaluate the progress made and the barriers in effective implementation should be identified.
- The proposed Public Health Regulatory Authorities should monitor the effective implementation of the National Nutrition Policy and the National Policies of Action on Nutrition.
- An overview should be initiated by the Ministry of Law and Justice, of the

level of compliance with the following international instruments to which India is signatory:

- Convention on the Rights of the Child (CRC)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- SAARC Declaration on the Girl Child.

6.6 The recommendations of the Commission are, at present, under the consideration of the Central and State Governments. The Commission hopes and trusts that they will be acceptable to the Government and that it will be advised in detail of the response of the Government and of the action taken on the recommendations.

B] HIV/AIDS and Human Rights

6.7 The Commission finalised its recommendations on a range of issues relating to Human Rights and HIV/AIDS in follow-up of the National Consultation on this subject which it organised in New Delhi on 24 - 25 November 2000, in collaboration with the National AIDS Control Organisation, Lawyers Collective, UNICEF and UNAIDS. The issues covered in the recommendations included: consent and testing, confidentiality, discrimination in health care, discrimination in employment, women in vulnerable environments, children and young people, people living with or affected by HIV/AIDS and marginalised populations. The recommendations of the Commission have been sent to the concerned Governmental agencies for the initiation of appropriate action. The detailed recommendations are available on the Commission's web site www.nhrc.nic.in and may also be seen at **Annexure 6**.

6.8 The publication of the Commission on this National Consultation has been widely disseminated and greatly appreciated. It has served as a key document in discussions organised under United Nations auspices in Durban, in Colombo and in Melbourne, on the latter two occasions the Asia-Pacific Forum of National Institutions joining as a co-sponsor of the discussions that were arranged. On all of these occasions, the efforts of the Commission on this matter have been singled out for recognition as the kind of action that National Institutions for the Promotion and Protection of Human Rights can usefully and constructively take to bring greater understanding to bear on this complex subject.

C] Maternal Anaemia and Human Rights

6.9 The Commission has been deeply concerned about the wide-spread prevalence of iron deficiency among expectant mothers, which has resulted in high infant and maternal mortality and low birth weight related developmental disabilities, particularly among the poorer sections of society.

6.10 In order to evolve a plan of action for systematic improvements in the health care delivery system, a two-day Workshop on Health and Human Rights with Special reference to Maternal Anaemia was organised by the Commission on 26 - 27 April 2000 in partnership with the Department of Women and Child Development and UNICEF. The recommendations of that Workshop were annexed to the Commission's annual report for the year 2000-2001 and also formally transmitted to the Central Government for appropriate action.

6.11 While the response of the Government to those recommendations is yet to be received, the Memorandum of Action Taken filed by the Central Government in respect of the Commission's annual report for 1999-2000 refers to the launch, on 15 October 1997, of the nationwide Reproductive and Child Health (RCH) programme, in which Nutritional Anaemia Control is given high priority.

6.12 The Memorandum of Action Taken adds that the current RCH Programme focuses on the following strategies:

- Promotion of regular consumption of foods rich in iron.
- Provision of iron and folate supplements in the form of tablets to high-risk groups, for prevention as well as treatment of severe anaemia.
- Improved packaging and streamlining the supply of iron and folic acid.
- Identification and treatment of severely anaemic cases.

6.13 The Memorandum also states that, during 2000-2001, 464.45 crores IFA (L) and 402.52 crores (small) Iron and Folic Acid tablets were supplied.

6.14 The Commission has taken note of these observations and looks forward to further, more detailed comments, on the recommendations contained in its annual report for 2000-2001. The Commission intends to pursue this matter with all the concerned Ministries of the Government to whom its recommendations have been sent, and trusts that they will respond to the Commission's recommendations fully and positively.

Rights of Women and Children

CHAPTER 7

A] Trafficking in Women and Children

1) Trafficking in Women and Children: Manual for the Judiciary

7.1 Trafficking in women and children, both male and female, is a grave violation of several human rights and there is great need to deal with this problem in a comprehensive way. In this context, the Department of Women and Child Development (DWCD), Ministry of Human Resource Development, Government of India approached the Commission with the proposal that a Manual be prepared, under the joint aegis of the Commission and the DWCD, for use of the judiciary. It was stated that a collaborative venture of this kind would carry special weight. A Committee was accordingly constituted under the Chairmanship of Smt. Justice Sujata V. Manohar, with a representative each of the DWCD, Ministry of Home Affairs, National Commission for Women, UNICEF, UNIFEM, Lawyers Collective and Joint Women's Programme to work out the structure and the details of the Manual. Two meetings of the Committee were then held, one at the Commission's headquarters in New Delhi on 11 September 2001 and the other at the National Law School of India University (NLSIU) in Bangalore on 22 February 2002. Based on the discussions held, the NLSIU has been commissioned to draft the Manual.

2) Information Kit on Trafficking in Women and Children

7.2 The Focal Point within the Commission dealing with the Human Rights of Women, including matters relating to Trafficking, brought out an Information Kit on Trafficking in Women and Children. This Kit provides information about the nature and extent of the problem, the reasons as to why trafficking takes place, the purposes for which women and children are trafficked, and who among the population of women and children are trafficked. It also deals with the *modus operandi* of the traffickers, the consequences of the problem, and the role of the Commission in combating the problem of trafficking. This Information Kit was released to the public by the Chairperson of the Commission on 9 October 2001, during the inaugural session of a one-day Technical Consultation for National Level Action Research on Trafficking in Women and Children, which was jointly organised by the Commission, UNIFEM and the Institute of Social Sciences, an NGO based in New Delhi.

3) Prevention, Rescue and Rehabilitation of Women and Children Trafficked into Prostitution in Delhi

7.3 The Commission has been greatly concerned about the number of women, particularly minor girls, found in the brothels of Delhi. To control this problem, the Focal Point on Trafficking decided that there was need to coordinate the programmes and measures required to deal with the prevention, rescue and rehabilitation of women and children trafficked into prostitution in Delhi and, indeed, along the borders with Nepal and Bangladesh. A meeting was accordingly convened in the Commission on 25 February 2002 under the Chairmanship of Justice Smt. Sujata V. Manohar. It was attended by senior police officials of Delhi, a representative of 'STOP' an NGO working in this area in Delhi, and senior officials of the Commission. The National Commission for Women was also invited; its Member, Smt. Nafisa Hussain, attended the meeting. Some of the pertinent points arising out of the meeting were as follows:

- Arrangements for providing food to the rescued women/girls, as well as for their transportation to hospitals for their medical check-ups should be made available at the concerned Police Stations.
- Additional space, should be provided for rescued women and children at Nirmal Chaya in Delhi in order to accommodate those who are rescued.

- There was need for other Departments to coordinate better with the Social Welfare Department of NCT Delhi and with the State Social Welfare Departments for the rehabilitation of rescued women and children. This would help in checking inter-state and inter-country trafficking across borders.
- There was need for better networking and coordination within the country between the Police Stations of different States/UTs to combat trafficking.
- It was stressed, that emphasis should be given to rehabilitation per se. Meaningful steps should be taken by the Government as well as by NGOs working in the field to arrange the repatriation of victims, their re-acceptance by their families, and their gradual re-entry into the life of their communities.
- It was observed that the owners of Kothas and pimps were often able to get bail and free themselves with the connivance of law-enforcing agencies. It was proposed that there was need to examine whether provisions of the Bonded Labour System (Abolition) Act, 1976; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1971 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 could be invoked to stall bail applications.

B] Combating Sexual Harassment of Women at the Work Place

7.4 During the course of the year under review, the Commission continued to work on the issue of sexual harassment at the work place. It will be recalled that, in its preceding report, the Commission had drawn attention to the guidelines issued by the Supreme Court in its landmark judgement in the case **Vishaka vs. State of Rajasthan, 1997 (6) SCC 241** and observed that these guidelines were not being implemented adequately either in the public sector or in the private sector. The Commission had also reported on the decisions taken in a meeting convened under the Chairmanship of Justice Smt. Sujata V. Manohar on 1 March 2001 where the precise role of the Complaints Committee and other pertinent matters arising out of that judgement were elucidated and explained.

7.5 The Commission has been informed that, following that meeting, the Department of Women and Child Development, Government of India has, through an Order dated 8 June 2001, constituted a Committee to monitor the implementation of the guidelines laid down by the Supreme Court in the Vishaka judgement.

7.6 In a further step to deal with sexual harassment at the work-place, the Chairman of the Commission convened a meeting on 25 April 2001 to consider how universities and educational institutions could implement the guidelines and norms prescribed by the Supreme Court in the Vishaka judgement. The meeting was attended by the Secretary, Department of Secondary and Higher Education and the Secretary, Department of Elementary Education and Literacy of the Ministry of Human Resource Development, Government of India; Chairman, University Grants Commission (UGC); Chairman, Central Board of Secondary Education (CBSE); Principal Secretary, Directorate of Education, NCT of Delhi; selected Senior Advocates and NGO representatives.

7.7 It was agreed in the meeting that the Chairman UGC would write to the Vice-Chancellors of universities across the country informing them that they were bound, by the judgement to set up Complaints Committees. The Vice-Chancellors would also be asked to keep the UGC informed about the working of the Committees, failing which adverse inference would be drawn regarding their compliance with the Apex Court's guidelines. The meeting also recommended that the setting-up of a complaints mechanism should be made a condition precedent for the granting of assistance to all Aided and Affiliated schools by the CBSE. The UGC and CBSE were requested to instruct all educational institutions to make periodic reviews of the action taken by them in respect of the setting-up of complaints mechanisms. The meeting also directed that a Nodal Officer should be appointed in every educational institution as the person who could readily be contacted for information/suggestions relating to complaints received. The meeting reiterated that it should be made mandatory for all educational institutions to send their Action Taken/Status Reports to the UGC and CBSE for the purpose of monitoring. Another decision taken at the meeting was that the detailed guidelines prepared by the Jawaharlal Nehru University in respect of sexual harassment should be examined by the UGC to see if they could be replicated for other universities as well. It was, in addition, felt that a Helpline should be established for women and girls in their work places and that this should be supported by non-governmental organisations, along the lines of the Helpline established for students in the capital.

7.8 The Commission is pleased to note that the CBSE has, through its letter of 20 August 2001 informed the Commission that a proposal is under consideration to amend the affiliation by-laws in order to make it essential for CBSE affiliated schools to set-up complaints mechanisms along the lines directed by the Supreme Court. The CBSE has further stated that all affiliated schools are being requested to send quarterly Action Taken Reports on the subject, for which a proforma has been devised covering the instructions of the Apex Court and that the modalities for a Helpline were under consideration.

7.9 In a further meeting presided over by the Chairperson of the Commission, a discussion was held in respect of the sexual harassment of women in the legal profession. Shri Soli S. Sorabjee, Attorney General of India, Shri D.V. Subba Rao, Chairman, Bar Council of India and Shri R.K. Jain, Senior Advocate, Supreme Court attended that meeting. Subsequent to the meeting, the Commission constituted a high-level Committee on 21 December 2001, under the chairmanship of Shri Soli Sorabjee in his ex-officio capacity to consider all aspects of the problem of sexual harassment of women in the legal profession and to make suitable recommendations for the penalisation/punishment of those who may be involved. Specifically, the Committee was also asked to consider whether amendments were needed to the Advocates Act, 1961 and the Bar Council Rules, and to advise the Commission of its views on this matter.

7.10 In a parallel effort, the Commission wrote to the Department of Personnel and Training (DOPT) recommending that 'the findings of the Complaints Committee in all matters pertaining to sexual harassment at the place of work should be considered as final against the delinquent official, as this would lead to early decision on the sensitive issue, and, save the victim from undue harassment. For this purpose the inquiry conducted by the Complaints Committee should be deemed as the inquiry conducted in a departmental inquiry under the disciplinary proceedings drawn up against the delinquent official.' That Department, in turn referred the matter to the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) for examination, which gave the opinion that such a procedure could not be followed. The Commission, thereafter, sought the advice of Shri P. Chidambaram, Senior Advocate. He has opined that there is no legal impediment to amending the Service Rules in such a manner that the inquiry conducted by the Complaints Committee be treated as a departmental inquiry. The Commission therefore intends to pursue this matter further.

C] Harassment of Women Passengers in Trains

7.11 A petition received from Jagori, an NGO on 15 January 1998, as well as a news item that appeared in the issue of 'Outlook' magazine dated 2 April 2001 brought to the notice of the Commission that women are frequently attacked, molested and sexually harassed on railway trains and platforms and in waiting rooms.

7.12 It was reported that, in a country where over 12 million people travel every day by trains, has more than 62,000 kilometers of track covering 6,848 stations, only a fourth of India's 8,000 passenger trains have any kind of security. In such a situation, women have little respite from unruly passengers and armed offenders. Despite this, the cases of harassment are under reported, the affected women being reticent to file complaints. Further, since law and order is a State subject, a complainant has to file a case with the local Government Railway Police (GRP) in the State where the incident has actually taken place. The authorities at the point of origin or termination of the journey are usually of little help, and there has been a tendency in the police to be insensitive to such crimes or to trivialise them.

7.13 The Commission, however, considered it essential to take serious note of this problem. After considering the matter in its several meetings, including discussions involving the Government Railway Police (GRP)/Railway Protection Force (RPF), senior officials of the Railway Board and representatives of Jagori, the Commission made the following recommendations to the Railway Board:

- It should be ensured that FIR forms in all the languages relevant to the routes concerned are made easily available and the public is provided complete information about the procedure to be followed. While giving information to the public concerning harassment of women passengers in trains, such informations should be depicted in graphics as well, so that the message can be easily understood by the public.
- The Railway Board should have appropriate notices fixed at strategic points in all railway stations/coaches stating that sexual assault, obscene remarks, stares, gestures, songs and unwanted attention are all forms of sexual harassment and therefore offences punishable by law under the Indian Penal Code and the Railways Act, 1989. It was further suggested that the contents of such notices could be shown on close-circuit T.V. on all railway platforms.

- The railways should also disseminate information at all stations, as well as within the trains, as to whom the women passengers could approach in order to lodge complaints.
- Trains and routes on which the maximum complaints were registered should be given priority with regard to implementation of the steps mentioned above.
- The different functionaries attached to various trains should be sensitised to issues relating to women. The Railway Board was requested to organise Gender Sensitisation Programmes, for which they could seek the help of the NGO, Jagori and other women's groups, and such NGOs could be associated with the regular training programmes conducted by the Ministry of Railways for their functionaries.
- The Railway Ministry may form State level co-ordination committees with representatives of the RPF and GRP in order to periodically review the progress of implementation of the measures undertaken for the safety of women passengers.
- The Commission desired that wide publicity be given to the action taken by the Railway Board on this matter through the media, as well as on the website of the Commission.

7.14 The Commission intends to check, from time to time, whether adequate action is being taken on these recommendations. It would also appreciate it if the Ministry of Railways could advise it of the steps being taken to follow-up on these matters.

D] Rehabilitation of Widows in Vrindavan

7.15 As indicated in the last annual report, the issue of destitute women, particularly widows, residing in the Vrindavan area has been a subject of immense concern to the Commission. In its preceding report, the Commission had provided details of the action taken by the Government of Uttar Pradesh on the basis of the recommendations made by the Commission in respect of proper accommodation, financial assistance, health care and sanitation facilities, creation of a suitable fund for

last rites, proper arrangements for the distribution of pensions, provision of LPG connections for group-cooking and the issuance of ration cards.

7.16 In follow-up of this matter, the Chairperson of the Commission called a meeting with senior officials of the Governments of Uttar Pradesh as well as West Bengal on 23 August 2001. This meeting was attended, among others, by the Secretary, Department of Women and Child Development (DWCD), Ministry of Human Resource Development, Government of India.

7.17 Among the decisions taken were the following:

- The Government of Uttar Pradesh would take on rent two buildings to increase the accommodation needed by the widows. If need be, a few NGOs could be identified to run these homes, subject to periodical review of their performance. This scheme, if successful, could later be extended and replicated elsewhere. It was also decided that suitable land would be procured by the Government of Uttar Pradesh nearby, for the construction of two homes which should be able to accommodate 500 destitute women/widows with assistance also being provided by the Central Government.
- In order to provide recreation facilities to these women, it was proposed to install television sets/radios in all the homes run by the Government. It was also decided that the Government could request the West Bengal Film Division to screen appropriate films in these homes. The Government could also request the National School of Drama and the Song and Drama Division to produce suitable programmes.
- Self-help groups for income generation would be set-up to provide suitable training to women in small groups of 25 each to make candles, pickles, pappads, etc. During the training period, each trainee could be given a stipend and, after the completion of the training, they could be helped to obtain loans from the banks to make themselves self-reliant. Vocational training could also be imparted to some of these women in tailoring and block printing.
- It was stated by the Secretary, Department of Women and Child Development, Ministry of Human Resource Development that their Department was in the process of developing a scheme for women in distress which would take care of all categories of women, including destitute women and widows needing care and protection.

7.18 The Commission has been gratified to note that the Department of Women and Child Development, Government of India has, since then, sanctioned a sum of Rs.3.3 crores under the Swadhar Scheme, out of which Rs.2.3 crores will be provided as a grant to the Government of Uttar Pradesh for the construction of a home with a 1,000 bed capacity. The remaining amount will be used for rehabilitation of these widows

7.19 In addition, at the request of the Commission, HelpAge India has started a health service to the widows in Vrindavan with the help of a mobile van which visits the areas where the widows reside.

7.20 As the great majority of widows in Vrindavan are from the State of West Bengal, the Commission has urged the Government of that State to extend its pension scheme to those widows now in Vrindavan who are from that State. The Commission considers it important, in this respect, that the pension scheme and the relevant laws of West Bengal be interpreted expansively to meet this need, and that the response of the State Government to the Commission's recommendation be prompt and positive. The Commission has noted that, in response to the situation, the Government of Uttar Pradesh has proposed to increase the amount of the pension that it will be paying to some of the widows in Vrindavan.

E] Nomenclature to be used in Official Documents for Addressing Wives of Persons who have Died

7.21 The Commission considered a proposal from an NGO — Uttam Environment Awareness Mission (UEAM) of Jammu and Kashmir which suggested that the existing nomenclature for addressing women who lost their life partners, as used in the records of the Revenue Department, Schools, Employment Exchanges and other such institutions, be declared to be 'Dead Words'. It stated that the existing usage added to the depression created by the loss and intensified the psychological crisis. It was urged that a change be made in nomenclature that is used, as this would encourage those who had suffered such loss to assume a dignified place in society.

7.22 Agreeing with the proposal, on 19 June 2001 the Commission made a

recommendation, to all State Governments and other concerned authorities that, instead of the use of expressions like 'Widow', 'Vidvah', 'Bevah' and the like, which are normally used to address the wives of persons who have died, expressions such as 'Wife of the Late', 'Zauja Marhoom' or 'Dharmpatni Swargiya' or 'Wife of Shaheedvir' (for those whose husbands had sacrificed their lives for the cause of the nation/country) should be used by the Governments for all official purposes, specially in the official records. The States/UTs were asked to send their Action Taken Reports to the Commission. Letters were also written in this connection, to the Ministry of Law, Justice and Company Affairs, the National Commission for Women, the Ministry of Social Justice and Empowerment and the Department of Women and Child Development (DWCD), Government of India.

7.23 The DWCD has informed the Commission that it has circulated the Commission's directions to the Governments of all States/UTs for compliance. It has also requested the Department of Personnel and Training, Government of India to take the necessary action for the implementation of Commission's direction in all Central Government offices.

7.24 The responses received from the State Governments have all been positive thus far. There has been one notable exception, however, which has displayed an extraordinary lack of sensitivity and an abundance of the kind of pedantry that can sometimes characterise official reactions.

F] Sale of Female Children of Lambada Tribals in Telengana Region, Andhra Pradesh

7.25 The Commission took *suo motu* cognisance of a news item published in the Hindu of 22 January 2000 which highlighted the suffering of women of the Lambada Tribe of Telangana Region in Andhra Pradesh. It was reported that, in a number of instances, they were being compelled by their circumstances either to sell or to kill their infant girls soon after birth. A detailed report, obtained by the Commission from Andhra Pradesh Government confirmed that there were numerous cases where the girl child was being given away, either for adoption, or sold. In many cases, neither the names nor the addresses of the persons supposedly adopting the children were known. The Commission took a serious view of this matter and observed that the

Supreme Court of India had laid down clear guidelines in respect of the adoption of Indian children by foreign nationals. Unfortunately, in most of such cases, poverty and illiteracy were the main cause for the giving-up of the child. The Commission considered the issue in a meeting on 26 April 2001 and further directions were given to the State Government. The State Government subsequently sent a detailed report indicating how it would deal with the problem. In the light of that report, the Commission closed the proceedings before it. However, at the request of Smt. Shanti Reddy, a Member of the National Commission for Women, who is working with cases involving the sale of babies by Lambada tribals for adoption, a high-level meeting was convened by the Commission where the Joint Secretary, Ministry of Social Justice and Empowerment and Director, Central Adoption Resource Agency (CARA) were present. The officials present agreed to review cases where foreign parents were not found suitable in adopting such babies.

G] Women's Human Rights Cell in National Human Rights Commission

7.26 Keeping in view the large number of complaints being received by the Commission relating to women, including allegations of non-registration or non-investigation of dowry deaths, sexual harassment of women at the work-place, instances of rape, outraging of the modesty of women, abuse of girl children and kidnapping, the Commission has set up a Women's Human Rights Cell within the Commission's Law Division. The Cell is scrutinising all complaints/cases relating to the death or harassment of women and the girl children, including those relating to dowry demands and rape cases. All fresh complaints received on these subjects are being processed by this Cell, while cases on this subject which are presently being processed in the various Sections of the Law Division, are also being transferred to this Cell. The Cell is functioning in co-ordination with the Research Division.

Rights of the Vulnerable

CHAPTER 8

A] Abolition of Bonded Labour and Child Labour

1) Bonded Labour

8.1 The Supreme Court had, in its order dated 11 November 1997, passed in writ petition (civil) No.3922 of 1985, requested the Commission to be involved in the monitoring of the implementation of the Bonded Labour System (Abolition) Act, 1976. The order stated that 'the concerned authorities would promptly comply with the directions given by the NHRC in this regard.' The Commission has, since then, been monitoring the implementation of the Bonded Labour System (Abolition) Act, 1976 through its Special Rapporteurs Shri K.R. Venugopal, IAS (Retd.) in the States of Andhra Pradesh, Karnataka, Tamil Nadu and Kerala and Shri Chaman Lal in the carpet belt of Uttar Pradesh. Shri Chaman Lal has also been assisting the Member, Dr Justice K. Ramaswamy, in State-level reviews of the Bonded Labour and Child Labour situation. Dr Justice K. Ramaswamy has personally carried out district-level reviews in Andhra Pradesh, through visits to Warangal (29 September - 3 October 2001), Medak (23 - 26 June 2001), Nizamabad (10 - 15 November 2001) and Hyderabad (31 January - 3 February 2002). He has also carried out State-level reviews of the situation in Rajasthan (8 - 9 June 2001), Uttar Pradesh (7 July 2001), Orissa (3 - 4 November 2001) and Maharashtra (18 - 19 January 2002).

8.2 The reviews conducted by Dr Justice K. Ramaswamy have indicated:

- There is reluctance on the part of the top administration in almost every State to admit that the problem of bonded labour still exists. Most of the States hold the view that, with the coming into force of the Bonded Labour System (Abolition) Act, 1976, all the bonded labourers were released and the problem was solved for ever.
- Mandatory vigilance committees at the district and sub-divisional headquarters are not in position at many places. Even where such committees were constituted they have become defunct over the years. The committees have not made a worthwhile contribution anywhere in terms of identification, release and rehabilitation of bonded labourers. Wherever bonded labourers have been detected, the credit must go to NGOs and social activists who have been bringing these cases to the notice of an apathetic and unresponsive administration.
- The funds provided by the Government of India under the Centrally Sponsored Scheme for the rehabilitation of released bonded labourers have been utilised to a very small extent because of a lack of interest and commitment on the part of the District Magistrates to the cause of bonded labourers. Rehabilitation of migrant bonded labourers is seen to have been totally neglected everywhere. They are invariably dispatched to their native districts without receiving any rehabilitation grant.
- The efforts of the Ministry of Labour , Government of India to provide financial grants for awareness generation, the survey of bonded labour and an impact/evaluation study have not evoked an encouraging response from many States. Very few States have, as yet, actually availed of the offer.
- Prosecution of offenders under the Bonded Labour System (Abolition) Act ,1976 has, in fact, been neglected in every State that has been reviewed so far.

8.3 With the efforts of the Commission, vigilance committees have now been constituted in all the districts and sub-divisional headquarters of the States covered by the reviews undertaken by the Member. They are required to meet regularly and their functioning is to be supervised by the Divisional Commissioners. The Member has been emphasising to the District Magistrates that it is necessary to rehabilitate the released labourers expeditiously so that they do not relapse into bondage. He has also been suggesting that Panchayati Raj institutions be involved in the identification, release and rehabilitation of bonded labourers, and that the Panchayati Raj Act be amended suitably to achieve this end, as has been done in Karnataka.

8.4 The salient points in the reviews conducted by Dr Justice K. Ramaswamy, Member are indicated below:

Rajasthan (9 June 2001)

8.5 Eleven out of a total of 22 districts have been identified as Bonded Labour Prone. Vigilance committees have now been constituted in all the districts. Divisional Commissioners have been directed to monitor the functioning of the vigilance committees. A total of 5,438 labourers have been released during the period 1997-98 to 2000-01. Only 4,226 of them have been rehabilitated. 182 have died; 125 are reportedly untraceable and 100 are in the process of rehabilitation. 805 migrant labourers were sent to their native places, no effort was made to arrange for their rehabilitation under the Centrally Sponsored Scheme.

Uttar Pradesh (7 July 2001)

8.6 District-level vigilance committees are in position in 57 out of a total of 70 districts as of 7 July 2001. As regards the sub-divisional vigilance committees, only 190 out of 299 sub-divisions have constituted such committees. A total of 1,738 bonded labourers have been identified and released in the State during the period 1996-97 to 2000-01. Before this, a total of 27,489 bonded labourers were released after the Bonded Labour System (Abolition) Act came into force and 27,469 of them were rehabilitated by 1997. Of the 1,738 bonded labourers released during 1996-97 to 2000-01, 978 were migrants and no information could be obtained about their rehabilitation. The remaining 760 bonded labourers, together with 10 others who had arrived from other States, were to be rehabilitated in Uttar Pradesh. Only 332 out of this total of 770 had, however, actually been rehabilitated until the date of review.

Orissa (29 January 2002)

8.7 Vigilance committees have been constituted in all the districts (30) and sub-divisional headquarters, after a preliminary review conducted by the Special Rapporteur on 8 November 2001 had pointed out such committees did not exist in many places. A total of 50,083 bonded labourers have been identified in Orissa since the enforcement of Bonded Labour System (Abolition) Act, of whom 48,992 were actually released. The balance of 1,091, it is now stated, were wrongly identified. A

total of 46,907 released labourers have been rehabilitated under the Centrally Sponsored Scheme. Of the remaining 2,085 cases, 2,028 were not pursued because of death or migration of the individuals concerned, and 57 cases are still pending for rehabilitation. There has been no detection of bonded labour after the special survey of 1997 ordered by the Apex Court in the year 1998. Only 35 bonded labourers of Orissa, released from Rajasthan in 1998, were rehabilitated in the State.

Maharashtra (19 January 2002)

8.8 Only 20 out of a total of 35 districts have mandatory vigilance committees and Sub-divisional vigilance committees exist only in 46 places. A comparatively small number of 1,397 bonded labourers were released prior to 1997 and 1,305 of them were reported to have been rehabilitated. 17 bonded labourers were detected in a survey of 1997 in Thane district, of whom 9 were rehabilitated, and 3 cases were still being considered. Three bonded labourers were identified and released in 1999. Their rehabilitation is still pending. 33 more bonded labourers, who were detected in Ratnagiri district, were released on 6 July 2000 and sent to their native State, Tamil Nadu. However, no information was furnished about their rehabilitation.

Bihar and Jharkhand

8.9 In a special meeting conducted by Dr Justice K. Ramaswamy on 19 February 2002, a petition was received from the South Asian Coalition on Child Servitude (SACCS), regarding the pending cases of rehabilitation of bonded child labourers belonging to Bihar and Jharkhand, who had been released in the carpet belt in Uttar Pradesh between the period 1994-2001. Their problems were discussed with the Labour Commissioners and Labour Secretaries of Bihar and Jharkhand, in the presence of the Director-General (Welfare), Union Labour Ministry. A total of 183 pending cases were identified, 143 of Bihar and 40 of Jharkhand. The Labour Secretaries, Bihar and Jharkhand, were supplied with full particulars of these persons by the General Secretary, SACCS. They were directed to trace these persons with the help of the branch office of SACCS in Patna, and take up questions relating to their rehabilitation with the Director-General (Welfare), Ministry of Labour, who responded to the Commission's moves very positively.

Workshop on Bonded Labour

8.10 To clarify certain definitional aspects of the Bonded Labour System (Abolition) Act and to sensitise District Magistrates in respect of the Act, a one-day workshop was organised in Ranchi on 21 July, 2001 in collaboration with the Labour Department of Government of Jharkhand. The Chairperson of the Commission personally inaugurated the workshop, which was attended by the Chief Secretary, Labour Secretary, Divisional Commissioners and Deputy Commissioners of all the districts of Jharkhand. The Minister for Labour, Employment and Training presided over the inaugural function. The workshop resulted in the formulation of an action plan for the effective implementation of the Bonded Labour System (Abolition) Act and the processing of pending cases relating to the rehabilitation of released labourers in Jharkhand. The Commission is monitoring the execution of the action plan.

8.11 A similar workshop was organised in Chandigarh on 22 September 2001 by the Government of Haryana under the directions of the Commission. Member Dr Justice K. Ramaswamy, Special Rapporteur Shri Chaman Lal and OSD (Research) Shri Y.S.R. Murthy represented the NHRC in this workshop. The workshop was attended by the Chief Secretary, the Labour Secretary, the Divisional Commissioners of Gurgaon, Rohtak, Hisar and Ambala and the Deputy Commissioners of Ambala, Yamuna Nagar, Karnal, Jind, Hissar, Bhiwani, Sonapat, Mohindergarh, Rewari, Sirsa, Kurukshetra, Kaithal, Panipat, Jhajhar, Panchkula, Faridabad and Gurgaon. A number of doubts and misgivings expressed by the district officials regarding enforcement of the Bonded Labour System (Abolition) Act were removed.

Expert Group on Bonded Labour

8.12 On 29 September 2000, the Commission had constituted an Expert Group to prepare a report on the present status of the implementation of the Bonded Labour System (Abolition) Act, assess the effectiveness of the existing mechanism and schemes of rehabilitation, and make recommendations for the effective involvement of the Commission in the matter as mandated by the Supreme Court. The Group headed by Shri S.R. Sankaran, IAS (Retd.), former Secretary, Rural Development, Government of India, submitted its report to the Commission on 31 May 2001. The report of the Group, recommending a number of changes in the law and an action plan for the Commission, is under consideration. The Group also recommended that the accountability of District Magistrate and others vested with statutory powers

should be increased, and suggested appropriate legal measures to deal with cases of wanton neglect of duty. A copy of the report of the Expert Group has been transmitted to the Supreme Court.

Specific Case

8.13 To illustrate the nature of the actions being taken by the Commission, the facts are given below of a specific case involving the detection and release of 85 bonded labourers from the stone quarries of Barighat, Ganj Basoda, District Vidisha in Madhya Pradesh in December 2000. The credit for the detection goes to Shri Raghunath Vivek Pandit, Director, SAMARTHAN, a Mumbai-based NGO and Swami Agnivesh, President, Bonded Labour Liberation Front, Delhi. Shri Vivek Pandit visited Ganj Basoda alongwith some members of a local NGO and, with the help of the district administration got 85 bonded labourers released from 4 stone quarries. This was later verified by the Commission's investigation team which visited Vidisha from 10 - 12 January 2001. Although the release certificates were issued promptly and interim relief of Rs.1,000 to each labourer was also arranged by the district administration, the rehabilitation of the released labourers under the Centrally Sponsored Scheme was proceeding slowly. On receipt of a request from Swami Agnivesh, Shri Chaman Lal, Special Rapporteur, was dispatched to Bhopal and Vidisha to get their rehabilitation expedited. He succeeded in ensuring the rehabilitation of 42 out of the total of 85 labourers. The matter was then discussed in a special review meeting conducted by Dr Justice K. Ramaswamy in Bhopal on 26 April 2002. 15 out of the 85 released labourers were migrant labourers and action for their rehabilitation, was, thereafter, initiated through their respective States, Uttar Pradesh and Jharkhand; 52 of the remaining 70 have since received the full rehabilitation grant due to them under the Centrally Sponsored Scheme. The rehabilitation of the remaining 28 is also being monitored. In addition to getting a financial package of Rs.20,000 each, the released labourers belonging to Madhya Pradesh are also entitled to receive a grant of Rs.25,000 under the SC/ST Act, 20 per cent of which is to be paid on the registration of the FIR. 33 labourers had actually received this amount until the date of review.

2) Child Labour

8.14 The Special Rapporteur, Shri Chaman Lal, remained actively involved in monitoring the enforcement of the Child Labour (Prohibition and Regulation) Act,

1986 and the functioning of the National Child Labour Project (NCLP) schools in the carpet belt of Uttar Pradesh. He visited Jaunpur, Varanasi, Sonebhadra, Bhadoi, Mirzapur and Allahabad from 8 - 11 August 2001 and submitted a detailed report which was considered by the Commission and sent to the State Government for follow-up action. The Commission appreciates the positive and prompt action taken by the State Government on the suggestions for improvement made by the Special Rapporteur.

8.15 Dr Justice K. Ramaswamy, Member assisted by Shri Chaman Lal, carried out an over-all review of the Child Labour situation in Rajasthan, Uttar Pradesh, Orissa and Maharashtra during the period covered by this report. The review was based on the directions issued by the Supreme Court in its landmark judgement of 10 December 1996, in **writ petition (civil) no.465/1986 M.C. Mehta vs. State of Tamil Nadu and others**. The important directions given in the judgement are as under:

- Survey for the identification of working children.
- Withdrawal of children working in hazardous industries and ensuring their admission to formal or non-formal schools.
- Contribution at the rate of Rs.20,000 per child to be paid by the offending employers of children to a Welfare Fund to be established for this purpose.
- Employment to one adult member of the family of the child withdrawn from the work and if that is not possible a contribution of Rs.5,000 to the Welfare Fund to be made by the State Government.
- Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs.20,000/25,000 deposited in the Welfare Fund as long as the child attends school.
- Regulating the hours of work for children involved in non-hazardous occupations, so that the working hours do not exceed 6 hours per day and education provided for at least 2 hours a day. The entire expenditure on education is to be borne by the concerned employer.

8.16 The Ministry of Labour, Government of India has expressed the view that the directions of the Supreme Court are being implemented with great earnestness. (Page

4 of their publication entitled 'Policy and Programme for the Rehabilitation of Working Children and Manual for Implementation of National Child Labour Projects'). The Commission, however, has found the situation to be far from satisfactory in the States that it has studied and reviewed during the period covered by this report. It therefore urges both the Central and State Governments to give greater care to the implementation of the directions of the Apex Court to bring about a higher level of accountability in the administration to achieve this purpose.

Rajasthan (9 June 2001)

8.17 The survey conducted in 1997 (28 April - 4 May) in compliance with the directions of the Supreme Court had resulted in identification of a total number of 8,090 child labourers — 3,026 working in hazardous and 5,064 in non-hazardous occupations. Only 2,070 out of the total of 2,504 children withdrawn from hazardous work were enrolled in formal or non-formal centres of education, while only 223 of the affected families were provided employment. However, Rajasthan has fulfilled the commitment to contribute Rs.5,000 per child labourer for the balance of 2,803 of the total of 3,026 children withdrawn from hazardous occupations. Although 2,701 notices were issued for recovery of Rs.20,000 per child, only an insignificant amount of Rs.60,000 has been recovered so far. Prosecutions were launched only in 74 cases. No periodical survey has been conducted to detect, release and rehabilitate child labour after the survey of 1997 ordered by the Supreme Court.

8.18 Six National Child Labour Projects (NCLP) are operating in Rajasthan, one each in Jaipur, Udaipur, Ajmer, Tonk, Jodhpur and Alwar. Jaipur has also been brought under ILO-IPEC programme which aims at educational rehabilitation of 7,200 working children. The State Government has, in addition, initiated a number of measures for the universalisation of elementary education, awareness generation and community mobilisation to tackle the problem of child labour on an on-going basis.

Uttar Pradesh (7 July 2001)

8.19 The review was conducted on 7 July 2001. However, relevant data have been updated till 31 March 2002. A total of 60,705 child labourers were detected in Uttar Pradesh between 1997 and 31 March 2002. Of them, 28,722 were identified and withdrawn from hazardous work, including 838 children withdrawn from hazardous

employment and 2,727 from non-hazardous work in the year 2001-2002. A total of 49,240 children (22,924 withdrawn from hazardous and 26,316 from non-hazardous work), have been admitted to schools. 6,688 prosecutions have been launched, 6,348 recovery certificates involving a total amount of Rs.2,919.39 lakh have been issued. An amount of Rs.77.37 lakh has actually been recovered. Recoveries amounting to Rs.1,211.35 lakh have, however, been stayed by the courts. Only 4,421 families out of a total of 21,546 affected families of children withdrawn from hazardous work have been provided some employment. Monitoring by the Commission has resulted in an improvement in the prosecution of cases under the Child Labour (Prohibition and Regulation) Act. It has also had a deterrent effect in the districts of the carpet belt. Four hundred and seventy NCLP schools are functioning in 11 districts of Uttar Pradesh, seeking to provide accelerated primary education, vocational training, supplementary nutrition and medical-care to 45,831 children.

Orissa (29 January 2002)

8.20 A total of 23,761 children were detected in the course of the State-wise survey in 1997 organised under the directions of the Supreme Court. There has been no systematic survey and detection after that. Only 2 child labourers were detected in 1998-99 and 2 in 2000-01. 18,089 children out of a total of 23,761 withdrawn from hazardous work, have been admitted to schools — 1,522 in formal schools, 16,466 in NCLP schools and 101 in other non-formal schools. 13,504 have been mainstreamed into formal education. The Commission has been pleased to learn that the education of children working in non-hazardous establishments has also been receiving the attention of the administration. The detection of children working in non-hazardous occupations has been made regularly from 1997-98 onwards. Only 4,036 affected families of children withdrawn from hazardous occupations and 5,921 families of children detected in non-hazardous occupations have, however, been covered under the Poverty Alleviation Programme. Show-cause notices for recovery of Rs.20,000 per child were issued in respect of 10,511 employers/establishments. Only a paltry amount of Rs.1.20 lakh has been realised. The matter was examined in detail and specific directions were given to the Labour Secretary, Orissa to realise the outstanding amount. Only 316 prosecutions were filed against employers. As yet, only 12 cases have been decided. 5 cases have been dropped and 7 have resulted in acquittal. There has been no conviction.

8.21 The NCLP is operating in 18 out of a total of 30 districts of Orissa. 682 NCLP

schools are providing non-formal education to 37,516 children withdrawn from work — 16,466 from hazardous and 21,050 from non-hazardous establishments. As many as 19,514 children have been mainstreamed to formal education from these schools.

Maharashtra (19 January 2002)

8.22 A total of 1,023 child labourers were detected in 1997. In another survey carried out during the period from 1 October 1999 to 28 February 2000, 2,983 children were detected in 2,041 establishments. In an ongoing survey of 2001-2002, 4,552 children have been detected in 2,444 hazardous establishments. The review has indicated that follow-up action as directed by the Supreme Court was taken only in respect of the first survey of 1997. Only 573 children out of 1,002 withdrawn from hazardous work were actually admitted to schools. Only one family covered by the 1997 survey, which was conducted under the directions of the Supreme Court was given employment. The Labour Secretary of the State indicated that the proposal to establish a grant of Rs.5,000 per child for the affected families, as required by the Supreme Court when employment could not be offered, is now under the consideration of the Government of Maharashtra. As regards recovery of Rs.20,000 per child from the offending employers, an amount of Rs.7,64,000 has been recovered in 38 cases only. 440 prosecutions were launched in respect of the detection of 1,002 children from hazardous establishments. Only 64 cases have been disposed of till now 13 resulting in conviction and 51 in acquittal. In addition, a total fine of Rs.88,200 has been imposed on 6 persons who have been convicted.

Child Labour in Slaughter Houses

8.23 Employment of children in slaughter houses is prohibited under the provisions of the Child Labour (Prohibition and Regulation) Act, 1986. The Commission has, however, been receiving reports about the employment of children in abattoirs/slaughter houses all over the country. In a meeting held on 16 March 2001, the Commission therefore decided to send notices to all concerned. Accordingly, all States/Union Territories were requested, on 9 April 2001, to ensure that the concerned departments were directed to inspect slaughter houses under their jurisdiction. It was added that children found to be working in such establishments should be withdrawn, provision made for their education and rehabilitation as directed by the Supreme

Court and legal action initiated against offenders. As of 31 March 2002, no response had been received from the State of Manipur, Meghalaya, Nagaland, Uttaranchal and Union Territory of Chandigarh. The State of Maharashtra had sent a report only in respect of one slaughter house. The other States/UTs had, however, responded stating that the concerned authorities had been asked to comply strictly with the Commission's directions. The Commission urges that this matter continues to receive the attention of all States/Union Territories, and especially of those who have not yet responded adequately to the Commission.

Child Labour in Aligarh Lock Industry

8.24 A Committee to study all aspects of the child labour situation in the lock industry in Aligarh (UP) was constituted by the Commission on 2 August 2000 with Shri Chaman Lal, Special Rapporteur as its Chairman and Shri Madhukar Dwevedi, Special Secretary, Labour Department Uttar Pradesh; Shri B.K. Singh, Dy. Labour Commissioner, Agra; Shri Joseph Gathia, Director, Centre of Concern for Child Labour, Delhi and Smt. Sadhana Ramachandran, Advocate, Supreme Court as Members. The Committee submitted its report to the Commission on 3 April 2001. A copy of the report was sent to the Government of Uttar Pradesh on 21 May 2001 for its response. Although the District Magistrate, Aligarh has confirmed that action has been taken on a number of points, particularly in respect of the functioning of NCLP schools, a detailed response from the State Government is still awaited. In reply to a reminder issued on 18 February 2002, the Commission has been informed that the Labour Department of the State Government has examined the report and decisions are now to be taken up at the senior-most level of the Government. The Commission urges the Government of Uttar Pradesh to act promptly and comprehensively on the recommendations contained in the report.

Impact/Evaluation Study

8.25 Dr Bhupinder Zutshi of the Himalayan Research and Cultural Foundation, New Delhi was engaged by the Commission on 8 June 2000 to conduct a study on the 'Impact, Community Response and Acceptance of Non-Formal Education under the National Child Labour Project' in the carpet-weaving belt of Mirzapur-Bhadoi and glass bangle region of Ferozabad (UP). He presented his report before the Commission on 15 May 2001 and a further presentation was arranged for the Union Labour

Secretary on 23 August 2001. The report has provided an encouraging account of the improvement in the child labour situation in the carpet-belt as a result of the continuous monitoring on behalf of the Commission. It also commended the improvement in the functioning of the NCLP schools which are being visited by the Special Rapporteur of the Commission. The report, however, brought to light serious deficiencies in the implementation of schemes in glass-bangle region of Ferozabad.

8.26 A special workshop, organised by the Special Rapporteur in Ferozabad on 7 January 2002 was attended by the Labour Commissioner and Inspector of Factories, Uttar Pradesh, the District Magistrate and other officers of Ferozabad and 11 NGOs involved in the running of the NCLP schools. Dr Zutshi explained in detail the findings of his study and the District Magistrate, Ferozabad promised remedial action, which is to be monitored by the Commission. Dr Zutshi has also organised an Awareness Generation Workshop for NGOs/parents of children in Varanasi on 20 October 2001, a Master Trainers Training in Mirzapur from 20-24 October, 2001 and a Non-Formal Education Teachers Training Programme in Varanasi from 27 October - 3 November, 2001. He received help from UNESCO, New Delhi and the International Bureau of Education, Geneva. Project Directors of the NCLP in Varanasi, Mirzapur and Bhadoi and 37 teachers selected from NCLP schools of Varanasi, Bhadoi, Mirzapur and Allahabad benefited from these workshops.

8.27 While continuing its drive to end child labour, the Commission is constrained to observe that, despite the repeated pronouncements of the Supreme Court and monitoring by various agencies including the Commission itself, widespread child labour persists in the country. There are many reasons for this including, regrettably, the inherent deficiencies in the existing legislation relating to child labour. Article 24 of the Constitution provides 'that no child below the age of fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment'. The Commission holds the view that the term 'hazardous' should necessarily be interpreted with reference to what is hazardous for the child, and not merely in relation to certain processes/occupations being categorised as hazardous, which is the approach adopted in the Child Labour (Prohibition and Regulation) Act, 1976. The Commission is strongly of the view that the entire issue of child labour must be viewed through the perspective of the rights of the child. In this perspective, Article 24 of the Constitution must be read with Articles 21, 39(e) and 39 (f) and 45 and also with the provisions of the principal United Nations human rights treaties including, above all, the Convention on the Rights of the Child, 1989 which has been ratified by India. The present situation is clearly unacceptable. For all of the efforts made, there

are many individuals and groups who have worked with great dedication and skill to end child labour, the results are still inadequate. They will, unfortunately, remain inadequate until the laws relating to child labour are radically re-thought and re-written, and brought into line with a proper appreciation of what the rights of the child should mean in terms of policy choices and accountability. The nation-wide provision of free and compulsory education for all children until they complete the age of 14 years is intrinsic to any real progress in this matter. The effort to achieve this great objective, on which depends the future of our children no less than of our country, must move beyond debates to amend the Constitution, and find expression in practical programmes for every district, village and family of India. There can be no greater challenge or necessity, and no greater achievement, than to educate the children of India, and to free them from the bondage of child labour.

8.28 The Commission therefore urges the Government of India to act with speed and determination to re-write the laws regarding child labour and, acting with the State Governments, set a time-frame to achieve free and compulsory education for the children of the country.

B] Rehabilitation of People Displaced by Mega Projects

8.29 In its annual report for the year 2000-01, the Commission spelt out its view that there was need to formulate a revised national policy to deal with greater sensitivity in respect of issues concerning the rehabilitation of people affected by mega projects. Specifically, the Commission expressed the opinion that the resettlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act itself, or be the subject of appropriate separate legislation, so that they are justiciable. The Commission was additionally of the view that the Government should, while adopting a comprehensive policy, provide for that policy to itself be incorporated into appropriate legislation within a specified time frame.

8.30 In the course of the year under review, Shri M. Venkaiah Naidu, Minister for Rural Development, was invited by the Chairperson for a discussion in the Commission on matters relating to this subject. In the meeting held on 1 June 2001,

the views of the Commission were conveyed in detail to the Minister. The latter, in turn, informed the Commission that the draft policy on land acquisition had been framed by his Department and had also been considered by a group of Ministers. He stated that his Ministry necessarily had to consider the divergent views expressed by various wings of the Government on the question of acquisition of land for projects, including those of the Railway and Telecom sectors. The Minister nevertheless stated that he appreciated the suggestions made by the Commission and promised that these would be placed before the Cabinet for consideration. The Commission is of the view that it is of vital importance that the right to livelihood and dignity of lakhs of vulnerable citizens of this country, who are affected by the acquisition of land for mega projects, should be protected in the manner proposed by the Commission. The reasons advanced by the Commission are spelled out in detail in its last annual report, they are therefore not being repeated here. The Commission takes this opportunity to urge, once again, that the National Policy to be adopted in this respect must be based on principles that are fair, just and transparent and that conform with the Constitution and the treaty obligations of this country, particularly ILO Convention 107, to which India is a party and which provides for the protection of the rights of indigenous and tribal people.

C] Rights of the Disabled

8.31 The approach to people with disabilities, both nationally and internationally, has, for far too long, been built on a model of care and entitlement based on charity and the assumption that disability is an individual pathology, a condition grounded in the psychological, biological or cognitive impairment of the individual. For the Commission, however, there is need for a paradigm shift in this respect, and a necessity to view questions relating to disability through the perspective of human rights.

8.32 The goal of most policies and schemes has, thus far, generally been the short-term alleviation of individual problems, using state institutions, voluntary organisations and bi-lateral and multi-lateral funding bodies for the granting benefits to persons with disabilities. More recently, however, governments have begun to recognise that disability is a 'social' pathology.

8.33 The Commission, for its part, has been interacting with the Central and State Governments to take stock of the facilities provided to persons with disabilities.

Information available to it indicates that a variety of measures are being planned to implement policies such as job reservations, reservations in admission to various educational institutions, conveyance allowances, petrol subsidy, assistance for purchasing aids, loans for employment, special reservations in the allotment of government quarters, shops etc. by the State Governments. The Commission has recommended, however, that the facilities and procedures for providing and giving effect to such measures should be standardised and streamlined for the proper implementation of the new Act.

8.34 The Commission has, already, reviewed the working of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and suggested a number of amendments to this legislation, which have been detailed in its annual report for 2000-2001.

8.35 The Commission has also addressed a number of individual complaints from NGOs and others engaged in assisting persons with disabilities. These related to harassment, intolerance, discrimination at the work place and elsewhere. In particular, it took up the case of C.K. Anka Toppo, a medical student who lost his eyesight in the final year of the MBBS Course and was originally denied permission to complete this course. The details of this case may be seen at pages 272 to 274. The examining body was persuaded by the Commission to amend the examination procedure to enable him to appear at the final examination. He has since passed that examination. Steps are also in progress for further action to suitably amend the curriculum and examination procedure for visually impaired persons so as to enable them to take the medical course and become doctors in the disciplines suitable for them.

8.36 Concerned about the issue of wide prevalence of iron and iodine deficiency related health problems, which result in a large number of children in the country being born with mental disabilities, the Commission has worked closely with the concerned Ministries and Departments, UNICEF and with other experts in this regard. As indicated elsewhere in this report, comprehensive recommendations have been made by the Commission to the Government on maternal anaemia related health problems leading to birth of under-weight and disabled children.

8.37 The Commission successfully championed the need to enumerate the disabled in Census 2001; this was agreed upon. However, the Commission is of the opinion that much still remains to be done to remove societal neglect of the disabled, and to provide them access to the facilities and services to which they have a right.

8.38 A Core Group on Disability related issues has therefore been constituted by the Commission in August 2001. The Core Group will consider the problems faced by the disabled from a human rights perspective and evolve suitable ways and means of improving the conditions of the disabled. Shri B.L. Sharma, IAS (Retd.), former Chief Commissioner for Disabilities has been nominated to serve as the Chairperson of the Group, which will also have the following experts as its members:

- Prof. (Smt.) Amita Dhanda, National Academy of Legal Studies and Research (NALSAR), Hyderabad;
- Shri Lal Advani, President, Indian Association for Special Education and Rehabilitation, New Delhi;
- Shri S.K. Rungta, Secretary General, National Federation for the Blind, New Delhi;
- Ms. Anuradha Mohit, Special Rapporteur (Disability), National Human Rights Commission, New Delhi;
- Shri Javed Abidi, Executive Director, National Centre for Promotion of Employment for Disabled People (NCPEDP), New Delhi; and
- Shri Thakur Hari Prasad, Chairperson, Institute for the Mentally Disabled, Hyderabad.

8.39 The Core Group is to look into the following issues:

- Identification of important human rights issues concerning the disabled persons.
- Review of the policies adopted so far by the Central/State Governments and suggest possible interventions by the Commission and the nature of strategies to be adopted.
- Serve as a monitoring mechanism on the action taken for protection of the rights of the disabled.
- Suggest steps for creation of awareness on the rights of the disabled persons in the country.

- Identify broad areas of co-operation between the Commission and the NGOs with good track record engaged in the advancement of the rights of the disabled.
- Consider any other important issue relating to disabled persons.

8.40 Ms. Anuradha Mohit, former Deputy Chief Commissioner for Persons with Disabilities, has been appointed by the Commission to serve as Special Rapporteur(Disability). This appointment should greatly strengthen the capacity of the Commission to address issues relating to disabilities.

D] Rights of the Elderly

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

8.42 The Commission has stressed that there is need for better mobilisation and coordination of efforts on behalf of the elderly. To identify areas of activity of particular importance to them, the Commission held two rounds of discussions with Non-Governmental Organisations working for the rights of older persons. The following suggestions emerged from those discussions:

- Medical Insurance cover is need for older persons beyond 70 years, for as long as they live.
- Provision of separate queues for older persons in hospitals.
- Need for having Old Age Homes in every area. Every major Hospital/District Hospital and Primary Health Centre must have a separate wing for older persons and a hospice for the terminally ill funded by Government.

- Ascertain from various States as to the action being taken by them to check abuse of the elderly and the action that they propose to take to protect the rights of the aged.
- Pensions for older persons.
- Provision in the Indian Penal Code to make abuse of the elderly an offence punishable under law.
- Starting of a website by the Government which can provide, at one place, information on health, investment, Government circulars etc. relating to older persons along the lines of ELDERNET.

8.43 The Commission sought the response of the Ministries of Social Justice and Empowerment, Law, Justice and Company Affairs, Home Affairs, Finance, Health and Family Welfare and Insurance Companies on these suggestions.

- The Department of Pension and Pensioners' Welfare has indicated that, to facilitate quicker dissemination of the Department's orders and clarifications and to make them easily accessible to Pensioners' Associations and others, all matters relating to pensioners have been made available on the internet and can be accessed at www.nic.in.persmin.
- The Ministry of Health and Family Welfare has circulated the recommendation for the provision of separate queues for older persons in hospitals to all States and Union Territories.
- The Ministry of Social Justice and Empowerment has indicated that it is implementing two schemes, namely, an Integrated Programme for Older Persons, and a Scheme of Assistance to Panchyati Raj Institutions/Voluntary Organisations/Self Help Groups for construction of old age homes.

8.44 The Commission has requested Shri K.B. Saxena, IAS (Retd.), formerly Secretary to Government of India, to study the existing schemes and to advise the Commission in respect of them.

8.45 Representatives of the Insurance sector have been called to the Commission to discuss the coverage of older persons in Medical Insurance Schemes. They have been

requested to examine their schemes and policies from the perspective of the human rights of the elderly. The Commission has also expressed its concern over the plight of older persons belonging to economically weaker sections of society in the unorganised sector. HelpAge India is particularly involved with such groups. The representatives of the Insurance companies indicated that policies can be prepared for different groups, but it was important to identify the agency that could pay the premiums on their behalf. The Companies expressed their willingness to discuss these matters further.

E] Problems of Denotified and Nomadic Tribes

8.46 The communities designated as Denotified Tribes (DNT) and Nomadic Tribes (NT) of India were identified as ‘Criminal Tribes’ (which included both castes as well as tribes) in pre-independence India. Though the Criminal Tribes Act, 1871 was annulled soon after independence, the police, as well as members of the public, frequently and most regrettably continue to treat persons belonging to these communities as ‘born criminals’ and ‘habitual criminals’. They therefore remain amongst the most disadvantaged and discriminated against in the country.

8.47 The eminent activist and author, Smt. Mahasvetadevi, President, Denotified and Nomadic Tribals Rights Action Group, sent a petition to the Commission on the plight of the Denotified and Nomadic Tribal Communities of India referring to their ill-treatment by the administration, and by the police in particular. The Commission thereafter convened a meeting of the Chief Secretaries and senior officers of a number of concerned states on 15 February 2000 to deal further with this matter. A number of specific recommendations were then made to the State Governments and the Commission has sought to follow-up on the action taken on those recommendations. Regrettably, the situation on the ground has not yet perceptibly altered for the better and the responses of most State Governments has been desultory. The Commission will therefore pursue this matter, which affects most seriously the human rights of members of the Denotified and Nomadic Tribes and reflects most poorly on the capacity of the State and society to treat them with the respect that is their right.

8.48 On the recommendations of the Commission, the Ministry of Home Affairs sent a copy of the views of the Commission to the Sardar Vallabhbhai Patel National Police

Academy in Hyderabad asking that these be circulated to all concerned officers, including officer trainees. The Ministry also wrote to all the States asking them to furnish statistics in respect of DNTs and NTs. Reports have been received from the States of Karnataka and Madhya Pradesh, while the States of Andhra Pradesh, Gujarat, Rajasthan and West Bengal have indicated that action is being taken by them. No replies have been received from Maharashtra and Punjab and reminders have been sent to them. The Government of Karnataka has indicated that all the Denotified and Nomadic Tribes in the State have been included under the SC/ST and OBC categories and are being given all the benefits available for each of the categories. Therefore, it does not consider it necessary to carry out a separate enumeration of these communities. The Madhya Pradesh Government has stated that the majority, through out all of these communities have been included under SC/ST and OBC categories. It has requested the Union Ministry of Home Affairs to undertake the enumeration of those communities that have not been included under SC/ST or OBC categories.

8.49 The Commission had also recommended that all those State Governments that had enacted the 'Habitual Offenders Act', should take the steps to repeal that Act. The responses on this point have thus far been inadequate. The Commission urges the Ministry of Home Affairs to pursue this matter, just as it will itself.

F] Manual Scavenging

8.50 The Commission 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.

8.51 In the preceding report, the Commission provided details of the high-level group it had constituted to elaborate recommendations and to pursue plans to end manual scavenging within a fixed time frame. The Secretary-General of the Commission then pursued this matter with his counter-part in the Ministry of Urban Development and Poverty Alleviation, which is the nodal Ministry dealing with this subject.

8.52 Subsequently, the Chairperson of the Commission called a meeting on this matter on 6 August 2001 which was attended by the Secretary, Ministry of Social

Justice and Empowerment; the Secretary, Ministry of Urban Development and Poverty Alleviation, the Secretary-General of the Commission and other senior officials. After detailed discussions, it was agreed that:

- Steps must be taken to end manual scavenging in the country by 2 October 2002;
- Public notices should be issued by the municipalities prohibiting the construction of dry toilets and for their conversion to wet toilets within a given time-frame. No new licenses should be given for the construction of new buildings unless these guidelines are complied with; and
- The scheme for the rehabilitation of manual scavengers should simultaneously be pursued with vigour.

8.53 On 14 August 2001, the eve of Independence Day, the Chairperson of the Commission addressed a letter to the Prime Minister stating that it was a matter of national shame that, despite over half-a-century having passed since we gained independence, the inhuman practice of manual scavenging continued in our country. He pointed out that the Commission was constrained to believe that the requisite sensitivity and commitment to the cause was lacking on the part of Government. He therefore urged the Prime Minister that, as a significant step towards the eradication of this practice, as well as an important symbolic gesture, he may consider the desirability of making an announcement on Independence Day to the effect that, by 2 October 2002, the country will have no dry latrines. The Chairperson also proposed to the Prime Minister that, if the Low Cost Sanitation (LCS) scheme were converted from a fifty percent loan scheme to a full subsidy scheme, and an additional amount of Rs.1,017 crores were made available for this purpose, then all the dry latrines in the country could be converted into pour-flush latrines.

8.54 In a further letter dated 14 August 2001, addressed to the Chief Ministers of all States, the Chairperson proposed that the Union and the State Governments should jointly work together to ensure, that by 2 October 2002, there were no dry latrines left in the country.

8.55 In response to the Chairperson's communications and appeals, the Commission is heartened to note that the Governments of Goa, Kerala, Meghalaya, Mizoram and Tripura have stated that manual scavenging has been abolished in their States. The Government of Uttar Pradesh has stated that the 'The Employment of

Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993' has now been adopted by that State. Rajasthan has stated that a Bill has been introduced in the Assembly in this regard. The State of Himachal Pradesh has indicated that all those involved in the practice of manual scavenging have already been 'liberated', and that the State has its own Municipal Act, which provides for attaining the objectives of the Central Act. The Government of Andhra Pradesh has set as a target the end of the year 2002 to end this practice. The Government of West Bengal has set the date of 31 March 2002 to end this practice, while the newly formed State of Chhattisgarh has set the date as 30 June 2002. Bihar has stated that it has decided to end this practice at the earliest possible date, while Madhya Pradesh and Assam have indicated March 2002 and 2 October 2002 respectively as their target dates. However, the States of Arunachal Pradesh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Jharkhand, Karnataka, Maharashtra, Manipur, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tamil Nadu, and Uttaranchal have not responded to the communications addressed to them. This is disappointing.

8.56 While a definite momentum has been created to end the unconscionable practice of manual scavenging, a decisive effort must now be made, with the involvement of the political leadership of the country at the highest level, to follow through until this practice ceases to exist. Although the Memorandum of Action Taken for the year 1999-2000, tabled by the Ministry of Home Affairs before Parliament, states that a variety of initiatives have been taken by the Central and State Governments, the vigour and commitment of these actions will need to be intensified if the plight of manual scavenging is conclusively to be eradicated if this practice that has brought shame to this country and degradation to its citizens is to be considered over, once and for all. The Commission therefore urges all concerned to lend their full might and exercise their will to achieve this objective by Gandhi Jayanti 2002.

G] Human Rights in Situations of Natural Disasters

1) The Orissa Cyclone Affected

8.57 The Commission continued to monitor the relief and reconstruction effort on behalf of those stricken by the super-cyclone that hit Orissa in October 1999,

concentrating on the implementation of its recommendations of 8 December 1999 and 21 August 2000, to which reference has been made in earlier annual reports of the Commission. The Special Rapporteur of the Commission visited the State as needed to check on the progress, paying particular attention to the protection of the rights of the most vulnerable sections of society.

8.58 On 29 January 2002, the Chairperson personally convened a special review meeting at Bhubaneswar, which was attended by the Chief Secretary and all of the Secretaries of the Departments concerned with the relief and reconstruction work. The review indicated that the disbursement of *ex-gratia* payments to the next-of-kin of those who had died had proceeded satisfactorily, as had the disbursement of House Building Assistance (HBA) to the affected families. Action had also been taken on a variety of other recommendations of the Commission, such as the allotment of funds for compensation to be paid to fishermen who had earlier been overlooked. The recommendation of the Commission seeking the disbursement of HBA to affected families who had built their homes on land on which they had encroached in Paradeep had also been implemented.

8.59 The Commission has noted with satisfaction that 4,369 primary school buildings had been constructed until 31 December 2001 against the target of 5,750. The pace of construction of high school buildings — 364 completed and 764 in progress, was also found to be satisfactory.

8.60 The ICDS coverage in the cyclone affected Districts had been expanded by bringing into operation all of the 14 pending ICDS projects — 12 of 1995-96 and 2 of November 1999. Satisfactory progress was also noted in respect of 27 new projects sanctioned on the recommendation of the Commission.

8.61 The review indicated that progress in the construction of cyclone shelters was still slow. As recommended by the Commission, a total of 100 multi-purpose cyclone shelters are to be constructed — 60 under the Chief Minister's Relief Fund and 40 with World Bank assistance. Work on 43 cyclone shelters financed from the Chief Minister's Relief Fund had already been taken up. However, there had been no progress in the construction of cyclone shelters with assistance from the World Bank.

8.62 The Commission was informed that, with the construction of new school buildings designed to serve as school-cum-cyclone shelters, the State was now in a far better position to face the menace of floods and cyclones. Looking back on this

experience, the Commission would like to observe that its involvement in respect of the protection of the rights of those who had been struck by this major natural calamity was certainly helpful — and was so perceived to be not only by the affected population but by the State Government as well. The Commission would like to express its appreciation of the cooperation extended to it by the State authorities and for the readiness with which they acted upon its recommendations and advice. The involvement of the Commission in such a situation also constituted an important precedent for National Institutions established for the promotion and protection of human rights. This has been widely observed and commented upon both in this country and elsewhere by those concerned with the defence of human rights and human dignity in situations of widespread stress, and calamity.

2) The Gujarat Quake Affected

8.63 The Commission took *suo motu* cognisance in respect of the situation arising from the devastating earthquake that struck large areas of Gujarat on 26 January 2001. Once again, the Commission acted to ensure that the rights of the affected population — and particularly of the most disadvantaged — were protected and respected. An account of the Commission's actions in the immediate aftermath of the earthquake are contained in its annual report for the year 2000-2001.

8.64 Thereafter, on 29 May 2001, the Commission made a series of directions and recommendations to the Gujarat Government. In particular, the Commission urged the State Government to hasten the work for the rehabilitation of the affected population and to ensure that, before the monsoon broke, temporary shelters were provided to all quake-affected people. The Government was also asked to complete the enumeration of orphaned children, destitute women, and older citizens expeditiously and to draw up an action plan to provide relief and rehabilitation, special care being taken of those belonging to marginalised sections of society. The Government was also directed to ensure that a mechanism was set up by which the case of each orphaned child was monitored on a long-term basis, and officials were sensitised to prevent any kind of exploitation of the children. It was added that any policy providing for adoption should take into consideration the revised Guidelines for the Adoption of Indian Children, 1995, as laid down by the Supreme Court that advice and assistance should be sought from the Central Adoption Resource Agency (CARA) and that the Government should be sensitive to the views of the community in respect of the adoption of children.

8.65 Further, the Commission expressed the view that there should be no discrimination against any section of the population while providing relief and rehabilitation assistance. As a large number of people had been injured, the Government was asked to come forward with a plan for the long-term relief and rehabilitation of those who had been orthopaedically affected, with special reference being given to amputees and those suffering from partial/permanent incapacitation.

8.66 The State Government was also asked to empower an officer stationed at Bhuj with sufficient powers to resolve the problems of the affected people at the district level itself, thus ensuring expeditious redressal of grievances and an increase in the credibility of actions being performed.

8.67 The Commission expressed particular concern that the Dalits who had migrated to areas near Bhuj from areas north of the District, in search of better economic opportunities, were being asked to go back. The State Government was therefore asked to ensure that the return of the Dalits to their villages be entirely voluntary. The Government was also directed to review the building by-laws, update them and ensure their proper implementation.

8.68 In addition to these directions, the Commission recommended to the State Government that family identity cards be issued in order to ensure that assistance went to the right people and that NGOs, prominent citizens, philanthropic organisations were associated formally with the effort underway in each affected area and in each taluk of the affected districts. It was further suggested that a plan be formulated to set-up HAM Radio Clubs in schools/colleges in the quake/cyclone prone areas of the State so as to have a better communications system in case of major calamities.

8.69 The State was also advised to raise a Special Battalion, in the nature of a Rapid Action Force, specialised in providing sophisticated relief and rehabilitation assistance. There was also a need for an elaborate Disaster Management Plan for the future to prevent panic or knee-jerk reactions and to ensure coordination in the performance of all.

8.70 Drawing the attention of the State Government to reports of unequal relief/rehabilitation efforts in the different affected districts, the Commission asked the Government to ensure that rehabilitation assistance was made available in adequate measure to those areas that had been neglected.

8.71 In order to monitor closely the follow-up action taken by the Gujarat Government to implement its directions, the Commission set-up a monitoring group consisting of Shri P.G.J. Nampoothiri, Special Representative of the Commission in Gujarat, Shri Gagan Sethi, Managing Trustee, Jan Vikas Trust, Ahmedabad, Smt. Annie Prasad, President of Kutch Mahila Sangathan and Professor Anil Gupta of the Indian Institute of Management, Ahmedabad. The monitoring group was asked to report periodically to the Commission on the level of compliance with its directions. It was also asked, in particular, to report on any case of discrimination based on caste, community and religion; on grievances of the affected population and on the transparency, or lack of it, in respect of the free-flow of information to the affected persons and agencies involved in the rehabilitation work.

8.72 The Commission's directions were issued after a detailed survey had been undertaken of the relief and rehabilitation measures by its Secretary-General and by its Special Representative in Gujarat who visited the affected areas. The Chairperson of the Commission also visited these areas personally on 18 May 2001, in order to get a first-hand impression of the work under way and the problems being faced.

8.73 In an interesting example of the complementarity of the higher judiciary of the country and the Commission, a copy of the judgment dated 17 February 2001 of the High Court of Gujarat in the case **Bipinchandra J. Diwan vs. State of Gujarat**, was sent to the Commission for 'necessary action and intervention if necessary in redressing the complaints of violation of human rights in accordance with the provisions of section 12 (b) of the Protection of Human Rights Act, 1993.' The High Court also associated the District Judge in each district as an Ombudsman to receive complaints from affected persons and to take these up with the authorities in order to provide quick relief and an immediate activating of the legal aid system.

8.74 Copies of the order of the Commission were sent to the Chief Minister of Gujarat; and to the Chief Secretary; Revenue Secretary; Relief Commissioner; Secretary, Women and Child Development; Health Secretary; Secretary, Social Justice and Empowerment; Chief Executive of the Gujarat Disaster Management Authority; Central Relief Commissioner and Additional Secretary, Department of Agriculture and Co-operation, Government of India; and to the Secretary, Women and Child Development, Government of India.

8.75 The Prime Minister of India was also apprised of the action taken by the Commission, through a letter from the Chairperson dated 28 May 2001.

H] Racism: World Conference in Durban

8.76 A major concern of the Commission during the year under review was the stand it should take at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, that was held in Durban between 31 August - 8 September 2001. In preparing for that Conference, the Commission considered it its duty to listen attentively to those in our country who have been the victims of historical injustices, and who are hurting because of discrimination and inequality — particularly Dalits and Adivasis. It was to hear their voices, and to benefit from an exchange of views with them, and with eminent jurists, academics and human rights activists, that the Commission organised two major consultations in August 2001, in Bangalore and New Delhi respectively, as steps preparatory to the formulation of its views for the Conference. The Commission also decided that it should be represented by Justice Dr K. Ramaswamy and Shri Virendra Dayal at the World Conference and at a gathering of National Institutions in Johannesburg on 27 - 28 August 2001, immediately prior to that Conference.

8.77 The full text of the Statement of the National Human Rights Commission, which constituted a major policy pronouncement, can be seen at www.nhrc.nic.in. The principal points contained in that Statement, however, in respect of certain of the key issues before the Conference that were particularly germane to India, are reproduced below:

- There can be no doubt that in India — as everywhere else in the world — history and society have been scarred by discrimination and inequality.
- It was in recognition of this — and to end such injustice — that Part III of the **Constitution of our Republic** dealing with Fundamental Rights, contained powerful provisions to combat all forms of discrimination, including notably those forms which were based on race, caste or descent. These provisions of the Constitution are justiciable.
- It can with good reason be said that India has embarked on a programme of affirmative action which is, perhaps, without parallel in scale and dimension in human history. It is all the more remarkable for being undertaken in a country that has demonstrated, in the 54 years since its Independence, an unshakeable faith in the capacity of its people to effect fundamental social, economic and political change through the processes of democracy.

- The National Human Rights Commission of India believes it is essential that all Member States, including India, respect the international human rights regime established under the auspices of the United Nations and observe the discipline of the treaties to which they are States Party. It is worth mentioning, in this connection, that Section 2(d) of the Protection of Human Rights Act, 1993 which establishes the National Human Rights Commission, defines 'human rights' to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants.
- In the light of this, the Commission is of the opinion that the exchange of views on human rights matters, whether at the national, regional or international level, can all contribute constructively to the promotion and protection of such rights and that the Conference provided a singular opportunity to the international community to deal openly and courageously with the vexed issues of discrimination and inequality as they exist all over the world, in all of their variety, including the forms of discrimination that persist in India and all other countries. In such a context, it was not so much the nomenclature of the form of discrimination that must engage our attention, but the fact of its persistence that must cause concern. Given this perception, the Commission was of the view that the debate on whether race and caste are co-terminus, or similar forms of discrimination, is not the essence of the matter. The Constitution of India in Article 15 expressly prohibits discrimination on either ground, and that constitutional guarantee must be rigorously implemented. In this connection, the Commission believes deeply in the value of engaging Governments, non-governmental organisations, national institutions, and all concerned elements of civil society in the process of fighting discrimination, and urges that this process be conducted at all levels in a spirit that is genuinely interested in the furtherance of human rights, and not vitiated by self-righteousness or by political and other extraneous considerations.
- In furtherance of its statutory responsibilities, the Commission has thus accorded the highest priority to ending discrimination against Scheduled Castes and Scheduled Tribes and in seeking to eradicate, in particular, two pernicious practices which largely affect members of these communities: these relate to manual scavenging and bonded labour.
- The Commission has also taken up the issue of the rights of persons displaced by mega projects, specifically those affected by construction of large dams, many of whom are tribals.

- In the final analysis, the Commission believes that the promotion and protection of the human rights of the weakest sections of society are clearly related to their full and proper empowerment. That is why the Commission has urged the adoption and implementation of policies at the Central and State levels that will open the doors of opportunity to them: free and compulsory primary education upto the age of 14 years, as the Constitution requires; access to proper primary health care; freedom from malnutrition and maternal anaemia, and the re-allocation of resources to back such programmes in a manner that has true meaning. In addition, the Commission has continued to receive and redress numerous individual complaints that it has received daily from persons who are included among the Scheduled Castes and Scheduled Tribes; these have alleged acts of discrimination, 'untouchability', violence against the human person, atrocities of various kinds, and high-handedness by public servants and others.
- Economic upliftment and empowerment of Dalits is the most effective tool to combat casteism. More avenues must be opened for the economic betterment of the disadvantaged.
- The Commission is acutely aware that the journey to end discrimination, injustice and inequality will be long and often frustrating. But it is convinced that, in this mission, the Constitution of the Republic has shown the way. Legislative and affirmative action programmes are firmly in place, but unquestionably need to be far better implemented. The Commission is convinced that discrimination on any of the grounds contained in the Constitution of India, and these include race, caste and descent, constitute an unacceptable assault on the dignity and worth of the human person and an egregious violation of human rights. The Commission holds the view that the instruments of governance in our country, and the energetic and committed non-governmental sector that exists, can unitedly triumph over the historical injustices that have hurt the weakest sections of our country, particularly Dalits and Scheduled Tribes. This is above all a national responsibility and a moral imperative than can and must be honoured.

8.78 After the World Conference, the Commission has been engaged in an effort to analyse the Declaration and Programme of Action that were adopted in Durban and to devise a strategy to follow-up on those important documents and the Statement that was jointly agreed upon by the forty-seven National Institutions for the

Promotion and Protection of Human Rights that were present in Durban for the Conference. The Commission intends to pursue these matters seriously in the period ahead, and to monitor the implementation of the Durban documents by the concerned authorities in this country.

Research Programmes and Projects

CHAPTER 9

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

9.1 With a view to preventing the employment of children by Government servants the Commission has continued to pursue this matter with the Central and the State Governments. The Commission had recommended that the relevant Service Rules governing the conduct of Central and State Government employees be amended to achieve this objective.

9.2 The Union Ministry of Personnel and Public Grievances and Pensions (Department of Personnel and Training) has informed the Commission that the Central Government has amended the All India Services (Conduct) Rules, 1968 as well as the Central Civil Services (Conduct) Rules, 1964 appropriately.

9.3 The majority of States have also brought about the required amendments to the Conduct Rules of their employees. In its annual report for the year 1999-2000, the Commission indicated that the States of Arunachal Pradesh, Bihar, Gujarat, Haryana, Kerala, Manipur, Meghalaya, Nagaland, Orissa, Punjab, Rajasthan and Uttar Pradesh had not yet taken a decision in this regard. The States of Bihar, Gujarat and Haryana have since complied with the recommendations of the Commission. The response of

the remaining nine States is, however, still awaited. Of the three newly formed States of Chhattisgarh, Jharkhand and Uttranchal, the former two States have carried out the requisite amendments in the Conduct Rules of their employees. The State of Uttranchal has reported that the matter is under active consideration.

9.4 The Commission is concerned that this matter should not rest with the amendment of Conduct Rules. The Rules must be monitored with zeal, if the odious practice of employing children as domestic help is to end. The Commission intends to continue to monitor this matter and to see whether the Central and State Governments will actually take action against those public servants who continue to persist in employing children as domestic servants.

B] Quality Assurance in Mental Hospitals

1) Mental Hospitals in Ranchi, Agra and Gwalior

9.5 The Commission continued to monitor the functioning of the Ranchi Institute of Neuro-Psychiatry and Allied Sciences (RINPAS), the Institute of Mental Health and Hospital, Agra and the Gwalior Mansik Arogyashala in accordance with the mandate given to it by the Hon'ble Supreme Court through its order of 11 November 1997 in writ petitions (civil) No. 339/86-901/93 and 448/94 and writ petition (civil) No. 80/94.

9.6 As indicated in the last annual report, the Commission has asked its Special Rapporteur, Shri Chaman Lal to visit these three institutions and to report on their current status. The Special Rapporteur has done so and has provided comprehensive reports to the Commission in furtherance of the objectives laid down by the Supreme Court to improve the functioning of these institutions and to enhance their status as centres of excellence in the field of mental health. Those objectives required:

- Developing of advanced diagnostic and therapeutic facilities for patients;
- Improving social and occupational rehabilitation facilities for them;
- Starting postgraduate training courses in the fields of Psychiatry, Clinical Psychology, Psychiatric Social Work and Psychiatric Nursing;

- Expanding Mental Health Services at community level;
- Providing appropriate training and conducting short-term courses for medical and paramedical personnel; and
- Conducting research in the field of behavioural and neuro-sciences.

9.7 The Chairperson of the Commission personally visited the Institute of Mental Health Agra on 7 April 2001 and reviewed its functioning. This was followed by a meeting of the Directors and Chairpersons of the Management Committees held at the Commission's headquarters on 8 May 2001. The Health Secretaries of the States of Jharkhand, Uttar Pradesh and Madhya Pradesh also attended this meeting, when an up-to-date assessment was made of the compliance of the directions of Supreme Court, issues being identified institution-wise. The Chairperson urged the Heads of the Management Committees to assert their authority and to get the problems of these institutions resolved by eliminating bureaucratic redtape. He emphasised the need to ensure that the Directors of these institutions are allowed to exercise the powers given to them under the notifications of autonomy issued by the Governments in respect of these institutions.

9.8 Significant improvements have since been noticed in the working of these institutions and in their management and administration. The admission and discharge of patients has been streamlined and the incidence of involuntary admission has registered an appreciable decline. Diagnostic and therapeutic facilities have been upgraded and their impact is visible in the rate and speed of recovery of patients. Though a great deal more remains to be done in the field of occupational therapy, the progress made in Ranchi and Agra merits commendation. All the three institutions are engaged in expanding mental health services at the community level and some of their doctors are making a significant contribution to research training centres by participating in prestigious national and international conferences. For want of requisite infrastructure, however, these institutions have not yet started regular training courses, though re-orientation programmes are being conducted and students from various medical colleges are being accepted for short durations. Efforts are underway to start professional and para-professional training activities in Ranchi and Agra in the field of Psychiatry, Clinical Psychology, Psychiatric Social Work and Psychiatric Nursing.

9.9 A significant feature of the improvement in the functioning of these institutions

has been the establishment of Half-way Homes for the cured patients before they are finally discharged. The Chairperson visited the Gwalior Mansik Arogyashala on 2 November 2001 to inaugurate the Half-way Home for female patients and laid the foundation stone of the new OPD building of the institution. A special drive is underway to restore a number of cured patients to their respective families, who had earlier been reluctant to take them back. Significant results have been achieved, especially by Ranchi Institute. The Chairperson visited the Ranchi Institute on 20 July 2001 and was impressed by the overall progress made after the intervention of the Commission.

9.10 Progress in respect of the new constructions/renovations ordered by the Supreme Court has been satisfactory.

9.11 The autonomous character of the institutions, though agreed to in principle and formalised by the issuing of notifications, is evolving rather slowly, especially in Agra and Gwalior.

9.12 The Gwalior Mansik Arogyashala had, for a long while, been without a regular Director. The Commission has, however, recently been informed of the appointment of a regular Director against the post authorised for this position.

9.13 The Commission has been concerned about the rehabilitation of the cured patients who are either destitutes or have been abandoned by their families. An Expert Group has been constituted to deal with this problem, with Justice Sujata V. Manohar, Member of the Commission, serving as Chairperson. The Directors of the three institutions, Shri S. Murlidhar, Advocate Supreme Court, Shri Harsh Mandher, CEO Action Aid, and a representative of the Ministry of Health and Family Welfare are members of this Group whose Convenor is the Special Rapporteur, Shri Chaman Lal. On 26 February 2002, the Group spelt out an action-plan to undertake the counselling and rehabilitation of cured patients, assistance being offered by Action Aid.

2) Mentally Ill Patients in Dargahs/Private Hospitals

9.14 Despite the efforts of the Commission to have all State Governments act on the basis of the report prepared for it on Quality Assurance in Mental Hospitals, much remains to be done for the proper care of those suffering mental disabilities.

9.15 In preceding annual reports, the Commission has dwelt at some length on the situation that prevailed in the Sultan Alayudeen Dargah in Goripalayam near Madurai, where patients were often brought by their relatives in the hope of a healing by faith, and then been left behind in the Dargah often in chains. After being dissatisfied by the efforts of the State Government to remedy the situation, the Commission had appointed a Committee under the eminent psychiatrist, the late Dr K.S. Mani of Bangalore to go into this matter. The recommendations of the Mani Committee, which were adopted by the Commission on 3 January 2001 and transmitted to the Tamil Nadu Government for appropriate action, may be seen on pages 295 to 296 of the present report.

9.16 Despite these recommendations, however, a shocking incident occurred on 6 August 2001, when 28 inmates of the Baddhusa Private Mental Asylum in Erwadi of Ramanathapuram district, Tamil Nadu, lost their lives in a fire, primarily owing to the fact that they had been kept in chains. The Commission was greatly disturbed by the incident and the failure of the State Government to prevent this tragedy. Taking a grave view of the matter, it asked all States and UTs to certify that no mentally ill patients were chained and kept in captivity. This, the Commission felt, was essential in order to prevent the recurrence of any such tragic incident in future. In letters addressed to the Chief Secretaries of all the States and Chief Administrators of all Union Territories, the Commission requested them to have the requisite reports sent to the Commission by 31 January 2002.

9.17 The Commission regrets to note that the response of the concerned authorities has not been very forthcoming in some cases. Replies have been received from the States of Andhra Pradesh, Assam, Chhattisgarh, Goa, Jammu and Kashmir, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Nagaland, Orissa, Sikkim, Tamil Nadu, Uttar Pradesh and West Bengal and from the UTs of Andaman and Nicobar Islands, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and Pondicherry. Andhra Pradesh, Chhattisgarh, Goa, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Nagaland, Orissa, Uttar Pradesh, West Bengal and the UTs have reported that there are no mentally ill patients who were being kept in chains. Tamil Nadu has also reported to the same effect.

9.18 Jammu and Kashmir has further informed the Commission that the hospital authorities in the State's two psychiatric disease hospitals did sometimes use chains 'to temporarily curtail the aggressive activities of homicidal schizophrenics and resistant mania patients.' These institutions have now been advised to do away with this practice.

9.19 On 6 February 2002, the Commission sent reminders to all the States and Union Territories which have, thus far, failed to respond to its directions on this matter. In view of the serious human rights implications involved, the Commission intends to continue to monitor this question closely.

C] Action Research on Trafficking in Women and Children

9.20 As indicated in its preceding report, the Commission had requested its Member, Justice Sujata V. Manohar, to serve as its Focal Point in respect of the Human Rights of Women, including such matters as Trafficking in Women and Children. Among the activities initiated by the Focal Point is a programme calling for Action Research on Trafficking in Women and Children in India, which is being conducted jointly by the Commission and UNIFEM, the latter having offered to bear the entire cost of the programme.

9.21 The main focus of the Action Research programme would be on trends, dimension, factors and responses related to trafficking in women and children in India. And, within this, it will make a fair assessment of the possible outcome of trafficking in terms of commercial sexual exploitation of women and children. The other objectives of the programme would be to concentrate on the routes of trafficking, transit points, the role of law enforcement agencies, NGOs and others in detecting and curbing trafficking. It would pinpoint the areas from where most women and children are trafficked, the reasons for trafficking and the measures necessary for the prevention of trafficking. The research would review the existent laws (national/international) and, on that basis, recommend whether new laws should be enacted and how the old laws can be strengthened. It would also analyse, issues relating to the repatriation and rehabilitation of trafficked women and children once they are rescued. The initial information-base for the study would be police records, media reports of missing persons, reports of the National and State Commissions for Women, the records of NGOs and those of the Border Security Force. In order to obtain the requisite information from these sources, a number of NGOs/institutions will be identified from the effected districts of the following States, namely, West Bengal, Andhra Pradesh, Maharashtra, Bihar, Uttar Pradesh, Rajasthan, Kerala, Karnataka, Goa, Pondicherry, the North-Eastern States, and the six cities of

Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad. In addition, information will be collected from the victims of trafficking, especially those who have been rescued and from those who are still in situations of exploitation, such as prostitution, bonded labour, begging, etc. The source area for this information would be rescue homes, red light areas, night shelters, juvenile homes and the like.

9.22 In order to conduct the Action Research, it has been decided in consultation with UNIFEM to identify the Institute of Social Sciences, New Delhi as the nodal NGO which would not only coordinate the entire research but also coordinate with the other NGOs/institutions identified in each of States/cities mentioned above. Given the criminal nature of the problem, services of a senior Police Officer from the Indian Police Services has also been requisitioned to work as a Nodal Officer with the Commission.

9.23 With a view to starting the proposed Action Research, a one-day Technical Consultation for the National Level Action Research on Trafficking in Women and Children was held at the Institute of Social Sciences, New Delhi on 9 October 2001. It was inaugurated by the Chairperson of the Commission. The Workshop focussed on finalising the methodology for the proposed Action Research.

D] Research Programmes on Women's Rights

1) Rights of Women Prisoners in Indian Jails: A Sociological Study

9.24 The Commission approved financial assistance for a research study on the 'Rights of Women Prisoners in Indian Jails: A Sociological Study' proposed by the National Institute of Criminology and Forensic Science (NICFS), New Delhi, which functions under the Ministry of Home Affairs, Government of India. The objectives of the proposed study have been outlined in the preceding annual report of the Commission. The study is to be conducted in three phases and is scheduled to be completed within a period of one year. Considerable progress has already been made, the NICFS having completed the process of data collection from the States of Arunachal Pradesh, Assam, Bihar, Delhi, Maharashtra, Tamil Nadu and Uttar Pradesh. They now have to analyse the data towards preparation of the final report.

2) Complaints made by Women at Police Stations in Bangalore

9.25 The Commission has approved a proposal that it received from 'Vimochana', a Forum for Women's Rights based in Bangalore, to conduct a study on 'Complaints made by Women at Police Stations in Bangalore.' The main objectives of the study are to:

- Make an overall assessment of the kinds of complaints that are made at police stations by women;
- Evaluate the manner in which these complaints were 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;
- Suggest measures that may be adopted within police stations and outside with regard to improving citizen's access to FIRs, the procedure for drafting complaints and follow-up on the investigation and prosecution of complaints.

9.26 For this study, Vimochana will set up desks run by two social workers each in two police stations in Bangalore city. These desks will be set up in those police jurisdictions where there is a higher reporting of crimes against women, particularly those resulting in unnatural death.

E] Research Project on: 'Impact, Community Response and Acceptance of Non-Formal Education under the National Child Labour Project— A Case study of Carpet-Weaving Belt of Mirzapur-Bhadhoi and Glass-Bangle region of Ferozabad'

9.27 A reference has been made earlier in this report to this Research Project, towards which the Commission has provided financial assistance. The study was undertaken

by Dr Bupinder Zutshi, Visiting Faculty, Centre for the Study of Regional Development, Jawaharlal Nehru University, New Delhi.

9.28 Dr Zutshi presented the results of the study to the Commission on 15 May 2001. As a follow-up action three training workshops were organised by the Commission and UNESCO in New Delhi, Varanasi and Ferozabad. A curriculum was devised for an accelerated three-year non-formal education course, to cover the curriculum that normally requires five years of formal primary education.

9.29 The study pointed to certain inadequacies in the implementation of National Child Labour Project. Its findings included the following:

- 7,13,273 children from the carpet-weaving belt of Mirzapur-Bhadhoi and 17,127 children from glass-bangle belt of Ferozabad were out of school as of July 2000. These children immediately required an elementary education programme so that they are not employed in hazardous activities.
- A significant number of children below the age of 8 years are enrolled in Non-Formal Education Schools (NFE) under the National Child Labour Project (NCLP). Attempts should have been made to enroll these younger children directly into formal schools.
- A significant proportion of school-going children in these areas are enrolled in NFE Schools, which indicates that parents have shifted children from formal schools to the NFE Schools for the monetary benefits available under the NCLP .
- In Ferozabad, NFE Schools were providing, in parallel, five-years of primary education. This violated the NCLP provision that three years of accelerated Non-Formal Education should be provided, covering the curriculum of five years of primary education in formal schools.
- In NFE Schools in Ferozabad, a majority of the children had dropped-out without completing the full NFE course. These vacancies had been filled with new enrollments. It was also observed that the children who had dropped-out had not joined formal schools; this indicated that an objective of the NCLP Scheme, to educate and mainstream the children into the formal schools, had not been achieved.

- Almost 62 per cent of the NFE Centres were without drinking-water facilities within the immediate vicinity. However, a majority of the NFE Centres arranged drinking water in pitchers, the safety aspects of which needed more attention. Toilet facilities was absent in the majority of the centres.

9.30 The findings and recommendations made in the study have been forwarded to the Union Labour Ministry, the State Government of Uttar Pradesh, and the District Magistrates concerned for appropriate remedial action.

F] Research Study on the Musahar Community of Bihar

9.31 The Commission supported a research study 'The Musahar: A Socio-Economic Study,' by the A.N. Sinha Institute of Social Studies, Patna. Musahars are amongst the poorest of the Scheduled Castes and their deprivation is such that they are often compelled to subsist on a diet of rats and similar rodents. They are concentrated in Bihar, Jharkhand and Madhya Pradesh.

9.32 The study pointed to the extreme socio-economic backwardness of Musahars. According to the study, the social life of Musahar was akin to that of primitive societies, extreme suffering attending every phase of life from birth till death. Education amongst the Musahars was almost non-existent, the literacy-rate being only six per cent. Development programmes of the Government had not reached them.

9.33 The report of the study is being examined by the Commission which intends to pursue this matter, which draws attention to the persistent indignity with which an entire community of the country has to live, despite the promise of the Constitution and the laws of our land.

G] Research Project on Mentally Ill Persons in Jails of West Bengal

9.34 The Commission supported a research study by SEVAC, a Calcutta-based NGO, titled 'Operation Oasis', which sought to identify the mentally-ill persons languishing in different jails/homes in West Bengal and make recommendations on their behalf. SEVAC had, earlier conducted a study in respect of mental illness in Homes for the Vagrant/Destitutes in West Bengal.

9.35 The project was completed during the course of the year under review and the preliminary findings confirm the existence of a large number of mentally ill persons in the jails of West Bengal, who are lacking appropriate facilities for their care, treatment and rehabilitation. The final report is awaited, upon receiving which, the Commission will pursue this matter with the State Government.

H] Key Thrust Areas

9.36 Since the Commission was established, the number of human rights issues assigned to its Policy, Research, Projects and Programmes Division for study and monitoring has increased with every passing year. The Commission therefore considered it essential to review these issues and establish certain priorities amongst them. As a result of the review, certain Projects/Programmes and Key Thrust Areas have been identified by the Commission.

9.37 The Projects/Programmes include the following:

- Abolition of bonded labour/child labour.
- Supervision of the functioning of the three mental hospitals at Agra, Gwalior and Ranchi, including monitoring of the functioning of the Agra Protective Home.
- Relief measures being undertaken by the Government of Gujarat and other agencies for those affected by the earthquake which occurred in January 2001.
- Public health and human rights, including the rights of those affected by HIV/AIDS.
- Trafficking in women and children.

- Abolition of manual scavenging.
- Starvation deaths in Orissa.
- Widows in Vrindavan.
- Denotified tribes.
- Human rights education.

9.38 The Major Thrust Areas include the following:

- Rights of the child, including
 - a) The Child Marriage Restraint Act, 1929
 - b) Child labour
 - c) Child abuse
- Rights of women
- Dalit and tribal issues, including atrocities on Scheduled Castes/Scheduled Tribes.
- Custodial justice management including
 - a) Conditions of jails
 - b) Custodial deaths/torture/fake encounters
 - c) Penal reforms
- Issues concerning marginalised sections, including
 - a) Matters relating to disability
 - b) Treatment of the mentally ill (including Quality Assurance in Mental Hospitals)
 - c) Rights of the elderly
 - d) Problems of minorities
 - e) Refugees, migrants and internally displaced persons
- Consideration of important bills/ordinances and monitoring their impact
- Manual scavenging
- Bonded labour/child labour
- Human rights education
- Review of domestic laws/bills
- Review of international treaties
- Rights of those displaced by mega projects

Promotion of Human Rights Literacy and Awareness

CHAPTER 10

10.1 It is widely recognised that human rights education can contribute most constructively to deepening and widening an understanding of human rights and of the relationship between a proper respect for such rights and what Professor Mahbub-ul-Haq so eloquently and succinctly described as ‘human governance’. The Commission has been mandated under Section 12(h) of the Protection of Human Rights Act, 1993 to promote human rights awareness and literacy. It has, accordingly, endeavoured to promote a culture of human rights in the country by following a strategy of many parts: it has pressed for the introduction of human rights education in the curricula both of schools and of universities; it has involved NGOs in efforts to spread human rights awareness at the grassroot level; it has sought to bring about a greater sensitivity among civil servants, police and security personnel, and members of the judiciary by re-orienting their training programmes and organising seminars, workshops and the like; it has encouraged the media to report on human rights issues and it has urged the Central Government to devise a National Action Plan for Human Rights and a Plan for Human Rights Education. Further, visits by the Chairperson and Members of the Commission to state capitals and other parts of the country, and their participation in numerous discussions on human rights, encompassing the entire range of such rights, have also provided an impetus to a wider awareness of human rights.

A] National Action Plan for Human Rights and Action Plan for Human Rights Education

10.2 Ever since the World Conference on Human Rights in Geneva in June 1993, greater emphasis has been placed on the value of individual States formulating National Action Plans for Human Rights. The elaboration of such national plans has also been the subject of frequent discussion in workshops organised by the United Nations for participants from the Asia-Pacific regions.

10.3 The Commission has been of the view that the development of a national plan for human rights can help crystallise programmes and policies that are human rights-friendly across the entire range of governmental activity. Such a plan can assist to identify issues having a bearing on human rights in the work of a variety of Ministries and Departments, and it can re-orient attitudes and priorities across the spectrum of governmental endeavour. It can, further, add legitimacy and strength to the voice of those who advocate good and humane governance as essential to the well-being of a country. The Commission has therefore been urging that such a national plan be formulated.

10.4 In this connection, the Commission would also like to observe that the Tenth Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia Pacific Region held in Beirut, Lebanon on 4 - 6 March, 2002, once again reaffirmed the desirability of developing national human rights plans of action, through a process which ensured the participation of a wide range of Government Ministries/Departments and agencies, Non-Governmental Organisations, academic institutes and other sectors of society. The workshop called on States to establish a monitoring mechanism to supervise the implementation of such action plans. It emphasised the desirability to include human rights education as a component of the action plan. The Statement adopted by the National Institutions at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, at Durban held in August, 2001, also encouraged Governments to develop, through consultation and cooperation with national institutions, national human rights plans of action, including those addressing racism in the context of the UN Decade for Human Rights Education. National Human Rights Institutions were called upon to ensure that the struggle against racism was integrated into the national plan of action in education and human rights training.

10.5 The Commission, therefore, once again urges the Government of India to develop a National Action Plan for Human Rights. The Commission has already offered to assist, by sharing its knowledge, expertise and experience in helping to develop such an Action Plan. It is worth noting that countries as varied as Australia, South Africa, Philippines and Thailand have already done so, with positive results.

10.6 While the Commission has noted that the Government of India has finally developed a Human Rights Education Plan in the context of the UN Decade on Human Rights Education, it regrets to note that no initiative has yet been taken by the Government to develop a National Action Plan for Human Rights. The Commission would like to observe that while National Institutions and the non-governmental organisations can help to develop such a Plan, it is the State that must assume the primary responsibility to do so. The Commission is also of the view that, in a country such as India, with a federal structure, there is need to involve the States in such an exercise so that an integrated Plan can be formulated for the country as a whole. The Commission is of the view that the process by which the Plan is prepared will also be of great importance, as there is need to involve a broad spectrum of civil society in the effort.

10.7 The Commission very much hopes that the Central Government will take the lead in this endeavour and earmark the appropriate persons and resources to take this process forward. It would be willing to assist in this effort and trusts that the period ahead will witness progress in respect of such an undertaking.

10.8 As regards the Action Plan for Human Rights Education, it will be recalled that the United Nations General Assembly, through its Resolution 49/184 of 23 December 1994, resolved to declare the period 1995-2004 as the UN Decade for Human Rights Education. The United Nations High Commissioner for Human Rights subsequently requested Members States to observe the Decade by drawing-up and implementing an Action Plan for Human Rights Education.

10.9 The Government of India, set-up a Coordinating Committee under the Chairmanship of the Union Home Secretary to prepare such a Plan in consultation with the other concerned Ministries and Departments, to monitor its implementation and report to the United Nations on the progress made towards the realisation of the goals set out for this Decade.

10.10 Regrettably, it was only in the course of the year 2001-2002, in the seventh year

of the decade, that Commission received a copy of the Action Plan prepared by the Government of India. The Commission will not, at this stage, comment on the quality or Contents of the Action Plan. It would, however, like to observe that even though most of the UN Decade for Human Rights Education has already passed, the responsibility to persevere with a coherent programme for Human Rights Education, remains. The Commission therefore hopes that the Government of India will give this subject the importance that it deserves, an importance that is stressed in various Human Rights instruments, including the Universal Declaration of Human Rights in its Article 26(2).

B] National Institute of Human Rights

10.11 The National Institute of Human Rights (NIHR) was established in the National Law School of India University (NLSIU), Bangalore with the assistance of the Commission in an effort to establish a centre of excellence for human rights education. During the preceding year, the Institute prepared a Handbook on Human Rights for Judicial Officers, with the help of a grant from the Australian Human Rights Fund Small Grants Scheme, which was given to the Institute upon a recommendation of the Commission. During the current year, the Commission sanctioned further assistance to the Institution to organise similar training programmes for Judicial Officers from the States of Kerala and Tamil Nadu, making use of the Hand Book for Judicial Officers prepared by the Institute. As indicated earlier in this report, the NLSIU was also deeply involved with the Commission in organising National Consultations in Bangalore and New Delhi in August 2001, in preparation for the World Conference in Durban. In addition to assisting the Commission in the formulation of its own position prior to the Conference, the Consultations served a most valuable function in fostering a national debate on the issues covered by that Conference and in educating the public in respect of them.

C] Human Rights Training for Civil Servants

10.12 The Commission continued to interact closely with the Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussorie as well as the Sardar

Vallabhai Patel National Police Academy (SVPNPA), Hyderabad in its on-going effort to create an awareness of human rights among young administrators. The Commission is convinced that appropriate training can go a long way towards preparing them to deal with human rights issues that may arise in the course of their careers with fairness and sensitivity. The Commission has also taken steps to involve both these institutions in the development of Manuals on human rights related subjects for District Magistrates and Superintendents of Police. Financial assistance has been provided to the SVPNPA for this purpose during the year under review.

10.13 The Commission has also provided financial assistance to the LBSNAA for undertaking two research studies entitled (i) 'Insurgency, Terrorism and Human Rights: Analysis and Recommendations in respect of Jammu and Kashmir and North East'; and (ii) 'Protection of Human Rights in Tribal Areas: Land, Environment and other Rights.' The Academy proposes to utilise the services of the officer trainees in undertaking the survey connected with the research studies thereby sensitising them to issues relating to human rights and also enabling them to get first hand information on the prevailing conditions in the field.

D] Human Rights Training for Police Personnel

10.14 The orientation and training of police personnel remained a high priority of the Commission in the course of the year 2001-2002. Visits of the Chairperson and Members of the Commission to the various states often included discussions with the Directors General of Police in regard to the training of police personnel and the use of the training material on Human Rights prepared by the Commission. Inter-active sessions and capsule courses were also organised, eminent personalities, legal luminaries and reputed NGOs being invited to participate in them. The feedback received by the Commission indicates that the material prepared and disseminated by it is being incorporated into both the basic and the refresher courses in police training institutions. The Commission is convinced that such training is essential. It increases the capacity of the police to react to situations of stress and provocation with greater respect for the rights of those involved, and it also improves, in the long run, the image of the police as a people-friendly force.

10.15 The two training projects jointly undertaken by the Commission with the

British Council on 'Human Rights Investigation and Interviewing Skills' and 'Improving Custodial Management', which began in the year 2000-2001, were carried forward and successfully concluded in the year 2001-2002.

10.16 The first project, on 'Human Rights Interviewing and Investigation Skills' had, as its objective, the development of analytical and appraisal skills required for objective and accurate reporting. Participants were selected from among the police personnel of a number of States and also from those serving with the National and State Human Rights Commissions. In all, 20 Regional Programmes were developed under the project and a total number of 220 police personnel were trained. Eight trainers from the different State and National Human Rights Commissions were trained at the Andhra Pradesh Police Academy in Hyderabad, who in turn conducted courses in Chandigarh, Hyderabad, Bhopal, Guwahati and Kolkata during the period March-July, 2001.

10.17 In the first phase of the training, 118 officers were trained as against the target of 120. In addition to police personnel from the National Human Rights Commission and from the State Human Rights Commissions of Punjab, Himachal Pradesh, Manipur, Madhya Pradesh, Assam and West Bengal, police personnel were drawn from the States of Delhi, Himachal Pradesh, Haryana, Punjab, Karnataka, Andhra Pradesh, Tamil Nadu, Madhya Pradesh, Goa, Gujarat, Chattisgarh, Maharashtra, Nagaland, Meghalaya, Arunachal Pradesh, Assam, Tripura, Uttaranchal, Uttar Pradesh, Orissa, Andaman and Nicobar Islands, Bihar and West Bengal for the training.

10.18 The second phase of the training programme was organised in Chandigarh, Thiruvananthapuram, Yashada (Pune) and Ranchi from 10 September 2001 - 23 November 2001, during which a total of 102 police personnel, including 8 officers from the National Human Rights Commission were trained. Thus, in both phases, a total of 220 police personnel received the training envisaged under the project.

10.19 The second project, entitled 'Improving Custodial Management,' aimed at better protecting the human rights of citizens while under detention in police or judicial custody. The programme was initially restricted to five states. Eleven officers were nominated for the training, which involved a study tour to the United Kingdom in the month of April 2001. Of these officers, eight were of the rank of IG/DIG. The remaining three were of the rank of SSP/SP, including an SSP from the Commission. The officers of the States, who had undergone the training, were subsequently required to run workshops in their respective States, with a view to training a further 200 police officers.

10.20 The estimated share of the British Council towards the project was Rs.39 lakhs (£ 60,000). The Commission incurred an expenditure of Rs.1,61,504.

10.21 In a further act of collaboration, the British Council and the Commission undertook a training project entitled 'Strengthening of the Role of Human Rights Cells in State Police Headquarters to Improve Custody Management'. The purpose of the project was to design, develop and deliver a need-based training module to promote a better understanding and better practices in respect of human rights among the police. Under this project, eleven police officers underwent training. They comprised an IG and DIG/SP from each of the five states, namely Bihar, Uttar Pradesh, Himachal Pradesh, Haryana and Gujarat, and an officer from the Commission.

10.22 The British Council has also organised a 'Training of Trainers' programme from 28 May-8 June 2001 at the Uttar Pradesh Academy of Administration, Nainital. The trainers are, currently, running 2-day workshops at the district level on 'Police for the Protection of Human Rights' at different locations in their respective States, the idea being to train 20 police personnel of the rank of Deputy Superintendent of Police/Station House Officer/Constable in each workshop. In all, the core trainers will train some 1,000 police personnel.

E] Human Rights Education for Para-military and Armed Forces

10.23 Since the Commission was established a major, and reciprocal, effort has been made between it and the armed forces to exchange views on human rights matters, including the training of personnel of all ranks. These contacts, conducted at the highest level, have had a definite impact on the conduct of the armed and para-military forces and to the adoption of training curricula and modules designed to increase a sensitivity to human rights factors even in situations of great stress and ambiguity. The Chairperson and Members have, thus, readily accepted invitations to address and inter-act with armed forces personnel on numerous occasions, both in the field and at their various training institutions. As early as 1998, the Commission prepared a training syllabus for the para-military forces, after due consultation with them. This was incorporated in the training curriculum of the Central Police Organisations. However, that material needed to be revised and improved. The

Commission is therefore seized with the task of preparing a series of Handbooks for the para-military forces, in consultation with the Bureau of Police Research and Development (BPR&D). Three draft handbooks, designed for different levels of personnel of the Central Police Organisations are presently being processed.

10.24 The tradition of holding an annual debate on a human rights theme has been maintained for a number of years. However, the debate scheduled for March 2002 had to be postponed owing to the build-up of forces along the border and the additional need for the heavy deployment of para-military forces on internal security duties.

F] Internship Programme

10.25 With a view to spreading an awareness of human rights issues among university students, the Commission introduced a 'Summer Internship Programme' in the year 1998. Since then, this programme has been held annually during the summer vacations in the universities and has proved to be increasingly popular. Keeping in view the increasing request for internships, the Commission also introduced a 'Winter Internship Programme' from the year 2000. The Summer Internship Programme-2001 was held for a period of 30 days from 14 May-12 June 2001. Eighteen students, pursuing studies in Law, Political Science, Sociology and Criminology in Universities in the States of Madhya Pradesh, West Bengal and Orissa participated in the programme. Each year, the Commission chooses a different set of States from which to choose the summer interns, the idea being to provide an opportunity to students from all parts of the country to participate in this programme. During the year under review the 'Winter Internship Programme' was held from 3 December 2001-4 January 2002. Thirteen students from Delhi University, the Indian Law Institute, New Delhi; Jawaharlal Nehru University, New Delhi; Nagpur University and Bangalore University participated in the programme.

G] Seminars and Workshops

10.26 The principal seminars and workshops organised by the Commission in the year 2001-2002 included the following:

- A two-day Regional Consultation on Public Health and Human Rights was held in New Delhi on 10-11 April 2001. It was organised by the Commission in consultation and partnership with Ministry of Health and Family Welfare and the World Health Organisation.
- The first National Public Consultation on Racism was organised on 4 - 5 August 2001 in Bangalore and the second National Public Consultation was organised on 11 August 2001 in New Delhi.
- Human Rights Day was observed on 10 December 2001. The Chief Guest for the occasion was His Excellency Shri K.R. Narayanan, President of India.
- A Regional Consultation with NGOs from the Eastern Region of the country was held on 29 January 2002 in Bhubaneswar, Orissa. Fifty one NGOs from the Eastern States of Orissa, West Bengal, Bihar, Jharkhand and Senior Officials from the State Government of Orissa attended the Consultation. The Consultation was organised on behalf of the Commission by Shri A.B. Tripathy, Special Representative, NHRC, Orissa.

10.27 In addition to the above, the Chairperson, Members and senior officers of the Commission participated in numerous seminars, workshops and the like, organised by a range of institutions and organisations, both governmental and non-governmental, across the length and breadth of the country.

H] Publications and the Media

10.28 As a tribute to the efforts of all who have participated, helped and encouraged the Commission in its constant endeavour to translate the rhetoric of 'All Human Rights for All' into action, the Commission brought out a calendar for the year 2002 covering the spectrum of the principal concerns.

10.29 The calendar carries a statement on the 'Mission' of the Commission. It then highlights and illustrates some of the main issues of concern to the Commission: human dignity, the right to equality, bonded and child labour, compulsory and human rights education, public health and sustainable development, trafficking in women

and children, natural calamities, displaced persons, mental health, the need to respect the secular character of India, the right to food, the need to combat terrorism under the Rule of Law. Each of these subjects is illustrated by a photograph and accompanied by the views and directions of the Commission on the subject. The Calendar was released by the Chairperson at a press conference held in the Commission on 2 January 2002.

10.30 The Commission has also issued a set of four posters on Mahatma Gandhi, which carry some of his sayings most germane to a proper understanding of human rights. His Excellency, the President of India, Shri K.R. Narayanan, released the first of these posters on Human Rights Day, 10 December 2001. The quotations carried on these posters are:

- It has always been a mystery to me how men can feel themselves honoured by the humiliation of their fellow beings.
- Peace will not come out of a clash of arms but out of justice lived and done.
- To slight a single human being, is to slight those divine powers and thus to harm not only that Being, but with Him, the whole world.
- There is a higher court than the courts of justice and that is the court of conscience. It supersedes all other courts.

10.31 With a view to disseminating knowledge on important developments in the field of human rights, the Commission is planning to bring out an annual publication entitled the 'Journal of the Human Rights'.

10.32 To oversee the publication of the Journal, it has been further decided to constitute an Editorial Board under the Chairmanship of the Chairperson Justice Shri J.S. Verma, with the following as Members: Shri Virendra Dayal, Member, NHRC; Shri Fali S. Nariman, Shri Dipankar Gupta and Shri Rajiv Dhawan, Senior Advocates, Supreme Court; Shri Harsh Mandar, CEO, Action Aid India; Dr Mohan Gopal, Director, NLSIU, Bangalore; Shri P.C. Sen, Secretary General, NHRC; Shri A.K. Sharma, Director (Retired), NCERT; and Prof. M.C. Sharma, Advisor (Research), NHRC. Shri Dipankar Gupta, Senior Advocate, Supreme Court will be the Editor of the Journal.

10.33 The Commission is also endeavouring to publish selected essays on

themes relevant to the human rights situation in the country and to the work of the Commission.

10.34 The newsletter of the Commission continued to be published both in English and Hindi every month, providing a most useful means of disseminating information on the Commission's activities and priorities. The demand for the newsletter, which is available to its readers free of cost, is large and growing. In a number of instances, it has come to the notice of the Commission that organisations have made photocopies of the newsletter and have thus widened its reach and circulation. The newsletter also continues to be widely read by police personnel and personnel of the armed and para-military forces. It has proved to be especially useful to media personnel covering human rights issues and the work of the Commission. Comments and expressions of appreciation about the newsletter have been received from a wide circle of people around the country, encompassing students, academicians, human rights activists, research scholars, government officials, representatives of NGOs, members of the legal fraternity and others.

10.35 The newsletter is also available on the website of the Commission, www.nhrc.nic.in, which is consulted extensively both at home and abroad by all those who are interested in the human rights situation in India.

10.36 The Clipping Information Service of the Commission, a computerised database of daily clippings on human rights issues from the national and regional press, has proved to be another useful source of reference material not only to the Commission but also to students of human rights, researchers and media personnel. Computerisation has made the clippings retrievable newspaper-wise, date-wise and topic-wise.

10.37 The website of the Commission now also features the Computer Management System of the Commission, which provides the facility of accessing the status of complaints before the Commission through the Internet. The On-line status of complaints, along with details about a case, can be ascertained from the Commission's home-page www.nhrc.nic.in.

10.38 There has been constant interaction between the media and the Commission on a variety of human rights issues and the press releases of the Commission have been widely used. Coverage of the work of the Commission has been extensive, both in the print and electronic media. The Commission would like to thank the media for

the range and depth of its coverage of human rights matters. There is a vast difference between the understanding of issues now, compared with the year 1993, when the Commission was established.

10.39 The Commission has indicated, in its preceding report, that the Asia-Pacific Forum was engaged in making a film on the work of selected National Institutions in this region. That film has been completed and contains extensive footage on the work of this Commission.

I] Visits on Behalf of the Commission to Various States

10.40 During the year under report, the Chairperson, Members, Special Rapporteur and Senior Officials of the Commission paid visits to several States in the country including, *inter alia*, the States of Andhra Pradesh, Assam, Chhattisgarh, Goa, Gujarat, Jammu and Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Meghalaya, Orissa, Pondicherry, Rajasthan, Tamil Nadu, Uttaranchal and Uttar Pradesh. Programmes fixed on a number of occasions for a visit by the Chairperson to Bihar did not materialise, difficulties being expressed by the State Government.

10.41 The visits provided an opportunity for the Commission to interact with the principal decision makers in the State, as well as with leading non-governmental organisations and others interested in human rights. Every effort was made, during such visits, to cover as wide a range of the Commission's concerns as possible, keeping in mind the special problems and issues relating to the State that was visited.

10.42 Follow-up action on each of the visits, and Action Taken Reports have been requested from the State Governments in respect of the matters raised. The visits are also frequently utilised to discuss individual complaints brought before the Commission which often raise extremely sensitive issues regarding the conduct of public servants, or human rights violations having broad societal overtones.

J] Visits Abroad

10.43 While visits to the various States of our country have provided an opportunity to the Commission to understand and seek to resolve the problems being faced by individuals and various segments of society within India, visits abroad have occasionally been necessary to attend meetings on human rights in which the perspective and experience of the Commission has been sought and this has made a difference.

10.44 Among the meetings attended were the following:

- The Chairperson and Shri Virendra Dayal, Member represented the Commission in a meeting of the International Coordinating Committee of National Institutions for the Promotion and the Protection of Human Rights and at the 57th Session of the United Nations Commission on Human Rights in Geneva between 17 - 21 April 2001.
- Shri Y.S.R.Murthy, Private Secretary to the Chairperson and Officer on Special Duty (Research) represented the Commission at a workshop on the Impact of Globalisation on the Full Enjoyment of Economic, Social and Cultural Rights held in Kuala Lumpur between 8 - 10 May 2001.
- Prof. Mool Chand Sharma, Advisor (Research) represented the Commission in a Regional Workshop on National Human Rights Institutions and the Right to Development and Economic, Social and Cultural Rights held in Hong Kong between 11 -13 July 2001.
- Dr Justice K. Ramaswamy and Shri Virendra Dayal, Members, accompanied by Shri Y.S.R.Murthy represented the Commission in a pre-World Conference meeting of the National Institutions for the Promotion and Protection of Human Rights, held in Johannesburg between 27 - 28 August 2001 and, thereafter at World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban between 31 August - 8 September, 2001.
- Shri Virendra Dayal, Member, represented the Commission at the Sixth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, held in Colombo between 24 - 27 September 2001.

- Prof. L.M. Nath, Member of the Core Group on Health, represented the Commission at a Workshop on HIV/AIDS and Human Rights: The Role of National Human Rights Institutions in Asia Pacific, held in Melbourne between 7 - 8 October 2001.
- Justice (Smt.) Sujata V. Manohar, Member, represented the Commission at the Second World Congress against the Commercial Sexual Exploitation of Children, held in Yokohama between 17 - 20 December 2001.
- Smt. S. Jalaja, Joint Secretary, represented the Commission at the Tenth Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asian and Pacific Region, held in Beirut between 2 - 6 March 2002.
- Smt. Maushumi Chakravarty, Information Officer, and Shri Shashikant Sharma, Senior System Analyst, National Informatics Centre attached to the Commission, represented the Commission at the workshop of Commonwealth Human Rights Commissions held in Johannesburg between 12 - 14 March 2002; the workshop considered concepts relating to networking for the sharing of best practices amongst Human Rights Commissions.

Non-Governmental Organisations

CHAPTER 11

11.1 Section 12(i) of the Protection of Human Rights Act, 1993, requires the Commission to encourage the efforts of non-governmental organisations (NGOs) and institutions working in the field of human rights. The Commission considers this to be a most important responsibility and the experience of the Commission over the past nine years indicates that a close working relationship with credible NGOs is absolutely essential to the promotion and protection of human rights in the country. The Commission, accordingly, has been holding a series of structural consultations with NGOs, on a regional basis. It has also been working in close partnership with a number of NGOs that have an outstanding record in respect of human rights issues, associating them with diverse aspects of the work of the Commission.

11.2 To review the progress of these consultations with NGOs and to serve as a monitoring mechanism, the Commission on 17 July 2001 constituted a Core Group of leading representatives of NGOs, under the Chairmanship of Shri Chaman Lal, Special Rapporteur of the Commission. The Members of the Core Group are:

- Smt. Aruna Roy, Mazdoor Kisan Shakti Sangathan Distt: Rajsamand, Rajasthan;
- Shri Henri Tiphagne, Executive Director, People's Watch-Tamil Nadu;
- Shri Harsh Mander, Country Director, Action Aid India, New Delhi;
- Shri Javed Abidi, Executive Director, National Centre for Promotion of Employment for Disabled People, New Delhi;

- Shri Ravi Nair, Executive Director, South Asian Human Rights Documentation Centre, New Delhi;
- Dr Y.P. Chhibbar, General Secretary, People's Union for Civil Liberties, New Delhi;
- Dr Mira Shiva, Senior Coordinator, Voluntary Health Association of India, New Delhi;
- Shri Ashok Rawat, Director (Programmes), HelpAge India, New Delhi; and
- Ms. Federica Donati, Assistant Programme Officer, UNICEF, New Delhi.

11.3 The Commission also designated Smt. S. Jalaja, Joint Secretary of the Commission to serve as the Nodal Officer for co-ordinating with NGOs.

11.4 The Core Group has met four times since it was constituted and it has identified the following areas of concern for specific programmes and joint partnership between the Commission and the NGO sector:

- Systemic reforms in police and jails administration;
- Matters relating to custodial institutions of various kinds like women's homes, children homes, etc;
- Rights of the disabled especially of women and of those who come from disadvantaged groups;
- Problems of Dalits;
- The growing incidents of communalism-related violations;
- Human Rights of un-organised workers in both rural and urban areas.

11.5 Important ideas have emerged from the deliberations of the Core Group. They include the following:

- The Commission has decided that, where, on complaints received from NGOs, a decision is to be taken by the Commission for the closure of any case, the

comments of the concerned NGO may be obtained before the passing of final orders. Where complaints received from an NGO are proposed to be investigated by an investigation team of the Commission, the concerned NGO, in appropriate cases, may also be informed of the visit of the team.

- On the issue of violations of the guidelines of the Supreme Court in respect of Arrest, the Core Group felt that its Members could play a useful role in the dissemination of information on the Supreme Court Judgements on this matter.
- The Group has also undertaken the responsibility of mobilising the NGO sector in supplementing the efforts of the Commission in its various endeavours. In this connection, certain important communications from the Commission, addressed to State Governments, regarding issues such as the abolition of manual scavenging, sexual harassment of women at the work place, and the presence of mentally ill persons being kept in chains in hospitals or other institutions of the States, have been given to the Core Group members for wider dissemination.

11.6 A Regional Consultation was held with NGOs of the Eastern Region of the country in Bhubaneswar on 29 January 2002. Fifty one NGOs participated, coming from the States of Orissa, West Bengal, Bihar and Jharkhand; senior officials of the State Government of Orissa also attended the Consultation.

11.7 While extremely desirous of strengthening the role of NGOs in furthering the cause of human rights, the Commission has regrettably also had to express its concern over reports that some NGOs have been functioning as front organisations for groups opposed to the unity and territorial integrity of the country and engaging in acts of terrorism and violence. NGOs have been exhorted to be mindful of such groups. The Commission has also had to issue a word of caution in respect of the misuse of its name and logo by unscrupulous elements, purporting to be NGOs in some cases even for monetary gain. Such groups hurt the cause of human rights. There is, therefore, a need to be vigilant in respect of them.

State Human Rights Commission and Human Rights Courts

CHAPTER 12

12.1 The Commission continued to pursue the question of the setting-up of State Human Rights Commissions with the Chief Ministers of those States which have not yet done so. Thus far, twelve States viz. Assam, Chhattisgarh, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Manipur, Maharashtra, Punjab, Rajasthan, Tamil Nadu and West Bengal have set up State Human Rights Commissions. Notifications for constituting the State Human Rights Commission have also been issued by the States of Bihar and Orissa but these Commissions have not yet been established. The Government of Uttar Pradesh, which has now reportedly decided to constitute a State Commission, has also not yet actually constituted one. There have also been indications that the States of Andhra Pradesh, Gujarat and Karnataka are considering setting-up State Commissions. Among the North-Eastern States, Assam and Manipur have State Human Rights Commissions and the others are, in principle, in favour of having Commissions. However, financial and administrative reasons are holding them back and there is need to think further how best the States of the North Eastern Region can have access to one or more Human Rights Commission without the arrangements becoming a financial and administrative burden. The Commission urges the Ministry of Home Affairs to examine this matter further and to consult with the State Governments so that appropriate arrangements can be made for the North-Eastern States.

12.2 Under Section 30 of the Protection of Human Rights Act, 1993, for the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification specify for each district a Court of Session to be a Human Rights Court to

try the said offences. According to the information received by the Commission, the States of Assam, Andhra Pradesh, Sikkim, Tamil Nadu, Uttar Pradesh, Meghalaya, Himachal Pradesh, Goa, Madhya Pradesh and Tripura have notified such Courts.

12.3 A continuing impediment to the proper functioning of these Courts has, however, been the lack of clarity as to what offences, precisely, can be classified as human rights offences. The Commission has proposed a precise amendment to Section 30 of the Protection of Human Rights Act, 1993, but in the absence of any action being taken on that proposal, these Courts have not been able to adequately discharge the purpose for which they were designated.

12.4 The Commission takes this opportunity to reiterate that, both in respect of Human Rights Courts and in respect of State Human Rights Commissions, it is insufficient merely to designate or establish them. Their quality must be ensured, both in terms of personnel and financial autonomy, and they must be extended the support that they need if they are to fulfil the purposes envisaged for them under the Protection of Human Rights Act, 1993.

Complaints Before the Commission

CHAPTER 13

A] Number and Nature

13.1 The total number of complaints registered in the Commission in 2001-2002 was 69,083, while the corresponding figure for the year 2000-2001 was 71,555. This suggests that, after successive years of rapid increase in the annual number of complaints received by the Commission, the number has now stabilised. As in the past, however, the largest number of complaints registered were from the State of Uttar Pradesh; they numbered 39,588 or 57.3 per cent of the total number of complaints registered by the Commission. Bihar followed Uttar Pradesh, with 4,149 complaints; Delhi was third, with 3,849 complaints.

13.2 It remains a matter of deep regret to the Commission that, despite the repeated recommendations made by it, the Government of Uttar Pradesh, has failed to set-up a State Human Rights Commission that could provide some relief to the numerous citizens of that State who feel that their human rights are being violated. Such a step could also help to reduce the burden on the National Human Rights Commission.

13.3 During the year under review, the Commission had a total of 83,695 cases to consider, of which 14,612 were carry-over cases of 2000-2001. During the year, the Commission considered 72,106 cases. At the end of the period under review, 11,589 cases were pending consideration of the Commission. Of the cases that were considered, 30,350 were dismissed *in limini* and 16,439 were disposed of with

directions to the appropriate authorities. A total of 25,317 cases were taken cognisance of by the Commission for further action. Of these, 3,319 had been concluded and 21,998 were pending. In most of such cases, the reports that were asked for by the Commission from the varying authorities of the Central and State Governments were awaited. Thus, during the year 2001-2002, the Commission disposed of a total of 50,108 cases, in comparison with a disposal of 44,373 cases in the year 2000-2001.

13.4 As far as custodial deaths reported to the Commission were concerned, they showed a marginal increase from 1,039 in 2000-2001 to 1,307 in 2001-2002. Of these, 165 deaths occurred in police custody and 1,140 in judicial custody. Two deaths were also reported by the para-military forces to have occurred in their custody. The State of Maharashtra continued to report the highest number of deaths in police custody. Twenty seven such cases were reported this year, followed by 17 from West Bengal and 16 from Andhra Pradesh. In 1999-2000 and 2000-2001, custodial death cases in police custody were 177 and 127 respectively. During the period under review, the number of such deaths indicated a decline in the States of Assam, Delhi, Goa, Gujarat, Madhya Pradesh, Punjab and the Union Territory of Chandigarh.

13.5 In the year 2001-2002, the maximum cases of deaths in judicial custody occurred in Uttar Pradesh. 194 cases were recorded in the different jails in that State, followed by 144 in Bihar and 125 in Maharashtra. In total, the number of deaths in judicial custody increased from 910 in 2000-2001 to 1,140 in 2001-2002. It appears, therefore, that there is need once again to draw attention to the guidelines issued by the Commission earlier, which called for regular medical check-ups and more diligent health care for prisoners. In addition, it also appears necessary that the involvement of NGOs should be increased, especially in those States recording the highest number of deaths in judicial custody.

13.6 Of the total number of cases admitted for disposal during 2001-2002, 80 cases pertained to disappearances, 1,975 cases related to illegal detention/illegal arrest, 1,768 cases alleged false implication and 4,638 complaints related to other police excesses. During this period, the Commission received 122 cases specifically alleging that the dignity of women had been violated, 176 cases of sexual harassment, 169 complaints about jail conditions and 462 cases alleging atrocities against members of the Scheduled Castes/Scheduled Tribes, together with 6,143 complaints alleging that public servants had failed to take the appropriate action expected of them. The Commission is constantly seeking to refine and improve its system for categorising the complaints received by it.

13.7 A state-wise list of the number of cases registered/considered by the Commission and pending consideration is at **Annexure 9**. A State-wise list of cases dismissed *in limini*, cases disposed of with directions, cases concluded and cases pending before the Commission is at **Annexure 10**. The cases admitted for disposal during the period 1 April 2001 to 31 March 2002 have been categorised. The categories in which the cases have been divided include custodial deaths, custodial rapes, disappearances, illegal detentions/arrests, false implication, other police excesses, failure in taking action, indignity to women, sexual harassment, jail conditions and atrocities on Scheduled Castes/Scheduled Tribes and others. A state-wise list is at **Annexure 11**.

13.8 It is worth noting that, since its establishment in October 1993, the Commission has ordered compensation in 528 cases. The total amount of compensation that has been ordered till now amounts to Rs.13,45,31,934.

13.9 The Commission once again urges the Central and State Governments to respond promptly to requests for reports and to act without delay on its varied recommendations on individual cases. The Commission also repeats its recommendation that they should adhere more carefully to the various guidelines issued by it, as this would help the Commission to dispose of cases more promptly and better fulfil the responsibilities entrusted to it under the Protection of Human Rights Act, 1993.

B] Investigation of Cases

13.10 During the year 2001-2002, the Commission directed its Investigation Division to look into 2,688 cases, in comparison to 1,597 cases in the preceding year. Of these cases, 1,808 complaints related to the 'collection of facts' from different parts of the country. The majority of such complaints were from States which did not have State Human Rights Commissions, notably Uttar Pradesh (1,493), Bihar (56), Uttaranchal (52), Delhi (45), Haryana (25). Spot investigations were carried out in respect of 115 complaints on the directions of the Commission; they were conducted most frequently in the States of Uttar Pradesh, Delhi, Haryana, Bihar, Punjab, Rajasthan and Madhya Pradesh.

13.11 The complaints sent to the Investigation Division alleged a wide range of human rights violations, including bonded labour, child labour, illegal detention, false implication, custodial violence, fake encounters, gender related violence, discrimination and atrocities against Scheduled Castes/Scheduled Tribes and other disadvantaged groups, inhuman conditions in jails, etc. On occasion, the Investigation Division availed of the assistance of representatives of NGOs in examining the victims and witnesses, particularly those belonging to vulnerable sections of society.

13.12 In matters where the initial response of the State Government is found to be unsatisfactory, the Commission seeks further clarification from that Government. In many instances, it considers it essential to call for further investigation either by the State CID or the CBI. In certain instances, it additionally entrusts the Investigation Division with the task of monitoring the progress of such cases. In the year 2001-2002, the Commission endorsed 32 such cases to the Investigation Division for monitoring the action taken and the progress made in respect of the complaints.

13.13 The Investigation Division was also asked to assist the Commission in the task of processing and scrutinising the large number of custodial death cases reported over the years. Out of a total of 7,184 custodial death cases reported to the Commission between 1993 to 2001, 5,431 cases were examined and then disposed of by the Commission.

13.14 The Commission, in addition, referred 733 cases for analysis and advice to the Investigation Division. Such cases related, primarily, to allegations of fake encounters, false implication, illegal detention and custodial torture.

13.15 In the year under review, the Investigation Division finalised the investigation of 2,279 cases, in addition to scrutinising 5,431 cases of custodial death.

13.16 In view of the progressive increase in the workload of the Investigation Division, the Commission is of the view that there is need to augment the existing strength of that Division and to create additional posts. Since the Investigation Division functions, essentially, in a manner akin to any other police/investigation agency, it would be desirable to restructure it, keeping in mind the hierarchical structure prevalent in such organisations. Precise proposals will be framed and processed to achieve this end. The Commission has observed that, owing to an anomaly in pay scales and the non-availability of suitable officers, some posts of

Inspectors have had to be filled by Sub Inspectors, while Inspector rank officers have filled some post meant for Dy.SPs. The Commission is of the view that the pay scale of a Dy. SP in the Commission should be the same as that of a Dy.SP in a Central Police Organisation and that there should be an increase in the vehicles and other infrastructure needed. The Commission has already taken up the question of pay in higher scales with the competent Ministry but, regrettably, a favourable decision is yet to be taken. There is great need for the Commission to have an Investigation Division properly staffed and equipped to meet the requirements of the work entrusted to it, and the expectations of those who bring their complaints to the Commission seeking redressal of their grievances. The Commission therefore hopes that these matters are expeditiously considered and acted upon.

C] Complaint Management System

1) Computerisation of Complaint Handling Mechanism

13.17 The Commission, with the help of the National Informatics Centre (NIC), has developed a Complaints Management System (CMS) that provides the facility of accessing the status of complaints before the Commission through internet. The online status of complaints, along with details about cases, can be checked from the Commission's home-page www.nhrc.nic.in. It includes the current status of the case, detailed information about the complainant and the victims and the last orders/directions/recommendations given by the Commission. The CMS enables a search, based on the file number, information about the complainants/victims and the incident.

13.18 The CMS deals with complaints that have been registered with the Commission, and monitors the follow-up action being taken on the cases until their final disposal. It also offers a powerful tool for the retrieval of complaints, using keywords for details of cases as provided by complainants. The CMS can also generate 101 different kinds of reports, based on the case related database of the Commission, as well as statistical tables of various data.

13.19 The CMS has the following features:

- Easy input of data entry form, resulting in more entries in the same period, increasing productivity.
- Comprehensive/ detailed information culling/ recording about victim/ complainant and incident;
- Provision for storing the identity of the Consultant/officer culling the basic information of a complaint;
- Recording of Commission's direction at the point of origin, thus avoiding duplication of efforts;
- Controlled registration of custodial death cases;
- Series of authorisations and validations resulting in better data quality;
- Provision for storing the date and time, along with the user-identification for every transition;
- Ordered and controlled entry of basic and follow-up directions/action codes;
- Preparation of notice, Action Taken Report, etc in multiple copies;
- Automatic generation of statements for reminders, summons, non-reported cases, etc;
- Flexibility and scalability of application by making provision to incorporate new States, new districts, new incident codes, new authorities, etc;

13.20 This system represents a further step by the Commission to bring about greater transparency in its functioning and increasing its access to the public. It also helped considerably in managing the vast and varied case-load of the Commission.

13.21 The computerisation of CMS module was inaugurated by The President of India Shri K.R.Narayanan on Human Rights Day, 10 December 2001.

2) 'MADAD'

13.22 The Commission set up MADAD — an information and facilitation counter — for disseminating information and providing assistance to persons approaching the Commission to obtain information regarding its functioning and/or the status of the complaints they had submitted alleging the violation of human rights.

13.23 The counter, which started functioning on 2 October 2001, is equipped with a computer and information booklets and provides quick information regarding the status of any complaint filed before the Commission. It functions as an aid and a guide to the complainant and is meant to provide help at the very doorstep of the Commission. The complainant is, however, free to have detailed discussion with an official of the Commission, if he/she so wishes.

13.24 As a manifestation of its desire to serve people better, the Commission has also started a mobile phone service, bearing the number 98-102-98900, to enable complainants to present their grievances to the Commission. The service, which normally is available between 6 P.M. and 9.30 A.M., enables complainants to reach the Commission after office hours in respect of matters that call for redressal of their grievances and that cannot wait. These have frequently included complaints relating to custodial torture, illegal detention, imminent threat to life etc.

D] Illustrative Cases 2001-2002

13.25 Once again, in its annual report, the Commission is providing the gist of some 33 cases that it considered in the year under review. As in the past, the cases are illustrative of the range of complaints before the Commission, dealing variously with civil and political rights, economic, social and cultural rights, including the rights of women and children and others whose dignity has been affected, and the rights of groups, including minorities, dalits and adivasis. The Commission is mindful of the desire of human rights activists and scholars to have access to a wider degree of information on the cases before it, the manner it has handled these cases, and the decisions it has taken. This is one reason why the Commission was keen to set-up a Complaints Management System that would provide a wide range of data both to complainants and to others interested in the work of the Commission. Work is also

proceeding on a Compendium of the principal cases that have come before the Commission. In addition, increasingly, both the Newsletter of the Commission and its website www.nhrc.nic.in are carrying material on the cases before the Commission and the decisions taken on them. In certain instances, the Proceedings of the Commission have been carried in full on its web-site, including those in respect of the situation in Gujarat.

POLICE EXCESSES

a) Custodial Deaths

1) Death of Sanjay Sitaram Mhasker due to custodial violence: Maharashtra (Case No.210/13/98-99-ACD)

The Commission received a complaint alleging that one Sanjay Sitaram Mhasker was picked up by the police on 8 April 1998 and locked-up in a police station. It was alleged that he died after being mercilessly beaten by the police and, thereafter, a conspiracy was hatched to show that he had hanged himself. It was added that the post-mortem had not been conducted properly. Intervention of the Commission was requested for the registration of a case of murder against the guilty police officials and for the payment of compensation.

In response to the Commission's notice issued to the Home Secretary, Government of Maharashtra, a report was submitted by the Sub-Divisional Magistrate (SDM), Thane. It confirmed that the death of Sanjay Sitaram Mhasker in police custody was due to beating by the police and added that certain police officials had been held responsible. The Commission after due consideration of the said report, issued a show-cause notice to the Government of Maharashtra asking as to why a sum of Rs.3 lakhs be not awarded to the next-of-kin of the deceased and also called for the action taken by the State Government on the report of the SDM Thane.

In response to the show-cause notice, the Government of Maharashtra stated that action to prosecute 19 delinquent public servants had been initiated for custodial violence for causing the death of Sanjay Sitaram Mhasker. In the light of this, the Commission in an order dated 30 July 2001 directed the Government of Maharashtra to pay a sum of Rs.3 lakhs as immediate interim relief u/s 18(3) of the Act to the next-of-kin of the deceased.

2) Custodial death of Mohammad Irshad Khan (Case No.2387/30/2000-2001-CD)

The Commission received information from the Deputy Commissioner of Police (DCP), North East District, Delhi about the death of Mohammad Irshad Khan. A complaint was also received from Shri Acchan Khan, father of the deceased, alleging that his son had died as a result of brutal beating by the police. Shri Acchan Khan added that the family of the victim had not been informed of the circumstances of the death. The intervention of the Commission was requested, as also an independent investigation into the case and protection for the complainant's family in view of threats by the police personnel who had been accused of being involved in the death of Mohammad Irshad Khan.

In response to a notice from the Commission, the Home Secretary, Government of the National Capital Territory of Delhi, stated that the matter had been investigated by DCP (Vigilance), Delhi. The latter's report indicated that, on 12 October 2000, while the victim was driving his two wheeler scooter, he had collided with a cycle rickshaw. In a scuffle that ensued, a policeman had intervened and reportedly beaten the victim, who had collapsed on the spot. The victim was then taken to GTB Hospital, where he was declared to have been brought dead on arrival. A case FIR No.274 had been registered at Police Station Usmanpur and the accused Sub Inspector Vijay Kumar and Constable, Swatantra Kumar had been arrested. A magisterial inquiry had been conducted by the SDM, Seelampur.

A further report, dated 9 April 2001 from the Deputy Secretary, Home Department, Government of National Capital Territory of Delhi, stated that a chargesheet had been filed against the delinquent police officials u/s 302/34 IPC.

Upon further consideration of the matter, the Commission directed that a show-cause notice be issued to the Government of National Capital Territory of Delhi asking as to why immediate interim relief in the amount of Rs.3 lakhs u/s 18(3) of the Protection of Human Rights Act be not granted to the next-of-kin of the deceased.

The Government of National Capital Territory of Delhi, in response, stated that Rs.3 lakhs had been sanctioned towards the payment of compensation to the next-of-kin of the deceased. It was later confirmed that the amount was paid to the wife of the deceased on 30 May 2001.

3) Custodial death of Ram Kishore — complaint by Uttar Pradesh Parjapati Samaj Vikas Parishad (Case No.483-LD/93-94)

The Commission received a complaint from the Uttar Pradesh Parjapati Samaj Vikas Parishad alleging that one Ram Kishore, a driver employed by M/s Goodwill Enterprises, Mohan Nagar, Ghaziabad had been killed while in police custody. The complaint stated that Ram Kishore had realised an amount of Rs.1.5 lakh from certain parties in Meerut on behalf of his employers on 15 July 1993. However, later that day he had been the victim of an armed robbery in Modi Nagar in which incident all the money had been taken away from him. Despite this, he was handed over to the police by his employers for interrogation, in the course of which he was tortured in the police station. Ram Kishore was not released despite approaches being made to the District Magistrate and SSP, Ghaziabad. He died on the night of 23 July 1993. Thereafter, in order to hush-up the case, the dead body was taken to the District Hospital, Ghaziabad and the post-mortem report was manipulated as to the cause of death, the evidence of torture being destroyed. The Commission was requested to intervene, investigation was sought by the State Criminal Investigation Department (CID), and compensation urged for the widow of the victim.

Upon notice being issued to the Government of Uttar Pradesh, the latter directed the State CID to conduct an enquiry. Despite this, considerable delays occurred, requiring the Commission to pursue this matter relentlessly over a number of years. Finally, on 4 April 2000, the Government of Uttar Pradesh informed the Commission that a chargesheet had been submitted u/s 302/343/330/217/218/201/34/120 B IPC in the court of the Chief Judicial Magistrate (CJM), Ghaziabad against the proprietor of the M/s Goodwill Enterprises, Shri R.P. Chada, the then Inspector In-charge, Shri R.B. Pathak and the concerned Sub-Inspector Shri Jawahar Lal. Further, in departmental proceedings, a warning had been issued to an Assistant Superintendent of Police (ASP), and a misconduct entry made in the record of another Sub Inspector. It was added that departmental action was under consideration in respect of another ASP, an accused doctor and an SDM. A warning had also been issued to the SDM, Modi Nagar.

In its proceedings of 19 September 2001, the Commission held that the fact of the prosecution of public servants in itself was sufficient proof and justification for award of immediate interim relief. It accordingly issued a show-cause notice to the Government of Uttar Pradesh asking as to why such relief be not granted to the next-of-kin of the deceased u/s 18(3) of the Act. The State

Government was also asked to intimate the action taken against the remaining delinquent public servants.

As no reply was received from the Government of Uttar Pradesh within the time stipulated, the Commission proceeded to order the payment of compensation in the amount of Rs.3 lakhs as immediate interim relief to the next-of-kin of the deceased.

4) Death of Lallan due to negligence in providing medical treatment: Uttar Pradesh (Case No.28302/24/1999-2000)

The Commission was informed of the custodial death of one Lallan on 27 March 2000 by the district authorities of Pratapgarh, Uttar Pradesh.

The report received from the Home Secretary, Government of Uttar Pradesh stated that a magisterial inquiry had been held in the matter. That inquiry indicated that two cross FIRs had been registered against Lallan and others for an incident of beating and firing in which Lallan had also been injured. The enquiry report also stated that there had been negligence on the part of the police and the doctor in attending to Lallan, in as much as the injuries on his person had not been examined carefully and no steps had been taken by the police to give him immediate medical treatment when his condition had grown serious.

The Commission reached the conclusion that this was a case of negligence on the part of the doctor and the police resulting in the death of Lallan. It therefore issued a show-cause notice to the Chief Secretary, Government of Uttar Pradesh as to why immediate interim relief be not granted to the next-of-kin of the deceased Lallan; it also recommended that disciplinary action be initiated against the doctor and the delinquent police officials.

Despite the issue of show-cause notice on 4 September 2001 and a reminder dated 30 October 2001 sent to the Chief Secretary, Government of Uttar Pradesh, no response was received. The Commission, therefore, assumed that the Government of Uttar Pradesh has no cause to show against the proposed action. In its order dated 28 January 2002, therefore, the Commission directed that the Government of Uttar Pradesh pay Rs.1 lakh as immediate interim relief to the next-of-kin of the deceased and initiate departmental action against the Senior Medical Officer (SMO) Pratapgarh and other delinquent police officials.

**5) Death of Manoj Kumar due to torture by police: Uttar Pradesh
(Case No.7955/96-97/NHRC)**

The Commission received a complaint from one Smt. Vijay Lakshmi alleging that Manoj Kumar, her son, had been implicated in a false case u/s 307 IPC, that he had been tortured in police custody and that this had resulted in his death on 8 August 1996.

On consideration of the report received from the Chief Secretary and the Director General of Police (DGP), Uttar Pradesh, it was observed that when Manoj Kumar was admitted in the District Jail, Agra on 7 August 1996, he had a number of injuries on his person and that he died on 8 August 1996. The post-mortem Report confirmed these injuries on various parts of his body. The Commission also noted that the doctors concerned with the treatment of Manoj Kumar in hospital had not acted responsibly.

The Commission observed that it had issued instructions from time to time regarding the need to medically examine persons immediately after arrest and every 48 hours thereafter while in custody. These instructions had not been complied with by the police department. The Commission held that death of Manoj Kumar had taken place while in the custody of the police. A show cause notice was accordingly issued to the Government of Uttar Pradesh asking as to why compensation in the amount of Rs.2 lakhs be not granted to the next-of-kin of the deceased as immediate interim relief, and action initiated against the delinquent police officers through disciplinary proceedings/prosecution.

Since no reply was received to the show-cause notice and subsequent reminder, the Commission in its proceedings of 24 September 2001 recommended that the State Government pay Rs.2 lakhs as immediate interim relief to the next-of-kin of the deceased. It also ordered the initiation of disciplinary proceedings/prosecution against the delinquent public servants.

**6) Death of Shishu Rebe due to torture in police custody:
Arunachal Pradesh (Case No.74/96-97/NHRC)**

The Commission received information from the Inspector General of Police (IGP), Itanagar, Arunachal Pradesh about the death of one Shishu Rebe who was arrested on 10 March 1996 on a murder charge and kept in Chiyangtigo police station lock-up, where he died on 29 March 1996.

Pursuant to the directions of the Commission a final investigation report was received from the Superintendent of Police (SP) Headquarters Itanagar, Government of Arunachal Pradesh. It indicated that the deceased had been tortured by a Sub-Inspector and that a charge-sheet had been filed against Sub-Inspector u/s 304 in a case that was now before the Sessions Courts, Seppa. A sum of Rs.30,000 had also been sanctioned by the State Government to be paid to the next-of-kin of the deceased. In its proceedings dated 31 July 2001, the Commission opined that the amount of compensation appeared to be inadequate and a subsequently show cause notice was issued to the State Government asking as to why a sum of Rs.1 lakh should not be paid to the next-of-kin of the deceased and disciplinary action initiated against the delinquent public servant. The Government of Arunachal Pradesh, in its reply dated 28 August 2001, indicated that it had no objection to pay the compensation amount as directed by the Commission, including the sum of Rs.30,000 already paid by it. As regards disciplinary action against the delinquent public servant, it was stated that since case No.3/96 u/s 304 IPC was pending trial, disciplinary action would be taken after the trial of the case was completed.

The Commission, in its order dated 16 October 2001, recommended that the balance of Rs.70,000 be paid to the next-of-kin of the deceased as an amount of Rs.30,000 had already been paid by the State Government. As regards the disciplinary action against the concerned official, the Commission directed that departmental proceedings should be pursued even while the criminal case was pending, since the criminal proceedings and the departmental proceedings were independent of each other and this matter had been settled by several judgments of the Supreme Court.

7) Death of Nageshwar Singh due to illegal detention and torture: Bihar (Case No.7482/95-96/NHRC)

The Commission received a complaint from one Kameshwar Singh resident of Vaishali District, Bihar, alleging that on 25 August 1993 his brother, Nageshwar Singh, had died due to custodial torture by the Railway Police, Barauni in the police station of Vidurpur District in Bihar. He further alleged that the victim had been illegally detained in the Police Station and humiliated in public.

Proceeding on the basis that, *prima facie*, the victim had died due to torture in police custody, the Commission directed on 7 October 1999 that expeditious action be taken to complete investigations against the concerned police personnel, that

departmental action also be initiated against them, and that Rs.3 lakhs be paid as compensation (immediate interim relief) to the dependents of the deceased.

The State Government of Bihar did not comply with the Commission's directions for the payment of Rs.3 lakhs and requested a review of the decision on the grounds, (i) that the deceased was unmarried and was survived only by two brothers, who were engaged in their vocations and could not be considered as 'dependents' of the deceased under Section 21 of the Hindu Adoptions and Maintenance Act, 1956; and (ii) that one of the erring police officials, Kaushal Kishore Sharma, against whom the State had ordered the recovery of Rs.1,00,000 from his salary, had filed a writ petition in the High Court of Patna challenging the recovery of the amount from his salary.

Dealing with these objections, the Commission took the view in its proceedings of 31 January 2002 that 'reliance on Section 21 of The Hindu Adoption and Maintenance Act, 1959 by the State of Bihar for non-payment of the compensation awarded by the Commission is wholly irrelevant in this case. The amount has been awarded u/s 18(3) of the Protection of Human Rights Act, 1993 which is independent of any provisions in the personal law by which a person may be governed in the matter of his liability to maintain his dependents. The two provisions under the two different statutes are totally independent and not inter-linked in any manner. Liability of the state to pay compensation for the acts of the high-handedness of its employees cannot be escaped by getting any advantage under the personal law of the deceased.'

As regards the second objection, the Commission held that 'payment of Rs.3,00,000 is to be made by the State Government itself, leaving the State Government at liberty to initiate proceedings for the recovery of this sum from those who by their acts of high-handedness had exposed the Government to this liability. In the absence of any order from the High Court staying the direction issued by the Commission its compliance has to be made in letter and spirit'.

8) False implication of Madhukar Jetley: Uttar Pradesh (Case No.2385/24/2000-2001)

One Madhukar Jetley, an advocate resident in Lucknow, Uttar Pradesh submitted a complaint dated 27 April 2000 alleging false implication and illegal detention in case No.514/1999 u/s 387 IPC. In response to a notice from the Commission, the Government of Uttar Pradesh submitted a copy of the Crime Branch

Criminal Investigation Department (CB-CID) inquiry report, which confirmed that the complainant had been falsely implicated and that a report had been filed against the complainant, Smt. Rohini Chandra, u/s 182/211 IPC for filing a false case. Both the Investigating Officers, Shri Narsingh Narain Sharma and the Sub-Inspector Police Station Hazratganj, had been found guilty of falsely implicating the victim and of extorting Rs.1,000 from him. Adverse remarks had, therefore, been made in the confidential reports of the erring police personnel. The Commission, in its proceedings dated 3 November 2000, accordingly awarded compensation in the amount of Rs.50,000 to the victim in respect of his illegal detention and false implication by the police. The DGP, Uttar Pradesh was also directed to inform the Commission of the action taken against the erring police personnel and for the recovery of the compensation amount from them.

Smt. Rohini Chandra, in the meantime, submitted a counter petition alleging that the CB CID had undertaken a wrongful investigation in order to protect the complainant, Shri Madhukar Jetley. The Commission, therefore, directed its Director General (Investigation) to have this matter investigated further by a team of the Commission. The report of that team, as well as further investigations by the Government of Uttar Pradesh came to the conclusion that the allegations made by Smt. Rohini Chandra were false. The Commission therefore reiterated its earlier order of 3 November 2000 directing the Government of Uttar Pradesh to pay Rs.30,000 to Shri Madhukar Jetley. The compliance report was awaited by the Commission.

b) Torture

9) **Torture of Dayashankar by police: Uttar Pradesh (Case No.791/24/2000-2001)**

One Dayashankar Vidyalkar, a resident of Haridwar, Uttranchal submitted a complaint alleging that while he was propagating the teachings of Swami Dayanand at Haridwar Railway Station on 29 February 2001, he was beaten and manhandled by a Constable and, as a result, his left ear was badly injured and a bone behind his right ear was broken.

The reports received from the Superintendent of Police Railways, Moradabad and the Director General, Railway Protection Force, Railway Board, in response to a notice issued by the Commission, indicated that the allegations of the complainant

against the Constable were found to be correct. The Constable was punished by a reduction in his present pay-scale by 3 stages for 3 years, and a case u/s 323/326 IPC and section 145 of Railways Act, 1989 was also registered against him.

The Commission, after considering the aforesaid reports and giving a personal hearing to the complainant, as well as after obtaining an opinion from a Medical Board of the All India Institute of Medical Sciences, New Delhi regarding the nature of the injuries suffered by the complainant, recommended a payment of Rs.10,000 to the petitioner by the Ministry of Railways. This has been paid.

**10) Illegal detention and torture of Anil Kumar: Maharashtra
(Case No.517/13/98-99)**

The complainant, Prabhuraj S. Kappikeri, alleged that his brother Anil Kumar, resident of Latur, Maharashtra, had come to Udaigiri on 12 January 1997 to meet him and other relatives. He was picked up by the police, beaten and illegally detained. A complaint was made to the Superintendent of Police, but no action was taken.

The Commission issued notice to the Government of Maharashtra and received a report. On consideration of the report, the Commission held that there was truth in the contention of the complainant. The governmental enquiry had also held the public servants to be guilty of misconduct. As the human rights of the victim had been violated, the Commission issued notice to the Chief Secretary, Government of Maharashtra, to show-cause as to why a sum of Rs.10,000 be not paid as immediate interim relief to Anil Kumar for causing him physical injury and confining him to unlawful custody.

In reply, the Maharashtra Government contended that the erring police officials had been punished and that a fine of Rs.500 had been imposed on each of them. It was therefore urged that the Commission should not grant Rs.10,000 as interim compensation to Shri Anil Kumar. The Commission considered the reply on 28 December 2001 and held that the immediate interim relief u/s 18(3) of the Act was in the nature of compensation to the victim for the violation of his human rights, while the fines imposed as punishment in a disciplinary proceeding on the delinquent public servant served a different purpose. There was therefore no ground to deny the immediate interim relief to the victim. Accordingly, the Commission confirmed that payment be made of immediate relief in the amount of Rs.10,000 to the victim, Anil Kumar. The compensation has since been paid by the State Government.

**11) Illegal detention and torture of D.M. Rege: Maharashtra
(Case No.1427/13/98-99)**

D.M. Rege, an officer of Shamrao Vithal Co-operative Bank Limited, Versova Branch, Mumbai complained to the Commission that he was illegally detained and tortured by the police in connection with an incident involving the misplacement of cash in the Bank and requested for an inquiry into the matter.

Upon directions of the Commission, a report was received from the DCP, Zone-VII, Mumbai. It indicated that the complainant was indeed innocent, and that his detention and torture were unjustified. The report also mentioned that the guilty Constable had been awarded a minor punishment by way of forfeiture of his increment for one year, while the delinquent Sub-Inspector had been transferred out. After consideration of the report, the Commission directed the Police Commissioner, Mumbai to have the matter re-examined in order to ensure that the erring police personnel were suitably punished in a manner that would be commensurate with the wrong that had been done. The Commission also issued a show-cause notice as to why Rs.30,000 be not awarded as immediate interim relief to the victim.

The State Government, through its letter of 4 January 2001, requested the Commission to reconsider the issue of payment of compensation on the ground that two of the policemen had been immediately transferred, and that the Constable had been awarded punishment of stoppage of his increment for one year for his misconduct. The Commission, in its order dated 10 April 2001, rejected the plea of the State Government, and held that, since the guilt of the public servants had been established, there were no grounds to justify a re-consideration of this matter and directed that compensation of Rs.30,000 be paid by the State Government to the complainant for violation of his human rights.

c) Police Harassment

**12) False implication of Manoj Kumar Tak and Narender Tak:
Madhya Pradesh (Case No.667/12/98-99-FC)**

The NHRC received a complaint from one Anuradha Tak and her husband Manoj Kumar Tak, both residents of Ramnagar, Sodala, Jaipur, Rajasthan alleging that Manoj Kumar Tak and his brother, Narender Tak, were falsely implicated by SI, C.B.S.

Raghuvanshi in case No.70/1998 u/s 392 IPC at the behest of one Sushil Sharma (Advocate), father of Anuradha, who did not approve the marriage of his daughter with Manoj Kumar Tak. The Commission, in its proceedings of 9 May 2001, *prima facie* found that a gross violation had occurred of the human rights of Manoj Kumar Tak and his brother, Narendera Kumar Tak, as was evident from the findings of the CID inquiry which were not disputed by the State Government. The State Government had further indicated that it had registered a criminal case against the then police station Incharge, SI, C.B.S. Raghuvanshi, Sushil Kumar Sharma, Advocate and some others, and that SI Raghuvanshi had since been removed from service. Based on these findings, the Commission issued a notice to the State of Madhya Pradesh to show-cause as to why immediate interim relief u/s 18(3) of the Act be not awarded to the victims.

In response to the show-cause notice, the State Government raised two objections, namely, (i) that only SI C.B.S. Raghuvanshi, the then police station Incharge and Sushil Kumar Sharma, Advocate were held responsible in the CID enquiry for the violation of human rights. Hence only they should be made responsible for payment of the amount and not the State Government; (ii) that C.B.S. Shri Raghuvanshi had challenged the action of the State Government before the High Court and, therefore, during the pendency of the matter before the High Court, the State Government should not be required to make any payment.

The Commission, in its proceedings dated 9 May 2001, while referring to its earlier decisions in Case Nos.91/10/98-99 and 181/95-96/NHRC, reiterated the underlying principle and the object of enacting Section 18(3) in the Protection of Human Rights Act 1993. The Commission observed '(i) the object of Section 18(3) of the Act is to provide immediate interim relief in a case where a strong *prima facie* case of violation of human rights has been made out, so that the complainant is provided immediate relief which need not await determination in another proceeding of the full compensation awardable or identification of the particular public servant guilty of the violation and determination of his liability in another proceeding. The effect of award of "immediate interim relief" under Section 18(3) of the Act is that the amount so awarded is to be adjusted in the total compensation determined as payable in a proceeding like a Civil Suit so that the same amount is not paid over twice, and no more; (ii) the idea of "immediate interim relief" does not, therefore, presuppose the establishment of criminal liability of the offender in a court of law as a precondition for the administration of the "reliefs" nor does it depend on whether any civil litigation is either pending or prospective. **A welfare state recognising its obligation to afford "relief" to its citizens in distress, particularly those who are victims of violations of**

their human rights by public servants, has made this law under which the Governments seek advice from the National Human Rights Commission as to what in this view, is reasonable “immediate interim relief” in a given case so that the State can act on the recommendation. The recommendations of the Commission are not, no doubt, binding judicial orders; but they cannot be undone and turned to naught by a perverse palpably untenable legal view of the matter. The limiting of such statutory relief only to cases in which criminal liability of the offending public servant is established in a Court of law beyond reasonable doubt by standards of criminal evidence, is to thwart an otherwise civilised piece of legislation by importing totally irrelevant limitations. The Commission desires to point out that the ground urged by the Government in this case is wholly irrelevant; (iii) the meaning to be given to Section 18(3) by any State professing to be welfare state should ensure a liberal construction to promote the philosophy of the statute and to advance its beneficent and benevolent purposes. The view that implies that administration of such “immediate interim relief” could only be at the end of the day, after the guilt of the offending public servant is established in a criminal trial on the standards of criminal evidence would nullify the great humanism the statute seeks to enshrine...’

In view of above, the Commission held that the liability of the State of Madhya Pradesh for payment of the amount to be ordered as ‘immediate interim relief’ u/s 18(3) of the Act cannot, therefore, be doubted and this liability of State does not depend upon and need not be deferred till, fixation of liability of any individual public servant. Accordingly, the Commission awarded a sum of Rs.3 lakhs as immediate interim relief to the two victims. Compliance has since been made, following an intervention with the Chief Minister of the State.

13) False implication of Rajinder Singh: Haryana (Case No.810/7/98-99)

One Saubhagyawati of Ballabgarh, Faridabad alleged inaction by the police in regard to her complaint regarding harassment of her daughter, Savita, by her husband and in-laws. She also alleged false implication by the police of Rajinder Singh, husband of Saubhagyawati’s second daughter, at the instance of Savita’s in-laws. She said that Rajinder had tried to intervene and get the matter settled, upon which Savita’s in-laws had lodged a false complaint against him.

The report received from the SP, Faridabad admitted that the Police Station

House Officer (SHO), Puran Chand, did not investigate the case lodged by the petitioner properly. The case filed against Rajinder Singh was also found to be false and departmental action had been taken against the SHO.

The Commission, after considering the report, held that a false case had been registered against Rajinder Singh, and the petitioner and her family had to undergo mental torture. It therefore issued a show cause notice to the SP, Faridabad as to why an amount of Rs.10,000 be not paid to the petitioner and Rajinder Singh.

In reply, the Senior Superintendent of Police (SSP) pleaded that the case against Rajinder Singh was cancelled after it was found to be false and that no grounds therefore remained for the award of compensation. Meeting on 18 September 2001, the Commission however held that the very fact that the erring officials had committed lapses and had been dealt with departmentally, was sufficient, *prima facie*, to establish that there were valid reasons for the grant of immediate interim relief. The Commission accordingly directed payment of compensation in the amount of Rs.10,000 to the petitioners. The amount was paid soon thereafter.

14) Illegal detention by Police: Uttar Pradesh (Case No.13161/24/98-99)

Acting on a complaint from one Mohammed Azad, resident of Ghaziabad, Uttar Pradesh, the Commission observed in its Proceedings of 1 November 1999 that the son of the complainant had been illegally detained by the police from 16 - 27 November 1998 and directed the payment of Rs.25,000 immediate interim relief to the complainant; it also recommended that this amount be recovered from the salary of the Sub-Inspector of Police Brij Pal and three other police personnel responsible for the illegal detention.

The SSP Ghaziabad sought reconsideration of this decision on the grounds — (i) that both the petitioner and his son had filed an affidavit denying that the son of the petitioner had been illegally detained; and (ii) that the petitioner had also denied that any complaint had been submitted to the Commission at any time.

The Commission, while rejecting the stand taken by the police authorities, observed in an order dated 10 December 2001 that a denial made by the petitioner or his son at this stage could not have any weight because the police report had itself

earlier admitted that the son of the petitioner had been illegally detained and kept in lawful custody. Moreover, this crime was committed against society, and not merely against an individual. The Commission observed that the stand taken by the petitioner and his son was an after-thought and could not be accepted.

The Commission therefore directed that compliance be made of its earlier recommendations and also issued notice to the petitioner and his son to show-cause asking as to why action be not taken against them for resiling from their earlier statement by the later filing of an affidavit.

DEATH BY NEGLIGENCE IN JUDICIAL CUSTODY

15) Reference from Human Rights Court, Kanpur Nagar, in respect of death of Jasveer Singh in judicial custody due to negligence in providing timely medical aid: Uttar Pradesh (Case No.5190/24/1999-2000-CD)

The Commission received a reference from the Human Rights Court, Kanpur Nagar, relating to the death in judicial custody of one Jasveer Singh. The Court had come to the conclusion that the deceased had been denied proper and timely medical attention while in custody, on account of which he had died of acute intestinal obstruction. The Court further held that the death in custody of the said undertrial was the result of gross negligence and carelessness on the part of the public servant in whose custody the deceased was at that time. An amount of Rs.2,70,000 was determined by the Court as an appropriate compensation to be paid to the dependents. Since no specific power is given under the Act to such a Court to award compensation to the victim in addition to or apart from any provisions under the Criminal Procedure Code, or award punishment to the guilty under the IPC or any other relevant law, the Human Rights Court referred the issue of compensation to the NHRC.

The Commission considered the facts and circumstances of the case together with the findings reached by the learned Judge of the Human Rights Court, Kanpur Nagar and, in its order dated 20 September 2001, held that a strong *prima facie* case had been made out to justify the grant of immediate interim relief u/s 18 (3) of the Act, the Commission accordingly recommended to the State of Uttar Pradesh that it make a payment of Rs.2,70,000 as immediate interim relief to the next-of-kin of the

deceased. The Commission also recommended the initiation of proceedings to identify the delinquent public servants and to take disciplinary action against them in addition to their prosecution.

**16) Death of Dhirender Singh in Jail: Uttar Pradesh
(Case No.21808/24/99-2000/CD)**

The Commission, on receiving intimation of the custodial death of a prisoner named Dhirender Singh, in the District Jail, Jaunpur, on 20 January 2000, called for a detailed report from the Government of Uttar Pradesh. The report that was received stated that certain 'anti-social elements' had gone to the main gate of the District Jail on that date and had asked for an under-trial prisoner, Jaya Prakash Singh, on the pretext that they had to hand-over a letter to him. Jaya Prakash Singh went to the main gate, where the deceased was also present at that time. The 'anti-social elements' fired at Jaya Prakash Singh, but he escaped. However, a stray bullet hit the deceased in his stomach. He was rushed to the hospital where he was declared dead. The report further stated that the deceased had gone to the main gate to collect milk, bread and paper as he was authorised to do so. A detailed magisterial inquiry conducted to look into the matter, had however arrived at the conclusion that there was negligence on the part of the jail authorities which resulted in the death of Dhirender Singh.

The Commission after considering the report, directed the State Government to remove shortcomings of the kind that had come to light in this case. It also held that the death of Dhirender Singh was due to the negligence/lapse on the part of the prison administration. Accordingly, it issued a show-cause notice to the State Government asking as to why immediate interim relief should not be paid to the next-of-kin of the deceased. Since no reply was received from the Government of Uttar Pradesh to the show-cause notice in spite of a reminder, the Commission through its order of 3 July 2001 concluded that the death of the deceased was due to the negligence on the part of the jail authorities and awarded a sum of Rs.75,000 to the next of kin of the deceased u/s 18(3) of the Act.

VIOLATION OF RIGHTS OF CHILDREN/WOMEN

17) Sexual harassment in the work place and suicide of Sangeeta Sharma, Advocate: Andhra Pradesh (Case No.203/1/2000-2001)

Dr Kalpana Kannabiran, President, Asmita Resource Centre for Women, Secunderabad, Andhra Pradesh submitted a complaint in respect of the suicide of an advocate of Andhra Pradesh High Court, Sangeeta Sharma, allegedly as a result of sexual harassment by a fellow lawyer and some senior advocates. The intervention of the Commission was requested in order to ensure proper investigation of the case and action against the accused.

Having regard to the sensitive nature of the complaint, the Commission issued notices to the Chief Secretary and DGP, Andhra Pradesh asking for an indication of the current status of the criminal investigation. The Government of Andhra Pradesh submitted a report dated 11 July 2000, which indicated that a case had been registered u/s 306 IPC. The report added that during the pendency of investigation, a writ petition had been filed in the High Court which granted a stay on further investigations being undertaken by the police pursuant to the FIR and anticipatory bail was also allowed to one of the accused. Subsequently, the High Court vacated the stay on 11 July 2000 and further investigations in the case were handed over to the CID. After completion of investigation by the CID, a charge-sheet was filed in the trial court.

In a parallel action, the Commission also took up the wider question of the sexual harassment of women in legal profession and called for and considered reports/comments from the Secretary, Andhra Pradesh Bar Association, the Secretary, State Bar Council of Andhra Pradesh, the Chairman, Bar Council of India, New Delhi as well as the President, Bar Association of India.

During a meeting with the members and officers of the Commission on 4 May 2001, which was attended amongst others by Shri Soli J. Sorabjee, Attorney General of India, Shri D.V. Subba Rao, Chairman Bar Council of India and Shri R.K. Jain, Senior Advocate, Supreme Court, a decision was taken to constitute a High Power Committee to examine this matter further.

Accordingly, such a Committee was constituted on 21 December 2001, under the Chairmanship of Shri Soli J. Sorabjee in his ex-officio capacity to consider all aspects of the problem of sexual harassment of women in the legal profession and to make

suitable recommendations for the penalisation/punishment for those who may be involved. The Committee would also consider whether amendments were needed to the Advocates Act, 1961 and the Bar Council Rules. The other members of this Committee are Shri Raju Ramachandran, Advocate, Supreme Court of India; Shri A.K. Ganguly, Advocate, Supreme Court of India; Ms. Meenakashi Arora, Advocate, Supreme Court of India; Smt. M. Daruwala, Director, Commonwealth Human Rights Initiative, New Delhi and Ms. Naina Kapoor, Director, SAKSHI, New Delhi.

**18) Rape of a minor Dalit girl; failure to comply with the law:
Haryana (Case No.390/7/98-99/NHRC)**

The Commission received a complaint from Faridabad, Haryana wherein the complainant stated that her daughter aged 7 years was raped by one Lekhraj, who was subsequently sentenced to 10 years of rigorous imprisonment and a fine of Rs.2,500. The complainant added that the crime committed against her young daughter was heinous in nature and that there was great need to rehabilitate her daughter as she was suffering from a deep sense of humiliation and was mentally and psychologically scarred by this experience.

The Commission called for a report from the Home Secretary, Government of Haryana, which indicated that an amount of Rs.6,250 had been given to the complainant as compensation in accordance with a government circular.

On consideration of the report, the Commission took the view that the quantum of immediate relief had to be in accordance with the scale laid down in the Schedule to the rules made under SC/ST (Prevention of Atrocities) Act 1989, which provided the norms to be followed. Under item 17 of Annexure 1, in respect of offences committed under the Indian Penal Code which were punishable with imprisonment for a term of 10 years or more, a victim or his/her dependents were entitled to a minimum amount of relief of at least Rs.50,000, depending upon the nature and gravity of the offence. Further, under Rule 15, the State was required to prepare a model contingency plan for implementing the provisions of the Act and notify the same in the official gazette of the State Government. This plan, *inter alia*, had to contain a package of relief measures, including a scheme to provide immediate relief in cash or in kind or both.

The Commission observed that the scheme of the Haryana Government appeared to have been framed under the provisions of the Rules. It added that the plan

prepared by the State Government under Rule 15 prescribing a scheme for immediate relief in cash or kind could not be in violation of Rule 12(4) read with Annexure 1. The plan had to be prepared within the parameters of the Rules. The Annexure prescribed the minimum amount of the relief to be granted by the State Government. The State Government therefore could not prescribe an amount which was below this minimum. Since rape of a minor girl below the age of 12 years carried a sentence of not less than 10 years rigorous imprisonment and this had been imposed in the present case, the victim would be entitled at least to the minimum compensation of Rs.50,000 in accordance with the norms laid down in Annexure 1 to the Schedule, item 17.

In an order of 18 March 2002, the Commission therefore held that the minimum compensation to be awarded to the victim had to be Rs.50,000. It also stated that the circular of the Government of Haryana had to be revised in order to bring it in consonance with the statutory requirement.

**19) Death of 12 year old child worker, Naushad: Bangalore
(Case No.452/10/2000-2001)**

An NGO of Bangalore, MAYA (Movement for Alternatives and Youth Awareness), made a complaint to the Commission saying that a 12 year old child worker had died in the Silk Filature Unit premises in Ramanagaram town on 14 November 2000 having suffered 79 per cent burns sustained in the unit. It was alleged that the age of the deceased was changed to 17 years by the police, acting in connivance with the doctor who had conducted the post-mortem, in order to save the employer.

Pursuant to a notice issued by the Commission to the Chief Secretary as well as to DGP Karnataka, the Labour Commissioner Karnataka informed the Commission that appropriate cases under the Workmen Compensation Act, 1923 and Child Labour (Prohibition and Regulation) Act, 1986 had been registered in court against the employer. The Commission was also informed that an inquiry had been instituted against the doctors of Victoria Hospital, Bangalore who were involved in falsely certifying the age of the deceased as 17/18 years in the post-mortem report, even though the deceased was aged only about 12 years.

The Commission has been monitoring the progress in respect of the cases that are in court. In addition, after considering the inquiry report submitted against the doctors, the Commission directed the Government of Karnataka to inform it of the action taken by the disciplinary authority on the report of the Inquiry Officer.

20) Commission of rape by a Minister of State in the Government of Assam (Case No.113/3/2000-2001)

The Commission took cognisance of a complaint from a resident of Kokrajhar, Assam alleging that her 16 year old daughter had been raped by Rajan Mushahary, a Minister of State in Assam in Shantivan Hotel, Barobisa, West Bengal on 27 February 2000. The victim was, allegedly, raped again after one month and threatened with dire consequences if she divulged the matter. The mother thereafter lodged a complaint and a case was registered at Gosaingaon Police Station. However, no action was taken against the erring Minister, even though the young daughter had conceived.

Upon notice being issued to the Government of Assam, a report dated 29 November 2000 was submitted by the DGP, Assam which pointed to the involvement of the Minister in the commission of the offence amongst others. The police had arrested three persons out of the seven who were named.

The Commission thereupon asked what action, if any, the Chief Minister proposed to take concerning the continuation of the accused Minister of State in the Government, adding that his continuance in that capacity would run counter to basic rudiments of the rule of law.

A further report submitted by the State Government stated that the State CID had directed the SSP to take steps for DNA profiling, in order to complete investigation in the case. In regard to the reservations expressed by the Commission in respect of the accused continuing as a Minister of State, the report indicated that the continuation of Rajender Mushahary in the Council of Ministers was to be based on the result of the investigation. The Commission, however, firmly repeated its view that the continuation of such a person as Minister in the State Cabinet ran counter to the rudiment of the rule of law and was likely to give the impression of interference in the course of investigation and prosecution for the offences.

Press reports thereafter appeared indicating that the Chief Minister had taken strong exception to the proceedings and view of the Commission. On 23 April 2001, therefore, the Commission stated that it was constrained to observe that if the newspaper reports were correct, the Chief Minister had completely missed the point made by the Commission and that he had made observations which depicted a lack of appreciation of the role and functions envisaged for the Commission under its Statute. The Commission added that it was 'constituted under the Protection of

Human Rights Act, 1993 for the better protection of the human rights and its functions include inquiring into violation of human rights or negligence in prevention of such violation; review of safeguards provided by the Constitution or any law, etc., and such other functions as it may consider necessary for the promotion of human rights.' The Commission then reiterated yet again its earlier observations that 'the continuance of the principal-accused of such an offence as a Minister in the State Cabinet, in its view, is erosion of the rule of law and, as a consequence, it is a serious violation of human rights.'

Further investigation reports submitted by the Government of Assam to the Commission indicated that the DNA test established that Shri Rajender Mushahary was the father of the child that had been conceived and that he had been arrested on 6 August 2001. Four others were arrested on 2 January 2002 and two were absconding.

In the light of the developments, the Commission did not find it necessary to pursue this matter any further. Accordingly, it closed its proceedings in respect of this case.

VIOLATION OF THE RIGHTS OF THE VULNERABLE SECTIONS OF SOCIETY

21) Killing of 7 Dalits by Upper Castes: Karnataka (Case No.628/10/99-2000)

The Commission received complaints from a number of organisations concerning the killing of 7 Dalits in Karnataka on 11 March 2000 by persons belonging to the upper castes. They requested a probe by the Commission and called for the granting of compensation to the victims.

The Commission took cognisance of the matter and, in response to a notice, received a report from DGP Karnataka. The report stated that there was a clash between two groups. To escape from the fury of the clash, the members of one group, who were Dalits, entered the house of a relative and bolted the door from inside. The accused persons bolted the door from outside and set the house ablaze. In this criminal act, 6 persons were burnt alive and another person, who was in a neighbouring house, also sustained severe burns and died while being taken to the hospital. A case had been registered against the accused. Inquiry into the incident also

indicated that a Police Sub-Inspector (PSI) had failed to take precautionary measures and to arrange appropriate 'bandobust' to avoid untoward incidents. The PSI had exhibited gross negligence and dereliction in the discharge of his duties. He had been placed under suspension and a departmental enquiry had been initiated against him.

The Commission, in its proceedings dated 19 December 2000 held that the failure of the Government of Karnataka to protect Dalits was, in this instance, beyond doubt. It therefore issued a show-cause notice to that Government asking as to why immediate interim relief u/s 18(3) of the Act be not awarded to the next-of-kin of the deceased.

A further report was then received from the State Government. It stated suitable 'bandobust' had been arranged in the village; that an amount of Rs.1.5 lakh had been paid to the next-of-kin of each of the deceased as compensation, and that disciplinary proceedings had been instituted against the delinquent public servant. The Commission took note of the action taken and closed the case on 30 June 2001.

22) Harassment and illegal detention of farmers: Uttar Pradesh (Case No.9480/24/1999-2000)

The Commission received a complaint one Shri Lalji Yadav, a journalist of Azamgarh, Uttar Pradesh, alleging that several farmers from whom land revenue was due, had been detained for several days in a lock-up by the tehsil authorities of Azamgarh District in order to recover arrears of land revenue from them. It was further alleged that the detained farmers were not properly fed and were kept in animal-like conditions.

In response to a notice issued by the Commission to the DGP, Uttar Pradesh, a report was received which indicated that an enquiry had been conducted by the SDM, Azamgarh. The enquiry report admitted the detention of farmers in the lock-up, but added that the Tehsildar had stated that there was no provision for providing any food to the detenues.

The Commission expressed its displeasure at the insensitivity of the concerned authorities as well as their ignorance of the law laid down by the Supreme Court in respect of such situations in the case **Jolly George Verghese vs. The Bank of Cochin, AIR 1980 SC 470**, which had also been referred to by the Commission in its earlier orders, e.g., the Sharda Belvi Case No.19265/NHRC (24/7786/96-LD) decided on 21

August 2000. The Commission reiterated the law on the subject and emphasised that, unless the conclusion is reached after a fair inquiry that the default in the discharge of the contractual liability to repay the loan had some element of bad faith verging on disowning of the obligation, mere default to repay is not enough to detain the defaulter. In this case, no attempt was made to address the real issue and reach such a conclusion. The revenue authorities did not appear to have followed the law laid down by the Supreme Court. Further, no proper food was supplied to the detainees, as was clear from the report itself, which stated that there was no provision in the statute to meet such a purpose. The Commission took the view that the State was under an obligation to make an arrangement for proper food during the period of detention and the authorities could not abdicate this responsibility merely on the ground that the relatives of some of the detainees could make such arrangements for their food. The Commission, accordingly, through its order dated 17 September 2001 recommended payment of the Rs.10,000 by way of immediate interim relief to each of persons detained.

HUMAN RIGHTS VIOLATIONS BY SECURITY FORCES

23) Procedure with respect to complaints against Armed Forces: Disappearance of Mohammed Tayab Ali, who was last seen in the company of para-military forces (Case No. 32/14/1999-2000)

The Commission received a complaint from Smt. Mina Khatoon, resident of District Imphal (East), which was referred to it by the Manipur State Human Rights Commission, alleging the disappearance of her husband Mohammed Tayab Ali on 25 July 1999 after he was taken away to the headquarters of the 17 Assam Rifles Battalion. He had not been seen thereafter.

The Commission considered the report submitted by the Ministry of Defence and, in the light of the evidence on record, including the deposition of witnesses, who stated that they had seen Mohammed Tayab Ali being picked-up by security men, held that the security forces were liable for the disappearance of Mohammed Tayab Ali. The Commission accordingly awarded a sum of Rs.3 lakhs as immediate interim relief, u/s 18(3) of the Act, to the complainant. A compliance report is awaited.

Given the importance of this case, particularly in respect of the procedure to be followed in regard to complaints submitted against the armed forces, relevant

extracts of the proceedings of the Commission in this case are being reproduced verbatim below:

Mohammed Tayab Ali was seen being picked up in the Maruti van and being taken to the battalion headquarters of 17 Assam Rifles. His relatives and friends also made attempts to reach him at 17, Assam Rifles on the same day, but failed. Pursuant to a notice issued by the Manipur State Human Rights Commission to the Inspector General of Police (Law and Order) to ascertain the whereabouts of Mohd. Tayab Ali, the Inspector General of Police (Law and Order), Manipur submitted his inquiry report to the State Commission. It stated that the Director General of Police, Manipur, Imphal had issued crash messages to all concerned police authorities in the State of Manipur for flashing the information regarding whereabouts of Mohd. Tayab Ali. It had also taken up the matter with the Commander, Manipur Range. On 22 August 1999, the Staff Officer of Commander, Manipur Range, Imphal informed the Director General of Police, Manipur that the case of the alleged arrest of Mohd. Tayab Ali of Kairang Muslim village was investigated and inquiries were made from 17 Assam Rifles and all other units in that behalf. It was confirmed by them that no individual by the name of Mohd. Tayab Ali was picked up by 17 Assam Rifles or any other Assam Rifles unit.

After receipt of this report, the State Commission summoned the complainant Smt. Mina Khatoon in order to find out if her husband had been located. She appeared before the Commission and reiterated that her husband was last seen being carried in a Maruti van to 17 Assam Rifles campus at Kangla, Imphal. She also filed some photographs of her husband.

On consideration of the entire matter, the State Commission referred the case to this Commission as it relates to the 'armed forces'. On receipt of the reference from the Manipur State Human Rights Commission this Commission issued notices to the Ministries of Defence and Home Affairs, Government of India and called for a report in accordance with Section 19 of the Protection of Human Rights Act, 1993. The report of the Ministry of Defence received with their letter dated 11 April 2000 stated that on 25 July 1999, at around 9.45 hours, information was received that some valley based insurgents after firing on CRPF personnel at Langjing were fleeing towards Dimapur. A column of 17 Assam Rifles accordingly established a Mobile Check Post. Apparently, one of the vehicles attempted to speed towards Dimapur. The security team stopped the vehicle. There was an exchange of fire and one individual died. The driver of the vehicle managed to escape with the vehicle. This body was later identified as that of

Mohd. Tayab Ali. It was handed over to Kangpokpi police station on 25 July 1999. Thus the Defence Ministry's report concluded that Mohd. Tayab Ali had died in retaliatory fire opened by the personnel of the armed forces. Hence no cognisance could be taken of the complaint submitted by Smt. Mina Khatoon. This was a totally different and inconsistent stand taken by the Defence authorities from the earlier report of DGP Manipur which had denied that any person by the name of Mohd. Tayab Ali was picked up by 17 Assam Rifles or any other Assam Rifles unit.

As per the report of the Defence authorities, the body of the person killed in the encounter was handed over to Kangpokpi police station. No attempt seems to have been made by Kangpokpi police station to identify the body despite information having been flashed to all the police stations about the disappearance of Mohd. Tayab Ali. The body was disposed of as unidentified. This Commission, therefore, directed by its order dated 13 December 2000, that the photographs of the dead body of the person killed in the encounter on 25 July 1999 should be shown to the complainant to ascertain whether the photographs were of Mohd. Tayab Ali. The Commission received a letter dated 15 January 2001 from the Director General of Police, Manipur, Imphal stating that the Kangpokpi police station had shown the photographs of the unidentified dead body to the close relatives of Mohd. Tayab Ali, i.e. the complainant Mrs. Mina Khatoon, his wife, Mohd. Tahir Ali, the father and Mohd. Vazir Ahmed, the elder brother of Mohd. Tayab Ali. But none of them could identify the deceased in the photograph and they stated that the body was not of Mohd. Tayab Ali. Thus, it is proved that the person who was killed in an encounter on 25 July 1999 was not Mohd. Tayab Ali.

Thus, facts clearly indicate that Mohd. Tayab Ali while he was travelling on a Luna Moped was picked up apparently by some armed forces men in a Maruti van without any registration number and was taken to the Headquarter of 17, Assam Rifles. There is the unrebutted testimony of several witnesses who had seen him being taken in this fashion. Since then Mohd. Tayab Ali is missing. The stand taken by the Defence authorities that Mohd. Tayab Ali was killed in an encounter on 25 July 1999 must be rejected since the dead body of the person killed in that encounter was not that of Mohd. Tayab Ali. It must, therefore, be concluded that 17 Assam Rifles in whose custody Mohd. Tayab Ali was last seen, has failed to account for him, thereafter.

In the case of **the Union of India vs. Luithukla (Smt.) and Others, (1999) 9 SCC 273**, the Supreme Court considered a similar case where the husband of the first respondent had been taken away by the army personnel. His brother had visited the

army camp on the next day and inquired about his brother but no information was given to him. Thereafter, a complaint was lodged with the officer in charge of the local police station. Various attempts were made to locate the missing person but to no effect. The Supreme Court upheld the High Court's finding that the missing person was last seen in the custody of security forces and was not seen since then. The security forces were, therefore, held liable for his disappearance, and payment of compensation to the wife of the missing person. In the present case also, the facts are similar. The security forces in the present case are, therefore, liable to pay 'immediate interim relief' to the complainant for the disappearance of her husband Mohd. Tayab Ali while in the custody of 17, Assam Rifles.

Since the violation of human rights is by members of the armed forces, it is appropriate to examine the provisions of sections 17 to 19 of the Protection of Human Rights Act, 1993. Sections 17, 18 and 19 are contained in Chapter IV relating to the procedure to be followed by the Commission for inquiry into the complaints of violation of human rights, which is one of the functions of the Commission specified in sub-section (a) of section 12 of the Act. Section 17 prescribes the general procedure for inquiring into the complaints; section 18 specifies the steps after inquiry that may be taken by the Commission; and section 19 prescribes the special procedure with respect to armed forces while dealing with such complaints. These sections have to be read together for a proper understanding of the scope of section 19 and the limitations in the special procedure. Sections 17 to 19 are as follows:

Section 17. Inquiry into complaints. The commission while inquiring into the complaints of violations of human rights may:

- (1) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it;

Provided that:

- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;
- (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

- (2) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

Section 18. Steps after inquiry The Commission may take any of the following steps upon the completion of an inquiry held under this Act namely:

- (1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (4) subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;
- (5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
- (6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

Section 19. Procedure with respect to armed forces

- (1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:

- (a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;
 - (b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.
- (2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.
- (3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.
- (4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

Section 17 which prescribes the general procedure for inquiry into complaints of violations of human rights says that the Commission may call for information or report from the concerned government or authority etc.; and on receipt of information or report, if the Commission is satisfied that no further inquiry is required or the necessary action has been taken, it may not proceed further with the complaint. It further says that if it considers necessary, then the Commission may initiate an inquiry. Section 18 mentions the steps after completion of the inquiry. It empowers making of recommendations by the Commission, which include that for initiation of action against the concerned person and also for grant of such immediate interim relief to the victim as may be considered necessary. In the case of armed forces, section 19 prescribes the special procedure, which to the extent indicated therein overrides the general procedure. It is necessary now to examine the restriction made by section 19.

Section 19 begins with the non-obstante clause which indicates that the special procedure prescribed therein overrides the general procedure in its application to complaints of violation of human rights by members of the armed forces. The first step in this procedure prescribed by clause (a) of sub-section (1) is to seek a report from the Central Government as against calling for 'information' or 'report' prescribed in section 17. Clause (b) of sub-section (1) of section 19 then prescribes the next step, that 'after the receipt of the report, it may, either not proceed with the complaint or, as

the case may be, make its recommendations to that Government.' Thus, on receipt of the report there are two options: the first is not to proceed with the complaint, and the other is to make 'recommendations' to the Central Government. The first option of not proceeding with the complaint is similar to that in proviso (b) to clause (i) of section 17. Obviously, it refers to the situation where on receipt of the report the Commission is satisfied that there is no need to proceed further with the complaint in order to make its recommendations to the Government. This situation being similar under both provisions, it presents no difficulty. The question is of the scope of Commission's powers when it is not satisfied with the report received from the Central Government and there is need to adopt the second course, which may lead to making its recommendations to the Government. It is this area which needs a closer look.

It is clear that the function of the Commission prescribed in clause (a) of section 12 to inquire into any complaint of violation of human rights includes the power to inquire into such complaints made even against members of the armed forces; and section 19 merely prescribes the special procedure for dealing with such complaints overriding the general procedure under section 17. The power to make recommendations, when necessary, in section 19 must be read along with sub-sections (1) and (3) of section 18 which deal with the nature of recommendations on conclusion of the inquiry, when closure of the complaint is not considered appropriate. There is nothing restrictive in section 19 to curtail this power of the Commission and the express power to make recommendations leads necessarily to this conclusion. In other words, the only limitation in section 19 vis-à-vis section 17, is that under section 19, the Commission cannot proceed to 'initiate an inquiry' itself, as it can under section 17(ii) of the Act.

Implicit in section 19 is the responsibility of proper investigation by the Central Government to enable it to make the report required under section 19 after examination of the complaint in a fair and objective manner in the light of all relevant facts. This requires ascertainment of the relevant facts and examination of the material disclosed by the complainant. The conclusions reached in the Report forwarded by the Central Government to the Commission, must be the logical outcome of the materials and duly supported by the reasons given in its support.

It is settled, that when there is power to do an act, there is power to do all that is necessary for the performance of that act. This is implicit in the provision conferring the power to act. Thus, all that is necessary to make 'recommendations' for compliance by the Central Government is implicit in the power conferred in section 19(1)(b) to

make recommendations, in case the Commission is not satisfied with the report that it is not necessary to proceed with the complaint. To decide whether to accept the report and not proceed with the complaint or to proceed further, itself requires an objective determination which must be based on relevant materials. The 'report' of the Central Government must, therefore, satisfy this requirement and contain all relevant materials to enable performance of the exercise by the Commission.

The dictionary meaning of the word 'report' includes: 'to write an account of occurrences; to make a formal report; a statement of facts.' There is nothing in the context to alter the ordinary meaning. The 'report' required to be submitted by the Central Government to the Commission must contain a statement of facts and an account of occurrences and not merely the findings or conclusions reached by the Central Government on facts which are not disclosed to the Commission. This meaning given to the word 'report' in section 19 is in consonance with its purpose of enabling the Commission to perform the task of dealing with such a complaint against members of the armed forces. The object of enacting the Protection of Human Rights Act, 1993 (POHRA) is the better protection of human rights and constitution of National Human Rights Commission (NHRC) is for this purpose. Jurisdiction of the NHRC to deal with the complaints against armed forces is subject only to a restricted procedure. The construction made of section 19 and the meaning given to the word 'report' therein, promotes the object of the enactment. It has to be preferred. This is a settled canon of interpretation of statutes.

Another aspect needs mention. A complaint of violation of human rights is based invariably on the allegation of harm to the victim resulting from some act or omission of the alleged violator. Once the harm attributed to the violator is proved or admitted, the burden of proving that the harm resulted from a justified act permitted under the law, is on the person against whom the allegation is made. Unless that burden is discharged by proof of facts or circumstances, which provide justification for the act under the law, the initial presumption of the violators' accountability remains un rebutted.

An obvious illustration is the case of unnatural death caused by use of force or disappearance from custody. As soon as it is proved or admitted that the victim was in the custody of someone, the burden is on that person to prove how he dealt with the detainee, and unless it can be satisfactorily shown that the custodian is not responsible for the harm or disappearance from the custody, the initial presumption of accountability remains un rebutted. The present case is of that kind.

Mohd. Tayab Ali, husband of the complainant is proved to have been taken in custody by the 17 Assam Rifles, and the custodian has been unable to prove satisfactorily the lawful termination of custody, when he was alive. These facts alone are sufficient to uphold the liability of 17 Assam Rifles and to hold it accountable for his disappearance.

Section 105 of the Indian Evidence Act, 1872 places the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code or any other justification on the 17 Assam Rifles, which burden it has failed to discharge. Section 106 of Evidence Act places the burden of proving the facts especially within knowledge of any person upon him, irrespective of the general burden of proof being on the other side. This provision also casts the obligation on the custodian to prove how he dealt with the detainee or the victim. Viewed at, in any manner, the 17 Assam Rifles has failed to discharge the burden and the initial presumption of its liability for the disappearance of Mohd. Tayab Ali remains un rebutted.

This case falls within the ambit of the second part of section 19(1)(b) since on receipt of the report from the Central Government the Commission is of the considered opinion that it is a fit case for making recommendations in terms of sub-section (1) and (3) of section 18 of the Act. The Commission therefore, makes the necessary consequential recommendations.

The complainant has lost her husband at a young age. At the time of her husband's disappearance, she had five children and she was pregnant. The loss of the sole breadwinner rendered the family destitute. Since the violation of human rights in the present case is by members of the armed forces, the Commission, in exercise of its powers under section 19 of the Protection of Human Rights Act recommends that it would be just and proper in the circumstances of the case to award immediate interim relief of Rs.3 lakhs to the complainant and her children. We make this recommendation to the Ministry of Defence and the Ministry of Home Affairs, Government of India for compliance. The action taken should be communicated to the Commission within three months.

**24) Death in firing by Armed Forces: Manipur
(Case No.25/14/99-2000)**

The Commission took *suo motu* cognisance of a press report alleging that at least 5 persons including a minor had been killed and three others injured when the Central Reserve Police Force (CRPF) personnel opened indiscriminate fire at Churachandpur's Lower Lamka road in the aftermath of an attack by underground activists on their colleagues on 21 July 1999. The same matter was also taken cognisance of by the Manipur Human Rights Commission which, after having an 'on-the-spot' study done by one of its Members on 22 July 1999, referred the matter to this Commission.

The Commission called for a report from the Home Secretary, Ministry of Home Affairs, Government of India. It stated that, on 21 July 1999, when a CRPF party was returning to the police station out-post, militants fired upon the party from the balcony of J.B.Hotel and also from the adjoining by-lanes of the hotel. The CRPF personnel immediately took position and retaliated. The place of incident was a heavily crowded local market. Chaos and panic ensued as a result of the firing. It was added that the force had shown utmost restraint.

The Commission after considering the 'on-the-spot' study of the State Human Rights Commission and the report received from Ministry of Home Affairs observed that there were no bullet marks on the wall of the balcony where the militants had allegedly positioned themselves and held that the CRPF personnel had opened fire indiscriminately, an action that had resulted in the death of three civilians and one fireman, and injuries to four persons including three women. The Commission, accordingly, through its order dated 28 September 2001, directed the payment of immediate interim relief in the amount of Rs.2 lakh to the next-of-kin of each of the deceased and Rs.25,000 to each of the four injured persons.

**25) The Case of Jalil Andrabi, Advocate: Jammu and Kashmir
(Case No.9/123/95-LD)**

This case relates to the alleged abduction and subsequent killing of Jalil A. Andrabi, an Advocate in Srinagar by the Security Forces. The Secretary, Bar Association, Srinagar, filed a Habeus Corpus Petition No.32/96 before the High Court of Jammu and Kashmir and the National Human Rights Commission also intervened in this case.

The High Court subsequently appointed a Special Investigation Team (SIT) to make an inquiry into the incident. The SIT constituted by the Court has submitted its report. The report states that the concerned Army unit has refused to hand over the accused Major Avtar Singh to the SIT. The matter continues to be *sub judice* before the High Court, a notice having been served against the Army for the production of the accused before the High Court.

The Commission has raised this matter repeatedly in its annual report and with the senior most echelons of the army. It intends to pursue this matter, but has to await the outcome in the High Court.

OTHER IMPORTANT CASES

26) Death due to Electrocutation — Strict Liability of the State: Jharkhand (Case No.1509/4/2000-2001)

The Commission took cognisance of a complaint from Maku Murmur, resident of Dumka, Jharkhand alleging that her husband, Babu Ram, had died on 9 July 2000 as a result of being electrocuted by a live transmission wire. She stated that the death was the result of negligence of the Bihar State Electricity Board.

Upon a notice sent to the Chairman, Bihar State Electricity Board as well as to the District Magistrate, Dumka, it was confirmed that the victim had died after being electrocuted. It was, however, contended that a severe storm had occurred on the date of the incident and that deceased might have come into contact with the electricity wires, which would have fallen to the ground because of the storm and rain. It was stated that the death had not resulted from the fault of any person of the electricity department or any other authority.

The Commission, while over-ruling the contentions of the State, held that the Bihar State Electricity Board could not be absolved of its responsibility of properly maintaining the whole system; that rain and storms were not an unusual phenomenon and care was needed to avoid such situations. Accordingly, the Commission in its proceedings dated 29 August 2001 issued a notice to the State of Bihar to show cause why immediate interim relief u/s 18(3) of the Protection of Human Rights Act, 1993 be not awarded to the petitioner.

The Bihar State Electricity Board sought a review of the matter on two grounds, namely, (i) that the State of Bihar had been bifurcated with the formation of the State of Jharkhand with effect from 15 November 2000 and that this had transferred the liability to the State of Jharkhand; and, (ii) that the death of Babu Ram Tudu was in an accident, resulting from heavy rains and a storm which led to the snapping of a high-tension wire and the lowering of its height.

The Commission did not find any justification in these submissions. In a decision of 11 January 2002, it referred to the doctrine of strict liability recognised and applied by the Apex Court in a similar situation in the case of **M.P. Electricity Board vs. Shail Kumari and Others**. The Commission accordingly recommended the payment of Rs.2 lakhs by the Bihar State Electricity Board as immediate interim relief u/s 18(3) of the Protection of Human Rights Act, 1993 to the next of kin of the deceased.

As regards the bifurcation of the State of Bihar following the creation of the State of Jharkhand, the Commission held that this was now a matter for adjustment between the two States, it did not however exonerate the State of Bihar of its liability to a third party, which had been incurred on a date prior to bifurcation of the State.

27) Killing of Mohinder Singh in police firing (Case No.253/9/2000-2001)

The Commission received a complaint from one Gurmeet Kaur, wife of the late Sardar Mohinder Singh, resident of Jammu in the State of Jammu and Kashmir alleging that her husband had been killed during the morning of 5 February 2001 as a result of indiscriminate firing by the police. It was stated that the police had resorted to firing on a procession without any prior warning and that the victim's husband had been shot while he was returning home, when he was not a member of any procession, and was totally unaware of the situation around him. A similar complaint was submitted by the People's Union for Civil Liberties (PUCL), Jammu and Kashmir through its Convenor, Shri Balraj Puri.

Upon a notice being sent to the Chief Secretary and DGP, the State Government submitted a report dated 14 June 2001, stating that a tense situation had developed after the killing of six members of the Sikh community. The District Magistrate, Jammu had accordingly imposed a curfew on the city on 4 February 2001. However, in violation of curfew restrictions, members of the Sikh community had assembled at

Gurudwara Teg Bahadur and about 400-500 persons had then taken out a procession, armed with lathies, swords, etc. While the police contingent had tried to stop the procession peacefully, the procession turned violent and stones were pelted. After warning, the police resorted to lobbing tear-gas shells and a mild lathi-charge was undertaken. Thereafter, in order to prevent damage to property, the Magistrate on duty ordered a firing, in which Sardar Mohinder Singh was injured along with others. The injured Sardar Mohinder Singh was taken to GMC Hospital, where he died.

In their comments on the police report, the PUCL, Jammu and Kashmir denied the allegations in respect of damage to houses of members of the minority community by the pelting of stones. It was further submitted that the victim was not a part of the procession and, therefore, was not pelting stones when fired upon. The claim that the victim was immediately removed to hospital was also denied on the basis of post-mortem report and the affidavits of eyewitnesses.

Upon further consideration of the matter, the Commission in its Proceedings dated 29 October 2001 held that, on the basis of the material before it, the deceased was not a member of the procession and, therefore, in no way connected with the unlawful assembly. In spite of this, he was struck by a bullet fired by the police and succumbed to the injuries sustained in the police firing. The Government of Jammu and Kashmir was, therefore, called upon to show-cause as to why immediate interim relief to the next-of-kin of the deceased be not granted in accordance with the provisions of section 18 (3) of the Protection of Human Rights Act.

The Office of the Deputy Commissioner, Jammu subsequently submitted a reply dated 22 December 2001 stating that a magisterial inquiry had been ordered to find out the circumstances leading to the death of the victim. The report added that, in the meantime, the State Government had granted *ex-gratia* relief amounting to Rs.1 lakh to the next-of-kin of the deceased. The report of magisterial inquiry was awaited.

28 Death in police firing: Bihar (Case Nos.2489/4/1999-2000 and 2314/4/1999-2000)

The Commission received complaints seeking compensation for the families of two innocent persons killed in a police firing in Bokaro, Bihar, on 4 November 1999. The killings had allegedly occurred when a peaceful dharna had been organised against police inaction in respect of a case of kidnapping and murder of an eight year

old girl. It was alleged that the SDM and Dy. S.P. had ordered a lathi charge without any provocation on the part of the crowd and, later, that the police had resorted to firing on the crowd which had led to the killing of two persons

The DGP, Bihar, (now Jharkhand) in response to the notice of the Commission reported that two police officials had been found to be guilty and had been suspended. It was also reported that departmental action was being taken against the erring police officials.

Upon considering the report, the Commission held that the suspension of the police officials established negligence on the part of the State in not controlling the situation, resulting in the loss of two lives, for no fault of their own. The Commission, therefore, issued notice to the Government of Bihar to show-cause as to why compensation of Rs.2 lakh each be not awarded to the next-of-the-kin of the deceased. As the State Government failed to give a satisfactory reply in spite of the show cause notice and reminders, the Commission by its order of 3 January 2002 recommended to the Government of Jharkhand that the payment of Rs.2 lakh be made to the next-of-the-kin of the each of the deceased as immediate interim relief u/s 18(3) of the Act.

29 Protection of Human Rights Defenders: False implication of Lalit Uniyal: Uttar Pradesh (Case No.773/24/1999-2000)

The Commission received a complaint from one Lalit Uniyal, resident of Banda District, Uttar Pradesh alleging that atrocities had been committed against an innocent Dalit woman, Shiv Dulari and her son, Jagdish, on 28 May 1999 in Village Aau, Police Station Atarra. The victims were abused and mercilessly beaten at the behest of one Rajnati Awasthi. No relief was provided by the SP and DM, Banda and only after a magisterial inquiry was conducted on orders of the Divisional Commissioner, was the guilty S.I suspended and chargesheeted. Soon after, in a further complaint to the Commission, Shri Uniyal stated that he had himself been falsely implicated in a case by the police because he had earlier sent a complaint to the Commission in respect of the atrocities committed against the Dalit woman and her son.

The Commission directed its DG (I) to inquire into the complaint and submit a report. A report was also called for from the DGP, Uttar Pradesh.

The investigation by the Additional DIG of the Commission confirmed the allegations made by Shri Uniyal that the accused S.I., O.P. Sharma, along with Constable Pratap Singh, had gone to the house of the victim, Smt. Shiv Dulari, abused her and her son, Jagdish, and also beaten her son. The guilty police personnel were, thereafter, transferred to Police Lines and a case was registered against them at Police Station Hazratganj, Lucknow. The Additional DIG of the Commission, however, recommended the suspension of the accused police personnel as well as further investigation by the State CID. In accepting the recommendations of the Additional DIG and of the DG (I), the Commission directed the Government of Uttar Pradesh to ask the State CID to pursue the investigation of this case, including the allegation of 'false implication' brought before the Commission by Shri Lalit Uniyal.

The report of the State CID was received by the Commission. Upon considering it, the Commission found that the registration of cases against Shri Lalit Uniyal, Shri Phool Chand Khushwaha and two others was a vindictive act on the part of the local police officers. The Commission, therefore, recommended to the State Government of Uttar Pradesh that it take necessary action against the delinquent police personnel and also issued a show-cause notice to the State Government asking it as to why immediate interim relief u/s 18 (3) of the Act be not granted to the complainant, Lalit Uniyal.

A reply in respect of the show-cause notice is awaited.

30) Rights of Persons with Disabilities: Commission provides assistance to Shri C.S.P. Anka Toppo, a blind medical student to enable him to complete his MBBS Course (Case No. 1754/30/2000-2001)

One C.S.P. Anka Toppo approached the Commission on 1 September 2000, stating that he had been denied permission to appear for the final MBBS examination conducted by the All India Institute of Medical Sciences (AIIMS) in May 2001 for 'want of approved guidelines' from the Medical Council of India (MCI). He also alleged harassment by the faculty and misinformation in respect of himself, in order to prevent him from writing the final examination, even though he could now read the normal books required for the course with the help of a computer and a scanner.

Shri Toppo had originally been selected for an MBBS course at AIIMS in 1989. He passed the first and second professional examinations and was to appear in the final

examination in December 1993. But barely two months before the final examination, he lost his sight and a series of operations had not been able to restore any vision.

On the advice of the Commission, which also drew attention to similar instances having arisen in other countries over the years, the authorities at AIIMS discussed the issues arising from Shri Toppo's case with some of its former Directors and Deans. They reached the opinion, however, that in view of the severe visual loss suffered by Shri Toppo, it would not be possible for him to work in the medical profession. The authorities informed the Commission that they could, nevertheless, grant Shri Toppo a degree in Human Biology and also help him to get employment at AIIMS. Shri Toppo, however, insisted on pursuing his medical career despite the loss of his sight. In the course of the proceedings, the Deputy Commissioner for Persons with Disability, Institute for the Physically Handicapped, Delhi, Ms. Anuradha Mohit, appeared before the Commission on behalf of the petitioner. She elaborated on the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which comprises statutory provisions to provide persons with disabilities with equal opportunities in all matters, including the acquisition of knowledge and employment.

Shri Toppo brought to the notice of the Commission that his case was not the first of its kind, as one Dr Y.G. Parameswarappa of Karnataka had been allowed to complete his MBBS under similar circumstances in 1977 by the Bangalore Medical College. Dr Parameswarappa, he stated, had been associated with the Department of Pharmacology of the Bangalore Medical College over the last 20 years. In this connection, the Commission learnt of film footage compiled by a TV Channel concerning Mr Parameswarappa and arranged a viewing of it during one of its hearings.

The Commission then asked the authorities at AIIMS to consider whether the methods adopted for examining Dr Parameswarappa could be applied in the case of Anka Toppo. The Commission also arranged a meeting between Dr Parameswarappa and the Director of AIIMS, Dr P.K. Dave to assist the latter in ascertaining the factual position as to the manner in which Dr Parameswarappa had taken his final MBBS examination inspite of being visually challenged. It was learnt that Dr Parameswarappa had been provided with a 'writer' to assist him during his theory papers. He had also been allowed to complete his internship with the help of an assistant.

On 23 May 2001, the authorities at AIIMS informed the Commission that they were of the opinion that it was possible to examine the petitioner, Shri Toppo, for the

MBBS course inspite of his disability, by offering a modified methodology of examination. The Director, AIIMS, also informed the Commission that he was taking steps to examine Shri Toppo for the final MBBS examination at the earliest and that the latter would be kept informed of arrangements. Further, in the light of the experience of this case, an exercise has been undertaken in the Institute to work out a methodology, which could be adopted in all similar cases in future so that there was a system in position which could be put into practice each time such a situation arose. A Committee of Experts was being constituted for the purpose and the entire exercise would require about three months to be in place.

At its sitting on 28 May 2001, the Commission placed on record its appreciation of the efforts made by the Director, AIIMS, Dr P.K. Dave and his colleagues. The Commission also expressed the view that the Medical Council of India should perform a similar exercise so that the same facility and system is available in other medical institutions of the country as well.

The Commission was recently informed that Shri Toppo had appeared for his final MBBS examination and that he had passed that examination.

31) Cases where decision of the Commission has been upheld by Court — Shri Mohammed Khan: Haryana (Case No.7/21/96-LD)

This case relates to a complaint received from one Sher Mohammed Khan, alleging beating and torture at the hands of police officials in Gurgaon, Haryana. The Commission called for a report from the DGP, Haryana and after considering the report, recommended on 20 February 1998 that a case be registered against the SHO Police Station, Sadar, Gurgaon and compensation in the amount of Rs.25,000 be paid to the complainant.

Feeling aggrieved by the recommendation of the Commission, Shri Sheodan Singh, the then SHO PS Sadar, Gurgaon, filed a petition Crl. Misc. No.12078/98 — Sheodan Singh vs. State of Haryana and others before the High Court of Punjab and Haryana. The High Court, by its order dated 30 November 2000, dismissed the petition directing that it would be wholly inappropriate to exercise the extraordinary jurisdiction of the court u/s 482 of the Code of Criminal Procedure in the instant case.

Shri Sheodan Singh then moved a special leave petition in the Supreme Court

against the order of the High Court of Punjab and Haryana in Crl. Misc. No.12078 - M/1998. The Supreme Court took the view that since the police had registered an FIR against Shri Sheodan Singh, and that FIR had been transformed into a final report and the Magistrate had taken action on the said final report, it did not feel inclined to interfere in the matter and disposed of it accordingly.

The amount of compensation has since been paid by the State Government.

32) Jurisdiction of NHRC under Section 36(1) of the Act in relation to State Human Rights Commission (Case No.624/25/2000-2001)

In its proceedings of 3 January 2002, the Commission took cognisance of a complaint from an advocate, Tamali Sengupta, alleging that atrocities had been committed by the police in villages in Midnapore district on 29 December 2000. The Commission called for an investigation report from the State Government and, also on 3 January 2001, directed that a team of its officers proceed to the area for an on-the-spot investigation and collection of facts in respect of the allegations made in the complaint.

On 22 January 2001, however, the Commission received a resolution dated 19 January 2001, that had been adopted by the West Bengal Human Rights Commission (WBHRC). That resolution stated that it did not appreciate the NHRC ordering an enquiry into such matters which are pending before this State Commission as the National Human Rights Commission is prevented from enquiring into such matters under the provisions of section 36(1) of the Protection of Human Rights Act'. The resolution added that the State Commission 'would appreciate if prior to the National Human Rights Commission taking a decision of directing an enquiry into any matter in West Bengal, it would specifically be satisfied whether the same matter is also pending before the State Commission or not, as otherwise in case matters pending before the State Commission are interfered with by the National Human Rights Commission subsequent to the taking of cognisance of the matter, it would create extraordinary embarrassment to the State Commission and will ultimately tend to undermine the authority and status of the State Human Rights Commission'.

The above mentioned resolution of the WBHRC was considered by the Commission (NHRC) in its proceedings dated 24 January 2001, when the Commission observed that:

- There appears to be some misunderstanding in the WBHRC about the meaning and purport of section 36(1) of the Protection of Human Rights Act, 1993 (POHRA) which may have led to this stance of the WBHRC. The opinion required to be formed for the purpose of section 36(1) is of the NHRC itself which is not obliged to act on the view taken by the State Commission. For this purpose, the State Commission may communicate to the NHRC the material facts pertaining to the action, if any, taken by the State Commission in a particular matter to enable the NHRC, to form its opinion whether the same matter can be treated as pending before the State Commission prior to its cognisance being taken by the NHRC, and then to act accordingly. The NHRC is not to be governed merely by the view of the State Commission in formation of its opinion.
- It also needs mention that the Protection of Human Rights Act, 1993 does not exclude any part of India from the jurisdiction of the NHRC nor does it prohibit any person from approaching the NHRC in respect of violation of human rights anywhere in the country, simply because a State Commission exists for that area. Prior clearance of the State Commission is not needed by the NHRC to exercise its functions in any part of India.
- The NHRC would appreciate it even more if the emphasis is greater on discharge of our common functions rather than on the debate of comparative authority of the Commissions, which is not conducive to the purpose of its establishment.

A further resolution dated 5 February 2001 passed by the WBHRC was received in the NHRC on 11 February 2001. It stated, *inter alia*, that the State Commission had received an application on 11 January 2001 from the Committee of Protection of Democratic Rights of West Bengal asking for an immediate investigation into incidents in Hemnagar Choto Angeria village on 4 January 2001. The resolution added that the State Commission had taken the view on 15 January 2001 that the Home Secretary to the Government of West Bengal should be 'directed to take appropriate action in the matter' and should report to the State Commission about action taken in this regard, since the State Commission thought it a matter of failure of law and order in the State. The State Commission also reiterated its view that the issue was 'pending' before it and that the NHRC should therefore not pursue this matter.

The National Human Rights Commission, however, on 14 February 2001 considered the matter again and held that:

- No plausible construction made of section 36(1) of the Act or meaning given to the word 'pending' can support the view that the same matter was 'pending' before the State Commission when this Commission took cognisance and proceeded to deal with it in view of the facts of the case. The facts would clearly show that not merely was cognisance taken of the situation alleged in Midnapore district by this Commission earlier on 29 December 2000 but notice had also been issued to the Government of West Bengal on 3 January 2001 before the State Commission received the application on 11 January 2001. After the order of 16 January 2001 the next order by this Commission was made on 24 February 2001. The State Commission, according to the facts given by it, had already disposed of the matter on 15 January 2001 treating it as a 'matter of failure of law and order in the State' and only requiring the Home Secretary of the State Government to take appropriate action in the matter. On any view, at best the matter could be treated as pending before the State Commission only from 11 January 2001 when the application was received to 15 January 2001 when it was disposed of in the manner stated. The matter cannot, therefore, be treated as 'pending' before the State Commission prior to 11 January 2001 and after 15 January 2001 and no action having been taken by the State Commission itself except to transmit the application to the State Government when the complaint was against the State Government itself;
- The word 'pending' in section 36(1) of the Act must be construed to mean, 'that the matter is not concluded and the Court which has cognisance of it can make an order on the matter in issue' as held by the Supreme Court in **S.K. Kashyap vs. State of Rajasthan, 1971(2) SCC 126**. This means cognisance of the matter must have been taken which can happen only on consideration of the matter by the Court or authority and its decision to entertain it, which condition is not satisfied merely by the filing of an application without any consideration and decision to entertain it. The starting point of pendency of the matter is the decision to entertain it. The end-point is, when the matter is concluded by an order of direction terminating the proceedings so that nothing remains to be done further for disposing of the matter. The overall purpose of section 36(1) of the Act is to empower the National Human Rights Commission to avoid multiplicity of proceeding where another Commission is fully seized of the matter;
- On a proper construction of section 36(1) of the Act and giving the word 'pending' therein the correct meaning, the matter can be said to have been pending before the State Commission only on the 15 January 2001 when it was

taken up for consideration and disposed of on the same day. As already indicated, the said matter was pending before the National Human Rights Commission from 29 December 2000. For this reason, the State Commission should have abstained from entertaining the same on an application made to it on 11 January 2001;

- That section 36(1) of the Act should have been noticed by the State Commission for abstaining from taking cognisance of this matter much less to rely on for the protest which it has made, and that too through the media instead of by a written communication to this Commission expressing its view so that it could be resolved between the two Commissions without any unwanted publicity.

33) Harassment of M. Karunanidhi and others by police: Tamil Nadu: Jurisdiction of NHRC (Case No.280/22/2001-2002) (Linked Case No.275/22/2001-2002)

An NGO based in Tamil Nadu, Peoples Watch, brought a complaint to the Commission alleging that the arrest of M. Karunanidhi, Murasoli Maran and T.R. Balu along with others by the Tamil Nadu police in Chennai on 30 June 2001, was made without following the guidelines of the Supreme Court of India as laid down in the case of *D.K. Basu vs. State of West Bengal 1997 (1) SCC 416* and that this amounted to a gross violation of human rights of those who had been arrested. The intervention of the Commission was sought in the matter and a prayer made for an inquiry into the violation of the human rights of the arrestees and further consequential action based on the findings of the inquiry.

The Commission took cognizance of the matter and issued notice on 2 July 2001 to the Chief Secretary and Director General of Police, Tamil Nadu. In a reply filed by the Chief Secretary of Tamil Nadu on 16 July 2001, the State Government indicated that it had issued orders, vide G.O. Ms. No.797 dated 7 July 2001, constituting a one-man Commission of Inquiry headed by Justice A. Raman, retired Judge of Madras High Court to enquire, *inter alia*, into the instances and lapses, if any, on the part of the police officials. The terms of reference of the Commission of Inquiry included whether there was any excess on the part of the police while effecting the arrest of M. Karunanidhi, Murasoli Maran and T.R. Balu, or thereafter until their judicial remand, and whether there were any lapses on the part of the police personnel. The State Government thus requested the National Human Rights Commission to await the

report of the Commission of Inquiry in the light of section 36 of the Protection of Human Rights Act, 1993.

In hearings involving counsel for the parties and the Solicitor General of India, the Commission carefully considered the question whether the constitution of a Commission of Inquiry under the Commissions of Inquiry Act, 1952 by the Government of Tamil Nadu subsequent to cognisance of the matter having been taken by the National Human Rights Commission on 2 July 2001, could oust the jurisdiction of the Commission in any manner to proceed with the inquiry it had initiated earlier. In an order dated 23 August 2001, the Commission held that the jurisdiction of the National Human Rights Commission was excluded only when inquiry into the same matter is already proceeding before a State Commission or any other Commission which had earlier taken cognisance of the same matter to make it 'pending' before it. In other words, pendency of the same matter before a State Commission or any other Commission had significance to bar the jurisdiction of the National Human Rights Commission by virtue of section 36(1) only if that situation existed at the threshold, i.e. when the National Human Rights Commission took cognisance and not when cognisance by another Commission was at a later date.

In view of above, the Commission further held that by no stretch of imagination could the same matter of which cognisance was taken by this Commission (NHRC) on 2 July 2001 be treated as 'pending' before the Commission of Inquiry constituted by the Government of Tamil Nadu under the Commissions of Inquiry Act, 1952 by issuance of a Notification on 7 July 2001. This result ensued, even assuming that the terms of reference of the Commission of Inquiry included the matter being inquired into by the NHRC. There could, thus, be no doubt that the bar of jurisdiction to inquiry by this Commission (NHRC) contemplated under sub-section 1 of the section 36 of the Act had no application and was not attracted in the present case and the inquiry initiated by this Commission (NHRC) on 2 July 2001 would, therefore, continue.

It requires to be mentioned, in this connection, that the State Government of Tamil Nadu filed a writ petition before the High Court of Tamil Nadu challenging the aforesaid order of the Commission. Since a similar question of law was subsequently brought before the High Court of Gujarat, the Commission filed two transfer petitions in the Supreme Court of India for transfer of the matters pending before the High Court of Tamil Nadu and the High Court of Gujarat to the Supreme Court for decision. The Supreme Court has issued notices in both the transfer petitions and has stopped further proceedings in these matters before the respective High Courts.

E] Action Taken on the Cases Reported in the Annual Report of 2000-2001

As many readers of the annual reports of the Commission have expressed an interest in knowing of the action taken on the cases reported upon in the preceding annual report, the present report contains a section that up-dates information in respect of the cases reported on in the annual report of 2000-2001. The position, in summary form, is indicated in the succeeding paragraphs.

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

In this instant case of illegal detention, the death of Shah Mohammed in police custody, and negligence on the part of doctors for not conducting a thorough post-mortem, the Commission had directed the State Government of Madhya Pradesh to register a case of custodial death against the police officers responsible for causing the death of Shah Mohammed and to initiate appropriate disciplinary proceedings against the doctors who had not conducted the post-mortem examination thoroughly and had failed to prepare a comprehensive post-mortem examination report. The State was also directed to pay a sum of Rs.2.5 lakhs to the next-of-kin of the deceased.

Pursuant to the Commission's directions, the State Government of Madhya Pradesh has reported that as directed by the Commission, compensation of Rs.2.5 lakhs has been paid to the next-of-kin of the deceased and suitable legal action has been initiated against the guilty officials. The Commission, after taking the report on record, has closed the case.

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

In this case the Commission had, by its order dated 28 January 2000 directed the State of Bihar to pay a compensation of Rs.2 lakhs to the family of the deceased and employment to one of the members of the family.

In compliance, the State Government of Bihar issued a sanction dated 10 June 2000 in respect of the payment of Rs.2 lakhs, subject to its recovery from the delinquent public servant. As regards the second recommendation of the Commission, it has stated that employment will be considered in accordance with the guidelines issued by the State Government for making appointments on compassionate grounds. The final action taken report is awaited despite reminders.

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

The Commission, by its order dated 11 May 2000, recommended an award of interim relief in an amount of Rs.1 lakh to the legal heirs of the deceased who, by admission of the police itself, was tortured while in custody and committed suicide. The Commission had directed the Senior Superintendent of Police, Bijnore to inform the Commission of the progress in the various proceedings against the delinquent police officials.

The State Government reported that the interim relief of Rs.1 lakh has been sanctioned to the next-of-kin of the deceased on 30 January 2002. As regards action against errant policemen, it was reported that the erring SI had been placed under suspension and departmental proceedings instituted against the other erring policemen by issuing charge-sheets against them.

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

In this case, the Commission by its order of 17 August 2000 recommended: (i) the payment of compensation of Rs.10,000 each to Dara Singh, Manmohan Singh, Bhim Singh, Anil Sharma and R.K. Mishra for the torture inflicted on them while in custody; (ii) initiation of departmental enquiry against Inspector A.S. Tyagi; and (iii) transfer of constable Sansar Singh from Anand Parbat Police Station, Delhi to another police station.

Pursuant to the Commission's direction, the Commissioner of Police, Delhi, by a letter dated 15 March 2002 informed the Commission that payment of compensation of Rs.10,000 each had been made to Dara Singh, Manmohan Singh, Bhim Singh, Anil

Sharma and R.K. Sharma on 31 March 2000. A departmental enquiry against Inspector A.S. Tyagi, the then SHO Anand Prabat and SI Har Prasad, the IO of the case, had been initiated. The departmental enquiry was in progress. Constable Sansar Singh had been transferred from PS Anand Parbat by an order dated 4 January 2001.

5) Allegations of Death, Rape and Torture of Tribals as a Result of Actions of the Joint Task Force set up by the Government of Tamil Nadu and Karnataka to Apprehend Veerappan and Associates. (Case No.222/10/97-98, Case No.534/22/97-98, Case No.795/22/97-98, Case No.249/10/97-98, Case No.79/10/1999-2000)

In the above case, as reported in the Annual Report for 2000-2001, the Commission had constituted a panel of two eminent persons to look into all relevant aspects of the allegations. Justice A.J. Sadashiva was appointed to serve as Chairman of the Panel with Mr C.V. Narasimhan, former Director, CBI, as its Member. The two State Governments were requested to extend the necessary cooperation to the Panel, which commenced its work. However, soon after, a writ petition was filed before the High Court of Karnataka challenging the jurisdiction of the Panel. On 27 March 2000, the High Court passed an interim order staying further proceedings of the Panel.

On 30 November 2001 the High Court dismissed the writ petitions challenging the jurisdiction of the Panel and directed that the members of the Justice A.J. Sadashiva Committee proceed with the enquiry expeditiously in accordance with the directions of the NHRC. However, the dismissal of the writ petitions and the writ appeals would not preclude the aggrieved party, if any, to approach the NHRC, in case any adverse order was passed against them on the basis of the enquiry Report. Accordingly, the Panel started its hearings in the matter from 6 February 2002. The report of the Panel is awaited.

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

The Enforcement Directorate filed a Writ Petition in the High Court of Delhi against the Commission's directions to make the payment of Rs.50,000 to Prabhakar L. Mehta, Mumbai and the matter is at present pending in the High Court of Delhi.

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

In this case the Commission had, by its order dated 19 September 2000, recommended to the Government of Uttar Pradesh that it pay immediate interim compensation and order an enquiry to identify the police personnel responsible for detaining the three persons illegally and torturing them.

The Government of Uttar Pradesh by its letter dated 11 December 2001 has stated that the enquiry had been handed over to CBCID and that this was in progress. As regards payment of compensation as recommended by the Commission, the State Government stated that it would be made on receipt of the findings of the CBCID.

The Commission considered the matter further and, by an order dated 25 February 2002 called for the CBCID Report; this is still awaited.

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

In this case, the Commission had by its order dated 14 March 2001 directed that a sum of Rs.10 lakhs should be paid to Shri S. Nambinarayanan by the Government of Kerala as immediate interim relief and also to report on the action taken against the delinquent officers.

The Government of Kerala filed a Petition No.15272/2001 before the High Court of Kerala challenging the Commission's proceedings dated 14 March 2001 and the High Court has, by its order dated 8 June 2001 stayed the order of the Commission, pending a decision in the matter.

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

The Commission, by its order dated 22 August 2000 had recommended the payment of immediate interim compensation of Rs.30,000 to the petitioner, it also recommended that this amount be recovered from the concerned police official if the Government so wished and a criminal case registered against the guilty Sub-Inspector.

Pursuant to the Commission's directions, the State Government of Maharashtra has indicated that the payment of Rs.30,000 was made to the petitioner on 19 April 2001. As regards the registration of a criminal case under section 325 IPC against the police Sub-Inspector, Shri B.S. Mahajan, the investigation had been completed and the matter was under consideration of the Director General of Police, Maharashtra for further necessary action.

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

The Commission had, by its order dated 10 November 2000, directed the Director General of Police, Bihar to ask the CBCID to conduct a fresh investigation of the case and to submit its report to the CJM. It had also issued a show-cause notice to the Bihar Government as to why immediate interim relief to the next-of-kin u/s 18(3) of the Protection of Human Rights Act, 1993, be not awarded.

The State Government has, by its letter dated 22 May 2001, reported that the matter had been handed over to CBCID for investigation and, after completion of that investigation, a report would be sent to the Commission. The matter is still pending with the CBCID of the State.

11) False implication by police: Bihar (Case No.3321/4/97-98)

The Commission had awarded compensation of Rs.25,000 to each of the complainants as immediate interim relief with a direction to recover the same from the delinquent police officials.

The matter has been taken up with the State Government with a view to expediting compliance of the direction of the Commission. However, compliance is still awaited.

12) Acts of Police High-Handedness Against Agitating Farmers in Ten Villages of C.R. Pattna Taluk, Hassan District: Karnataka. (Case No.91/10/98-99)

Acting upon the recommendations of the Commission the State Government of Karnataka has submitted the final report of High Powered Committee constituted on 14 January 2000 to consider the amount of compensation for property loss and injury to farmers during the police atrocities at Bagur Naville.

In accordance with the recommendations of the said Committee, the Government of Karnataka has accorded sanction for the payment of compensation to the victims. Taking into consideration the aforesaid compliance report, the Commission closed the case on 13 February 2002.

13) Acts of Police High-Handedness Against Dalits in Ogalur Village Tamil Nadu (Case No.772/22/98-99)

The Commission had recommended in its order dated 26 September 2000 that the State of Tamil Nadu pay the victim, Loganayaki, a sum of Rs.1 lakh, the victim Muthamil Selvi a sum of Rs.50,000, and a sum of Rs.10,000 to each of the 34 women and elderly persons arrested, together with an additional compensation of Rs.5,000 per child to the children who were involved. It also called for appropriate departmental action to identify the errant police officials, to punish them for not following the D.K. Basu guidelines and to further ensure that the guidelines were circulated to all police stations rigidly.

The Government of Tamil Nadu has informed the Commission through its letter dated 29 November 2000, that its recommendation regarding award of compensation had been complied with, and that disciplinary proceedings have also been initiated against the guilty officials.

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

The Commission had directed the State of Uttar Pradesh to pay compensation to the extent of Rs.10,000 to each of the detenues and also directed the State

Government to frame guidelines in consonance with the Supreme Court's judgement for the use of concerned authorities who were incharge of making recoveries of land revenue. It had also directed the revision of the existing norms of dietary allowance for the civil prisoners wherever these norms were inadequate to meet the cost of the diet of the inmates.

The State of Uttar Pradesh has sent an interim report regarding the proposed revision of existing norms of dietary allowance for the civil prisoners. However, final approval is yet to be given by the State of Uttar Pradesh. A compliance report is still awaited regarding payment of Rs.10,000 to each of the detainees.

**15) Atrocities on Dalit women by forest officials: Uttar Pradesh
(Case No. 2731/96-97/NHRC)**

In this case, the Commission by its order dated 2 June 2000 had recommended the payment of Rs.50,000 as interim compensation to each of four women.

The State Government has stated that immediate interim relief of Rs.2 lakhs @ Rs.50,000 for each of the four women has been sanctioned. However, payment had been made to only two of the women. The other two women were yet to be identified and they had not yet come forward to make a claim. The State Government has assured the Commission that, as and when the remaining two women come forward or are identified, the payment would be made to them on the basis of sanction already issued.

Upon being satisfied with the response of the State Government, the Commission closed the case on 2 July 2001.

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

In this case, the Commission in its proceedings dated 2 May 2000 came to the conclusion that seven children, belonging to the Balmiki community, were humiliated, stripped naked, and paraded in the locality and also beaten up by police personnel of Gurgaon, Haryana. It held that the concerned police personnel had abused their power and, accordingly, directed the Superintendent of Police, Gurgaon to file charge-sheets against them under the appropriate provisions of the Indian

Penal Code and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to pursue the case diligently and also initiate disciplinary action against the delinquent police personnel. In addition, the Commission recommended the payment of a sum of Rs.20,000 as compensation to each of the seven boys. It also observed that the State Government was at liberty to recover this amount from the salaries of the concerned police personnel.

The State Government has, through its letter dated 23 October 2000, reported to the Commission that it has paid the compensation to the children as directed, and that disciplinary proceedings/prosecution had been initiated against the delinquent public servants.

17) Attacks on Members of the Christian Community in Several States (Case Nos.289/6/1999-2000; 351/6/1999-2000; 295/6/1999-2000; 481/6/1999-2000; 1873/4/1999-2000; 1933/4/1999-2000)

The Commission is closely monitoring all the cases alleging atrocities against Christians and, at every instance when this has been necessary, issued appropriate directives to the concerned State Governments/Union Territories.

The Commission has also followed-up on this matter with the Chief Secretary/DGP and other senior officials during visits of the Chairperson/Member to the concerned States/Union Territories.

18) Inhuman Treatment of Mentally Ill Patients at Sultan Alayudeen Dargah: Tamil Nadu (Case No.427/22/98-99)

This case relates to the mistreatment of mentally ill patients in the Sultan Alayudeen Dargah in Goripalayam, Tamil Nadu.

The Commission forwarded a copy of the report submitted by the Dr K.S. Mani Committee, containing several important recommendations in respect of the situation, to the Chief Secretary, Government of Tamil Nadu and called for an action taken report.

In compliance, the Government of Tamil Nadu sent a detailed report on the

steps it had taken to improve conditions of mentally ill patients at Goripalayam Dargah, Madurai. It stated that:

- A team of psychiatrists from the Institute of Psychiatry, Madurai Medical College is making periodic visits to Goripalayam Dargah to treat the mentally ill patients.
- At present, the Dargah authorities are not admitting mentally ill patients.
- Instructions have been issued not to chain the patients. There are no patients in chains in the Dargah.
- The Dargah authorities have been instructed to remove all the thatched sheds.
- Two new buildings with RCC roofs were under construction.
- Three new toilets were being constructed.
- The sandy floors were being replaced by laying cement flooring.
- A detailed proposal had been developed to improve the conditions of the mentally ill patients at Goripalayam.

The Government of Tamil Nadu has also initiated a District Mental Health Programme with an outlay of Rs.1 crore for Madurai district with the following components:

- Training of Medical Officers of Primary Health Centres, Paramedical and non-medical persons.
- Establishing of Mental Health Clinics in all the Taluk hospitals in Madurai district.
- Information, education and communications programmes to create awareness about mental health among the public.

The Government of Tamil Nadu has also constituted a Commission of Inquiry with Thiru N. Ramadosa, retired District Judge, to inquire into the incident of fire on 6 August 2001 at the Badhusha Private Mental Asylum in Erwadi in Ramanathapuram district in which 28 inmates lost their lives.

19) Rape of four Scheduled Caste and Scheduled Tribe women in West Godavari District, Andhra Pradesh. (Case No.343/1/98-99)

The Commission had ordered the State Government to pay a sum of Rs.50,000 as monetary compensation to each of the victims and to undertake a review of the existing schemes, so that victims of rape belonging to the Scheduled Castes and Scheduled Tribes are provided monetary assistance/*ex-gratia* payment and given such relief even if the culprits/rapist belongs to the same caste/community and that such schemes also provide for the rehabilitation of the victims.

The State Government, by its letter dated 27 March 2002, has expressed its inability to comply with the directions of the Commission and has requested a review of the orders. The matter is under consideration of the Commission.

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

In its order dated 5 April 2000, the Commission directed the State of Maharashtra to pay Rs.50,000 to the victim of rape and to enquire into the circumstances which led to delay in sending intimation of this incident to the Commission. It also desired to know the outcome of the criminal proceedings lodged against S. Nanaware and of the disciplinary action taken against the Dy. Superintendent of the Observation Home.

The State of Maharashtra has sent an interim report stating that a sum of Rs.50,000 can be paid to the victim of the rape only after the release of Nanaware, who is undergoing imprisonment. The matter is under consideration of the Commission.

21) Rape of a ten year old Girl Child in Juvenile Observation Home: Andhra Pradesh (Case No.32/1/1999-2000)

The Commission, on consideration of a report submitted by the Government of Andhra Pradesh had directed in its proceedings dated 18 October 2000 that efforts be stepped-up to complete the investigation of the case and to pay interim compensation of Rs.50,000 to the parents of the girl, a victim of rape for the suffering and trauma that the child had endured while in a Juvenile Home.

The Commission received a compliance report dated 19 March 2001 from the Government of Andhra Pradesh, stating that Rs.50,000 had been sanctioned for being paid to the victim's parents. The concerned guilty doctors had been placed under suspension and disciplinary proceedings had been initiated.

The Commission has asked the State Government to send further report on the status of the case.

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

The Commission had directed the Government of Bihar in its proceedings of 24 May 2000 to pay a sum of Rs.2 lakhs as compensation to the complainant, Meena Singh, who had stated that her husband Sudhir Singh, had died in judicial custody as a result of negligence. The Commission had also asked that an enquiry be initiated by the Inspector General of Prisons into the circumstances leading to the possession of lethal weapons by the inmates of Ranchi jail and the reasons for the inability to control the violence that occurred on the fateful day of the attack on Sudhir Singh. Further, the Commission had asked for the initiation of action against those officials who were responsible for allowing such a situation to develop in the manner in which it did.

The Commission has been informed that Rs.2 lakhs was paid to the complainant on 6 April 2001 by the State of Jharkhand. A final report is awaited in respect of the enquiry that was undertaken and the action initiated against the erring officials.

The matter is being pursued with the State Government.

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

The matter relates to negligence on the part of the police of Uttar Pradesh resulting in the killing of Mahendra Pal Singh while he was under police protection.

In this case, in its proceedings of 25 May 2000, the Commission recommended that the Government of Uttar Pradesh initiate departmental action against Sub-Inspector, D.D. Singh, Officer-in-charge of the Police Post and other officials for

negligence in not protecting Mahendra Pal Singh and allowing him to be killed by the members of an unlawful assembly and also to pay a sum of Rs.1 lakh to the next-of-kin of the deceased.

The Government of Uttar Pradesh requested the Commission for a review of its orders on the ground that the complaint should not have been considered by the Commission because of the provisions of Section 36(2) of the Protection of the Human Rights Act, 1993 and, further a charge-sheet had already been filed against the accused. The Commission accepted the view of the State Government and closed the case on 26 February 2002.

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

The Commission had directed on 22 March 2000 that payment of interim compensation in the amount of Rs.2 lakhs be made to the next-of-kin of a young girl who had been crushed by a vehicle that had been deployed for the security of a former Prime Minister of the country.

In response, the State Government indicated through letters 31 March 2001 and 28 June 2001 that the Rs.2 lakhs has been sanctioned to next-of-kin of the deceased.

**25) Victim of medical negligence: Orissa
(Case No.359/18/1999-2000)**

In this case, keeping in view the trauma caused to P.K. Sethi, a victim of medical negligence, the Commission had directed the Government of Orissa to grant enhanced compensation in the amount of Rs.2 lakhs to the victim for his further treatment and maintenance.

The Collector and District Magistrate, Nayagarh, in his compliance report, indicated that the Health and Family Welfare Department, Government of Orissa had sanctioned an amount of Rs.91,000 in the first instance, and steps were being taken to sanction the balance in the amount of Rs.1,09,000 as compensation to the victim.

**26) Release of Bonded Labourers and Their Rehabilitation: Punjab
(Case No.663/19/1999-2000)**

The Deputy Commissioner, Jalandhar has informed the Commission that all the 65 labourers had been released after payment of their dues and had been allowed to go wherever they wished to go. An FIR had been lodged against the proprietor of the Cold Storage Rupewali and his driver under section 16/17 Cr.P.C., and under sections 342, 323, 354 IPC. Particulars of the labourers were, however not available in the office of SDM Shahkot.

The report received from the Deputy Commissioner, Jalandhar was placed before the Commission on 29 April 2002, when the Commission observed that partial compliance had been made, but it appeared that inadequate steps had been taken to comply fully with the directions of the Commission. It was added that the District Magistrate, Jalandhar should not take the directions of the Commission casually but should make strenuous efforts to trace the labourers who had been released, issue them the release certificates that were required under the law and provide them with other benefits directed by the Commission in its proceedings dated 18 September 2000.

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

The Commission by its order of 9 March 2001 had directed the Superintendent of Police, Ratnagiri to furnish a status report on the case that had been registered against the three accused persons in respect of a case of bonded labour. The Commission had also directed the district administration to issue release certificates under the provisions of the Bonded Labour System (Abolition) Act, 1976 and to pay a sum of Rs.20,000 to each of the released bonded labourers and ensure their rehabilitation by forming a co-operative society of the released bonded labourers and of any other bonded labourers identified in the area. The Commission had recommended that they may also be assisted under the Employment Assurance Scheme or through a land-based rehabilitation scheme.

The Superintendent of Police, Ratnagiri, Maharashtra, by his letter dated 28 March 2001, informed the Commission that a charge sheet against the three accused persons has been filed in the court of JMFC, Chiplun, Ratnagiri on 6 January 2002. As regards the Commission's recommendations regarding the issue of release certificates,

the payment of Rs.20,000 to each of the released bonded labourers, and their rehabilitation, the final compliance report from the DM Ratnagiri is still awaited.

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

The Commission had recommended that the Government of Uttar Pradesh take the necessary steps for the rehabilitation of the bonded labourers concerned. Since the compliance report was not forthcoming, the case was discussed in a review meeting on bonded labour/child labour taken by the Member of the Commission Dr Justice K. Ramaswamy, in Lucknow on 7 July 2001. The Principal Secretary (Labour) Government of Uttar Pradesh directed the DM, Sonebhadra to comply with the directions issued in the proceedings of the Commission dated 14 June 2000. He also assured the Commission that its directions in respect of the rehabilitation of the bonded labourers by forming Cooperative Societies/Self-Help Groups, would be complied with.

Despite these assurances, the Commission is of the view that this matter needs to be pursued until the released labourers are actually provided the full benefits. It has thus been pursuing this matter with the State Government. Following its original letter of 20 June 2000, reminders have been sent on 12 January 2001, 21 June 2001, 31 January 2002 and 11 February 2002. The compliance report, however, is still awaited.

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

The Commission had recommended the payment of compensation and the rehabilitation of bonded labourers in accordance with the Supreme Court judgement on this subject.

The matter was discussed in a review meeting on bonded labour/child labour taken by the Dr Justice K. Ramaswamy in Lucknow on 7 July 2001, when a report dated 9 February 2001, received from the State Government, was discussed. That report stated that the District Magistrate, Allahabad had expressed difficulty in arranging the rehabilitation of the released children, as six of them had been sent to district Sonebhadra and seven to districts Purnea, Garwa and Palamu of Bihar.

The Commission held that the rehabilitation of these children was, in this case, clearly the responsibility of the Government of Uttar Pradesh. By a further letter dated 11 February 2002 to the Chief Secretary, Uttar Pradesh and the DM, Allahabad, the Commission has reminded them that there is need to comply fully with the recommendations of the Commission and to submit a compliance report.

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

The Commission had directed the Ministry of Labour, Government of India and the Government of Punjab to formulate appropriate measures to resolve the problems of migrant labourers. The reports from both the agencies have been received and are under consideration of the Commission as part of an on-going examination of the issue of migrant labour in the country.

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

In its Annual Report for the year 2000-2001 the progress in this case until 15 February 2001 had been recounted in detail. On 20 March 2001, the Commission directed that the exercise of identifying the partially identified dead bodies should be taken up forthwith, followed by the exercise of identifying the unidentified ones. The Commission also directed that material available with the CBI and the State of Punjab in respect of partially identified as well as non-identified persons should be made available for inspection by the Commission as well as learned counsel representing different interests so that the first stage of enquiry of full identification of maximum number of bodies out of the total of 2,097 was completed. On 29 September 2001, the Commission directed that proceedings regarding the 582 identified cases be started without any further loss of time. Copies of FIRs were also called for in respect of the 582 fully identified bodies.

Thereafter, in its directions dated 04 February 2002, the Commission, while confining itself to the 582 fully identified bodies, framed the following issues for consideration:

- Whether the officers of the State of Punjab or of the Union of India who were connected with the cremation of the 582 full-identified bodies were not

responsible for their death and, therefore, there was no violation of human rights committed by them;

- the liability of the concerned officers of these Governments as a result of the above;
- in case of liability of the above officers, the consequent liability of the Government concerned ; and
- relief including compensation, if any.

The Commission continues to hold hearings in this case.

32) Killing of 35 members of Sikh community in Anantnag District of Jammu and Kashmir by militants (Case No.206/9/99-2000)

The Commission had directed the State Government to furnish a report on the action taken on the findings and recommendations of the Justice Shri S.R. Pandian Commission, as well as to furnish a progress report in respect of the case before CJM Anantnag in respect of the killing of 5 persons on 25 March 2000, allegedly in a fake encounter.

The State Government in its letter dated 4 July 2001, informed the Commission that it had decided to accept the report of the Justice S.R. Pandian Committee of Inquiry *in toto*, in terms of the recommendations of the Commission. It further informed the Commission that the concerned personnel of Jammu and Kashmir police had been formally charge-sheeted and a full-fledged departmental enquiry was being conducted. The State Government added that an FIR had been registered against them and that a special team of investigators had been appointed to complete the investigation. In respect of the police personnel of the Central Security Forces, the Ministry of Home Affairs, Government of India, had been requested to take disciplinary action. *ex-gratia* relief at Rs.1 lakh to the next-of-kin of each of the deceased, and at Rs.5,000 per head to the injured persons, had been paid by the concerned District Magistrate.

In view of this report, the Commission closed the case before it in its Proceedings recorded on 25 July 2002.

The matter was, however, re-opened following a report that appeared in the Times of India of 6 March 2002, alleging that officials had tampered with the DNA samples that had been sent for examination and that, for more than a year, the Government of Jammu and Kashmir had been sitting on a 'damning report' that had been sent by the concerned laboratory in Hyderabad. On 13 March 2002, the Commission therefore directed the State Government, as well as the Ministry of Defence and the Ministry of Home Affairs, Government of India, to submit a comprehensive up-to-date report of the action taken in this matter, together with any that were in contemplation, to correctly identify the five deceased. The reports are still awaited.

The Commission intends to pursue this matter.

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

The Commission continued to monitor relief and development measures in the KBK region of Orissa through its Special Rapporteur, Shri Chaman Lal. He visited all the concerned districts, namely, Kalahandi, Naupada, Bolangir, Sonepur, Koraput, Malkangiri, Nawrangpura and Rayagada from 14 - 22 November, 2001 and submitted a detailed progress report indicating the position under the following heads:

i) Rural water supply and sanitation (RWSS)

The target of one hand pump or sanitary well for every 250 persons of the population was achieved in all the districts. The Commission's suggestion regarding the introduction of a Self-Employed Mechanics Scheme (SEM) has also been successfully undertaken in the districts of Kalahandi (5 blocks), Koraput (2 blocks), Rayagada (5 blocks), Naupada (2 blocks) and Bolangir (6 blocks). The Chief Engineer (RWSS) is monitoring the implementation and functioning of this scheme which is to be extended to all blocks (80) of these districts.

ii) Primary health care (PHC)

The target of opening 8 additional PHCs - 3 in Koraput, 2 each in Malkangiri and Rayagada and one in Kalahandi has been fully achieved. Will the opening of 49

additional Mobile Health Units, facilities are now available in all the blocks of the KBK region. The overall position of medical and para-medical staff has improved, by making a posting in the KBK region compulsory on fresh appointment/promotion and declaring the subordinate posts as part of the District Cadre.

The report of the Special Rapporteur highlights the need for continued efforts to control malaria, which remains a major health hazard in this area.

iii) Social Security schemes

The intervention of the Commission has helped to streamline the functioning of the various pension schemes in the region. The public distribution system is also functioning efficiently, with the full involvement of panchyatraj institutions. Women's self-groups have also been involved in these effort.

The Commission has, however, noted with concern that there has been a certain slackness in some districts in the running of the emergency feeding programme and the mid-day meal scheme. The Commission has also objected strongly to the reduction in the scale of rice under the emergency feeding programme from 6 kg to 5 kg per beneficiary per month and has, through its order dated 19 December 2001, directed the restoration of the scale of 6 kg per beneficiary. Taking note of the report of the Special Rapporteur regarding the supply of dry rations instead of cooked food under mid-day meal scheme to students in urban areas, the Commission has directed that only cooked food should be supplied in all the schools.

iv) Soil conservation programme

Watershed Projects under the Employment Assurance Scheme are progressing satisfactorily in all the blocks, and encouraging results have been achieved in the districts of Kalahandi, Koraput, Nawrangpur and Bolangir. Some improvement has been noticed in Naupada district also. The Commission has advised the State Monitoring Committee to give more attention to the execution of these vital projects in districts Sonepur, Rayagada and Malkangiri.

v) Rural development programme

Rural Development Programmes are progressing satisfactorily in all the districts in terms of the utilisation of funds and the achievement of targets. However, employment generation under the Employment Assurance Scheme is far below the assured level of 100 days of work to each targeted family.

vi) Afforestation

The progress in afforestation activities through Block Plantation, Rehabilitation of Degraded Forest (RDF) and Non-Timber Forest Produce Plantation (NTFP) under the Long-Term Action Plan (LTAP) has been encouraging. It is being undertaken with full mobilisation of the community. The Commission has advised the State Level Monitoring Committee to give special attention to these programmes in view of their importance to a long-term solution to the problems of the KBK region.

The Commission has commended the Government of Orissa for the progressive and pro-poor measure that it has taken in transferring the ownership of 60 NTFP items to Gram Panchyats. The Commission has advised the State Government to monitor and evaluate the implementation of this new policy carefully, and to extend it progressively in order to give the tribal population full rights to collect, process, consume and sell Non-Timber Forest Produce.

vii) While noting with satisfaction the measures initiated by the State Government to tackle the crucial issue of land alienation, the Commission has advised it to expedite action on the recommendations of the Expert Committee on Land Reforms which was constituted under the directions of the Commission. The Commission appreciates the move of the State Government to take up the amendment of Regulation 2/1956 providing for a complete ban on the transfer of tribal land to non-tribals, the involvement of panchyatraj institutions in the detection of illegal transfers, the restoration of land to original owners, and the enforcement of punishment in respect of the unlawful occupation of tribal lands.

Dr Amrita Rangasami, Director, Centre for the Study of Administration of Relief is one of the petitioners in this case. The Commission has, in a sitting on 27 July 2001, heard her suggestions in respect of the need to ensure the development of a

permanent system to deal with the perennial problems being faced in Orissa which are aggravated periodically by emergencies arising out of natural calamities. The Commission requested her to prepare a report containing specific suggestions. Accordingly, Dr Rangasami has submitted a note and has also made a presentation before the Commission on 14 March 2002. She has raised the basic issue that there is a dichotomy between the existing procedure of relief administration and the relevant provisions of the Constitution; she has therefore urged that there should be a paradigm shift from the domain of 'Benevolence', that considers relief to be an act of charity, to a 'Rights'-based approach which acknowledges the citizen's right to food and livelihood and his/her claim upon the State. The issue will be taken up in detail in future hearings of this case.

Administration and Logistic Support

CHAPTER 14

A] Staff

14.1 As of 31 March 2002, the total sanctioned strength of the Commission was 341 posts, while the total number of officers and staff in position in the Commission was 284. Every effort is being made to fill the vacant posts. The constantly increasing workload of the Commission has necessitated the engagement of consultants to cope up with the additional work. A special dispensation has been obtained from Government for engaging upto 20 consultants in the Commission.

14.2 Since it will take the Commission some time to build and develop its own cadre, various methods were used to select staff for the Commission, including deputation, re-employment and direct recruitment. The process of absorption of employees working in the Commission has been continuing, and permanent absorption in the grade of Inspector, Assistants, Personnel Assistants and Constables was initiated during the year.

B] Special Rapporteurs/Representatives

14.3 The scheme of appointing Special Rapporteurs to assist the Commission in its more demanding and sensitive responsibilities for interaction with governmental and non-governmental authorities and others, continued during the year 2001-2002.

During the year under review, Shri Chaman Lal and Shri K.R. Venugopal continued to serve as Special Rapporteurs for the Commission, looking after key human rights issues, including, for instance prison reform, bonded labour, child labour, the monitoring of the functioning of the Agra Protective Home and of the three mental hospitals in Agra, Gwalior and Ranchi. More recently, Ms. Anuradha Mohit has been appointed to serve as Special Rapporteur (Disability).

14.4 With a view to assisting the Commission in the effective performance of the functions assigned to it under the Protection of Human Rights Act, 1993, a scheme has also been in existence since 1999 for the appointment of Special Representatives of the Commission, particularly in States where there is no State Human Rights Commission and the work-load is heavy. In the year 2001-2002, there were four such Special Representatives, namely, Shri P.G.J. Nampoothiri in Gujarat (he has recently been re-designated as Special Rapporteur), Shri N.N. Singh in Bihar, Shri A.B. Tripathy in Orissa and Shri S.V.M. Tripathy in Uttar Pradesh. The Commission has also been utilising the expertise and experience of retired civil servants in other ways. For instance, the Commission has requested Shri K.B. Saxena to prepare a study on issues pertaining to the human rights of Dalits.

C] Core Groups

14.5 Of particular help to the Commission has been the Constitution of Core Groups on a number of critically important issues relevant to the proper promotion and protection of human rights in the country. These Core Groups, comprising some of the most knowledgeable and committed persons in their respective fields, have greatly strengthened the competence and capacity of the Commission to fulfil the functions assigned to it under its Statute.

14.6 The Commission has now established the following:

- a Core Group on Health.
- a Core Group to serve as a Monitoring Mechanism for Consultation with NGOs.
- a Core Group on Disability Related Issues.
- a Core Group of Lawyers.

14.7 The details of these Core Groups have been provided under those sections of this report as are relevant to their work.

D) Use of Official Languages

14.8 Ever since it was established, the Commission has been receiving complaints and reports in Hindi as well as in various regional languages. The translation of regional language reports and complaints received in regional languages and foreign languages is the responsibility of the Hindi Section. During the year 2001-2002, the Commission received a total number of 5,260 complaints in Hindi, regional languages and foreign languages. The Hindi Section is also attending to the translation of the monthly newsletter, annual reports and budget documents of the Commission into Hindi.

14.9 The scheme for giving cash awards to writers for original work in Hindi, as well as for the translation into Hindi of books in regional languages or English relating to human rights, continued during the year. Work has also been initiated to bring out a half yearly Hindi Magazine and a Hindi Glossary of terms associated with human rights.

E] Library

14.10 The Library of the Commission added 857 new titles relating to human rights issues during the year 2001-2002. As of 31 March 2002, 5,873 titles were available in the library. The Commission has taken up a computerisation programme for the library, with the assistance and help from the National Informatics Centre (NIC). The Library has proven to be of great use to interns, research workers and NGOs, in addition to those who serve the Commission.

F] Funds

14.11 Under section 32 of the Protection of Human Rights Act, 1993, the Commission is granted financial assistance by the Central Government by way of grants-in-aid after due appropriation made in this behalf by the Parliament. During 2001-2002, the Commission received Rs.720 lakhs under Revised Estimates as grants-in-aid. The expenditure of the Commission during the year was Rs.693.05 lakhs.

14.12 The accounts of the Commission are prepared in a format prescribed by the Central Government under the NHRC (Annual Statement of Accounts) Rules, 1996. The Comptroller and Auditor General of India audits the accounts. The Comptroller and Auditor General of India have certified the accounts of the Commission for the year 2000-2001 and the accounts are under print. These will be sent to the Government, thereafter they may be placed before each House of Parliament as required under section 34 of the Protection of Human Rights Act, 1993. The Accounts for 2001-2002 are being finalised.

G] Manav Adhikar Bhavan

14.13 The offices of the Commission are, at present, located in Sardar Patel Bhawan and Jaisalmer House in New Delhi. Ever since it was established, the Commission has been facing an acute shortage of office accommodation. With the expansion of its activities and an increase in the number of complaints handled by it, the staff strength of the Commission has also risen and this has further aggravated the problem. The Commission has therefore been keen that a suitable plot of land, centrally located in New Delhi, be allotted to it for the construction of its own building, 'Manav Adhikar Bhawan'. The Chairperson had accordingly, personally taken up this issue with the Minister of Urban Development, Cabinet Secretary and the Union Home Secretary. As a result of the persistent efforts of the Commission, a plot of land measuring 7,397 sq. mts., adjacent to the office of the Central Vigilance Commission in the INA area, was allotted to the Commission by the Ministry of Urban Development in April 2001.

14.14 The Commission has deposited the cost of land with the Central Public Works Department (CPWD) and has taken proprietary possession of the land from the Land and Development Office, Ministry of Urban Development. Preliminary work for the construction of the building is under way and a provision of Rs.50 lakhs has been made in the budget of the Commission for the year 2002-2003 for construction. The Commission has requested the Government to provide sufficient funds at an early date, so that the construction of 'Manav Adhikar Bhawan' can be completed expeditiously.

Summary of Principal Recommendations and Observations

CHAPTER 15

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

15.2 As of the time of writing the present annual report, the eighth such report had not been placed before each House of Parliament, together with a Memorandum of Action Taken, in accordance with the procedure envisaged under section 20(2) of the Protection of Human Rights Act, 1993. (Para 1.2)

15.3 The cycle of delay has thus, once again, been repeated. Worse still, the delay in tabling the annual report before Parliament has resulted in a corresponding delay in releasing its contents to the public. In the process, both the elected representatives of the people of India and the people of India themselves have, in effect, been denied timely and comprehensive information on the work and concerns of the Commission. (Paras 1.3)

15.4 Over the past nine years the Commission has daily endeavoured to give meaning and reality to the Objects and Reasons that led to the adoption of the Protection of Human Rights Act, 1993. It has sought to use to the full the opportunities provided to it by that Act to promote and protect human rights in the country. But it has also had to deal with the infirmities of the Act and the opportunities that these, in turn, have provided to frustrate the efforts of the Commission and, on occasion, the very purposes of the Act itself. (Para 2.1)

15.5 By the sixth year of its functioning, it became increasingly clear to the Commission that certain provisions of the Act required to be re-examined as they were,

in fact, tending to militate against the purposes of the Act itself and lending themselves to being used, on occasion, to thwart the endeavours of the Commission to provide for the 'better protection' of human rights in the country. The Commission therefore requested a former Chief Justice of India to head a high-level Advisory Committee to assess the need for structural changes and amendments to the Act. The advice of that Advisory Committee was given to the Commission in October 1999 and considered by the Commission in February 2000. After a clause by clause discussion of the Act, the Commission formulated its views on the amendments that were required to be made to the Act, keeping in view the major impediments and structural inadequacies experienced by the Commission over a course of seven years in operating the Act. Only then, in March 2000, did the Commission transmit its proposals regarding the amendments required to the Act to the Central Government. (Para 2.5)

15.6 It is a matter of deepest regret to the Commission that, over two years later, those proposals are still pending consideration before the Central Government, despite the Chairperson having personally drawn attention to this matter, both publicly and privately, at the highest reaches of Government. (Para 2.6)

15.7 The Memorandum of Action Taken of April 2002 has this to say in respect of section 19 of the Act which sets down the procedure to be followed in relation to the armed forces:

'the present system of enquiry by the forces and punishment of the guilty persons has been working satisfactorily and, in view of this, it is felt that there is no need at the present stage to change the procedure that has already been spelt out in the Protection of Human Rights Act, 1993 for dealing with armed forces. It is reiterated that the Government of India is transparent in dealing with complaints and there is no apprehension on this account.' (Para 2.7)

15.8 It is not the view of the Commission that the 'present system' of enquiry into allegations of human rights violations by the armed forces is working satisfactorily. The Government is fully aware that section 19 of the Act, as at present worded, prevents the Commission from itself initiating an inquiry into, or investigating, the violation of human rights by the armed forces and that this provision has been widely criticised both at home and abroad. Yet, spokespersons of the Government, even at the highest levels, have frequently referred to the existence of the Commission and its powers under the Act as a sure defence against the violation of human rights by the

armed forces when allegations of such violations are brought against them. The Commission finds this tendency to use it to provide an alibi for possible wrong-doing by the armed forces disturbing, to say the least. This is more so since the Commission clearly considers the 'present system' unsatisfactory, and the existing definition of 'armed forces' — which includes not only the 'naval, military and air forces' but also 'any other armed forces of the Union' — excessively wide. (Para 2.8)

15.9 Despite the existing inadequacies of the Act in this respect, however, the Commission has made clear to the Central Government that the power of the Commission to make 'recommendations' under section 19 must mean, as a corollary, that it has the power to do all that is necessary for the proper discharge of its responsibility. The Commission has thus taken the view that the 'report' that it seeks from the Central Government under section 19(1) of the Act must satisfy this requirement and contain all the material that is necessary to enable the Commission to decide objectively whether to accept the Government's report, and not proceed further in respect of the allegations contained in a complaint, or to make 'recommendations' in respect of that complaint. In the view of the Commission, the 'report' must therefore contain a statement of all of the facts and all of the occurrences relating to the alleged violation of human rights contained in a complaint; it must not merely be confined to the findings or conclusions reached by the Central Government on the basis of facts that are not disclosed to the Commission. The Commission has also made clear that only such a construction of section 19 would promote the 'better protection' of human rights, which is the principal object of the Protection of Human Rights Act, 1993 and that such a construction must be preferred, since it is in consonance with a settled canon in the interpretation of statutes. (Para 2.9)

15.10 The relevant extracts of the opinion of the Commission, spelling out its construction of section 19 of the Act, may be seen on pages 249 to 263 of this report; it deals with the complaint of Smt. Mina Khaton alleging the 'disappearance' of her husband, Mohammed Tayab Ali, who was last seen in the custody of the armed forces. (Para 2.10)

15.11 The indication given in this report of the provisions of the present Act to which amendments have been proposed by the Commission is not exhaustive. A qualitative change is required both in the Act and in the sensitivity with which the Central and State Governments view their responsibilities under it. The same applies to the nature of the manner in which they extend their cooperation to the National and State Human Rights Commissions. (Para 2.13)

15.12 The language of the Statute must be such as to prevent those who have violated human rights from escaping its net. When there is an attempt at concealment, the Commission should find it possible to pierce the veil of evasion and reach the truth. It is a well established principle relating to the wording of statutes that their texts must not lend themselves to interpretations that defeat the very intention of the legislation and lead to unreasonable and untenable consequences. The Commission, therefore, calls upon the Central Government once again to respond positively to the proposals it has made for the amendment of the Protection of Human Rights Act, 1993. It also expresses the hope that, before the position of the Central Government is finalised, if there should be any matters requiring clarification or an exchange-of-views with the Commission, such discussions take place, with a view to ensuring that the high Objects and Reasons of the Act are indeed served in the manner that they require and deserve. (Para 2.15)

15.13 The human rights situation in Gujarat, beginning with the tragedy that occurred in Godhra on 27 February 2002 and continuing with the violence that ensued subsequently, was of the deepest concern to the Commission as the year under review drew to a close. (Para 3.1)

15.14 As of the time of writing this report, the Commission had concluded that, in its opinion, there could be no doubt that there had been a comprehensive failure on the part of the State Government to control the persistent violation of the rights to life, liberty, equality and dignity of the people of that State. The Commission noted that there had been a decline in incidents of violence in recent weeks and that certain positive developments had taken place. However, while recognising that it was essential to heal the wounds and look to a future of peace and harmony, the Commission emphasised that the pursuit of these high ideals must be based on justice and the upholding of the values of the Constitution and the laws of the land. The Commission remained deeply disturbed, in this connection, by persisting press reports stating that charge-sheets filed thus far in respect of certain grave incidents lacked credibility in as much as they were reported to depict the victims of violence as the provocateurs; that FIRs were neither promptly nor accurately recorded in respect of atrocities against women, including acts of rape; that compensation for damaged property was often set at unreasonably low amounts; that pressure was being put on certain of the victims to the effect that they could return to their homes only if they dropped or altered the cases they had lodged; while yet others were being pressured to leave the relief camps even though they were unwilling to do so in the absence of viable alternatives. (Para 3.13)

15.15 The Commission in an Opinion dated 14 July 2000 dwelt at length on various provisions of the Prevention of Terrorism Bill 2000, and opposed that Bill, *inter alia*, because it did not conform with international human rights standards. It reacted similarly on 19 November 2001 when, at the height of the fever occasioned by the 'global war against terrorism,' the Commission opposed the Prevention of Terrorism Ordinance, 2001 which had been promulgated on 24 October 2001. In its Opinion of 19 November 2001, the Commission expressed its position of principle in the following terms:

'Undoubtedly national security is of primary importance. Without protecting the safety and security of the nation, individual rights cannot be protected. However, the worth of a nation is the worth of the individuals constituting it. Article 21 [of the Constitution], which guarantees a life with dignity, is non-derogable. Both national integrity as well as individual dignity are core values in the Constitution, the relevant international instruments and treaties, and respect the principles of necessity and proportionality.' (Para 4.7)

15.16 The Commission is convinced that a proper observance of human rights is not a hindrance to the promotion of peace and security. Rather, it is an essential element in any worthwhile strategy to preserve peace and security and to defeat terrorism. The purpose of anti-terrorism measures must therefore be to protect democracy and human rights, which are fundamental values of our society, not undermine them, even inadvertently. Further, the nature and manner of implementation of such measures must be fully consistent with this purpose, regardless of whether the measures call for greater vigilance in surveillance, the prosecution of terrorist acts under the laws of the land, or the use of force by the police or armed forces of the country to control or destroy terrorists. (Para 4.8)

15.17 It is for these reasons that the Commission continued to remind the agencies of the State that they must act in conformity with the Constitution, the laws of the land, and the treaty obligations of the country. The Commission also continued to draw the attention of the armed forces to the need to observe the guidelines laid down by the Supreme Court in respect of the Armed Forces (Special Powers) Act, 1958, and to the implications and meaning of the provisions and principles laid down in the Indian Penal Code in respect of certain situations in which the use of force can extend even to the causing of death [see Indian Penal Code, Chapter IV, General Exception (acts which are not offences)]. (Para 4.9)

15.18 Despite the existing inadequacies of the Protection of Human Rights Act, 1993 the Commission made clear to the highest echelons of the Ministry of Defence, including the Army Headquarters, and to the Ministry of Home Affairs, the manner in which it construes the provisions of section 19 of that Act relating to the procedure to be followed with respect to the armed forces when allegations of human rights violations are brought against them. In brief, the Commission has taken the position that in the case of unnatural death caused by the use of force, or 'disappearance' from custody, unless it can satisfactorily be shown that the custodian is not responsible for the harm done in custody, or 'disappearance' from custody, the initial presumption of accountability of the custodian will remain un rebutted and the Commission will proceed to act accordingly. (Para 4.10)

15.19 In the course of the year under review, the human rights situation in Jammu and Kashmir remained fraught with difficulties, requiring the close attention of the Commission. (Para 4.11)

15.20 Throughout this period and despite this climate of continuous violence, the Commission pursued its responsibility to promote and protect human rights in Jammu and Kashmir. Whenever the Commission considered it necessary, notice was issued to the concerned authorities of the State Government, the Ministry of Home Affairs and the Ministry of Defence calling for the submission of detailed investigation reports. In other cases, the State authorities were themselves directed to look into the grievances, remedy them, and report back to the Commission on the action taken. In instances when the Commission reached the conclusion that the reports received were evasive, unconvincing or inadequate, it called for further information on the basis of a careful analysis of these reports, often by its own Investigation Division. On frequent occasions, the Commission interacted with the complainant, advising him/her of the efforts made and eliciting his/her responses in respect of the investigations conducted and the reports received. The complaints covered a wide range of allegations, including those of enforced disappearances, illegal detention and torture, custodial death, extra-judicial killings and fake encounters. (Para 4.12)

15.21 The Commission also continued to pursue matters of which it had taken cognisance earlier. Notable among these were the aftermath of the killing of 35 Sikhs in Chittisinghpora on 20/21 March 2000 and the killing of 5 persons in Patribal by the security forces on 25 March 2000, who were stated to be responsible for the killings in Chittisinghpora. In respect of these matters, the Commission had directed the State Government to furnish it with a copy of the report of the Commission of Inquiry

headed by Shri Justice S.R. Pandian, as well as to keep it informed in respect of the case before the Chief Judicial Magistrate, Anantnag concerning the killing of the five persons in Patribal. (Para 4.13)

15.22 On 14 July 2001, the State Government informed the Commission that it had decided to accept the report and recommendations of the Pandian Commission of Inquiry in totality. It further informed the Commission that personnel of the Jammu and Kashmir police had been formally charge-sheeted and a full-fledged departmental inquiry had been instituted against them; that an FIR had been registered and a special team of investigators had been appointed to complete the investigation; and that, in so far as personnel of Central Security Forces were concerned, the Ministry of Home Affairs, Government of India had been requested to take appropriate action against them. It was further stated that *ex-gratia* relief of Rs.1 lakh had been paid to the next-of-kin of those who had been killed. The Commission, accordingly, in its proceedings of 25 July 2001, closed its consideration of this matter. (Para 4.14)

15.23 The Commission was, however, deeply disturbed to read press reports to the effect that those reportedly killed in encounters in Patribal were identified as villagers who had, according to the people of the area, been killed in 'fake encounters' and wrongly blamed for the Chittisinghpura killings. On further enquiries by the Commission, the Government indicated that samples had been taken for DNA testing in respect of those who had been killed in Patribal. It remained a matter of the gravest concern to the Commission, as expressed in its annual report for the year 2000-2001, that despite the passage of many months, the results of the DNA testing had not been made public. In its preceding report, therefore, the Commission had observed that the manner in which the Patribal incident had been handled:

'... has done great harm to the cause of human rights in the State and to the reputation of the armed forces and the Governmental authorities, both at the Centre and in the State.'

The Commission went on to:

'... urge the Government to disclose the facts relating to the deaths in Patribal and take appropriate action if wrong has been done. The long-term interests of the State and the security of the nation can never be advanced by the concealment of possible wrong-doing. It is a serious mistake to think otherwise.' (Para 4.15)

15.24 The Commission's worst suspicions in respect of this matter gained credence when an article appeared in the Times of India of 6 March 2002 stating that officials had tampered with the DNA samples of the relatives of those killed in Patrival in order to prove the test results negative, and that for more than one year, the Jammu and Kashmir Government had 'been sitting over a damning report from Hyderabad.' The Commission therefore took up this matter again on 13 March 2002, directing the State Government, as well as the Ministry of Defence and the Ministry of Home Affairs, Government of India, to submit comprehensive up-to-date reports on the action taken in this matter, together with the action being contemplated, to correctly identify the five deceased persons. The reports were awaited. The Commission has every intention of pursuing this matter till justice is done. (Para 4.16)

15.25 Another case which is a source of continuing embarrassment to the country is that of Jalil Andrabi. The case remains exactly where it was a year ago. The Commission urges the Central Government to ensure that action is taken without further prevarication to bring to book those who were responsible for committing this heinous crime. It should not be said that the processes of our country protect those who are guilty of such grievous wrongs and human rights violations. (Para 4.17)

15.26 The Commission continued to hold hearings in respect of the problems being faced by members of the Kashmiri Pandit community, of whom some 3,00,000 have had to leave the Valley since the insurgency began, together with over a 1,000 Muslim families and a number of Sikh families. In order to assist them in dealing with their problems, the Commission had encouraged the Government of Jammu and Kashmir to constitute a Committee at the State-level to examine their difficulties expeditiously and to help resolve them. The Special Rapporteur of the Commission was requested to serve as a member of that Committee. While the Committee was initially able to help, in some measure, in providing some assistance to the aggrieved, it has not functioned with the regularity expected of it. This has been a matter of concern and anxiety to the Commission as also to the Kashmiri Pandits who continue to face great difficulties and hardships. The Commission finds the present situation unacceptable and deeply frustrating, not least since its Chairperson has personally had occasion to discuss these matters with the highest echelons of the State Government when he visited Jammu and Kashmir and was given the assurance that the problems facing the Kashmiri Pandits would receive priority attention. Regrettably, this has not been the case. The Commission therefore urges the State Government to react with greater promptness and sensitivity to the concerns and grievances of members of the Kashmiri Pandit community to re-activate the Committee that has been constituted and to ensure that it functions with regularity and a sense of purpose. (Para 4.20)

15.27 Two particularly important cases deserve mention in this section of the report. The first related to the complaint brought by Smt. Mina Khatoon alleging the 'disappearance' of her husband, Mohammed Tayab Ali, who was last seen in the custody of the armed forces. The Commission elaborated its views on Section 19 of the Protection of Human Rights Act, 1993 when dealing with this case. (Para 4.22)

15.28 The second case related to a matter that was referred to this Commission by the Manipur State Human Rights Commission. The latter had, originally, taken *suo motu* cognisance of a press report alleging that five persons had been killed and three others injured as a result of indiscriminate firing by security forces in Churachandpur, as a retaliatory action undertaken by them in the aftermath of an attack on a colleague by underground elements. However, as the matter related to the conduct of personnel of the Central Reserve Police Force (CRPF), the State Human Rights Commission considered it appropriate to refer the case to the National Human Rights Commission, which had jurisdiction in such matters. Upon taking cognisance of this case, this Commission called for and received a report from the Ministry of Home Affairs, which it considered with care. In a Proceeding of 28 September 2001, the Commission, going on the basis of an on-the-spot study made by the Manipur Human Rights Commission prior to the referral of the case to the National Human Rights Commission, decided that this was an appropriate case in which to recommend the payment of Rs.2 lakhs as immediate interim relief to the next-of-kin of each of four persons who had died, and Rs.25,000 to each of the four persons who were injured. (Para 4.23)

15.29 It has been a major priority of the Commission, ever since it was established, to curb custodial violence. Towards this objective, the Commission issued guidelines in December 1993 stating that it must be informed of any incident of custodial death or rape within 24 hours of any such occurrence. Information on custodial deaths was to be followed by a post-mortem report, a videography report on the post-mortem examination, an inquest report, a magisterial enquiry report, a chemical analysis report etc. (Para 4.24)

15.30 The Commission is gratified to note that, in accordance with its guidelines, the agencies of the State have been prompt, by and large, in informing the Commission whenever such incidents have occurred. An effort has, however, sometimes been made by a State Government and facilitated by a State Human Rights Commission to use section 36(1) of the Act, to block the jurisdiction of the National Human Rights Commission by asserting that it has taken cognisance of a custodial death prior to this Commission, despite the fact that the report of the State authorities on the incident

had been sent to the National Commission in accordance with its guidelines of 1993, (which were issued long before any State Commission came into existence) and were merely copied to the State Commission. The latter also often lack the facilities that the National Commission has to scrutinise reports of custodial deaths. Such unnecessary complications clearly underline the need for the amendment of section 36(1) of the Act along the lines already recommended by the Commission. It has been observed that the subsequent reports needed for the scrutiny of such incidents have often been delayed. To avoid inordinate delay, the Commission issued fresh guidelines in December 2001 enjoining the States to send the required reports within two months of the incident and that these reports were to include, *inter alia*, a post-mortem report that should be submitted in accordance with a new format that had been devised by the Commission. (Para 4.25)

15.31 The Commission is disturbed by the increase in the number of deaths both in police and in judicial custody in 2001-02. The figures reinforce the view of the Commission that there is need for better custodial management and a deeper orientation of police personnel in matters relating to human rights. The Commission is also of the view that the Human Rights Cells established by the State Governments need to play a more pro-active role in improving conditions in the prisons, including the provision of health and related facilities. It accordingly urges all State Governments to give greater attention to these matters. (Para 4.27)

15.32 Since the Commission was established in October 1993, it has received reports of 7,256 deaths having occurred in police or judicial custody. An analysis of some 5,500 such cases indicates that about 80 per cent of the deaths that occurred in judicial custody were attributable to causes such as illness and old age. The remaining 20 per cent occurred for a variety of reasons including, in certain cases, illness aggravated by medical negligence, violence between prisoners, or suicide. All of these point to the great need for the better maintenance and running of prisons, better trained and more committed staff, including medical staff, and an improvement in the capacity of prisons to deal with mental illness and morbidity among inmates. The Commission recommends that all of these areas, too, receive the increased attention of the State Governments. (Para 4.31)

15.33 With a view to ensuring prompt and accurate reporting to the Commission in respect of cases of custodial death, the Commission had recommended that the post-mortem examination in respect of all such cases be video-filmed and that the film be transmitted to the Commission, along with all other relevant reports, so as to enable

the Commission to make an independent assessment as to the cause of such deaths. In its last annual report the Commission had pointed out that the States of Maharashtra, Manipur and Uttar Pradesh, and the Union Territory of Andaman and Nicobar Islands, had not yet complied with the recommendation of the Commission pertaining to the video-filming of the post-mortem examination, while the States of Bihar, Gujarat, Nagaland and Kerala were still considering the adoption of the Model Autopsy Form prescribed by the Commission. (Para 4.38)

15.34 Acceptance of the recommendation relating to the videography of post-mortem examinations is still awaited from the States of Manipur and Uttar Pradesh, while the States of Bihar, Kerala and Nagaland are yet to respond favourably in respect of the Model Autopsy Form. The Commission urges these States to join all of the others, who have responded positively to the recommendations of the Commission. (Para 4.39)

15.35 In modification of its instructions, as mentioned earlier in this report, the Commission directed that, while its instructions regarding the videography of the post-mortem examination in respect of a death in police custody would remain in force as before, the requirement of videography of the post-mortem examination in respect of a death in jail would be applicable only when the preliminary inquest by the magistrate had raised suspicion of some foul play, or when a complaint alleging foul play had been made to the authorities concerned, or there was any other reason for suspicion of foul play. (Para 4.41)

15.36 For the past many years, the Commission has been emphasising with increasing urgency that there must be major police reforms in the country if the human rights situation is to improve, if the investigation work of the police is to be insulated from 'extraneous influences', and if the police is to be accorded the trust that it needs for the proper discharge of its responsibilities to the people of this country. (Para 4.42)

15.37 In the course of the year, the Commission continued to follow the proceedings before the Supreme Court in respect of that case. It also continued to impress upon the Central and State Governments that reforms along the lines recommended by the Commission, the National Police Commission and others, were absolutely essential to the future well-being of the country. (Para 4.44)

15.38 The Commission has already referred, in the present report, to the large-scale violation of the rights to life, liberty, equality and dignity of the people of Gujarat,

starting with the tragedy in Godhra on 27 February 2002 and continuing for some two months thereafter as violence spread to other parts of the State. In that connection, the Commission had occasion to reflect, once again, on the necessity of police reform. As the Proceedings of the Commission in that context are annexed in full to the present report, (see **Annexure 2 and 3**), there is no need to repeat them here. Suffice it to say that the Commission urges both the Central and State Governments yet again, through this report, to take the situation in Gujarat as a warning and a catalyst, and to act with determination to implement the various police reforms recommended by the Commission in those Proceedings and in its earlier reports. (**Para 4.45**)

15.39 The Commission has noted, in this connection, that the Memorandum of Action Taken of April 2002, filed by the Central Government in respect of the Commission's annual report of 1999-2000 refers to certain measures being taken under the 'Police Modernising Scheme' to improve the police force in the States. The Commission welcomes these measures. It would like to point out, however, that these measures will not suffice; the heart of the matter relates to restoring the independence and integrity of the police so that it can conduct investigations without political and other 'extraneous influences' being brought to bear on it. It was to meet this major objective that the recommendations of the Commission, among others, were devised. It is these recommendations that must be acted upon, if the rot that has set-in is to be cured and if the rule of law is to prevail. (**Para 4.46**)

15.40 The Commission has noted, with appreciation that, upon its recommendation, State Governments have established Human Rights Cells in the police headquarters of their respective capitals. These cells for which elaborate guidelines were devised by the Commission in consultation with the State Governments, were expected to function as vital links between the Commission and the State Government. The Commission has observed, however, that the cells are not being able to fulfil the roles assigned to them for want of adequate infrastructure. (**Para 4.47**)

15.41 The Commission therefore urges the Governments of the States/Union Territories to review, once again, the infrastructural and personnel needs of the State Human Rights Cells, relating these to the number of complaints received and processed by them, and to take the action that is required to strengthen them accordingly, so as to ensure their effective functioning. While making this review, the State Governments should take into account not only the number of complaints that are received in the cell from this Commission, but also from the respective State Human Rights Commissions, where they exist. (**Para 4.48**)

15.42 In its preceding annual report, the Commission had emphasised that the value of Human Rights Cells will, in the long-term, depend on the quality and commitment of those who are appointed to head them and the support that they receive from the highest levels of the political and administrative leadership in each State. The Commission therefore recommended that special care be taken in regard to the appointments that are made in respect of those who are charged with the responsibility of heading these cells and that the fullest cooperation be extended to them. The Commission would like to reiterate this recommendation, for only if it is acted upon with sincerity will these Human Rights Cells function with the integrity, independence and capability required of them and serve the vital purpose that this Commission had in mind in urging that they be established. (Para 4.49)

15.43 As mentioned in the report for the year 2000-2001, the Commission has introduced a system of obtaining six-monthly consolidated reports from the jail authorities of all States/Union Territories regarding the medical examination of prisoners on admission to jail. The Commission urges those States that have not been adequately responsive to send the requested data to the Commission. The Commission would like to underline that the States have an obligation to ensure the medical examination of prisoners on admission to jail. (Para. 4.62)

15.44 The Commission has been greatly distressed by the reports it has received of the presence of mentally ill persons in prisons, in violation of the provisions of the Mental Health Act, 1987 and the specific directions given by the Supreme Court on the subject. Directions issued by the Commission through a letter addressed by the Chairperson to the Chief Ministers of all the States/UTs on 11 September 1996 were reiterated on 7 February 2000 and the Criminal Justice Cell has been monitoring compliance. A review made in January 2001 revealed the presence of mentally ill patients in jails in 10 States, namely, Rajasthan, Tamil Nadu, Sikkim, Delhi, West Bengal, Jammu and Kashmir, Karnataka, Manipur, Orissa and Assam. Efforts of the Commission have resulted in the situation being corrected in Rajasthan, Tamil Nadu, Sikkim, Delhi and Manipur. The Commission is distressed to note that as many as 112 mentally ill patients are still being held in Alipore Jail, Calcutta. The Commission has specifically requested the Chief Secretary, West Bengal to arrange for the proper treatment of these prisoners and their rehabilitation. (Para 4.63)

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

implementation. During the period under review, the Commission regrets to note that little substantial progress has been made in respect of the treaties/instruments to which it had drawn attention in its annual report for the year 2000-2001. These included the following:

- Protocols to the Convention on the Rights of the Child
- Protocols to the Geneva Convention
- Convention Against Torture
- Convention and Protocol on the Status of Refugees

The Commission considers it necessary to repeat its recommendation that both the Optional Protocols to the Convention on the Rights of the Child be adopted and appropriate action taken to this end. It also once again urges that the Government examine the 1977 Protocols to the Geneva Convention of 1949 expeditiously and offer its comments to the Commission at the earliest. As far as the Convention Against Torture is concerned, the Commission is of the view that the process of ratification must proceed with far greater speed and clarity of purpose than has hitherto been the case. The Commission therefore urges the Government, once again, to take the action that is needed to complete the process of ratification without further embarrassing delay. In regard to the process that has been initiated by the Central Government to examine the question of the treatment of refugees, including the different possibilities such as enactment of a national refugee law and/or the possibility of signing the Convention on the Status of Refugees and the related Protocol, the Commission hopes that this process will be completed within a time-frame that is clear and reasonable, so that this important matter is expeditiously acted upon in a manner that is consistent with the dictates of our Constitution, the decisions of the Supreme Court and international instruments on this subject. (Paras 5.14 to 5.23)

15.46 On 10-11 April 2001, the Commission organised the third of its major gatherings on Public Health and Human Rights. The Regional Consultation was arranged in collaboration with the Ministry of Health and Family Welfare and the World Health Organisation (WHO). Representatives of NGOs, public health experts and human rights activists attended the Consultation, as did jurists, policy makers, scientists and other interested members of civil society. The Consultation focused on three vital issues concerning public health i.e. Access to Health Care, Tobacco Control and Nutrition. The recommendations generated at the Consultation were considered and adopted by the Commission. (Para 6.5)

15.47 The recommendations of the Commission are, at present, under the consideration of the Central and State Governments. The Commission hopes and trusts that they will be acceptable to the Government and that it will be advised in detail of the response of the Government and of the action taken on the recommendations. (Para 6.6)

15.48 The Commission finalised its recommendations on a range of issues relating to Human Rights and HIV/AIDS in follow-up of the National Consultation on this subject which it organised in New Delhi on 24 - 25 November 2000, in collaboration with the National AIDS Control Organisation, Lawyers Collective, UNICEF and UNAIDS. The issues covered in the recommendations included: consent and testing, confidentiality, discrimination in health care, discrimination in employment, women in vulnerable environments, children and young people, people living with or affected by HIV/AIDS and marginalised populations. The recommendations of the Commission have been sent to the concerned Governmental agencies for the initiation of appropriate action. (Para 6.7)

15.49 The Commission has been deeply concerned about the wide-spread prevalence of iron deficiency among expectant mothers, which has resulted in high infant and maternal mortality and low birth weight related developmental disabilities, particularly among the poorer sections of society. (Para 6.9)

15.50 In order to evolve a plan of action for systematic improvements in the health care delivery system, a two-day Workshop on Health and Human Rights with Special reference to Maternal Anaemia was organised by the Commission on 26 - 27 April 2000 in partnership with the Department of Women and Child Development and UNICEF. The recommendations of that Workshop were formally transmitted to the Central Government for appropriate action. (Para 6.10)

15.51 While the response of the Government to those recommendations is yet to be received, the Memorandum of Action Taken filed by the Central Government in respect of the Commission's annual report for 1999-2000 refers to the launch, on 15 October 1997, of the nationwide Reproductive and Child Health (RCH) programme, in which Nutritional Anaemia Control is given high priority. (Para 6.11)

15.52 The Commission has taken note of these observations and looks forward to further, more detailed comments, on the recommendations contained in its annual report for 2000-2001. The Commission intends to pursue this matter with all the

concerned Ministries of the Government to whom its recommendations have been sent, and trusts that they will respond to the Commission's recommendations fully and positively. (Para 6.14)

15.53 During the course of the year under review, the Commission continued to work on the issue of sexual harassment at the work place. It will be recalled that, in its preceding report, the Commission had drawn attention to the guidelines issued by the Supreme Court in its landmark judgement in the case **Vishaka vs. State of Rajasthan, 1997 (6) SCC 241** and observed that these guidelines were not being implemented adequately either in the public sector or in the private sector. The Commission had also reported on the decisions taken in a meeting convened under the Chairmanship of Justice Smt. Sujata V. Manohar on 1 March 2001 where the precise role of the Complaints Committee and other pertinent matters arising out of that judgement were elucidated and explained. (Para 7.4)

15.54 In a parallel effort, the Commission wrote to the Department of Personnel and Training (DOPT) recommending that 'the findings of the Complaints Committee in all matters pertaining to sexual harassment at the place of work should be considered as final against the delinquent official, as this would lead to early decision on the sensitive issue, and, save the victim from undue harassment. For this purpose the inquiry conducted by the Complaints Committee should be deemed as the inquiry conducted in a departmental inquiry under the disciplinary proceedings drawn up against the delinquent official.' That Department, in turn referred the matter to the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) for examination, which gave the opinion that such a procedure could not be followed. The Commission, thereafter, sought the advice of Shri P. Chidambaram, Senior Advocate. He has opined that there is no legal impediment to amending the Service Rules in such a manner that the inquiry conducted by the Complaints Committee be treated as a departmental inquiry. The Commission therefore intends to pursue this matter further. (Para 7.10)

15.55 The Commission considered it essential to take serious note of harassment of women passengers in trains. After considering the matter in its several meetings, including discussions involving the Government Railway Police (GRP)/Railway Protection Force (RPF), senior officials of the Railway Board and representatives of Jagori, the Commission made a series of recommendations to the Railway Board. (Para 7.13)

15.56 The Commission intends to check, from time to time, whether adequate action is being taken on these recommendations. It would also appreciate it if the Ministry of Railways could advise it of the steps being taken to follow-up on these matters. (Para 7.14)

15.57 The Supreme Court had, in its order dated 11 November 1997, passed in writ petition (civil) No.3922 of 1985, requested the Commission to be involved in the monitoring of the implementation of the Bonded Labour System (Abolition) Act, 1976. The order stated that 'the concerned authorities would promptly comply with the directions given by the NHRC in this regard.' The Commission has, since then, been monitoring the implementation of the Bonded Labour System (Abolition) Act, 1976 through its Special Rapporteurs Shri K.R. Venugopal, IAS (Retd.) in the States of Andhra Pradesh, Karnataka, Tamil Nadu and Kerala and Shri Chaman Lal in the carpet belt of Uttar Pradesh. Shri Chaman Lal has also been assisting the Member, Dr Justice K. Ramaswamy, in State-level reviews of the Bonded Labour and Child Labour situation. Dr Justice K. Ramaswamy has personally carried out district-level reviews in Andhra Pradesh, through visits to Warangal (29 September - 3 October 2001), Medak (23 - 26 June, 2001), Nizamabad (10 - 15 November 2001) and Hyderabad (31 January - 3 February 2002). He has also carried out State-level reviews of the situation in Rajasthan (8 - 9 June, 2001), Uttar Pradesh (7 July, 2001), Orissa (3 - 4 November 2001) and Maharashtra (18 - 19 January, 2002). (Para 8.1)

15.58 The reviews conducted by Dr Justice K. Ramaswamy have indicated:

- There is reluctance on the part of the top administration in almost every State to admit that the problem of bonded labour still exists. Most of the States hold the view that, with the coming into force of the Bonded Labour Act, 1976, all the bonded labourers were released and the problem was solved for ever.
- Mandatory vigilance committees at the district and sub-divisional headquarters are not in position at many places. Even where such committees were constituted they have become defunct over the years. The committees have not made a worthwhile contribution anywhere in terms of identification, release and rehabilitation of bonded labourers. Wherever bonded labourers have been detected, the credit must go to NGOs and social activists who have been bringing these cases to the notice of an apathetic and unresponsive administration.
- The funds provided by the Government of India under the Centrally Sponsored

Scheme for the rehabilitation of released bonded labourers have been utilised to a very small extent because of a lack of interest and commitment on the part of the District Magistrates to the cause of bonded labourers. Rehabilitation of migrant bonded labourers is seen to have been totally neglected everywhere. They are invariably dispatched to their native districts without receiving any rehabilitatory grant.

- The efforts of the Labour Ministry, Government of India to provide financial grants for awareness generation, the survey of bonded labour and an impact/evaluation study have not evoked an encouraging response from many States. Very few States have, as yet, actually availed of the offer.
- Prosecution of offenders under the Bonded Labour System (Abolition) 1976 Act has, in fact, been neglected in every State that has been reviewed so far. (Para 8.2)

15.59 With the efforts of the Commission, vigilance committees have now been constituted in all the districts and sub-divisional headquarters of the States covered by the reviews undertaken by the Member. They are required to meet regularly and their functioning is to be supervised by the Divisional Commissioners. The Member has been emphasising to the District Magistrates that it is necessary to rehabilitate the released labourers expeditiously so that they do not relapse into bondage. He has also been suggesting that Panchayati Raj institutions be involved in the identification, release and rehabilitation of bonded labourers, and that the Panchayati Raj Act be amended suitably to achieve this end, as has been done in Karnataka. (Para 8.3)

15.60 Dr Justice K. Ramaswamy, Member assisted by Shri Chaman Lal, carried out an over-all review of the Child Labour situation in Rajasthan, Uttar Pradesh, Orissa and Maharashtra during the period covered by this report. The review was based on the directions issued by the Supreme Court in its landmark judgement of 10 December 1996, in writ petition (civil) No.465/1986 M.C. Mehta vs. State of Tamil Nadu and others. (Para 8.15)

15.61 The Ministry of Labour, Government of India has expressed the view that the directions of the Supreme Court are being implemented with great earnestness. (Page 4 of their publication entitled 'Policy and Programme for the Rehabilitation of Working Children and Manual for Implementation of National Child Labour Projects'). The Commission, however, has found the situation to be far from satisfactory in the States that it has studied and reviewed during the period covered by this report. It therefore

urges both the Central and State Governments to give greater care to the implementation of the directions of the Apex Court to bring about a higher level of accountability in the administration to achieve this purpose. (Para 8.16)

15.62 While continuing its drive to end child labour, the Commission is constrained to observe that, despite the repeated pronouncements of the Supreme Court and monitoring by various agencies including the Commission itself, widespread child labour persists in the country. There are many reasons for this including, regrettably, the inherent deficiencies in the existing legislation relating to child labour. Article 24 of the Constitution provides ‘that no child below the age of fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment’. The Commission holds the view that the term ‘hazardous’ should necessarily be interpreted with reference to what is hazardous for the child, and not merely in relation to certain processes/occupations being categorised as hazardous, which is the approach adopted in the Child Labour (Prohibition and Regulation) Act 1976. The Commission is strongly of the view that the entire issue of child labour must be viewed through the perspective of the rights of the child. In this perspective, Article 24 of the Constitution must be read with Articles 21, 39(e) and 39 (f) and 45 and also with the provisions of the principal United Nations human rights treaties including, above all, the Convention on the Rights of the Child, 1989 which has been ratified by India. The present situation is clearly unacceptable. For all of the efforts made, there are many individuals and groups who have worked with great dedication and skill to end child labour, the results are still inadequate. They will, unfortunately, remain inadequate until the laws relating to child labour are radically re-thought and re-written, and brought into line with a proper appreciation of what the rights of the child should mean in terms of policy choices and accountability. The nation-wide provision of free and compulsory education for all children until they complete the age of 14 years is intrinsic to any real progress in this matter. The effort to achieve this great objective, on which depends the future of our children no less than of our country, must move beyond debates to amend the Constitution, and find expression in practical programmes for every district, village and family of India. There can be no greater challenge or necessity, and no greater achievement, than to educate the children of India, and to free them from the bondage of child labour. (Para 8.27)

15.63 The Commission therefore urges the Government of India to act with speed and determination to re-write the laws regarding child labour and, acting with the State Governments, set a time-frame to achieve free and compulsory education for the children of the country. (Para 8.28)

15.64 The Commission is of the view that it is of vital importance that the right to livelihood and dignity of lakhs of vulnerable citizens of this country, who are affected by the acquisition of land for mega projects, should be protected in the manner proposed by the Commission. The Commission takes this opportunity to urge, once again, that the National Policy to be adopted in this respect must be based on principles that are fair, just and transparent and that conform with the Constitution and the treaty obligations of this country, particularly ILO Convention 107, to which India is a party and which provides for the protection of the rights of indigenous and tribal people. (Para 8.30)

15.65 The Commission has been interacting with the Central and State Governments to take stock of the facilities provided to persons with disabilities. The Commission has recommended that the facilities and procedures for providing and giving effect to such measures should be standardised and streamlined for the proper implementation of the new Act. (Para 8.33)

15.66 The Commission has, already, reviewed the working of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and suggested a number of amendments to this legislation, which have been detailed in its annual report for 2000-2001. (Para 8.34)

15.67 The Commission successfully championed the need to enumerate the disabled in Census 2001; this was agreed upon. However, the Commission is of the opinion that much still remains to be done to remove societal neglect of the disabled, and to provide them access to the facilities and services to which they have a right. (Para 8.37)

15.68 The eminent activist and author, Smt. Mahasvetadevi, President, Denotified and Nomadic Tribals Rights Action Group, sent a petition to the Commission on the plight of the Denotified and Nomadic Tribal Communities of India referring to their ill-treatment by the administration, and by the police in particular. The Commission thereafter convened a meeting of the Chief Secretaries and senior officers of a number of concerned states on 15 February 2000 to deal further with this matter. A number of specific recommendations were then made to the State Governments and the Commission has sought to follow-up on the action taken on those recommendations. Regrettably, the situation on the ground has not yet perceptibly altered for the better and the responses of most State Governments has been desultory. The Commission will therefore pursue this matter, which affects most

seriously the human rights of members of the Denotified and Nomadic Tribes and reflects most poorly on the capacity of the State and society to treat them with the respect that is their right. (Para 8.47)

15.69 The Commission had also recommended that all those State Governments that had enacted the 'Habitual Offenders Act', should take the steps to repeal that Act. The responses on this point have thus far been inadequate. The Commission urges the Ministry of Home Affairs to pursue this matter, just as it will itself. (Para 8.49)

15.70 The Commission 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. (Para 8.50)

15.71 While a definite momentum has been created to end the unconscionable practice of manual scavenging, a decisive effort must now be made, with the involvement of the political leadership of the country at the highest level, to follow through until this practice ceases to exist. Although the Memorandum of Action Taken for the year 1999-2000, tabled by the Ministry of Home Affairs before Parliament, states that a variety of initiatives have been taken by the Central and State Governments, the vigour and commitment of these actions will need to be intensified if the plight of manual scavenging is conclusively to be eradicated if this practice that has brought shame to this country and degradation to its citizens is to be considered over, once and for all. The Commission therefore urges all concerned to lend their full might and exercise their will to achieve this objective by Gandhi Jayanti 2002. (Para 8.56)

15.72 The Commission continued to monitor the relief and reconstruction effort on behalf of those stricken by the super-cyclone that hit Orissa in October 1999, concentrating on the implementation of its recommendations of 8 December 1999 and 21 August 2000, to which reference has been made in earlier annual reports of the Commission. (Para 8.57)

15.73 On 29 January 2002, the Chairperson personally convened a special review meeting at Bhubaneswar, which was attended by the Chief Secretary and all of the Secretaries of the Departments concerned with the relief and reconstruction work. (Para 8.58)

15.74 The review indicated that progress in the construction of cyclone shelters was

still slow. As recommended by the Commission, a total of 100 multi-purpose cyclone shelters are to be constructed — 60 under the Chief Minister's Relief Fund and 40 with World Bank assistance. Work on 43 cyclone shelters financed from the Chief Minister's Relief Fund had already been taken up. However, there had been no progress in the construction of cyclone shelters with assistance from the World Bank. (Para 8.61)

15.75 A major concern of the Commission during the year under review was the stand it should take at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, that was held in Durban between 31 August - 8 September 2001. (Para 8.76)

15.76 After the World Conference, the Commission has been engaged in an effort to analyse the Declaration and Programme of Action that were adopted in Durban and to devise a strategy to follow-up on those important documents and the statement that was jointly agreed upon by the forty-seven National Institutions for the Promotion and Protection of Human Rights that were present in Durban for the Conference. The Commission intends to pursue these matters seriously in the period ahead, and to monitor the implementation of the Durban documents by the concerned authorities in this country. (Para 8.78)

15.77 With a view to preventing the employment of children by Government servants the Commission has continued to pursue this matter with the Central and the State Governments. The Commission had recommended that the relevant Service Rules governing the conduct of Central and State Government employees be amended to achieve this objective. (Para 9.1)

15.78 The Union Ministry of Personnel and Public Grievances and Pensions (Department of Personnel and Training) has informed the Commission that the Central Government has amended the All India Services (Conduct) Rules, 1968 as well as the Central Civil Services (Conduct) Rules, 1964 appropriately. (Para 9.2)

15.79 The majority of States have also brought about the required amendments to the Conduct Rules of their employees. In its annual report for the year 1999-2000, the Commission indicated that the States of Arunachal Pradesh, Bihar, Gujarat, Haryana, Kerala, Manipur, Meghalaya, Nagaland, Orissa, Punjab, Rajasthan and Uttar Pradesh had not yet taken a decision in this regard. The States of Bihar, Gujarat and Haryana have since complied with the recommendations of the Commission. The response of the remaining nine States is, however, still awaited. Of the three newly formed States

of Chhattisgarh, Jharkhand and Uttranchal, the former two States have carried out the requisite amendments in the Conduct Rules of their employees. The State of Uttranchal has reported that the matter is under active consideration. (Para 9.3)

15.80 The Commission is concerned that this matter should not rest with the amendment of Conduct Rules. The Rules must be monitored with zeal, if the odious practice of employing children as domestic help is to end. The Commission intends to continue to monitor this matter and to see whether the Central and State Governments will actually take action against those public servants who continue to persist in employing children as domestic servants. (Paras 9.4)

15.81 The Commission continued to monitor the functioning of the Ranchi Institute of Neuro-Psychiatry and Allied Sciences (RINPAS), the Institute of Mental Health and Hospital, Agra and the Gwalior Mansik Arogyashala in accordance with the mandate given to it by the Hon'ble Supreme Court through its order of 11 November 1997 in writ petitions (civil) No. 339/86-901/93 and 448/94 and writ petition (civil) No. 80/94. (Para 9.5)

15.82 The Chairperson of the Commission personally visited the Institute of Mental Health Agra on 7 April 2001 and reviewed its functioning. This was followed by a meeting of the Directors and Chairpersons of the Management Committees held at the Commission's headquarters on 8 May 2001. The Health Secretaries of the States of Jharkhand, Uttar Pradesh and Madhya Pradesh also attended this meeting, when an up-to-date assessment was made of the compliance of the directions of Supreme Court, issues being identified institution-wise. The Chairperson urged the Heads of the Management Committees to assert their authority and to get the problems of these institutions resolved by eliminating bureaucratic redtape. He emphasised the need to ensure that the Directors of these institutions are allowed to exercise the powers given to them under the notifications of autonomy issued by the Governments in respect of these institutions. (Para 9.7)

15.83 Despite the efforts of the Commission to have all State Governments act on the basis of the report prepared for it on Quality Assurance in Mental Hospitals, much remains to be done for the proper care of those suffering mental disabilities. (Para 9.14)

15.84 In preceding annual reports, the Commission has dwelt at some length on the situation that prevailed in the Sultan Alayudeen Dargah in Goripalayam near Madurai, where patients were often brought by their relatives in the hope of a healing

by faith, and then been left behind in the Dargah often in chains. After being dissatisfied by the efforts of the State Government to remedy the situation, the Commission had appointed a Committee under the eminent psychiatrist, the late Dr K.S. Mani of Bangalore to go into this matter. The recommendations of the Mani Committee, which were adopted by the Commission on 3 January 2001 and transmitted to the Tamil Nadu Government for appropriate action, may be seen on pages 295 to 296 of the present report. (Para 9.15)

15.85 Despite these recommendations, however, a shocking incident occurred on 6 August 2001, when 28 inmates of the Baddhusa Private Mental Asylum in Erwadi of Ramanathapuram district, Tamil Nadu, lost their lives in a fire, primarily owing to the fact that they had been kept in chains. The Commission was greatly disturbed by the incident and the failure of the State Government to prevent this tragedy. Taking a grave view of the matter, it asked all States and UTs to certify that no mentally ill patients were chained and kept in captivity. This, the Commission felt, was essential in order to prevent the recurrence of any such tragic incident in future. In letters addressed to the Chief Secretaries of all the States and Chief Administrators of all Union Territories, the Commission requested them to have the requisite reports sent to the Commission by 31 January 2002. (Para 9.16)

15.86 The Commission regrets to note that the response of the concerned authorities has not been very forthcoming in some cases. (Para 9.17)

15.87 Ever since the World Conference on Human Rights in Geneva in June 1993, greater emphasis has been placed on the value of individual States formulating National Action Plans for Human Rights. The elaboration of such national plans has also been the subject of frequent discussion in workshops organised by the United Nations for participants from the Asia-Pacific regions. (Para 10.2)

15.88 The Commission has been of the view that the development of a national plan for human rights can help crystallise programmes and policies that are human rights-friendly across the entire range of governmental activity. Such a plan can assist to identify issues having a bearing on human rights in the work of a variety of Ministries and Departments, and it can reorient attitudes and priorities across the spectrum of governmental endeavour. It can, further, add legitimacy and strength to the voice of those who advocate good and humane governance as essential to the well-being of a country. The Commission has therefore been urging that such a national plan be formulated. (Para 10.3)

15.89 The Commission, therefore, once again urges the Government of India to develop a National Action Plan for Human Rights. The Commission has already offered to assist, by sharing its knowledge, expertise and experience in helping to develop such an Action Plan. (Para 10.5)

15.90 While the Commission has noted that the Government of India has finally developed a Human Rights Education Plan in the context of the UN Decade on Human Rights Education, it regrets to note that no initiative has yet been taken by the Government to develop a National Action Plan for Human Rights. The Commission would like to observe that while National Institutions and the non-governmental organisations can help to develop such a Plan, it is the State that must assume the primary responsibility to do so. The Commission is also of the view that, in a country such as India, with a federal structure, there is need to involve the States in such an exercise so that an integrated Plan can be formulated for the country as a whole. The Commission is of the view that the process by which the Plan is prepared will also be of great importance, as there is need to involve a broad spectrum of civil society in the effort. (Para 10.6)

15.91 The Commission very much hopes that the Central Government will take the lead in this endeavour and earmark the appropriate persons and resources to take this process forward. It would be willing to assist in this effort and trusts that the period ahead will witness progress in respect of such an undertaking. (Para 10.7)

15.92 It will be recalled that the United Nations General Assembly, through its Resolution 49/184 of 23 December 1994, resolved to declare the period 1995-2004 as the UN Decade for Human Rights Education. The United Nations High Commissioner for Human Rights subsequently requested Members States to observe the Decade by drawing-up and implementing an Action Plan for Human Rights Education. (Para 10.8)

15.93 The Government of India, set-up a Coordinating Committee under the Chairmanship of the Union Home Secretary to prepare such a Plan in consultation with the other concerned Ministries and Departments, to monitor its implementation and report to the United Nations on the progress made towards the realisation of the goals set out for this Decade. (Para 10.9)

15.94 Regrettably, it was only in the course of the year 2001-2002, in the seventh year of the decade, that Commission received a copy of the Action Plan prepared by the Government of India. The Commission will not, at this stage, comment on the quality

or Contents of the Action Plan. It would, however, like to observe that even though most of the UN Decade for Human Rights Education has already passed, the responsibility to persevere with a coherent programme for Human Rights Education, remains. The Commission therefore hopes that the Government of India will give this subject the importance that it deserves, an importance that is stressed in various Human Rights instruments, including the Universal Declaration of Human Rights in its Article 26(2). (Para 10.10)

15.95 The Commission takes this opportunity to reiterate that, both in respect of Human Rights Courts and in respect of State Human Rights Commissions, it is insufficient merely to designate or establish them. Their quality must be ensured, both in terms of personnel and financial autonomy, and they must be extended the support that they need if they are to fulfil the purposes envisaged for them under the Protection of Human Rights Act, 1993. (Para 12.4)

15.96 In view of the progressive increase in the workload of the Investigation Division, the Commission is of the view that there is need to augment the existing strength of that Division and to create additional posts. Precise proposals will be framed and processed to achieve this end. The Commission has observed that, owing to an anomaly in pay scales and the non-availability of suitable officers, some posts of Inspectors have had to be filled by Sub Inspectors, while Inspector rank officers have filled some post meant for Dy.SPs. The Commission has already taken up the question of pay in higher scales with the competent Ministry but, regrettably, a favourable decision is yet to be taken. There is great need for the Commission to have an Investigation Division properly staffed and properly equipped to meet the requirements of the work entrusted to it, and the expectations of those who bring their complaints to the Commission seeking redressal of their grievances. The Commission therefore hopes that these matters are expeditiously considered and acted upon. (Para 13.16)

Sd.

(Justice J.S. Verma)

Chairperson

Sd.

(Justice K. Ramaswamy)

Member

Sd.

(Justice Sujata V. Manohar)

Member

Sd.

(Virendra Dayal)

Member

3 July 2002

Recommendations of the NHRC for Amendments to the Protection of Human Rights Act, 1993

ANNEXURE 1

Present Provision	Proposed Amendment	Reasons
<p>1 Long Title</p> <p>An act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.</p>	<p>An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto including the implementation of International Covenants.</p>	<p>Reference to International Covenants specifically made</p>
<p>2 Section 1(2)</p> <p>Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.</p>	<p>Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to International Covenants and any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.</p>	<p>Reference to International Covenants specifically made to clarify doubts NHRC's order dt. 11.6.99 in Case No.802/94-95/NHRC and connected matters taken into account</p>

Present Provision	Proposed Amendment	Reasons
3 Section 2		
1(a) 'armed forces' means the naval, military and air forces <u>and includes any other armed forces of the Union</u>	'armed forces' means the naval, military and air forces	Excludes para-military forces for the reasons that in International Forums lack of jurisdiction over military and para-military forces is pointed out as a serious infirmity affecting the credibility of the NHRC and commitment (to Human Rights) on the part of Government. of India
1(f) 'International Covenants' means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966	'International Covenants' means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and any other Covenant and Convention which has been, or may hereafter be, adopted by the General Assembly of the United Nations.	Expands the scope to include subsequent covenants instead of freezing it in time to the year 1966
1(g) 'Member' means a Member of the Commission or of the State Commission, as the case may be, <u>and includes the Chairperson</u>	'Member' means a Member of the Commission or of the State Commission, as the case may be.	As the term Chairperson is defined earlier, it is redundant to include Chairperson within the definition of Member and hence this change.
Section 2(2)		
Any reference in this Act to a law,	Any reference in this Act to a law	Broadbases the provision to

Present Provision	Proposed Amendment	Reasons
which is not in force in <u>the State of Jammu and Kashmir</u> , shall, in relation to that <u>State</u> , be construed as a reference to a corresponding law, if any, in force in that <u>State</u> .	which is not in force in any area shall, in relation to that area , be construed as reference to the corresponding law, if any, in force in that area .	cover any such contingency in any area instead of the provision being restricted to one state

4 Section 3

2(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights

Two Members to be appointed from amongst persons **who are working or had worked in the field of human rights** and have practical experience in matters relating to human rights

Provision is slightly modified for better focus at the same time avoiding too restrictive a provision

Following explanation shall be introduced below Sub-Section(2)(d)

Explanation: In the composition of the Commission care shall be taken to ensure that it reflects the pluralistic character of the polity.

This is suggested in lieu of any specific reservation for any category/group in view of separate commissions for Minorities, SC/ST and Women

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as may be delegated to him by the Commission or the Chairperson'

To enable delegation of powers to Secretary General by Chairperson in respect of matters for which Chairperson alone is empowered.

Present Provision	Proposed Amendment	Reasons
5 Section 4	<p>In sub-section(1) after the second proviso, the following proviso shall be inserted</p> <p>Provided also that in the case of appointment of a Member, the Chairperson shall be a member of the Committee.</p> <p>The following proviso shall be added after the third proviso</p> <p>Provided however also that in case of an equality of votes in the meeting the Chairperson of the Committee shall have a casting vote</p>	<p>Membership of the Committee expanded because of Chairperson's responsibility for proper functioning of the Commission.</p> <p>To meet the contingency of equality of votes</p>
Sub-section (2)	<p>No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy or absence in the Committee referred to in sub-section (1)</p>	<p>To cover the contingency of absence</p>
6 Section 5	<p>The Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that</p>	<p>Modified in view of proposed deletion of sub-section(2)</p>

Present Provision	Proposed Amendment	Reasons
behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.	such other Member, as the case may be, ought on any such ground to be removed.	
(2) Notwithstanding anything in sub-section(1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be: (a) is adjudged an insolvent; or (b) engages during his term of office in any paid employment outside the duties of his office; or (c) is unfit to continue in office by reason of infirmity of mind or body; or (d) is of unsound mind and stands so declared by a competent court; or (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude	To be deleted entirely	In this regard reference is invited to Art.124(4) of the Constitution regarding removal of judges. In light of that provision, Sec.5(2) is deemed redundant and Sec.5(1) deemed sufficient for effecting the removal as the words 'proved misbehaviour or incapacity' can cover all the grounds enumerated in the present Sec.5(2).
7 Section 6 Marginal note	Term of office of Chairperson and Members	Change needed consequent upon the change in the definition in Sec.2(1)(g)
Term of office of Members	A new sub-sec.4 will be added and it shall read as follows: (4)Chairperson or any Member	To provide for the contingency of resignation as such provision does not

Present Provision	Proposed Amendment	Reasons
	may by writing under his hand addressed to the President resign his office.	exist now
8 Section 8		
Terms and conditions of service of Members The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed.	Terms and conditions of service of Chairperson and Members The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and the Members shall be such as may be prescribed.	Change needed consequent upon the change in the definition in Sec.2(1)(g)
Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment	Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.	
9 Section 9		
No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution <u>of the Commission</u> .	No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in its constitution.	For removal of ambiguity in the current provision
10 Section 10		
(2) The Commission shall regulate its own procedure.	The Commission shall, by regulations, specify its own procedure for the conduct of its meetings and other matters .	For better clarity

Present Provision	Proposed Amendment	Reasons
11 Section 11		
The Central Government shall make available to the Commission:	The Central Government shall with the concurrence of the Commission , make available to the Commission:	To focus on and secure the autonomous position of the Commission, it is considered necessary that appointments are made with the concurrence of the Commission.
(a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and	(a) an officer of the rank of Secretary to the Government of India who shall be appointed by the Commission as the Secretary-General of the Commission:	
(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.	(b) an officer of the rank of a Director-General of Police who shall be appointed by the Commission as the Director-General (Investigation) of the Commission;	The present sub-section(b) is split into two sub-sections for better clarity
	(c) such police and investigative staff, as the Commission may consider necessary from time to time, who shall be appointed by the Commission.	
(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.	(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other investigative , administrative, technical and scientific staff as it may consider necessary.	To enable the Commission to appoint investigative staff of its choice even from outside the Government

Present Provision	Proposed Amendment	Reasons
(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section(2) shall be such as may be prescribed.	(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by regulations.	In keeping with the autonomous status of the Commission this amendment is needed as the Commission should have the final say on the salaries, allowances etc. of the staff appointed by Commission
12 Section 12		
(a) inquire, <i>suo motu</i> or on a petition presented to it by a victim or any person on his behalf, into complaint of	(a) inquire, <i>suo motu</i> or on a petition presented to it by a victim or any person on his behalf, or on the request of the Supreme Court.	To provide for the contingency of cases being referred to the Commission by the Supreme Court and to obviate the kind of difficulties which arose in the Punjab Mass Cremation Case
(i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant;	(i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant;	
Clause (c) visit, <u>under intimation</u> to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;	Clause (c) 'visit any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;'	The stipulation of 'intimation' to State Government done away with as it is neither in keeping with the autonomy of the Commission nor is capable of ensuring the element of surprise over the visit.

Present Provision	Proposed Amendment	Reasons
13 Section 13		
(1)(a) summoning and enforcing the attendance of witnesses and examining them on oath	(1)(a) summoning and enforcing the attendance of witnesses and examining them on oath and obtaining duly signed statements.	Based on experience to obviate the situation of a witness refusing to sign his oral statement with the ulterior motive to deny it at a later point of time To bring in specificity.
(1)(f) any other matter which may be prescribed'	<p data-bbox="592 683 1013 800">(1)(f) any other matter which may be prescribed by regulations.</p> <p data-bbox="592 772 823 800">New Sub-section 6</p> <p data-bbox="592 863 1013 1485">(a) The Commission may, whenever it considers expedient to do so,, transfer any of the complaints filed or pending before it to the State Human Rights Commission of the State from which the complaint arises, for disposal in accordance with the provisions of the Act. Provided that the complaint so transferred is one respecting which the State Commission would have jurisdiction to entertain.</p> <p data-bbox="592 1549 1013 1802">(b) The complaint so transferred under clause (a) shall be dealt with and disposed of by the State Commission, as if the complaint had initially been filed before the State Commission.</p>	To enable transfer of complaints to the State Commissions wherever they are set up

Present Provision	Proposed Amendment	Reasons
14 Section 14		
(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.	(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer of the Commission , or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government as the case may be.	Scope expanded to bring in clarity and to enable utilisation of the services of the officers of the Commission without being legally challenged
(2)(a) summon and enforce the attendance of any person and examine him	(2)(a) summon and enforce the attendance of any person and examine and obtain his duly signed statement .	For the same reason as in Sl. No.12 (Sec.13(1)(a))

15 Section 18

Marginal Note

Steps after Inquiry

Steps **during and** after inquiry

The Ahmadi Committee had suggested a complete overhaul of the present provision from Sec.14 to Sec.18 to cater to various requirements but the Commission has narrowed them down to a few important changes keeping in view the need to reduce amendments to the bare minimum while at the same time ensuring that essential elements as are required for increasing the effectiveness of the provisions are not lost sight of.

Present Provision	Proposed Amendment	Reasons
<p>The Commission may take any of the following steps upon the completion of an inquiry held under this Act namely—</p> <p>(1) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned government or authority <u>the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;</u></p>	<p>The Commission may take any of the following steps during, or upon the completion of an inquiry held under this Act namely—</p> <p>(1) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned government or authority:</p> <p>(a) payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;</p> <p>(b) the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;</p> <p>(c) such further action as it thinks fit;</p>	<p>To clarify the scope for making necessary interim orders also during the pendency of the inquiry Sub-section(1) is amplified and scope is provided for other recommendations being made.</p>
<p>(3) recommend to the concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary'</p>	<p>(3) recommend to the concerned government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary'</p>	<p>Amplifies the provisions to enable payment of interim relief at any stage of the inquiry.</p>

Present Provision	Proposed Amendment	Reasons
<p>16 Section 19(2)</p> <p>The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.</p>	<p>(a) Upon receipt of the report together with the recommendation of the Commission the Central Government if considers itself unable to comply with the same or any part of it, shall communicate its reasons for inability to the Commission within a period of three months, or such further extended period as may be given for this purpose by the Commission.</p> <p>(b) The Commission shall thereafter consider the same and make such final recommendations as it deems fit.</p> <p>(c) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.</p>	<p>Provision amplified for better appreciation and understanding of the matter where Central Government may feel difficulty in accepting the recommendation of the Commission in a given case/situation.</p>
<p>17 Section 20</p> <p>(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or</p>	<p>(2) The Central Government and the State Government, as the case may be, shall within a period of three months from the date of receipt of such report cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case</p>	<p>As the reports of the Commission are sought after by the National and International Human Rights bodies and by NGOs and others, it is deemed necessary to avoid delays in the release of the report. This provision will enable</p>

Present Provision	Proposed Amendment	Reasons
proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any	may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any	the Commission to release the reports in time.
	Provided that where any such report is not laid before the Houses of Parliament or the State Legislature, as the case may be, within that period, it shall be open to the Commission to publish such report.	

18 Section 21

(1) A State Government <u>may</u> constitute a body to be known as the ... (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.	A State Government shall constitute a body to be known as the ... (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.	It is highly desirable, looking at the widespread violation of human rights in many parts of the country, that each State has its own Human Rights Commission. Therefore, it is desirable to introduce the element of compulsion and hence the proposed amendment.
(2) The State Commission shall consist of — (a) a Chairperson who has been a Chief Justice of a High Court; (b) one Member who is, or has been, a Judge of a High Court;	2) The State Commission shall consist of — (a) a Chairperson who has been a Chief Justice of a High Court; (b) one Member who is, or has been, a Judge of a High Court;	The size of the State Commission is proposed to be reduced in order to make them more compact and further also keeping in view the need to lower the financial burden on the States

Present Provision	Proposed Amendment	Reasons
(c) <u>one Member who is</u> , or has been, a district Judge in that State;	(c) one Member to be appointed from amongst persons who are working in the field or had worked in the field of human rights and	
(d) <u>two</u> Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.	have practical experience in matters relating to human rights The following explanation shall be introduced under sub-section 2	
	<u>Explanation:</u> In the composition of the Commission care shall be taken to ensure that it reflects the pluralistic character of polity	

19 Section 22

(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:	(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:
Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of:	Proviso 1: Every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of:
(a) The Chief Minister — Chairperson	a) The Chief Minister — Chairperson
(b) Speaker of the Legislative Assembly — Member	(b) Speaker of the Legislative Assembly — Member
(c) Minister in-charge of the Department of Home, In that State - Member	(c) Minister in-charge of the Department of Home, In that State — Member

Present Provision	Proposed Amendment	Reasons
(d) Leader of the Opposition in the Legislative Assembly — Member	(d) Leader of the Opposition in the Legislative Assembly — Member	
Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.	Proviso 2: Where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.	
Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.	Proviso 3: No sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.	
	Proviso 4: In case of an equality of votes in the meeting the Chairperson shall have a casting vote.	To provide for such a contingency of equality of votes
	Proviso 5: In the case of appointment of the Chairperson of the State Commission, the Chairperson of the Commission shall be consulted..	To enable the Committee to focus its choice, the presence of the former Chief Justice of India who has knowledge of the functionaries under consideration for the office of the Chairperson of the State Commission is expected to be helpful
	Proviso 6: In the appointment of a Member, the Chairperson of the State Commission shall be a member of the Committee.	For the same reasons as in Sl. No.4 i.e. introduction of 3rd proviso to Sec.4.

Present Provision	Proposed Amendment	Reasons
	<p>A new Section shall be added as follows: Section 22(1)(A)</p> <p>It shall be permissible for the Chairperson or Member, as the case may be, of one State Commission to be appointed as the Chairperson or Member, as the case may be, of another State Commission provided however the consent of the concerned State Government, and of the concerned Chairperson or Member as the case may be, is obtained.</p>	<p>This is an enabling provision which will be useful to those states especially the small ones in the North East or Goa or Pondicherry, etc. who for financial or other reasons seek an alternative provision.</p>
<p>(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee</p>	<p>(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee referred to in sub-section (1)</p>	<p>For the same reason as in Sl. No.4 i.e. Sec.4(2)</p>
20 Section 23		
<p>(1) <u>Subject to the provisions of sub-section (2)</u>, the Chairperson or any other member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that</p>	<p>The Chairperson or any other member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or</p>	<p>Changes proposes for the reasons as in the case of Sec.5 (See Sl. No.5)</p>

Present Provision	Proposed Amendment	Reasons
<p>behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.</p>	<p>such other Member, as the case may be, ought on any such ground to be removed.</p>	
<p>(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be —</p>	<p>To be entirely deleted</p>	<p>Changes proposes for the reasons as in the case of Sec.5 (See Sl. No.5)</p>
<p>(a) is adjudged an insolvent; or</p>		
<p>(b) engages during his term of office in any paid employment outside the duties of his office; or</p>		
<p>(c) is unfit to continue in office by reason of infirmity of mind or body; or</p>		
<p>(d) is of unsound mind and stands so declared by a competent court; or</p>		
<p>(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.</p>		

Present Provision	Proposed Amendment	Reasons
21 Section 24		
Head Note		
Term of office of Members of the State Commission	Term of office of Chairperson and Members of the State Commission	For the same reason as in the case of change proposed in Sl. No.6
	New sub-section(4) shall be added 'Chairperson or any Member may, by writing under his hand addressed to the Governor, resign his office.	For the same reason as in the case of change proposed in Sl. No.6
22 Section 26		
Terms and conditions of service of Members of the State Commission	Terms and conditions of service of the Chairperson and Members of the State Commission	
The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed by the State Government	The salaries and allowances payable to, and other terms and conditions of service of the Chairperson and the Members shall be such as may be prescribed by the State Government	As in Sl. No.8
Provided that neither the salary and allowances nor the other terms and conditions of service or a Member shall be varied to his disadvantage after his appointment.	Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.	

Present Provision	Proposed Amendment	Reasons
23 Section 27		
Sub-section(1)		
The State Government shall make available to the Commission—	The State Government shall, with the concurrence of the Commission , make available to the Commission—	Changes similar to those suggested to Sec.11 (Sl. No.10) and for the same reasons too.
(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and	(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and	
(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.	(b) an officer of the rank of an Inspector General of Police who shall be appointed by the Commission as the Inspector General (Investigation) of the Commission; (c) such police and investigative staff, as the Commission may consider necessary from time to time, who shall be appointed by the Commission	The present sub-section (b) is split into two for better clarity
(2) subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary	(2) subject to such rules as may be made by the State Government in this behalf, the Commission may appoint such other investigative , administrative, technical and scientific staff as it may consider necessary	Changes similar to those suggested to Sec.11 (Sl. No.10) and for the same reasons too.
(3) The salaries, allowances and conditions of service of the	(2) The salaries, allowances and other terms and conditions of	Changes similar to those suggested to Sec.11 (Sl.

Present Provision	Proposed Amendment	Reasons
officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the <u>State Government</u> .	service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by regulations .	No.10) and for the same reasons too.
24 Section 28		
(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.	(2) The State Government shall within a period of three months from the date of receipt of such report, cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any. The following proviso shall be added: 'Provided that where any such report is not laid before the House or Houses, as the case may be, of State Legislature within that period, it shall be open to the State Commission to publish its report'	Changes proposed are similar to the changes proposed to Sec.20 and for the same reasons (see Sl. No.16)
25 Section 30		
For the purpose of providing speedy trial of offences arising out of violation of human rights,	(1) Where an offence under any law for the time being in force also involves the violation of human	To have a better focus to this laudable provision to have easy access to justice at the

Present Provision	Proposed Amendment	Reasons
<p>the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.</p>	<p>rights, the State Government may, for the purpose of providing speedy trial of the offence involving human rights as, specified by notification issued in that behalf by the appropriate Government, and with the concurrence of the Chief Justice of High Court by notification, constitute one or more Human Rights Courts to try the offence.</p>	<p>District level itself in case of human rights violations which however in its present form is lacking in clarity, the provision is amplified and clarified.</p>
<p>Provided that nothing in this section shall apply if —</p>	<p>(2) A Human Rights Court shall be presided over by a person who is, or has been a Sessions Judge who shall take cognizance and try the offence, as nearly as may be in accordance with the procedure specified in the Code of Criminal Procedure, 1973.</p>	
<p>(a) a Court of Session is already specified as a special court; or</p>	<p>Provided that a Human Rights Court shall, as far as possible, dispose of any case referred to it within a period of three months from the date of framing the charge.</p>	
<p>(b) a special court is already constituted, for such offences under any other law for the time being in force.</p>	<p>(3) It shall be competent for the Human Rights Court to award such sentence as may be authorised by law and the power to decide the violation of human rights shall, without prejudice to any penalty that may be awarded, include the power to award compensation, relief, both interim</p>	

Present Provision	Proposed Amendment	Reasons
	<p>and final, to the person or members of the family, affected and to recommend necessary action against persons found guilty of the violation:</p> <p>(4) An appeal against the orders of the Human Rights Court shall lie to the High Court in the same manner and subject to the same conditions in which an appeal shall lie to the High Court from a Court of Session.</p> <p>(5) Nothing in this section shall apply if —</p> <p>(a) a Court of Session is already specified as a special court; or</p> <p>(b) a special court is already constituted, for such offences under any other law for the time being in force.</p>	

26 Section 32

(1) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(1) The Central Government shall **pay to the Commission** by way of grants such sums of money **as are from time to time approved by Parliament** after due appropriation, by law in this behalf.

Provision modified to confer financial autonomy to the National Human Rights Commissions in keeping with its mandate and in line with the Paris Principles governing the establishment and strengthening of the National Institutions for Promotion of Human Rights.

Present Provision	Proposed Amendment	Reasons
(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section(1)	(2) The Commission, in its discretion , may spend such sums as it think fit for performing the functions under this Act out of grants referred to in sub-section(1).	
27 Section 33		
(1) The State Government shall after due appropriation made by Legislature by law in this behalf, pay to the Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.	(1) The State Government shall pay to the Commission by way of grants such sums of money as are from time to time approved by Legislature after due appropriation, by law in this behalf.	Provision modified to confer financial autonomy to the State Human Rights Commissions in keeping with their mandate and in line with the Paris Principles governing the establishment and strengthening of the National Institutions for Promotion of Human Rights.
(2) The Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section(1)	(2) The Commission, in its discretion , may spend such sums as it think fit for performing the functions under this Act out of grants referred to in sub-section(1).	
28 Chapter VIII		
Heading: Miscellaneous	Jurisdiction of the Commission	Change needed in view of complete overhaul proposed of Sec.36 and 37

Present Provision	Proposed Amendment	Reasons
29 Section 36		
Head note		
<u>Matters not subject to jurisdiction of the Commission</u>	Taking cognizance of matters before other Commissions	Change needed in view of complete overhaul proposed of Sec.36 and 37
<u>Sub-sections</u> (1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.	(1) Notwithstanding anything contained in any other law and constitution of a State Human Rights Commission, or any other Commission, except a Commission appointed under the Commission of Inquiries Act, the Commission may take cognizance of and inquire into the violation of human rights, notwithstanding the cognizance thereof taken by the concerned Commission, either by itself or in coordination with the concerned Commission and deal with it in accordance with this Act.	In keeping with the pre-eminent status of the National Human rights Commission, it is considered necessary that it should have the overarching ability to oversee the issues of human rights violations and their remedies and hence this provision has been proposed
	Provided further that the Commission may, in its discretion, entertain any matter already considered and decided by any other Commission, except a Commission appointed under the Commission of Inquiries Act, for examination either <i>suo motu</i> or at the instance of the aggrieved person except on the question of quantum of compensation.	In addition to the reasons given above, it is also considered that a certain power of judicial superintendence and powers similar to those under Art. 136 of the Constitution are necessary to prevent any miscarriage of justice in any case of violation

Present Provision	Proposed Amendment	Reasons
(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed	(2) The Commission or the State Commission shall not, subject to the proviso, inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. Provided that the Commission or State Commission may inquire into any matter after the expiry of the said one year period, if it is satisfied, for reasons to be recorded, that these are good and sufficient reasons for taking cognizance.	This proviso is deemed necessary to do justice in deserving cases where for any reason the one year limiting stipulation could not be adhered to.

30 Section 37

Constitution of special investigation teams

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

The present Section 37 shall to be omitted

The present provision seems anomalous as the primary responsibility to enquire into the human rights violations under the Act are that of the National and State Human Rights Commissions and so this provision is not only redundant but is also against the spirit of autonomy of the National and State Commissions. So its deletion is proposed.

Present Provision	Proposed Amendment	Reasons
		Government can take recourse to other existing laws if it wants to order any inquiry in any matter.
	<p>The following section shall be substituted:</p> <p>Transfer of complaints and inquiries ‘Where complaints involving the same or substantially the same issues, of violation of human rights or negligence in prevention of such violation, by a public servant, are pending before the Commission and a State Commission or more than one State Commission, and the Commission is satisfied on its own motion, or on an application made by the Central or State Government, or by a party to any such complaint, that such issues are substantial issues of general importance, the Commission may withdraw the complaints or inquiries before the State Commission or State Commissions and inquire into all the matters itself.</p>	This provision is similar to Article 139A of the Constitution and will enable NHRC in appropriate cases, to establish uniformity in cases having similar issues.
	Introduction of a new Chapter IX	
	<p>After Sec.37 in the Principal Act introduce the following words and figures —</p> <p>‘Chapter IX — Miscellaneous’</p>	Necessitated because of the change made to heading of Chapter VIII

Present Provision	Proposed Amendment	Reasons
<p>32 Section 40</p> <p>(2)(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 11.</p>	<p>To be deleted</p>	<p>Since appointment of the kind in Sec.11(3) will be governed by regulations (see Sl. No.10) this provision is redundant</p>
<p>(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p>	<p>(3) Every rule made under this Act by the Central Government or every regulation u/s 41A(2)(a) made by the Commission shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p>	<p>Enabling provision for placing of the Regulations before Parliament</p>

Present Provision	Proposed Amendment	Reasons
33 Section 41		
(2)(b) The conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 27	To be deleted	Since appointment of the kind in Sec.27(3) will be governed by regulations (see Sl. No.21) this provision is redundant
Sub-section (3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.	Every rule made by the State Government under this section and every regulation made by the State Commission under Section 41(B)(2)(a) , shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.	Enabling provision for placing the Regulations before State legislatures
34	Amendment to introduce new Sec.41A and 41B	
	Sec41A — Power of the Commission to make regulations (1) The Commission may, subject to the rules made by the Central Government by notification and with the approval of that Government make regulations to carry out the purposes of this Act. (2) In particular, and without prejudice to the foregoing power	Provision needed in view of the stipulation that certain matters will be prescribed by the Commission through Regulations (See Sec.10(2) and Sec.11(3) — Sl. No. 9 and 10)

Present Provision	Proposed Amendment	Reasons
	<p>such regulations may provide for all or any of the following matters, namely:</p> <p>(a) Salaries and allowances of officers and other staff under Sec.11(3)</p> <p>(b) Any other matter which the Commission is required to prescribe by regulations</p>	
	<p>Section 41B — Power of the State Commission to make regulations</p> <p>(1) The State Commission may, subject to the rules made by the State Government, by notification and with the approval of that Government, make regulations to carry out the purpose of this Act.</p> <p>(2) In particular, and without prejudice to the foregoing power, such regulations may provide for all or any of the following matters, namely:</p> <p>(a) Salaries and allowances of officers and other staff under Section 27(3)</p> <p>(b) Any other matter which the State Commission is required to prescribe by regulations.</p>	<p>Provision is need in view of the stipulation that certain matters will be prescribed through Regulations by the State Commission (see Sec.10(2) and Sec.27(3) — Sl. No.9 and 21)</p>

Proceedings of the Commission on Gujarat: 1 April 2002

ANNEXURE 2

Name of the complainant : Suo motu
Case No. : 1150/6/2001-2002
Date : 1 April 2002

Coram

Justice Shri J.S. Verma, Chairperson
Justice Smt. Sujata V. Manohar, Member
Shri Virendra Dayal, Member

Proceedings

1 These Proceedings on the situation in Gujarat are being recorded in continuation of earlier Proceedings of the Commission dated 1 and 6 March 2002. They also follow upon a visit of the Chairperson of the Commission to Gujarat between 19-22 March 2002, during which mission he was accompanied by the Secretary-General of the Commission, Shri P.C. Sen, the Special Rapporteur of the Commission, Shri Chaman Lal, and his Private Secretary, Shri Y.S.R. Murthy. During the course of that mission, the team visited Ahmedabad, Vadodara and Godhra and held intensive discussions, *inter alia*, with the Chief Minister, Chief Secretary and

senior officers of the State, eminent citizens, including retired Chief Justices and Judges of High Courts, former civil servants, leaders of political parties, representatives of NGOs and the business community, numerous private citizens and, most importantly, those who were the victims of the recent acts of violence.

2 In his meeting with the Chief Secretary and senior officers of the State Government, the Chairperson explained the purpose and timing of his visit. He indicated that he had not visited the State earlier in order not to divert the attention of the State authorities from the tasks in which they were engaged. However, the visit could not be further delayed as normalcy had not been restored in the State despite the passage of three weeks since the tragic events in Godhra. It was the concern of the Commission to see an end to the violence that was occurring and a restoration of normalcy. The Chairperson added that it was the role of the Commission to serve as a facilitator to improve the quality of governance, as a proper respect for human rights depended on such governance. This duty had been performed by the Commission in earlier instances too, notably after the Orissa cyclone and the Gujarat earthquake. As then, it was now the responsibility of the Commission to ensure that the violation of human rights ceased, that further violations were prevented and that those who were victims were expeditiously rehabilitated and their dignity restored.

3 The Commission would like to emphasise that the present Proceedings contain the **Preliminary Comments** of the Commission on the situation in Gujarat. Likewise, the **Recommendations** that it contains are of an immediate character and constitute the minimum that needs to be said at this stage.

4 This is because the report of the team that visited Gujarat is being sent under separate cover, confidentially, both to the Central and State Governments, and it would be appropriate to wait for their response to it before commenting in greater length on the situation or setting out comprehensive recommendations.

5 Further, while the team was able to meet with a considerable range of persons concerned with the situation in Gujarat who were desirous of meeting with it, the numbers of such persons was vast and it was not possible for the team, within the constraints of the time available and the circumstances prevailing on the ground, to meet individually with all of those who sought to interact with it. The team therefore encouraged those who wished to meet with it to do so, if possible, in groups and also to submit their views and concerns in writing. Numerous and voluminous written representations have thus been received by the Commission, both from groups and

from individuals, during the visit of the team to Gujarat and subsequently. These have been and are being carefully examined. They have been of great value to the Commission in the recording of the Preliminary Comments and Recommendations contained in these Proceedings and their further analysis and study will contribute immensely to subsequent Proceedings of the Commission.

6 On 28 March 2002, the Commission also received a response from the Government of Gujarat to a notice that it had sent on 1 March 2000; it was entitled 'Report on the incidents in Gujarat after the burning of the Sabarmati Express Train on 27 February 2002,' and came with three Annexures A, B and C, providing details respectively on the 'Law and Order Measures' taken by the State Government; the 'Rescue, Relief and Rehabilitation Measures;' and a 'Response to Press Clippings' that had been sent by the Commission to the State Government for comment. The Report of the State Government, hereinafter referred to as 'the Report,' has been carefully examined and taken into account in drafting the present Proceedings.

7 The Commission would like to emphasise that these Proceedings must therefore be seen as part of a continuing process to examine and address the human rights situation prevailing in Gujarat beginning with the Godhra tragedy and continuing with the violence that ensued subsequently. In this respect, the Proceedings in this case bear some similarity to the manner in which the Commission kept the situation under review, monitoring and commenting on it as the need arose, following both the super-cyclone in Orissa in 1999 and the earthquake in Gujarat in 2001.

8 There is, however, a fundamental difference as well. The earlier instances arose from catastrophic natural disasters which subsequently required a monitoring of the performance of the State to ensure that the rights of all, particularly those of the most vulnerable, were respected. In the present instance, however, the death and destruction sadly resulted from the inhumanity of human beings towards other human beings, and the large-scale violation of human rights. This therefore requires a response from the Commission of a qualitatively different kind.

9 The Commission would like to observe that the tragic events that have occurred have serious implications for the country as a whole, affecting both its sense of self-esteem and the esteem in which it is held in the comity of nations. Grave questions arise of fidelity to the Constitution and to treaty obligations. There are obvious implications in respect of the protection of civil and political rights, as well as of economic, social and cultural rights in the State of Gujarat as also the country more

widely; there are implications for trade, investment, tourism and employment. Not without reason have both the President and the Prime Minister of the country expressed their deep anguish at what has occurred, describing the events as a matter of national shame. But most of all, the recent events have resulted in the violation of the Fundamental Rights to life, liberty, equality and the dignity of citizens of India as guaranteed in the Constitution. And that, above all, is the reason for the continuing concern of the Commission.

10 It would now be appropriate and useful to recall the background to the involvement of the Commission in this matter.

11 The Commission took *suo motu* action on the situation in Gujarat on 1 March 2002 on the basis of media reports, both print and electronic. In addition, it had also received a request by e-mail, asking it to intervene.

12 In its Proceedings of that date, the Commission *inter alia* observed that the news items reported on a communal flare-up and, more disturbingly, suggested inaction by the police force and the highest functionaries in the State to deal with the situation. The Commission added:

‘In view of the urgency of the matter, it would not be appropriate for this Commission to stay its hand till the veracity of these reports has been established; and it is necessary to proceed immediately assuming them to be *prima facie* correct. The situation therefore demands that the Commission take note of these facts and steps-in to prevent any negligence in the protection of human rights of the people of the State of Gujarat irrespective of their religion.’

13 Notice was accordingly issued on 1 March 2002 to the Chief Secretary and Director General of Police, Gujarat, asking:

‘for their reply within three days indicating the measures being taken and in contemplation to prevent any further escalation of the situation in the State of Gujarat which is resulting in continued violation of human rights of the people.’

14 Meeting again on 6 March 2002, the Commission noted, *inter alia*, that it had requested its Secretary General, on 4 March 2002, to send a copy of its 1 March notice

to its Special Representative in Gujarat, Shri Nampoothiri, for his information. The latter was also asked to send a report to the Commission on the situation, involving in that exercise other members of the Group constituted by the Commission to monitor the rehabilitation work in that State after the recent earthquake in Kutch.

15 In its Proceedings of 6 March 2002, the Commission further noted that:

‘a large number of media reports have appeared which are distressing and appear to suggest that the needful has not yet been done completely by the Administration. There are also media reports attributing certain statements to the Police Commissioner and even the Chief Minister which, if true, raise serious questions relating to discrimination and other aspects of governance affecting human rights.’

16 Instead of a detailed reply from the State Government to its notice of 1 March 2002, the Commission observed that it had received a request dated 4 March 2002, seeking a further 15 days to report:

‘as most of the State machinery is busy with the law and order situation, and it would take time to collect the information and compile the report.’

17 The Commission’s Proceedings of 6 March 2002 accordingly state:

‘May be, preparation of a comprehensive report requires some more time, but, at least, a preliminary report indicating the action so far taken and that in contemplation should have been sent together with an assurance of the State Government of strict implementation of the rule of law.’

The Commission recorded its disappointment that even this had not been done by the Government of Gujarat in a matter of such urgency and significance. It added that it ‘expects from the Government of Gujarat a comprehensive response at the earliest.’

18 A ‘Preliminary Report’ dated 8 March 2002 was received by the Commission from the Government of Gujarat on 11 March 2002. However, it was perfunctory in character. In the meantime, the Commission had received a fairly detailed report on the situation from its Special Group in Gujarat, comprising its Special Representative, Shri P.G.J. Nampoothri, former Director General of Police, Gujarat, Smt. Annie Prasad,

IAS (Retd.) and Shri Gagan Sethi, Director, Jan Vikas. With violence continuing, it was in such circumstances that the Commission decided that the Chairperson should lead a team of the Commission on a mission to Gujarat between 19-22 March 2002. And it was pursuant to this that the detailed Report of the State of Gujarat was received on 28 March 2002, in response to the Commission's notice of 1 March 2002 and the discussions held with the team.

19 There follow below certain Preliminary Comments and Recommendations of the Commission on the situation in Gujarat. As indicated above, these will be followed, as required, by other Proceedings, containing Comments and Recommendations, which will take into account the response that will be received from the Central and State Governments to the mission-report of the Commission's team, a further reading and analysis of the voluminous material that has been, and is being, submitted to the Commission, and the situation as it develops on the ground.

Preliminary Comments:

20

- (i) The Statute of the Commission, as contained in the Protection of Human Rights Act, 1993, requires the Commission under the provisions of Section 12, to perform all or any of the following functions, namely:
 - (a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of
 - (i) violation of human rights or abetment thereof; or
 - (ii) negligence in the prevention of such violation, by a public servant;
 -
 - (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
 -
 - (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
 -

- (j) such other functions as it may consider necessary for the promotion of human rights.’

The term ‘human rights’ is defined to mean the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India (Section 2(1)(d)), and the International Covenants are defined as the ‘International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th December 1966’ (Section 2(1)(f)).

- (ii) It is therefore in the light of this Statute that the Commission must examine whether violations of human rights were committed, or were abetted, or resulted from negligence in the prevention of such violation. It must also examine whether the acts that occurred infringed the rights guaranteed by the Constitution or those that were embodied in the two great International Covenants cited above.
- (iii) The Commission would like to observe at this stage that it is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of those who constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-State players acting within its jurisdiction. The State is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights.
- (iv) The first question that arises therefore is whether the State has discharged its responsibilities appropriately in accordance with the above. It has been stated in the Report of the State Government that the attack on kar sevaks in Godhra occurred in the absence of ‘specific information about the return of kar sevaks from Ayodhya’ (p. 12 of the Report). It is also asserted that while there were intelligence inputs pertaining to the movement of kar sevaks to Ayodhya between 10-15 March 2002, there were no such in-puts concerning their return either from the State Intelligence Branch or the Central

Intelligence Agencies (p. 5) and that the 'only message' about the return of kar sevaks, provided by the Uttar Pradesh police, was received in Gujarat on 28 February 2002 i.e., after the tragic incident of 27 February 2002 and even that did not relate to a possible attack on the Sabarmati Express.

- (v) The Commission is deeply concerned to be informed of this. It would appear to constitute an extraordinary lack of appreciation of the potential dangers of the situation, both by the Central and State intelligence agencies. This is the more so given the history of communal violence in Gujarat. The Report of the State Government itself states:

'The State of Gujarat has a long history of communal riots. Major riots have been occurring periodically in the State since 1969. Two Commissions of Inquiry viz., the Jagmohan Reddy Commission of Inquiry, 1969, and the Dave Commission of Inquiry, 1985, were constituted to go into the widespread communal violence that erupted in the State from time to time. Subsequently, major communal incidents all over the State have taken place in 1990 and in 1992-93 following the Babri Masjid episode. In fact, between 1970 and 2002, Gujarat has witnessed 443 major communal incidents. Even minor altercations, over trivial matters like kite flying have led to communal violence.' (p. 127).

The Report adds that the Godhra incident occurred at a time when the environment was already surcharged due to developments in Ayodhya and related events (also p. 127).

Indeed, it has been reported to the Commission that, in intelligence parlance, several places of the State have been classified as communally sensitive or hyper-sensitive and that, in many cities of the State, including Ahmedabad, Vadodara and Godhra, members of both the majority and minority communities are constantly in a state of preparedness to face the perceived danger of communal violence. In such circumstances, the police are reported to be normally well prepared to handle such dangers and it is reported to be standard practice to alert police stations down the line when sensitive situations are likely to develop.

- (vi) Given the above, the Commission is constrained to observe that a serious failure of intelligence and action by the State Government marked the events leading to the Godhra tragedy and the subsequent deaths and destruction that occurred. On the face of it, in the light of the history of communal violence in Gujarat, recalled in the Report of the State Government itself, the question must arise whether the principle of 'res ipsa loquitur' ('the affair speaking for itself') should not apply in this case in assessing the degree of State responsibility in the failure to protect the life, liberty, equality and dignity of the people of Gujarat. The Commission accordingly requests the response of the Central and State Governments on this matter, it being the primary and inescapable responsibility of the State to protect such rights and to be responsible for the acts not only of its own agents, but also for the acts of non-State players within its jurisdiction and any inaction that may cause or facilitate the violation of human rights. Unless rebutted by the State Government, the adverse inference arising against it would render it accountable. The burden is therefore now on the State Government to rebut this presumption.
- (vii) An ancillary question that arises is whether there was adequate anticipation in regard to the measures to be taken, and whether these measures were indeed taken, to ensure that the tragic events in Godhra would not occur and would not lead to serious repercussions elsewhere. The Commission has noted that many instances are recorded in the Report of prompt and courageous action by District Collectors, Commissioners and Superintendents of Police and other officers to control the violence and to deal with its consequences through appropriate preventive measures and, thereafter, through rescue, relief and rehabilitation measures. The Commission cannot but note, however, that the Report itself reveals that while some communally-prone districts succeeded in controlling the violence, other districts — sometimes less prone to such violence — succumbed to it. In the same vein, the Report further indicates that while the factors underlining the danger of communal violence spreading were common to all districts, and that, 'in the wake of the call for the "Gujarat Bandh" and the possible fall-out of the Godhra incident, the State Government took all possible precautions' (p. 128), some districts withstood the dangers far more firmly than did others. Such a development clearly points to local factors and players overwhelming the district officers in certain instances, but not in others. Given the widespread reports and allegations of groups of well-organised persons, armed with mobile telephones and

addresses, singling out certain homes and properties for death and destruction in certain districts — sometimes within view of police stations and personnel — the further question arises as to what the factors were, and who the players were in the situations that went out of control. The Commission requests the comments of the State Government on these matters.

- (viii) The Commission has noted that while the Report states that the Godhra incident was ‘premeditated’ (p. 5), the Report does not clarify as to who precisely was responsible for this incident. Considering its gruesome nature and catastrophic consequences, the team of the Commission that visited Godhra on 22 March 2002 was concerned to note from the comments of the Special IGP, CID Crime that while two cases had been registered, they were being investigated by an SDPO of the Western Railway and that no major progress had been made until then. In the light of fact that numerous allegations have been made both in the media and to the team of the Commission to the effect that FIRs in various instances were being distorted or poorly recorded, and that senior political personalities were seeking to ‘influence’ the working of police stations by their presence within them, the Commission is constrained to observe that there is a widespread lack of faith in the integrity of the investigating process and the ability of those conducting investigations. The Commission notes, for instance, that in Ahmedabad, in most cases, looting was ‘reported in well-to-do localities by relatively rich people’ (p. 130). Yet the Report does not identify who these persons were. The conclusion cannot but be drawn that there is need for greater transparency and integrity to investigate the instances of death and destruction appropriately and to instill confidence in the public mind.
- (ix) The Report takes the view that ‘the major incidents of violence were contained within the first 72 hours.’ It asserts, however, that ‘on account of widespread reporting both in the visual as well as the electronic media, incidents of violence on a large-scale started occurring in Ahmedabad, Baroda cities and some towns of Panchmahals, Sabarkantha, Mehsana, etc’ in spite of ‘all possible precautions having been taken’ (p. 128-129). The Report also adds that various comments attributed to the Chief Minister and Commissioner of Police, Ahmedabad, among others, were torn out of context by the media, or entirely without foundation.
- (x) As indicated earlier in these Proceedings, the Commission considers it would

be naive for it to subscribe to the view that the situation was brought under control within the first 72 hours. Violence continues in Gujarat as of the time of writing these Proceedings. There was a pervasive sense of insecurity prevailing in the State at the time of the team's visit to Gujarat. This was most acute among the victims of the successive tragedies, but it extended to all segments of society, including to two Judges of the High Court of Gujarat, one sitting and the other retired who were compelled to leave their own homes because of the vitiated atmosphere. There could be no clearer evidence of the failure to control the situation.

- (xi) The Commission has, however, taken note of the views of the State Government in respect of the media. The Commission firmly believes that it is essential to uphold the Right to Freedom of Speech and Expression articulated in Article 19(1)(a) of the Constitution, which finds comparable provision in Article 19 of the Universal Declaration of Human Rights, 1948 and Article 19 of the International Covenant on Civil and Political Rights, 1966. It is therefore clearly in favour of a courageous and investigative role for the media. At the same time, the Commission is of the view that there is need for all concerned to reflect further on possible guidelines that the media should adopt, on a 'self-policing' basis, to govern its conduct in volatile situations, including those of inter-communal violence, with a view to ensuring that passions are not inflamed and further violence perpetrated. It has to be noted that the right under Article 19(1)(a) is subject to reasonable restrictions under Article 19(2) of the Constitution.

- (xii) The Commission has noted the contents of the Report on two matters that raised serious questions of discriminatory treatment and led to most adverse comment both within the country and abroad. The first related to the announcement of Rs.2 lakhs as compensation to the next-of-kin of those who perished in the attack on the Sabarmati Express, and of Rs.1 lakh for those who died in the subsequent violence. The second related to the application of POTO to the first incident, but not to those involved in the subsequent violence. On the question of compensation, the Commission has noted from the Report that Rs.1 lakh will be paid in all instances, 'thus establishing parity.' It has also noted that, according to the Report, this decision was taken on 9 March 2002, after a letter was received by the Chief Minister, 'on behalf of the kar sevaks,' saying 'that they would welcome the financial help of Rs.1 lakh instead of Rs.2 lakhs to the bereaved families of Godhra massacre' (see p.

115). This decision, in the view of the Commission, should have been taken on the initiative of the Government itself, as the issue raised impinged seriously on the provisions of the Constitution contained in Articles 14 and 15, dealing respectively with equality before the law and equal protection of the laws within the territory of India, and the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. The Commission has also noted the contents of the Report which state that 'No guidelines were given by the Home Department regarding the type of cases in which POTO should or should not be used' and that, subsequent to the initial decision to apply POTO in respect of individual cases in Godhra, the Government received legal advice to defer 'the applicability of POTO till the investigation is completed' (pp. 66-67). The Commission intends to monitor this matter further, POTO having since been enacted as a law.

- (xiii) The Commission has taken good note of the 'Rescue, Relief and Rehabilitation Measures' undertaken by the State Government. In many instances, strenuous efforts have been made by Collectors and other district officers, often acting on their own initiative. The Commission was informed, however, during the course of its visit, that many of the largest camps, including Shah-e-Alam in Ahmedabad, had not received visits at a high political or administrative level till the visit of the Chairperson of this Commission. This was viewed by the inmates as being indicative of a deeper malaise, that was discriminatory in origin and character. Unfortunately, too, numerous complaints were received by the team of the Commission regarding the lack of facilities in the camps. The Commission has noted the range of activities and measures taken by the State Government to pursue the relief and rehabilitation of those who have suffered. It appreciates the positive steps that have been taken and commends those officials and NGOs that have worked to ameliorate the suffering of the victims. The Commission, however, considers it essential to monitor the on-going implementation of the decisions taken since a great deal still needs to be done. The Commission has already indicated to the Chief Minister that a follow-up mission will be made on behalf of the Commission at an appropriate time and it appreciates the response of the Chief Minister that such a visit will be welcome and that every effort will be made to restore complete normalcy expeditiously.
- (xiv) In the light of the above, the Commission is duty bound to continue to follow developments in Gujarat consequent to the tragic incidents that occurred in

Godhra and elsewhere. Under its Statute, it is required to monitor the compliance of the State with the rule of law and its human rights obligations. This will be a continuing duty of the Commission which must be fulfilled, Parliament having established the Commission with the objective of ensuring the 'better protection' of human rights in the country, expecting thereby that the efforts of the Commission would be additional to those of existing agencies and institutions. In this task, the Commission will continue to count on receiving the cooperation of the Government of Gujarat, a cooperation of which the Chief Minister has stated that it can be assured.

Recommendations

21 The Commission now wishes to make a first set of Recommendations for the immediate consideration of the Central and State Governments. As indicated earlier, once a response has been received from these Governments on the report of the visit of the Commission's team to Gujarat, and a full analysis made of the numerous representations received by the Commission, additional Proceedings will be recorded by the Commission on the situation in Gujarat, offering further Comments and Recommendations.

1) Law and Order

- (i) In view of the widespread allegations that FIRs have been poorly or wrongly recorded and that investigations are being 'influenced' by extraneous considerations or players, the Commission is of the view that the integrity of the process has to be restored. It therefore recommends the entrusting of certain critical cases to the CBI. These include the cases relating to the
 - Godhra incident, which is at present being investigated by the GRP;
 - Chamanpura (Gulbarga Society) incident;
 - Naroda Patiya incident;
 - Best Bakery case in Vadodara; and the
 - Sadarpura case in Mehsana district.
- (ii) The Commission recommends that Special Courts should try these cases on

a day-to-day basis, the Judges being handpicked by the Chief Justice of the High Court of Gujarat. Special Prosecutors should be appointed as needed. Procedures should be adopted for the conduct of the proceedings in such a manner that the traumatised condition of many of the victims, particularly women and children, is not aggravated and they are protected from further trauma or threat. A particular effort should be made to depute sensitive officers, particularly officers who are women, to assist in the handling of such cases.

- (iii) Special Cells should be constituted under the concerned District Magistrates to follow the progress of the investigation of cases not entrusted to the CBI; these should be monitored by the Additional Director-General (Crime).
- (iv) Specific time-frames should be fixed for the thorough and expeditious completion of investigations.
- (v) Police desks should be set-up in the relief camps to receive complaints, record FIRs and forward them to Police Stations having jurisdiction.
- (vi) Material collected by NGOs such as Citizen's Initiative, PUCL and others should also be used.
- (vii) Provocative statements made by persons to the electronic or print media should be examined and acted upon, and the burden of proof shifted to such persons to explain or contradict their statements.
- (viii) Given the wide variation in the performance of public servants in the discharge of their statutory responsibilities, action should be initiated to identify and proceed against those who have failed to act appropriately to control the violence in its incipient stages, or to prevent its escalation thereafter. By the same token, officers who have performed their duties well, should be commended.

2) Camps

- (i) Visits to camps by senior political leaders and officers should be organised in a systematic way in order to restore confidence among those who have been

victimised. NGOs should be involved in the process and the management and running of the camps should be marked by transparency and accountability

- (ii) Senior officers of the rank of Secretary and above should be given specific responsibility in respect of groups of camps.
- (iii) Special facilities/camps should be set-up for the processing of insurance and compensation claims. The Chief Minister of the State had requested the Commission to issue an appropriate request to insurance companies for the expeditious settlement of claims of those who had suffered in the riots. The Commission will readily do so and recommends that the State Government send to it the necessary details at an early date in order to facilitate such supportive action.
- (iv) Inmates should not be asked to leave the camps until appropriate relief and rehabilitation measures are in place for them and they feel assured, on security grounds, that they can indeed leave the camps.

3) Rehabilitation

- (i) The Commission recommends that places of worship that have been destroyed be repaired expeditiously. Assistance should be provided, as appropriate, *inter alia* by the State.
- (ii) Adequate compensation should be provided to those who have suffered. This will require an augmentation of the funds allocated thus far, through cooperative arrangements involving both the State and Central Governments. Efforts should be made to involve HUDCO, HFDC and international financial and other agencies and programmes in this process.
- (iii) The private sector, including the pharmaceutical industry, should also be requested to participate in the relief and rehabilitation process and proper coordinating arrangements established.
- (iv) The role of NGOs should be encouraged and be an intrinsic part of the overall effort to restore normalcy, as was the case in the coordinated effort after the earthquake. The Gujarat Disaster Management Authority, which was also

deeply engaged in the post-earthquake measures, should be requested to assist in the present circumstances as well.

- (v) Special efforts will need to be made to identify and assist destitute women and orphans, and those subjected to rape. The Women and Child Development Department, Government of India and concerned international agencies/programmes should be requested to help. Particular care will need to be taken to mobilise psychiatric and counselling services to help the traumatised victims. Special efforts will need to be made to identify and depute competent personnel for this purpose.
- (vi) The media should be requested to cooperate fully in this endeavour, including radio, which is often under-utilised in such circumstances.

4) Police Reform

- (i) The Commission would like to draw attention to the deeper question of Police Reform, on which recommendations of the National Police Commission and of the National Human Rights Commission have been pending despite repeated efforts to have them acted upon. The Commission is of the view that recent events in Gujarat and, indeed, in other States of the country, underline the need to proceed without delay to implement the reforms that have already been recommended in order to preserve the integrity of the investigating process and to insulate it from extraneous influences.

(Justice J.S. Verma)
Chairperson

(Justice Sujata V. Manohar)
Member

(Virendra Dayal)
Member

Proceedings of the Commission on Gujarat: 31 May 2002

ANNEXURE 3

Name of the complainant : Suo motu
Case No. : 1150/6/2001-2002
Date : 31 May 2002

Coram

Justice Shri J.S. Verma, Chairperson
Justice Shri K. Ramaswamy, Member
Justice Smt Sujata V. Manohar, Member
Shri Virendra Dayal, Member

Proceedings

1 These Proceedings of the Commission in respect of the situation in Gujarat are in continuation of those recorded by the Commission on 1 and 6 March 2002 and 1 April and 1 May, 2002.

Proceedings of 1 April 2002; transmittal of Preliminary Comments and Recommendations, together with Confidential Report, to Government of Gujarat, Ministry of Home Affairs, Government of India and Prime Minister

2 It will be recalled that, in its Proceedings of 1 April 2002, the Commission had set out its Preliminary Comments and Recommendations on the situation. It had also directed that a copy of those Proceedings, together with a copy of the Confidential Report of the team of the Commission that visited Gujarat from 19-22 March 2002, be sent by the Secretary-General to the Chief Secretary, Government of Gujarat and to the Home Secretary, Government of India, requesting them to send the response/comments of the State Government and the Government of India within two weeks. In view of the visit of the Hon'ble Prime Minister to Gujarat that had been announced for 4 April 2002, the Chairperson was also requested to send a copy of the Proceedings and of the Confidential Report to him.

Proceedings of 1 May 2002; response of Government of Gujarat, dated 12 April 2002 to Preliminary Comments and Recommendations of 1 April 2002

3 In its Proceedings of 1 May 2002, the Commission noted that the Government of Gujarat had sent a reply dated 12 April 2002, but that the Ministry of Home Affairs had sent an interim response, dated 16 April 2002, seeking time until 30 April 2002 to send a more detailed reply. However, no further reply had been received from the Ministry of Home Affairs as of the time of recording the 1 May Proceedings.

Lack of response to Confidential Report

4 In the same Proceedings, the Commission further noted that the reply of the Government of Gujarat did not respond to the Confidential Report of the Commission's team, referred to in its Proceedings of 1 April 2002. The Commission also observed that a specific reply was sought to that Report in order to enable further consideration of the matter, in view of the allegations made, which are mentioned in that Report. While noting that, ordinarily, it would be in order for the Commission to proceed with the further consideration of this matter with the available reply alone while treating the contents of the Confidential Report as unrebutted, the Commission deemed it fit to give a further opportunity of two weeks to reply to the specific matters mentioned in the Confidential Report. The Ministry of Home Affairs, Government of India was also given a further two weeks for its detailed reply, which was to cover *inter alia* the contents of the Confidential Report that had already been sent to it.

Response of Ministry of Home Affairs, Government of India to Preliminary Comments and Recommendations of 1 April 2002 and to the Confidential Report

5 Later in the day on 1 May 2002, after it had recorded its Proceedings, the Commission received a further response from the Ministry of Home Affairs, Government of India. The covering letter, dated 1 May 2002, stated that the response related to 'the Proceedings of the Commission dated 1st April 2002 and the recommendations made therein in so far as it concerns the Central Government.' The response added that 'the report of the visit of the team of the National Human Rights Commission to Gujarat between 19th and 22nd March, 2002 which was sent in a sealed cover has also been examined and since all the issues mentioned therein pertain to the Government of Gujarat, they have been requested to send their comments on the above report directly to NHRC.'

Failure of the Government of Gujarat, until the date of recording the present Proceedings, to respond to the Confidential Report

6 Despite the above-mentioned response of the Government of India, and the extension of time until 15 May 2002 that was granted by the Commission to the Government of Gujarat to respond to the Confidential Report, no response has as yet been received from the State Government to that Report. This is so despite repeated oral reminders by the Commission and assurances by the State Government that a response would soon be forthcoming.

7 In these circumstances, the Commission is now adopting the following procedure:

- (i) It will offer additional Comments upon the response of the Government of Gujarat of 12 April 2002, in respect of the Preliminary Comments of the Commission of 1 April 2002;
- (ii) It will not wait any longer for the response of the Government of Gujarat to the Confidential Report that was sent to it on 1 April 2002, enough time and opportunity having been provided to the State Government to comment on it. Instead, the Commission now considers it to be its duty to release that Confidential Report in totality. It is, accordingly, annexed to these Proceedings as Annexure I. The Commission had earlier withheld release of the Confidential Report because it considered it appropriate to give the State Government a full opportunity to comment on its contents, given the sensitivity of the allegations contained in it that were made to the team of the Commission that visited Gujarat between 19-22 March 2002. As and when

the response of the State Government to that Confidential Report is received, the Commission will also make that public, together with the Commission's views thereon.

- (iii) It will make a further set of Recommendations developing on its earlier recommendations, in the light of the reply received from the Government of Gujarat dated 12 April 2002 and from the Ministry of Home Affairs, Government of India, dated 1 May 2002.

8 In proceeding in this manner, the Commission will also keep in mind, in particular, the reports that it has been receiving from its Special Representative in Gujarat, Shri P.G.J. Nampoothiri, a former Director-General of Police of that State, who has been requested by the Commission to continue to monitor the situation and to report on developments. The State Government has been advised of Shri Nampoothiri's responsibilities and it has informed the competent officers of the Government of Gujarat of this arrangement in writing. The Commission will, in addition, continue to be mindful of the extensive coverage of developments relating to Gujarat in the print and electronic media.

A) Comments of the Commission on the response of the Government of Gujarat of 12 April 2002, in respect of its Preliminary Comments of 1 April 2002

Failure to protect rights to life, liberty, equality and dignity

9 In its Preliminary Comments of 1 April 2002 the Commission had observed that the first question that arises is whether the State has discharged its primary and inescapable responsibility to protect the rights to life, liberty, equality and dignity of all of those who constitute it. Given the history of communal violence in Gujarat, a history vividly recalled in the report dated 28 March 2002 of the State Government itself, the Commission had raised the question whether the principle of 'res ipsa loquitur' ('the affair speaking for itself') should not apply in this case in assessing the degree of State responsibility in the failure to protect the rights of the people of Gujarat. It observed that the responsibility of the State extended not only to the acts of its own agents, but also to those of non-State players within its jurisdiction and to any action that may cause or facilitate the violation of human rights. The Commission added that, unless rebutted by the State Government, the adverse inference arising

against it would render it accountable. The burden of proof was therefore on the State Government to rebut this presumption.

10 Nothing in the reports received in response to the Proceedings of 1 April 2002 rebuts the presumption. The violence in the State, which was initially claimed to have been brought under control in seventy two hours, persisted in varying degree for over two months, the toll in death and destruction rising with the passage of time. Despite the measures reportedly taken by the State Government, which are recounted in its report of 12 April 2002, that report itself testifies to the increasing numbers who died or were injured or deprived of their liberty and compelled to seek shelter in relief camps. That report also testifies to the assault on the dignity and worth of the human person, particularly of women and children, through acts of rape and other humiliating crimes of violence and cruelty. The report further makes clear that many were deprived of their livelihood and capacity to sustain themselves with dignity. The facts, thus, speak for themselves, even as recounted in the 12 April 2002 report of the State Government itself. The Commission has therefore reached the definite conclusion that the principle of 'res ipsa loquitur' applies in this case and that there was a comprehensive failure of the State to protect the Constitutional rights of the people of Gujarat, starting with the tragedy in Godhra on 27 February 2002 and continuing with the violence that ensued in the weeks that followed. The Commission has also noted in this connection that, on 6 May 2002, the Rajya Sabha adopted with one voice the motion stating:

'That this House expresses its deep sense of anguish at the persistence of violence in Gujarat for over six weeks, leading to loss of lives of a large number of persons, destruction of property worth crores of rupees and urges the Central Government to intervene effectively under article 355 of the Constitution to protect the lives and properties of the citizens and to provide effective relief and rehabilitation to the victims of violence.'

The Commission has further noted, in this connection, that it has proven necessary to appoint a Security Advisor to the Chief Minister, to assist in dealing with the situation. The appointment implicitly confirms that a failure had occurred earlier to bring under control the persisting violation of the rights to life, liberty, equality and dignity of the people of the State.

Failure of intelligence

11 The response of the State Government of 12 April 2002 also fails to dispel the observation made by the Commission in its Preliminary Comments that the failure to protect the life, liberty, equality and dignity of the people of Gujarat itself stemmed from a serious failure of intelligence and a failure to take timely and adequate anticipatory steps to prevent the initial tragedy in Godhra and the subsequent violence.

12 The report of the State Government of 12 April 2002 asserts that the State Intelligence Bureau 'had alerted all Superintendents and Commissioners of Police as early as 7.2.2002 about the movement of karsevaks from the State by train on 22.2.2002 to Ayodhya. Besides the State Intelligence Bureau had also intimated UP State Police authorities on 12th, 21st, 23rd, 25th and 26th February 2002 about the number of karsevaks who had left the State for Ayodhya by train.' However, 'specific information about the return journey of karsevaks by the Sabarmati Express starting from Ayodhya was received only on 28.2.2002 at 0122 hrs i.e., after the incident had taken place on 27.2.2002 morning.'

13 It appears incomprehensible to the Commission that a matter which had been the subject of repeated communications between the Gujarat Intelligence Bureau and the UP State Police as to the out-going travel plans of the karsevaks, should have been so abysmally lacking in intelligence as to their return journeys. This is all the more so given the volatile situation that was developing in Ayodhya at that time and the frequent reports in the press warning of the dangers of inter-communal violence erupting in Ayodhya and other sensitive locations in the country. In the view of the Commission, it was imperative, in such circumstances, for the Gujarat Intelligence Bureau to have kept in close and continuing touch with their counterparts in Uttar Pradesh and with the Central Intelligence Bureau. The inability to establish a two-way flow of intelligence clearly led to tragic consequences. The Commission must therefore also definitively conclude that there was a major failure of intelligence and that the response of the State Government has been unable to rebut this presumption.

Failure to take appropriate action

14 The failure of intelligence was, in the opinion of the Commission, accompanied by a failure to take appropriate anticipatory and subsequent action to prevent the spread and continuation of violence. The Preliminary Comments of the Commission had observed, in this connection, that while some communally-prone districts had

succeeded in controlling the violence, other districts — sometimes less communally prone — had succumbed to it. The Commission had therefore pointed to ‘local factors and players’ overwhelming the district officers in certain instances, but not in others, and had asked the State Government as to who these players were in the situations that had gone out of control. Such information had been sought from the State Government particularly since there were widespread reports of well-organised persons, armed with mobile telephones and addresses, singling out certain homes and properties for death and destruction. The reports had also implied that public servants who had sought to perform their duties diligently and to deal firmly with those responsible for the violence had been transferred at short notice to other posts without consulting the Director-General of Police and, indeed, over his protests.

15 The reply of the State Government of 12 April 2002 does not answer these questions. Instead, it refers to the ‘gravity of the communal incident which provoked the disturbances’ and the role of the electronic media. While there can be no doubt whatsoever about the gravity of the Godhra tragedy, it is the considered view of the Commission that that itself should have demanded a higher degree of responsiveness from the State Government to control the likely fall-out, especially in the wake of the call for the ‘Gujarat bandh’ and the publicly announced support of the State Government to that call. Regrettably, immediate and stringent measures were not adequately taken; the response of the Government thus proved to be unequal to the challenge, as vividly illustrated by the numbers who lost their lives, or were brutally injured or humiliated as the violence spread and continued.

Failure to identify local factors and players

16 As to the ‘local factors and players’, in respect of whom the Commission had sought specific information, the reply of the State Government is silent, taking instead the position that this is a ‘matter covered by the terms of reference of the Commission of Inquiry appointed by the State Government.’ The Commission is constrained to observe that it found this answer evasive and lacking in transparency, not least because of the numerous eye-witness and media reports — including allegations specifically made to the Commission and communicated to the State Government — which identify and name specific persons as being involved in the carnage, sometimes within the view of police stations and personnel. The reply makes no effort whatsoever to rebut the allegations made against such persons, or to indicate the action taken by the State Government against those specifically named for participating in the egregious violation of human rights that occurred, or for inciting the acts of violence that resulted in murder, arson, rape and the destruction of lives and property.

Pattern of arrests

17 In this connection, the Commission has made a careful analysis of the pattern of arrests indicated to it by the State Government in its report of 12 April 2002. That report states that a total number of 27,780 arrests had been made, involving both crimes and as preventive detention. The response does not, however, make clear how many arrests, preventive or otherwise, were made in the worst afflicted areas of the State within the first 72 hours of the tragedy in Godhra, nor the community-wise break-up of those arrested in those areas in the immediate aftermath of Godhra, though such data would have enabled a proper scrutiny of the charge of discrimination brought against the State Government in respect of its conduct in the critical hours immediately after the Godhra tragedy and the call for the 'bandh'. This lack of transparency seriously undermines the response. The report states instead, that, in relation to various offences, 11,167 persons were arrested, of whom 3,269 belonged to the 'minority' community and 7,896 to the 'majority.' As regards the 16,615 preventive arrests, it mentions that 13,804 belong to the 'majority' community and 2,811 to the 'minority.' The questions that arise, however, are when and where were the arrests made, who were arrested and for how long were they kept in custody, and were those who were specifically named arrested. The Special Representative of the Commission, Shri Nampoothiri has observed in a report to the Commission dated 24 April 2002 that 'almost 90% of those arrested even in heinous offences like murder, arson, etc., have managed to get bailed out almost as soon as they were arrested.' Reports have also appeared in the media that those who have been released on bail were given warm public welcomes by some political leaders. This is in sharp contrast to the assertion made by the State Government in its report of 12 April 2002 that 'bail applications of all accused persons are being strongly defended and rejected' (sic).

Uneven handling of major cases

18 The analysis made by the Commission of the State Government's reply of 12 April 2002 also illustrates the uneven manner in which some of the major cases had been handled until that date. In respect of the Godhra incident, where 59 persons were killed, 58 persons had been arrested and all were in custody (54 in judicial custody, 4 in police remand). In respect of the Chamanpura (Gulbarga Society) case, where some 50 persons including a former Member of Parliament were killed, 18 persons had been arrested (17 were in judicial custody, 1 was released by the juvenile court). As regards Naroda Patia, where some 150 persons were reportedly killed, 22 had been arrested, but the response is silent in respect of whether they had been released on bail or were

in custody. In respect of the Best Bakery case in Vadodara, where some 8 persons were reportedly killed, 12 accused persons were in judicial custody. However, no details were given about the status of the 46 persons arrested in the Sadarpura case of Mehsana District where some 28 persons were reportedly killed.

Distorted FIRs: 'extraneous influences', issue of transparency and integrity

19 The Commission had recorded in its Proceedings of 1 April 2002 that there were numerous allegations made both in the media and to its team that FIRs in various instances were being distorted or poorly recorded, and that senior political personalities were seeking to influence the working of police stations by their presence within them. The Commission had thus been constrained to observe that there was a widespread lack of faith in the integrity of the investigating process and the ability of those conducting investigations. The Commission had also observed that according to the State Government itself, 'in Ahmedabad, looting was reported in well-to-do localities by relatively rich people.' Yet the State Government had not identified who these persons were.

20 The report of the State Government of 12 April 2002 once again fails to make the necessary identification of these persons. It also fails to rebut the repeatedly made allegation that senior political personalities — who have been named — were seeking to influence the working of police stations by their presence within them. It states that the Government 'fully accepts the view that there should be transparency and integrity in investigating instances of death and destruction' and adds that 'this is being taken care of'. The Commission's Special Representative, Shri Nampoothiri, however, has reported to the Commission on 24 April 2002 in a totally opposite vein. He has stated that, in respect of most of the 'sensational cases,' the FIRs registered on behalf of the State by the police officers concerned, the accused persons are shown as 'unknown'. His report adds that 'this is the general pattern seen all over the State. Even when complaints of the aggrieved parties have been recorded, it has been alleged that the names of the offenders are not included. In almost all the cases, copies of the FIRs which the complainant is entitled to, has not been given.' There has been widespread public outrage, in particular, in respect of atrocities against women, including acts of rape, in respect of which FIRs were neither promptly nor accurately recorded, and the victims harassed and intimidated. The Commission must conclude, therefore, that until the time of Shri Nampoothiri's 24 April 2002 report, the victims of the atrocities were experiencing great difficulty in having FIRs recorded, in naming those whom they had identified and in securing copies of their FIRs. Further — for far too long —

politically-connected persons, named by the victims of the crimes committed, remained at large, many defying arrest. These are grave matters indeed that must not be allowed to be forgiven or forgotten. Based on Shri Nampoothiri's reports the Commission would therefore like to warn that the danger persists of a large-scale and unconscionable miscarriage of justice if the effort to investigate and prosecute the crimes that have been committed is not directed with greater skill and determination, and marked by a higher sense of integrity and freedom from 'extraneous political and other influences' than has hitherto been in evidence. Of particular concern to the Commission have been the heart-rending instances identified in its Proceedings of 1 April 2002, in respect of which it had called for investigations by the CBI: those cases relate to some of the very worst incidents of murder, arson, rape and other atrocities, including many committed against women and children whose tragic and inconsolable circumstances have profoundly shocked and pained the nation.

Pervasive insecurity: Justices Kadri and Divecha

21 In its Preliminary Comments of 1 April 2002 the Commission had referred to the pervasive sense of insecurity prevailing in Gujarat at the time of the visit of its team to that State between 19-22 March 2002. It added that this was most acute among the victims of the successive tragedies, but that it extended to all segments of society, including to two Judges of the High Court of Gujarat, one sitting (Justice Kadri) and the other retired (Justice Divecha) who were compelled to leave their homes because of the vitiated atmosphere.

22 The Commission has carefully considered the 12 April 2002 response of the State Government in respect of Justices Kadri and Divecha. In regard to the former, the response states that, 'prior to 28th, there was already half a section of police guards' posted outside Justice Kadri's residence in Law Garden. It adds that on 28 February 2002, Justice Kadri shifted to Judges Colony in Vastrapur 'of his own accord.' It goes on to state that, from 9 March 2002, a further police guard was placed at his house 'since he desired to shift back to his original residence.' The Commission is compelled to observe that the response of the State Government fails to acknowledge an incontrovertible fact: the movements of Justice Kadri from house to house were compelled on him because of the pervasive insecurity. They were not 'of his own accord' because they were clearly involuntary. And the conclusion is inescapable that the insecurity was such that it was not dispelled by the police arrangements reportedly made for him.

23 As to the 12 April 2002 response of the State Government in respect of Justice Divecha, it totally ignores any mention of the repeated efforts made by him and his associates to seek appropriate police protection, the repeated visits of mobs to his home on 27 and 28 February, his forced departure, together with Mrs. Divecha, from their home at around 12.20 p.m. on 28 February 2002 and the fire that was set to their apartment and property at around 4 p.m. on that day. Justice Divecha's letter to the Chairperson of this Commission dated 23 March 2002 (Annexure II) speaks for itself. The fact that criminal case no. 121/2002 was subsequently registered, that 7 arrests had been made and that the matter was under investigation, does not explain the failure to protect Justice Divecha. The action taken was, sadly, too little and too late. Nor can the Commission accept the proposition that, 'As the city of Ahmedabad was engulfed by the disturbance, it was not possible for the City Police to arrange for protection for every society.' The Commission would like to underline that there were communal reasons for the repeated and specifically targeted attacks on Justice Divecha's property. The attacks were not a case of random violence against 'every society' in the city, as the response of the State Government would have the Commission believe. Indeed, the response betrays a considerable lack of sensitivity in explaining what occurred. It is for this reason that the Commission must reject as utterly inadequate the response of the State Government, as contained in its reply of 12 April 2002, in respect of this matter.

24 There is a deeper point at issue here that the Commission wishes to make. If the response of the State Government to the security needs of two Justices of the High Court was so hopelessly inadequate, despite the time and the opportunity that it had to prevent the harm that was done, it must be inferred that the response to the needs of others, who were far less prominent, was even worse. Indeed, the facts indicate that the response was often abysmal, or even non-existent, pointing to gross negligence in certain instances or, worse still, as was widely believed, to a complicity that was tacit if not explicit.

B) Release of the Confidential Report transmitted to the Government of Gujarat with the Commission's Proceedings of 1 April 2002

25 For the reasons indicated earlier in these Proceedings, the Confidential Report transmitted to the State Government of Gujarat on 1 April 2002, and to which the State Government has not responded for nearly two months despite repeated opportunities

to do so, is now being released by the Commission (see Annexure I). Even while doing so, however, the Commission urges that Government to come forward with a clear response, indicating in detail the steps it has taken in respect of the persons named in that report who allegedly violated human rights or interfered in the discharge of the responsibilities of the State to protect such rights. Further, the Commission once again calls upon the State Government to provide a full account of the incidents to which the Commission drew its attention in that Confidential Report, and to indicate the measures it has taken to investigate and redress the wrongs that were committed.

C) Further set of Recommendations of the Commission, in the light of the reply of 1 April 2002 received from the Government of Gujarat, and of 1 May 2002 from the Ministry of Home Affairs, Government of India

26 Having reviewed the responses received thus far, the Commission would now like to make a further set of Recommendations, keeping in mind those that it had made in its Proceedings of 1 April 2002.

1) Law and Order

Involvement of CBI

27

- (i) In view of the widespread allegations that FIRs had been poorly or wrongly recorded and that investigations had been 'influenced' by extraneous considerations or players, the Commission had stated that the integrity of the process had to be restored. It had therefore recommended that certain critical cases, including five that it had specifically mentioned, be entrusted to the CBI.
- (ii) The State Government responded on 12 April 2002 saying that 'An investigation conducted by the State Police cannot be discredited, cannot be put into disrepute and its fairness questioned merely on the basis of hostile propaganda'. It then recounted the steps taken in respect of the five cases listed by the Commission and added that transference of these cases to the CBI would 'indefinitely delay the investigation' and help the accused persons to get bail. It also stated that the CBI is already understaffed and over-

burdened. The Commission was therefore requested to reconsider its recommendation as it was based on 'unsubstantiated information given to the Commission by sources with whom authentic information was not available.'

- (iii) The response of the Ministry of Home Affairs, Government of India, dated 1 May 2002, summarises the position of the State Government. It then adds that, under existing rules, the CBI can take up the investigation of cases only if the State Government addresses and appropriately requests the CBI to do so. Since the State Government had expressed the opinion that investigation into the cases is not required by the CBI at this stage, 'it is not possible for the Central Government to direct the CBI to take up the investigation of the above cases.'
- (iv) The Commission has considered these responses with utmost care. It does not share the view of the State Government that the substance of the allegations made against the conduct of the police, and the reports of 'extraneous' influences brought to bear on the police, were based on 'hostile propaganda' or 'unsubstantiated information.' The allegations were made by those who were personally affected by, or witness to, the events, and by eminent personalities and activists who spoke to the Commission directly, or addressed petitions to it, with a full sense of responsibility. The Commission would like to underline that it is a central principle in the administration of criminal justice that those against whom allegations are made should not themselves be entrusted with the investigation of those allegations. It has universally been the practice to act on this principle, including in this country. To depart from that principle would, therefore, be to invite a failure of justice. In respect of the cases listed by the Commission, the allegations of inaction, or complicity by the elements of the State apparatus were grave and severely damaging to its credibility and integrity. It would thus be a travesty of the principles of criminal justice if such cases were not transferred to the CBI. Worse still, the inability to do so could severely compromise the fundamental rights to life, liberty, equality and dignity guaranteed by the Constitution to all of the people of India on a non-discriminatory basis. Further, in the light of the unanimously adopted resolution in the Rajya Sabha on 6 May 2002, urging the Central Government 'to intervene effectively under Article 355 of the Constitution to protect the lives and properties of citizens,' the Commission is emphatically of the view that the role of the Central Government in respect of the investigation of the cases identified by the Commission should go beyond

a mere invocation of the 'existing rules' in respect of when the CBI can take up a case for investigation and a statement to the effect that 'it is not possible' for it to direct the CBI to take up the investigation of these cases given the position taken by the State Government.

- (v) In these circumstances, the Commission urges once again that the critical cases be entrusted to the CBI and that the Central Government ensure that this is done, not least in view of the Rajya Sabha resolution referring to its responsibilities under Article 355 of the Constitution. The Commission is deeply concerned, in this connexion, to see from Shri Nampoothiri's report of 28 May 2002 that, of 16,245 persons arrested for substantive offences, all but some 2100 had been bailed out as of 10 May 2002. It also noted from that report that of the 11,363 Hindus arrested for such offences, 8% remained in custody, while 20% of the 4,882 Muslims thus arrested remained in such custody. This does not provide a particularly reassuring commentary on the determination of the State Authorities to keep in check those who were arrested or to bring them to justice.

Police Reform

28

- (i) The Commission drew attention in its 1 April 2002 Proceedings to the need to act decisively on the deeper question of Police Reform, on which recommendations of the National Police Commission (NPC) and of the National Human Rights Commission have been pending despite efforts to have them acted upon. The Commission added that recent events in Gujarat and, indeed, in other States of the country, underlined the need to proceed without delay to implement the reforms that have already been recommended in order to preserve the integrity of the investigating process and to insulate it from 'extraneous influences'.
- (ii) The report of the State Government of 12 April 2002 contains the ambiguous response that 'the question of Police Reform is already under the consideration of the State Government.' Nothing further is said.
- (iii) As to the 1 May 2002 response of the Central Government, it recounts the history of the less than purposeful effort thus far made to bring about Police

Reform. It takes the position that 'Police' is a State subject and that 'the Centre at best can lead and give guidance.' Without going into details of the recommendations made, it recalls the work of the National Police Commission (NPC), the letters addressed to Chief Ministers in 1994, the judgement of the Supreme Court in the case filed by Vineet Narain, the PIL before the Supreme Court in yet another case, the work of the Ribeiro Committee constituted to review the action taken to implement the recommendations of the NPC, NHRC and Vohra Committee, etc. The response concludes 'However, crucial recommendations of the Commission (the NPC) relating to the constitution of State Security Commission/selection of DGP, insulation of investigation from undue pressure etc., could not be implemented.'

- (iv) The Commission is fully familiar with this melancholy history of failure — and of the lack of political and administrative will that it signifies — to revive the quality of policing in this country and to save it from the catastrophic 'extraneous influences' that are ruining the investigative work of the police. The Commission therefore urges both the Central and State Governments once again, taking the situation in Gujarat as a warning and catalyst, to act with determination to implement the various police reforms recommended and referred to above.
- (v) By drawing attention to the fundamental need for Police Reform, the Commission did not have in mind the temporary appointment of a Security Advisor to a Chief Minister, necessary as such a step may be, or the transfer of police personnel — sometimes for the right reasons, but frequently for the wrong. It had in mind, instead, the crucial reforms which are detailed in full in its submissions to the Supreme Court in the case **Prakash Singh vs. Union of India**. These are fully known to the Central and State Governments and are also published, *in extenso*, in the Commission's annual report for the year 1997-98, where they may readily be seen. Further, the Commission has in mind the judgement of the Supreme Court in the case **Vineet Narain and Others vs. Union of India and Another (1998 1SCC 273)** in which the Apex Court, *inter alia*, set out the method of appointment and functioning of the Central Bureau of Investigation (CBI) and the Central Vigilance Commission (CVC), and of a Central Prosecution Agency and went on to observe:

'In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the State Governments also to set up a credible mechanism for selection of Police Chiefs in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, (as indicated above) is set up in each State for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also of all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicising the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their Constitutional powers in the federation to impress upon the State Government that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission's Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister (then Shri Indrajit Gupta) in his letters to the State Government, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances.'

- (vi) These observations of the Supreme Court, written in 1997, are singularly prescient when set against the situation in Gujarat. The Police Reforms directed by the Apex Court never took place. An unreformed police force thus allowed itself to be overwhelmed by the situation and by the 'extraneous influences' brought to bear on it. In the face of the challenges confronting it, the State Government thus failed in its primary and inescapable duty to protect the constitutionally guaranteed rights of the citizenry. In such a situation, it was widely reported that certain transfers of police personnel were made for whimsical, 'extraneously' influenced reasons. It was also reported that the Director-General of Police was not consulted in respect of them, but side-lined in the decision-making process and protested against the manner in which these transfers were made. With the Central

Government now being fully associated with the unanimously adopted resolution of the Rajya Sabha requiring it to 'intervene effectively under Article 355 of the Constitution,' it becomes doubly incumbent on it to ensure that 'prompt measures' are taken by it, 'within the ambit of its constitutional powers in the federation' to impress upon the State Government that much of what occurred in the aftermath of the Godhra tragedy was 'alien to the envisaged constitutional machinery' and that there is, *inter alia*, urgent need for radical police reform along the lines already directed by the Supreme Court 'if the situation is to be cured, if the rule of law is to prevail.' The Commission therefore urges that the matter of Police Reform receive attention at the highest political level, at the Centre and in the States, and that this issue be pursued in good faith, and on a sustained basis with the greater interest of the country alone in mind, an interest that must overrule every 'extraneous' consideration. The rot that has set-in must be cured if the rule of law is to prevail.

Special Courts and Special Prosecutors

29

- (i) The Commission had recommended on 1 April 2002 that Special Courts be established to try the most critical cases on a day-to-day basis, the Judges being hand-picked by the Chief Justice of the High Court of Gujarat, with Special Prosecutors being appointed as needed. Emphasis was also placed on the need for procedures to be adopted of a kind that protected the victimised women and children from further trauma and threat. The deputation of sensitive officers, particularly those who were women, was recommended to assist in the handling of such cases.
- (ii) The response of the State Government does not indicate whether it accepts the recommendation for Special Courts of the kind proposed by the Commission, the purpose of which was to ensure expeditious trial and disposal of cases. The Commission would like to stress that justice appropriately and speedily delivered after an outburst of communal violence is essential to the return of normalcy, and that delays in the process exacerbate the climate of violence and mistrust. The response of the State Government also does not comment on the recommendation regarding the appointment of Special Prosecutors. This is regrettable since media and other reports have

alleged that the existing Public Prosecutors have, in critical cases, not asked the Courts to send the accused to police remand, but have informed the Courts that there was no objection to the granting of bail. The Government is therefore requested to clarify the facts pertaining to these matters.

Special Cells

30 The Commission had recommended that Special Cells be constituted under the concerned District Magistrates to follow the progress of cases not entrusted to the CBI and that these should be monitored by the Additional Director General (Crime). The response of the State Government accepts the role proposed for the latter, but does not confirm if appropriate action has been taken. Further, it is silent on the need for Special Cells under the concerned District Magistrates/Police Commissioners. The recommendations are therefore repeated.

Time-frames for investigations

31 The Commission had recommended that specific time-frames should be fixed for the thorough and expeditious completion of investigations. This recommendation appears to have been accepted by the State Government, but it has not spelt out what the time-frames will be, so neither the Commission nor the public know how long the process will take. The State Government should therefore clarify its position on this matter.

Police Desks in Relief Camps

32 The Commission had recommended that police desks should be setup in the relief camps to receive complaints, record FIRs and forward them to Police Stations having jurisdiction. The 12 April 2002 response of the State Government asserts that instructions to this effect had been given and that 3,532 statements and 283 FIRs had been recorded in the relief camps. The Commission, however, is constrained to observe that, according to a report received from its Special Representative dated 24 April 2002, police desks had been set up only in 9 out of a total of 35 relief camps then in existence in Ahmedabad, that these desks worked only for a few days and only for two hours on an average on those days. The Commission therefore calls for full

compliance with its recommendation in respect of the setting-up of such police desks in the relief camps. That would go a long way towards ensuring that FIRs are more accurately and fully recorded, particularly in respect of crimes committed against women and children, especially rape and other acts of brutality. Regrettably, such cases are still not being adequately registered, a fact that emerges from Shri Nampoothiri's report of 28 May 2002, not least because of the insensitive questioning by police personnel. There is also a lack of evidence of sufficient women officers being appointed to help with such cases. In this connection, the Commission would also like to reiterate its view that, in the very nature of situations such as this, material collected and provided by other credible sources, e.g., NGOs, should be fully taken into account. There is little evidence to suggest that this is being done. There is therefore need for greater responsiveness to this recommendation and greater transparency on the part of Police Commissioners and Superintendents of Police who should establish a system whereby NGOs and others can know precisely what action has been taken in respect of material provided by them.

Survey of all Affected Persons

33 The Commission urges, in this connection, that a comprehensive survey be expeditiously completed to establish the facts concerning the number and names of those who have been killed, or who are missing, injured, rendered widows, orphans or destitute in the violence that has ensued. The response of the Government does not throw any light on what is being done to gather such data. This is posing a major legal and humanitarian problem, not least to those who are the next-of-kin of those who have been killed or who are missing. The procedure for declaring a person dead needs to be reviewed in the present circumstances, and a procedure developed based on affidavits by the next-of-kin and their neighbours or other reliable persons. The Commission further recommends that the State Government expeditiously publish the data that is compiled, on a district-wise basis. This would not only assist the survivors in receiving the compensation and benefits that is their due, but also set to rest speculation about the number of persons killed or missing, and the widespread belief that there is a serious discrepancy between 'official' and 'unofficial' figures. A comparable recommendation by the Commission in respect of casualties after the Super-Cyclone in Orissa and the earthquake in Gujarat greatly assisted both the State and the affected population to arrive at the truth and to avoid painful controversy.

Analysis of material collected by NGOs and others

34 The Commission had recommended that material collected by NGOs such as Citizen's Initiative, PUCL and others should be used. The response of the State Government indicates that such material, provided by different organisations will be investigated and, if found to be correct upon investigation, appropriately used in accordance with law. The Commission has taken note of this and will be monitoring the action taken by the State Government, particularly in respect of certain critically important cases and of those involving crimes against women and children which have been extensively documented by NGOs and citizens groups. The Commission has also asked its Special Representative to keep it informed of developments in regard to these cases, the details of which are available in the widely circulated reports of these NGOs and citizens groups. The reports thus far received do not suggest that the State Government is acting with adequate diligence on this matter.

Provocative Statements

35 The Commission had drawn special attention to the provocative statements made by persons to the electronic or print media, especially the local media, and had urged that these be examined and acted upon, the burden of proof being shifted to such persons to explain or contradict their statements. The response of 12 April 2002 of the State Government merely states that such statements 'will be examined and acted upon appropriately.' It does not indicate which statements are being examined, nor does it provide the details of the action being taken under the provisions of the Indian Penal Code and other relevant acts to bring to book those individuals or organisations that have been making incendiary statements, or publishing articles or leaflets promoting communal enmity. The Commission would like to receive all relevant details of the persons or organisations identified by the State Government in this connection and of the statements or actions for which they are being prosecuted. Only then will the Commission be able to arrive at a conclusion as to whether the State Government has acted appropriately in respect of this most serious matter. A further detailed report from the State Government would therefore be appreciated in this respect.

Identification of delinquent public servants

36 The Commission had expressly called for the identification of officers who had

failed to discharge their statutory responsibilities appropriately and for proceedings to be instituted against them. Likewise, the Commission had added that those who had performed their duties well, should be commended. The State Government has stated that it will be guided by the findings of the Commission of Inquiry appointed by the State Government. It adds that 'some of the officers who have performed their duties commendably have already been rewarded appropriately.' The Commission is of the view that action against the delinquent public servants need not, in all instances, await the outcome of the Commission of Inquiry. In situations such as prevailed in Gujarat, the swiftness and effectiveness of the action taken against delinquent public servants itself acts as a major deterrent to misconduct or negligence in the performance of duty. It also acts as a catalyst to the restoration of public confidence and as an indication of the good faith of the Administration. Failure to take prompt action has the opposite effect. The Commission therefore recommends that prompt action be taken against the delinquent public servants and that the progress in the action initiated be communicated to the Commission.

2) Proper Implementation of Existing Statutory Provisions, Circulars and Guidelines

37 Communal riots are not new to India and least of all so to Gujarat, as the responses of the State Government themselves indicate. The Commission would therefore like to stress that there already exists in the country a comprehensive body of material in the form of statutory provisions, circulars, guidelines and the like, that has been meticulously elaborated over the years, that can and must be followed by those responsible for the maintenance of law and order and communal harmony in the country. In assessing whether or not the Government of Gujarat discharged its responsibilities adequately in the face of the violence that convulsed the State for over two months, it is essential to assess its performance against this body of material. For purposes of these Proceedings, the Commission will not attempt to list out comprehensively the entire range of statutes, circulars and guidelines germane to developments in Gujarat, but it will, by way of illustration, draw attention to certain of them, since they are singularly relevant to an assessment of the conduct of the State Government and of its officials.

A) Statutory Provisions

38 Amongst the principal statutory provisions that could and should have been vigorously used to control the situation are the following:

39 The Indian Penal Code (1860)

Chapter VIII entitled 'Of offences against the public tranquility':

This is relevant in its entirety (Sections 141-160 IPC)

The Commission would, however, draw attention in particular to the following provisions of that Chapter:

- Section 153 — Wantonly giving provocation with intent to cause riot — If rioting be committed, if not committed;
- Section 153-A — Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony;
- Section 153-B — Imputations, assertions prejudicial to national integration.

Chapter XV entitled 'Of offences relating to religion'

This, too, is most relevant and includes the following:

- Section 295 — Injury or defiling place of worship with intent to insult the religion of any class;
- Section 295-A — Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or beliefs;
- Section 297 — Trespassing on burial places, etc.;
- Section 298 — Uttering words, etc., with deliberate intent to wound religious feelings.

The Commission would also draw attention to the special relevance in Chapter XXII of Section 505 (1), (2) and (3) IPC, dealing respectively with Statements conducing to public mischief, Statements creating or promoting enmity, hatred or ill-will, between classes, and an Offence under sub-section (2) committed in a place of worship, etc.

The Code of Criminal Produce (1973)

40 Attention is drawn, in particular, to the contents of Chapter V, relating to Arrest of Persons, and especially to

- Section 41 — When police may arrest without warrant;
- Section 51 — Search of arrested person; and
- Section 52 — Power to seize offensive weapons.

The following sections of Chapter X, dealing with Maintenance of Public Order and Tranquility, are also particularly relevant

- Section 129 — Dispersal of assembly by use of civil force;
- Section 130 — Use of armed force to disperse assembly;
- Section 131 — Power of certain armed force officers to disperse assembly;
- Section 144 — Power to issue order in urgent cases of nuisance or apprehended danger.

Chapter XI, dealing with Preventive Action of the Police, contains, in particular, the following:

- Section 149 — Police to prevent cognizable offences;
- Section 151 — Arrest to prevent the commission of cognizable offences.

Chapter XII concerning Information to the Police and their Powers to Investigate, is also of relevance, particularly Section 154 pertaining to the recording of information in cognizable cases.

41 In addition, attention is drawn to The Police Act, 1861. Of particular relevance are the following provisions:

- Section 23 — Duties of police officer;
- Section 30 — Regulation of public assemblies and processions and licensing of the same;

42 The National Security Act, 1980, which provides for preventive detention, is also germane to the situation that prevailed in Gujarat, as is the Arms Act, 1959.

43 As indicated earlier, the statutory provisions mentioned above do not purport to be a comprehensive listing of all such provisions under the various acts of the country relevant to the maintenance of law and order and communal harmony. However, even the selected listing contained in these Proceedings gives an idea of the vast range of the provisions of law that the Government of Gujarat could and should have drawn upon to deal swiftly and effectively with the violence that ensued. The performance of the authorities, however, points to a less than vigorous use of these provisions.

3) Circulars, Guidelines, etc.

44 In examining the situation, the Commission has, in particular, been struck by the apparent failure of the Government of Gujarat to follow vigorously the 'Guidelines to Promote Communal Harmony' issued by the Ministry of Home Affairs, Government of India, in 1997 and circulated to all Chief Ministers with a covering letter dated 22 October 1997 from the then Union Minister for Home Affairs, Shri Indrajit Gupta, who called for 'urgent action' on the basis of those Guidelines.

45 Given the pointed relevance of those Guidelines to the situation in Gujarat, they are being attached to these Proceedings in full as Annexure III. In addition, however, it is essential to highlight certain portions of those Guidelines, by reproducing them in the main body of these Proceedings.

Excerpts from the 'Guidelines to Promote Communal Harmony'

46 From the Chapter entitled **Intelligence:**

- Paragraph 2: 'The organisational aspect of intelligence, with special reference to its adequacy, scope and efficacy, both at the State level and in the Districts/Towns/Areas identified as sensitive/hyper-sensitive should be thoroughly reviewed on a priority basis.'
- Paragraph 8: 'There is an urgent need to make use of the intelligence feed-back so gleaned from the ground level. To ensure this there must be at least a monthly review of intelligence at the District level by the District Magistrate, Superintendent of Police and the Head of District Intelligence. Such reviews should not get "routinised." A monthly report of the review should be sent to the State Government.'

47 From the Chapter entitled 'Periodical Review of Communal Situation at District level and State level'

- Special arrangements are recommended to ensure that women are protected as they are 'the most affected group in communal tensions or riots' (paragraph 11), as also for 'industrial areas,' as they 'may be prone to communal flare-ups' (paragraph 14).
- Paragraph 15 requires: 'At the first sign of trouble, immediate steps have to be taken to isolate elements having a non-secular outlook. Effective will needs to be displayed by the District Authorities in the management of such situations so that ugly incidents do not occur. Provisions of section 153(A), 153(B), 295 to 298 and 505 of IPC and any other law should be freely used to deal with individuals promoting communal enmity.'
- Paragraph 16: 'Activities of communal organisations fomenting communal trouble, should be under constant watch of intelligence/police authorities. Prompt action should be taken against them at the first sign of trouble.'
- Paragraph 17: Processions have been the single largest cause of communal conflagrations.

48 Under the Chapter entitled **Stringent Implementation of Acts relating to**

Religious Places, the Guidelines stress, in particular, the need to ensure respect for the Religious Institutions (Prevention of Misuse) Act, 1988 and the Places of Worship (Special Provisions) Act, 1991. The Guidelines also call for the 'strict enforcement of the penal provisions of these Acts' (paragraphs 25-27).

49 The responsibility of the Press is dealt with in the Chapter devoted to this subject. It calls on the Press to 'report incidents factually without imparting a communal colour to them' (paragraph 30) and states that 'Action should be taken against writers and publishers of objectionable and inflammatory material aimed at inciting communal tension.' (paragraph 31).

50 In the 'Administrative Measures' required for dealing with serious communal disturbances, the Guidelines state that, 'as soon as a communal incident occurs, a report should be sent thereon to the Ministry of Home Affairs immediately, mentioning, *inter alia*, the grant of awards for good work or punishments for showing laxity in the district officer connected with the incidents' (paragraph 35). The Guidelines add 'special Public Prosecutors, preferably from outside the district concerned or in any event from outside the affected area should be appointed' (paragraph 36).

51 The need to 'Detect and Unearth' illegal arms and to cancel arms licenses issued without adequate justification is considered in paragraph 40.

52 Thereafter, the 'Role of the Police' is dealt with at some length. Paragraph 44 stresses the need for 'minority community members in the police force deployed in communally sensitive areas;' it urges the 'launching of special campaigns to recruit more members of minorities in the State Police Force' and the 'creation of composite battalions of armed police which should include members of all religious communities including SCs/STs for exclusive use in maintaining communal peace and amity in sensitive areas.'

53 Under the heading 'Punitive Action', the Guidelines state that 'Laws relating to collective fines should be used without fear or favour, wherever the situation warrants' (paragraph 48). It is then urged that 'Crimes committed during riots should be registered, investigated and the criminals identified and prosecuted.' 'Stringent judicial action' is required to be taken against criminals and it should be well publicised in order to impose 'a high degree of constraint upon others' (paragraph 49).

54 Paragraph 50 deals with Special Courts for expeditious trial and disposal of cases. It also suggests that when an Enquiry Committee/Commission is set up, 'its recommendations should be expeditiously implemented, say within three months and the Central Government should be kept informed'.

55 As regards 'Personnel Policy,' the Guidelines categorically state that the District Magistrate and the Superintendent of Police 'will be responsible' for maintaining communal harmony in the district (paragraph 52) and that 'A mention should be made in the ACRs of DMs/SPs which should reflect their capability in managing law and order situations, especially their handling of communal situations.' (paragraph 53).

56 Of great importance in the Guidelines and of clear relevance to the situation in Gujarat is the view expressed on the 'Role of Ministers/Office Bearers of Political Parties.' Paragraph 57 states that 'Ministers and office bearers of political parties should exercise maximum restraint and self-discipline in making public utterances on any issue concerning the communal disturbance' and paragraph 58 adds 'No Minister or an office bearer of a political party should participate in any function or a meeting or a procession which may have a bearing on religious or communal issues. It would be best if the District Magistrate is consulted before participating therein.'

57 The Guidelines recapitulated above were issued by the Government of India 18 years after the Second Report of the National Police Commission (NPC) which, in 1979, analysed the grave issue of Communal Riots in great detail. Chapter XLVII of that Report contained specific observations and recommendations which retain a high degree of relevance to what occurred in Gujarat recently.

58 The Second Report of the NPC recalled and examined the work of various Commissions of Inquiry appointed earlier to look into major incidents of communal violence, including *inter alia* the Raghubar Dayal Commission (Ranchi-1967), the Madon Commission (Bhiwandi-1970), the Jaganmohan Reddy Commission (Ahmedabad-1969) and the Balasubramanian Commission (Bihar Sharief-1981) and reached the conclusion that there was a 'pattern in the failures' to deal effectively with the outbursts of communal violence. The 'pattern' pointed to the following 'failures' (paragraphs 47.6 - 47.16):

- A failure in timely and accurate gathering of intelligence;
- A failure to make a correct assessment of the intelligence reports;

- A failure to anticipate trouble, and to make adequate arrangements on the ground;
- A failure to deploy available resources adequately and imaginatively in vulnerable areas; a tendency to disperse the force in penny-packets without sufficient striking reserves;
- A failure by the DM and SP to take 'quick and firm decisions' and a 'growing tendency among the district authorities to seek instructions from higher quarters, where none are necessary';
- A failure of police officers and their men to function without bias; a pattern instead of such personnel showing 'unmistakable bias against a particular community';
- A failure of officers to take responsibility in dealing with a situation, 'to avoid to go to a trouble spot, or when they happen to be present there, (to) try not to order the use of force when the situation demands, or better still slip away from the scene leaving the force leaderless';
- A failure to post district officers on 'objective considerations' or for 'long enough tenures'; instead, officers 'being posted and transferred due to political pressures,' adversely affecting the discipline and moral of the force, the 'spate of transfers' undermining the 'credibility of the administration.'
- A failure to be transparent in respect of a situation and a tendency to 'hide the true-facts,' even among senior officers. The tendency to 'minimise' the number of casualties often resulted in rumours, the populace then choosing to believe 'sources other than the administration and the government media.'

59 The Second Report of the National Police Commission (NPC) then went on to make a number of powerful recommendations, many of which were subsequently used in the Guidelines of 1997, referred to above. Among the more relevant of the NPC recommendations, specifically in respect of communal situations, were the following:

- The administration should disseminate correct information to the public through all available means. In cases of mischievous reporting, the State Government and local administration should use every weapon in the legal

armoury to fight obnoxious propaganda prejudicial to communal harmony (paragraphs 47.28, 47.29).

- The authorities in dealing with communal riots should not be inhibited, by any consideration, to adopt luke-warm measures at the early stages; a clear distinction must be made between communal riots and other law and order situations and 'the most stringent action taken at the first sign of communal trouble' (paragraph 47.34).
- Officers who have successfully controlled the situation at the initial stages with firm action should be suitably rewarded. Immediate and exemplary action should be taken against officers who willfully fail to go to the trouble spot or who slip away from there after trouble has erupted (paragraph 47.35).
- The NPC Report 'strongly disapproves' of 'the practice of posting and transfers on political pressures.' Only specially selected experienced officers with an image of impartiality and fair play should be posted to communally sensitive districts (paragraph 47.36).
- There should be a control room in all of those places which have been identified as prone to communal trouble. Even though some information passed on to the control room may not be useful every bit of information passed on to the control room should be acted upon as if it were genuine (paragraph 46.37).
- Unless crimes committed are registered, investigated and the criminals identified and prosecuted, the police would not have completely fulfilled its role as a law enforcement agency. The police should realize that the task of investigation is a mandatory duty cast upon it and any indifference to this task can attract legal sanctions (paragraph 47.47).
- In a riot situation registration of offences becomes a major casualty. 'It is futile to expect the victim of the crime to reach a police station risking his (her) own life and report a crime to the police.' The police should therefore open several reporting centers at different points in a riot-torn area (paragraph 47.48).
- The police forces of the various States in the country should truly represent the social structure in the respective States (paragraph 47.58).

60 In drawing attention to the Circulars, Guidelines and Reports mentioned above, the Commission would like to underline its sense of anguish that, despite the existence of such thorough and far-reaching advice on how to handle incidents of communal violence, the Government of Gujarat has conspicuously failed to act in accordance with the long-standing provisions of these important instructions and that, measured against the standards set by them, the performance of the State appears to be severely wanting. The Commission believes that there is need for careful introspection within the State Government in this respect; the shortcomings in its performance need to be analysed, *inter alia*, in the light of the statutory provisions, circulars and guidelines referred to above, and a detailed report based on that analysis should be made available by the State Government to the Ministry of Home Affairs, Government of India, and to this Commission for their consideration. The report should indicate the precise conclusions that the State Government has reached, and the steps that it intends to take, to prevent the recurrence of the type and range of failures that have marred the performance of the State in the handling of the tragic events that occurred recently. The report should also indicate clearly what steps the Government intends to take against those who are responsible for these multiple failures, identifying the delinquent public servants, and others in authority, without equivocation.

4) Camps

61 The Commission had recommended that the camps should be visited by senior political leaders and officers in a systematic way, that NGOs should be involved in the process, and that the management and running of camps should be marked by transparency and accountability. The State Government has, in its response of 12 April 2002, recounted the number of visits made, the medical, para-medical, sweepers, anganwadi and other staff appointed/deployed, the medicines distributed etc.

62 The Commission has taken note of these efforts. It would, however, like to draw particular attention to the following matters:

- (i) There is a manifest need to improve sanitary conditions in the camps, and increase the provision of toilets and water supply. Particular care must be taken of the needs of women, for whom special facilities should be provided. There should be a reasonable ratio prescribed of toilets and bathing places to population.

- (ii) Particular vigilance must be ensured to prevent the spread of epidemics, measles and other illnesses having already taken a toll.
- (iii) While the response of the State Government indicates the quantity of food-grains, pulses, etc., supplied to the camps in 8 districts, it does not indicate the standards adopted in providing essential food-items. These standards must accord with the minimal nutritional levels set by WHO/UNICEF and the competent Ministries of the Government of India in situations such as this. There have been alarming reports of arbitrary reductions in the quantity of foodstuffs being provided.
- (iv) Given the scorching heat of summer, and the imminent monsoon that will follow, there is an immediate and most critical need to provide semi-permanent structures and better protection against the elements. Standards must also be set for the provision of fans etc., in terms of population, in order to ease the suffering of those who have sought refuge in the camps.
- (v) Camp-wise monitoring committees should be appointed to watch over each of the camps.
- (vi) The role and functions of NGOs should be more clearly defined than has been the case till now. Private sector organisations and business houses should be encouraged to 'adopt' certain camps, or specific activities within them, e.g., the provision of medicines, the improvement of shelter, sanitary conditions, etc.
- (vii) The reports of the Secretary-level officers appointed to monitor work in the camps should be recorded on a prescribed form, and be available to the public as also to the Special Representative of the Commission in Gujarat.
- (viii) An adequate number of trauma specialists should be sent to the camps and other distressed areas for the counselling and treatment of victims.
- (ix) Procedures should be simplified for obtaining death certificates and ownership certificates, in order to expedite the giving of compensation. Time-frames should be set for the settlement of claims and the survey of townships and villages that have been affected. These should be indicated to the public and to this Commission. There are disturbing reports that the

compensation being announced for damaged homes and properties is being arbitrarily fixed and serving as a disincentive to victims to start their lives anew. This should be urgently looked into by the State Government which should establish credible mechanisms for assessing damages done to homes and items of property and ensure that those who have suffered receive fair and just compensation.

- (x) Confidence building measures should be elaborated and made public, in order to facilitate the return of camp inmates and others who have fled, to their homes and work. Leadership must be provided by the highest echelons of the State Administration.
- (xi) The Commission has noted the assurance given by the State Government, in its response of 12 April 2002, and reiterated subsequently in media reports to the effect that the inmates will not be asked to leave the camps until appropriate relief and rehabilitation measures are in place for them and they feel assured, on security grounds, that they can indeed leave the camps and return to their homes. Reports reaching the Commission, however, still point to pressures being exerted on the inmates, or conditions in some camps being so inhospitable, that inmates have felt compelled to leave the camps and seek refuge with family or friends. The Commission recommends once again, in the circumstances, that no camp be closed without a clear recommendation from a Committee comprising the Collector, a representative of a reputed NGO, a representative of the camp, and the Special Representative of the Commission in Gujarat or a nominee of his.

5) Rehabilitation

63

- (i) The Commission has noted that the State Government, in its response of the 12 April 2002, has accepted its recommendation 'in principle' that places of worship that have been destroyed be repaired expeditiously. However, little has been done to start work as yet. The Commission recommends that the full list of damaged and destroyed sites/monuments be published district-wise. This would constitute an essential confidence-building-measure as certain historical sites have not only been destroyed but efforts have been made to erase any trace of them. Plans should be announced for the future protection of historical, religious and cultural sites in the State and the entire exercise undertaken in consonance with articles 25 to 29 of the Constitution.

- (ii) The Commission has taken note of the package of relief and rehabilitation measures announced by the State Government, including the contribution from the Prime Minister's Relief Fund. It has also noted that disbursement of assistance is 'still under progress.' The Commission is concerned that difficulties have arisen in obtaining death and ownership certificates and has referred to this matter earlier in these Proceedings. Delays have also occurred in assessing damages and paying compensation at an appropriate level. The Commission is aware of the immense amount of work that must be done to ensure proper relief and rehabilitation to those who have suffered. It would, however, urge that procedures be streamlined and expedited to deal with the issues mentioned above. Further, as long as inmates stay in the camps, there is need to ensure that this painful interlude in their lives is redeemed, in part at least, by the provision of work and training, by the maintenance of appropriate nutritional standards, by medical and psychiatric care adequate to the demands of the situation. Particular care should also be taken of the needs of widows, victims of gender-related crimes, and orphans. Further, while a number of special schemes have been announced for the victims of the violence, as indeed they should have been, this should not imply that they should not be eligible for the existing range of anti-poverty and employment schemes. In other words, there should be a convergence of Government schemes for their care.
- (iii) The Commission has noted the measures being taken to re-settle the victims. Various reports indicate, however, that compensation for damaged property is often being arbitrarily set at unreasonably low amounts and that pressure is being put on victims that they can return to their homes only if they drop the cases they have filed or if they alter the FIRs that they have lodged. It is important to ensure that conditions are created for the return of victims in dignity and safety to their former locations. Only if they are unwilling to return to their original dwelling sites should alternative sites be developed for them. The response of the State Government of 12 April 2002 does not indicate whether it has acted upon the Commission's recommendation that HUDCO, HDFC and international funding agencies be approached to assist in the work for rehabilitation. The Commission would like a further response to this.
- (iv) The Commission had recommended that the private sector, including the pharmaceutical industry should be requested to assist in the relief and

rehabilitation process. The State Government has responded on 12 April 2002 that it has not experienced any shortage of drugs and medicines thus far. The Commission intends to continue monitoring the situation in this and other respects through its Special Representative, Shri Nampoothiri.

- (v) The Commission has also taken note of the response of the State Government in respect of the Commission's recommendation that NGOs and the Gujarat Disaster Management Authority be associated with the relief and rehabilitation work. The plight of women and children, particularly widows, victims of rape and orphans remains of particular concern to the Commission. It is essential their names and other details be recorded with care and individual solutions be pursued for each of them, whether this be for financial assistance, shelter, medical or psychiatric care, placement in homes, or in respect of the recording of FIRs and the prosecution of those responsible for their suffering. The Commission intends to monitor this matter closely.

Concluding Observations

64 The tragic events in Gujarat, starting with the Godhra incident and continuing with the violence that rocked the State for over two months, have greatly saddened the nation. There is no doubt, in the opinion of this Commission, that there was a comprehensive failure on the part of the State Government to control the persistent violation of the rights to life, liberty, equality and dignity of the people of the State. It is, of course, essential to heal the wounds and to look to a future of peace and harmony. But the pursuit of these high objectives must be based on justice and the upholding of the values of the Constitution of the Republic and the laws of the land. That is why it remains of fundamental importance that the measures that require to be taken to bring the violators of human rights to book are indeed taken.

65 The Commission has noted that there has been a decline in the incidents of violence in the past three weeks and that certain positive developments have taken place since the start of May 2002. However, as these Proceedings indicate, much remains to be done, and the integrity of the administration must be restored and sustained if those who have suffered are to be fully restored in their rights and dignity.

66 The Commission will therefore continue to monitor the situation with care, and it calls upon the Government of Gujarat to report to it again, by 30 June 2002, on all of

the matters covered in the Comments and Recommendations contained in these Proceedings, including the Confidential Report of 1 April 2002 transmitted to it earlier (Annexure I).

67 The Commission would like to close with an invocation of the thoughts of Mahatma Gandhi and Sardar Vallabhbhai Patel who, born in Gujarat, illuminated the life of the country with their wisdom, foresight and courage.

68 Gandhiji once observed:

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

He also said:

‘Peace will not come out of a clash of arms but out of justice lived and done.’

69 And the comments of Sardar Patel, who chaired the Advisory Committee of the Constituent Assembly charged with the drafting of the articles on Fundamental Rights, are also of the deepest significance. The issue then was this: in the years preceding Independence, detractors of the National Movement, including elements of the retreating colonial power, repeatedly claimed that the minorities of India could not possibly find justice at the hands of other Indians. Sardar Patel was determined to refute this politically motivated assessment of the character of the country. Accordingly, on 27 February 1947, at the very first meeting of the Advisory Committee of the Constituent Assembly on Fundamental Rights, Minorities and Tribals and Excluded areas, Sardar Patel asserted: ‘

It is for us to prove that it is a bogus claim, a false claim, and that nobody can be more interested than us, in India, in the protection of our minorities. Our mission is to satisfy every one of them. Let us prove we can rule ourselves and we have no ambition to rule others.’

70 So it was that the Constitution of the Republic included a series of articles having a bearing on the rights of minorities — some of general applicability, others of greater specificity. The most notable were those relating to the Right to Equality (particularly

articles 14, 15, 16 and 17), the Right to Freedom of Religion (articles 25, 26, 27 and 28), Cultural and Educational Rights (particularly articles 29 and 30) and, upholding them all, the Right to Constitutional Remedies (in particular article 32).

71 Critical and cruel as the communal dimension was to the tragedy of Gujarat, what was at stake, additionally, was respect for the rights of all Indians — irrespective of community — that are guaranteed by the Constitution. That Constitution assures the Fundamental Rights of all who dwell in this country, on a non-discriminatory basis, regardless of religion, race, caste, sex or place of birth. It was this guarantee that was challenged by the events in Gujarat. It is for this reason that the Commission has followed developments in that State closely, and that it will continue to monitor the situation for as long as is needed.

(Justice J.S. Verma)
Chairperson

(Justice K. Ramaswamy)
Member

(Justice Sujata V. Manohar)
Member

(Virendra Dayal)
Member

Opinion: The Prevention of Terrorism Bill, 2000

ANNEXURE 4

Coram

Justice Shri J.S. Verma Chairperson

Justice Dr K. Ramaswamy Member

Justice Smt. Sujata V. Manohar Member

Shri Sudarshan Agarwal Member

Shri Virendra Dayal Member

Introduction

Media reports indicate that the Law Commission of India has submitted the draft Bill together with its 173rd Report to the Government of India and that the Bill is likely to be moved in the next session of the Parliament for its enactment as a law to deal with terrorism in the country. There has been a debate in the country for some time about the need of enacting such a stringent law as well as its form in case of its enactment. The debate has also focussed on the experience of the working of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and the fact of it

being permitted to lapse. Divergent views have emerged in the debate and the Law Commission of India has recommended enactment of the law in terms of the proposed Bill.

2.1 Functions of the Commission specified in Section 12 of the Protection of Human Rights Act, 1993, particularly those in clauses (d), (f) and (j) are relevant in this context. These functions include: to review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; study treaties and other international instruments on human rights and make recommendations for their effective implementation; and such other functions as it may consider necessary for the promotion of human rights. It is, therefore, an essential function of the Commission to formulate its opinion on the desirability and need of enacting such a stringent law and to give public expression to it for consideration by the Parliament and all those involved in the making of the laws so that due weight is given to the Commission's opinion in the performance of this exercise.

2.2 It may be recalled that in discharge of this statutory obligation, the Commission had earlier opposed the continuance of the TADA Act and a letter dated 20 February, 1995 to this effect was sent by the then Chairperson to all Members of Parliament and it is also included in the Annual Report of the Commission for the Year 1994-1995 as Annexure I. The earlier opinion of the Commission is relevant at this juncture not merely as the historical background but also because of its relevance in the formation of the opinion of the Commission in the present context.

3.0 It is in the performance of this statutory responsibility that the Commission has examined the need for enactment of such a law in its meeting held on 11 July, 2000. The matter has been considered not strictly from the point of view of the constitutional validity of the proposed new law and its provisions which, if necessary, would be a matter for the courts to decide, but on the need and wisdom of enacting such a law particularly in the light of the earlier experience with the TADA, the adequacies of the existing laws and the provisions of international covenants to which India is a party. Even though absence of need to enact the law and its un-wisdom are not grounds of constitutional invalidity, yet they are relevant for the performance of the functions of the Commission and of the Parliament. This is the occasion for examination of this question.

4.0 Issues: In the above background, the issues which arise for consideration in this context are the following, namely:

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

It may here be mentioned that the Chairperson of this Commission was invited by the Law Commission to inaugurate its seminar on 20 December, 1999 to discuss the proposed Bill. In his inaugural address, the Chairperson identified these two issues which arose for discussion in the seminar and while refraining from expressing any opinion on the first issue, he said that in the event of such a law being found necessary, it must have a human face as indicated in decisions of the Supreme Court and also because of the past experience.

5.0 Answer: The considered unanimous opinion of this Commission is that there is no need to enact the above new law (Prevention of Terrorism Bill, 2000) and, therefore, the need does not arise to answer the other question.

6.0 Reasons: Brief reasons for the Commission's unanimous opinion are indicated here after:

6.1 Existing Laws: The Prevention of Terrorism Bill, 2000 under Section 3 sets out the kind of actions which are proposed to be dealt with under the Bill. These actions are substantially taken care of under the existing laws. For example, any action which threatens the unity, integrity, security or sovereignty of India is covered by Section 153-B of the Indian Penal Code (I.P.C.). Chapter VI of the IPC deals with Offences against the State. Section 121-A which forms part of this Chapter deals with conspiracy to overawe by means of criminal force or the show of criminal force, the Central or State Government and the offence is punishable with imprisonment for life. Section 122 deals with collecting arms and ammunition with the intention of waging war against the Government of India. Section 124-A deals with sedition. Under Chapter VIII dealing with Offences against Public Tranquility, Section 153-A deals with promoting enmity between two groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony. Chapter XVI deals with Offences affecting the Human Body. It includes causing hurt or grievous hurt, wrongful confinement, kidnapping, abduction and so on. Apart from the Indian Penal Code, there is the Arms Act, 1959, Explosives Act, Explosive Substances Act and

the Armed Forces (Special Powers) Act, 1958 the last of which gives powers to the armed forces in disturbed areas to use force even leading to death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting assembly of five or more persons or carrying of weapons or things capable of being used as weapons or fire-arms, ammunition or explosive substances. There is also the power to arrest without warrant in the circumstances set out in the Act.

6.2 There is also on the statute book Unlawful Activities (Prevention) Act, 1967 which can be suitably modified if required. We have also enacted the Suppression of Unlawful Activities against the Safety of Civil Aviation Act, 1982 to deal effectively with offences against the safety of civil aviation. This was pursuant to India ratifying the Hague Convention of 1970 for dealing with hijacking and Montreal Convention of 1971 for the suppression of unlawful acts against civil aviation. This Act provides the necessary legal provisions for giving effect to these Conventions.

6.3 In addition, there are at present in force at least four Central Preventive Detention Acts and a number of Preventive Detention Acts enacted by various States. The Preventive Detention Acts enacted by the Union of India include the National Security Act, 1980, the Prevention of Black Marketeering and Maintenance of Supplies Act, 1980, the Prevention of Narcotic Drugs and Psychotropic Substances Act, 1988 and the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Between these legal measures, all the 'terrorist acts' contemplated under the new Bill appear to be covered. If necessary, the Indian Penal Code or any provisions of any other Act can be amended to cover any specific action which at present may not be covered, though, it does not appear to be so. The punishments provided under these Acts can be increased where necessary. But there does not appear to be any need to have a separate new bill for the purpose of creating new offences.

6.4 Avowed justification for the new law: The avowed justification for these provisions appears to be (i) it is difficult to secure convictions under the criminal justice system; and (ii) trials are delayed. Hence special courts will speed up trial. Undoubtedly, the main problem which the country is facing today, relates to proper investigation of crimes and efficient prosecution of criminal trials. Adjudication and punishment of crimes also take a long time before the Courts. The problem, however, cannot be solved by enacting laws that do away with the legal safeguards that are designed to prevent innocent persons from being prosecuted and punished.

The problem cannot also be solved by providing for a different and more drastic procedure for prosecution of certain crimes, for making confessions before the police admissible in evidence, contrary to the provisions of the Evidence Act, and for raising presumption of guilt as set out in the Bill, and creating special courts. These provisions seriously affect human rights guaranteed under the Constitution and violate basic principles of criminal jurisprudence as internationally understood.

6.5 Remedy: There are three stages at which remedial measures need to be taken on an urgent basis by the Government to strengthen the criminal justice system:

6.5.1 The stage of investigation: Unless investigation is carried out speedily and efficiently, it is not possible to have a speedy and effective trial leading to conviction. The investigation machinery must be independent and free from political or any other kind of interference, an imperative to which NHRC has drawn attention in successive Annual Reports to the Parliament. Unfortunately, as various Police Commission Reports and the experience of the NHRC have shown, constant political interference with the police force has seriously impaired the ability of the police to investigate crimes freely and efficiently. There is also a need for giving proper training for efficient and effective investigation, including improvement of forensic skills and laboratories, another matter to which the National Human Rights Commission has repeatedly drawn attention. Such training and facilities are at present sadly lacking. In the case of *Vineet Narain and Ors. vs. Union of India and Ors.*, (1998) 1 SCC 226, the Supreme Court has observed:

There is another aspect of rule of law which is of equal significance. Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition.'

The Supreme Court in that case, has also observed:

'... there is urgent need for the State Governments also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also of all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of

Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicising the personnel. ...'

There is, therefore, an urgent need to have independent and well-trained investigation machinery to investigate crimes, particularly, crimes related to terrorism.

6.5.2 There must also be efficient prosecution on behalf of the State, of all such crimes. Once again in the above case, the Supreme Court has observed:

'The recent experience in the field of prosecution is also discouraging. discharge of the accused on filing of the charge-sheet indicates, irrespective of the ultimate outcome of the matters pending in the higher courts, that the trial court at least was not satisfied that a *prima facie* case was made out by the investigation. These facts are sufficient to indicate that either the investigation or the prosecution or both were lacking..... Investigation and prosecution are interrelated and improvement of investigation without improving the prosecution machinery is of no practical significance.'

It is, therefore, essential that experienced Public Prosecutors are appointed to prosecute crimes involving terrorism and that they are appointed in sufficient numbers.

6.5.3 The delays in criminal courts are also undermining the criminal justice system. One of the main causes of delay is shortage of courts. It is necessary to create many more Sessions Courts, provide the necessary infrastructure to these Courts and to appoint many more Sessions Judges who are competent and possess integrity. The judiciary can be requested to give training or refresher courses to these Sessions Judges at the various Judicial Academies of the various States for speedy disposal of cases before them without undermining judicial adjudication. Criminal trials especially those dealing with serious offences which are tried by the Court of Sessions need to be speedily conducted and disposed of. There can be no doubt that amongst these cases, those dealing with acts of terrorism must be given preference for early disposal (preferably within six months). But, for this purpose, it is essential that depending upon the number of such crimes in each State, and bearing in mind the average disposal per Judge, adequate numbers of additional Sessions Judges are appointed in each State, along with adequate numbers of Public Prosecutors who will prosecute the cases before them and additional courts are accordingly set up with the necessary

infrastructure. This has to be done on an urgent footing. When this is done, crimes connected with terrorist activities should be given priority before the Sessions Courts in those States where such additional Sessions Courts are set up along with all the above concomitants. Obviously in those States where terrorism is rampant, additional courts will have to be set up as early as possible and the Union Government should, wherever necessary, assist the State Government in financing such additional courts.

The correct remedy for speedy trial and punishment of crimes connected with terrorism in India is proper strengthening of the crime investigation and prosecution machinery and criminal justice system. If there are a large number of acquittals today, it is not for lack of any laws but for lack of proper utilisation of these laws, lack of proper investigation and prosecution, and lack of adequate number of courts to try the offences. Unless this root problem is redressed, adopting draconian laws will only lead to their grave misuse as has been the case with the previous TADA law.

6.6 Obligations of the State under International Covenants etc.: In pursuance of its statutory responsibility the Commission has examined the Prevention of Terrorism Bill 2000 and, in particular, sought to form an opinion as to whether the Bill will increase, or decrease, the effective implementation of treaties and other international instruments on human rights. In pursuing this responsibility, the Commission has also had in mind the opinions of the Supreme Court, notably in **Vishaka and Others vs. State of Rajasthan and Others (1997(6)SCC 241** and **Apparel Export Promotion vs. A.K. Chopra (1999(1)SCC 759)** in respect to this matter. In the former case, the Court took the view that it was:

‘..... now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.’

In the latter, the Court held:

‘In cases involving violation of human rights, the courts must ever remain alive to the international instruments and conventions and apply the same to a given case where there is no inconsistency between the international norms and the domestic law occupying the field.’

6.7 The Commission has concluded that, set against these observations, the

Prevention of Terrorism Bill, 2000 would hinder, rather than enhance, the effective implementation of treaties and other international instruments on human rights and that, in particular, the provisions of the Bill would not be in consonance with many provisions of the International Covenant on Civil and Political Rights (ICCPR) to which India is a State Party. Moreover, the meaning of the 'right to life with dignity' in Article 21 of the Constitution of India must include the provisions of the international instruments on the subject because there is no inconsistency between them and the domestic law.

6.8 As in the case of the Terrorist and Disruptive Activities (Prevention) Act, 1987, this is especially so in respect of the following:

6.8.1 Raising of the presumption of guilt, and shifting the burden to the accused, to establish his innocence.

- Art. 14(2) of the ICCPR expressly requires that:

'Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty.'

6.8.2 Making confessions before a police officer admissible in evidence.

- The Commission is of the view that this would increase the possibility of coercion and torture in securing confessions and thus be inconsistent with Article 14(3) (f) of the ICCPR which requires that everyone shall be entitled to the guarantee of not being compelled to testify against himself or to confess guilt.' This provision is consistent with Article 20(3) of the Constitution of India.
- It would also imperil respect for Article 7 of the ICCPR which categorically asserts 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment.....' It may be recalled that this right is non-derogable under any circumstances, including times of war and public emergency that India has already signed the Convention against Torture on 14 October 1997, though ratification is still awaited.

6.8.3 Modifying the provisions of the Code of Criminal Procedure, particularly in regard to the time set for investigation and grant of bail.

- Article 14(3) (a) of the ICCPR requires that an accused:

‘... be informed promptly and in detail of the nature and cause of the charge brought against him,’ while

- Article 14(3)(c) of the ICCPR asserts the right:

‘to be tried without undue delay.’

Further, Article 9(2) of the ICCPR states:

‘Anyone who is arrested shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him;’ while

- Article 9(3) asserts:

‘Anyone arrested or detained on a criminal charge shall be promptly brought before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody....’

6.9 There are a number of other provisions of the Bill that would have a chilling effect on human rights, notable among them being Section 3(8) which provides for punishment for those in possession of information of material assistance in preventing the commission of a terrorist act. Read with Section 14, which gives powers to investigating officers to require individuals to furnish information in their possession, the Bill could gravely jeopardise the work of professionals such as journalists. The provision would also run counter to Article 19 of the ICCPR dealing with the right to the freedom of expression, which includes the right ‘to seek, receive and impart information and ideas of all kinds....’ subject to certain restrictions, ‘but these, shall only be such as are provided by law and are necessary,’ *inter alia*, ‘for the protection of national security or of public order (ordre public), or of public health or morals’.

6.10 Furthermore, the provisions of Section 37(1) of the Bill, which provide for immunity from legal proceedings and prosecutions against the Central and State Governments and officials acting ‘in good faith,’ are inconsistent with the provisions of Article 2(3) of the ICCPR, under which:

'Each State Party to the present Covenant undertakes:

- a) To ensure that any person whose rights or freedoms are herein recognised as violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.'

The proviso to Section 37(1) of the Bill carries this inconsistency yet further, in that it provides a blanket immunity for:

'any serving member or retired member of the Armed Forces or other para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.'

Clearly, too, such a provision would adversely affect the already limited jurisdiction of the National Human Rights Commission under Section 19 of the Protection of Human Rights, 1993 to deal with complaints alleging the violation of human rights by members of the Armed Forces and, in consequence, further militate against the express purpose of that Act that the Commission should ensure the 'better protection' of human rights in the country.

6.11 It is worthwhile to recall in this overall connection that, since the World Conference on Human Rights, held in Vienna in June 1993, the international community has been categorical in its assertion that:

'The acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights' (Paragraph 17 of the Declaration and Programme of Action).

Further, in a series of resolutions in recent years on 'Human Rights and Terrorism', and in its 1994 Declaration on 'Measures to Eliminate International Terrorism,' the General Assembly of the United Nations has consistently taken the view 'that terrorism, in all its forms and manifestations, wherever and by whomever committed, can never be justified in any instance, including as a means to promote and protect human rights.' The General Assembly has also observed that 'Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any

circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.' The General Assembly has therefore urged States to 'enhance international cooperation at regional and international levels in the fight against terrorism in accordance with relevant international instruments, including those relating to human rights, with the aim of its eradication.' Of these instruments, the International Covenant on Civil and Political Rights and the Convention against Torture, referred to above, are surely among the most important.

6.12 At a time when India is itself urging support for the adoption of a comprehensive International Convention on Terrorism, it is essential to recall these developments, and the stated need to abide by the international instruments on human rights, even while combating terrorism with view to eradicating this menace. It is also essential to recall that while an overall Convention on this subject is yet to be adopted, ten multilateral conventions have already been adopted on various aspects of terrorism, and that India is a State Party to each of these Conventions. These are the:

- Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970,
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971,
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973,
- International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979,
- Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980,
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988,

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988,
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988,
- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997,
- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

6.13 It is important, both to the cause of human rights and to the fight against terrorism, that the measures required to be taken by the Government of India under each of these Conventions are fully and meticulously undertaken, both in terms of appropriate legislation, where this may still be needed, and in terms of other practical arrangements essential to the effective implementation of these Conventions.

6.14 Check on financing of terrorism: One area where suitable law needs to be enacted is the area of financing of terrorism. The U.N. General Assembly in its resolution of 17 December, 1996 called upon States to take steps to prevent and counteract through proper domestic laws, the financing of terrorists and terrorist organisations whether such financing is direct or indirect through organisations which may be camouflaged as charities or which are engaged in unlawful activities such as illicit arms trafficking, drug-dealing and racketeering including the exploitation of persons for purposes of funding terrorist activities. Article 4 of the International Convention on the Suppression of Financing of Terrorism enjoins each State Party to adopt such measures as may be necessary to establish as criminal offence under its domestic law, the offence relating to financing of terrorism as set out in Article 2 and to make these offences punishable by appropriate penalties which take into account the grave nature of the offences. It is in this area that there appears to be a lack of appropriate legislation. Unfortunately, the present Bill is silent on this aspect. The Government needs to frame appropriate legislation in the light of this international convention.

7.0 Conclusion: For the above reasons, and consistent with the view that it took in respect of TADA, the Commission is now unanimously of the considered view that there is no need to enact a law based on the Draft Prevention of Terrorism Bill, 2000

and the needed solution can be found under the existing laws, if properly enforced and implemented, and amended, if necessary. The proposed Bill, if enacted, would have the ill-effect of providing unintentionally a strong weapon capable of gross misuse and violation of human rights which must be avoided particularly in view of the experience of the misuse in the recent past of TADA and earlier of MISA of the emergency days.

This Commission regrets its inability to agree with the opinion of the Law Commission in its 173rd Report and recommends that a new law based on the Draft Prevention of Terrorism Bill, 2000 be not enacted. Such a course is consistent with our country's determination to combat and triumph over terrorism in a manner also consistent with the promotion and protection of human rights.

New Delhi
14 July, 2000

End Notes

References on Sections of the Indian Penal Code, 1860:

Chapter VI of IPC section 121 A: Conspiracy to commit offences punishable by section 121 — Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation — To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Chapter VI of IPC Section 122: Collecting arms, etc., with intention of waging war against the Government of India — whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Chapter VI of IPC Section 124 A: Sedition — Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1 — The expression ‘disaffection’ includes disloyalty and all feelings of enmity.

Explanation 2 — Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3 — Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Chapter VIII of IPC Section 153A: Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony —

- (1) Whoever —
 - i) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes, or communities, or
 - ii) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or

- iii) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc. —

- (2) Whoever commits an offence specified in sub-section(1) in any place of worship or any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Chapter VIII of IPC Section 153B: Imputations, assertions prejudicial to national integration —

- (1) ‘Whoever, by words either spoken or written or by sings or by visible representations or otherwise, —
 - i) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or
 - ii) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

- iii) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.
- (2) Whoever commits an offence specified in sub-section(1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

The Child Marriage Restraint Bill, 2002

(A Bill to restrain the solemnisation of child marriages)

ANNEXURE 5

Provisions as stand in the Act

Sec. 1. Short title, extent and commencement.

- This Act may be called the Child Marriage Restraint Act, 1929.
- It extends to whole of India except the State of Jammu and Kashmir; and it applies also to all citizens of India without and beyond India.
- Provided that nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.
- It shall come into force on the 1st day of April, 1930.

Amendments proposed by NHRC

Sec. 1. Short title, extent and commencement

- This Bill may be called the Child Marriage Restraint Bill, 2002.
- It extends to the whole of India except the State of Jammu and Kashmir; and it applies also to all citizens of India without and beyond India.
- Provided that nothing contained in this Bill shall apply to the Renoncants of the Union Territory of Pondicherry.
- It shall come into force on receiving the assent of the President.

Provisions as stand in the Act**Sec. 2. Definitions****a. 'child' :**

- means a person who, if a male, has not completed twenty-one years of age and if a female, has not completed eighteen years of age.

b. 'child marriage' :

- means a marriage to which either of the contracting parties is a child.

c. 'contracting party' :

- to a marriage means either of the parties whose marriage is or is about to be thereby solemnised; and

d. 'minor' :

- means a person of either sex who is under eighteen years of age

Amendments proposed by NHRC**Sec. 2. Definitions****a. 'child' :**

means a minor as defined in sub-section (d).

b. 'child marriage' :

- means a marriage to which either of the contracting parties is a child.

c. 'contracting party' :

- to a marriage means either of the parties whose marriage is or is about to be thereby solemnised.

d. 'minor' :

- means a person of either sex who is under eighteen years of age; and

e. 'Child Marriage Prevention Officer' includes

- **the Child Marriage Prevention Officer appointed under Sec. 9.**

After Sec. 2, insert new Sections 2A, 2B and 2C.

Sec. 2 A :

If at the time of the marriage one party or both parties to the marriage are minors, the marriage is voidable at the instance of the party who was a minor at the time of the marriage.

Provided that a petition for this purpose shall be filed only by a party to the marriage who was a minor at the time of marriage. If the petition is

Provisions as stand in the Act**Amendments proposed by NHRC**

filed during the minority of the petitioner it may be filed through his or her guardian and/or his or her next friend and/or along with the Child Marriage Prevention Officer. The petition may be filed at any time but before completion of two years of attaining majority.

Sec. 2 B :

- 1) At the time of granting a decree under Sec. 2A the Court shall make an order directing both parties to the marriage and/or their parents or their guardians to return to the other party, his or her parents or guardians as the case may be, money, valuables, ornaments and other gifts received on the occasion of marriage by them from the other side, or their money equivalent.
- 2) For this purpose the Court may give a notice to all concerned parties to appear and show cause why such an order should not be passed.
- 3)(a) The Court shall also be entitled to make interim as well as final order directing the husband and/or his parent/guardian to pay maintenance to the wife until her remarriage.
- (b) The quantum of maintenance shall be determined bearing in mind the income of the paying party and the life style of the paying party. The amount may be directed to be paid monthly or in lump sum.
- 4)(a) Where there are children of the marriage, the Court shall make an appropriate order for the custody of the child. In making such an order the welfare and best interests of the child shall be the paramount consideration.

Provisions as stand in the Act**Amendments proposed by NHRC**

(b) Such an order may include appropriate directions giving to the other party access to the child in such manner as may best serve the interests of the child, and such other orders in the interest of the child as it deems proper.

(c) The Court may also make an appropriate order providing maintenance to the child.

5) Orders made under sub-sections (3) and (4) may be either interim or final.

The Court shall have the power to add to, to modify or revoke any orders under these sub-sections, if there is any change in circumstances, at any time during the pendency of the petition and even after the final disposal of the petition.

6) The Court may also make a suitable order providing for residence of the wife until her remarriage.

7) For the purpose of relief under Sections 2 A, 2 B, 6, and 8(8) the Court having jurisdiction shall include the District Court, City Civil Court or Family Court having jurisdiction over the place where the defendant or the minor resides, or where the marriage was solemnised or where the parties last resided together. An order under Section 8, sub-sections (1) to (7) may however be obtained also from the nearest civil judge/munsif.

Sec. 2 C :

Any children of a marriage set aside under Section 2 A shall be legitimate for all purposes.

Provisions as stand in the Act**Amendments proposed by NHRC**

Sec. 3. Punishment for male adult below twenty-one years of age marrying a child.

- Whoever, being a male above eighteen years of age and below twenty-one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.

Sec. 3 of the GOI Act to be deleted altogether

Sec. 4. Punishment for male adult above twenty-one years of age marrying a child.

- Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

Section 4 of the GOI Act would become Section 3 and read as follows:

Sec. 3. Punishment for male adult above eighteen years of age marrying a child.

- Whoever being a male above eighteen years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to two years or with fine which may extend to one lakh rupees or both.

Sec. 5. Punishment for solemnising a child marriage

- Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to

Section 5 of GOI Act would become Section 4 and read as follows :

Sec. 4. Punishment for solemnising a child marriage

- Whoever performs, conducts or directs or abets any child marriage shall be punishable with simple imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh

Provisions as stand in the Act

three months and shall also be liable to fine, unless he proves that he had reasons to believe that the marriage was not a child marriage.

Amendments proposed by NHRC

rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

Sec. 6. Punishment for parent or guardian concerned in a child marriage.

(1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge

Section 6 of GOI Act would become Sec. 5 and read as follows :

Sec. 5. Punishment for parents or guardians or any other person including associations/organisations concerned in a child marriage and those who knowingly abetted, organised/attended/participated in a child marriage.

(1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any organisation or association who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attendance/ participation in a child marriage, shall be punishable with simple imprisonment which may extend to two years and shall also be liable to fine which may extend up to Rs.1 lakh.

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised.

Provisions as stand in the Act

of such minor has negligently failed to prevent the marriage from being solemnised.

Amendments proposed by NHRC

Insertion of new Section 6 after Section 5.

Section 6 — Marriage of a minor to be void in certain circumstances:

Where a minor —

- (a) Is taken or enticed out of the keeping of the lawful guardian ; or**
- (b) By force compelled, or by any deceitful means induced, to go from any place ; Or**
- (c) Is sold for the purpose of marriage ; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.**

Sec. 7 Offences to be cognizable for certain purposes.

- The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to offences under this Act as if they were cognizable offences

a) for the purpose of investigation of such offences ; an

Section 7 of the GOI Act to be read as follows :

Sec. 7 Offences to be cognizable.

- **An offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of the Code of Criminal Procedure, 1973 (2 of 1974).**

Provisions as stand in the Act**Amendments proposed by NHRC**

b) for the purposes of matters other than (i) matters referred to in Sec. 42 of that Code, and (ii) the arrest of a person without a warrant or without an order of a Magistrate.

Sec. 8 Jurisdiction**Original Section 8 to be deleted.**

- Notwithstanding anything contained in Sec. 190 of Cr.PC, 1973, no Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall take cognizance of, or try, any offence under this Act.

Sec. 9 Mode of taking cognizance of offences**Sec. 9 of the original Act would be deleted altogether.**

- No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

Sec. 10. Preliminary inquiries into offences.**Original Sec. 10 of GOI Act to be deleted.**

- Any Court, on receipt of a complaint of an offence of which it is authorised to take cognizance, shall, unless it dismisses the complaint under Sec. 203 of Cr.PC, 1973 either itself make an inquiry under Sec.

Provisions as stand in the Act**Amendments proposed by NHRC**

202 of that Code or direct a Magistrate subordinate to it to make such inquiry.

Sec. 11 Power to take security from complainant

[Repealed by the Child Marriage Restraint (Amendment) Act, 1949].

Sec. 12 Power to issue injunction prohibiting marriage in contravention to this Act.

(1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in Sections 3, 4, 5 and 6 of this Act prohibiting such marriage.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has offered him an opportunity to show

Sec. 12. of GOI Act will become Sec. 8 and would read as follows :

Sec. 8. Power to issue injunction prohibiting marriage in contravention of this Bill.

(1) Notwithstanding anything to the contrary contained in this Bill, the Court on the application of the Child Marriage Prevention Officer, if satisfied, from information laid before it through a complaint or otherwise that a child marriage in contravention of this Bill has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in sections 3, 4 and 5 of this Bill, prohibiting such marriage.

(2) An application under subsection (1) can also be made by friends, well-wishers, NGOs, public spirited and respectable citizens. The Court may also take *suo motu* cognizance on the basis of newspaper reports.

Provisions as stand in the Act**Amendments proposed by NHRC**

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| <p>cause against the issue of the injunction.</p> <p>(3) The Court may either on its own motion or on the application of any person aggrieved rescind or alter any order made under sub-section (1).</p> <p>(4) Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.</p> <p>(5) Whoever knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees or with both :</p> | <p>(3) For the purpose of preventing mass child marriages on certain days such as Akshaya Trutiya, the District Magistrate/Collector of the District shall be deemed to be a Child Marriage Prevention Officer with all consequential powers. The District Magistrate/Collector shall also have the additional power to stop and/or prevent child marriages. For this purpose he/she may take all appropriate actions.</p> <p>(4) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has offered him/her an opportunity to show cause against the issue of the injunction, provided however that in the case of any urgency the Court shall have the power to issue an interim injunction without such notice. Such an injunction may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.</p> <p>(5) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).</p> |
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Provided that no woman shall be punishable with imprisonment.

Provisions as stand in the Act**Amendments proposed by NHRC**

(6) Where an application is received under sub-sections (1) or (2), the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(7) Whoever knowing that an injunction has been issued against him under this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one lakh rupees or both :

Provided that no woman shall be punishable with Imprisonment.

(8) Any child marriage performed in contravention of an injunction order (whether interim or final) or in violation of an order issued by the District Magistrate/Collector under Section 8(3) shall be void ab initio.

Introduction of new Sections 9, 10, 11 and 12

After Sec. 8 of the Principal Bill the following sections shall be added, namely :

Sec. 9. Child Marriage Prevention Officer —

(1) **The State Government shall, by notification in the official Gazette, appoint for the whole State or such part thereof as may be specified in that notification, an officer or officers to be known as Child Marriage Prevention Officer (s) having**

Provisions as stand in the Act**Amendments proposed by NHRC**

jurisdiction over the area specified in the notification. The State Government may appoint a respectable member of the society with a record of social service or a Panchayat level officer or an office bearer of any governmental, public sector or non- governmental organisation as such an officer.

(2) It shall be the duty of the Child Marriage Prevention Officer.

(i) To prevent child marriages by taking such action as he/she deems fit ;

(ii) To collect evidence for the effective prosecutions of persons contravening provisions of this Bill ;

(iii) To counsel and advise either individual cases or people generally not to indulge in such practices, to create awareness of the evil which results from child marriage, and generally to sensitize the community on this issue; and

(iv) To discharge such other functions as may be assigned to him/her by the State Government.

(3) The State Government may, by notification in the official Gazette, invest the Child Marriage Prevention Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prevention Officer shall exercise his powers subject to such conditions as may be specified in the notification.

(4) The Child Marriage Prevention Officer shall have the power to move the Court for an order under Sections 2A or 8.

Provisions as stand in the Act**Amendments proposed by NHRC**

(5) The above provisions shall apply to the Central Government in respect of UTs.

Sec. 10. Officer appointed under the Bill to be a public servant.

- The Child Marriage Prevention Officer appointed under Sec. 9 shall be deemed to be public servant within the meaning of Sec. 21 of the Indian Penal Code (XLV of 1860).
-

Sec. 11. Protection of action taken in good faith

- No suit, prosecution or other legal proceedings shall lie against the Child Marriage Prevention Officer appointed under this Bill in respect of anything in good faith done or intended to be done in pursuance of this Bill or any rules or orders made thereunder.
-

Sec. 12 Powers to make rules :

The Central and State Governments may, by notification in the official Gazette make rules, for the purpose of carrying out the provisions of this Bill.

Recommendations on HIV/AIDS

ANNEXURE 6

The recommendations emerging from the group discussions are presented as a series of action points that seek to feed into the response to HIV/AIDS both on national and State levels, and in reference to all partners, including the international and domestic non-governmental organisations, foreign governments and multilateral agencies, credit institutions, the business community/private sector, employers' and workers' associations, religious associations and communities.

Another purpose of the action points is to complement the International Guidelines on HIV/AIDS and Human Rights with practical solutions in Indian context.

Consent and Testing

- All staff of testing centres and hospitals, both in public and private sector should be trained and sensitised, on the added value of the right of any person or patient to make an informed decision about consenting to test for HIV. Further the same staff need to be sensitised on universal precautions, provided with an appropriate infrastructure and conducive environment enabling them to respect the right of any person or patient to decide whether to test for HIV or not. This right to self-autonomy must be combined with the provision of the best possible services of pre-test and post-test counselling.
- Persons detected at routine HIV screening at blood banks, should be referred to counselling centres at nearby health care facilities, for further evaluation and advice.

- The physical environment in which counselling and testing is carried out needs to be conducive and enabling to prepare HIV positive people physically, mentally, with accurate information on how to 'live positively'. An important component of the enabling environment is sufficient time to internalise and consider the counselling and information provided to make an informed decision on consent to testing.
- Official ethical guidelines and a comprehensive protocol should be developed on how to counsel and best protect the rights of the people who according to current legislation, or the practice of diminished authority, may not have legal, or social, autonomy to provide or withhold give their consent. This would include *inter alia* children, mentally disadvantaged persons, prisoners, refugees, and special ethnic groups.
- A comprehensive protocol on informed consent and counselling should be developed and be applicable in all medical interventions including HIV/AIDS. It needs to include testing facilities and processes in normal hospital setting, emergency setting and voluntary testing that take into consideration the window period. Although the counselling offered aims to advise testing for those who might feel they have been engaging in unsafe practices, the right to refuse testing must be respected.
- The availability and/or accessibility to voluntary testing and counselling facilities needs to be increased throughout India, including rural/remote areas, in an immediate or phased manner within previously defined and agreed timelines.
- Guidelines for written consent procedures in the case of HIV/AIDS research need to be explored and developed.

'The right to self-autonomy is a positive right to protect yourself —

Protecting the rights of the infected, protects the rights of the non-infected'

Confidentiality

- Train and sensitise all staff in testing settings, blood banks, and care and support settings, both in public and private sector, on the right of any person or patient to enjoy privacy and decide with whom medical records are to be shared.
- Explore innovative and practical ways to implement respect for confidentiality in different settings: location for disclosure of diagnosis, specific procedures for the handling of medical journals and correspondence, reporting procedures, and confidential disclosure of status without the presence and pressure of family members, which is particularly relevant to infected women.
- The legal framework, administrative procedures, and professional norms should be revised to ensure enabling environments, which foster and respect confidentiality.
- Develop guidelines/regulations for beneficial disclosure of testing results. Disclosure without consent should only be permitted in exceptional circumstances defined by law.

Discrimination in Health Care

- Train and sensitise care providers and patients on their respective rights in the context of HIV/AIDS, and combine it with training on universal precautions and with the supply of means of protection including post exposure prophylaxis (PEP) and essential drugs for all health care settings. Include to a greater extent trained and sensitised health care workers as trainers and role models to other health care workers. Information on HIV/AIDS should be available at all health care institutions for the public as well as for the staff, and should be most user-friendly.
- Implement stigma reduction programmes and campaigns among health care professionals that prohibit isolation of HIV positive patients, provide appropriately prescribed treatment of opportunistic infections, and offer standard procedure for the protection of confidentiality. Include to a greater extent people living with HIV/AIDS in the design of stigma reducing campaigns, awareness programmes and care and support services.

- Develop anti-discrimination legislation that practically enables protection of the rights of health care workers and patients, and that makes both the public and the private sectors accountable.
- Establish a multi-sectoral consultative body on HIV/AIDS to provide advice and dissemination of information to health care workers.

Discrimination in Employment

- Adoption of national and State anti-discrimination legislation that should apply equally to both the public and private sectors and should prohibit discrimination in relation to work. This should include prohibition of pre-employment HIV testing, routine health checkups with mandatory HIV testing, reasonable accommodation, HIV friendly sickness schemes, entitlements, regulation on subsidised treatment costs, and compassionate employment.
- Train and sensitise both employers/corporate leaders and employees/workers at formal and informal work places, and expand the awareness programmes to the surrounding communities, on the issues of HIV/AIDS, stigma and discrimination, leading to adoption of private and public corporate regulations on HIV/AIDS.
- Train and sensitise law enforcement authorities or other authorities/sections of the community that might be closely connected with the workplace on the issues of HIV/AIDS, stigma and discrimination.
- Raise awareness about the existing CII policy on HIV/AIDS and training in legal literacy related to both HIV/AIDS in the workplace as well as other work place regulations in force. Media could be of great use to such a campaign.
- Commission an investigation on the anticipated costs for large and small Indian companies in the context of HIV, to prepare employers and workers in dealing with the consequences of HIV/AIDS.
- Introduce affirmative action/positive discrimination in the form of insurance and health care benefits and introduce medical insurance schemes to cover HIV positive employees.

- Increase focus on workplaces with special vulnerabilities: introduce interventions training and sensitisation programmes within the armed forces, and design training and sensitisation programmes that are child- youth- and women friendly to be used in the workplaces where they are represented.

Women in Vulnerable Environments

- Effectively share accurate information on HIV (including transmission modes, sexually transmitted diseases (STD), preventive and curable aspects, treatment, drugs and counselling) to different categories of women in varied innovative, culturally adapted ways all over India.
- Adopt legal changes to empower women for equality in areas such as property rights, domestic violence and marital rape, and protect the right to association for any groups of women working for collective interests.
- The rights of women to provide or withhold informed consent, for HIV testing, must be protected. Social barriers that limit the free exercise of such a right by women must be overcome through appropriate educational and administrative measures.
- All pregnant women should be provided an opportunity to have an HIV test, since vertical transmission of HIV can be effectively stopped by the use of low cost drugs in pregnant women who test positive. Women, who test positive for HIV, during pregnancy, should be offered such treatment.
- Start alternate media communication programmes to reach out to as many groups of women as possible on the issue of empowerment of girls and women and elimination of misconceptions, myths and stereotyping related to male and female sexuality. Remove silence about sexuality in the development of policies, guidelines, project management and programming as well as within prevention messages.
- Increase programmes directed at informing and involving men in the response to HIV/AIDS by opening up discussion on sexuality and gender differences, challenging cultures of shame and blame.

Children and Young People

- Ensure that the response to children and young people is shaped and driven by their rights guaranteed under the CRC, and also, their overall health needs as well as health education requirements. Train government officials, policy-makers, and healthcare providers to fully familiarise them with the contents of CRC.
- Create innovative mechanisms to inform children and youth on safe sex and other sexual health issues and ensure that such information is related to their cultural context and age groups. Extensively use mass media and the education system to disseminate relevant information. The information and advocacy campaign should be subsidised by the Government.
- Redesign the health care services, including contact points/counselling services, to become more child- and youth friendly, and accessible.
- The limitations of the legislation related to children and young people need to be addressed. For instance, the Juvenile Justice Act (JJA) should be revised to facilitate the shift to alternate methods of providing non-custodial care. A law covering sexual abuse of boys and girls should be adopted. Legal remedies need to be made accessible to children and youth.
- Develop a clear policy for how young people wishing to go through an HIV test can do so voluntarily and without breach of confidentiality vis-à-vis legal guardians or others.

People Living with or Affected by HIV/AIDS (PWHA)

- Formulate institutional guidelines with standards placing the issues of PWHA in a larger framework.
- Scale up availability and access to appropriate health care for PWHA within mainstream services (including increase in availability of voluntary testing centres). Explore practical ways to ensure that the right of PWHA to treatment of opportunistic infections is promoted, respected and protected in practice. This should include efforts to reduce stigma and discrimination in the health care system, reduction of the cost as well as increase of availability and affordability of drugs.

- Commission a study on the WTO regime post 2004. Lobby with the UN agencies, including the OHCHR to work for affordable drugs, and lobby towards Indian capacity building and opportunities for domestic drug manufacturing. Organise a workshop on WTO and TRIPS with reference to the issue of future access to drugs and anti-retrovirals.
- Ensure ways to protect everyone's right to information about HIV/AIDS, means of protection and support available for positive living, among others, by strengthening the quality control of the services and drugs, and access to information on policy of all partners. This includes the training of testing technicians and physicians on HIV/AIDS technical aspects.
- Increase legal literacy among PWHAs and communities by community training programmes and integration of legal literacy messages in prevention messages. Ensure access to legal remedy in case of violations of the rights guaranteed
- Review information, education and communication (IEC) strategies with the aim of reducing stigma while preventing HIV/AIDS. For this purpose, explore the role of public broadcasting companies, and introduce tax relief for private broadcasting channels to allow public broadcasting on issues related to HIV/AIDS. Train and sensitise the media through workshops. Lobby for the inclusion of HIV/AIDS issues in the Right to Information Bill.
- Immediately review legislation that impedes interventions (such as Section 377 IPC, as well as feasible anti-discrimination legislation, health legislation and disability legislation to be more supportive to people living with HIV/AIDS, prevention, care and support initiatives. Include HIV/AIDS issues in the Right to Information Bill. Introduce affirmative action for HIV positive people in the employment sector.

Marginalised Populations

- Revise and reformulate laws and processes (such as Section 377 of the Indian Penal Code and the NDPS Act) to enable the empowerment of marginalised populations and reach them with HIV/AIDS prevention messages as well as care and support mechanisms.

- The revision of the legislation must seek to mitigate the socio-economic factors that cause people's marginalisation as well as unsafe practices.
- Legalise any sexual activities undertaken with consent between adults, and in connection with this adopt a clearly defined age for sexual consent.
- Legitimise and expand innovative harm reduction programmes to reduce harmful practices including needle exchange and unsafe sexual activities, and expand condom distribution among all marginalised populations.

General

- A comprehensive strategy to prevent and control HIV-AIDS should combine a population based approach of education and awareness enhancement with strategies for early detection and effective protection of persons at high risk.
- An Action Plan for implementation of these recommendations should be developed with focus on specific areas of action and prioritised sequencing of recommendations for early implementation within each of them. This may be done through a working group comprising of representatives from the NHRC, Ministry of Health and Family Welfare, Government of India and UNAIDS who will identify the pathways of action and the agencies for implementation.

Respecting Human Rights — Crucial in dealing with HIV/AIDS

'Respect for Human Rights helps to reduce vulnerability to HIV/AIDS, to ensure that those living with or affected by HIV/AIDS live a life of dignity without discrimination and to alleviate the personal and societal impact of HIV infection. Conversely, violations of Human Rights are primary forces in the spread of HIV/AIDS. ... Implementing a Human Rights approach is an essential step in dealing with this catastrophic threat to human development.'

Acronyms and Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ASO	AIDS Service Organisation
ANC	Ante Natal Care
AZT	Zidovudine
CDC	Centre for Disease Control (in Atlanta, USA)
CII	Confederation of Indian Industry
CRC	Convention on the Rights of the Child, 1989
CEDAW	International Convention on the Elimination of All Forms of Discrimination Against Women, 1979
HIV	Human Immunodeficiency Virus
ICPD	International Conference on Population and Development, Cairo 1994
IEC	Information, Education and Communication
IDU	Injecting Drug Use [er, -ers]
IMA	Indian Medical Association
INP+	Indian Network for Positive People
IPC	Indian Penal Code
ITPA	Immoral Traffic in Women and Girls Prevention Act, 1986
JJA	Juvenile Justice Act
KNP+	Karnataka Network for Positive People
NACO	National AIDS Control Organisation
NDPS	Narcotic and Psychotropic Substances Act
NGO	Non Governmental Organisation
NFHS	National Family Health Survey
NHRC	National Human Rights Commission
OHCHR	Office of the [UN] High Commissioner for Human Rights
PEP	Post Exposure Prophylaxis
PHC	Primary Health Care Centres
PWHA	Person/People Living with HIV/AIDS
RTI	Reproductive Tract Infections
SACS	State AIDS Control Societies
STD	Sexually Transmitted Disease
STI	Sexually Transmitted Infection
TB	Tuberculosis
TRIPS	Trade Related Aspects of Intellectual Property Rights (WTO Agreement)
UNAIDS	Joint United Nations Programme on HIV/AIDS

UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
VCT	Voluntary Counselling and Testing
WTO	World Trade Organisation

Statement showing details of custodial deaths reported by the state governments

ANNEXURE 7

State/UT	1993-94	1994-95				1995-96			1996-97		
	Total	PC	JC	Others	Total	PC	JC	Total	PC	JC	Total
Andhra Pradesh	0	6	0	0	6	10	45	55	27	70	97
Arunachal Pradesh	0	0	0	0	0	0	0	0	2	0	2
Assam	1	14	4	0	18	7	15	22	13	12	25
Bihar	4	17	0	0	17	8	67	75	14	79	93
Goa	0	1	1	0	2	0	0	0	3	0	2
Gujarat	0	0	0	0	0	18	4	19	18	32	50
Haryana	1	2	0	0	2	4	5	9	2	7	9
Himachal Pradesh	0	2	0	0	2	0	1	1	1	0	1
Jammu and Kashmir	1	0	0	3	3	15	0	15	4	0	4
Karnataka	0	1	0	0	1	3	10	13	8	28	36
Kerala	1	3	0	0	3	2	2	4	6	9	15
Madhya Pradesh	1	2	8	1	11	2	7	9	8	7	15
Maharashtra	0	2	0	0	2	9	25	34	21	180	201
Manipur	1	2	1	0	3	4	0	4	1	0	1
Meghalaya	1	3	0	0	3	0	3	3	0	10	10
Mizoram	0	0	0	0	0	0	2	2	0	0	0
Nagaland	0	1	0	1	2	2	0	2	2	1	3
Orissa	0	3	1	1	5	2	8	10	3	10	13
Punjab	0	10	2	0	12	8	8	16	5	12	17
Rajasthan	1	10	0	0	10	6	11	17	5	25	30
Sikkim	0	0	0	0	0	1	0	1	0	0	0
Tamil nadu	6	7	0	2	9	4	1	5	3	18	21
Tripura	0	1	0	0	1	0	0	0	0	0	0
Uttar Pradesh	8	5	0	1	6	13	24	37	32	139	171
West Bengal	0	14	1	0	15	14	37	51	6	42	48
A & N Islands	0	0	0	0	0	0	0	0	0	0	0
Chandigarh	0	0	0	0	0	0	0	0	0	0	0
D & N Haveli	0	0	0	0	0	0	0	0	0	0	0
Daman and Diu	0	0	0	0	0	0	0	0	0	0	0
Delhi	7	5	33	0	38	7	33	40	5	19	24
Lakshadweep	0	0	0	0	0	0	0	0	0	0	0
Pondicherry	1	0	0	0	0	0	0	0	0	0	0
Chattisgarh	0	0	0	0	0	0	0	0	0	0	0
Jharkhand	0	0	0	0	0	0	0	0	0	0	0
Uttaranchal	0	0	0	0	0	0	0	0	0	0	0
Total Cases	34	111	51	9	171	136	308	444	188	700	888

During the year 2000-2001 two deaths took place in the custody of Army, the total No. of deaths in custody comes to 1039. During the year 2001-2002 two deaths took place at the hands of Para-military Forces, the total No. of deaths in custody comes to 1307.

1997-98			1998-99			1999-2000			2000-2001			2001-2002		
PC	JC	Total	PC	JC	Total	PC	JC	Total	PC	JC	Total	PC	JC	Total
21	53	74	25	96	121	11	73	84	2	76	78	16	81	97
2	2	4	2	1	3	4	0	4	1	1	2	2	0	2
18	15	33	15	22	37	11	22	33	11	11	22	10	20	30
10	107	117	10	182	192	7	155	162	2	137	139	2	144	146
0	2	2	0	1	1	2	2	4	2	3	5	0	5	5
10	27	37	8	37	45	13	19	32	11	27	38	8	44	32
3	7	10	4	18	22	5	24	29	4	20	24	5	34	39
0	0	0	2	0	2	1	0	1	1	2	3	1	1	2
2	0	2	0	0	0	0	0	0	0	1	1	0	0	0
7	33	40	10	40	50	6	35	41	5	41	46	9	41	50
6	30	36	4	25	29	6	14	20	1	26	27	4	33	37
17	43	60	19	99	118	13	58	71	11	37	48	7	38	45
17	116	133	20	98	118	30	126	156	19	104	123	27	125	152
1	0	1	3	0	3	0	1	1	0	0	0	0	0	0
2	0	2	1	6	7	0	2	2	1	0	1	3	2	5
0	1	1	0	0	0	0	0	0	1	0	1	0	0	0
1	0	1	1	0	1	0	0	0	0	0	0	0	0	0
4	19	23	0	68	68	1	45	46	2	55	57	7	49	56
8	27	35	12	43	55	11	42	53	13	48	61	7	70	77
11	30	41	3	47	50	3	45	48	3	38	41	5	49	54
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13	54	67	14	41	55	9	48	57	4	24	28	7	48	55
2	0	2	0	0	0	0	0	0	2	0	2	1	0	1
14	172	186	20	222	242	18	141	159	10	121	131	11	183	194
10	43	53	6	40	46	19	43	62	9	38	47	17	54	71
0	0	0	0	2	2	1	2	3	0	2	2	0	0	0
0	0	0	0	0	0	0	0	0	1	2	3	0	1	1
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	1	1	0	0	0	0	0	0	0	0	0
11	26	37	0	17	17	6	19	25	9	28	37	5	27	32
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1	0	1	1	0	1	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	1	29	30	4	28	32
0	0	0	0	0	0	0	0	0	1	33	34	4	55	59
0	0	0	0	0	0	0	0	0	0	6	6	3	8	11
191	807	998	180	1,106	1,286	177	916	1,093	127	910	1,037	165	1,140	1,305

PC: Police Custody

JC: Judicial Custody

Statement showing number of communications in respect of police encounters as reported by the State Governments

ANNEXURE 8 a

State	93-94	94-95	95-96	96-97	97-98
Andhra Pradesh	—	—	—	—	2
Arunachal Pradesh	—	—	—	—	—
Assam	—	—	—	—	—
Bihar	—	—	—	—	4
Goa	—	—	—	—	—
Gujarat	—	—	—	—	2
Haryana	—	—	—	—	1
Himachal Pradesh	—	—	—	—	—
Jammu and Kashmir	—	—	—	—	2
Karnataka	—	—	—	—	—
Kerala	—	—	—	—	—
Madhya Pradesh	—	—	—	—	1
Maharashtra	—	—	—	—	9
Manipur	—	—	—	—	—
Meghalaya	—	—	—	—	—
Mizoram	—	—	—	—	—
Nagaland	—	—	—	—	—
Orissa	—	—	—	—	—
Punjab	—	—	—	—	1
Rajasthan	—	—	—	—	—
Sikkim	—	—	—	—	—
Tamil nadu	—	—	—	—	1
Tripura	—	—	—	—	—
Uttar Pradesh	—	—	—	—	32
West Bengal	—	—	—	—	—
A and N Islands	—	—	—	—	—
Chandigarh	—	—	—	—	—
D and N Haveli	—	—	—	—	—
Daman and Diu	—	—	—	—	—
Delhi	—	—	—	—	3
Lakshadweep	—	—	—	—	—
Pondicherry	—	—	—	—	—
Chattisgarh	—	—	—	—	—
Jharkhand	—	—	—	—	—
Uttaranchal	—	—	—	—	3
Foreigners	—	—	—	—	1
Total	—	—	—	—	62

State	98-99	99-00	00-01	2001-2002	Total
Andhra Pradesh	2	1	7	2	14
Arunachal Pradesh	—	—	—	—	0
Assam	1	1	1	—	3
Bihar	2	1	3	2	12
Goa	—	—	—	—	0
Gujarat	1	4	1	—	8
Haryana	—	—	3	—	4
Himachal Pradesh	—	—	—	—	0
Jammu and Kashmir	—	—	—	1	3
Karnataka	—	—	1	—	1
Kerala	2	—	—	—	2
Madhya Pradesh	1	—	8	1	11
Maharashtra	2	7	15	3	36
Manipur	—	1	1	—	2
Meghalaya	—	—	—	—	0
Mizoram	—	—	—	—	0
Nagaland	—	—	—	—	0
Orissa	—	—	—	—	0
Punjab	—	—	—	1	2
Rajasthan	1	—	34	—	35
Sikkim	—	—	—	—	0
Tamil nadu	1	1	—	—	3
Tripura	—	—	—	—	0
Uttar Pradesh	62	64	31	42	231
West Bengal	—	2	1	—	3
A and N Islands	—	—	—	—	0
Chandigarh	—	—	—	—	0
D and N Haveli	—	—	—	—	0
Daman and Diu	—	—	—	—	0
Delhi	—	1	2	3	9
Lakshadweep	—	—	—	—	0
Pondicherry	—	—	—	—	0
Chattisgarh	—	—	—	—	0
Jharkhand	—	—	—	3	3
Uttaranchal	1	2	2	—	8
Foreigners	—	—	—	—	1
Total	76	85	110	58	391

Statement showing number of complaints received from sources other than State Governments, including the media, in respect of deaths allegedly in fake encounters

ANNEXURE 8b

State	93-94	94-95	95-96	96-97	97-98
Andhra Pradesh	—	—	—	—	1
Arunachal Pradesh	—	—	—	—	—
Assam	—	—	—	—	6
Bihar	—	—	—	—	—
Goa	—	—	—	—	—
Gujarat	—	—	—	—	—
Haryana	—	—	—	—	3
Himachal Pradesh	—	—	—	—	—
Jammu and Kashmir	—	—	—	—	5
Karnataka	—	—	—	—	—
Kerala	—	—	—	—	—
Madhya Pradesh	—	—	—	—	2
Maharashtra	—	—	—	—	14
Manipur	—	—	—	—	—
Meghalaya	—	—	—	—	—
Mizoram	—	—	—	—	—
Nagaland	—	—	—	—	—
Orissa	—	—	—	—	—
Punjab	—	—	—	—	—
Rajasthan	—	—	—	—	—
Sikkim	—	—	—	—	—
Tamil nadu	—	—	—	—	—
Tripura	—	—	—	—	—
Uttar Pradesh	—	—	—	—	34
West Bengal	—	—	—	—	—
A and N Islands	—	—	—	—	—
Chandigarh	—	—	—	—	—
D and N Haveli	—	—	—	—	—
Daman and Diu	—	—	—	—	—
Delhi	—	—	—	—	3
Lakshadweep	—	—	—	—	—
Pondicherry	—	—	—	—	—
Chattisgarh	—	—	—	—	—
Jharkhand	—	—	—	—	3
Uttaranchal	—	—	—	—	—
Foreigners	—	—	—	—	—
Total	—	—	—	—	71

State	98-99	99-00	00-01	2001-2002	Total
Andhra Pradesh	3	22	14	4	44
Arunachal Pradesh	—	7	—	—	7
Assam	7	11	6	13	43
Bihar	—	—	—	—	0
Goa	—	—	—	—	0
Gujarat	1	4	2	—	7
Haryana	—	1	—	—	4
Himachal Pradesh	—	—	—	—	0
Jammu and Kashmir	—	2	1	3	11
Karnataka	—	2	—	—	2
Kerala	—	—	—	—	0
Madhya Pradesh	5	—	1	1	9
Maharashtra	2	15	9	5	45
Manipur	—	—	—	—	0
Meghalaya	—	—	—	—	0
Mizoram	—	—	—	—	0
Nagaland	—	—	—	—	0
Orissa	1	1	—	—	2
Punjab	—	—	—	—	0
Rajasthan	2	—	—	3	5
Sikkim	—	—	—	—	0
Tamil nadu	—	5	2	—	7
Tripura	—	—	—	2	2
Uttar Pradesh	40	37	68	74	253
West Bengal	2	4	—	1	7
A and N Islands	—	—	—	—	0
Chandigarh	—	—	—	—	0
D and N Haveli	—	—	—	—	0
Daman and Diu	—	—	—	—	0
Delhi	1	—	—	—	4
Lakshadweep	—	—	—	—	0
Pondicherry	—	—	—	—	0
Chattisgarh	—	—	—	—	0
Jharkhand	1	2	2	3	11
Uttaranchal	—	2	4	4	10
Foreigners	—	—	—	—	0
Total	65	115	109	113	473

Statement showing number of complaints received/ registered in respect of deaths in police firing

ANNEXURE 8c

State	93-94	94-95	95-96	96-97	97-98
Andhra Pradesh	—	—	—	1	3
Arunachal Pradesh	—	—	—	—	—
Assam	—	—	—	—	1
Bihar	—	—	—	2	7
Goa	—	—	—	—	—
Gujarat	—	—	1	—	1
Haryana	—	—	—	—	6
Himachal Pradesh	—	—	—	—	—
Jammu and Kashmir	—	—	1	4	2
Karnataka	—	—	—	—	—
Kerala	—	—	—	—	1
Madhya Pradesh	—	—	—	1	5
Maharashtra	—	—	—	4	9
Manipur	—	—	—	1	—
Meghalaya	—	—	—	1	—
Mizoram	—	—	—	—	—
Nagaland	—	—	—	—	—
Orissa	—	—	1	—	—
Punjab	—	—	—	—	—
Rajasthan	—	—	—	1	2
Sikkim	—	—	1	—	—
Tamil nadu	—	—	—	—	1
Tripura	—	—	—	—	—
Uttar Pradesh	—	—	1	10	28
West Bengal	—	—	—	—	—
A and N Islands	—	—	—	—	—
Chandigarh	—	—	—	—	—
D and N Haveli	—	—	—	—	—
Daman and Diu	—	—	—	—	—
Delhi	—	—	—	1	4
Lakshadweep	—	—	—	—	—
Pondicherry	—	—	—	—	—
Chattisgarh	—	—	—	—	—
Jharkhand	—	—	—	—	—
Uttaranchal	—	—	1	—	—
Foreigners	—	—	—	—	—
Total	—	—	6	26	70

State	98-99	99-00	00-01	2001-2002	Total
Andhra Pradesh	1	1	2	—	8
Arunachal Pradesh	—	—	—	—	0
Assam	1	—	6	—	8
Bihar	4	8	13	16	50
Goa	1	—	—	—	1
Gujarat	—	1	1	4	8
Haryana	1	—	—	2	9
Himachal Pradesh	—	—	—	—	0
Jammu and Kashmir	2	1	4	1	15
Karnataka	2	—	1	3	6
Kerala	1	—	—	—	2
Madhya Pradesh	—	1	5	6	18
Maharashtra	1	8	10	9	41
Manipur	—	2	2	—	5
Meghalaya	—	1	—	—	2
Mizoram	1	—	—	—	1
Nagaland	—	—	—	—	0
Orissa	3	—	8	8	20
Punjab	1	1	—	—	2
Rajasthan	—	1	5	1	10
Sikkim	—	—	—	—	1
Tamil nadu	1	1	1	2	6
Tripura	—	1	—	1	2
Uttar Pradesh	8	23	24	16	110
West Bengal	—	2	7	2	11
A and N Islands	—	1	—	—	1
Chandigarh	—	—	—	—	0
D and N Haveli	—	—	—	—	0
Daman and Diu	—	—	—	—	0
Delhi	—	—	2	—	7
Lakshadweep	—	—	—	—	0
Pondicherry	—	—	—	2	2
Chattisgarh	—	—	—	—	0
Jharkhand	2	1	6	4	13
Uttaranchal	—	1	1	1	4
Foreigners	—	—	—	—	0
Total	30	55	98	78	363

Statement showing number of cases registered, number of cases considered by the Commission, and number of cases processed but pending consideration by the Commission during the year 2001-2002

ANNEXURE 9

From 1/4/2001 to 31/3/2002

State/UT	No. of cases considered as on 01/04/2001	No. of cases registered		Total (2+3+4)	No. of cases considered	No. of cases processed but pending for consideration
		Complaints	Custodial deaths/rapes			
1	2	3	4	5	6	7
Andhra Pradesh	99	830	97	1026	841	185
Arunachal Pradesh	4	31	2	37	15	22
Assam	25	158	31	214	154	60
Bihar	1191	4003	146	5340	4784	556
Goa	21	60	5	86	73	13
Gujarat	189	1158	52	1399	1274	125
Haryana	547	2483	39	3069	2776	293
Himachal Pradesh	40	158	2	200	169	31
Jammu and Kashmir	58	284	0	342	235	107
Karnataka	93	653	50	796	641	155
Kerala	65	185	37	287	217	70
Madhya Pradesh	614	2259	45	2918	2460	458
Maharashtra	496	2043	152	2691	2386	305
Manipur	4	44	0	48	30	18
Meghalaya	2	14	5	21	16	5
Mizoram	3	12	0	15	6	9
Nagaland	3	14	0	17	9	8
Orissa	133	805	56	994	807	187
Punjab	160	940	77	1177	993	184
Rajasthan	931	2529	54	3514	3165	346
Sikkim	5	3	0	8	2	6

State/UT	No. of cases considered as on 01/04/2001	No. of cases registered		Total (2+3+4)	No. of cases considered	No. of cases processed but pending for consideration
		Complaints	Custodial deaths/rapes			
1	2	3	4	5	6	7
Tamil nadu	187	1091	55	1333	959	374
Tripura	2	28	2	32	22	10
Uttar Pradesh	7857	39394	194	47445	40758	6690
West Bengal	307	733	71	1111	975	136
A and N Islands	2	10	0	12	11	1
Chandigarh	16	67	1	84	68	16
D and N Haveli	3	8	0	11	10	1
Daman and Diu	0	2	0	2	1	1
Delhi	658	3817	32	4507	3971	536
Lakshadweep	1	2	0	3	2	1
Pondicherry	14	47	0	61	40	21
Chattisgarh	56	328	32	416	344	72
Jharkhand	368	1590	59	2017	1823	194
Uttaranchal	444	1949	11	2404	2018	386
Foreigners	14	44	0	58	51	7
Total	14612	67776	1307	83695	72106	11589

State-wise list of cases disposed of/pending disposal by the Commission during the year 2001-2002

ANNEXURE 10

State/UT's	Dismissed <i>in limini</i>	Disposed of with directions	Cases taken cognisance		Total
			Concluded	Pending	
1	2	3	4	5	6
Andhra Pradesh	351	130	78	282	841
Arunachal Pradesh	1	6	2	6	15
Assam	49	21	15	69	154
Bihar	2,188	984	229	1,383	4,784
Goa	28	10	15	20	73
Gujarat	688	237	53	296	1,274
Haryana	1,200	607	340	629	2,776
Himachal Pradesh	99	35	2	33	169
Jammu and Kashmir	29	55	14	137	235
Karnataka	254	120	29	238	641
Kerala	97	34	26	60	217
Madhya Pradesh	1,199	519	156	586	2,460
Maharashtra	1,073	495	100	718	2,386
Manipur	0	3	2	25	30
Meghalaya	5	2	3	6	16
Mizoram	0	4	0	2	6
Nagaland	4	1	0	4	9
Orissa	319	197	55	236	807
Punjab	385	160	84	364	993
Rajasthan	1,647	558	137	823	3,165
Sikkim	0	0	1	1	2
Tamil nadu	362	194	98	305	959
Tripura	9	4	0	9	22
Uttar Pradesh	15,638	10,291	1,232	13,597	40,758
West Bengal	581	142	24	228	975
A & N Islands	7	2	1	1	11
Chandigarh	33	11	3	21	68

State/UT's	Dismissed <i>in limini</i>	Disposed of with directions	Cases taken cognisance		Total
			Concluded	Pending	
1	2	3	4	5	6
D & N Haveli	9	0	0	1	10
Daman and Diu	1	0	0	0	1
Delhi	1,982	728	423	838	3,971
Lakshadweep	0	1	0	1	2
Pondicherry	23	6	3	8	40
Chattisgarh	163	60	19	102	344
Jharkhand	1,006	297	95	425	1,823
Uttaranchal	894	510	77	537	2,018
Foreigners	26	15	3	7	51
Total	30,350	16,439	3,319	21,998	72,106

State-wise statement of category of cases admitted for disposal during the year 2001-2002

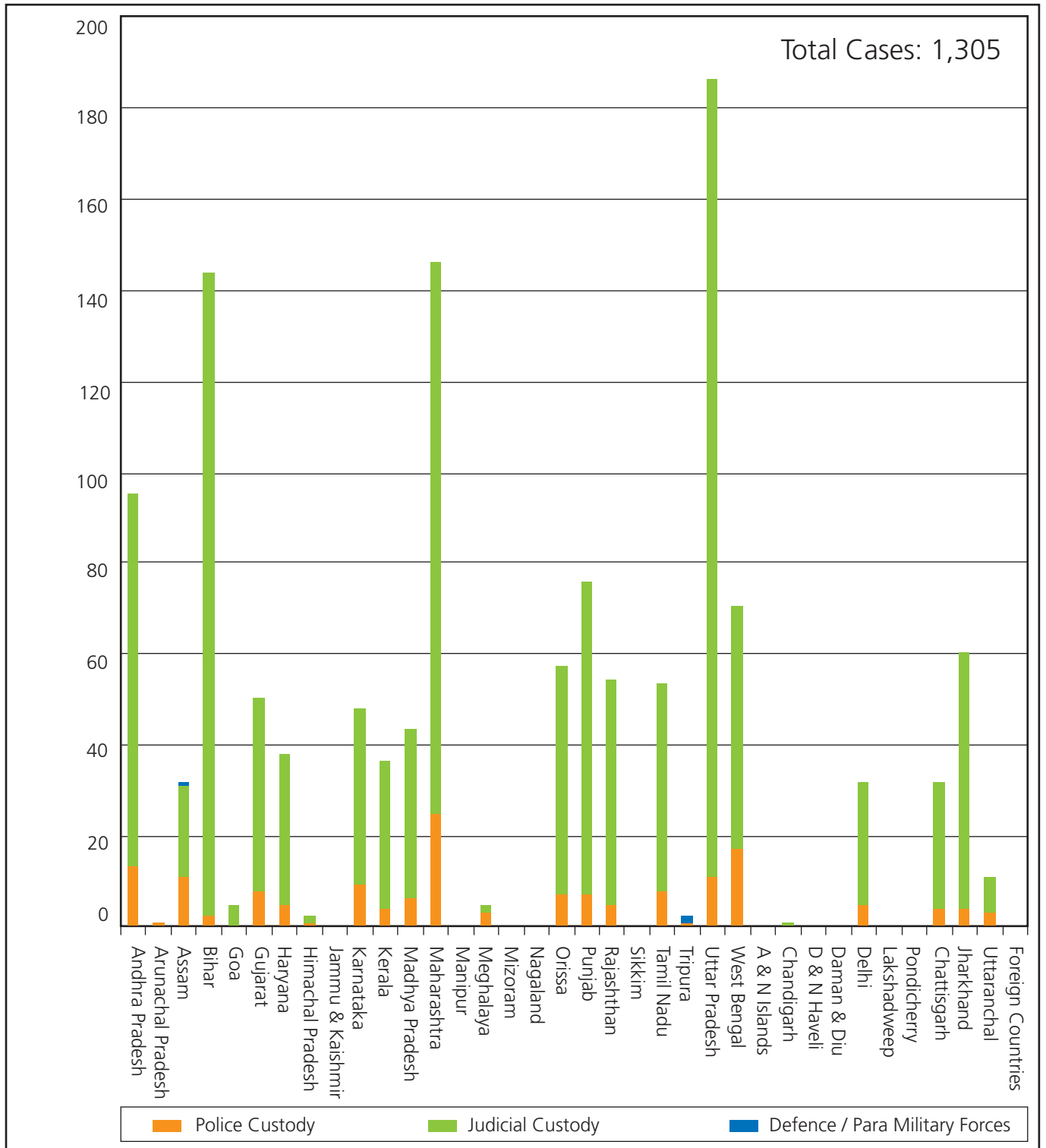
ANNEXURE 11

State/UT's	Custodial death			Custodial rapes	Disappearances	Illegal detention/arrest	False implication
	Police custody	Judicial custody	Defence/Para-military				
1	2	3	4	5	6	7	8
Andhra Pradesh	13	82	0	0	2	24	11
Arunachal Pradesh	1	0	0	0	0	0	0
Assam	11	20	1	0	0	1	0
Bihar	2	142	0	0	3	40	67
Goa	0	5	0	0	1	1	2
Gujarat	8	42	0	0	4	12	12
Haryana	5	33	0	0	0	63	85
Himachal Pradesh	1	1	0	0	4	0	0
Jammu and Kashmir	0	0	0	0	0	2	1
Karnataka	9	39	0	0	0	14	10
Kerala	4	32	0	0	1	1	4
Madhya Pradesh	6	37	0	0	35	24	35
Maharashtra	25	121	0	0	0	27	22
Manipur	0	0	0	0	0	2	0
Meghalaya	3	2	0	0	0	0	0
Mizoram	0	0	0	0	0	0	0
Nagaland	0	0	0	0	1	0	0
Orissa	7	50	0	0	0	11	7
Punjab	7	69	0	0	6	9	10
Rajasthan	5	49	0	0	0	35	31
Sikkim	0	0	0	0	0	0	0
Tamil nadu	8	45	0	0	0	37	21
Tripura	1	0	1	0	3	0	0
Uttar Pradesh	11	175	0	0	1	1,543	1,325
West Bengal	17	53	0	0	0	7	3
A & N Islands	0	0	0	0	0	0	0
Chandigarh	0	1	0	0	0	2	1
D & N Haveli	0	0	0	0	0	0	0
Daman and Diu	0	0	0	0	0	0	0
Delhi	5	27	0	0	0	37	28
Lakshadweep	0	0	0	0	0	0	0
Pondicherry	0	0	0	0	0	0	1
Chattisgarh	4	28	0	0	4	7	8
Jharkhand	4	56	0	0	6	24	31
Uttaranchal	3	8	0	0	9	52	53
Foreigners	0	0	0	0	0	0	0
Total	160	1,117	2	0	80	1,975	1,768

Other police excesses	Failure in taking action	Indignity to women	Sexual harassment	Jail conditions	Atrocities on SC/ST	Others	Total
9	10	11	12	13	14	15	16
51	48	2	3	2	15	107	360
1	1	0	0	0	0	5	8
3	7	0	1	0	0	40	84
212	439	23	8	26	35	615	1,612
10	2	0	0	1	1	12	35
62	58	2	3	2	14	130	349
165	255	3	12	5	16	327	969
5	4	0	0	2	1	17	35
25	6	1	2	0	1	113	151
47	24	1	4	4	6	109	267
16	5	1	0	0	0	22	86
81	144	3	12	5	16	344	742
104	87	2	6	7	7	410	818
1	0	0	0	0	0	24	27
1	0	0	0	0	0	3	9
1	0	0	0	0	0	1	2
2	0	0	0	0	0	1	4
30	42	2	5	5	9	123	291
77	57	1	2	3	0	207	448
155	225	7	6	16	49	382	960
0	1	0	1	0	0	0	2
89	51	3	7	3	38	101	403
3	1	0	0	0	0	0	9
2,823	4,130	48	81	73	227	4,392	14,829
26	31	2	6	2	2	103	252
0	0	0	0	0	0	2	2
8	1	0	0	0	0	11	24
0	0	0	0	0	0	1	1
0	0	0	0	0	0	0	0
411	286	9	12	2	1	443	1,261
0	0	0	0	0	0	1	1
3	3	0	0	0	0	4	11
13	15	1	1	2	1	37	121
100	69	9	2	6	12	201	520
113	151	1	2	3	11	208	614
0	0	1	0	0	0	9	10
4,638	6,143	122	176	169	462	8,505	25,317

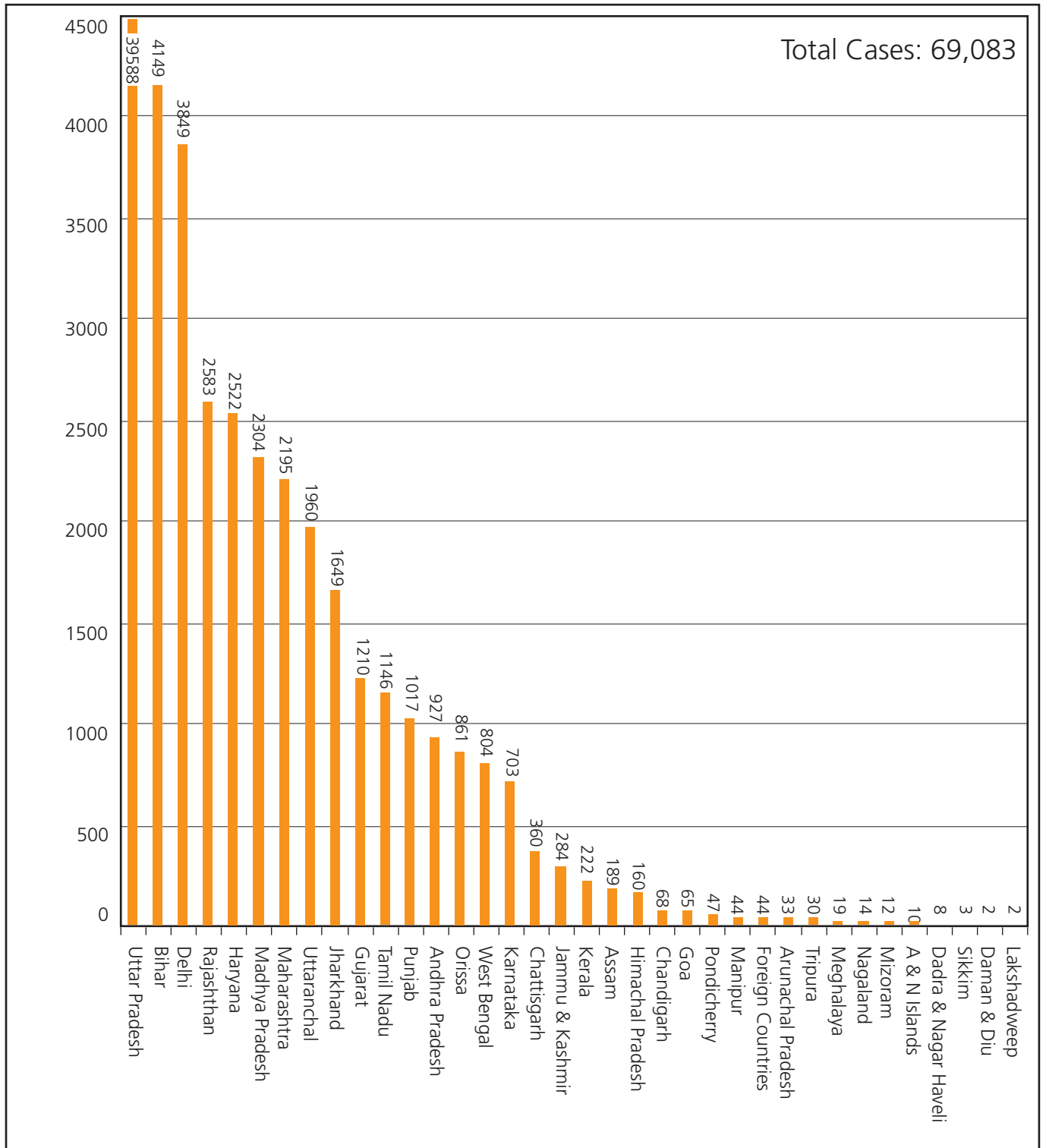
Custodial deaths during the year 2001-2002

For details see Annexure 7



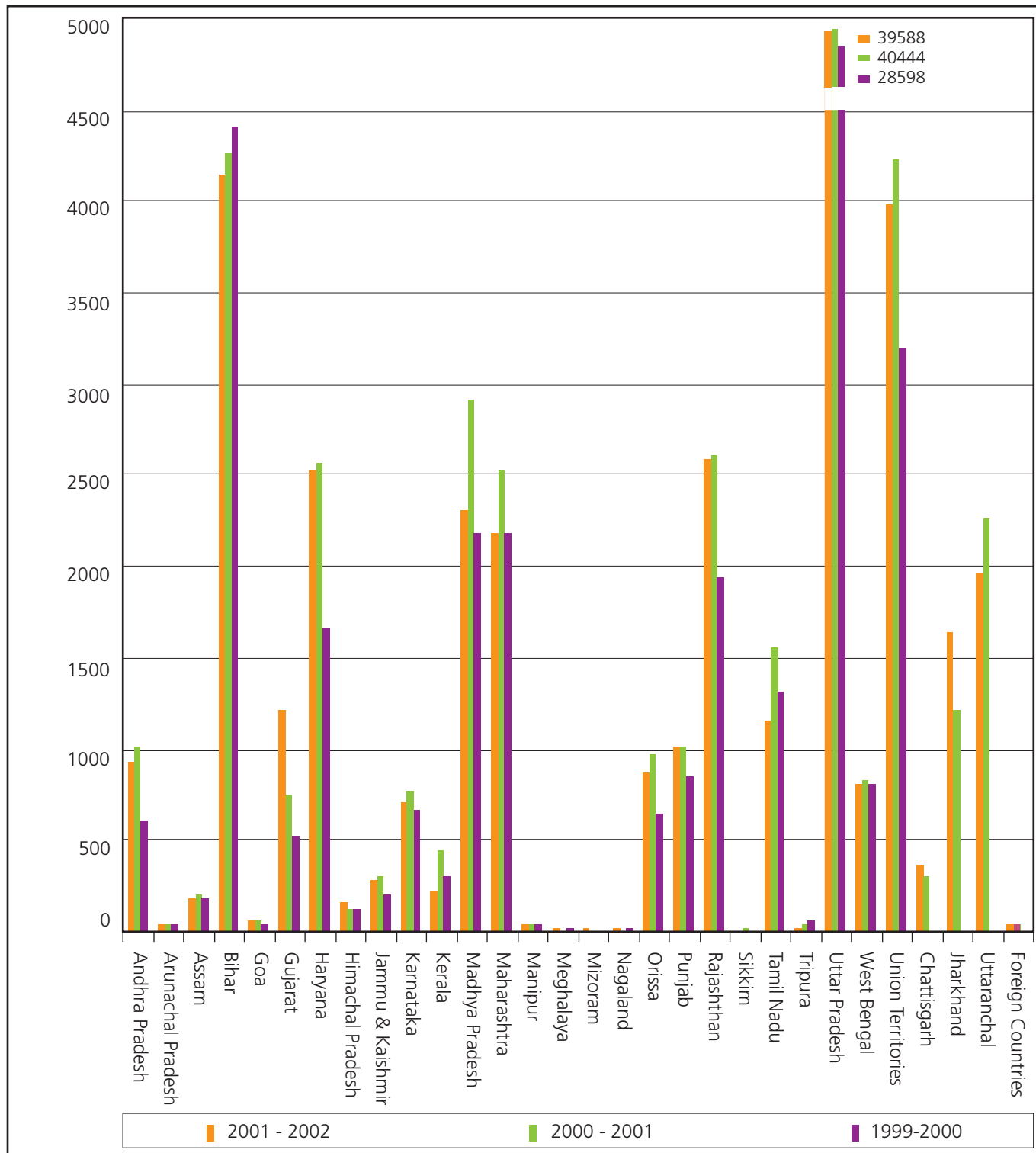
State wise list of cases registered during 2001-2002

For details see Annexure 9



List of cases registered during the last three years

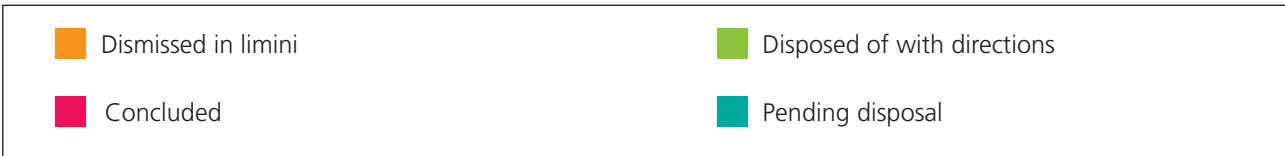
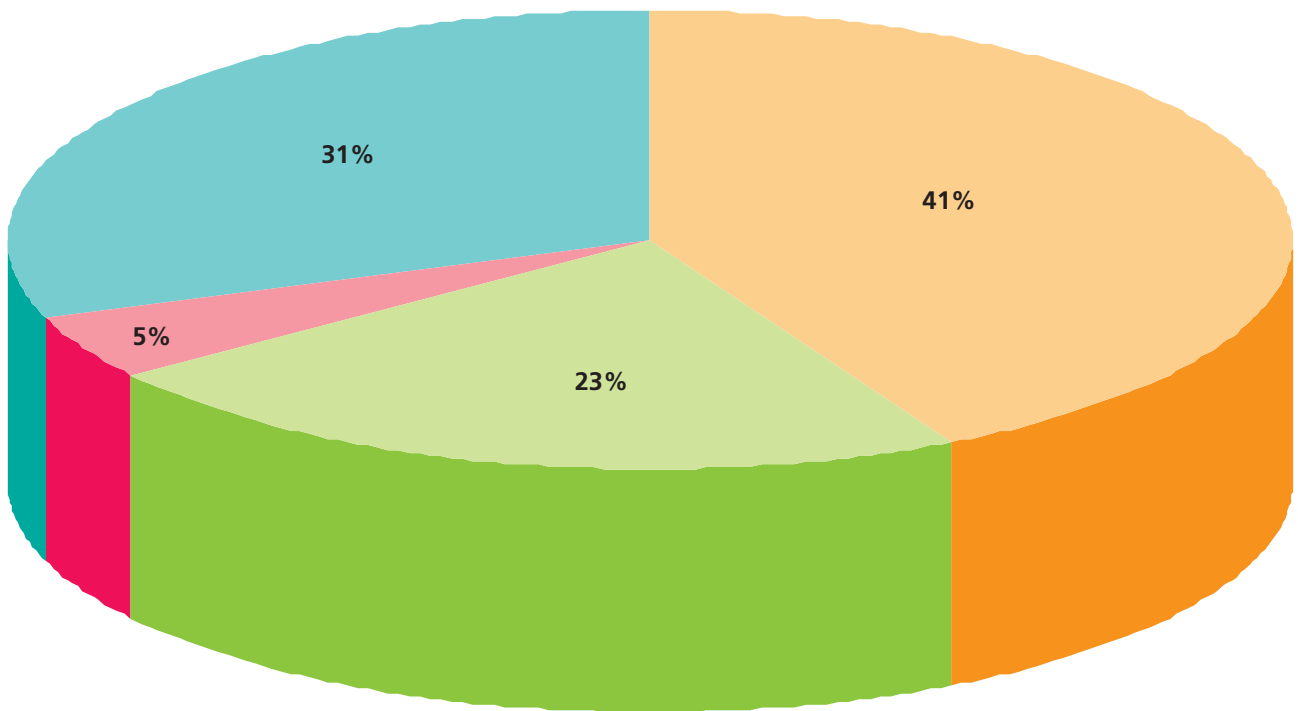
For 2001-2002 details see Annexure 9



Cases disposed off/pending disposal by the Commission during the year 2001-2002

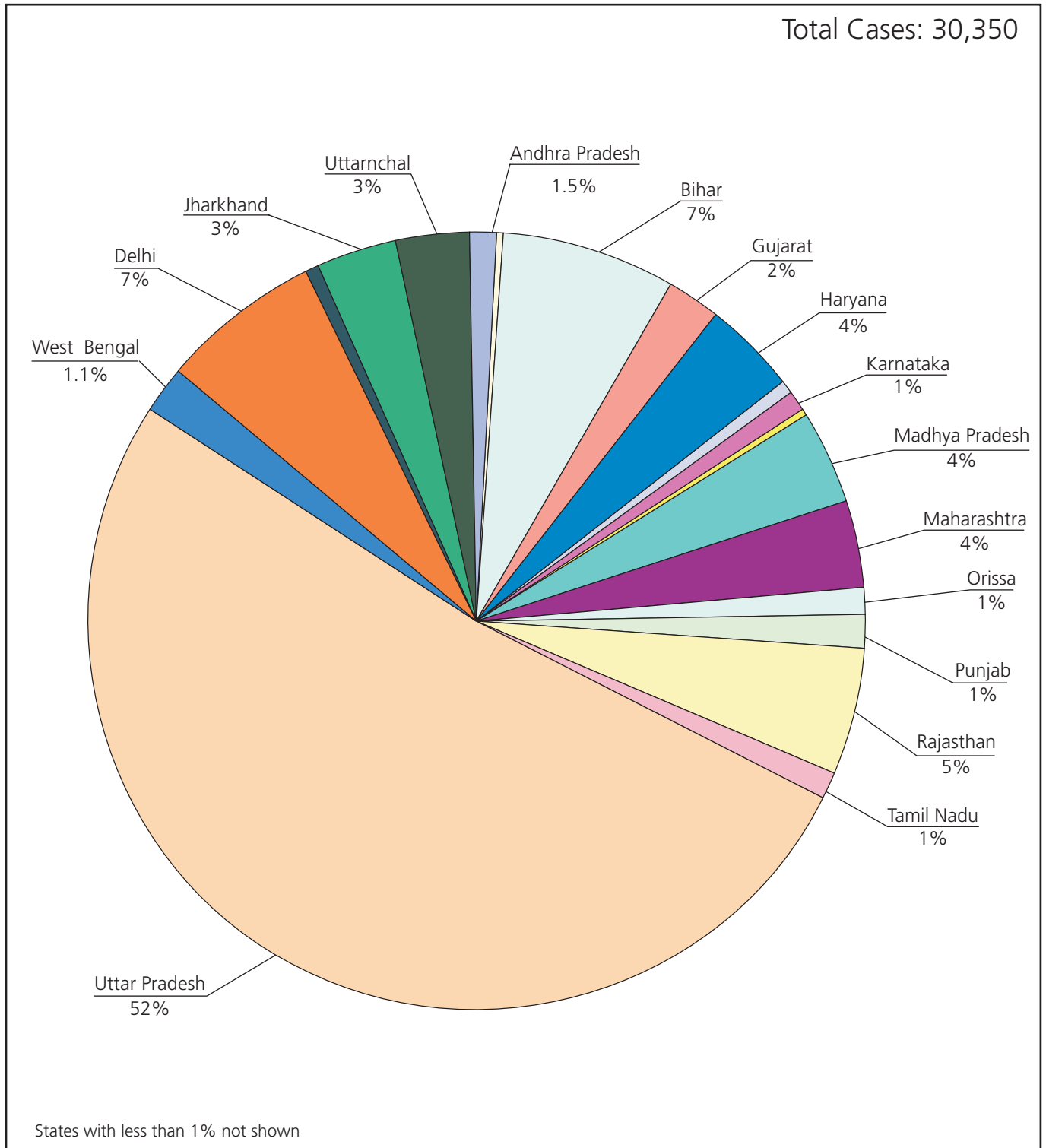
For details see Annexure 10

Total Cases: 72,106



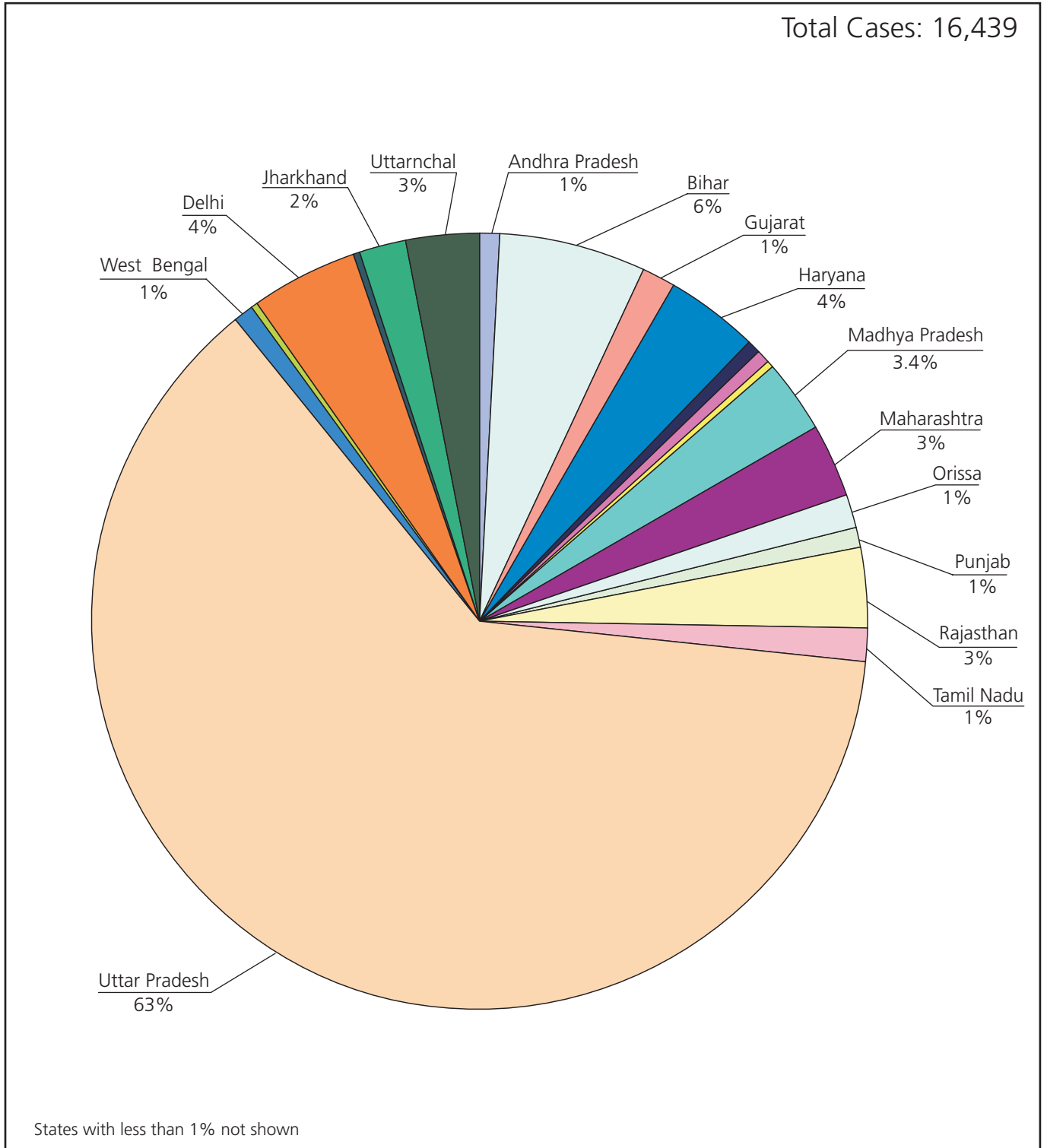
Cases dismissed *in limini* during the year 2001-2002.
States/UTs with a dismissal rate of more than 1%.

For details see Annexure 10



Cases disposed off with directions during the year 2001-2002. States/UTs with a dismissal rate of more than 1%.

For details see Annexure 10



Nature and categorisation of the cases considered by the Commission during the year 2001-2002

For details see Annexure 11

