

National Human Rights Commission

ANNUAL REPORT 2003-2004



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New Delhi 110 001, India**

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CHAPTER 1

INTRODUCTION

1.1 This is the eleventh annual report of the National Human Rights Commission. It covers the period 1 April 2003 to 31 March 2004.

1.2 The tenth annual report of the Commission, for the period from 1 April 2002 to 31 March 2003, was forwarded to the Central Government for placing the same before the Parliament, on 14 November 2003. As at the time of writing the present annual report, the tenth annual report together with the Memorandum of Action Taken had not been placed before each House of Parliament, in accordance with the procedure envisaged under section 20(2) of the Protection of Human Rights Act, 1993.

1.3 The ninth annual report of the Commission, for the period 1 April 2001 to 31 March 2002 was forwarded to the Central Government on 3 July 2002. It was tabled in the Lok Sabha and the Rajya Sabha together with the Memorandum of Action Taken on 16.12.2003 and 17.12.2003 respectively.

1.4 The Commission would like to emphasise, once again that any delay in placing the annual report before the Parliament, not only deprives the Commission from getting a feedback about the action taken by the Government, but also the Members of Parliament and the citizens an opportunity to discuss its contents at the earliest and most appropriate time. The Commission has urged the Central Government to expeditiously place the annual report before Parliament, together with Memorandum of Action Taken, so that information about the initiatives and activities of the Commission for the preceding year could be made available to the public without undue delay.

1.5 The Commission had also forwarded copies of the ninth annual report to all the State Governments/Union Territories as envisaged under Section 20(2) of the Protection of Human Rights Act, 1993, for tabling the report in the State Legislature, along with a Memorandum of Action Taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any. The Action Taken Report has only been received from the States of Jammu and Kashmir, Karnataka, Tripura,

Rajasthan, Orissa, Jharkhand, Madhya Pradesh and UT of Lakshadweep. The confirmation regarding laying the report in the State Assemblies, is however, still awaited.

1.6 During the period under review Dr. Justice A.S. Anand continued to serve as the Chairperson of the Commission with Shri Virendra Dayal and Justice Smt. Sujata V. Manohar as Members. Shri Virendra Dayal demitted office on 15 November 2003, after completing two terms as Member. Shri R.S. Kalha, IFS (1965), formerly Secretary in the Ministry of External Affairs, assumed office as Member on 12 September, 2003. Justice Y. Bhaskar Rao who was formerly Chief Justice of the Karnataka High Court and Chairman of the State Human Rights Committee, Andhra Pradesh, assumed office as Member on 10 October 2003. Shri P.C. Sharma IPS (AM:66) formerly Director, Central Bureau of Investigation joined the Commission as Member on 3 March 2004.

1.7 As regards those who are “deemed to be Members of the Commission” under the provisions of Section 3(3) of the Act, Dr. Tarlochan Singh and Dr. Poornima Advani continued in office as the Chairpersons, respectively of the National Commission for Minorities and National Commission for Women. Shri Bizoy Sonkar Shastri continued to hold office as Chairperson of the National Commission for SC/ST till he demitted office on 24 February 2004. Consequent upon the enactment of the Constitution (Eighty Ninth Amendment) Act, 2003 coming into force on 19.2.2004 vide notification of that date, the erstwhile National Commission for Scheduled Castes & Scheduled Tribes has been replaced by (1) the National Commission for Scheduled Castes and (2) the National Commission for Scheduled Tribes.

1.8 Shri Ajit Bharihoke, an officer of the Delhi Higher Judicial Service, took charge as Registrar (Law) on 19 May 2003. Shri P.S.S. Thomas, IAS (KN:69), assumed office as Secretary General on 1st July 2003, and Shri Santosh Kumar, IPS (BH:67) took over as Director General (Investigation) on 3rd November 2003.

CHAPTER 2

Disability - a Paradigm Shift: From Welfare to Human Rights

INTRODUCTION

2.1 About 21.5 million persons in the country's population either temporarily or permanently experience physical, intellectual or psychological impairment of varying degrees and most often, their lives are handicapped by social, cultural, economic, infrastructural and attitudinal barriers, which hamper their freedom of participation, access to opportunities and enjoyment of rights on equal terms. Further, discrimination, inequality, segregation and stigmatization of disability have caused acute isolation and marginalization. The benefits of legal, policy and programmatic measures by the Government in the Centre and States have remained limited to the urban areas and middle class Indians with disabilities, thereby leaving a large section of the rural disabled outside the process of development. The Commission, therefore, believes that a shift from charity to human rights is indispensable in so far as persons with disability are concerned.

2.2 In this Chapter, a broad analysis of approach to disability has been presented, which is, by no means, exhaustive as the subject is vast and has wide ranging implications on law, policy, social behaviour and other practices. This Commission has a mission to promote and protect rights of persons with disabilities who are an integral part of this country.

2.3 The specific initiatives taken by the Commission in this regard during the period under review have been reflected in various Chapters of this report and therefore do not find a mention here.

2.4 In earlier annual reports, the Commission has commented on the widespread disparities that render some people of this country less equal than others. Having taken note of the "historic wrongs" which perpetuate inequalities on the basis of physical and intellectual characteristics, **'the Commission is committed to create conditions in which persons**

with disabilities can enjoy their human rights and fundamental freedoms on equal basis.' This necessarily means combating disability based discrimination because "the first and foremost freedom must be freedom from discrimination, for without this, the realization of human rights and other freedoms by persons with disabilities would remain elusive".

DISCRIMINATION

2.5 The Right against Discrimination is within the mandate of Right to Equality under Article 14 of the Constitution of India. It is pertinent to mention that formal recognition of discrimination on the ground of disability is a recent phenomenon and is not reflected in the laws enacted some 20 years ago. For instance, the Constitution of India, Articles 15 and 16 prohibit discrimination in the matter of employment and access to public facilities on grounds of religion, race, caste, sex and place of birth, but is silent on disability. However, when the special provisions benefiting persons with disability are particularly aimed at their participation whether in employment or otherwise, the Constitution and judicial interpretation take a more unequivocal position. A positive legislative regime on disability has evolved since Article 16(3) & (4) of the Constitution encourages affirmative action and legislative measures in favour of any backward class of citizens, which in the opinion of the State, are not adequately represented in the services.

2.6 The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in general and its Chapter titled 'Non Discrimination' in particular is an excellent illustration of the State's effort to extend equal opportunities without discrimination to persons with disability. Sections 45, 46 and 47 of the this Act actually build upon Articles 15 and 16 of the Constitution as the element of non-discrimination to achieve equality of opportunity in public employment and access to public places, including transport systems is guaranteed in very clear terms for persons with disabilities.

Poor Observance of Non-discrimination

2.7 Despite such clear legal provisions, corresponding amendments and modifications in the service rules and administrative procedures have not been carried out by the majority of State Governments and the Centre. In January 2003, the Commission, therefore, advised the authorities in the State & UT Administrations to undertake a review of service rules and the relevant laws in order to identify inconsistencies and to carry out necessary modifications in accordance with the Disabilities Act, 1995. The Commission notes that whatever little improvements could be possible on this front have been due to the interventions of the Courts, Tribunals and quasi-judicial bodies.

2.8 Similarly, implementation of legal and administrative arrangements for the creation of barrier free facilities have been extremely tardy as the States and Local Governments

have done precious little to modify the norms of 'Buildings and Town Planning'. Likewise, the transport systems such as trains and buses continue to be fabricated on standards, which fail to accommodate accessibility norms and the principle of non-discrimination. Telecommunications, broadcasting, and other systems of information are also out of the reach of a vast majority of the disabled for similar reasons.

2.9 The Commission is, therefore, of the firm opinion that the Government of India and State Governments should elaborate and adopt a National/State Plan on accessible infrastructure for persons with disabilities in order to ensure access without discrimination to built environment, transport system, telecommunication, information and broadcasting. The Commission has also advised the State and UT Administrations to encourage Municipal Corporations to adopt 'Model Building Bye-Laws' circulated by the Ministry of Urban Affairs and Employment, Government of India and to ensure proper utilization of budget allocated under the Swaran Jayanti Punarwas Yojana meant for creating barrier free facilities in the villages so that the school buildings, post offices, health centres, Panchayat buildings, buses and railway stations become accessible to the rural disabled.

The negligible improvements on this front have often been attributed to resource crunch. The Commission fails to accept it since a large part of budget under the rural development schemes for creating barrier free facilities in the villages remain grossly underutilized. Similarly, the modifications in the building byelaws by the local authorities entail hardly any expenditure and yet, insignificant improvements had been noted during the period under review. The Commission notes with deep concern that denial of access has deprived the disabled of their other fundamental rights and freedoms.

2.10 The conditions of the disabled persons at the grass root level require serious consideration. There is a need to harness the potential of Panchayati Raj Institutions to protect and promote the rights of the disabled at the village level.

2.11 Accessibility has been the overriding concern in the disability rights debate throughout the world. If access is guaranteed, persons with disabilities can use, interact and participate in social institutions and environments to the same extent as others. The capacity of people with disability to fully participate in all aspects of community life is not so much hampered by the impairments as due to inflexible systems, processes and structures. A study commissioned by the office of the UN High Commissioner for Human Rights notes that "all points of access to the structures of everyday life – the world of education, of work, of family or of social interaction – are set largely by reference to the dominant norm of the able-bodied." Therefore, discrimination occurs when the difference of disability is discounted while regulating the terms of access and participation.

ATTITUDES

2.12 Long held beliefs, attitudes and perception of disability sometimes conflict with the human rights values and principles, which recognize that all persons not only possess inherent self-worth but are also inherently equal, regardless of their differences. The Commission, therefore, finds it impossible to accept the plea that because certain forms of human rights abuses 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. A 'wrong' does not become 'right' even if it has continued for long in the past. The Vienna Declaration (1993) also notes: "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

CHARITY MODEL

2.13 Social values, norms and attitudes are not static and are liable to change, depending on a wide range of factors. Consequently, the formal approach to disability also undergoes a change. For example, the notion of charitable privilege has its roots in the English Poor Laws, which primarily protected drain on social resources and created criteria to limit the claim to rights. In other words, the charity model was based on an assumption that claim to rights is valid on certain grounds and invalid on certain others. Disability definitely was perceived as a disqualification and perhaps for this very reason, the expression 'invalid' became synonymous with persons with disabilities.

2.14 The charity model engineered asylum like institutions for the disabled resulting in their acute isolation and invisibility. The findings of an investigative project (Quality Assurance in Mental Health) undertaken by the Commission between 1997-99 also confirmed that a large number of mental health institutions are being managed and administered on the custodial model of care characterized by the prison-like structures with high walls, watchtowers, fenced wards and locked cells. These institutions functioned like detention centres where persons with mental illness were kept chained resulting in 'Erwadi' like tragedy in Tamil Nadu, in which more than 27 inmates lost their lives. Fortunately with the regular and close monitoring of the Government-run mental health institutions by the Commission and with the interventions of the Honourable Supreme Court, the standards of care have now improved to a certain extent.

INDIVIDUAL PATHOLOGY MODEL

2.15 Inspired by lawmakers, scientists and philosophers who provided scientific justification for social inequalities, an individual pathology approach to disability came into existence.

This model locates problems within the confines of the body of an individual and focuses on disease, physical or mental characteristics. The rules, regulations and criteria based on this approach generally limit the access and debar persons with disabilities from the world of work, education and social interactions. The implications of this model are best reflected in the formal definition of disability and the criteria that follow. For example, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, while defining disability in Section 2(t) stipulates that “person with disability means a person suffering from not less than forty percent of any disability as certified by a medical authority.” The disabilities that have been listed in Section 2 include blindness, low vision, hearing impairment, loco motor disability/cerebral palsy, mental retardation, mental illness and persons cured of leprosy.

2.16 Since the emphasis of individual pathology model is on bodily characteristics, there is a corresponding neglect of rights. The Commission is deeply concerned over the use of the current definition of disability and has encouraged a broad definition, meaning ‘persons with disabilities are those who temporarily or permanently, experience physical, intellectual or psychological impairment of varying degrees and their lives are handicapped by social, cultural, attitudinal and structural barriers, which hamper their freedom of participation, access to opportunities and enjoyment of rights on equal terms’.

FUNCTIONAL MODEL

2.17 The concept of rehabilitation of persons with disabilities is well entrenched in the disability policy and legal frameworks throughout the world, and India is no exception to this trend. This concept is based on a functional model, which links biological conditions of a person to his/her capacity to negotiate the diverse environments. The positive contribution of this model can be seen in the development of assistive technologies and special services. Its failure, however, lies in linking the entitlement to rights with the ability of the disabled person to negotiate environment, with the use of compensatory skills and assistive technologies.

2.18 Section 32 of the Persons with Disabilities Act, 1995 is a classic example in the Indian law on this trend, as it imposes an obligation on the appropriate authorities to identify posts to be held by persons with disabilities in different establishments. The criteria adopted by the Government in the identification of posts faithfully take into account the job requirements, essential physical functions and the peculiarities of the environment in which a particular job has to be performed. In other words, the law negates the difference and allows similar or same treatment of different people vis-à-vis encouraging reasonable accommodation in the work profile or in the instruments of work. There are numerous anomalies of this kind both in the law and administrative rules. For this very reason, the Commission has strongly advocated review of all the substantive and procedural laws to suitably incorporate the principle of reasonable accommodation wherever necessary.

2.19 Reasonable accommodation is a core element of equality of opportunity, imposing a duty on the appropriate authorities with regard to modifying physical and social environments, which unchanged, would constitute a discriminatory barrier preventing persons with a disability from full participation. For example, the equality clause of General Comment No. 5 of the Committee on Economic, Social and Cultural Rights clearly establishes that a failure to reasonably accommodate is a central element of disability discrimination.

HUMAN RIGHTS MODEL

2.20 The Commission believes that a human rights approach is necessary to restore rights and dignity of persons with disabilities as it seeks to break down barriers by addressing shortcomings in the environment, vis-à-vis limiting entitlements due to the difference of abilities. In the heart of human rights mission lies the respect for variation in human cultures and the recognition that people are different on several considerations such as gender, race and disability. Nevertheless, concerning their rights and dignity, all people are same. Thus, a real commitment to equality means taking positive action to ensure equal access regardless of differences.

2.21 A coherent programme of “equality of opportunity” also entails tackling deep-rooted practices and negative attitudes to disability. Besides that, reorientation of perspective is important for the way in which law and policy in relation to disability are developed, as well as interpreted and implemented. Otherwise, outmoded disqualifying regime and discriminatory standards would continue to exclude people on the basis of their disability.

2.22 Reform of the laws is vital for the restoration of equal rights and equal protection since, in the case of civil commitment, due process principles are not applied on the basis of equality for persons with mental illness. Equality is also denied in respect of other substantive rights on grounds of disability – the Commission’s concern in this regard is reflected at some length in Chapter V of this report.

2.23 ‘Human Rights are not merely about protecting people against the abuse of power – they are also about giving people access to power’. A world-view inspired by this understanding envisages an active membership that participates in all aspects of the community life, regardless of their differences. This can be achieved through a continuous process of capacity building of the people as well as the basic systems, structures and processes of the society. Towards this end in view, the Commission actively promotes human rights literacy and awareness in general and from a disability perspective in particular. In fact, the entire range of activities of the Commission are aimed at creating an environment in which human rights can be better promoted and protected. A detailed account of our initiatives in enhancing the capacity of civil servants, legal practitioners, members of law enforcing agencies, teachers and activists is provided in Chapter VIII of this report.

PUBLIC AND PRIVATE FREEDOMS

2.24 The human rights approach to disability on one hand requires the States to play an active role in enhancing the level of access to public freedoms and on the other requires that the enjoyment of rights by persons with disabilities is not hampered by third-party actors in the private sphere. 'It is not only the government agencies which are obliged to observe rights, but private bodies acting as government agents or to which public functions are delegated or subcontracted should also be held accountable similarly'. To this effect, NHRC suggested all the developmental Ministries in the Centre and States to regulate functioning of NGOs receiving aid to ensure that negative portrayal of disabled for raising funds is completely prohibited.

2.25 Furthermore, the obligation of the Government to take steps to eliminate discrimination in private sphere in respect of disability is crucial as the abuse, neglect and violence against the disabled is widespread within the institutions and confines of the family. The Commission has been deeply concerned about the exploitation of the disabled through beggary as they are not only used for begging but also at times, maimed and disabled for the purpose of beggary. The Government, therefore, has been advised to probe the nefarious activities of such mafia gangs and to take all necessary steps to bring them to book.

2.26 It is noted that many private bodies under the garb of imparting vocational training often engage persons with disabilities for years together in production activities by just paying them a stipend. The overall working conditions in these vocational training-cum-production centres are also far below the stipulated standards. The Commission, therefore, recommended to the Government to redefine norms of vocational education and suggested establishment of an independent authority with an aim to regulate, standardize, monitor and supervise working of institutions imparting education, training and residential care to the disabled.

DISABILITY CONVENTION

2.27 Change is an evolving process, which can be accelerated by a number of means. For instance the UN General Assembly Resolution 56/168 of 19 December 2001 towards a binding treaty on the theme of disability holds that promise. In fact, people with disabilities have offered the world a precious opportunity to redefine the norms of social justice, citizenship, democracy and human rights.

2.28 In response to the invitation to the National Human Rights Institutions for their participation in the Ad hoc Committee under General Assembly Resolution 57/229 and inspired by the suggestion made by the United Nations High Commissioner for Human Rights stating '**it will be of utmost importance that not only States but also National**

Human Rights Institutions are able to contribute their experience to the elaboration of the new Convention on the Rights of persons with Disabilities', the Commission therefore undertook a number of initiatives to mobilize support for a binding instrument in the international law on the theme of disability.

2.29 As the Commission is of the firm view that a coherent and integrated approach to disability in the international law cannot be developed under the present treaty system, an exclusive convention is therefore, necessary to give "status, authority and visibility" to disability issues which cannot be achieved through the process of reform of existing international instruments and monitoring mechanisms. Moreover, the Commission believes that a single comprehensive treaty would enable the State Parties to understand their obligations in clear terms and it would set clear targets for the development of disability-inclusive infrastructure and processes. Adding a new treaty would also complement existing international standards for the rights of the disabled.

2.30 During the period under review, the Commission focused its interventions in some of the key areas. The Government of India was engaged in a constructive dialogue encouraging its active participation in the treaty elaboration process. Towards this end, a number of meetings were convened involving representatives of the Ministries of External affairs and Social Justice and Empowerment. These meetings proved useful in overcoming some misgivings about disproportionate financial burden that the new treaty may bring.

2.31 The Commission also actively promoted awareness about the Convention among disability organizations and related bodies with the aim to inform them about the international treaty system and procedures. These dialectical consultations not only proved helpful for the disability sector but they were extremely useful for the Commission to have a closer view of the ground realities of persons with disabilities. Most importantly these workshops acted as an interface between the people and the Government, which has the primary responsibility to translate the lived realities of people with disabilities into various provisions of the treaty.

INTERNATIONAL WORKSHOP ON CONVENTION

2.32 Responding positively to the invitation of the Ad hoc Committee to make available suggestions and proposals to be considered in the development of a new Disability Convention, the Commission also hosted an International Workshop in cooperation with Asia Pacific Forum and the Office of the High Commissioner of Human Rights inviting National Human Rights Institutions from the Commonwealth and Asia Pacific Region between 26-29 May 2003 at New Delhi. The Workshop not only crystallized a proposal regarding the nature, scope and key elements of the proposed Convention but also identified the specific role that NHRIs could play in the process of treaty elaboration. The concluding statement issued at the workshop is at Annexure 1.

2.33 Regarding the nature of the treaty, the NHRIs strongly affirmed the need for a comprehensive and integral Convention stressing, **‘that the Convention should be a ‘rights-based’ instrument built on international human rights norms and standards’**. Defining the scope of the new Convention, the New Delhi Workshop recommended that the Convention shall apply both to public and private institutions and spheres and the full range of rights contained in existing international human rights instruments should be incorporated in the Convention.

2.34 In addition to the application of existing international human rights law, the NHRIs recommended that the Convention should contain specific articles dealing with specialized areas and issues relating to civil, political, economic, social and cultural rights as by the very nature of the context of disability, they require codification.

2.35 The Commission had the privilege to present a joint statement to the Second Session of the UN Ad hoc Committee along with the recommendations of the New Delhi Workshop. Subsequently, the Commission also contributed to the UN working group that harmonized the draft text of the Convention. To systematically assist the work of the Ad hoc Committee, the Commission, along with the APF members has compiled a Working Paper addressing difficult and complex issues requiring clarification from a human rights perspective. This paper has become an important reference document, which the Commission hopes to develop further.

2.36 During the meetings of the UN Ad hoc Committee and the working group, the Commission’s role has been that of a facilitator, providing technical support and also acting as a watchdog to ensure that disability treaty builds on existing standards of human rights and that under no circumstances attempts substandard provisions.

2.37 Under the circumstances, the amendment to the definition of International Covenants’ as provided in the Protection of Human Rights Act, 1993, which is limited to the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966 has become all the more important. 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’.

CONCLUSION

2.38 No institution or nation genuinely striving to serve the cause of human rights can ever do enough. The Commission is no exception. It is functioning in a country of over one billion people, unparalleled pluralism and sub-continental proportions. Given the immensity of the hopes now reposed in it and the dimensions of the problems it must confront, the

Commission is consistently and consciously making tireless efforts to gain its strength and capacity by actively engaging the people, their organizations and government, and other like minded institutions and individuals who are genuinely interested in creating an inclusive society in which difference is recognized as a natural aspect of human diversity regardless of the nature of difference. In the effort to accelerate the paradigm shift from welfare to the rights of the disabled, the Commission has gained new understanding of equality and discrimination and a new meaning of life, liberty and dignity which are the core values that underpin the system of human rights. It is our sincere hope that the obstacles to the enjoyment of human rights and fundamental freedoms encountered by persons with disabilities would be efficiently removed using all the available means. Of course the persons with disabilities must play the central role in the process of change.

CHAPTER 3

Situation in Gujarat

3.1 The sequence of events arising out of the tragedy that occurred in Godhra on 27.2.2002 and the communal violence that erupted thereafter, and many measures and initiatives taken by the Commission to ensure protection of human rights in the context of these events, like the proceedings before Courts, and the proceedings of the Commission, have already been covered in detail in its two annual reports relating to the years 2001-2002, and 2002-2003. Events in Gujarat have continued to receive attention of the Commission. This report brings progress on the Gujarat issues up to date as at the time of writing. Actions relating to earlier years which have been covered in the related annual reports are not being repeated in the present report.

3.2 A major development in the Gujarat issue during 2003 – 2004 (the period under review in the present report) was the trial of the case, which has come to be known as the “Best Bakery Case”. After charge sheet was filed against 21 accused, the trial commenced before the Fast Track Court at Vadodara on 20th February 2003. Although a large number of witnesses had been cited by the prosecution, only 73 were examined and the rest, including some eye-witnesses, were given up. 37 of the witnesses resiled from their earlier statements and were declared hostile. On 21st June 2003, the remaining statement of the Investigating Officer was recorded and he was also cross-examined. On the same day, statements of all the 21 accused persons, under section 313 Cr.PC, were recorded by the Trial Court. The Trial Court also heard arguments of the prosecution and the defence on the same day i.e. 21st June 2003 and reserved the judgment, which was delivered on 27th June 2003, acquitting all the 21 accused.

3.3 After the judgment of the Fast Track Court acquitting all the 21 accused in the Best Bakery Case on 27th June, 2002, the Chairperson, NHRC, in response to some media queries stated, (reported both in the print and electronic media) that there had been a “miscarriage of justice”, and the State of Gujarat ought to file an appeal against the judgment of the Trial Court. He also said that this would be an opportunity for the state to “restore its credibility”.

3.4 By its proceedings of 30th June, 2003, the NHRC asked the Chief Secretary, Gujarat to send a copy of the judgment of the trial court to the Commission and inform it within seven days as to what action, if any, was the State planning against the order of acquittal. The Chief Secretary, let alone responding, did not even acknowledge the communication of NHRC dated 30th June, 2003. The State of Gujarat also remained indifferent to the suggestion made for filing an appeal against the order of acquittal.

3.5 Since, copy of the judgment was not sent to the NHRC and even the record of the case was not made available to its Special Rapporteur, the Commission, by its proceedings dated 6th July, 2003, invoking its powers under Section 13 of Protection of Human Rights Act, 1993, requested the Trial Court to furnish copies of the judgment and the record of the case to its team which was sent to Vadodara for the said purpose. On 8th July, 2003, the team collected the record from the Trial Court and returned to New Delhi and submitted its report.

3.6 As no response from the Chief Secretary was received to the communication dated 30th June, 2003, after waiting for over a month, and taking notice of the report submitted by its team and other relevant material, including the statement of Ms. Sheikh Zahira Bibi, made before the Commission seeking assistance of the Commission for retrial of the case and obtaining legal advice, the NHRC, on 30th July, 2003, taking recourse to the provisions of Section 18(2) and other enabling provisions contained in the Protection of Human Rights Act, 1993, proceeded to file an SLP before the Hon'ble Supreme Court. In this petition the Commission raised not only issues of miscarriage of justice as a result of acquittal of all the accused in the Best Bakery Case but larger issues touching upon the credibility of criminal justice delivery system; protection of witnesses and victims of crime; the postulates of a fair trial and the need to lay down guidelines, in the face of case after case failing, particularly critical cases, on account of witnesses turning hostile at the trial, so as to restore credibility of criminal justice delivery system, which had come under serious challenge and cloud. NHRC also prayed for an order to "reinvestigate" the Best Bakery Case by the Central Bureau of Investigation (CBI) and for its "retrial" outside Gujarat. The SLP was listed for preliminary hearing on 8th August, 2003.

3.7 Having remained quiet all this time, on 6th August, 2003, the State of Gujarat filed an appeal in the High Court of Gujarat against the order of acquittal and informed the Supreme Court about it when the SLP came up for consideration. The Supreme Court was pleased to describe the State appeal as only an "eye-wash" and the State undertook to amend the Memo of Appeal. Even the Second Memo of Appeal was found by the Supreme Court to be "inadequate". The State undertook to amend the Second Memo of Appeal also.

3.8 That the Hon'ble Supreme Court was pleased to treat the larger issues raised by the NHRC in its SLP, as matters of larger public interest and converted the SLP into Public

Interest Litigation (Writ Petition) – WP (Crl.) No. 109 of 2003 by its order of 8th August 2003. Ms. Zahira Sheikh, one of the prime witnesses, also filed an SLP in the Supreme Court against the order of acquittal and notice was issued to the State and the acquitted accused in the said case.

3.9 The Commission had also filed a separate application u/s 406 Cr.P.C. before the Supreme Court on 31st July 2003 seeking transfer of 9 other serious cases, arising out of the Godhra incident, Chamanpura (Gulburga Society) incident, Naroda Patiya incident and the Sadarpura case in Mehsana district, for their trial outside the State of Gujarat. This application was taken up by the Supreme Court along with the SLP filed by the Commission. The matter of transfer of cases is still pending, though the Supreme Court has stayed the trials in those cases after issuing notice to the State.

3.10 The appeal filed by the State of Gujarat against the acquittal in the Best Bakery case was dismissed by the Gujarat High Court on 26th December 2003. The matter was, thereafter, further considered by the Commission on 19.1.2004. After perusing the judgment delivered by the High Court of Gujarat, it asked the Chief Secretary, Government of Gujarat to inform the Commission what action, if any, the State of Gujarat was proposing to take in the matter of dismissal of appeal against acquittal of the accused in the Best Bakery case. The State remained indifferent and conveyed no information to the Commission.

3.11 Against the judgment of acquittal delivered by Gujarat High Court, Ms. Zahira Habibulla H. Sheikh and Ors, filed SLP in the Supreme Court. The State of Gujarat also filed an appeal against the order of acquittal. They were registered as Criminal Appeal Nos. 446-449/2004. By a detailed order dated 12th April 2004, the Supreme Court allowed the criminal appeals and set aside the order of acquittal of all the 21 accused passed by the Trial Court and confirmed by the Gujarat High Court. The Supreme Court further directed retrial of the case outside the State of Gujarat. The judgment of the Supreme Court makes reference to the Statement made by Ms. Zahira Habibulla H. Sheikh before the Commission and the SLP filed by the NHRC before Supreme Court, which was converted as (PIL) Writ Petition.

3.12 While directing retrial of the case on 12th April, 2004, the Supreme Court observed as under:-

“Keeping in view the peculiar circumstances of the case, and the ample evidence on record, glaringly demonstrating subversion of justice delivery system with no congenial and conducive atmosphere still prevailing, we direct that the retrial shall be done by a Court under the jurisdiction of the Bombay High Court. The Chief Justice of the said High Court is requested to fix up a Court of Competent jurisdiction.

We direct the State Government to appoint another Public Prosecutor and it shall be open to the affected persons to suggest any name which may also

be taken into account in the decision to so appoint. Though the witnesses or the victims do not have any choice in the normal course to have say in the matter of appointment of a Public prosecutor, in view of the unusual factors noticed in this case, to accord such liberties to the complainants party, would be appropriate.”

3.13 The Supreme Court also took a serious view of some objectionable observations and remarks made against the NHRC and certain NGOs in the judgment of the High Court of Gujarat while disposing of the State appeal in the Best Bakery case. It observed:-

“The High Court appears to have miserably failed to maintain the required judicial balance and sobriety in making unwarranted references to personalities and their legitimate moves before competent courts – the highest court of the nation, despite knowing fully well that it could not deal with such aspects or matters. Irresponsible allegations, suggestions and challenges may be made by parties, though not permissible or pursued defiantly during course of arguments at time with the blessings or veiled support of the Presiding Officers of Court. But, such besmirching tactics, meant as innuendo’s or serve as surrogacy ought not to be made or allowed to be made, to become part of solemn judgments, of at any rate by High Courts, which are created as Court of record as well – decency, decorum and judicial discipline should never be made casualties by adopting such intemperate attitudes of judicial obstinacy. The High Court also made some observations and remarks about persons / constitutional bodies like NHRC who were not before it. We had an occasion to deal with this aspect to certain extent in the appeal relating to SLP (Criminal) Nos. 530-532/2004. The move adopted and manner of references made, in para no. 3 of the judgment except the last limb (sub-para) is not in good taste or decorous. It may be noted that certain reference is made therein or grievances purportedly made before the High Court about the role of NHRC. When we asked Mr. Sushil Kumar who purportedly made the submission before the High Court during the course of hearing, he stated that he had not made any such submission as reflected in the judgment. This is certainly intriguing. Proceedings of the court normally reflect the true state of affairs. Even if it is accepted that any such submission was made, it was not proper or necessary for the High Court to refer to them in the judgment to finally state that no serious note was taken of the submissions. Avoidance of such manoeuvres would have augured well with the judicial discipline. We order the expunging and deletion of the contents of para 3 of the judgment except the last limb of the sub-para therein and it shall be always read to have not formed part of the judgment”.

3.14 Subsequent to the order of the Supreme Court dated 12th April, 2004, the Chief Justice of the Bombay High Court assigned the trial of the Best Bakery Case to a court in Mumbai. The State of Gujarat insisted upon appointing the Public Prosecutor for prosecuting the case before the court in Mumbai, while the victims requested the Bombay High Court for appointment of a Public Prosecutor. This controversy between the States of Gujarat and Maharashtra regarding appointment of the Public Prosecutor led to delay in starting re-trial of the case. The matter came to be resolved by the Supreme Court by its order dated 16.8.2004 appointing a Public Prosecutor and an Additional Public Prosecutor to prosecute the case. Both the Public Prosecutor and the Additional Public Prosecutor, namely, Mr.P.R. Vakil and Ms.Manjula Rao are from Maharashtra and their names had been suggested along with some other names by the complainants in the Best Bakery Case. Since the controversy regarding appointment of Public Prosecutor has been set at rest by the Supreme Court, the re-trial of the case is scheduled to begin on 19.8.2004.

CASE OF MS. BILKIS YAKUB RASOOL

3.15 Major events, court proceedings and the Commission's orders in this case have already been reported in the previous annual report for the year 2002-2003. The alleged gang-rape victim, Ms. Bilkis Rasool approached the Commission complaining that the police had not arrested the culprits, although she had very clearly given their names with particulars in her complaint and had on the other hand closed her case and filed a "final report" stating the case to be "untraced". Ms. Bilkis conveyed to the Commission that she wished to pursue legal remedy and file a case in the Supreme Court against the police action closing her case, but she did not have the means to pursue the case. She, therefore, requested the Commission to provide her legal assistance to pursue her case in the Supreme Court.

3.16 By its proceedings dated 9.7.2003, the Commission decided to give legal assistance to Mrs. Bilkis Yakub Rasool and undertook to bear the necessary expenses, if the need so arises, to enable her to ventilate her grievances in the Supreme Court of India. Shri Harish Salve, Sr.Advocate, Shri Ashok Arora, and Ms.Shobha, Advocate-on-Record, favourably responded to the request of the Chairperson, NHRC to provide legal assistance to Mrs.Bilkis Yakub Rasool and agreed to appear for her and pursue her case. On 25th August, 2003, Writ Petition (Criminal) 118 of 2003 was filed on behalf of Ms.Bilkis Yakub Rasool in the Supreme Court of India against the State of Gujarat seeking setting aside of the order of the learned Judicial Magistrate, First Class, Limkheda dated 25.3.2003 accepting the "final report" submitted by the police and to quash and set aside the "final report" of the police itself. She also sought a further direction to the Director, CBI, to conduct an independent investigation into the gang-rape and prosecute the guilty.

3.17 The Supreme Court issued notice to the State and after hearing learned counsel for the parties' accepted the prayer of the writ petitioner Ms.Bilkis Yakub Rasool and ordered fresh investigation into her complaint by the CBI by its order dated 16.12.2003.

3.18 In compliance with the order of the Supreme Court dated 16.12.2003, the Director, CBI, ordered registration of the case. The Special Crime Branch, CBI, Mumbai on 1.1.2004 registered RC 1(S)/2004 U/S 143, 147, 148, 149, 376 and 302 IPC and took up the investigation of the case. A team of CBI officers set up a camp office in Devgarh Baria, District Dahob, Gujarat for investigation of the case. After completing investigation, the CBI filed a charge-sheet on 19.4.2004 in the Court of CJM (Rural), Ahmedabad against 20 accused persons, including some police officers and doctors. The CBI also recommended departmental action for major penalty against 8 Government servants, named in the charge-sheet for dereliction of duty.

The CBI requested the Principal Secretary (Home) and Director General of Police and Inspector General of Police, Gujarat on 20.4.2004 to provide security to 33 important witnesses in the case in order to ensure free and fair trial and avoid any extraneous pressure being brought on the witnesses at the behest of accused persons.

3.19 While the matter rested thus, the Special Rapporteur of the Commission forwarded an application from the complainant Ms. Bilkis Yakub Rasool requesting for assistance from the Commission to appoint a lawyer during the trial of the case before the Trial Court. The Commission vide its proceedings dated 24.3.2004, acceded to the request of the complainant and asked Shri P.G.J. Nampoorthiri, Special Rapporteur, NHRC to take steps for engagement of a competent lawyer in consultation with the Commission and the complainant to represent her in the trial court. The Commission undertook to bear the expenses in that behalf.

3.20 Before the trial could commence in the Court of CJM (Rural), Ahmedabad, Ms. Bilkis Yakub Rasool brought to the notice of the Supreme Court, through an application, that she and some witnesses were under constant threat and that the atmosphere was so surcharged that it was not possible to have a fair trial before the CJM (Rural) at Ahmedabad. The Supreme Court took cognizance of the application and after notice to the State and hearing the parties by its order dated 8.8.2004 directed the transfer of the trial of the case from Ahmedabad to a court in Mumbai “in the interest of justice”. The Supreme Court, however, made it clear that the order of transfer of case was not to be interpreted as any indictment of the judiciary in Gujarat.

REHABILITATION OF PERSONS DISPLACED BY THE RIOTS

3.21 The Commission has continued to be concerned about the relief, rehabilitation, and resettlement of the victims of communal violence in the State of Gujarat who were ‘displaced’ following the post Godhra riots. The Commission had proposed several measures in that behalf. However, the experience of the Commission has been that the State Government in responding to the recommendations of the Commission regarding the relief and rehabilitation of victims, has been less than forthcoming or cooperative, with the result that

the efforts of the Commission have not led to initiation of substantial additional measures or even adequate speedy measures relating to relief, rehabilitation and resettlement of the unfortunate victims.

3.22 In its annual report for the year 2002-2003, the Commission had brought upto date various steps taken by it in the matter of relief and rehabilitation of the riot victims. Following the discussions held by the Commission with the Chief Secretary of Gujarat State on 9.5.2003, the Commission reminded the State Government of the requirement to respond to the six measures recommended by it, five of which related broadly to the area of relief, rehabilitation, restoration, and confidence-building measures. Unfortunately response of the State Government was far from satisfactory. Neither the letter dated 28.5.2003 nor the subsequent letter dated 25.6.2003 from the Chief Secretary to the Commission, which contained a note on 'relief and rehabilitation measures', adequately covered the issues that had been raised with the Chief Secretary on 9.5.2003. He was therefore once again requested to furnish a comprehensive report on the six issues.

3.23 In his further communication dated 17.9.2003, the Chief Secretary, Government of Gujarat, conveyed the following information to the Commission on issues relating to the relief and rehabilitation of the riot victims: The tenor of the information speaks for itself.

- (a) **Setting up of a Grievance Redressal Authority** : Regarding the proposal of the NHRC for setting up of a Grievance Redressal Authority it was stated by the Chief Secretary, Gujarat that in the SCA no. 3217 of 2003 filed by the Citizens for Peace and Justice & Others before the High Court of Gujarat that a similar demand has been made. The SCA is yet to be admitted by the Hon'ble High Court. However, the High Court has directed the Chief Secretary to hear the petitioners and one such hearing has already taken place on 23.7.2003. Thus, the matter is *sub judice*.
- (b) **Rehabilitation of the victims and their survey**: Apart from claiming that the state machinery had already carried out a detailed survey and paid compensation to the victims as per the policy guidelines of the state, the Chief Secretary stated that the State Government does not deem it necessary to conduct any fresh survey, even jointly with NHRC. The matter is also sub judice under the SCA mentioned above.
- (c) **Survey of riot affected persons still living in camp-like conditions**: Regarding survey of riot affected persons still living in camp-like conditions, the Chief Secretary stated that the State Government is willing to examine any grievance. He also claimed that there is no family living in camp-like conditions.
- (d) **Restoration of Tombs and Holy Places** : Regarding restoration of Tombs and Holy Places destroyed during the riots, the Chief Secretary stated that an SCA filed by the Islamic Relief Committee is pending before the High Court, and therefore the issue is *sub-judice*.

3.24 Thus, it would be seen that the State Government has continued to be indifferent in tackling the issue. The report of the Chief Secretary is more intended to block any action on the issues suggested by the Commission than to address them. In response to the contentions put forth in the Chief Secretary's letter dated 17.9.2003, the Special Rapporteur of the Commission who was consulted, reported details which supported the Commission's stand that there was need for a Grievance Redressal Authority. Many of the families displaced in the riots were not in a position either to return to their original homes or carry on their business, in the absence of a secured and congenial environment facilitating their return. The report of Special Rapporteur also indicated that the amount of compensation paid by the State Government to the persons displaced in many cases was grossly inadequate. To illustrate the point he had pointed out that in the case of damage to houses, though the maximum limit of compensation fixed by the State Government was Rs. 50,000, the average compensation being paid for a fully damaged house was only Rs. 6678.28 per house in rural areas and Rs. 8554.58 per house in urban areas. As per the report of the police agency, the total damage to properties (including houses, business establishments, vehicles etc.) was to the tune of Rs. 687.34 crore, whereas the State Government had distributed only Rs. 56.37 crore to the affected persons, which works out to just about 9 per cent of the loss. It was further pointed out by the Special Rapporteur that instances of inadequacy in compensation/relief were not limited to Ahmedabad alone, while the list attached to the SCA refers mostly to cases from that place only. Besides, the mere fact that SCA had been filed before the High Court was not a sufficient ground for not attending to the grievances of affected citizens. The Special Rapporteur disputed the contention that there were no families living in camp-like conditions.

3.25 The Commission, after considering the response of the Chief Secretary and the comments of the Special Rapporteur, felt that there was a strong need to set up an Authority as proposed. The State Government was informed by the Commission by a D.O. letter dated 14.11.2003 of its intention to set up a Grievance Redressal Authority headed by a former Chief Justice of the High Court with a nominee each of the State Government and NHRC as Members so as to provide for an independent forum to the aggrieved citizens to ventilate their grievances and to ensure transparency and speed in the disposal of their grievances. The Commission reiterated its view that a survey of families living in camp-like conditions was necessary and requested the State Government to cooperate with the conduct of the survey.

3.26 The State Government through a D.O. letter dated 31.12.2003 sent by the Chief Secretary stated that the State Government does not accept the suggestion of NHRC to constitute a Grievance Redressal Authority. It termed the suggestion as improper because the State Government, on the direction of the Hon. High Court is actively engaged in the redressal of grievances of the riot affected persons. As regards the survey of displaced families, the State Government stated that it was fully willing and ready to cooperate in the matter but it would like that the NHRC should first give details of the specific complaints.

3.27 Further to the response of the State Government, the Special Rapporteur stated as follows:

“As per information available, 1700 families in Sabarkantha, 75 in Dahod, 640 in Pachmahals, 100 in Vadodara, 325 in Mehsana and 950 in Ahmedabad City have shifted to colonies built by NGOs. It is estimated that not less than 1000 more families are staying in temporary camps or in rented accommodation.

In the SCA/3217/2003, no oral or written orders have been passed by the Gujarat High Court. However, on oral instructions the petitioners i.e. “Citizens of Justice and Peace” were given personal hearing by the Chief Secretary. In spite of 3 such meetings, there is no progress in the matter of redressal of their grievances.”

The Commission conveyed the above information to the Chief Secretary for further consideration of the matter. A reply from the Chief Secretary is still awaited!

CHAPTER 4

Civil Liberties

A] Protection of Human Rights in Situations of Terrorism & Insurgency

4.1 As in previous years, terrorism and insurgency continued to be a major concern with world community, including the Governments, the civil society, Human Rights Institutions and Voluntary Organizations. This has been more so after the “9/11 incident” which shook the very roots of the most powerful democracy in the world, the USA.

4.2 We in India, had been voicing our concern regarding tackling terrorism and insurgency at the global level for the past many years, particularly with regard to cross-border terrorism. The evil of terrorism continued to raise its head again and again and hundreds of innocent people across the length and breadth of this country continued to become its targets.

4.3 In the course of the year 2003 - 2004, the barbaric acts of terrorism and insurgency resulted in the killing of 31 persons in Tripura on 07.5.03, followed by suicidal attack on 28.6.03 resulting in death of 12 army personnel on the outskirts of Jammu. Hardly had we recovered from this shock when there was a dastardly attack on pilgrims on their way to Vaishno Devi Shrine near Katra (J&K) on 21.7.03. Another attack followed in quick succession on 22.7.03 leading to the death of 8 army personnel in another suicidal attack on army camp near Aknoor, J&K. The extremists in Tripura struck once again on 14.8.03 killing 18 persons. The twin bomb blast in South Mumbai on 25.8.03 was perhaps the most severe taking a toll of 46 innocent civilians and injuring some 160 others. The long list of these ghastly acts includes killing of several persons in Assam during November, 2003 allegedly by ULFA militants, blast at Jammu bus stand on 29.12.03 injuring about a dozen of passengers, attack on army personnel in J&K on 30.12.03 injuring 56 army personnel, bomb blast in the main market of Srinagar on 01.1.04 injuring 20 civilians and the attack of extremists at Jammu Railway Station on 21.1.04 resulting in death and injury to a large number of army personnel and others.

4.4 As terrorism aims at the destabilisation of civil society and the unraveling of the state, it is essential that it be firmly resisted by both. The Commission would therefore like to reiterate its conviction that the police and armed forces of the country, backed by all elements of society, have a duty to fight and eliminate terrorism. However this must be done in a manner that upholds the Constitution of the Republic, the laws of the land, the rule of Law and the Treaty commitments of the State. Since its establishment in October, 1993, the Commission has consistently taken a position in harmony with this approach.

4.5 The Commission is convinced that a proper observance of human rights is not a hindrance to the promotion of peace and security. On the contrary any lasting peace and long term national security depend on proper respect for human rights. The anti-terrorism measures must therefore be consistent with democracy and human rights, which are fundamental values of our society, and should not undermine them, even inadvertently. Further, the nature and manner of implementation of such measures must be fully consistent with the purpose, regardless of whether the measures call for greater vigilance in surveillance, the prosecution of terrorist acts under the law of land, or the use of force by the police or armed forces of the country to control or destroy terrorists.

4.6 Anti-terrorist measures must be, and be seen to be, directed only against terrorists and not against innocent civilian populations. Finally, the Rule of Law must be upheld, and the parameters within which the State must function as described above must be strictly respected.

4.7 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 the 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 causing of death.

4.8 In response to the Commission's recommendations, the BSF and the Army have both continued to keep the Commission informed, on a regular basis, of their personnel who since 1990 have been charged with violating human rights. In the course of year under review, the Army for its part informed the Commission that they registered 30 complaints against the army personnel with regard to violation of human rights and so far two complaints were investigated and 14 complaints were still under investigation. Army has also taken cognizance of 4 complaints, suo motu as well as on the basis of complaints received from other sources, of which one case was found to be true and punishment of dismissal from service on 2.12.2003 was awarded to No. 1562976L (Opr) Rajesh Sing Yadav for attempt to molest a

woman on 23.8.2003. Chairperson, NHRC being deeply concerned with the allegations relating to alleged violation of Human Rights by the security forces, took up the matter with the Chief of Army Staff in March, 2004. The Chief of Army Staff, General N.C. Vij, by his letter dated 06 April, 2004 informed the Chairperson, NHRC, "Please be rest assured that Human Rights figure very high in our operational matrix and we remain committed to do everything possible to further improve our track record in this field". The Army Chief gave details of the action taken against officers of different ranks for violation of Human Rights. He also informed Chairperson, NHRC vide another letter dated May 24, 2004 that with a view to prevent violation of Human Rights and sensitise officers posted in the field officers of the rank of Colonel have been specifically designated at various headquarters.

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

4.10 Throughout this period and despite this climate of violence, the Commission pursued its responsibility to promote and protect human rights throughout the Country. For its part, the Commission continued to take action both suo-motu and on the basis of complaints on reports of human rights violation in the State.

4.11 In the course of the year, it received a total of 214 complaints alleging violations in the State of J&K. Each of these complaints was processed with promptness. Whenever, the Commission considered it necessary, notices were 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.

4.12 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 many occasions, the Commission interacted with the complainants, advising them of the efforts made and eliciting their response 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. The Commission also continued to pursue the matters of which it had taken cognizance earlier.

4.13 The Commission took suo-motu cognizance of a newspaper report published in the 'Times of India' dated 31.8.2000 entitled "Desperately seeking the disappeared" as reference from the Association of Parents of Disappeared Persons (APDP)" about disappearance of some persons between the ages of ten and seventy who were alleged to have disappeared from the Kashmir Valley. The Commission obtained a report from the state authorities and sent it to the APDP for their comments which are still awaited.

4.14 In the course of the current year, the Commission also took suo-motu cognizance of media reports and strongly condemned the outrageous terrorist attack which occurred at Baan Ganga near Katra on the way to the Vaishno Devi Shrine on 20th July killing seven devotees, including a child and injuring many innocent civilians. The Commission had consistently taken the position that such criminal acts are wholly unjustified and are violative of human rights of the citizens. The Commission therefore called upon the authorities to ensure that the full force of the law must be brought to bear in dealing with such acts of terrorism and bringing to justice those who perpetrate or abet them.

4.15 The Commission has also taken a consistent stand in respect of anti-terrorism legislations namely Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Prevention of Terrorism Ordinance, 2001 or Prevention of Terrorism Act, 2002. The Commission has noted in this connection that, when compared with TADA, the Prevention of Terrorism Act does contain some provisions that are aimed at providing safeguards against its possible misuse. The Prevention of Terrorism (Amendment) Act, 2003, for example provides for the constitution of a Central Review Committee. The Commission, however, is of the view that these safeguards are insufficient. It therefore, remains the duty of the State to monitor the implementation of the safeguards in this Act and to ensure that the other provisions are not abused or human rights violated with impunity. The Commission, therefore, reiterates that there is no change in the stand that it has taken earlier in respect of the Prevention of Terrorism Act, 2002.

B] Custodial Deaths/Torture

4.16 Addressing problems of custodial violence has been a major priority of the Commission ever since it was established. The Commission remained deeply engaged in efforts to bring to an end the egregious violation of human rights that result in custodial deaths. Custodial violence is a calculated assault on human dignity. "Whenever human dignity is wounded", to quote the Supreme Court in its judgment of 18th December, 1996 in the case of D.K Basu Vs. the State of West Bengal, "civilization takes a step backward. The flag of humanity on each occasion must fly half mast."

4.17 A systematic effort to curb custodial violence has been a major priority of the Commission. Since inception as early as on 14/12/1993 the Commission issued instructions to all the States asking them to direct all District Magistrates and Superintendents of Police to report directly to the Commission any instance of death or rape in police custody within 24 hours of its occurrence, failing which there would be a presumption that efforts were being made to suppress the facts. Subsequent instructions extended this directive to cover deaths in judicial custody as well.

4.18 The Commission is gratified to note that in accordance with its guidelines, the agencies of the states have been found prompt by and large, in informing the Commission whenever such incidents occur. However, the subsequent reports like inquest report, postmortem report (including videograph and viscera report , if any) magisterial enquiry report etc are not being received promptly in many cases. An effort has also sometimes been made by some State Governments to use section 36(1) of the Act, to block the jurisdiction of the National Human Rights Commission by asserting that the State Human Rights Commission has taken cognizance of a custodial death.

4.19 Custodial violence causes a chasm between Police and public. There are administrative, social, professional and psychological factors contributing to this lack of probity in public life. Lack of specialized investigating skills, misplaced incentives and rewards, sheer callousness are other reasons. Transparency in arrest, medical examination at given intervals, honest record keeping, increasing awareness about human rights, improved interrogation skills are some of the means of reducing incidences of custodial violence.

4.20 In order to curb custodial violence, a special cell under the direct supervision of the DIG within the Investigation Division of the Commission is entrusted with the task of obtaining the relevant documents from the concerned authorities and then analysing that material with a view to assisting the Commission in deciding what further action is required to be taken in respect of such incidents.

4.21 In the year 2003-2004, the Commission was informed of 162 deaths in police custody and 1300 deaths in judicial custody besides one death in the custody of Para-military forces making a total of 1463 as against a total of 1340 such deaths in 2002-2003, (183 in police custody and 1157 in judicial custody). It will be observed that there has been a decrease in the deaths reported to the Commission in police custody and an increase in deaths in judicial custody when compared to the previous year. The number of deaths in judicial custody has to be viewed in the context of the total number of prison inmates during the given period and most of the deaths being due to illness and natural causes. Approximately 80 % deaths in Judicial Custody are found to be due to natural causes.

4.22 The reports indicate that there has been a decline in the number of custodial deaths in police custody in the States of Assam (6 as compared to 15 in 2002-2003), Haryana (2

as compared to 6 in 2002-2003), Karnataka (4 as compared to 16 in 2002-2003), Tamil Nadu (12 as compared to 17 in 2002-2003), West Bengal (13 as compared to 16 in 2002-2003), and Jharkhand (3 as compared to 6 in 2002-2003). However over the same period there was an increase of such deaths in the States of Bihar (9 as compared to 4 in 2002-2003), Gujarat (20 as compared to 17 in 2002-2003), and Maharashtra (32 as compared to 26 in 2002-2003).

4.23 As regard deaths that occurred in judicial custody in the course of the year 2003-2004, the reports indicated that there was a decline in the number of such cases in the States of Bihar (139 as compared to 153 in 2002-2003), Rajasthan (45 as compared to 55 in 2002-2003), West Bengal (43 as compared to 49 in 2002-2003) and Delhi (22 as compared to 30 in 2002-2003). However, over the same period there was an increase in such deaths in the States of Assam (18 as compared to 13 in 2002-2003), Haryana (49 as compared to 41 in 2002-2003), Maharashtra (148 as compared to 117 in 2002-2003), Orissa (52 as compared to 41 in 2002-2003), Punjab (81 as compared to 65 in 2002-2003), Tamil Nadu (106 as compared to 51 in 2002-2003), U.P (199 as compared to 169 in 2002-2003), Chhattisgarh (42 as compared to 29 in 2002-2003), and Jharkhand (53 as compared to 41 in 2002-2003).

4.24 The figures nevertheless reinforce the view of the Commission that there is need for better custodial management and a better 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 custody management of police lockups and jails, and improving conditions in police custody. It accordingly urges all State Governments to pay more attention to such matters.

4.25 The State-wise position indicating the number of custodial deaths reported to the Commission in 2003-04 may be seen at Annexure 2.

4.26 During the year under review, the Commission considered it essential to recommend initiation of disciplinary/legal proceedings against delinquent public servants. Payment of interim relief under section 18(3) of the Protection of Human Rights Act, 1993 in respect of 8 cases of custodial deaths was also recommended. In addition the Commission issued show-cause notices in 16 cases of custodial deaths asking the authorities concerned to show cause as to why immediate interim relief be not granted to the next of kin of the deceased persons.

4.27 Ever since the Commission was established in October 1993, it has received reports of a total 10,058 deaths having occurred in police or judicial custody. An analysis of deaths that occurred in judicial custody revealed that most of the deaths were attributable to causes such as natural illness and old age. Some of the deaths were due to illness aggravated by medical negligence, violence between prisoners, or suicide. All these factors call for better

prison management, a properly 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 reiterates its recommendations that in all these areas all State Governments should pay more attention.

4.28 As deaths resulting from torture in judicial custody have been found to be comparatively rare, the Commission in December 2001 modified its earlier guidelines requiring the videography of post-mortem examinations of all deaths occurring in jails. The Commission considered the post-mortem examination to be essential, but the requirement of videography of the post-mortem examination could be relaxed in the case of deaths in Judicial Custody. In modification of its instruction, the Commission directed on 21 December, 2001 that, while its earlier instruction 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 the complaint alleging foul play had been made to the authorities concerned, or there was any other reason for suspicion of foul play. We wish to reiterate the same position.

C] Encounter Deaths

4.29 The guidelines issued by the Commission in respect of procedure to be followed by all State Govts. in dealing with deaths occurring in encounters with the police were circulated to all Chief Secretaries of States and Administrators of Union Territories on 29.3.1997.

4.30 Experience of the Commission in the past six years in the matter of encounter deaths has not been encouraging. Though under the existing guidelines, it is implicit that the States must send an intimation to the Commission of all cases of deaths arising out of police encounters, yet some States did not send intimation on the pretext that there is no such specific direction and hence they were not following the guidelines issued by the Commission in true spirit. As a result, authentic statistics of deaths occurring in various States as a result of police action are not readily available in the Commission. The Commission felt that these statistics were necessary for the effective protection of human rights in the discharge of its duties. Therefore, in order to bring in transparency and accountability of public servants, the Commission revised the existing guidelines on 2 December 2003 (Annexure 3). It was emphasised that the States must send intimation to the Commission of all cases of deaths arising out of police encounters. The Commission also recommended a modified procedure to be followed by all State Govts. in all cases of deaths in the course of police action, and it was, inter alia, made clear that where the police officers belonging to the same police station are members of the encounter party whose action resulted in deaths, such

cases be handed over for investigation to some other independent investigating agency, such as State CBCID. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall invariably be investigated by the State CBCID. A Magisterial Inquiry must invariably be held in all cases of deaths, which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/ recommended only when the gallantry of the concerned officer is established beyond doubt.

4.31 All the Chief Ministers and Administrators have been directed to send a six monthly statement of all cases of deaths in police action in the States/ UTs through the Director General of Police to the Commission by the 15th Day of January and July respectively in the proforma devised for the purpose.

4.32 The allegation of an extra-judicial killing resulting from a fake encounter is an extremely grave issue. 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.

4.33 During the course of the year 2003-2004, the Commission received a total number of 100 intimations from police authorities in respect of deaths that had occurred as a result of police encounters. Besides, intimations of four deaths in firing were received from Army Authorities. A statement showing the state-wise position in respect of intimations received from police authorities of various states/ army authorities is given in Annexure 4.

4.34 In addition to the above, the Commission also received a total number of 109 complaints in respect of deaths that had allegedly occurred as a result of fake encounters by police as per complaints made by NGOs/ individuals. The Commission also received three complaints against armed forces and two complaints against para-military forces alleging deaths in fake encounters. A state-wise position in respect of such complaints is given in Annexure 5.

D] Systemic Reforms: Police

4.35 The need for independence of the Police from political interference, and steps to improve efficiency and modernize training programmes have been highlighted time and again by various experts and organizations. Several Police Commissions have submitted their reports recommending reforms in police organisational structure and functioning, but no concrete action has been taken on these reports and desired results are not in sight.

4.36 This Commission has been deeply concerned with the subject of systemic police reforms. It pronounced its stand in the affidavit filed before the Supreme Court in the matter of Prakash Singh Vs UOI and Others (Civil Writ Petition No.301 of 1996) and its various annual reports. The matter of Prakash Singh Vs UOI is sub judice in the Apex Court. The Commission continued to participate in the proceedings before the Supreme Court in respect of this case.

4.37 The Central Government in response to the Commission's recommendations, in earlier annual reports such as implementation of some of the important recommendations of NPC for improving the quality of policing in the country, has taken some concrete steps towards modernization of the police. The Commission wishes to reiterate its earlier stand that the steps to modernize the police are welcome, and are in fact necessary, but not sufficient to bring about the necessary systemic reforms in the police force. The key to these reforms is the integrity of the investigation process and its insulation from extraneous influence.

4.38 The Memorandum of Action Taken prepared by the Central Government in response to the annual report for 2000 - 2001 had stated, inter- alia, that all the recommendations made by the Padmanabhaiah Committee had been accepted and the State Governments had been requested to implement such recommendations as relate to them. The progress made in this regard needs to be reviewed / monitored at the highest level.

4.39 The Commission has been receiving complaints, inter alia, of police wrong doings and their complicity in the violation of human rights and failure to provide justice to those who have been wronged. The Commission had referred in its earlier reports to the large-scale violation of human rights in Gujarat starting with the tragedy in Godhra on 27.2.2002. The National Human Rights Commission once again urges both the Central and State Governments to act with determination to implement the various police reforms recommended by it in its various proceedings and earlier reports.

4.40 The Commission earnestly feels that it is critically important not to let our criminal justice system slide down in public trust. The police reforms outlined by the Commission in its earlier reports and in its submission pending before the Hon'ble Supreme Court in the case of Prakash Singh Vs UOI and Others be acted upon without further delay.

4.41 The Govt. has set up sometime back a Committee under the Chairmanship of Justice V.S. Malimath to consider and recommend measures for revamping the Criminal Justice System. The Ministry of Home Affairs, Government of India has sent a copy of the report to the Commission eliciting its views on these recommendations. The Commission is seized of the matter and its views will be sent to the Government shortly.

E] Functioning of Human Rights Cells in state Police Head Quarters

4.42 The question of promoting appropriate in-house machinery in the office of the Director General of Police in the states for ensuring better protection of Human Rights

by establishment of Human Rights Cells has been engaging the attention of the Commission for quite some time. Setting up of Human Rights Cells within the police of each state is a major step taken by the state police administration in the task of protecting and promoting human rights and thereby regaining the police-public confidence and credibility in the minds of the people.

4.43 The main features of this setup is that the DGP in each State has established a “Human Rights Cell”, headed by an officer not below the rank of an IGP, who will be designated “IGP/ADGP(Human Rights). As the head of the Human Rights Cell, he is expected to have a very good record and reputation and should be appointed with the concurrence of the Commission.

4.44 This setup is not a substitute for, but only an addition to, the present modes of dealing with complaints by the Commission. The Commission would, as heretofore, in appropriate cases, continue to have the complaints processed seeking reports from the unit Officers directly, and in appropriate cases get the complaints investigated by the Investigation Division of the Commission itself.

4.45 Under the provisions of the Protection of the Human Rights Act, 1993, the Commission can utilize the services of any agency or authority of the Central or the State Government for the purpose of conducting an investigation. This setup of “IGP/ADGP (Human Rights)” is available to the Commission u/s 14(1). However, the officer continues to work under the control and discipline of the State authorities. This has been found, in many cases, not to be a satisfactory system. The agency or authority of the Central or State Government for the purpose of conducting investigation on the direction of NHRC should work, for such investigation, under the control of the NHRC.

4.46 The creation of “IGP/ADGP Human Rights” has a great potential for developing itself into a meaningful interaction between the state administration and the National Human Rights Commission, for overseeing the processing of the complaints, and for adoption of preventive and remedial measures. The system has the potential of developing into an effective in house system for prevention of human rights violations.

4.47 Every state /UT has constituted a HR Cell in the office of DGP. However, its effectiveness in spreading the culture of respect for Human Rights in the state Police Forces is yet to be felt. The nodal officers of these Human Rights Cells are personally monitoring the cases referred to their state from the National Human Right Commission, including deaths in police and judicial custody.

F] Human Rights and Administration of the Criminal Justice System

4.48 The Commission has, in successive 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.

4.49 The Commission is gratified to note from the Memorandum of Action Taken on its annual report for the year 2001-2002 that the guidelines issued by the Commission advising the State Governments/ UT Administrations to report all custodial deaths or rape to the Commission within 24 hours of such occurrence as well as to send the required reports within two months of the incident including post-mortem report in accordance with the new format are being followed. The Commission had also noted that the Commission's instructions regarding the videography of the post-mortem examination in respect of deaths in police custody or judicial custody have been conveyed to the States and UTs for appropriate action.

4.50 The Commission issued revised guidelines in respect of procedure to be followed in cases of encounter deaths. The Commission has emphasised that the States must send an intimation to the Commission of all cases of deaths arising out of police encounters. The Commission also recommended a modified procedure to be followed by State Governments in all cases of deaths in the course of police action, and it was made clear that where the police officers belonging to the same police station are members of the encounter party, whose action resulted in deaths, such cases be handed over for investigation to some other independent investigating agency, such as the State CBCID. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part and a case of culpable homicide is made out, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such a case shall invariably be investigated by the State CBCID. A Magisterial Inquiry must invariably be held in all cases of deaths, which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry. All the Chief Ministers and Administrators have been directed to send a six monthly statement of all cases of deaths in police action in the States/ UTs through the Director General of Police to the Commission by the 15th Day of January and July in the proforma devised for the purpose.

4.51 The Commission has noted with appreciation that, upon its recommendations, State Governments have established Human Rights Cells in the police headquarters of their respective capitals.

4.52 The Commission is convinced that a fair and proper investigation is an essential feature of fair trial and that it is important to impart professional training to the investigating officials. In order to achieve this object, the Commission has set up a Training Division in NHRC in September 2003. Details of the training conducted by this Division are fully covered in Chapter 11 (F). During the year 2003-2004 the Training Division of the NHRC in collaboration with the Commonwealth Human Rights Initiative (CHRI) a prominent NGO, conducted a four days' 'Human Rights Sensitization Course', for police officers of Chhattisgarh working in the police stations and the State Human Rights Commission, in

February, 2004, at Raipur, Chhattisgarh. The aim was to sensitize the police officers working at the cutting edge to learn about the core human rights issues being dealt with by them and develop knowledge and skills to promote and protect human rights of citizens in their work sphere.

4.53 A training Programme on 'Human Rights Investigation, Interviewing Skills and Custody Management' was also conducted by the Training Division of the NHRC between 3-5 March, 2004 for the Delhi Police officers, in the rank of ACPs, SHOs and Addl. SHOs, who are required to be in constant touch with the public in the capital city generally under the glare of constant scrutiny of the media and the civil society. The training exposure will enable these police officers to carry out their onerous responsibilities with confidence and in consonance with human rights norms, as required by the Constitution and laws of the land.

G] Custodial Institutions

1) Visits to Jails

4.54 The protection of the human rights of prisoners and undertrials in jails is one of the major concerns of the Commission in view of their vulnerable status arising from deprivation of personal liberty under the law. Section 12C of the Protection of Human Rights Act 1993 spells out the responsibility of the Commission for improving living conditions in jails. The Commission has been discharging this statutory responsibility through visits to jails in the various States/UTs undertaken regularly by the Members and Special Rapporteurs. The Chairperson has also written to the Chief Justices of all High Courts suggesting measures for reducing the congestion of under-trials in the State prisons vide letter dated 1st July 2003. (Annexure 6)

4.55 Dr. Justice A.S. Anand, Chairperson visited the Yervada Central Prison, Pune on 12 June 2003. He was accompanied by Shri Chaman Lal, Special Rapporteur of the Commission and Chief Coordinator, Custodial Justice Cell (CJC). The Chairperson closely reviewed the living conditions of prisoners and commented on overcrowding (69.6%), lack of sanitation (toilet to prisoner ratio of 1:16) and poor availability of police escorts (47 % for court production and 24% for taking patients to outside hospitals). Some discrepancies in reporting of cases of death in jail to the Commission were also detected. The Chairperson complemented the Jail Department for an efficiently managed jail industry. He emphasized the need for regular visits by the Board of Visitors which are in existence in all the districts in Maharashtra. The Chairperson visited the female section, saw the crèche facilities run by SAATHI an NGO and pointed out the need for improving arrangements for vocational training of women prisoners. He also visited the Open Air Jail and addressed the inmates who complained about delay in grant of parole and harshness in deciding pre-mature release of lifers. A comprehensive report on the visit of the Chairperson was considered by the full Commission

on 28.6.03 and forwarded to the State Government for necessary action. The ATR received after 31.3.04 is being scrutinised.

4.56 The Chairperson, accompanied by the Chief Coordinator, CJC visited the Central Jail, Ambala on 18 October, 2003. He commented upon overcrowding (77%), lack of sanitation (toilet to prisoner ratio of 1:12) and the plight of the long-stay undertrial prisoners. Some discrepancies in reporting to the Commission the incidence of death in jail were also detected. While lauding the efficient management of the jail industry, the Chairperson suggested greater transparency and openness in the mode of payment of wages to prisoners. The Chairperson reviewed the health-care facilities in detail and recommended a regular monthly visit of the psychiatrist in view of growing incidence of mental illness in jails. A pathetic case of a mentally ill prisoner, named Jai Singh s/o Atma Ram admitted to jail on 4.9.1977 and languishing in mental hospital Amritsar since 1979 was detected. After examination, the Commission decided to move the High Court of Punjab for appropriate action. The Chairperson recommended reactivation of the system of Board of Visitors which has gone defunct in the State of Haryana and pointed out the need for greater involvement of NGOs in matters relating to welfare and rehabilitation of prisoners. The Chairperson also commented on the shortage of housing facilities for the jail staff. A report on the Chairperson's visit was considered by the full Commission and forwarded to the State Govt. The ATR received after the period covered by this report is being scrutinized.

4.57 Shri R.S. Kalha, Member and the Chief Coordinator visited the Presidency Correctional Home, Kolkata on 17.11.03 and District Correctional Home, Howrah on 18.11.03. Their report was considered by the full Commission on 27.1.04. While the Presidency Correctional Home, Kolkata is not experiencing any overcrowding, the District Correctional Home, Howrah was found overcrowded to the extent of 32.6 %. The team also commented on the utter unsuitability of its location. While the basic needs of the prisoners, such as accommodation, food and health-care are being satisfactorily met, the team made adverse observations on lack of hygiene and sanitation (open drainage and toilet to prison ratio of 1:14) and poor medical facilities for the mentally ill persons, particularly women. The Team appreciated the special attention and care being provided to the children staying with mothers through establishment of an Anganwani Centre under ICDS at the Presidency Correctional Home. Efficient functioning of the Jail industry with a good deal of transparency and openness in payment of wages earned the visitors' praise.

4.58 The plight of the undertrial prisoners constituting 81.56% of the total population in the District Correctional Home, Howrah was found to be pathetic. The team's report cites a number of cases and recommends regular review of the state of undertrials. The report has also highlighted the problem of the 'released' prisoners of Bangladeshi and Pakistani origin languishing in jails after completing their sentence and awaiting deportation to their countries and endorsed the State proposal for construction of a Transfer Facilitation Centre

operational on the Indo-Bangladesh border where such persons could be lodged transit after their release from prison. The team also recommended holding of jail adalats, constitution of the Board of Visitors and the State Advisory Board under the West Bengal Correctional Services Act, 1992. The team commended the involvement of NGOs in promoting education, vocational training and AIDS awareness among the prisoners. The team commented on an overwhelming number of undertrial prisoners (81.56%) in the District Correctional Home, Howrah and extremely slow progress of their trials (15 specific cases have been cited – 10 at the Presidency and 5 at the Howrah Correctional Home). Active involvement of the NGOs in the welfare of prisoners has been cited as a notable feature of prison administration in West Bengal. The report has been sent to the State Govt. on 27 January 2004.

4.59 The Chief Coordinator, CJC visited the Women's Jail, Tihar on 25.11.03. Despite overcrowding of the order of 50%, the living conditions in terms of accommodation, sanitation, food, health services were found satisfactory. Regular holding of jail adalats, a functional board of visitors, an efficient system of vocational training and gainful employment of prisoners, and enthusiastic involvement of NGOs have been brought out as notable features of the prison management. However, the plight of the undertrial prisoners was found to be pathetic and 23 specific complaints were heard. After consideration of the report of the Chief Coordinator, these cases were forwarded to Delhi High Court for necessary action through a letter addressed by the Chairperson to the Chief Justice. The report of the Chief Coordinator was considered by the Commission and forwarded to the Govt. of NCT on 23 January 2004 with appropriate recommendations.

4.60 The Chief Coordinator, Custodial Justice Cell reviewed the living conditions in prisons in Himachal Pradesh from the view point of human rights of prisoners by visiting Model Central Jail, Kanda (Shimla), Sub-Jail, Shimla, Open Jail, Bilaspur and sub-Jail, Bilaspur from 21 to 24 September, 2003. He also had a detailed discussion with the Addl. DG (Prisons), Himachal Pradesh on various aspects of the organisation, management and administration of jails in Himachal Pradesh. Jail population in Himachal Pradesh which is only 3% in excess of the authorized capacity is manageable in comparison with other States. Efforts are being made to bring down the proportion of the undertrials which constitute less than 60% of the total prison population against the figure of 75% for the country as a whole. Production rate of undertrials before courts is also cent per cent. Sanitary conditions (toilet to prison ration 1:6) at Kandla, Shimla and Bilaspur are commendably good. Parole is granted liberally and most of the convicts are keeping contact with their families. Powers of pre-mature release are being exercised with due thought and caution. However, a negative aspect of the jail administration in Himachal Pradesh is the continuation of the anachronistic system of classification of prisoners on the basis of their social and economic status and habits of life. Strength of available jail staff is inadequate at most places. Actual availability of the guarding staff is much below the actual requirement

especially in the sub-jails. Medical facilities are found inadequate, especially at the sub-jails. Problems of women prisoners requiring special attention in accordance with the recommendations of Justice V.R. Krishna Iyer Committee Report have not received much attention. Work facilities for the convicts, an essential component of reform and rehabilitation programme are inadequate with the result that a very small proportion of prisoners is being employed in the jail industries. It is also noticed that the existing infrastructure and facilities built in the past for this purpose are not being utilized to their full capacity. Involvement of the NGO sector which alone can ensure proper integration of the prisoners with society after their release is almost totally missing in Himachal Pradesh. Housing facilities for the staff also need improvement. The report of the Chief Coordinator, CJC was sent to the State Govt. on 17.12.2003 with appropriate recommendations.

4.61 Rajasthan was another State taken up by the Chief Coordinator, CJ Cell for study of jail conditions in the period of report. He visited Central Jail, Jaipur, Open Air Jail, Sanganer, District Jail, Tonk and Sub-Jail Malpura from 16-18 Feb. 2004. He also had a detailed discussion with the Addl. DG Prisons, Rajasthan and his senior colleagues on jail infrastructure and the various aspects of management and administration of jails in Rajasthan. His report gives a broad assessment of the strength and weaknesses of the jail management and administration in Rajasthan. Rajasthan is one of the few States which have idle capacity in jails and overcrowding, the defining feature of prison situation in most States is not being experienced here. However, because of uneven distribution of jail population, which cannot be helped, jails at Bharatpur, Jaipur and Kota are moderately overcrowded. A rationalization of the existing infrastructure in accordance with actual needs at various places has been recommended. The situation of undertrial prisoners is found to be better in Rajasthan with under trial prisoners constituting roughly 55% of the total prison population. Abolition of the archaic system of classification of prisoners on the basis of their socio-economic status and habits of life is another positive feature of Rajasthan jail management. Involvement of NGOs in education, recreation and welfare activities of the prisoners is another commendable aspect. Rajasthan offers an inspiring example of the utility and usefulness of the open jail system. As many as 9 open-air jails are functioning in Rajasthan serving as Half-way Homes in the process of transformation of prisoners' lives and their return to community. Parole rules are liberal although their actual operation is found to be unduly strict based entirely on police recommendations which calls for a thorough examination. It is commendable that pre-mature release of lifers is being governed by strictly adhering to the provisions of Section 433A Cr.PC and guidelines have been issued even for the exercise of the Constitutional powers under Article 161 of the Constitution. While facilities of accommodation, sanitation and hygiene and food are adequate, the health cover is found to be very poor even at the level of district jails. The arrangement of part time doctors adopted in as many as 22 district jails and all the sub-jails at an honorarium of Rs. 100 per month is not at all a satisfactory arrangement. Moreover, vacancies of 5 posts out

of a meagre authorization of 15 Medical Officers sanctioned for the entire jail set-up indicates a lack of concern and sensitivity towards the basic human rights of the prisoners. Huge vacancies at supervisory level and shortage of female staff are pronounced infrastructural deficiencies with serious implications. The report of the Chief Coordinator has been sent to the State Govt. and compliance will be monitored in 2004-05.

4.62 Shri A.B. Tripathy, Special Rapporteur of the Commission for Orissa and Jharkhand visited Birsa Munda Central Jail, Ranchi (8 April, 2003), Athamallik Sub-Jail, District Angul Orissa (31.5.03), District Jail, Chainbasa, Jharkhand (6.7.03), Open Air Prison, Jamjhari, Bhubneshwar (18.8.03) and Chatrapur Sub-Jail, District Ganjam Orissa (16.12.03). In his reports, the Special Rapporteur has commented on the state of buildings, prison population, state of undertrials and availability of medical facilities. All the jails visited by the Special Rapporteur have been found to be highly overcrowded and in poor sanitary and hygiene conditions. The jail buildings are old and their maintenance is suffering because of lack of resources. Huge vacancies of sanctioned posts are causing problems of management and administration. Medical facilities are unsatisfactory because of absence of regular doctors in most jails. The Special Rapporteur has pointed out the need for better facilities for the treatment of TB and mental cases in jails in Orissa. The open-air prison presently holding only 42 lifers needs infrastructural up-gradation and proper staffing. Absence of elementary recreation facilities such as T.V at most places has also been pointed out by the Special Rapporteur. The Special Rapporteur has also visited Choudwar Circle Jail (Cuttack) on 18.5.03 to inquire into a complaint submitted to the Commission by a prisoner alleging harassment by the jail staff. Besides looking into the complaint, the Special Rapporteur gave a broad assessment of the living conditions in jail. He has also visited Hindol (Dist. Dhankanal) sub-jail on 20.1.04 on Commission's specific directions to inquire into the existing medical facilities and death caused due to serious disease like T.B. He submitted a report mentioning 6 deaths due to T.B. in 2001, 10 in 2002 and 7 in 2003 in 16 jails in Orissa. Reports of the Special Rapporteur were considered by the Commission and sent to the State Government with the appropriate recommendations.

2) Prison Population

4.63 Overcrowding in Jails persists as a major problem in most States/UTs. In the Commission's view, unnecessary and unjustified arrests made by the Police and slow judicial process causing congestion of under-trial prisoners are the main causes of overcrowding in jails. The Custodial Justice Cell of the Commission under the charge of Shri Chaman Lal, Special Rapporteur is engaged in compiling and analysing the prison statistics since June 2000 in order to assess the magnitude of the problem in every State/UT. The analysis is based on State Prison statistics as of 30 June and 31 December each year. During the period of report, the Commission has analysed data relating to the prison population as of 31

December 2002 and 30 June 2003. The salient points arising from this analysis are given in the succeeding paragraphs.

3) Analysis of Prison Population as on 31 December 2002

4.64 The total prison population of the country was 3,24,852 against the authorized capacity of 2,34,462. This indicated an overcrowding of 38.5% which is substantially higher than the figure of 32.33% as of 31 December 2001. 12 States/UTs, namely, Delhi, Jharkhand, Haryana, Chhatisgarh, UP, MP, Bihar, Sikkim, Gujarat, Orissa, Tripura and Andaman & Nicobar have experienced overcrowding of an order higher than the national average ranging from 40% to 231%. Delhi remains at the top with overcrowding of 231% followed by Jharkhand, 155% and Chhatisgarh 125%. Six States and five Union Territories, namely, Manipur, Jammu & Kashmir, Nagaland, Rajasthan, West Bengal, Kerala, Daman & Diu, Lakshdweep, Chandigarh, Dadar and Nagar Haveli and Pondicherry were found to be free of the problem of overcrowding and were, in fact, having idle capacity in their jails.

4.65 Under-trial prisoners constituted 74.15% of the total prison population, more or less the same as 74.06% as of 30.6.02. The proportion of under-trial prisoners was more than 80% of the prison population in 10 States/Union Territories. These were: Dadar & Nagar Haveli (100%), Meghalaya (96.2%), J&K (90.71%), Manipur (90.68%), Nagaland (90.49%), Bihar (86.68%), UP (86.16%), West Bengal (85.96%), Mizoram (83.81%) and Delhi (80.19%). Pondicherry, Lakshdweep and Chhatisgarh were holding under-trials numbering less than 50% of the prison population. Among the major States, Rajasthan (59.54%) and MP (56.75%) are seen to be making appreciable efforts to reduce the proportion of under-trial prisoners.

4.66 The proportion of women prisoners remained less than 4% as before. Women constituted 3.73% of the total prison population. Mizoram with 9.46% tops the list followed by Tamil Nadu (8.17%), Punjab (5.56%), Manipur (5.54%), Andhra Pradesh (5.29%), Pondicherry (5.28%) and Chandigarh (5.04%). Jails in Dadar & Nagar Haveli, Daman & Diu and Lakshdweep were holding no female prisoners. The proportion of women prisoners was less than 2% in Nagaland (1.90%), Sikkim (1.16%), Tripura (0.96%) and Andaman & Nicobar (1.86%).

4.67 Children up to the age of 5/6 years are permitted to stay with their mothers in jails. A total of 1515 children up to the age of 5/6 years were staying in jails as of 31.12.02. West Bengal accounted for the highest number (279) followed by UP (211), Bihar (197), MP (116), Maharashtra (109) and Tamil Nadu (75). Jails in Kerala, Manipur, Meghalaya, Sikkim, Tripura, Andaman & Nicobar, Dadar & Nagar Haveli, Daman & Diu and Lakshdweep were not holding any children.

4) Analysis of Prison Population as of 30 June 2003

4.68 As of 30th June, 2003, the total prison population in the country was 3,23,232 which indicated an overcrowding of 37.38% over the authorized capacity of 2,35,255. which was substantially higher than the figure of 31.19% as of 30 June 2002.

4.69 The overcrowding exceeded the All India average of 37.38% in 11 States/Union Territories, namely, Delhi, Jharkhand, Haryana, Chhatisgarh, Gujarat, Tripura, Bihar, MP, Orissa, Sikkim and UP. Delhi continued to hold the dubious distinction of having the most overcrowded jail (220%) followed by Jharkhand (156%) and Haryana (113%). Jails had idle capacity in 12 States/UTs, namely, Lakshdweep, Manipur, J&K, Nagaland, Chandigarh, Dadar and Nagar Haveli, West Bengal, Rajasthan, Daman & Diu, Mizoram, Pondicherry and Kerala. The utilization of authorized capacity is less than 50% in jails in Lakshdweep (12.50%), Manipur (37.50%) and J&K (44.13%).

4.70 Under-trial prisoners constituted 72.78% of the total prison population in the country which shows a marginal drop of 1.28% from the figure of 74.06% as of 30 June 2002. Eight States/UTs had under-trial prisoners numbering more than 80% of the total prison population. These were: Dadar & Nagar Haveli (100%), Meghalaya (95.17%), Manipur (91.43%), J&K (90.99%), Bihar (86.11%), UP (85.07%), Delhi (81.13%) and West Bengal (80.72%). Chhatisgarh, Sikkim and Andaman and Nicobar had less than 50% under-trial prisoners. Among the major States, MP (56.99%), Rajasthan (55.89%) and Himachal Pradesh (53.40%) are seen to be making efforts to reduce the proportion of under-trials in jails.

4.71 Women constituted 3.77% of the total prison population. Mizoram (9.78%) had the highest percentage followed by Tamil Nadu (8.58%), Manipur (6.90%), Uttranchal (6.76%), Pondicherry (5.76%), Andhra Pradesh (5.54%), Punjab (5.40%) and West Bengal (5.12%). Union Territories of Dadar and Nagar Haveli, Daman and Diu and Lakshdweep were holding no female prisoners.

4.72 A total of 1579 children up to the age of 5/6 years were staying with their mothers in jails. UP was holding the highest number (330) followed by West Bengal (207), Bihar (201), Maharashtra (125) and Jharkhand (94). Jails in 11 States/UTs namely Kerala, Goa, Manipur, Nagaland, Sikkim, Tripura, Andaman & Nicobar, Dadar and Nagar Haveli, Daman and Diu, Lakshdweep and Pondicherry were not holding any children.

5) Sensitization of Jail Staff

4.73 The sensitization programme for Jail Supdts., Jailers and officers of Correctional Services which was started in 2000-01 continued during the period of report. One day Workshops were held at Ranchi, Jharkhand (5th July 2003), Pune, Maharashtra (28 September 2003), Vishakapatnam, Andhra Pradesh (13 September 2003), Patna, Bihar (10th January 2004) and Chandigarh, (19 March 2004). These workshops were conducted by Shri Chaman Lal, Chief Coordinator of the Custodial Justice Cell with the help of the DG/IG (Prisons)

of the State concerned. The workshops aimed at imparting the participants basic knowledge about human rights of prisoners, peculiarities of their vulnerable status and initiatives taken by the NHRC to improve jail conditions.

4.74 The workshop held at Ranchi was attended by the Jails Supdts, from all the 27 Jails – 2 Central Jails, 6 District Jails and 19 Sub Jails of Jharkhand and the Probation Officers of all the 22 Districts of the State. Shri A.B. Tripathy, Special Rapporteur, Orissa and Jharkhand was also involved in the conduct of this workshop along with Shri Satendra Singh, IAS, IG (Prison), Jharkhand and Shri R.K. Kataria, Special Secretary, Home. The workshop was inaugurated by Shri Arujun Munda, Chief Minister, Jharkhand who emphasized the need for observance of human rights in prisons and expressed the commitment of the State Government to improve the living conditions in jails. He exhorted the Jail Supdts to make the jails in the State totally free of violation of human rights of inmates. The CM mentioned a number of steps that have been taken by his Government to reduce congestion in jails and improve the living conditions of inmates. Shri R.N. Sahay, a leading Advocate of Jharkhand High Court Ranchi was a special invitee to address the participants on the important judgments of the Supreme Court regarding rights of prisoners and conditions in prisons. Two sessions were devoted, one each in the forenoon and afternoon programme for discussion and interaction with the participants which provided very useful inputs on prison conditions in Jharkhand with suggestions for improvement. It also revealed the need for a thorough study of the existing infrastructure and jail services in Jharkhand by the Commission in order to identify the organizational inadequacies and administrative shortcomings and make suitable recommendations to the Central and State Governments.

4.75 The second workshop of the period of report was held at Pune in Maharashtra on 28 July 2003. Shri B.T. Ningalova IG (Prisons) Maharashtra and Dr. V.S. Chitnis, Member and Shri Subhash Apte, Special IGP Maharashtra State Human Rights Commission were associated with the endeavour. 39 Officers of the Prison Department of Maharashtra including 4 D.Is.G (Prisons), one Research Officer, one Law Officer, two Psychiatrists, Principal Jail Officers Training Centre, 20 Supdt. (Prisons), 1 Deputy Supdt. (Prison) and 9 Jailers attended the workshop. The workshop was inaugurated by Justice Smt. Sujata V. Manohar, Member, NHRC while Shri S.T. Gokhale, Chairman, Community Aid and Sponsorship Programme (CASP), Pune presided over the inaugural function. Prof. Smt. Tara Bhadbhade, NHRC nominee for Central Jail Pune, Smt. Kamini Kapadia, Regional Manager, Action Aid, Mumbai and Prof. Meenakshi Apte, Director SAATHI made valuable contribution to the deliberations. In her inaugural address, Justice Smt. Sujata V. Manohar stressed vulnerability of prisoners to violation of their human rights and explained the provisions of the international covenants and the Constitution of India requiring humane treatment of persons in detention. Shri S.T. Gokhale, Chairman, CASP highlighted the problems of women prisoners and children staying with them and emphasized the need for systemic reforms in jail administration. He appealed to the media to work for bringing about the

much needed change in the attitude of the society towards prisoners by a sensitive and responsible reporting of stories of human suffering and human warmth relating to the lives of prisoners. Dr. V.S. Chitnis, Member SHRC gave a comprehensive talk on various judgments of the Supreme Court relating to prisoners' rights and jail conditions. Interaction with the participants, which formed an integral part of the workshop, helped in understanding the working and living conditions of the Jail officials whose job is becoming increasingly hazardous and stressful.

4.76 The workshop for the jail officials of Andhra Pradesh was conducted at Vishakapatnam on 13 September 2003 with the active cooperation and participation of Shri M.A. Basith, D.G. (Prisons) and Correctional Services, Andhra Pradesh. Earlier, one such workshop was held at Hyderabad on 27 November 2002. 45 Prison Officers holding the rank from Deputy Jailer to DIG participated in the workshop. In his inaugural address, Shri Virendra Dayal, Member, NHRC highlighted the importance of human rights in administration with particular reference to Police and Jail Departments. Explaining the significance of people's fundamental right to life with dignity, he emphasized the duty of the establishment, political as well as executive to respect the mandate of the Constitution of India and our international treaty obligations. He expressed his anguish over reports about pathetic living conditions and complaints of ill treatment, harassment and corruption in jails in most parts of India received by the Commission. He reminded the jail officials about their duty to respect the human rights of prisoners who have been deprived of their liberty and are totally dependent on their keepers in the matter of enjoyment of their minimum basic needs and other rights which are not affected by incarceration. Shri S. Govindarajulu, Chief Legal Adviser, CBCID, Hyderabad addressed the participants on important judgements of the Supreme Court related to the rights of prisoners and prison conditions. Shri Vidya Prasad, District and Sessions Judge, Visakhapatnam spoke about the plight of the tribals living in scheduled areas who remain deprived of the benefits of new Criminal Procedure Code. The interaction with the participants provided a useful insight into the major problems faced by the Prison staff.

4.77 The workshop for the Jail Supdts. of Bihar was held at Patna on 10th January 2004 in collaboration with the prison Department headed by Shri Ravi Kant, Additional Home Commissioner-cum-IG (Prisons) Bihar. 45 Jail Supdts., one Assistant Jailer and 4 Sub Divisional Magistrates, Incharge of the Sub Jails participated in the workshop. The workshop was inaugurated by Justice A.S. Anand, Chairperson, NHRC. Shri Baswan Prasad Bhagat, Minister for Prisons and Shri Ashok Kumar Chaudhri, Minister of State for Prisons, Bihar and Shri B.K. Halder, Home Secretary, Bihar were present at the inaugural function. Shri Ashok Kumar Chaudhri, Minister of State welcomed the Commission's initiative and described the measures being taken by the State Government to improve the conditions in the Prisons. He expressed the view that the problems of prisoners can be sorted out only if the inflow and outflow of prisoners is controlled by expediting the judicial process. Shri Baswan

Prasad Bhagat, Minister for Prisons drew the Commission's attention to the difficult and hazardous nature of the duties the Jail Spudts. are performing at a great risk to their personal security. Commenting on the slowness of the judicial process, he mentioned that the bail-laws in our country are working to the disadvantage of the poor prisoners.

4.78 In his inaugural address the Chairperson, NHRC explained the purpose of the sensitization workshops and the role of the Commission as a facilitator in promoting good governance. He expressed concern over reported increase in the number of custodial deaths in prisons in Bihar by quoting figures for the previous three years and stressed the need for better health care in jails. He also requested the State Government to take steps for activating the institution of Board of Visitors, which has gone defunct and explained its significance in involving the civil society in the better running of Jails and improve medical facilities.

4.79 Advocates Mrs. Anjana Prakash and Shri Ahsan Ammanulla shared with the participants their observations of jail visits in Bihar and explained the landmark judgements of the Supreme Court relating to prisoners' rights and jail conditions. The interactive session designed in the form of a panel discussion proved very useful in identifying the organisational, administrative and personnel problems of the Jail Department.

4.80 The workshop for the Jail Supdts. of Punjab was held at Chandigarh on 19 March 2004 in collaboration with the Prison Department of Punjab and the Regional Institute of Correctional Administration (RICA), Chandigarh. 13 Jail Supdts. and 5 Distt. Probation Officers attended the workshop. Shri R. S. Kalha, Member, NHRC in his inaugural address expressed the concern of the NHRC over reports of dismal living conditions in jails in various States and mentioned some of the measures taken by the Commission to improve the situation.

4.81 Shri N.K. Arora, Member, Punjab State Human Rights Commission addressed the participants as a special invitee. Dr. Upneet Kaur Lalli, Deputy Director, RICA engaged the participants in a discussion on prison conditions bringing out the problems of prisoners as well as the staff. Dr. P.S. Jaswal of the Law Department, Punjab University, Chandigarh delivered an illuminating lecture on the landmark judgements of the Supreme Court on jail conditions and prisoners' rights.

4.82 Shri A.P. Bhatnagar, DG (Prisons) Punjab made a presentation on jail infrastructure and prison conditions in Punjab. The interaction with the Jail Supdts. proved very useful in identifying infrastructural adequacies in the jail set-up of Punjab and the peculiar difficulties arising from the complex crime situation aggravated by the nexus between politics and crime. Besides feeling demoralized over lack of career prospects and a steadily falling status in comparison with other services specially police, the Jail Supdts. are found to be suffering from a feeling of physical insecurity in the performance of their duties.

6) Action taken Reports Received from States

4.83 In the annual report for the year 2002-03, the visits of the Chief Coordinator, Custodial Justice Cell to Central Jail, Patiala, Punjab (16 and 18 July 2002), Central Jail, Bhatinda, Punjab (17-18 July 2002), Central Jail, Gwalior, MP (13 Aug. 2002), and Central Jail, Coimbatore. Open Air Jail, Singanallur and Special Jail, Coonoor, Tamil Nadu (8-10 February 2003) were mentioned.

4.84 The ATRs dated 11.12.02 and 5.3.04 received from the Government of Punjab in respect of the report on the Central Jail, Patiala show that action has been initiated on the Commission's recommendations on issues like supply of drinking water, recreational facilities for prisoners, payment of wages to prisoners working in kitchen, treatment of TB cases, appointment of Board of Visitors, holding of Jail Adalats, streamlining of the functioning of jail factory and improving the facilities for prisoners' interviews. However, the observation regarding the classification of prisoners on the basis of socio-economic status and addition to superior mode of living has remained unattended since the matter is pending before the Supreme Court as a result of a SLP filed by the State Government against the order of Punjab High Court dated 9.5.2000 which had set aside the above mode of classification provided in the Jail Manual.

4.85 The ATRs dated 29 January 2003 and 10 July 2003 in respect of Central Jail, Bhatinda give a satisfactory account of action initiated on the recommendations relating to the state of sanitation, kitchen, long-stay under-trial prisoners, holding of Jail Adalats, improvement of interview facilities and the functioning of Jail factories.

4.86 The ATRs dated 21.2.03 and 3.6.03 in respect of the Central Jail, Gwalior indicate satisfactory compliance on the recommendations relating to sanitation and hygiene, kitchen management, diet to children, prisoners requiring cataract surgery, holding of Jail Adalats and specific problems of convicts and under-trials. However, nothing substantial has been done to improve the availability of police escort staff for taking prisoners to outside hospitals.

4.87 The ATRs dated 10.7.03 and 5.2.04 in respect of the Central Jail, Coimbatore, Open Air Jail Singanallur and Sub Jail, Coonoor give a very satisfactory account of action taken on recommendations made by the Commission. Necessary amendment in the Prison Manual has been initiated to implement the suggestions for streamlining the payment of wages to prisoners at the time of release. Action has been taken to constitute District Level Committees to recommend compensation to victims' families from the deductions made out of prisoners' wages. In order to expedite the constitution of Board of Visitors, powers have been delegated to the ADG (Prisons) for appointment of non-official Visitors. The eligibility rules for admission to open jail have been modified in accordance with the Commission's recommendations for ensuring optimum utilization of the capacity of open air prisoners.

7) Review of Jail Infrastructure and Connected Facilities

Orissa

4.88 In the annual report 2002-03, a mention was made of a review of jail infrastructure and connected facilities in Orissa undertaken by the Chief Coordinator, Custodial Justice Cell and the Special Representative (now Rapporteur) Orissa. Their report giving a number of specific recommendations designed to improve the organization and management of jails and living conditions of prisoners was accepted by the Commission and forwarded to the State Government on 10 July 2003. The Action Taken Report dated 14.10.2003 was considered by the Commission on 19.2.2004. The Commission is pleased to note that the following major recommendations have been accepted by the State Government and follow-up action has been initiated:

1. Upgradation of 17 Sub Jails to District Jails: This has been included in the perspective five year action plan for the modernization of prisons in Orissa during 2002-07.
2. Establishing an open Air Jail: An open Air jail has come up at Jamujhari in Distt. Khurda on 16.5.03.
3. Opening of 21 new Sub Jails in the State: This has been included in the perspective five year action plan for the modernization of prisons in Orissa during 2002-07.
4. Sanitation and Water Supply : A sum of Rs. 49 lakh has been earmarked in the perspective five year action plan for modernization of prisons in Orissa during 2002-07.

Jharkhand

4.89 Following the decision taken in the sensitization workshop held at Ranchi on 5 July, 2003, the Chief Coordinator, Custodial Justice Cell and the Special Rapporteur Orissa and Jharkhand undertook a review of the jail infrastructure and connected facilities in Jharkhand. Their report was accepted by the Commission and sent to the State Government on 2.4.2004. It makes a number of specific recommendations for removing organizational inadequacies, improving living conditions and promoting welfare of prisoners and prison staff. The major recommendations are:

- Upgradation of 14 Sub Jails to District Jails.
- Setting up of an open Air Jail in Jharkhand.
- Opening of an exclusive Women Jail in Jharkhand.
- Construction of 7 Sub Jails at specified places.
- Construction of 4 additional wards of 100 capacity each at Dhanbad and Gumla. 3

additional wards of 100 capacity each at Khunti, 2 additional wards of 200 capacity at 5 and one additional ward of 100 capacity at 10 specified jails.

- Shifting of Birsa Munda Central Jail to the new building at Hotwar.
- Improvement of sanitation and water supply. Additional toilets are required to be constructed to bring the toilet prison ration at least to 1:10.
- Augmentation of existing water supply and preparation of new water supply projects.
- Filling up of the following key posts at supervisory and functional level:

Supdt.	-	9
Jailer	-	3
Asstt. Jailer	-	12
Doctor	-	14
Compounder	-	7
Warder	-	251

- Improvement of medical facilities.
- Prescribing a special diet for children allowed to be kept in jail in consultation with the nutrition expert.
- Setting up of Creches for children in jails.
- Jail Industries : Jail industries are functioning in only two Central and five District Jails. This facility needs to be expanded to cover all the District Jails. Additional trades like making of jute-mats, blankets, oil-candles are required to be introduced
- Improving the housing facilities for staff.

4.90 The report has been sent to the State Government on 2.4.04. ATR is awaited.

8) Mentally ill Persons Languishing in Jails

4.91 Ever since its establishment in 1993, the NHRC has been concerned about the plight of the mentally ill persons languishing in jails all over the country. These persons belong to two categories. In the first category come the mentally ill convicts or undertrial prisoners and in the second the mentally ill persons with no involvement in crime who have been detained simply for being mentally ill. The Supreme Court has, way back in 1993, held in *Sheela Barse Vs Union of India* that no person should be held in jail merely on ground of mental illness. The Commission has found that the directions of Apex Court are not being followed in many States/UTs. The Chairperson, NHRC had therefore, written to the Chief

Ministers/Administrators of all States/UTs in 1996 drawing their attention to the directions of the Supreme Court and requested them to ensure its strict enforcement.

4.92 This was followed by similar letters in Dec 1998 and Feb 2000.

4.93 The Custodial Justice Cell of the Commission has, during the period under review, obtained from all States/UTs, information on the number of mentally ill persons of the above categories held in jails. Following facts emerge from the compiled information:

- (i) The number of mentally ill prisoners of criminal category (Convicts and Undertrials) in jails in India was 1643 (1576 males and 67 females) (Information was received on different dates from different States/UTs and is therefore presents a general estimate). The available data gives a rate of 5 mentally ill prisoners per thousand of Prison population (as of 31-12-02). 18 States/UTs have reported higher incidence than this average. Manipur with 48 mentally ill prisoners per thousand of prison population is worst affected followed by Meghalaya (36), Andaman & Nicobar (31) and J&K (31).
- (ii) Non-criminal mentally ill prisoners numbering 76 (74 males and 2 females) have been reported only from West Bengal. They are under treatment in a separate Psychiatric Hospital functioning as part of the Presidency Correctional Home, Kolkata. It is worth mentioning that the number of persons of non-criminal category lodged in jails has been brought down from 212 to 76 in the State during the last two years as a result of the Commission's intervention.

9) Prison Reforms

4.94 Mention was made in the annual report 2002-03 of the preparation of a draft Model Prison Manual by a Committee headed by the DG, Bureau of Police and Research Development (BPR&D). It has been learnt that the Manual was finalized and forwarded to the Ministry of Home Affairs in November 2003. Copies of the same have been forwarded by the BPR&D to all the States/Union Territories for its adoption.

10) Visits to Other Correctional Institutions/Protection Homes

4.95 The Commission has been overseeing the functioning of the Government Protective Home (Women), Agra following a remit from Supreme Court of India. During the period under report, Hon'ble Member Justice Sujata V. Manohar along with the Special Rapporteur, Shri Chaman Lal visited the Home. A number of shortcomings were noticed during the visit. In particular, Hon'ble Member remarked that "the work of Rescue Officer and the District Probation Officer is not entirely satisfactory. The Rescue Officer should be rotated every two or three years. Very little is being done either to arrest the traffickers or to rescue

victims, or to ensure that the few rescued young women are properly released in care of suitable guardians.”

4.96 The visit report pointing out the concerns of the Commission was sent to the concerned authorities for taking necessary actions. Following the observations of the Hon’ble Member, the Rescue Officer was transferred by the State Government and an investigation against him was ordered. The Commission has also been considering the reports of monthly Inspection of the Home carried out by the District Judge, Agra, as per the directions of the Supreme Court. As per the reports of the District Judge, some of the shortcomings pointed during the visit of the Hon’ble Member were rectified. However, in view of the fact that the performance of the District Probation Officer and the Rescue Officer in organizing raids and taking action against the traffickers and keepers of brothels had been consistently poor for the past 3 years, it was felt by the Commission that the issue required to be taken up with the concerned authorities. The Commission, therefore, invited the Director (Women’s Welfare), Government of Uttar Pradesh to come to the Commission for a discussion alongwith the Superintendent of the Home and the District Probation Officer, Agra.

4.97 The Director, Women’s Welfare, Government of UP and the officials of the Home attended a meeting organized in the Commission on 20-01-2004. The following issues were discussed:-

- Under-utilization of the Home: Average occupancy of the Home has been 20 against a total strength of 75 inmates; At times this has fallen to 6 or 7 as in September, 2003.
- Performance of the Investigator and the Rescue Officer in the light of the monthly inspection reports from the District Judge, Agra;
- Nomination of Special Police Officers under the ITP Act;
- Constitution of the Board of Visitors for the Home; and
- Effective Enforcement of ITP Act.

4.98 Hon’ble Member Justice Sujata V. Manohar who chaired the meeting, said that the effective enforcement of the ITP Act has been the main concern of the Commission particularly as part of the purposeful functioning of the Home. She requested the Director (Women’s Welfare) to take pro-active steps in Agra and elsewhere in the State. The Director was requested to discuss the matter for effective co-operation between the concerned wings of the administration for effective implementation of the ITP Act, with the District Superintendent of Police and the District Magistrate and prepare an Action Plan for implementation of the Act in law and spirit. The Hon’ble Member stressed that unless stringent action is taken against traffickers and brothel keepers, the evil cannot be rooted out. The Director was asked to prepare an Action Plan within a given time frame and to send it to the Commission.

4.99 The matter has been taken up with the State Government for taking appropriate action.

H] Improvement of Forensic Science Laboratories

4.100 As indicated in the previous reports, the Commission has been urging the Ministry of Home Affairs and the State Governments to implement the recommendations of a report entitled “State of the Art Forensic Sciences: For Better Criminal Justice”, which was prepared by a Core Group of Experts constituted by the Commission.

4.101 The Commission has noted that the steps have been taken by the Ministry of Home Affairs to implement certain recommendations, which include the creation of a separate Directorate of Forensic Sciences and advice to the States to set up Forensic Science Development Boards. In the annual report of the Commission for the year 2001-2002, it was stated that reminders were issued to various State Governments urging them to implement the recommendations of the Commission and send their reports on the action taken on them.

4.102 In response to these reminders, some of the State Governments have reported that the copy of the Report, which was forwarded to the Chief Secretary vide Commission's letter dated 22-10-1999 was not received by them. Accordingly, copies of the Report have been forwarded to Kerala, Punjab, Gujarat, Madhya Pradesh and Manipur. During the year, the Ministry of Home Affairs has been requested to expedite the following:-

- (i) Action taken on the remaining recommendations made by the Core Group;
- (ii) Implementation of the decisions taken by the Core Group; and
- (iii) Response, if any, received from the State Governments to MHA's letter dated 13-11-2001.

4.103 A reminder was again issued on 15-10-2003 and to the Ministry of Home Affairs. The response, however, was awaited. Meanwhile, reminders have been issued to Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Manipur, Meghalaya, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal.

CHAPTER 5

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

A] Prevention of Terrorism Act, 2002

5.1 The views of the Commission in regard to the Prevention of Terrorism Bill, 2000 and the Prevention of Terrorism Ordinance, 2001 have been indicated in full in the earlier annual reports of the Commission. The stand of the Commission in respect of anti-terrorism legislation was reiterated in a signed statement of 21 February 2003, the full text of which was reproduced in previous annual report. They are therefore not being repeated here. The ordinance was replaced by the Prevention of Terrorism Act, 2002 (POTA).

5.2 In its annual report for 2002-2003, the Commission noted that a wide spectrum of opinion in the country was increasingly concerned at the manner in which the POTA was being applied. This came as no surprise as the Commission had forewarned of its probable consequences. The apprehensions of the Commission in respect of the probable abuse of the provisions of the Act and the violation of human rights have, unfortunately, proven to be well-founded. Reports from a number of States, extensively carried in the media, point to the frequently arbitrary and discriminatory use of the Act and the damage done to the fundamental rights of citizens of the country, young and old alike. The Commission has been carefully monitoring the application of the Act and insisting that more safeguards were required in the Act to prevent its misuse.

5.3 The Commission has been receiving complaints of alleged misuse or abuse of provisions of the Prevention of Terrorism Act. During the year under review, the Commission received six cases, of which two were from Gujarat, three from Tamil Nadu and one from Jharkhand.

5.4 The constitutional validity of POTA was challenged in the Supreme Court of India in the People's Union for Civil Liberties & Another. Vs. Union of India (2003 (10) SCALE 967).

On 16th December 2003, the Supreme Court of India while dismissing petitions challenging constitutional validity of the Prevention of Terrorism Act, 2002, however held that mere support to banned terrorist organization is not sufficient for prosecution under POTA. Criminal intention must be proved. The Supreme Court has moderated Section 21 of POTA, which deals with offences relating to the support given to terrorist organization, which was cast in a manner that virtually invited gross abuse. Similarly, it reduced the rigour of Section 49(7) of the Act by holding that an accused under the POTA could seek bail even before the expiry of one-year period.

5.5 Section 60 of the Prevention of Terrorism Act, 2002 provides that the Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees for the purposes mentioned in the Act. The Government after taking note of the need of providing more safeguards set up a Central Review Committee under Section 60 of the Act on 4 April 2003 under the Chairmanship of a former Chief Justice of the Punjab and Haryana High Court, with the following Terms of Reference:

- (i) the Review Committee shall take a comprehensive view of the use of the said Act in various States and shall be empowered to entertain complaints or grievances with regard to enforcement of the said Act and accordingly, give its findings and suggestions for removing the shortcomings, if any, in the implementation of the said Act; and
- (ii) the Review Committee shall suggest measures to ensure that the provisions of the said Act are invoked for combating terrorism only.

5.6 Since, the recommendations or directions of the Review Committee except those explicitly provided in the said Act were not binding on the Central Government and the State Governments and were only advisory in nature under the existing provisions, the Parliament amended Section 60 of the Prevention of Terrorism Act, 2002 through the Prevention of Terrorism (Amendment) Ordinance, 2003 (Ord. 4 of 2003) which was promulgated on 27th October 2003 to remedy the lacuna. This step is in keeping with the concerns expressed by the Commission of providing more safeguards against misuse and abuse of the POTA and to protect Human Rights. Following, new provisions were inserted in Section 60 of this Act:-

“(4) Without prejudice to the other provisions of this Act, any Review Committee constituted under sub-section (1) shall, on an application by any aggrieved person, review whether there is a prima facie case for proceeding against the accused under this Act and issue directions accordingly.

(5) Any direction issued under sub-section (4), —

- (i) by the Review Committee constituted by the Central Government, shall be binding on the Central Government, the State Government and the police officer investigating the offence; and

- (ii) by the Review Committee constituted by the State Government shall be binding on the State Government and the police officer investigating the offence.

(6) Where the reviews under sub-section (4) relating to the same practice under this Act, have been made by a Review Committee constituted by the Central Government and a Review Committee constituted by the State Government, under sub-section (1), any direction issued by the Review Committee constituted by the Central Government shall prevail.

(7) Where any Review Committee constituted under sub-section (1) is of opinion that there is no prima facie case for proceeding against the accused and issue directions under sub-section (4), then, the proceedings pending against the accused shall be deemed to have been withdrawn from the date of such direction.”

5.7 The Ordinance (4 of 2003) was replaced by the Prevention of Terrorism (Amendment) Act, 2003. According to the Statement of Objects and Reasons of the Prevention of Terrorism (Amendment) Act, 2003, these amendments empower the Review Committee to review, “on an application by an aggrieved person, whether there is a prima facie case for proceedings against the accused under the Act and issue directions accordingly. The directions of the Review Committee shall be binding on the Central Government, the State Government and the police officer investigating the offence. Where the directions relating to the same offence under the said Act, have been made by a Review Committee constituted by the Central Government and the Review Committee constituted by the State Government, the directions of the Central Review Committee shall prevail over those of the State Review Committees.”

5.8 The Commission is of the firm view that a proper balance between the need and the remedy requires respect for the principles of necessity and proportionality. While it is necessary to combat terrorism, counter terrorism should not be used as an excuse to suspend all the rules of international law and domestic civil liberties. The need is to combat and triumph over terrorism in a manner which is consistent with the promotion and protection of human rights.

For its part, the Commission continues to monitor the implementation of the Prevention of Terrorism Act 2002 with great care.

B] Child Marriage Restraint Act, 1929

5.9 In its preceding annual reports, the Commission reported that the Draft Child Marriage Restraint Bill recommending substantial changes in the Child Marriage Restraint Act (CMRA), 1929, as approved by the Statutory Commission, was sent for consideration and appropriate action to all the State Governments/Union Territories as well as to the Department of Women and Child Development, Ministry of Human Resource Development, Government

of India. A copy of the Draft Bill was also forwarded for information to the Ministry of Home Affairs and the Ministry of Law and Justice, Government of India.

5.10 In this context, the State Governments of Bihar, Maharashtra and Punjab and Union Territory of Dadra & Nagar Haveli have conveyed their concurrence to the Bill proposed by the Commission. The States of Andhra Pradesh, Chhattisgarh, Haryana, Orissa, Tripura, Uttar Pradesh, Uttaranchal and the Union Territory of Chandigarh have made certain suggestions, which the Commission is examining. The State Government of Karnataka has informed the Commission that the Child Marriage Restraint (Karnataka Amendment) Bill, 2003 has been passed by both the Legislative Houses and it was in the process of obtaining the assent of the Governor. However, the Department of Women and Child Development, Government of Rajasthan has informed the Commission that the amendments proposed by the Commission were still being examined by the Department of Home. The Government of Rajasthan, along with other States/Union Territories have been reminded once again to respond to the Commission on this subject at the earliest.

5.11 The Department of Women & Child Development (DWCD) informed that the National Commission for Women (NCW) had also suggested certain amendments to the CMRA, 1929. These amendments were discussed and finalised in a meeting of the representatives of DWCD, Ministry of Law & Justice (Legislative Department) and NCW. The Legislative Department, which is the nodal Department for the Act then forwarded the proposed amendments of the CMRA to the State Governments/UTs with a request to furnish their comments as the subject matter of the said Act came under the Concurrent List of the Seventh Schedule of the Constitution. The amendments proposed by the NHRC to the CMRA, 1929 had also been forwarded to the Legislative Department for appropriate action.

C] Protection from Domestic Violence Bill, 2002

5.12 The Commission remains deeply concerned about the issue of domestic violence against women. In its preceding annual report for the year 2002 – 03, the Commission had reported that the Protection from the Domestic Violence Bill, drafted by the Department of Women and Child Development, in consultation with the Ministry of Law, Justice and Company Affairs was introduced in the Parliament on 8 March 2002. Thereafter, the Bill was referred to the Standing Committee of the Parliament pertaining to the Ministry of Human Resource Development for further examination and for suggesting changes, if any, required in the Draft Bill. After the Standing Committee submitted its report, the Department of Women and Child Development sent a copy of the Draft Bill, along with a copy of the report of the Standing Committee to the Commission for its comments. The Commission carefully examined the provisions of the Draft Bill and the report containing the recommendations of the Standing Committee and its detailed suggestions were forwarded to the Department of Women and Child Development on 30 January 2003. The suggestions

that were forwarded by the Commission to the Department of Women and Child Development may be seen at Annexure 5 of the annual report for the year 2002-03.

5.13 The Commission is pursuing the matter on a regular basis with the Department of Women and Child Development.

D] Protection of Human Rights Act, 1993

5.14 The Commission had conveyed its recommendations for carrying out amendments to the Protection of Human Rights Act, 1993, to the Central Government in March 2000. These proposals were annexed in full to the Commission's annual reports for the years 1999-2000 as well as 2001-2002. The seriousness and importance with which the Commission views the matter can be gauged from the fact that it formed a separate chapter (Chapter-2) in its report for the year 2001-2002 titled "Experience of the Working of the Protection of Human Rights Act, 1993" where it dwelt at length on the need for early notification of these amendments.

5.15 The Government, in its Action Taken Report on the Commission's annual report for the year 2001-02 has stated that an Inter-ministerial Committee which was set up to examine the proposed amendments, of the Protection of Human Rights Act, 1993 keeping in view Objects and Reasons of the Act, the role of other Commissions and the overall context of their functioning as also the socio political and economic conditions, etc, has since completed its examination and has submitted its findings to the Government for action. The Government is likely to finalize its views in the matter soon. The Commission notes with a sense of deep regret and anguish that, till date, these amendments have not seen the light of day.

5.16 The Commission would also like to draw attention to a specific amendment proposed to Section 19 of the Act in the above proposal referred to the Government. In its Action Taken Reports on the annual reports of the Commission for the years 2000-01 and for the year 2001-02, the Government has reiterated the view that the provisions of Section 19 of the Act, as they exist, do not necessitate any change. The Commission would like to reiterate its earlier view that the present system of enquiry into allegations of human rights violations by the armed forces is not working satisfactorily. The Commission would like to once again urge the Government to review its stand in the matter.

5.17 In its report for the year 2002-2003, the Commission, in Chapter 2 titled "Ten Years of the Commission in Retrospect", had reiterated the need for the amendments proposed to the Protection of Human Rights Act, 1993, to be notified at the earliest. The Commission hopes that the Government would move expeditiously in notifying the amendments without further loss of time.

E] Implementation of Treaties and other International Instruments

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

5.18 The Commission in its earlier annual reports had recommended that the Government of India examine and become a party to Optional Protocols 1 and 2 to the Convention on the Rights of the Child, dealing with the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. During the year under review, the Department of Women and Child Development has informed the Commission that they have circulated the draft Note for the Cabinet to the concerned Ministries and Departments, including the Ministry of Home Affairs, for their comments and views. However, the Ministry is yet to convey its decision on the recommendations made to the Commission.

2) 1977 Protocols to the 1949 Geneva Conventions

5.19 The Commission had recommended to the Government of India that it should examine the 1977 Protocols to the Geneva Conventions of 1949 and to offer its comments on them. During the period under review, the Ministry of External Affairs informed the Commission that all matters relating to the International Humanitarian Law (IHL) including the Geneva Conventions, were extensively discussed during the recent Conference of the Parties to the Red Cross Movement and the Geneva Conventions in Geneva. The changing nature of armed conflict in the contemporary period (Afghanistan, Iraq, conflicts in Africa, etc.), their impact on IHL and the Geneva Conventions and the related issues were under review at the international level. In the light of these developments, the Ministry of External Affairs stated that the concerned Ministries and Agencies of the Government including Ministry of Defence, Ministry of Home Affairs, and Ministry of Law should take stock of the current realities and of our response. The response is under examination by the Commission.

3) Convention Against Torture

5.20 In the previous reports, the efforts of the Commission in favour of India signing the Convention Against Torture have been mentioned in detail. It was on the basis of the Commission's recommendation that the Government of India signed this Convention on 14 October 1997. However, it is yet to ratify it. In the past few annual reports, the Commission expressed its concern over the delay in ratification of this Convention. The Commission was informed that the matter was engaging the attention of the Ministry of Home Affairs and the Ministry of Law and Justice. As soon as they complete action with regard to the amendment of the existing legislation, it was stated that the Ministry of External Affairs would be in a position to process early ratification of the convention. During the period under review, the Commission took up this matter with the Ministry of External Affairs in August 2003 and again in October 2003. In response, the Commission has been informed that the draft Cabinet Note on ratification of the Convention Against Torture has been forwarded for examination by the Ministry of Home Affairs, who will be piloting the necessary procedures

for an eventual ratification. The Commission therefore, took up the matter with the Ministry of Home Affairs in October 2003 and again in January 2004. However, it is yet to receive a response. The Commission urges all the concerned Ministries to take expeditious action in this regard.

4) Convention and Protocol on the Status of Refugees

5.21 The Commission's views on the need for a comprehensive national legislation to deal with refugee situations facing the country have been recounted in detail in the previous reports. The Commission continued to pursue this matter during the year under review.

5.22 The Ministry of Home Affairs, Government of India sought the Commission's views and comments on the Model National Law on Refugees which was prepared by Justice Shri P.N. Bhagwati in his capacity as Chairman of the 'Eminent Persons Group' set up by the UN High Commissioner for Refugees. The Commission considered this issue in consultation with experts in the field and thereafter decided to set up an Expert Committee on Refugees with the following composition:

1. Shri Fali S.Nariman, Member of Parliament
2. Shri Arun Kumar Jain, Joint Secretary, Ministry of Home Affairs.
3. Dr. Narinder Singh, Joint Secretary, Legal and Treaties Division, Ministry of External Affairs
4. Dr. O.P. Shukla, Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law and Justice,
5. Shri Muchkund Dubey, President, Council for Social Development, New Delhi.
6. Dr. Rajeev Dhavan, Senior Advocate, Supreme Court
7. Prof. B.S. Chimni, School of International Studies, JNU
8. Prof. Mahendra Lama, School of International Studies, JNU

The Expert Committee has been requested to go through the Model National Law on Refugees clause by clause and give its comments thereon to the Commission. A meeting of the Expert Committee took place on 9 March 2004. After a detailed discussion on the humanitarian considerations, security concerns and other related aspects, the Chairperson of the Commission, Dr. Justice A.S. Anand requested the Members of the Expert Committee to give their individual comments on Model National Law on Refugees and other general aspects as well as specific issues to be addressed in this regard.

F] Review of laws relating to Persons with Disabilities

5.23 In the previous annual report, the Commission examined the functioning of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and its impact. Subsequently, a comprehensive set of recommendations was communicated to authorities in the Central and State Governments specifying their obligations under the Persons with Disabilities Act and the action they were expected to take.

5.24 During the period under review, a preliminary analysis of family laws and civil and criminal procedures have been undertaken, which indicates a certain degree of bias against persons with psychiatric and intellectual disabilities and also those suffering from epilepsy.

5.25 For instance, “The Hindu Marriage Act of 1955”, Section 5(2)(a), (b), (c), while specifying the conditions for a valid Hindu Marriage states, “(a) at the time of the marriage, neither party is incapable of giving a valid consent of it in consequence of unsoundness of mind (b) though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children (c) has been subject to recurrent attacks of insanity or epilepsy”.

5.26 In Section 12(1), the Act lays down conditions of a voidable marriage, which inter alia includes conditions specified in Section 5(2)(a), (b), (c), referred in the previous para. The Commission is deeply concerned over the possible misuse of such provisions in the law depriving persons affected by temporary mental illness of their right to enter into marital relations and/or to maintenance.

5.27 Similarly, the Hindu Adoption and Maintenance Act of 1956 Section 7 and 8 prohibit a person from adopting a child unless the adopter has attained majority and is of sound mind. The provision of giving children away in adoption on grounds of unsoundness of the mind of the parent under this act needs to be carefully examined in the light of the definition of disability provided in Section 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which stipulates that, “person with disability means a person suffering from not less than forty percent of any disability as certified by a medical authority.” Here the compatibility of Hindu Adoption and Maintenance Act 1956, Section 9(4), with Section 2(t) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 needs careful examination since both the Acts have designated separate authorities to decide on the issue of unsoundness of the mind.

5.28 Likewise, the Indian Contract Act of 1872 absolved any person of unsound mind from contractual liability. Since a majority of people having mild to moderate degree of psychiatric and intellectual disability can manage the responsibilities of day-to-day life, this provision needs to be re-examined.

5.29 The Commission plans to encourage a more systemic review of both substantive and procedural laws to suggest suitable amendments in the light of the advances made in the fields of medicine, technology and rehabilitation, and above all to ensure equal protection and recognition of the rights of persons with disabilities.

G] Towards a New International Convention

5.30 National human rights institutions play a crucial role in translating international human rights norms and standards into practical action. However, their active participation in the elaboration of an International treaty is a new development. Emphasizing the involvement of National Institutions, the United Nations High Commissioner for Human Rights in April 2002 stated that, “it will be of utmost importance that not only States but also National Human Rights Institutions are able to contribute their experience to the elaboration of the new Convention on the rights of persons with disabilities”.

5.31 In response to the invitation by the General Assembly Resolution 57/229 to make available to the Ad Hoc Committee suggestions and possible elements to be considered for a treaty on the theme of disability, and, in particular the invitation of the UN Ad-Hoc Committee to National Human Rights Institutions for their participation in its future sessions, the Commission took a number of steps.

5.32 Since treaty elaboration provides a unique opportunity to raise the standards of social justice, well being and citizenship, the Commission encouraged the active participation of Government of India in the treaty elaboration process. The Commission held a series of meetings with senior officers of the Ministries of External Affairs and Social Justice and Empowerment. They were also invited to participate in the international meeting of National Human Rights Institutions at New Delhi in May 2003. The Commission notes with satisfaction that the Government of India deputed a delegation to the second meeting of the UN Ad Hoc Committee and also contributed actively to the Working Group.

5.33 The NHRC jointly hosted an International Workshop of National Institutions from the Asia Pacific Region and Commonwealth Countries at New Delhi between 26th –29th May 2003 in collaboration with the Asia Pacific Forum of National Human Rights Institutions, the United Nations Office of the High Commissioner for Human Rights and the British Council.

The participants of this workshop:

- Strongly affirmed the need for the development of a comprehensive and integral Convention.
- Stressed that the Convention should be a ‘rights based’ instrument built on international human rights norms and standards and social justice. It should be

informed by the overarching principle that all persons with disabilities, without exception, are entitled to the full benefit and enjoyment of all fundamental human rights and freedoms on the basis of equality, dignity and without discrimination.

- Further stressed that the situation of all disability groups and the diverse conditions related to gender, race, colour, age, ethnicity and other considerations must be taken into account when elaborating the Convention.

5.34 Based on the common understanding of the National Human Rights Institutions regarding the nature, type, scope, purpose and key elements of a disability convention, the Commission submitted a proposal to the UN Ad Hoc Committee in its second session at New York in June 2003.

5.35 Subsequent to the international meeting of NHRIs at New Delhi, the Commission provided inputs to a series of regional meetings and seminars convened by United Nations Economic and Social Commission for Asia and Pacific. The expert group meeting in June 2003 at Bangkok harmonized a proposal, which heavily draws on the report of international meeting at New Delhi.

5.36 Similarly, the Special Rapporteur of the Commission on Disability serviced the Women's Workshop of ESCAP (18th – 22nd August 2003), which outlined a set of recommendations for strengthening the gender dimension in the proposed disability Convention. She also contributed to another Expert Group Meeting under the aegis of UNESCAP on Oct. 14-17, 2003, which evolved a concrete text of the Convention.

5.37 In November 2003, the Commission participated in the inter-governmental seminar jointly hosted by Government of China and ESCAP. In this seminar certain contentious issues pending from the earlier meetings could be resolved, which included the issue of right to development vis-à-vis, rights based development. The provision of international cooperation and monitoring mechanisms, both international and national, were also thrashed out and the text could be fine-tuned.

Working Group

5.38 The Commission not only shared its expertise with the Asia Pacific Disability Forum but also mobilized support to facilitate the participation of the nominee of APDF in the Working Group, which met between January 5th -16th 2004 at the UN Headquarters in New York. The Asia Pacific Disability Forum approached the Commission for assistance of our Special Rapporteur on Disability in the UN Working Group for harmonizing the draft text based on proposals received by the UN Ad Hoc Committee. The Commission was pleased to make available the services of its Special Rapporteur on Disability.

5.39 The Working Group's mandate was to compile a draft text, which would be the basis for negotiations at the Ad Hoc Committee. Many members of the Working Group acknowledged the contributions of human rights experts in the process of compiling the draft text. Their ready knowledge of the human rights law was found useful in fine-tuning the text. However, the Working Group could not reach any consensus on a number of issues relating to the monitoring and implementation of the treaty, though, in their view, the National Institutions:

- Can promote awareness of the provisions of the Convention to persons with disabilities and to the general population
- Can monitor national legislation, policies and programmes to ensure consistency with the Convention
- Can undertake or facilitate research on the impact of the Convention and of national legislation
- Can develop a system for assessing the impact on persons with disabilities and can receive complaints about failure to observe the Convention.

5.40 Keeping in view the rapid pace of treaty elaboration and the effort of UN to invite views on the draft text compiled by the working group, the Commission decided to support the process by convening consultative workshops involving disability organizations, experts and representatives of Central and State Governments. These workshops were very useful in promoting awareness about the Treaty elaboration process and achievements made by the UN Ad hoc Committee and Working Group so far. On the other hand it provided opportunities for critical review of the draft convention on the theme of disability with an ultimate objective to suggest improvements taking into account the lived realities of persons with disabilities in India and the overall economic, social and cultural conditions of the country.

5.41 The Commission is of the firm view that a binding instrument on the theme of disability in international law would give "status, authority and visibility" to disability issues which cannot be achieved through the process of reform of existing international instruments and monitoring mechanisms. It also recognizes that by tailoring the existing rights to the specific circumstances of people with disabilities, the treaty would enable the State Parties to understand their obligations in clear terms and it would set clear goals for the development of disability-inclusive systems and processes.

Asian and Pacific Decade 1993-2002

5.42 The Governments of the ESCAP region proclaimed the Asian and Pacific Decade of Disabled Persons, 1993-2002, by resolution 48/3 of 23 April 1992, at Beijing. The resolution was intended to strengthen regional cooperation in resolving issues affecting the achievement

of the goals of the World Programme of Action concerning Disabled Persons, especially those concerning the full participation and equality of persons with disabilities. The Meeting held at Bangkok in June 1995 examined the progress made since the introduction of the Decade and adopted 73 targets and 78 recommendations concerning the implementation of the Agenda for Action, including the gender dimensions of implementation. Of the 12 policy areas under the Agenda for Action, ESCAP has focused its efforts on areas that were not covered by the mandates of other United Nations instruments and bodies. However, the achievements of the Asian and Pacific States in realizing the decade's targets could not ensure equality of opportunity and equal participation. Therefore, in May 2002, ESCAP adopted the resolution "Promoting an inclusive, barrier-free and rights-based society for people with disabilities in the Asian and Pacific region in the twenty-first century". The resolution also proclaimed the extension of the Asian and Pacific Decade of Disabled Persons, 1993-2002, for another decade, 2003-2012.

2003-2012 Biwako Millennium Framework

5.43 To achieve the goal, the framework identified seven priority areas for action, in each of which critical issues and targets with specific time frames and actions were listed. The seven priority areas include:

- (1) Self-help organizations of persons with disabilities
- (2) Women with disabilities
- (3) Early intervention and education
- (4) Training and employment, including self-employment
- (5) Access to built environment and public transport
- (6) Access to information and communication including ICT
- (7) Poverty alleviation through capacity building, social security and sustainable livelihood programme

5.44 Since Biwako Millennium Framework seeks to promote a rights-based approach to development, the Commission encouraged the Government of India to address structural inadequacies as exclusion of people with disabilities is not so much on account of their physical or mental impairments as due to limitations of the system; to accommodate difference of ability.

5.45 In the material equality perspective, society is obliged to modify those differences that deny or impair the right of each individual to be an equal member of society. Therefore,

principles of barrier-free design, adapted curricula, targeted policy and funding commitments are some useful mechanisms to reduce inequality and to promote equal participation by persons with disabilities.

5.46 Recognizing the inherent dignity, autonomy and right to participation of persons with disabilities and the important role which all sectors of Government have in creating a disability inclusive society, the Commission advised all the Ministries and Departments in the Government of India to:

- (1) Appoint a nodal officer to coordinate disability issues in consultation with people with disabilities representing various disability organizations.
- (2) undertake a systematic review of the development programmes and schemes to incorporate a disability dimension and to remove discriminatory provisions.
- (3) introduce disability specific programmes and schemes where it is not possible to enable equal participation by persons with disabilities.

Response and follow up action from the Government is awaited.

CHAPTER 6

Right to Health

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

A] Core Advisory Group on Health

6.2 The reconstituted Core Group on Health headed by Dr. N.H.Antia continued to assist the Commission on matters pertaining to public health and human rights. During the period under review, the Commission sought and obtained the advice of the Core Group on the following matters:

- 1) Children affected by leprosy or living in endemic environment
- 2) The problem of snake-bites in rural areas in Andhra Pradesh
- 3) "Tribals live near uranium in Jadugoda, Jharkhand" – Newspaper report in the "Times of India"
- 4) Issues relating to prevention of burn injuries
- 5) Issues relating to prevention and control of fluorosis
- 6) Illegal trade in human organs
- 7) Issues relating to 'AIDS in Andhra Pradesh'
- 8) A report entitled 'Asbestos, Health and Environment an in-depth study' submitted by the Institute of Public Health Engineers, India.
- 9) A report on an orientation workshop with NGOs and a report on an orientation meeting with the Media on 'Building consensus on AIDS Vaccine Development, Trials, Access and Development'

- 10) NHRC led Public Hearings on 'Access to Health Care' and other issues related to Public Health
- 11) Supreme Court's reference on the 'ban on sale of non-iodized salt' dated 4th October 2002 in the case of Common Cause Vs. Union of India (W.P. 525/2000).
- 12) Issues relating to 'Female Foeticide: Legislation, Ethics and Empowerment'

6.3 On the issue of ban on sale of non-iodized salt, the Core Group recommended that "universal iodization of salt is a public health need, which should be met without any relaxation in the ban on sale of non-iodized salt." Upon careful consideration of the comments of the Core Group on each of the above issues, the Commission took up these issues with the concerned authorities. Some of the other issues mentioned in the above list have been dealt with in other sections in this chapter and in other chapters of the annual report.

B] Public Health and Human Rights

National Consultation on Strengthening Primary Health Care

6.4 In the annual report for the year 2002-2003 it was reported that the Commission continued to monitor the progress of implementation of the recommendations of the Regional Consultation on Public Health which it had organised in the year 2001 in collaboration with the Ministry of Health and Family Welfare and the WHO. On the suggestions that emerged after discussions with the concerned Ministries of Government of India and others concerned on strengthening the Primary Health Care in the country, the Commission held further consultations with the Secretaries of the Department of Family Welfare, Health, Women and Child Development and others on the issue in August 2003 and in October 2003. Pursuant to these discussions, the National Institute of Health & Family Welfare has offered to host the three-day National Consultation on Primary Health Care and Human Rights in India. A small Sub-Group has worked out the themes, sub-themes and list of experts who could be invited to this Consultation. It is proposed to organize this event in 2005 and also integrate it with Regional/National Public Hearings on access to health care planned by the Commission during the year 2004-2005.

C] Public Hearings on Access to Health Care

6.5 In November 2003, the Commission approved a proposal received from Jan Swasthya Abhiyan, an NGO working on public health issues, to hold public hearings on Right to Health and Human Rights in five regions of the country (North, South, East, West and North East) followed by one at the national level at New Delhi. The Commission also decided to extend financial assistance to the NGO for organizing these public hearings. The objectives of the Hearings are as follows:

- To enable presentation of cases of denial of health care, and structural deficiencies in particular health facilities underlying such denial, to Public health officials and representatives of NHRC
- To enable civil society organisations to present key systemic and state level policy issues responsible for denial of health care, to Public health officials and representatives of NHRC
- To enable presentation of key issues related to violation of health rights by Private medical establishments, to further the process of establishing basic standards and regulation of this sector.
- To facilitate a process to define basic health care rights, including the rights of various vulnerable groups, and to lay the basis for civil society – public health system dialogue to ensure progressive realisation of these rights
- To enable NHRC to analyse and define the Right to Health Care in the context of the public health system at state and national levels, leading to a series of NHRC directives / recommendations towards recognition, delineation of content, and operationalisation of the Right to Health Care

6.6 The Commission proposes to hold these hearings in the course of next financial year and also involve the State Governments in this regard. Amounts of Rs. 8,34,000/- lakh have been sanctioned by the Commission for this purpose.

D] Emergency Medical Care:

6.7 Concerned by the prevailing unsatisfactory system of Emergency Medical Care, which resulted in the loss of many lives in the country, the Commission in April 2003 constituted an Expert Group headed by Dr. P.K. Dave with the following Terms of Reference:

1. To study the existing system for emergency medical care in India.
2. To study the existing system for emergency medical care (Central Accident & Trauma Services) set up by the Ministry of Health & Family Welfare in the National Capital of Delhi.
3. To suggest appropriate models of emergency medical care which should be developed by different States/Union Territories and their essential components.

6.8 The first meeting of the NHRC's Expert Group on Emergency Medical Care, was held in the office of the Commission on 4 September 2003 under the Chairmanship of

Dr. Justice A.S.Anand, Chairperson of the Commission. In his opening remarks, the Chairperson stated that the main purpose behind the setting up of the Expert Group by the Commission was to study the existing system of emergency medical care and to suggest improvements. He said that in light of the Upahar Cinema tragedy, the Commission took up this matter. He expressed concern over the present state of the hospitals, lack of transportation to rush victims to hospitals, inept handling of victims while transporting them and inadequate arrangements for dealing with road and rail accidents and burn injuries. The Chairperson said that the objective of the present exercise was to evolve some practical recommendations for improvements wherever necessary in the existing system for emergency medical care, which could then be sent to the policy framers in the Government.

6.9 The Group of Experts deliberated on various aspects of emergency medical care and submitted a report on 7 April 2004 (Annexure 7). The group of experts reviewed the existing scenario, including the centralized Accident and Trauma Services (CATS). In their report, the Group stated that nearly 4,00,000 persons lose their lives due to injuries, nearly 75,00,000 persons are hospitalized and 35,000,000 persons have minor injuries and are receiving emergency care at various places in India. The present system of Emergency Medical Service (EMS) in the country is functioning sub-optimally and requires up-gradation. The report of the Group of Experts set up by the Commission on EMS revealed the lacunae which exist in the present EMS and made a number of recommendations for implementation in the short-term and in the long term, including enunciation of a national accident policy and establishment of a central coordinating, facilitating, monitoring and controlling committee for Emergency Medical Services (EMS) under the aegis of Ministry of Health and Family Welfare. On 11 May 2004, the Commission asked the Union Health Secretary, Director General of Health Services, Government of India and the Chief Secretaries of all States and Administrators of Union Territories to have appropriate follow-up action initiated on these recommendations and also intimate the action taken to the Commission. In the following years, the Commission proposes to closely monitor the implementation of these recommendations. The Commission also proposes to further look into the infrastructure facilities, equipment, staffing and training at various levels of health care delivery viz. primary health centers, sub district/ taluka hospitals, district hospitals, medical colleges and teaching institutions.

E] Sub-standard Drugs and Medical Devices

6.10 The Commission has been deeply concerned about the issue of unsafe drugs and medical devices. Over the past few years, the Commission took up a number of specific aspects like contamination of intravenous fluids etc. and made recommendations to the concerned authorities. The Commission held a meeting with senior representatives of the Central Government, a number of State Governments and voluntary organizations working in the field in November 2003 followed by another consultation in March 2004.

6.11 The Chairperson, NHRC, Dr. Justice A.S. Anand in his remarks stated that right to health is one of the areas of major concern for the Commission which also includes in its ambit, the issue of unsafe drugs. He observed that the right to life is one of the most cherished rights and the Supreme Court interpreted it to mean not mere existence but right to healthy life with dignity. He expressed serious concern over the fact that unsafe drugs, devices and spurious drugs have reached alarming proportions. He highlighted their impact on people who become hapless consumers. Referring to the long chain of manufacturer-middlemen-retailer-consumer, he wanted to know what control was being exercised at the stage of manufacture and at other stages. He added that unsafe and spurious drugs exacerbate malnutrition, lack of primary health care infrastructure and anaemia. He asked the participants to indicate how many licences of retailers were cancelled, how many prosecutions launched, how many manufacturers booked and how many such units were closed during last one year. He emphasized the need for appropriate quality control, well-placed safety monitoring practices and creating public awareness. Based on these discussions, an Expert Group was set up by the Commission with the following composition:

1. Prof. S.D. Seth,
Chair in Clinical Pharmacology,
Indian Council of Medical Research
2. Dr. Prema Ramachandran
Director, Nutrition Foundation of India
3. Dr. Mira Shiva,
Director,
Women Health & Development,
Voluntary Health Association of India
4. Shri Raj Kumar,
Secretary,
Deptt. of Health
Govt. of Haryana
5. Shri R.D. Garg
Deputy Drug Controller
Govt. of NCT of Delhi

6.12 The Terms of the Reference of the Expert Group are as follows:

- i) To examine the issue of unsafe drugs and medical devices from the perspective of human rights and to evolve appropriate recommendations to various authorities, both in the Centre and in the States.

- ii) To examine areas relating to unsafe drugs and medical devices from the perspective of the Tenth Plan schemes for drug safety [Centre and State's] and recommendations of Mashelkar Committee.
- iii) Stock taking of reported health problems [from Consumer Courts, Civil Courts and State Health Departments] due to sub-standard and spurious and hazardous drugs and devices and suggest remedial measures.

At the time of writing of this report, the Expert Group has just commenced its work.

F] Illegal Trade in Human Organs

6.13 The Commission took up the issue of illegal trade in human organs and referred it to its Core Group on Health. The Core Group of experts on Health deliberated on the issue and have collectively expressed the view that the clause relating to 'compassionate donation' in the Organ Transplantation Act has been frequently exploited in an unethical manner, which is violative of human rights. The core group has suggested the following remedial measures:

- a) State Medical Councils should screen the records of hospitals performing organ transplants (especially kidney transplants) and estimate the proportion of transplants which have been made through a 'compassionate donor' mechanism. In case of kidney transplants, wherever the proportion has exceeded 5% of the cases performed in any of the past 5 years, the State Medical Council should initiate a full fledged enquiry into the background of the donors and the recipients, as well as a careful documentation of the follow-up health status of the donor and the nature of after care provided by the concerned hospital. Wherever police enquiries are needed for such background checks, the help of the State Human Rights Commission may be sought for providing appropriate directions to the State agencies.
- b) Cadaver Transplant programmes should be promoted to reduce the demand for 'live donors'.
- c) Facilities for chronic renal dialysis should be increased and improved in hospitals, to provide alternatives to kidney transplantation.
- d) Better facilities should be provided for transparent and effective counseling of prospective donors. Wherever possible, a mechanism should be established for independent verification of the veracity of 'compassionate donation' by a group of experts which is external to the hospital wherein the transplant procedure is proposed to be performed.

6.14 Based on the recommendations of the NHRC's Core Group, the Chairperson of the Commission on 29 January 2004 addressed letters to the Prime Minister of India as well as to the Chief Ministers of States/Union Territories urging them to initiate action on the above recommendations [Annexure 8].

G] HIV/AIDS and Human Rights

6.15 In the annual report for 2001-2002, the Commission referred to 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 detailed recommendations are available on the Commission's web site www.nhrc.nic.in. During the period under review, the recommendations of the Commission were again sent to the concerned Governmental agencies for the initiation of appropriate action. The implementation of these recommendations was also reviewed by the Chairperson/Members of the Commission during their visits to a number of States during the year under review.

6.16 The Commission took cognizance of a media report, which was carried by NDTV, on the grave threat posed by AIDS in Andhra Pradesh. The Report, quoting official statistics at the Government Hospitals for July–August 2002, stated that in Vijayawada, almost one in every ten pregnant women and in Guntur, one in every twenty pregnant women coming to Government Hospitals, was testing HIV+ve. The Commission referred this news report to the Core Group on Health for its advice. The Core Group took note of the press report related to the high prevalence of HIV positivity among pregnant women attending antenatal clinics in Andhra Pradesh. While recognizing the grave threat posed by the expanding epidemic of HIV-AIDS in India, the Core Group noted that estimates derived from antenatal screening lack a population denominator and hence cannot provide a true population estimate.

6.17 Based on the Core Group's advice in this regard, the Commission recommended that (a) public health action should focus on preventing mother to child transmission of the virus and measures to achieve this objective should receive prioritized attention from health policy makers at both central and state level and (b) a wider programme for the prevention of HIV/AIDS should conform to the recommendations made by NHRC as a follow-up of the national consultation jointly organized by the NHRC and UNAIDS in November 2000.

6.18 The Commission desired that these recommendations be referred to State Governments asking them to report on what action they have taken so far on the recommendations and, if no action has been taken then, by what time they would be implementing the recommendations. The Commission is pursuing this matter further.

6.19 The Commission has been taking cognizance of individual instances of discrimination faced by persons affected/infected by HIV/AIDS in the matter of access to education, health care and other facilities. Thus, for instance, the Commission took suo motu cognizance of a news report which appeared in the Hindustan Times on 5 March 2003. According to it, HIV+ve Bensy (aged 7 years) and her brother Benson (aged 5 years) were disowned by their fourth school, the Kaithakuzhi Government Lower Primary School. It was reported that the Government of Kerala decided to start a special school for these children at their home following stiff resistance from the parents and teachers. Upon consideration of the media report, the Commission decided to seek a status report in this matter from the concerned State Government and the Central authorities. Subsequently, the Commission received a report from the Government of Kerala stating that these children were now back in their old school. The Commission also sought and obtained a report from the Government of Kerala on the measures adopted by the State Government to increase awareness about HIV/AIDS in the schools/colleges and amongst the general public. The Government of Kerala informed the Commission that the State Government had formulated a HIV Policy so as to solve the problems faced by HIV affected persons especially children in the society and also to create awareness among the public and that immediate action was being taken to implement the policy. Regarding social integration of persons affected/infected by HIV/AIDS, Ministry of Health and Family Welfare, Government of India informed the Commission that the National Aids Prevention and Control Policy 2002 clearly states that, "the HIV+ve persons should be guaranteed equal rights to education and employment as other members of society. HIV status of a person should be kept confidential and should not in any way affect the rights of the person in employment his/her position at workplace, his/her marital position and other fundamental rights." The Commission is of the view that there should be a renewed effort by various authorities to increase awareness about HIV/AIDS in the schools/colleges and amongst the general public.

6.20 The Commission received a number of complaints from certain individuals from USA and France regarding alleged harassment faced by HIV/AIDS outreach workers in India. The Commission referred the points raised in these letters to the National Aids Control Organization with a request to examine and take necessary action in the light of recommendations adopted in the National Conference on HIV/AIDS organized by the Commission jointly with NACO.

6.21 The Commission also considered the reports on the orientation workshops conducted for the media and NGOs on AIDS vaccine development trials, access and deployment by

the Indian Council of Medical Research (ICMR), National AIDS Control Organization (NACO) and International AIDS Vaccine Initiative (IAVI). They were considered by the Commission in consultation with the experts on the NHRC's Core Group on Health. Thereupon, the Commission decided to seek full details of methodology and operational plan of the proposed HIV Vaccine Trial. The Commission proposes to pursue the matter further.

6.22 Towards the end of the reporting period under review, the Commission designated Justice Smt Sujata V. Manohar, Member of the Commission as the Focal Point on HIV/AIDS related matters in the Commission.

6.23 With a view to spreading awareness about Human Rights and HIV/AIDS, the Commission proposes to bring out a brochure/booklet on the subject. The Commission is also considering a proposal to produce a short duration film entitled, "HIV/AIDS – myth and reality" from a Human Rights perspective. Efforts are underway to produce this film jointly with the Doordarshan with a view to create public awareness on the issue.

H] Maternal Anaemia and Human Rights

6.24 It had been mentioned in the annual report for the year 2002 – 2003 that the Commission had organised a two-day Workshop on Health and Human Rights, with special reference to maternal anaemia in the year 2000, in partnership with the Department of Women and Child Development and UNICEF. The recommendations of this Workshop were subsequently also conveyed to the concerned Ministries of the Central Government for appropriate action. It was also reported that the Commission received replies from various Departments, except from the Department of Elementary Education and Literacy, Ministry of Human Resource Development, Government of India. The details of these responses were also reported in the annual report for the year 2002-2003.

6.25 The Commission took up the matter with the concerned Department of the Ministry of Human Resource Development, Government of India, inter-alia, to find out the follow-up action taken by them on the recommendations that emanated from the workshop organised by it. The Commission held a meeting with the Secretaries of the Department of Family Welfare, Health, Women and Child Development and others, on the issue of Primary Health Care in August and in October, 2003. It was decided that a Regional Consultation on Primary Health Care in India would be organised in collaboration with these Ministries. Further the Commission has decided to organise a series of Public Hearings on Primary Health. The Commission intends to pursue this important issue in the proposed Public Hearings as well as in the Regional Consultation to be held on Primary Health Care.

CHAPTER 7

Rights of Women and Children

7.1 Justice (Smt.) Sujata V. Manohar, Member of the Commission continued to serve as the Focal Point on matters relating to the Human Rights of Women, including Trafficking. During the course of the year under review, the Focal Point dealt with a number of issues pertaining to rights of women and children including prevention and combating of trafficking in women and children.

A] Trafficking in Women and Children

1) Action Research on Trafficking in Women and Children

7.2 In the year 2002-2003, it was reported that the Commission and the UNIFEM had jointly begun an Action Research Programme on Trafficking in Women and Children in India. Work continued on the project during the year 2003-04 also. Keeping in view the objectives of the research, data was collected from eight different categories of respondents by the Institute of Social Sciences, New Delhi, the nodal NGO coordinating the research programme. This data was collected from the districts of Andhra Pradesh, Assam, Bihar, Goa, Karnataka, Maharashtra, Meghalaya, Rajasthan, Tamil Nadu, Pondicherry, Uttar Pradesh, West Bengal and the NCT of Delhi where the incidence of trafficking was reported to be high. Data was also collected from the metropolitan cities of Mumbai, Chennai, Kolkata, Bangalore and Hyderabad, which are stated to be the demand areas. In all, data was collected from 4006 respondents, 561 rescued trafficked victims, 929 non-rescued trafficked victims, 510 rescued trafficked child labourers, 852 police officials, 582 clients, 160 traffickers and 412 brothel owners.

7.3 In addition to this, data on missing persons from various States/UTs was collated along with crime data from various States/UTs on Immoral Traffic Prevention Act, 1956 (ITPA) and related offences. Copies of the notifications and government orders issued by the State Governments/UTs under ITPA were also collated for the Action Research. Simultaneously, action programmes were conducted along with the Action Research wherever required. Some

of the programmes conducted were – training programmes for the police officers, public prosecutors, judicial officers, non-governmental organisations and public awareness campaigns. In all more than 34 training programmes involving more than 2000 police officials, 7 training programmes for judicial officers and 41 training sessions for NGOs and civil society members were facilitated. During the course of the action research, rescue operations and rehabilitation of individual victims was also carried out.

7.4 One of the important aspects of this research has been collection of qualitative data in the form of case studies that profile the exploitation of victims, trends and dimensions of trafficking, law enforcement and preventive aspects of trafficking.

7.5 The data collection from the different respondents in the field was completed in May 2003. Thereafter, code books were developed based on the responses in the schedules. Accordingly, data in all the filled-in interview scheduled was coded. The coded data was then fed in the computer. The Statistical Package for Social Sciences (SPSS) was used to carry out the statistical analysis. Based on this, the final report of the Action Research is being prepared. The recommendations emanating from the research will be put under the following categories: cross-cutting issues, prevention of trafficking, protection of victims and survivors, prosecution of traffickers and other exploiters, changes proposed in the Immoral Traffic Prevention Act, 1956. The basic aim is to ensure that all anti-trafficking interventions/ initiatives should strictly follow the human rights paradigm, so that the rights of the trafficked persons are always protected. The final report of the Action Research is expected to be completed by May-June 2004.

2) Trafficking in Women and Children: Manual for the Judiciary for Gender Sensitisation

7.6 In the annual report of 2002-2003, it was reported that the Commission had constituted a Committee to work out the structure and details of a manual for the use of the judiciary on Trafficking in Women and Children for Commercial Sexual Exploitation, under the chairmanship of Justice (Smt.) Sujata V. Manohar, Member, NHRC and comprised representatives from the Department of Women & Child Development (DWCD), Ministry of Home Affairs, National Commission for Women, UNICEF, UNIFEM, Lawyers' Collective and the Joint Women's Programme. This Committee further recommended that the National Law School of India University (NLSIU), Bangalore be commissioned to prepare the manual.

7.7 In consonance with the objectives framed for the manual, the Committee decided that for the purpose of drafting the manual, the NLSIU should convene State level consultations with judicial officers, public prosecutors, police and NGOs as well as collect information from judicial officers through a mail-questionnaire so as to assess their understanding of issues surrounding trafficking, from the following ten States, namely, Karnataka, Madhya

Pradesh, West Bengal, Orissa, Tamil Nadu, Goa, Maharashtra, Delhi, Rajasthan and Andhra Pradesh.

7.8 In the annual report for 2002-2003, it was mentioned that the NLSIU had convened three state level consultations with the concerned NGOs, public prosecutors, police and judicial officers of Karnataka, Andhra Pradesh and Goa. During the course of the year 2003-04, state-level consultations were held in Delhi, West Bengal, Tamil Nadu, Rajasthan, Maharashtra, Madhya Pradesh and Orissa. Based on the interaction with judicial officers, public prosecutors, police officers and representatives of NGOs, as well as data collected through the mail-questionnaire from judicial officers and from the court records of Magistrates located either in the State capitals or the towns where the High Court Benches are situated, and data collected from Custodial Homes, both governmental and non – governmental, the manual for the Judicial Officers is being prepared by the NLSIU, Bangalore.

7.9 The Commission proposes that once the manual is ready, a National Consultation would be convened to pre-test the manual among the judicial officers dealing with the issue of trafficking. Work on the preparation of the draft manual is well underway.

3) Trafficking of Women and Children: Effective Rescue and Post-Rescue Strategy

7.10 The Commission, in collaboration with PRAYAS (A project of the Tata Institute of Social Sciences), Mumbai organised a two-day National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy on 27 and 28 February, 2004 in Mumbai. The main objectives of the workshop were – (i) to review the effectiveness of the provisions of the Immoral Traffic Prevention Act, 1956 (ITPA); Juvenile Justice (Care and Protection of Children) Act, 2000; Indian Penal Code, 1860 and other laws for the rescue and post-rescue work, (ii) to exchange the experiences amongst the concerned agencies with regard to rescue and post-rescue work, (iii) to suggest ways to overcome the problems faced by the various government functionaries involved in rescue and post-rescue work, (iv) to examine the involvement of NGOs, and (v) to work out a uniform policy, scheme and plan for the effective rescue and post-rescue work for the trafficked girls/women.

7.11 The participants to the workshop were Judicial Officers, Police Officers, Government Officials and representatives of important non-governmental organizations working in the field from 10 states namely, Andhra Pradesh, Bihar, Goa, Karnataka, Maharashtra, Meghalaya, Orissa, Tamil Nadu, Uttar Pradesh, West Bengal and NCT of Delhi, where the problem of trafficking is rampant. Besides, the Secretary and Joint Secretary of the Department of Women and Child Development also attended the workshop. The Workshop was inaugurated by Dr. Justice A.S. Anand, Hon'ble Chairperson, National Human Rights Commission. Hon'ble Justice (Smt.) Sujata V. Manohar, Member, NHRC was one of the

leading speakers on the occasion. Ms. Sudha Shrotriya, Director, Dr. Savita Bhakhry, Senior Research Officer and Shri P.M. Nair, NHRC's Nodal Officer for Action Research on Trafficking in Women and Children were the other participants from the NHRC, in the Workshop.

7.12 Some of the important points and suggestions that emerged from the workshop were as follows –

- There was need to have a national database (intra and inter-state) and a quick – response tracing mechanism and coordinating structure for missing children and women within the police system to prevent trafficking.
- A specialised anti-trafficking structure within the police set-up at the Central, State, district and taluka levels should be established in order to deal with the issue of trafficking (including cross-border and inter-state), rescue, recovery of personal belongings, repatriation, etc. along the lines of structures set up within the police to deal with trafficking of drugs, smuggling of antiques, wild life poaching, etc.
- There was need to look afresh into the following sections of Immoral Traffic Prevention Act – 3, 4, 6, 7, 8, 13(3)(b), 14(ii), 17(5), 18, 20, 22-A & 22-AA – as there are gaps in their implementation.
- There was need to revise/amend State rules relating to ITPA as the same have been in existence ever since the Act was first passed in 1956.
- There was need to provide sufficient number of Short Stay Homes/Protective Homes/Shelter Homes at Taluka and district levels whereby any women who is in moral danger could approach these homes for a safe and secure shelter.
- The Government should appoint trained social workers at police stations, courts and rehabilitation homes for the purpose of counselling, information and guidance and rehabilitation.
- There should be Inter-Departmental Coordination structure set up to facilitate and monitor the process of rescue and rehabilitation at the district level, and Advisory Bodies at Central and State levels to monitor trafficking, impediments in implementation of ITPA and other provisions, rescue, rehabilitation and reintegration of victims.
- Training organisations at Central and State level should focus on sensitisation, dissemination of knowledge and training of ground level staff of the police, judiciary and women and child welfare departments. The objective behind this should be to develop personnel who has full knowledge of the correct legal framework and are aware of issues related to rescue, rehabilitation and reintegration. The training institutions could take the help of field-based organisation to achieve this purpose.

- Legalisation of prostitution would be an anti-women and anti-rehabilitation measure, leading to violation of human rights of the trafficked persons.
- Trafficking prone areas and district should be identified in the States with the twin objectives of awareness generation and generation of viable economic options, extending the various Government welfare services and anti-poverty schemes to even remotest areas.
- The police should plan rescue operations in cooperation with the institutional authorities, towards a humanistic and rehabilitation-oriented approach with the rescued women and children.
- In order to be successfully reintegrated, every woman rescued from prostitution requires an alternative source of income, which again is dependent on effective skills and training. Hence, the effectiveness of traditional skills that is being taught to the women in the government institutions needs to be re-examined, keeping in mind the changing economic scenario. The government Shelter Homes should also be open to facilitate the mobility of the women and girls required in order to obtain vocational training outside.
- In order to prevent re-trafficking, there was need to establish a proper follow-up mechanism for repatriated women and children.

4) Role of National Human Rights Institutions in the Prevention of Trafficking in Women and Children

7.13 The Advisory Council of Jurists (ACJ) of the Asia-Pacific Forum of National Human Rights Institutions that met in New Delhi on the 11th and 12th of November 2002, at its Seventh Annual Meeting, deliberated on the role of National Human Rights Institutions in the Prevention of Trafficking in Women and Children, and also submitted its final report.

7.14 The final report submitted by the ACJ contains the recommendations of the Council on the issue of Trafficking (Annexure.....). Subsequently, the Commission in its meeting held on 03.9.2003 adopted the recommendations made by the Council in its report. The Commission also desired that the report be forwarded to the Department of Women and Child Development (the Nodal Ministry) and the Ministry of Home Affairs for appropriate action. Accordingly, the report has been sent to the concerned Ministries with the request that action taken on the recommendations be reported to the Commission.

5) Prevention of Sex Tourism and Trafficking

7.15 The Commission in its last annual report mentioned that it had organised a one-day Sensitisation Programme on Prevention of Sex Tourism and Trafficking on 12 January 2003

in Mumbai in collaboration with the United Nations Development Fund for Women (UNIFEM) and the Women's Institute for Social Education, an NGO based in Mumbai. It was also mentioned that the Commission had accepted the recommendations made during the sensitization programme and desired that follow-up action be taken. Accordingly, the Commission has forwarded these recommendations to the Tourism Secretaries and the Secretaries in-charge of Women Welfare of all the States/Union Territories for taking appropriate action on them and requested to send the action taken report to the Commission. The Commission is yet to receive the action taken reports from Union/State Governments.

7.16 In order to further sensitize the policy makers, judicial officers, police officials and officials of the hotel and tourism industry, the Commission proposes to convene at least two more sensitisation workshops on prevention of sex tourism, one in the eastern zone and the other in the southern zone.

B] Combating Sexual Harassment of Women at the Work Place

7.17 In its annual report for the year 2002-03, the Commission had indicated in detail the steps taken by it in combating sexual harassment. The year under review saw the continuation of the Commission's efforts to combat sexual harassment at the work place. A meeting was held under the chairmanship of Dr. Justice A.S. Anand, Hon'ble Chairperson, NHRC on 1st May, 2003 to discuss the exact role of the Complaints Committee and whether there was any bar, legal or otherwise, to the amendment of CCS (CCA) Rules, 1965 and in particular Rule 14(2) thereof in order to avoid duplication of work involved in having the complaints of sexual harassment of women at the work place examined twice – once by the Complaints Committee and again by the Disciplinary Committee. After a detailed discussion, it was agreed that:

- All inquiries relating to complaints of sexual harassment of women at work places should be based on the principle of natural justice so that fair and just inquiry is conducted against the delinquent officer.
- There was need to provide legal semblance to Office Memorandum No.11013/11/2001-Estt (A) dated 12th December, 2002 (Annexure I) issued by the Department of Personnel and Training (DOPT) on "Report of the Complaints Committee constituted for prevention of sexual harassment of women at work places – follow up action" in order to ensure that it is implemented by all Ministries/Departments of the Government of India.
- In cases where the Complaints Committee is headed by an Officer of a level below that of the Officer complained against, then in such cases a senior officer may be appointed by the Disciplinary Authority to be the Chairperson of the Committee for that particular case.

- Following from above, preliminary steps were required to be taken to make an amendment in Rule 14(2) of the CCS (CCA) Rules so as to include an explanation that in cases relating to sexual harassment the Complaints Committee shall be deemed to be the Inquiry Authority.
- Accordingly, a consequential amendment would have to be made in the definition (Interpretation) Clause as well, viz. the Complaints Committee shall be an authority within the meaning of Rule 14(2) in cases involving allegations of sexual harassment at places of work.
- The Complaints Committee should also be given more powers whereby they could take the initiative to sensitize/alter the behaviour of the perpetrator.

7.18 In pursuance of the proceedings of the meeting held on 1st May 2003, the DOPT consulted the Department of Legal Affairs on the proposal of the Commission that Rule 14(2) of the CCS (CCA) Rules, 1965 maybe amended to give a statutory backing to the findings of the Complaints Committee. Thereafter, it forwarded the opinion of the Department of Legal Affairs in the said matter.

7.19 As the view of the Department of Legal Affairs was not in consonance with the discussions held earlier, the DOPT was once again requested to look into the decisions taken in the meeting held on 01.5.2003, as well as the opinion of the Department of Legal Affairs, so as to avoid duplication of work involved in having the complaints of sexual harassment of women at the workplace examined twice – once by the Complaints Committee and again by the Inquiry Committee under the CCS (CCA) Rules.

7.20 In response to the Commission's request made to the DOPT on 01.8.2003, it has been reported by them vide their letter dated 10.2.2004 that the Department had sought the opinion of the Learned Attorney General in the matter, keeping in view that supreme Court was considering the same issue in the case of Medha Kotwal Lele and others Vs. Union of India and others [Writ Petition (Crl.) No. 173 – 177/1999]. They had received the opinion of the learned Attorney General and the same was under consideration in the Department. The Commission intends to pursue this matter further. The Supreme Court, by its order dated 26.4.2004 in Writ Petition (Crl.) No.173-177/1999 Medha Kotwal Lele Vs Union of India has now held that the Complaints Committee as envisaged in Vishaka's case will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules 1964 and its report shall be deemed to be an inquiry report under these Rules.

7.21 At the instance of the Commission, Action Aid India, a member of the Core Group on NGOs set up by the Commission, volunteered to undertake a survey on the implementation of the guidelines issued by the Supreme Court in their judgement dated 13.08.1997 in Vishaka vs. State of Rajasthan. The NGO conducted the survey in approximately 850

government offices, comprising state and district level departments, directorates and institutions in nine States viz. Andhra Pradesh, Bihar, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu, Uttar Pradesh and West Bengal.

7.22 The survey was conducted mainly to know the following:

(a) Intimation of SC Guidelines at State and District Level Departments

In the 8 States mentioned above (except Maharashtra), 848 Departments were surveyed in all. The survey shows that out of these 848 Departments, only 444 (53%) Departments have received the intimation about the SC guidelines. The rest 404 (47%) Departments have not received the intimation.

(b) Setting up of Sexual Harassment Complaints Committee in the State and District Departments

Out of the 848 Departments, only 281 (33%) Departments have set up Complaints Committee while 545 (64%) Departments have not set up the same. The remaining three per cent informed that they were in the process of setting up the Complaints Committee.

(c) Formulation of Anti-Sexual Harassment Policy

A total of 780 offices were surveyed for this purpose. Out of these, only 100 (13%) Departments have formulated a policy and 678 (87%) Departments have not found it necessary to formulate any policy. The remaining two departments are in the process of formulation of such a policy.

(d) Change in Rules and Regulations

According to the guidelines, the rules/regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

Out of the 541 Departments surveyed for this purpose, only 28 (5%) have made some changes in the rules and regulations, while 505 (93%) Departments follow old service rules. The remaining eight departments are in the process of making changes in their service rules and regulations.

(e) Constitution and Nature of Redressal Mechanism

Out of the 794 Departments surveyed, only 302 (38%) have set up grievance redressal mechanism. 475 (60%) Departments have not set up the same. The remaining 17 Departments are in the process of setting up grievance redressal mechanism.

7.23 The survey report was placed before the Commission, wherein it desired that the draft report be sent to the concerned Ministries/Departments of the Central and State Governments for their response before it is published. Accordingly, the report was sent to all concerned. Their response is still awaited. The Commission hopes that immediate action would be taken by them on the findings of the study carried out by Action Aid.

C] Harassment of Women Passengers in Trains

7.24 The issue of harassment of women passengers in trains has been a subject of immense concern to the Commission. In the annual report for the year 2002 – 03, the Commission listed certain recommendations that it had made to the Railway Board as well as the follow-up action on those recommendations.

7.25 The Commission has noted the progress reported by the Railway Board. In a further communication received from the Railway Board, it was reported that FIR forms in Hindi, English and regional languages, such as, Telugu, Marathi, Kannada, Malayalam and Tamil have been made available with the running and stationary staff. The printing of FIR forms in other regional languages was under process.

7.26 As regards the depiction of graphics in coaches and designing of publicity material relating to prevention of sexual harassment in trains was concerned, JAGORI, a Delhi based NGO, was approached to prepare the necessary material. However, the material is yet to be received from JAGORI.

7.27 So far as the training of the Probationers of the Traffic and Security Department was concerned, the Railway Staff College at Vadodra has incorporated a module consisting of two hours session on gender sensitisation in Group 'A' & 'B' Foundation courses and Advance Management Programme. The Commission notes with concern that the Railway Ministry is yet to implement some of the important recommendations made by it for bringing solace and a sense of security to thousands of women passengers travelling by trains to different destinations in the country. In fact these initiatives ought to have been taken by the Ministry itself. The Commission intends to continue monitoring the compliance of its directions.

D] Rehabilitation of Destitute Women in Vrindavan

7.28 The Commission reported in its annual report for the year 2002-03 that it has been engaged in efforts to improve the status of and uphold the rights of destitute and marginalized women, particularly widows, living in the area of Vrindavan. In that report it had also mentioned that the Commission had held two meetings on 23.8.2001 and 03.10.2002 wherein a number of important decisions and suggestions were taken for improving the plight of these women.

7.29 In order to monitor the progress of implementation of the decisions taken in those two meetings, another meeting was held at Vrindavan on 4th July, 2003 under the

chairpersonship of Justice (Smt.) Sujata V. Manohar, Member, National Human Rights Commission. Besides the representatives of the Government of Uttar Pradesh, the meeting was attended by senior officers of the National Human Rights Commission and the Department of Women and Child Development (DWCD), Ministry of Human Resource Development, Government of India. Important decisions taken in this meeting and directions issued by Member, NHRC along with the action taken report of the Government of Uttar Pradesh are enumerated below:

a) Accommodation/Housing

7.30 The concerned officers of the Government of Uttar Pradesh were directed to re-examine the suitability of the site selected for the construction of shelter home at Pani Ghat in consultation with the experts. The Hon'ble Member further directed that a new site be selected if the present site was found unsuitable for construction of shelter home and that the DWCD should satisfy itself about the suitability of the site before going ahead with the construction. She also directed that the planning for construction should include provision for a bank, a fair price shop, a community hall, a vocational training room, a public health centre, a shopping complex and a park in the proposed building plan of the shelter home, so that the women who eventually come to stay in the building should get all the basic amenities. She also directed that the revised building plan should be shown to NHRC. For the construction of the proposed shelter home, information was sought from the State Government whether it was possible to involve local NGOs.

7.31 The Government of Uttar Pradesh was informed the Commission that Mathura-Vrindavan Development Authority has stopped the construction work at Pani Ghat, for they felt that the site would be unsuitable for construction as it was earmarked as 'flood-prone area' under the Mahayojana of the Authority. Currently, search for a new piece of land in Vrindavan was on. As regards the involvement of local NGOs, it was reported that none of their suggestions could be translated into action.

b) Pension

7.32 It was directed that provision for pension should be ensured for all destitute/marginalized women staying in Vrindavan as early as possible.

7.33 The Commission has been informed by the Government of Uttar Pradesh that a sum of Rs.1.00 crore was provided to Kaushalji Maharaj Trust and the Trust has been paying pension to the widows out of the interest of that fund. Since there were complaints about lack of transparency with regard to distribution of pensions, the State Government has asked the Trust to provide a list of beneficiaries who were getting pension out of this fund so as to devise a strategy for overall improvement in the distribution of pension. Till such time, all those women who were not getting regular pension should be covered by Annapurna

Yojna. With regard to enhancement of pension from Rs.125/- to Rs.250/- per month, the State Government has yet to take a decision.

7.34 Since the majority of destitute women living in Vrindavan belonged to West Bengal, the Commission had also taken up the issue of pension for them with the Government of West Bengal. In this connection, the Commission was informed that the Government of West Bengal had proposed the establishment of a 'Trust' to look after the women living in Vrindavan. The 'Trust' would have representatives from the Central Government, Government of Uttar Pradesh, Government of West Bengal and non-governmental organizations, with the District Magistrate, Mathura serving as its Chairperson. The corpus could be created for this fund by one time grant from the Government of India and the two State Governments. Accordingly, a meeting was convened in June 2003 to work out the modalities for establishment of a Trust. In this meeting, it was agreed that the District Magistrate, Mathura would submit a proposal to the Women and Child Development Department, Government of Uttar Pradesh. The Commission has received no further information about the formation of the Trust and issues associated with it so far.

c) Health Care

7.35 It was directed to organise regular eye camps for all destitute/marginalized women in Vrindavan.

7.36 The Commission has been informed that a Medical Officer had already been engaged to look after the medical requirements of the destitute/marginalized women. A mobile team sent by the Chief Medical Officer had identified fifteen women from the Shelter Home who were to be operated in Rama Krishna Hospital, Vrindavan. In addition to this, medical camps were regularly being organized on 7th & 12th of every month. A proposal had also been received by the District Administration with regard to providing health facilities to these women, which was being looked into.

d) LPG Connections and Fans

7.37 The State Government was directed to provide more LPG connections and fans in the Pagal Baba Ashram Trust Property.

7.38 It has been reported that 10 gas stoves and 25 gas cylinders had been purchased. These would facilitate the women to cook in groups consisting of 5 women each. Fans had also been installed in all those rooms where there were no fans.

e) Awareness Generation

7.39 There was need to generate awareness in Vrindavan about the activities being undertaken by the Government of Uttar Pradesh and the District Administration for

rehabilitating these women and to ensure provision of cremation fund by the State Government.

7.40 The State Government has not reported any action on this aspect so far.

f) Survey of Destitute/marginalized Women in Vrindavan

7.41 In order to know the actual target group of destitute/marginalized women living in Vrindavan and make an assessment of their requirements in terms of housing, food, pension, clothing etc., the State Government was requested to undertake a quick survey and prepare a computerised list of all the destitute/marginalized women and send the same to the NHRC. In addition to this, the State Government was asked to undertake an assessment of the existing properties suitably located, which could be negotiated for taking on rent to provide accommodation for these women.

7.42 The Commission intends to follow-up the progress in that behalf with the State Government.

E] Population Policy – Development and Human Rights

7.43 In its preceding annual report, the Commission reported that it had organised a Colloquium on Population Policy – Development and Human Rights on 9th and 10th January, 2003 in New Delhi in collaboration with the Department of Family Welfare, Ministry of Health and Family Welfare and the United Nations Population Fund. It was also reported that the recommendations made and the Declaration adopted in the Colloquium were sent to all the State Governments/Union Territory Administrations for compliance.

7.44 The Commission has received responses from the State Governments of Goa, Karnataka, Sikkim and the Union Territories of Andaman & Nicobar Islands and Chandigarh. All these State Governments and Union Territory Administrations have assured the Commission that they would take note of the recommendations that emerged from the Colloquium while preparing their State Population Policies. The State Government of Gujarat, which has its own Population Policy, has communicated that their policy aims at stabilising population through sustainable human development and is in consonance with the National Population Policy. Similarly, the Government of Madhya Pradesh, which also has its own Population Policy, has communicated to the Commission that their State Population Policy has incentives and disincentives so as to keep the size of the family limited. In view of this, they have stated that the incentives and disincentives should not be viewed as violation of human rights. This requires proper examination by the Commission.

7.45 The following States/UTs have not responded so far, despite regular follow-up by the Commission – Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Haryana, Himachal Pradesh, Kerala, Manipur, Meghalaya, Mizoram, Nagaland, Rajasthan, Tamil Nadu, Tripura,

Uttar Pradesh, West Bengal, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep and Pondicherry. The Commission is continuously pursuing the matter with these States/UTs.

7.46 The Governments of Bihar, Jammu & Kashmir, Jharkhand, Maharashtra, Orissa, Punjab, Uttaranchal and National Capital Territory of Delhi have informed the Commission that they were looking into the matter, but their definitive reports were still awaited. The Commission hopes that the State Governments would expedite sending their reports to the Commission on the recommendations made by it on this important issue which has a bearing on the rights of the vulnerable sections of society.

7.47 Commission in collaboration with the UNFPA has also brought out posters and brochures on the issue. The Commission hopes to distribute these posters and brochures all over the country so as to spread awareness on evolving a consensus on what constitutes a balance between population and development from the perspective of human rights.

7.48 With reference to the Supreme Court Judgement [JT 2003(6) SC 283] on Haryana Panchayati Raj Act, 1994 (Writ Petition No. 302 of 2001 in Javed & Ors. Vs. State of Haryana & Ors.) the Supreme Court has upheld the constitutional validity of the provision for disqualification of candidates with more than two children from contesting Panchayat elections in Haryana. In the light of the recommendations made in the two-day Colloquium on Population Policy – Development and Human Rights, the judgement is being studied by the NHRC from the point of view of its implications vis-à-vis the population policies framed by the Central and the State Governments, especially its impact on the rights of the vulnerable sections, in particular, women.

CHAPTER 8

Rights of the Vulnerable

A] Abolition of Bonded Labour

1) Introduction

8.1 The Commission continued to monitor the implementation of the Bonded Labour System (Abolition) Act 1976 as directed by the Supreme Court in its order dated 11 November 1997 passed in writ petition (civil) No. 3922 on 1985. The Supreme Court order has the effect of arming the recommendations of the Commission with force of law.

8.2 Pursuant to some of the suggestions made by the Amicus Curiae, Shri A.K. Ganguli, the Commission had submitted a report to the apex court apprising it about the unsatisfactory response from some of the bonded labour prone States identified by the Ministry of Labour, in relation to the Commission's directions for informing it about the bonded labour situation in their States. The Commission called for (1) status report on the detection and rehabilitation of bonded labour as on 31-12-2001 and (2) Quarterly Statements of detection and rehabilitation of bonded labour from 01-01-2002 onwards in prescribed proforma. Besides, the Commission in its report to the Supreme Court pointed out that some of the bonded labour prone states are regularly asserting that the problem did not exist in their States.

8.3 The Commission particularly expressed its concern over the laxity/ callousness in prosecution/ conviction of bonded labour cases. Prosecution of the offenders had been launched in very few cases in some States over the past years. But the number of convictions had been negligible so far. The Commission therefore sought some specific directions from the Supreme Court through the Amicus Curiae. These include constitution of the Vigilance Committees as per the Act; asking the States to confer powers of a Judicial Magistrate for the trial of offences under the Bonded Labour Act on the Executive Magistrates; immediate rehabilitation of the released bonded labourers, including the migrant bonded labourers, and, directing the States to regularly report to the Commission about the bonded labour situation in the prescribed proforma.

8.4 The Hon'ble Supreme Court on 15 July, 2003 issued directions to 11 States, viz., Andhra Pradesh, Haryana, Rajasthan, Karnataka, Jharkhand, Tamil Nadu, Chhattisgarh, Madhya Pradesh, Gujarat, Uttaranchal and Kerala to furnish regular status reports to the Commission with effect from 1-1-2002 onwards in the prescribed Proforma. In compliance of the Supreme Court direction, most of the States have begun sending the requisite reports. There were still a few states like Assam and Jammu & Kashmir, from where reports were not coming forth. Interestingly very few fresh identifications of Bonded Labour have been reported during the period. Most of the States have sent nil reports in this regard. This however, is hard to believe in view of the reports of the visits of Special Rapporteur of the Commission, the incidents brought to the notice of the Commission by the NGOs and activists, from time to time.

2) Workshops on Bonded Labour

8.5 The Expert Group on Bonded Labour constituted by the Commission on 22 September 2000 had, in its report dated 31.12.01, recommended the holding of workshops for sensitizing and educating District Magistrates, Superintendents of Police, NGOs and other field functionaries involved in the implementation of the Bonded Labour Act. Four such workshops were arranged during the period of report at Bangalore, Allahabad, Chandigarh and Patna in collaboration with the State Labour Departments.

8.6 Shri K.R.Venugopal, Special Rapporteur was instrumental in conducting the workshop at Bangalore. Shri Chaman Lal, Special Rapporteur, assisted by Director, NHRC was involved in conducting the workshops at Allahabad, Chandigarh and Patna. Shri Manohar Lal, Director General (Welfare), Government of India, Ministry of Labour actively participated in the workshops at Allahabad and Chandigarh along with Shri Raj Pal, Director who represented the Union Labour Ministry in the workshop at Patna.

8.7 The workshop in Bangalore was organized on 9-10 October, 2003 for the field level functionaries such as the Deputy Commissioners, heads of Zilla Panchayats and other functionaries, Officers of Labour Department, Police Department, NGOs and the Banking sector. The Chairperson, NHRC Dr. Justice A.S. Anand inaugurated the workshop. The State Home Minister Shri M. Mallikarjuna Kharge presided over the function. The Joint Secretary in the Union Labour Ministry Shri N. Chandramouli and the Director, National Law School of India University, Bangalore Dr. A. Jayagovind also participated in the workshop. The participants also included persons whose role is relevant to bonded labour and child labour work like the Regional Director of the RBI, the Convenor of the State Level Bankers Committee and the Chief General Manager, NABARD. The decisions and action points which emerged from the Workshop were communicated to the Government of Karnataka, Union Labour Ministry as well as to the participants. These were also sent to Andhra Pradesh and Tamil Nadu Governments for implementation and wide dissemination. The follow up action is being monitored by Shri K.R. Venugopal.

8.8 The workshop held at Allahabad on 11.11.03 was attended by 38 officers belonging to District Administration, Police, Labour, Education, and Rural Development Department. The Labour Commissioners of Bihar and Jharkhand were specially invited to the workshops for discussing inter-States problems. The workshop was inaugurated by Dr. A.S. Anand, Chairperson, NHRC while Shri Mata Prasad Pandey, Minister for Labour and Employment, Govt. of UP presided over the inaugural function. The workshop proved useful in drawing an Action Plan for clearing the huge pendency of rehabilitation of released bonded labourers in the State. A similar workshop was held at Chandigarh on 20 November, 2003 which was attended by 61 officers including 5 Deputy Commissioners, 12 Supdts. of Police, and 8 Additional Commissioners. A number of NGOs working in the field of workers' rights and social issues were also invited. Chaudhary Jagjit Singh, Minister for Labour and Employment, Govt. of Punjab presided over the inaugural function. Dr. Justice A.S. Anand, Chairperson, NHRC delivered the inaugural address exhorting the Dy. Commissioners to honour their obligations and faith reposed by the Parliament in giving them special powers under the Bonded Labour Act to eliminate this social evil. The workshop helped in clarifying for the benefit of the District Officers the definitional aspects of Bonded Labour Act and removing some of their misgivings on the issue. The role of the NGO sector in the elimination of bonded labour also figured prominently in the deliberations.

8.9 The workshop held at Patna on 9.1.2004 was attended by 31 officers, including 4 District Magistrates, 5 Deputy Development Commissioners and 13 District Social Security Officers. The Deputy Labour Commissioner, Varanasi and the Asstt. Labour Commissioner, Allahabad were specially invited to this workshop to discuss the inter-state problems. The workshop proved useful in identifying the problems of migrant bonded labourers whose plight has not received adequate attention from the Govt. and administration. The need for studying the impact of poverty alleviation programmes in rehabilitation of the released labourers was also highlighted.

3) Manual on Bonded Labour

8.10 The Ministry of Labour sought comments/suggestions of the Commission on the Draft Manual on Bonded Labour prepared by them as follow up of the consultation held with the Labour Secretaries/Labour Commissioners of various States in February, 2002 where the Commission was represented by its Special Rapporteur. The Commission, after consultation with experts in the field, sent its comments and suggestions for strengthening the provisions relating to identification, release and rehabilitation of bonded labour.

4) Efforts in the States

8.11 Besides inquiring into individual complaints under the Bonded Labour Act, the Commission has been reviewing the bonded labour situation in various States identified

as bonded labour-prone areas by the Government and non-Government organisations. Shri K.R. Venugopal, Special Rapporteur, NHRC undertook several visits to Kanataka, Tamil Nadu and Andhra Pradesh to review the progress of implementation of laws relating to abolition of bonded labour and to activate and sensitize the state administration. Shri Chaman Lal, Special Rapporteur carried out comprehensive reviews of the bonded labour situation in Orissa, Maharashtra, Punjab, UP, Bihar and Jharkhand during the period of report. His reports were considered by the Commission and forwarded to the State Governments concerned with appropriate directions. The salient points emerging from the reports from these reviews are given below State-wise:

4 (i) Orissa (17 April, 2003)

8.12 All the 30 districts of Orissa have been identified as bonded labour-prone areas. Vigilance Committees have been constituted in all the 30 districts and 58 sub-divisional HQs. However, the Commission's directions that these committees should meet at least once a quarter need to be enforced strictly.

8.13 In the last review undertaken by Dr. Justice K. Ramaswamy on 29 January 2002, 57 cases pending for rehabilitation in District Malkangiri since the survey of 1997 were identified and assurance for their earlier settlement was received. As per the report of Secretary, Panchayati Raj, 39 released bonded labourers, out of these 57 have been rehabilitated under the Centrally Sponsored Plan Scheme. 18 cases have been dropped due to death (9), migrant status/untraceability (8) and already employed in Govt. service (1). With this the backlog of rehabilitation presented at the last review and mentioned in the annual report 2001-02 has been satisfactorily cleared.

8.14 There has been no identification of bonded labourers in Orissa during the period under review. Fresh surveys to identify bonded labourers have been initiated in 10 districts, namely, Malkangiri, Koraput, Cuttack, Mayurbhanj, Bargarh, Phulbani, Kalahandi, Sundargarh, Rayagada and Keonjhar with financial grant of Rs. 20 lakh received from the Govt. of India under the modified Centrally Sponsored Plan Scheme. Evaluation studies to ascertain the impact of anti-poverty programmes in relation to the rehabilitation of released bonded labourers have been undertaken in 5 districts, namely, Koraput, Malkangiri, Rayagada, Kalahandi and Phulbani. Findings of surveys and evaluation studies are awaited from the State Govt.

4 (ii) Maharashtra (6 February 2004)

8.15 Vigilance Committees have been constituted in all the 35 districts and 109 Sub-divisional HQs. These committees were in place only in 20 districts and 46 Sub-divisional HQs when the last review was carried out by the Commission on 19 January 2002. The

State Govt. has issued fresh instructions to the DMs for holding regular meetings of these committees and has made Divisional Commissioners responsible to coordinate this activity.

8.16 Only 17 bonded labourers were identified and released in Dist. Thane Maharashtra as a result of the survey of January, 1997. Only 12 of them were rehabilitated in 1997. There has been no detection of bonded labourers in the State in the year 1998. 3 bonded labourers were detected in 1999 and 33 in 2000 in Ratnagiri district. However, all the 36 were migrant labourers who were sent back to their native places – 3 to Karnataka and 33 to Tamil Nadu – without ensuring their rehabilitation under the Centrally Sponsored Plan Scheme. Two bonded labourers were detected in 2001 in Thane Dist. Rehabilitation of these along with 5 pending cases of 1997 is reported to have been completed in 2001-02. Two bonded labourers have been identified, released and rehabilitated in the period under review. The State Government has been requested to furnish full particulars of these nine persons giving date and place of identification and release, details of rehabilitatory grants, their present status and the steps taken to ensure that they do not fall back into bondage.

8.17 The Govt. of India, Ministry of Labour had in November 2000 offered to all the 16 bonded labour prone-States, including Maharashtra, a grant of Rs. 25,000 each without any requirement of matching grant for the purpose of awareness generation (Rs.10 lakh), survey of bonded labour in 5 districts (Rs. 10 lakh) and evaluatory studies in 5 districts (Rs. 5 lakh). The Commission has noted with concern that despite recurring reports about the existence of bonded labourers in Maharashtra, the State Govt. has not availed of this offer till the time of review.

8.18 No information about prosecution under the Bonded Labour Act was furnished to the Commission. The Principal Secretary, Labour assured that details of prosecutions were being collected from the District Magistrates and would be furnished later giving the status of each case.

4 (iii) Punjab (9 March 2004)

8.19 Punjab is one of the 16 States identified as bonded labour prone-area by the Union Ministry of Labour. The evil practice is particularly noticed in the agricultural sector under the traditional system called 'siri' which was specifically declared as abolished under the Bonded Labour System (Abolition) Act 1976. Another prominent area of existence of bonded labour in the State is the brick-kiln industry, depending largely on migrant labour coming mainly from Bihar and Jharkhand. Although a number of studies conducted by NGOs and academic institutions have confirmed from time to time the existence of this evil practice in Punjab, the State Government has been consistently denying its presence.

8.20 Vigilance Committees have been constituted in all the 17 districts and 67 sub-Divisional HQs ensuring mandatory representation of scheduled castes and scheduled

tribes. However, these are not meeting regularly and there has been no detection of bonded labourers anywhere in the State at their instance. Fresh instructions have been issued to the DMs to ensure regular meetings of these committees and involve Panchayairaj institutions in identification of bonded labour in their respective areas.

8.21 A total number of 141 bonded labourers have been identified in Punjab till the date of review. 65 were identified in district Jalandhar in the year 1999. It is distressing to note that the entire amount of Rs. 6.5 lakh released by the Govt. of India as its share of rehabilitatory grant on 12.12.2001, has been lying undisbursed because of the failure of the State Govt. to release the matching grant. It was, therefore, not surprising to learn from the Labour Commissioner, Punjab that only 21 out of these 65 labourers could presently be located while the whereabouts of the rest of them are not known. This case clearly illustrates the truth of the observation made by the Supreme Court a number of times that released bonded labourers will have no option but to fall back into bondage if they are not promptly rehabilitated.

8.22 4 bonded labourers were identified and released in the year 2000. Their rehabilitation was incomplete in the sense that they were provided only Rs. 10,000 each instead of Rs. 20,000 each under the Centrally Sponsored Plan Scheme. 71 bonded labourers were released in the year 2001 in district Kapurthala but no steps have been taken for their rehabilitation under the Centrally Sponsored Plan Scheme which is based on special directions given by the Supreme Court in 1994.

8.23 There has been no detection of bonded labour in the State in the year 2002-03. Only one bonded labourer was identified and got released in Ferozepur during the period under review (2003-04). The Labour Commissioner, Punjab has informed on 9 March 2004 that the Department was releasing an amount of Rs. 20,000 for his rehabilitation in anticipation of receipt of grant from the Centre/State. Confirmation is still awaited.

8.24 Fresh surveys for identification of bonded labourers have been taken up in districts Amritsar, Jalandhar, Ludhiana, Patiala and Bhatinda with a grant of Rs. 10 lakh received from the Govt. of India for the purpose. The Commission is pleased to learn that the survey work is being entrusted to agencies like Ambedkar Centre and Centre for Rural and Industrial Development who have been challenging the official stand of Punjab Govt. that the State is free of the evil of bonded labour. The Commission hopes that the survey reports will present the reality.

4 (iv) Uttar Pradesh

8.25 Vigilance Committees have been constituted at all the 70 district HQs and 290 out of a total of 297 sub-Divisional HQs. Although the Vigilance Committees are reportedly meeting regularly, they have not proved effective for detection of bonded labourers in their respective areas. All detections made so far have resulted from the efforts of NGOs and

social activists. 123 bonded labourers were identified and released in the period of review. 58 of them were migrant labourers who went back to their native places. DMs concerned have been informed about their release and requested to take up their rehabilitation under the Centrally Sponsored Plan Scheme. The rehabilitation of the remaining 65 was initiated by the authorities in UP.

8.26 The rehabilitation of released labourers was found to be very slow and inadequate in previous reviews. As many as 482 bonded labourers released during the years 1998-99 to 2002-03, with the following year-wise details had not been rehabilitated at the time of last review:

1997-98	1
1998-99	4
1999-2000	245
2000-01	178
2001-02	26
2002-03	28

8.27 The matter figured prominently in the Bonded Labour Workshop conducted by the Commission at Allahabad on 11 November 2003. The Chairperson, NHRC made a specific mention of this matter in his inaugural address and requested the State Labour Minister who was also present to expedite rehabilitation of these persons. After physical verification carried out with special efforts of the Labour Commissioner, UP, 330 of these 482 released labourers have been located in the State. Including the 65 cases of the current year, a total of 395 bonded labourers were required to be rehabilitated in the State. The Commission has noted with satisfaction that rehabilitatory grant of Rs. 20,000 each for 324 out of a total of 395 labourers was released to the DM concerned before 31 March 2004. The Commission has expressed appreciation to the Govt. of UP especially the Labour Commissioner, UP for this record performance. The Commission has been assured that the rehabilitation of the remaining 61 bonded labourers will be completed in 2004-05.

8.28 Fresh surveys for identification of bonded labourers have been undertaken in 5 districts, namely, Mirzapur, Allahabad, Kanoj, Meerut and Gautambudh Nagar and 5 evaluatory studies to evaluate the impact of rehabilitatory schemes are being made in 5 districts, namely, Varanasi, Chittrakoot, Mathura, Mirzapur and Sonbhadra. The Commission has also noted with satisfaction the efforts being made by the Labour Department of UP for rehabilitation of migrant bonded labourers who had returned to their native districts in Bihar and Jharkhand after being released in UP in recent years.

4 (v) Bihar

8.29 26 out of a total of 38 districts are considered as bonded labour-prone districts. The prominent ones are West Champaran, Jamaui, Mungher, Khargaria, Nawadha and Begusarai. Vigilance Committees have been constituted at all the district HQs. As regards Sub-Divisional HQ., only 63 out of a total of 115 Sub-Divisional HQs are having these committees. There has been no identification of bonded labourers in Bihar in the recent years. However, the State Government has been very effective in arranging rehabilitation of the released bonded labourers received back from other States.

8.30 Till 31.3.2003, a total of 8357 bonded labourers had been identified and released in Bihar. 7906 out of these were rehabilitated under the Centrally Sponsored Plan Scheme till 31.3.03. 115 of the remaining were not traceable. As such, a backlog of 336 was brought forward to 2003-04. In the year 2003-04, a total of 146 bonded labourers were identified taking the total of released labourers required to be rehabilitated to 482. The Commission has noted with satisfaction that as many as 314 of these have been actually rehabilitated under the Centrally Sponsored Plan Scheme which provides for a relief package of Rs. 20,000 per labourer to be shared equally by the Centre and the State Governments. It is remarkable that the Govt. of Bihar has released its share of Rs. 31.40 lakh for the rehabilitation of 314 released bonded labourers in the districts of West Champaran Bettiah (294), Saharsa (13), Madhubani (4) and Dharbanga (3). As regards the rehabilitation of the balance number of 168 bonded labourers, the State-share of Rs. 10,000 each was also provided for 118 of them in the budget allotment of 2003-04 itself. The Labour Commissioner, Bihar informed the NHRC on 27 March 2004 that efforts were being made for obtaining Central share released. The Commission has been assured that rehabilitation of the remaining 168 cases will be completed in 2004-05.

8.31 The Commission appreciates the efforts of Bihar Govt. in implementing the principle of convergence to integrate the Centrally Sponsored Plan Scheme with other ongoing Poverty Alleviation Programmes of the Department of Rural Development. It is heartening to be told that all the released bonded labourers are being provided the benefits under the Indira Awas Yojna and Social Security Pension Scheme besides the rehabilitation package of Rs. 20,000 per head under the Centrally Sponsored Plan Scheme.

4 (vi) Jharkhand

8.32 15 out of a total of 22 districts in Jharkhand have been identified as bonded labour-prone districts. Vigilance Committees have been constituted in only 17, out of a total of 22 districts and 30 out of a total of 35 Sub-Divisions of the State. The Chief Secretary, Jharkhand has assured that the constitution of these committees will be completed by 31 July 2004. The Govt. of Jharkhand has not yet issued Govt. notification u/s 21 of the

Bonded Labour Act empowering the Executive Magistrate to exercise the powers of Judicial Magistrates. The Chief Secretary has assured that this will also be completed by 31 July, 2004.

8.33 A total of 5344 bonded labourers have been released and rehabilitated in the State till date. This includes 5 bonded labourers detected in district Lohardaga as a result of the special survey ordered by the Supreme Court in 1997. In that survey, a total of 102 bonded labourers were identified in undivided Bihar which included only 5 of Jharkhand. 5342 released labourers including 5 detected in Lohardaga in 1997 have been rehabilitated. The physical verification made by the Deputy Commissioner (DC), Lohardaga on the request of the Special Rapporteur revealed that although all the 5 released labourers had received rehabilitatory grant with additional benefits under Indira Awas Yojna and Pension scheme, etc., only one of them was found living in his village. The rest of them had reportedly gone back to UP to work in brick-kilns. The Labour Commissioner, Jharkhand has been requested to study these cases in detail in order to evaluate the efficacy of the rehabilitation schemes and find out reasons for their migration in search of work.

8.34 The Commission had in November 2002 supplied to the Labour Commissioner, Jharkhand a list of 116 bonded labourers belonging to district Garhwa who were released in UP during the period 1994 to 2001. Another list of 28 labourers of Palamu district released in UP was received by the Labour Commissioner, Jharkhand from an NGO in 2002-03. 110 out of a total of 116 labourers belonging to Garhwa have been traced and the State-share of Rs. 11 lakh has been released to DC Garhwa for their rehabilitation. Similarly, a sum of Rs. 2.80 lakh has been released to DC Palamu for the rehabilitation of 28 labourers received from UP. The Labour Secretary, Jharkhand has been requested to intimate position of Central-share and details of actual rehabilitation of these persons. In the year 2003-04, details of 82 bonded labourers released from different parts of UP have been received by the Labour Commissioner. Deputy Commissioners of the district concerned have been asked to trace out these labourers and initiate proposals for their rehabilitation under the Centrally Sponsored Plan Scheme. The Labour Secretary Jharkhand has assured the NHRC that the released bonded labourers received from other States are being duly considered for allotment of land and relief under Indra Awas Yojna and social security pension scheme.

8.35 A special allotment of Rs. 30 lakh received from the Union Labour Ministry has been utilized on carrying out survey in 15 districts. However, the net result of the survey – detection of only one bonded labour in district Garhwa – does speak well of the quality of survey. The Commission's disappointment has been conveyed to the Govt.

4 (vii) Madhya Pradesh

8.36 Shri Chaman Lal, Special Rapporteur was associated with the rehabilitation of 15 families comprising 27 members (15 male and 12 female) of released bonded labourers

in district Shivpuri (M.P) during the period of this report. These persons were identified as bonded labourers working at stone crushers at Gwalior and were rescued with the efforts of the Bandhua Mukti Morcha of Swami Agnivesh. The young and energetic Collector Shri Kanta Rao of District Shivpuri displayed commendable initiative in planning and executing a scheme for their rehabilitation in district Shivpuri. The Special Rapporteur visited the sites of rehabilitation – village Thakurpura where four families and village Banskheri where 11 families have been settled. Besides providing land for homestead purposes, these families have been granted the benefits under Indira Awas Yojna, drinking water facilities, BPL ration cards and other amenities. The most striking feature of the rehabilitation was found to be its sustainability ensured by granting mining lease for stone quarries to these families after drafting them into self-help groups. In a meeting with the district officials headed by the DM, held in village Banskheri on 25 March 2003, the arrangements for supply of ration, drinking water facilities, education for children and health-care were reviewed by the Special Rapporteur. The Banskheri settlement has also been provided the facility of a temporary Anganwadi Centre under the ICDS. These families, settled at Banskheri, have been allotted land of 0.5 hec. each for agricultural purposes. Bandhua Mukti Morcha has arranged education of 17 children of these families in their school at Faridabad. Primary school facilities have been set up at Banskheri for other children. The District Red Cross Society was also involved in arranging a medical camp and supplying blankets and polythene sheets to these families. The Special Rapporteur has noticed the sense of self-esteem and importance acquired by the liberated bonded labourers who have begun a new life. The Commission considers this to be a model project in tune with the directions issued by the Supreme Court from time to time about the rehabilitation of the released bonded labourers.

B) Abolition of Child Labour

1) Efforts in the States

8.37 The issues of Child Labour and Bonded Labour are found to be inter-related in several parts of the country. The Commission has been discharging this obligation by carrying out the review of both the Bonded Labour and Child Labour situation in various States notorious for high incidence of these evil practices.

8.38 Shri Chaman Lal, Special Rapporteur has reviewed the Child Labour and Bonded Labour situation in the States of Orissa, Maharashtra, Punjab, UP, Jharkhand and Bihar during the period of report. The salient points emerging from these reviews are mentioned below State-wise:

1 (i) Orissa (17 April 2003)

8.39 The review meeting held at Bhubaneswar was attended by the Principal Secretary, Labour and Employment Deptt., Secretary, Panchayati Raj, Principal Secretary, Revenue

and Labour Commissioner. Before this, the Special Rapporteur had visited Districts Angul and Cuttack to make the District-wise review and inspect the National Child Labour Project (NCLP) Schools.

8.40 In the last review made by Dr. Justice Ramaswamy, Member on 21 January 2002, the follow up of identification of children working in hazardous occupations/processes as a result of the survey ordered by the Supreme Court in December 1996, was found to be deficient in several respects. It was also noticed that there has been no systematic detection of children working in hazardous occupations/processes after the survey of 1996-97. Following the recommendations of the Commission, special surveys were undertaken in Districts Koraput, Malkangiri, Navrangpur, Sambalpur, Angul, Jharsuguda and Kalahandi in 2001-02. A total of 3676* children were identified engaged in hazardous occupations/processes and 18452 children in non-hazardous occupations/processes. In the year 2002-03, a total of 4207 children were identified in hazardous and 34712 in non-hazardous occupations/processes as a result of surveys conducted in Districts Koraput, Malkangiri, Sambalpur, Sonepur, Angul, Bolangir, Bargarh, Ganjum, Jharsuguda and Kalahandi. The Commission directed the State Government to take follow-up action for educational rehabilitation of the children detected in hazardous occupations/processes, economic rehabilitation of the affected families and prosecution of the offending employers in accordance with the directions issued by the Supreme Court on 10 December 1996 in Writ Petition (Civil) No. 465/1986 M.C. Mehta vs. State of Tamil Nadu and others.

8.41 The Review revealed that 3775 children identified in hazardous and 7695 in non-hazardous occupations/processes in the year 2001-02 were admitted to the NCLP schools. In the year 2002-03, 3913 children identified in hazardous and 8413 in non-hazardous occupations/processes were admitted to project schools. However, only 1805 out of a total of 7284 affected families (24.8%) were covered under the Poverty Alleviation Programme in 2001-02 and 2808 out of a total of 34964 (8%) in 2002-03. The recovery of Rs. 20,000/- per child from the offending employers has been negligibly small. Prosecutions under the Child Labour Act have also not received proper attention from the authorities concerned.

8.42 As many as 18 out of a total of 30 districts of Orissa are covered under the National Child Labour Project. Over 60,000 potential child labourers have benefited from this scheme in the State, with 31632 of them mainstreamed after completion of their informal education upto 5th Class. At the time of review, 675 schools out of a total of 710 sanctioned schools were reported to be functioning. 37096 children including 19746 (53.2%) girls were being provided accelerated primary education in these schools. The Scheduled Tribes constitute

***The figures mentioned in paras 8.40 to 8.62 are based on surveys conducted by the State Governments pursuant to the directions of the Supreme Court issued on 10 December 1996 in Writ Petition (Civil) No. 465/1986 M.C. Mehta vs. State of Tamil Nadu and others.**

43.50%, SCs 27.3%, OBCs 22.4% and General category only 6.8% of the total strength. The review revealed the need for greater involvement of the NGO sector in this activity and greater attention to the aspect of vocational training.

8.43 The overall performance of the Projects was found to be good. A large number of children passing out from one of the project schools (Kalahandi) have succeeded in securing admission into a Navodaya school through open competition.

1 (ii) Maharashtra (6 February 2004)

8.44 The 1991 Census had reported the incidence of child labour in agriculture, brick-kiln, beedi-making zari work, weaving, glass industries in Maharashtra accounting for 9.4% of the total child labourers in the country. Two surveys conducted in Maharashtra in compliance with the Supreme Court directions dated 10.12.1996 had identified 1023 children employed in hazardous and 20,391 in non-hazardous occupations/processes. 944 children (92%) withdrawn from hazardous occupations/processes were admitted to schools. 992 show-cause notices were issued for recovery of Rs. 20,000/- per child from each offending employer. However, out of a total amount of 2,04,60,000, a sum of only Rs. 8 lakhs (0.39%) was actually collected till the time of the review.

8.45 The third survey conducted in 1999-2000 resulted in identification of 2983 children engaged in hazardous work. However, no follow-up action was taken for educational rehabilitation of children, economic rehabilitation of the affected families and prosecution of the offending employers. Another survey was conducted during the period 1.9.01 to 31.1.02 which resulted in identification of 1679 children engaged in hazardous occupations. Only 771 children (46%) have been admitted to schools. 291 prosecutions have been filed against the faulting employers and all are pending. Recovery proceedings against 289 employers for recovery of Rs. 20,000 per child have been initiated but the actual collection was reported to be nil till the time of review. Action for rehabilitating 1679 affected families in accordance with the directions of the Supreme Court was also found wanting.

8.46 A total of 440 prosecutions were launched against the employers based on the survey of 1997. Out of those only 84 cases have been disposed of – 71 in acquittal and 13 in conviction (fine) only. It is a matter of concern that the 20 cases decided since the last review (19 January, 2002) have all ended in acquittal. Prosecution is slow and conviction rate is poor.

8.47 Maharashtra Government has taken a progressive step towards universalisation of primary education by targeting the 'out of school' children in the age group of 6-14 years under Mahatma Phule Education Guarantee Scheme. The number of such children was estimated to be 20 lakh. The review revealed that 3599 schools have been started under the scheme run by NGOs in which 3,81,579 children have been enrolled.

8.48 NCLP is presently in operation in two districts of Maharashtra – Sholapur and Thane. A total of 58 schools are imparting accelerated primary education with provision of vocational training, supplementary nutrition, primary health care and stipend to 3202 children. Five more districts namely Nasik, Dhule, Beed, Yeotmal and Nanded have also been brought under the NCLP from December 2003. The District Collectors have initiated action for operationalisation of the projects. Maharashtra is one of the 4 States selected for implementation of Indo-US Child Labour Project. The scheme is to be implemented in Gundia, Aurangabad, Amravati, Jalna and Mumbai sub-urban Districts. The project envisages complete elimination of child labour in the identified districts on priority basis through a multi-sectoral package of services which include the identification, withdrawal and educational rehabilitation with emphasis on vocational training of child labourers and economic advancement of their families. Maharashtra Institute of Labour Studies Mumbai has been identified as the nodal agency to execute the project. Baseline surveys will be conducted in all the districts to identify 4000 beneficiaries from each District, thus covering 20,000 children in the State

1 (iii) Punjab

8.49 Punjab is considered a Child Labour Prone State with recurring reports about the employment of children in sport-goods industries concentrated at Jalandhar. Jalandhar Ludhiana and Amritsar have been identified as sensitive districts from the viewpoint of child labour. The survey of 1996-97 carried out under the directions of the Supreme Court had resulted in identification of only 91 children working in hazardous establishments. No steps appear to have been taken for admitting them to formal or non-formal system of schooling. Only 21 out of a total of 91 affected families were traced and offered employment under the Poverty Alleviation Programme. The Labour Commissioner, Punjab has informed the Special Rapporteur that no one had accepted the offer because of their insistence on being provided Government jobs. Show cause notices for recovery of Rs. 20,000 per child from the offending employers were issued in all the 91 cases as per the directions of the Supreme Court. In 85 cases, the employers have contested the decision. 21 cases out of these have been decided, all in favour of employers. Only a sum of Rs. 1,20,000 out of a total recoverable amount of Rs. 18,20,000 (6.6%) was actually recovered till the date of review (9th March 2004). There has been no detection of child labour in hazardous occupations/processes in Punjab after the initial survey of 1997.

8.50 Three districts of Punjab namely Jalandhar, Ludhiana and Amritsar are covered under the NCLP. A total of 107 schools – 40 each in Ludhiana and Amritsar and 27 in Jalandhar – are imparting accelerated primary education to 5350 children. The Special Rapporteur visited six schools in District Jalandhar and held a meeting with District officials and the representatives of the NGOs involved in the running of these schools. The setting of schools and selection of beneficiaries were found to be as per the norms and

guidelines laid down by the Union Labour Ministry. The Girls account for 44% of the total number of 1350 students. 76.81% of children belong to SCs, 9.92 OBC and 13.27% to the General category. The results of mainstreaming are not very good and the dropout rate (11.61%) is rather high. However, the involvement of the NGOs and the level of their interest and dedication are commendable features. The Special Secretary (Labour) Punjab was requested to activate the State Monitoring Committee constituted in September 2001 which has not been meeting regularly.

1 (iv) Uttar Pradesh

8.51 The Special Rapporteur visited Kanpur, Allahabad, Bhadoi, Mirzapur and Varanasi from 12 to 16 March 2004 and made district-wise assessment of the child labour situation in the carpet belt. He held meetings with the officers of the Labour Department, district officials including the District Magistrates and representatives of the NGOs involved in the running of the NCLP schools in these districts. He visited three NCLP schools each in Varanasi, Bhadoi, Mirzapur and Allahabad. The overall assessment for the whole State was made in a meeting with the Labour Commissioner, UP at Kanpur on 15 March 2004.

8.52 A total number of 858 children were identified and withdrawn from hazardous work while 3022 from non-hazardous work in UP during the period 1.4.03 to 31.1.04. This includes 155 children of hazardous and 149 of non-hazardous category identified and withdrawn in the districts of carpet belt i.e. Varanasi, Jaunpur, Bhadoi, Mirzapur, Sonbhadra and Allahabad. This shows significant improvement over the total identification and withdrawal of 448 children from the hazardous work and 1159 from the non-hazardous work in 2002-03. With this the total number of children identified and withdrawn from hazardous and non-hazardous work comes to 29720 and 35995 respectively.

8.53 Out of a total of 29720 children withdrawn from hazardous work till 31.1.04, as many as 24266 children i.e. 81.6% are reported to have been admitted to schools. In non-hazardous category, this figures comes to 87.6%. The number of affected families in respect of the total detection of 29,720 children in hazardous work till 31 January 2004 is 24,257. Out of these, only 4672 i.e. 19% have actually been provided rehabilitation in accordance with the directions of the Supreme Court. Of the remaining, as many as 7106 families have been shown as already rehabilitated. 4623 families are unwilling to take assistance under the regular Poverty Alleviation Programmes and 5553 are migrant families, thus, leaving a balance of 2303 families which remain to be rehabilitated. As regards detection of 858 children during the period of Review, only 78 affected families had been provided rehabilitation till the date of review. The Labour Commissioner, UP was requested to write to the District Magistrates concerned about their obligation to arrange wage employment for one member of each eligible and willing family. In the event of their failure, the State Government is required, as per the directions of the Supreme Court to deposit Rs. 5000/- per detected child

labour to the Child Labour Rehabilitation-cum-Worker Fund which has been created in all the Districts.

8.54 The number of employers involved in the total detection of 29720 children in hazardous work till January 31.1.2004 is 10649. This includes 673 employers relating to the identification of 858 children in hazardous work during the period of review. 7016 Release Certificates (RCs) have been issued for recovering a total amount of Rs. 31,31,60,000/- . 1461 RCs have been stayed by Courts and 1535 have been quashed/returned. A total amount of Rs. 95,19,849 has been realised which includes Rs. 5,67,057 collected during the period 1.4.2003 to 31.1.2004. The total collection from the districts of carpet belt comes to Rs. 13,60,112.

8.55 A total of 7799 prosecutions have been launched under the Child Labour Act from 1997-98 to 29 February 2004. This includes 341 cases relating to the period of review. Considering the backlog of 2817 cases of pre-December 1996 period, a total of 8698 cases are still pending trial. The total number of cases decided till 31.1.2004 is 1915. Conviction in 307 cases gives a conviction rate of 16%. However, during the period of review, 146 cases were decided, all in acquittal.

8.56 Non-invasive surveys were conducted in the Districts of Moradabad (1999-2000), Aligarh (2000-01), Jalesar, Mirzapur, Khurja, Jaunpur, Saharanpur and Meerut (2001-02) to assess the magnitude of the problem of child labour. These surveys have revealed that 65,598 children out of a total number of 1,56,783 “out of school children i.e. 41.8% were found actually engaged in work.” In Mirzapur, the carpet belt, the proportion of “out of school children” has been found to be as high as 82.4%.

8.57 The NCLP is in operation in 11 districts of UP, including Varanasi, Bhadoi, Mirzapur and Allahabad in the carpet belt. A total number of 496 schools with sanctioned capacity of 25788 students but with actual strength only of 24,457 are being run in 11 Districts. 266 schools are being run by the NGOs while 230 by the Project Society headed by the DM of the District concerned. The Commission has reiterated its earlier recommendation for greater involvement of NGOs in the running of these schools. The Special Rapporteur has commented favourably on the setting of the schools and selection of beneficiaries in the districts visited by him. It is heartening to note that the NCLP has been extended to 15 additional districts and the new projects will be operationalised in 2004-2005.

8.58 UP along with Tamil Nadu, Maharashtra and MP has been selected under the Indo-US Co-operation on Elimination of Child Labour. Districts Moradabad, Ferozabad, Aligarh, Allahabad and Kanpur have been selected under this project and surveys for identification of 4000 children beneficiaries in each district have been entrusted to reputed academic Institutions.

1 (v) Jharkhand

8.59 The State of Jharkhand is actually afflicted by the problem of child labour with children engaged at automobile workshops and motor garages, brick-kilns, stone-crushers, beedi making units, hotels and dhabas etc. A total number of 3570 child labourers were identified as engaged in hazardous work as a result of the survey of 1996-97 ordered by the Supreme Court. No information has been furnished by the State Government about the educational rehabilitation of the identified children, although this omission was pointed out in the last review made by Dr. Justice K. Ramaswamy, Member on 23.6.2002. Only an amount of Rs. one lakh has been recovered from the offending employers – 80,000 from District Hazaribagh and Rs. 20,000 from Distt. West Singhbhum out of the total recoverable amount of Rs. 754 lakh. The Labour Secretary, Jharkhand informed that the families of the child labourers withdrawn from hazardous occupations, are provided assistance under the Indira Awas Yojana and Rural Development Schemes like SGSY. A total of 1002 families have been covered under IAY, 448 under IRDP/ SGSY.

8.60 A total of 208 prosecutions have been launched under the Child Labour (Prohibition and Regulation) Act 1986 during the period 1997 to 2004 in the Districts now forming the State of Jharkhand. These pertain to 1077 violations detected from 14,337 inspections. Most of these cases pertain to the regulatory provisions of the Act. Prosecutions for engagement of children in the prohibited work has been nil.

8.61 Five districts of Jharkhand namely Singhbhum, Dumka, Sahibganj, Pakur and Garhwa are covered under the NCLP. A total of 114 special schools are imparting accelerated primary education (First to Fifth Class) to 5700 children in 3 years. Girls constitute 52.6% of the total children. These projects have been in operation since 1996-97. The State Government has been asked to furnish full information about the number and composition of beneficiaries and final result of three years schooling for the periods 1996-97 to 1999-2000, 2000-2001 to 20.2.2003.

8.62 The review revealed that the Government of Jharkhand is making sincere efforts to ensure enrolment of all children in 6-14 years age group to schools by strengthening the formal and non-formal schooling capacity. The Commission has been informed that the number of non-school going children in the age group of 6-14 years had been brought down from 11,75,123 on 1.4.02 to 8,01,711 on 1.4.03 and 6,52,168 on 31.1.2004. The child population in the age group of 6-14 years in Jharkhand is 58,08,517. Out of these 6,52,168 children (11.2%) are out of school children.

2) Child Labour – The Need for a New Legislation

8.63 As reported in the annual report of the Commission for 2001-2002, despite the repeated pronouncements of the Supreme Court and monitoring by various agencies including

the Commission itself, widespread child labour persists in the country. Pointing out the inherent deficiencies in the existing legislation relating to child labour, the Commission observed that the entire issue of child labour must be viewed through the perspective of the rights of the child. The Commission held that the term “hazardous” in Article 24 should necessarily be interpreted with reference to what is hazardous for 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 Commission further opined that 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, must move beyond debates to amend the Constitution, and find expression in practical programmes for every district, village and family of India.

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

8.65 In the Memorandum of Action Taken, the response of the Government to the above observation of the Commission, has been given. The same is being reflected in the following paragraphs.

8.66 The enforcement of the provisions of the Child Labour (Prohibition & Regulation) Act, 1986 and other related laws is being monitored by the Ministry of Labour regularly. As regards rewriting of laws regarding child labour, this issue was also considered by the Second National Commission on Labour which made certain recommendations and also suggested an indicative law replacing the existing Child Labour (Prohibition & Regulation) Act. This has been examined in the Labour Ministry which is of the view that the suggested amendments are not practicably enforceable.

8.67 The Government considers that the mainstreaming of children from bridging schools set up under the National Child Labour Projects (NCLPs) into the formal schooling system is the most important aspect in the process of rehabilitation and elimination of child labour. This Ministry is, therefore, working in close cooperation and conjunction with the Department of Elementary Education & Literacy, Ministry of Human Resource Development. As a part of this policy, this Ministry has formulated the strategy for elimination of child labour during the 10th plan, which stipulates that the younger children in the age group of 5-8 years will be admitted directly to the formal schools under Sarva Shiksha Abhiyan of Ministry of Human Resource Development. The schools set up under various NCLPs will concentrate on children in higher age group i.e. 9-14 years. It is expected that this will help in achieving

the goal of putting all the children in the schools and elimination of child labour as per the target set out by Ministry of Human Resource Development.

8.68 The hazardous occupations and processes are identified by the Technical Advisory Committee constituted under Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986. As suggested by the Commission, this Committee has the mandate under the Act to consider and identify the hazardous occupations and processes, keeping only 'child' in view. This Committee is headed by the Director General, Indian Council of Medical Research and consists of experts in various fields of medicine from various institutions in the country. The Committee considers all the aspects of a particular occupation or process in relation to its effect on the health of the children in order to decide whether it is hazardous for children under the existing law.

C) Efforts in the Southern States of Andhra Pradesh, Tamil Nadu, Karnataka and Kerala

8.69 Shri K.R. Venugopal, Special Rapporteur, NHRC interacted regularly with the Chief Secretaries of Andhra Pradesh, Karnataka, and Tamil Nadu, as also the nodal Secretaries dealing with the subject with a view to reviewing the implementation of various provisions of the Acts relating to bonded labour and child labour.

8.70 During the year under review, Shri K.R. Venugopal undertook 7 visits to Karnataka, 4 visits to Tamil Nadu and 7 inspection-cum-study visits in Andhra Pradesh. He held review meetings with the Chief Secretaries of these States, nodal Secretaries dealing with Bonded Labour and Child Labour and the Commissioners and Heads of Departments concerned. During the meetings with the Chief Secretaries, Shri Venugopal persistently raised the issue relating to inadequate financial provisions made in the budget for the rehabilitation of the released bonded labour and implementation of the action plans formulated by them for eradication of child labour practices.

8.71 The Special Rapporteur reviewed the progress achieved in identification and rehabilitation of bonded labour in Karnataka and the progress in the implementation of the Action Plan for Elimination of Child Labour in the State. In the bonded labour prone HD Kote area of Mysore district, the Special Rapporteur held public inquiry in Chikkanandi village to highlight the failure of the State Government to release finances for the rehabilitation of the 33 bonded labourers freed in 2001. He also visited Mandya to check the progress in the prosecution of the infamous Hongarahalli chained bonded labour case detected in 2000. As mentioned in the last report, Shri Venugopal had made an inquiry in this case alongwith the District Magistrate and the Superintendent of Police, upon hearing that the Public Prosecutor was himself involved in the prosecution witnesses turning hostile in the Special Court. Shri Venugopal also made field visits to the child labour belt of Magadi and Ramanagara areas to get a first-hand knowledge of the problem of child labour. He held meetings with

the concerned Government officials, NGOs and the owners of silk reeling units to assess the status of child labour and impressed upon the State Government to issue appropriate instructions to take forward the mandate of the Supreme Court on Bonded Labour and Child Labour. Visits were also made by him to the National Child Labour Project Schools in Karnataka and Tamil Nadu to evaluate their functioning.

8.72 Shri Venugopal held discussions with the Government of Tamil Nadu on the State Level Model Draft Rehabilitation Plan prepared at the instance of the Special Rapporteur. Of late, it was decided that these Plans should now be prepared for each district. This strategy could be advocated in other States as well. During the year, Tamil Nadu formulated an Action Plan for Eradication of Child Labour, as was done by Karnataka in 2001. The Special Rapporteur, Shri K.R. Venugopal, furnished extensive inputs in the formulation of these Plans. The Commission appreciated the action of the Tamil Nadu Government and the efforts made by the Special Rapporteur in this regard. The Special Rapporteur has also been pursuing with the Government of Andhra Pradesh the formation of an action plan for the eradication of child labour in the State having the largest incidence of child labour in the country. The draft Action Plan, however, has been prepared by Andhra Pradesh. Shri Venugopal has now embarked upon the task of preparing road maps based on these plans so as to identify requirements of resources against a specific time frame to make the plans operational in realistic terms.

8.73 The Commission desired that its Special Rapporteurs in other States as well should work for developing similar Model Action Plan in consultation with experts on the subject, which could be adopted by States.

8.74 During his visit to Madurai in Tamil Nadu, Shri K.R. Venugopal held a meeting with Government Officials and office bearers of NGO for a discussion on the techniques they adopt in identifying Tamilian bonded labourers in States outside Tamil Nadu, which could be helpful for taking up similar work in Andhra Pradesh.

8.75 The Special Rapporteur visited the Debt Bondage Project of the ILO in Rangareddy district of Andhra Pradesh. He also visited Kurnool for a review meeting with the District Magistrate and other district officials, with particular reference to the cases of chained bonded child labour of Bhuvaneshwari and Srinivas detected in May, 2002. As mentioned in the last report, while investigating the matter, the Special Rapporteur took with him the Principal Secretary in the Department of Social Welfare and the Commissioner of Education in order to involve them in the inquiry alongwith the District Magistrate and the Superintendent of Police.

8.76 During the year Shri K.R. Venugopal held meetings and interactions with activist organizations and institutions working in the area of child labour and bonded labour. Chief among these were with the ILO, the UNICEF, the Union Labour Ministry, the National Law

School of India University (NLSIU), Bangalore, the Institute for Social and Economic Change (ISEC) and NGOs in the States of Karnataka, Tamil Nadu and Andhra Pradesh.

8.77 An important case where the efforts made by the Special Rapporteur yielded significant results is the one relating to the case of a young bonded woman labourer Smt. Thenmozhi of Tamil Nadu. Shri K.R. Venugopal investigated this case based on which a recommendation was made to the Commission to seek the payment of a compensation of Rs. 2.0 lakh from the Government of Tamil Nadu to the victim against whom her masters had inflicted considerable violence leading to the suspected miscarriage of the child she was pregnant with. The Tamil Nadu Government, however, agreed to pay a compensation of Rs. 25,000, which was considered inadequate by the Commission. The Special Rapporteur, pursued the matter with the Government of Tamil Nadu, who during the year under review took a decision to enhance the compensation to Smt. Thenmozhi to Rs. 1.0 lakh. The Commission accepted this decision of the Tamil Nadu Government and has also expressed its appreciation of the response of the Government of Tamil Nadu. The other aspects of this case such as prosecution are being pursued.

D] Rights of the Disabled

8.78 Undoubtedly there is a sizable proportion of people with disabilities. However, the exact estimates of their population are not yet known. Going by a conservative estimate of 5% of the population suggested by WHO for developing countries, it is estimated that there should be at least 50 million persons having some form or the other of disability in India.

8.79 The Commission has been deeply concerned about the obstacles the Disabled face in the enjoyment of their fundamental freedoms and human rights. In the year 2002-03, the Commission communicated a comprehensive set of recommendations to various Ministries and Departments of Government of India and the State Governments for proper implementation of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. From the progress reports received it appears that disability related policy tends to be couched in a welfare model. The emphasis of the disability schemes and programs is focused on rehabilitation of persons with disabilities and there is a corresponding neglect in improving the systemic and structural inadequacies. Most of the states and union territories continue with a piecemeal approach and as a consequence the entire process of development has by-passed people with disabilities.

8.80 In States like Rajasthan, Punjab, Madhya Pradesh, Andhra Pradesh, Karnataka, Tamil Nadu, Gujarat and in the Union Territory of Chandigarh, a positive impact of the proper implementation of the Disabilities Act 1995 is quite visible. However, no significant improvements were recorded in a majority of States and Union Territories. There seems to be a considerable lack of awareness regarding various obligations under the Disabilities

Act. The High Court of Patna in the case 2894/4/2002-2003/FC (Mamta Kumari V/s the State of Bihar & Orissa) has also observed, “The lack of interest in implementing the Act, which specially takes care of disabled persons, can be seen as the inaction of the State Government in planning for the disabled”. The court further notes that “The budget outlay, allotment and expenditure on persons with disabilities for 1993-2001 reveal that no program in the State of Bihar even took off. The funds are neither committed nor properly utilized on affirmative action schemes and are rather spent on exhibitions, seminars and conferences, which has no earthly use. Finally the Court held that on an affirmative action not taken under the Act, it will be appropriate that this order be marked in the National Human Rights Commission”.

8.81 Responding to the order of High Court of Patna, the Commission has examined the wide ranging provisions of Disabilities Act 1995, with a view to identifying areas for affirmative action. These have been classified under five broad themes to facilitate appropriate action by various ministries and departments in the state governments.

1) Disability: A State Subject

8.82 As per Entry 9 in the List II of Schedule 7 of the Constitution, the subject of ‘Relief to the Disabled and Unemployable’ is the responsibility of the State Governments. Despite the Constitutional mandate, most of the State Governments have neither introduced any law nor have introduced the State Policy on Disability so far. Some schemes have been introduced to provide scholarships, pensions, assistive devices, Braille books, out of turn houses etc. But, their impact has been insignificant.

8.83 Taking note of the indifference of the state governments toward adopting a state policy on disability, the Commission plans to proactively device a framework to aid policy formulation by state governments. This framework would be built on the models of best practices.

2) Freedom of Information and Communication

8.84 At the center of the challenge posed by the emerging Information society is how the freedom of information and expression, which is fundamental to the effective exercise of human rights, would further evolve. These rights are enshrined in the UN Charter 1947, and further elaborated in Article 19 of the Universal Declaration of Human Rights 1948. For the governments in the Asian and Pacific region the Biwako Millennium Framework outlines action to promote these freedoms in the emerging information age.

8.85 There seems a political will in many countries to support the participation of people with disabilities in information society. New legal frameworks and standards are being developed to promote the concept of universal design and universal service. The

telecommunication, broadcasting and information laws and regulations falling short of accessibility standards have either been repealed or revised. These measures have been instrumental in redefining the standards of information production, distribution and processing.

8.86 Keeping in view the urgent need to protect the freedom of information, expression and communication in the emerging information society by people with disabilities, the Commission advised the Ministry of Urban Affairs and Employment in the Government of India to take lead in guiding the work of an inter-ministerial committee to evolve a national accessibility ICT policy. However, the Ministry of Urban Affairs has expressed its inability to take the lead, as the subject matter does not relate to them. Therefore, the Commission plans to facilitate the formation of a taskforce to assist coordinated action towards the creation of a barrier-free information society.

8.87 Analysis of the complaints filed by persons with disabilities before the Commission and the media reports indicate that persons with disability are subject to systematic violations and denial of rights. The most common among these include:

- Denial of right to work which one freely chooses and accepts
- Denial of just and fair conditions of work
- Denial of an adequate standard of living for himself and his family, including adequate food, clothing and housing
- Denial of access to public, transport, built infrastructure and information systems
- Denial of participation in social, cultural, and political life
- Denial of right to marry and to form a family
- Denial of appropriate assistance in exercising their full capacity before the law
- Denial of right in the family property and to own property
- Denial of safety and minimum standards of living in the institutions

8.88 The Commission believes that people with disabilities provide us with a means to understand the way in which social life can be organised to be fair, to be just, to be humanitarian and to be equal. They provide us an opportunity to redefine norms of social justice, citizenship and well-being. In that sense disability is an important factor that can leverage change and many contribute to social transformation. Much would depend on how the challenge of disability is responded to.

Chapter 2 of this Report deals with disability issues in detail.

E] Problems of Denotified and Nomadic Tribes

8.89 The Commission has been concerned about the violation of human rights of the communities designated as Denotified Tribes (DNT) and Nomadic Tribes (NT). They had, earlier in pre-Independence India, been identified as “Criminal Tribes”. Though the Criminal Tribes Act, 1871 was annulled soon after independence, prejudice against them has persisted. The police, as well as members of the public, frequently treat persons belonging to these communities as “born criminals” and “habitual criminals.”

8.90 As mentioned in its earlier report, the Commission had convened a meeting of the Chief Secretaries and Senior Officers of a number of concerned States in February, 2000 to discuss the matter concerning the alleged ill-treatment meted out to the DNTs/NTs by the administration and by the police in particular.

8.91 A number of specific recommendations were then made to the State Governments and, subsequently, the Commission made efforts to follow-up on those recommendations. It is however disappointing to note that most of the States have shown very little enthusiasm in the implementation of these recommendations made by the Commission.

8.92 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 Denotified Tribes and Nomadic Tribes. Reports were received from States, details of which can be had in the last annual report of the Commission.

8.93 The Commission took note of the responses received from the Central and State Governments. While it appeared that steps were being taken in some States to merge the Denotified Tribes and Nomadic Tribes with other categories of disadvantaged sections of the society and provide them the appropriate benefits, the Commission cannot but observe that it continues to receive complaints alleging the violation of the human rights of persons who constituted the Denotified Tribes and Nomadic Tribes. The Commission observed that a de-facto situation is still prevailing in which persons belonging to these groups are singled out for arbitrary and discriminatory treatment.

8.94 As the concerns of the Commission have not been addressed to its satisfaction, the matter has been further reviewed. In August, 2003, letters were written to the States requesting them to provide specific information about the DNT/NTs on the following lines:-

- (i) The status of inclusion of the DNT/NTs in the category of SC/ST/OBC in each State;
- (ii) Whether there still exist pockets/special settlements in the State of DNT/NTs or

whether such settlements have been merged with the general population in villages/towns;

- (iii) The facilities being provided to the DNT/NTs by way of schooling, primary health, etc.
- (iv) Whether there are reports of specific cases against particular DNT/NTs as perpetrators of particular crimes or as victims of mal-treatment by the Administration and inquiry made thereof;

8.95 The response received from the States is under examination. Information from the States of Andhra Pradesh, Arunachal Pradesh, Bihar, Delhi, Jharkhand, Jammu & Kashmir, Kerala, Maharashtra, Meghalaya, Mizoram, Orissa, Uttar Pradesh and Uttaranchal is still awaited.

8.96 Meanwhile, with a view to ascertain the socio-economic conditions of the DNTs/NTs the Commission has approved a research project on “a Study of the Human Rights Status of Denotified and Nomadic Communities of Delhi, Gujarat and Maharashtra” received from the DNT/NT People’s Action Group headed by Shri G.N. Devy.

F] Manual Scavenging

8.97 The efforts made by the Commission to deal with the issue of manual scavenging which is one of the most degrading practices prevailing in the country have been highlighted in the earlier annual reports of the Commission.

8.98 The Commission has repeatedly taken up this matter, at the highest echelons of the Central and State Governments through a series of personal interventions by successive Chairpersons of the Commission.

8.99 During the period under report, the Chairperson Dr. Justice A.S. Anand wrote a letter to the Prime Minister following the CAG report that the funds earmarked for the abolition of manual scavenging were not properly utilized. He requested that the concerned authorities be directed to take immediate steps to end the practice of manual scavenging within a specific time-frame.

8.100 The Commission had, on earlier occasions also taken up the matter with the Hon’ble Prime Minister in 2001 and again in 2002. In response to the Commission’s persuasion, the matter was included as part of the Prime Minister’s 15-point initiative. In keeping with the Prime Minister’s announcement, the Planning Commission formulated a National Action Plan for Total Eradication of Manual Scavenging by 2007.

8.101 As indicated in the last annual report, the Commission continued to advocate appropriate action on this matter, not only at the level of the Central Government but also in its interaction with the State Governments. A meeting was held on 6 January 2003 with the Urban Development Secretaries of the States of Bihar, Gujarat, Haryana, Jharkhand, Jammu and Kashmir, Manipur, Maharashtra, Orissa, Punjab, Tamil Nadu, Uttaranchal and Uttar Pradesh to discuss the progress made in the eradication of manual scavenging.

8.102 Further, in view of the unsatisfactory response from some of the State Governments, the Commission held a meeting on 6th November, 2003 with the Secretaries/representatives from the concerned Departments of the States of Bihar, Jharkhand, Madhya Pradesh, Gujarat, Karnataka, Maharashtra, Punjab, Rajasthan, Uttar Pradesh and West Bengal to discuss the matter regarding eradication of manual scavenging in the country. The Safai Karamchari Commission, the Planning Commission, HUDCO, Ministry of Urban Development, Ministry of Social Justice and Empowerment, Sulabh International Social Service Organization and Actionaid India were also invited to attend the meeting.

8.103 The Chairperson of the Commission, in his opening remarks, stated that it was a distressing fact that 56 years after independence and 10 years after the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 came into force, the inhuman practice of manual scavenging is still continuing. Urgent steps are needed to do away with this demeaning practice. While the Government is expected to take the necessary steps, the mindset of the civil society also needs to be changed. The NGOs' can play an effective role in that behalf.

8.104 The States were asked to indicate the progress made with respect to the following action points identified by the NHRC:-

- Adoption of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993;
- Survey to identify the number of scavengers and their dependents;
- Imparting of training to the identified scavengers and their dependents;
- Rehabilitation of the identified scavengers utilizing funds available under Centrally Sponsored schemes;
- Making provision in building by-laws not to sanction the construction of new buildings and also not to issue completion certificate unless there is provision of water flush latrine;
- To pass a resolution to fix a final date by which the State is free of dry latrines.

8.105 Most of the States reported that the process of conversion of dry latrines with wet latrines was continuing. Fresh surveys were also being conducted in certain States.

8.106 The representative of the Ministry of Social Justice apprised the meeting that there was no dearth of funds. The Ministry requested the States to send proposals for rehabilitation of the freed scavengers under the National Scheme of Liberation and Rehabilitation of Safai Karamcharis (NSLRS).

8.107 The Ministry of Urban Development and Poverty Alleviation requested the States to urgently launch a programme for identification of manual scavengers and furnish fresh data. The Ministry has also invited suggestions from the States for improving the implementation of the Centrally Sponsored Scheme of Urban Low Cost Sanitation Scheme for Liberation of Scavengers.

8.108 The representative of the Planning Commission stated that with the launching of the “National Action Plan for Total Eradication of Manual Scavenging by 2007”, the scheme for construction of wet latrines and the training and liberation of manual scavengers will be implemented by the Department of Urban Employment and Poverty Alleviation. An inter-ministerial Committee has been set up in the Ministry of Social Justice to discuss the issues relating to the implementation of the National Action Plan.

8.109 The representative of HUDCO, in response to the suggestions of the States for providing more subsidy for conversion, informed that they are contemplating framing of new guidelines for providing 100% subsidy for construction of wet latrines including super-structure. The representatives of the National Commission for Safai Karamcharis highlighted the somewhat callous attitude of the State administration in dealing with the problem of manual scavenging and implementation of the NSLRS. The representative of Sulabh International, an NGO active in this field, inter alia, suggested that there is no programme for abolition of manual scavenging in rural areas, under the Ministry of Rural Development. A policy decision may be taken in this regard keeping in view the peculiarities of the problem in rural areas. The representative of Action Aid, an NGO involved in the eradication of manual scavenging, stated that instead of rehabilitating the freed scavengers in Sanitary Marts or other related works, they should be rehabilitated in other professions to remove the stigma attached to them.

8.110 After discussions, the Chairperson, in his concluding remarks, stated:-

- The baseline data is scanty and proper surveys need to be done in which NGOs and Safai Karamcharis can be involved to identify the number of dry latrines, the manual scavengers and their families who are required to be rehabilitated.
- The Statutes, Rules, Notifications are not self-implementing. They require implementation. Keeping in view the magnitude of the problem, total commitment and absolute dedication is required.

- Six-monthly targets should be set by the States themselves for:-
 - 1) Converting Dry latrines &
 - 2) Constructing New Latrines.
- Though some of the States say that the problem of manual scavenging has been eliminated in towns, the status with respect to villages needs to be reviewed.
- Rehabilitation of scavengers should be under-taken by giving 'vocational training' in other fields as well so that the 'stigma' attached to them can be removed comprehensively.
- The States should fix a target for themselves and fulfill their commitment.

8.111 The Commission is monitoring the implementation of the decisions taken in the matter.

G] Human Rights in Situations of Natural Disasters

1) Monitoring of Cyclone Reconstruction Work in Orissa

8.112 The Commission continued to monitor the implementation of recommendations dated 8 December, 1999 and 21 August, 2000 references to which have been made in earlier reports of the Commission. The Commission has been regularly receiving quarterly progress reports from the Govt. of Orissa in this connection. The report for the quarter ending 31.3.04 presents a somewhat satisfactory picture of the progress of the following pending matters:

- Construction of Multipurpose Cyclone Shelters:- Out of 60 MCSs taken up with Chief Minister Relief Fund (CMRF), construction of 57 has been completed. Out of 40 MCSs to be built with the World Bank assistance, construction of 8 has been completed and construction of 52 is in progress.
- Construction of School Buildings:- Construction of 1046 out of a total of 1122 High School buildings and 5645 out of a total of 5705 primary school buildings have been completed.
- Operationalisation of ICDS Projects: All the 41 ICDS Projects including 27 sanctioned in the wake of the super cyclone have been operationalised. However, Child Development Project Officers (CDPOs) have been provided in 37 Projects only. Vacancies of Anganwadi workers and Helpers have been filled up to the extent of 96.4% and 99.7%, respectively.

8.113 The Commission has requested the State Government to expedite the inquiry into the delay in the opening of sluice gates at Ramel Dam and regulating water from Hathgarh Dam, which had caused aggravation of the impact of the floods in Keonjhar town and Bhadrak municipal area.

2) (a) Gujarat Earthquake

8.114 The Commission took suo-motu cognizance of the calamity that arose from the devastating earthquake, which hit large areas in the State of Gujarat on 26th January, 2001. The Commission, first of all, obtained report from Shri P.G.J. Nampoothiri, Special Representative, NHRC on the relief and rehabilitation measures being taken there so as to enable the Commission to take steps for issuing appropriate directions/guidelines to the concerned authorities. The Commission also decided to depute Shri N. Gopalaswami, the then Secretary General, NHRC to visit the affected areas and submit his report. The reports submitted by Shri Gopalaswami and Shri Nampoothiri were considered by the Commission in the meeting held on 29.5.2001. The Commission gave certain directions and made recommendations for immediate attention and action by the concerned authorities in Gujarat and in the Central Government. Details of the recommendations are given in the last annual report 2001-2002.

8.115 In order to monitor closely the follow-up action taken by the State Governments to impact its directions, the Commission set up a Group consisting of Shri PGJ Nampoothiri, Special Rapporteur, NHRC; Shri Gagan Sethi, Managing Trustee of Jan Vikas Trust; Smt. Annie Prasad, President of Kutch Mahila Sangathan and Prof. Anil Gupta, IIM, Ahmedabad. The Commission considers the reports sent by the Committee in its meetings held from time to time.

8.116 Shri P.G.J. Nampoothiri, Special Rapporteur submitted a preliminary report in February, 2003 regarding the monitoring of the relief of persons disabled in the earthquake. He has reported the following developments/problems:-

- (i) Grant of assistance to paraplegics has been raised to Rs.2000/- per month and they have started receiving the grant. Unfortunately these steps have come a little too late. Many of the 101 living paraplegic persons have become victims of depression and need much more attention;
- (ii) Difficulties are being experienced by the injured persons in getting temporary and permanent disability certificates, which hamper claim for financial assistance;
- (iii) Closer monitoring required for implementation of model standards in town planning and constructions to make them disabled persons friendly; and
- (iv) Govt. has recently issued orders appointing a few physiotherapists.

8.117 The Committee formed by the Commission to monitor relief and rehabilitation of quake-affected persons continued its work during the current year as well. The Special Rapporteur, Shri P.G.J. Nampoothiri alongwith other Committee members visited 8

villages in Kutch during the reporting period. In the villages, people whose houses were damaged by the earthquake have got themselves rehabilitated either on their own or with the assistance given by the Government or through NGOs. In Kutch alone, 1,56,000 houses have been constructed in rural areas, of which about 50,000 were built by the NGOs. Out of these, the National Council for Cement and Building Material (NCCBM) found that less than 5% of those were non-earthquake proof after a few of them were retro-fitted with seismic norms.

8.118 In the badly affected towns of Kutch, Bhuj, Anjar, Bhachau and Rapar, town planning schemes have been approved. The Government has approved a plan to allot 25 Sq.m. built up accommodation to the urban poor on re-location.

8.119 Of the over 10,000 patients receiving psychotherapeutic treatment, about 3,000 have fully recovered. From the 111 paraplegics, 53 have been given specially designed houses by some NGOs. These persons are now receiving an allowance of Rs.2,000/- from the Government every month. In all, 245 children orphaned by the earthquake have also been taken care of.

8.120 The Special Rapporteur has also held two meetings with the officials of Gujarat State Disaster Management Authority.

2 (b) Trauma Counselling for the Victims of Violence in Gujarat

8.121 In the backdrop of large scale violence and horrific events which occurred after the Godhra incident, the Commission granted financial assistance to Swanchetan Society for Mental Health, New Delhi for a proposal for providing trauma counselling to the victims of violence. It was stated that the fear in the minds of the people has become very deep rooted and the situation prevailing in the State was such that the trauma faced by the people was intense.

8.122 The project started in July, 2002 was due to be completed in six months. The Swanchetan Society however later apprised that the work will be long-term and will continue for one more year. Swanchetan have been providing specific therapy and techniques in Post Traumatic Stress Disorder (PTSD), for nearly three hundred children to deal with the nightmares, flashbacks and other psychological symptoms after the riots.

8.123 A preliminary report was received from the society during the year regarding the work done so far. The highlights of the report are as under:-

- (i) Many children, who were either victims or witnesses in the Gujarat riots, developed symptoms like nightmares, hyper-alertness, withdrawal from people, phobias and many psychiatric symptoms;

- (ii) The focus was put on understanding the nature of grief and shock that human beings face in a traumatic situation;
- (iii) Empowerment of community is crucial in healing process of the individuals;
- (iv) Counseling has been carried out in various camps located at Baroda, Godhra, Baria, Lunawada, Fatehpura, Halol, Kalol, Ahmedabad, etc.
- (v) In a period of five months, counseling has been done for nearly one thousand children. Out of these, 242 (1/5th of the total) have suffered severe trauma.

8.124 A statistical analysis of the study was being carried out which would help in understanding the short term and long term effects of trauma and communal rioting. The final report of the project is expected to be available in early 2004.

H] Quality Assurance in Mental Health

(1) Mental Hospitals in Ranchi, Agra and Gwalior

8.125 The Commission remained deeply involved in overseeing the functioning of the Ranchi Institute of Neuro Psychiatry and Allied Sciences (RINPAS), Institute of Mental Health and Hospital (IMHH), Agra and the Gwalior Mansik Arogyashala (GMA), Gwalior as directed by the Supreme Court of India in their Order dated 11 November, 1997. The Commission continued to monitor the implementation of the tasks assigned to these Institutions by the Supreme Court while granting them autonomous status in September 1994.

8.126 Shri Chaman Lal, Special Rapporteur of the Commission has been visiting the Institutions periodically and submitting detailed reports on the working of various services and facilities, treatment and care of patients, training and research activities and community health services as specified by the Supreme Court. Justice Mrs. Sujata V. Manohar also visited the IMHH Agra on 5th May, 2003.

8.127 Considerable improvements have since been noticed in the working of these Institutions. Admissions and discharge have been streamlined in accordance with the provisions of the Mental Health Act, 1987 and the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare. A clear shift from custodial to treatment and care concerns are noticed in the functioning of these institutions. Cell admissions have been totally stopped. Switch over from close to open system of custody of patients is being steadily improved. Incidence of death of patients have come down as a result of close scrutiny of every case by the Commission. Library facilities, training

activities and research works have shown appreciable improvement at RINPAS, Ranchi and the IMH&H, Agra. The aspect of Community Mental Healthcare is receiving greater attention than before. The Commission is closely monitoring the implementation of the specific task assigned by the Supreme Court to these Institutions.

8.128 The Special Rapporteur, Shri Chaman Lal visited the Ranchi Institute of Neuro Psychiatric and Allied Sciences, RINPAS on 4th July, 2003 and again on 26-03-2004. The report of the earlier review was considered by the Commission on 14th August, 2003. Copies of report were sent to the Chief Secretary, Government of Jharkhand and Director, RINPAS for compliance with the observations and directions of the Commission. The reviews carried out by the Special Rapporteur included all round activities of RINPAS from providing therapeutic care to living condition of the inmates, functioning of the management, staff position, teaching and academic activities, community outreach programme to Half-way Homes.

8.129 On the basis of reviews it can be said that RINPAS has been making steady progress in achieving the object set by the Supreme Court while granting it autonomous status. The standard of diagnostic and therapeutic services, living conditions and patients care have registered distinct improvements. Promising steps have been taken for developing training facilities for medical and para medical personals. The scope and reach of the community outreach programmes has been expanded. The credibility of RINPAS in government and private circles is seen to have gone up. However, the staff position remains unsatisfactory. A number of key posts in Psychiatry, Clinical Psychology, Psychology Social Work, Psychiatric Nursing and Neurology department were found vacant. The shortcomings have been conveyed to the Chairperson of the Management Committee of RINPAS, with a request to take necessary remedial actions.

8.130 Hon'ble Member Justice Sujata V. Manohar accompanied by Shri Chaman Lal, Special Rapporteur, visited the Institute of Mental Health & Hospital, Agra on 5th May, 2003 and reviewed the diagnostic and therapeutic facilities, staff strength, progress regarding professional courses, research activities, Half-way Home and rehabilitation of long stay patients. The Special Rapporteur again visited the Institution on 5.03.2004. It is satisfying to note that IMHH, Agra has been making steady progress in realising the objectives set out by the Supreme Court while granting it the status of an autonomous Institution. The standards of diagnostic and therapeutic facilities and hospital services have gone up considerably since the NHRC got involved in supervising its functioning. Patients' care and welfare are also receiving full attention from the establishment. The quality of repair and renovation works and beautification of the campus are striking features of this Institute. Development of facilities for training of medical and para-medical staff has, however, been slow because of difficulties in filling up the senior posts in various disciplines. Participation of the Institution in Research activities is still commendable. Available facilities of

occupational therapy, an essential component of mental health care are inadequate. Community outreach programme can be expanded after staffing pattern improves. It is hoped that with the appointment of a new Director, the institute will improve its overall functioning as a hospital and make significant contribution in the field of research and training.

8.131 The Special Rapporteur visited Gwalior Mansik Arogyashala, (GMA) on 31-3-2004. A detailed study of the functioning of the Hospital shows that the progress in the GMA in achieving the objectives set by the Supreme Court while granting it autonomy cannot be rated as satisfactory. The observation in this regard has been made in earlier reports also on the functioning of the Institute since it came under the supervision of the NHRC. The standard of diagnostic and therapeutic services has registered very little improvement for want of the Departments of Clinical Psychology and Psychiatric Social work. While the living conditions and patients' care have improved, absence of occupational therapy is a glaring deficiency, although an encouraging beginning has been made in the female section recently. The community outreach programme has now started receiving proper attention and will hopefully be carried forward. The aim of making GMA a centre of excellence in the field of Training and Research remains a distant dream. Promises made from the level of the Minister and Secretary Medical Education in the Government of MP to the Chairperson, NHRC to improve the staffing pattern have not so far materialized.

a) Guidelines on Reporting Deaths in the Three Mental Hospitals

8.132 The Commission has, from time to time, received reports from three mental hospitals viz RINPAS, Ranchi, IMHH, Agra and the GMA, Gwalior about deaths of inmates due to natural causes or as a result of unnatural causes i.e., homicide or suicide. In order to standardize the procedure to be adopted by the three hospitals in reporting the deaths to NHRC, the Commission has formulated the following guidelines:-

- a) The Commission should be informed immediately about every death, natural or unnatural, of the inmate, which occurs in the Institute.
- b) Post mortem examination must be conducted in each case of death. The Director of the hospital will examine each case in the light of the cause of death mentioned in the post mortem examination report.
- c) In cases of unnatural death i.e. suicide or homicide
 - i. The Director of the Institute shall order an inquiry by a board of officers headed by one of the senior doctors to go into all relevant aspects of the case, if the death in question was unnatural death or circumstances of death raised suspicion of foul play.

- ii. The report of the court of inquiry should be finalized after the Management Committee has considered it in its statutory periodical meeting and satisfied itself about the findings of the inquiry.
- iii. In all cases of homicide or suicide, the board of officers holding the inquiry should also consider the issue of responsibility of the supervisory staff and give a clear finding on the same.
- d) In cases of natural death i.e. death due to illness, or an accident caused by carelessness on the part of the deceased because of his mental state-
 - i. The Director shall send the inquiry report to the NHRC after examining the post mortem report.
 - ii. In case the post mortem report warrants a detailed inquiry or a complaint is received from the family of the deceased, the procedure laid down in (c) above shall be followed.

8.133 The guidelines have been sent to the three Mental Hospitals for compliance.

b) Expert Group on Mental Health

8.134 The Constitution of an Expert Group under the guidance of Justice Smt. Sujata V. Manohar, Member, NHRC to deal with the problem of rehabilitation of cured but abandoned patients was mentioned in the annual report 2001-2002.

8.135 During the course of the year under review, a meeting of the Group was held on 2nd April, 2003. The meeting identified two categories of patients who could be rehabilitated:-

- i) Patients who could be repatriated to their families after short stay in the Half Way Home, and
- ii) The long stay psychiatric patients, LSP

8.136 Another meeting of the Group was held on 7th January 2004. The meeting discussed the new strategy being evolved in the Ministry of Health & Family Welfare about the de-institutionalization and replacement of existing system of Mental Health Centres by the Community-based Services. The following measures were decided upon for facilitating the rehabilitation process:-

- (i) Long stay patients, LSPs who are cured be given vocational training by Actionaid India;
- (ii) Some arrangements be made for patients who are manageable and required umbrella care in the community;

- (iii) A Neuro-psychologist may be placed by Actionaid India for patients who have cognitive deficiencies;
- (iv) Actionaid India to train these patients in living skills and social skills, using the skill training, behavioral response and token economy methods.
- (v) It was pointed out that a majority of the chronically ill patients are abandoned and such people need institutionalized care. For them, Half-way Home will not serve the purpose and some other measures are needed;
- (vi) Intensive training for patients and family is needed before their release to check replace of infirmity either due to behavioral problem of the family/society or due to poor drug compliance.

8.137 The Director, Actionaid India, Shri Harsh Mander has suggested that the Ministry of Social Justice & Empowerment, Govt. of India may consider extending the benefit of the social security pension scheme to those mental patients who are discharged from mental hospitals but have nowhere to go. This will act as an incentive in the matter of acceptance of the patients by their families and will increase the rate of restoration of LSPs to their families.

c) Half-Way Homes

8.138 Half-way Homes in Gwalior Mansik Arogyashala, Gwalior are working in both male and female sections with the help of NGOs. They are located just outside hospital campus. The male Half-way Home is being run by an organisation called SAKET. It has so far received 114 patients selected for gradual discharge and restoration to their families. 82 of them actually been restored to their families by the efforts of SAKET. The female Half-way Home is being run by the Association for Social Health in India. It was started in May, 2001. The team of dedicated workers led by ASHI Vice President, Ms. Meera Dawar has done commendable job in imparting vocational training to inmates in useful skills like stitch-craft, embroidery, typing, candle making etc. What would impress one most and can not go unnoticed is the sense of self esteem and dignity the inmates have acquired while living in this home.

8.139 In the Institute of Mental Health & Hospital, Agra, a Half-way Home for male patients has been started in the Family Ward and is being run by the institution itself. During the course of the year, the Institute has started a Half-way Home for female patients also.

8.140 Halfway Homes have also been established in both the men and female sections in RINPAS. The arrangement was ad hoc and has been serving the elementary purpose of segregation of cured patients and providing them some relaxation and facilities for self management. However, a proper Half-way Home is required to be established in the hospital campus and run by some NGO. Sanjeevani Gram Trust has been identified by

the Director, RINPAS as a credible NGO in this connection. SGT has submitted a proposal, for running Half-way Homes to the Ministry of Social Justice and Empowerment (MOSJE).

8.141 The Commission feels that establishment of Half-way Homes duly funded by the MOSJE is an urgent need of all the three mental hospitals. The Commission hopes that the Ministry will take immediate necessary action in the matter.

2) Visit to Govt. Mental Hospitals in West Bengal

8.142 Besides overseeing the functioning of RINPAS, Ranchi; IMHH, Agra and GMA, Gwalior, the Commission undertook the study of conditions in some other Government mental hospitals also. To begin with, Justice Smt. Sujata V. Manohar, Member, NHRC accompanied by Shri Chaman Lal, Special Rapporteur visited Calcutta Pavlov Hospital and Lumbini Park Hospital, Kolkata on 16-17 January, 2004. The report considered by the Commission on 18 March 2004 gave a comprehensive picture of the diagnostic and therapeutic facilities, patients care, standard of occupational therapy facilities and NGO involvement. The Commission made a series of recommendations to improve the functioning of these hospitals, especially the care and treatment of patients from the viewpoint of their human rights. The report has been sent to the Government of West Bengal on 5th April, 2004.

3) Quality Assurance in Mental Health (NIMHANS Report)

8.143 The Commission has been concerned with the problem of unsatisfactory conditions generally prevailing in Mental Hospitals in the country. The mental hospitals, almost being used as dumping grounds by desperate relatives of the mental patients were resulting in overcrowding, besides lacking in basic amenities and were also having poor medical facilities. They offered little in terms of improving the awareness of relatives about the nature of the illness or of the need for medication and the rehabilitation of recovering patients. The Commission, therefore, thought it to be timely and appropriate to take up project of such nature which would have a direct bearing on the human rights of those suffering from mental disabilities.

8.144 With a view to preparing a plan of action for improving conditions in mental hospitals in the country and enhancing awareness of the rights of those with mental disabilities, the Commission entrusted a research project on “Quality assurance of Mental Hospitals” to the National Institute of Mental Health & Neuro Sciences (NIMHANS) at Bangalore. The Report prepared by NIMHANS entitled “Quality Assurance in Mental Health” was sent to all the Mental Hospitals and to the State Health Secretaries for necessary follow up action. As per the memorandum of action taken on the annual report of the Commission for 2001-02, the Government has sent the views of the Commission to the States/Union Territories that appropriate action could be taken for the proper care

of those suffering mental disabilities. While some States have reported follow up action, regrettably, there has been no enthusiastic response from other States despite persuading them from time to time. In an effort to ensure that all the States carry out the recommendations, the Commission has sought advice from NIMHANS regarding implementation of the recommendations made in the report. The Commission intends to pursue the matter.

Rehabilitation Project in the Mental Hospitals of Agra, Gwalior and Ranchi

8.145 For the Rehabilitation of Long Staying Patients in the Mental Hospitals of Agra, Gwalior and Ranchi, Project-Maitri is being carried out by Actionaid India with financial support from the NHRC. As per the project, Actionaid India will hold sensitization workshops for the attendants and nursing staff of the three mental hospitals.

8.146 The initiative for taking up the project by the Actionaid, India came up during the meeting of the expert group held on 24/9/02 constituted for the purpose. The Actionaid team in the respective hospitals has been carrying out therapeutic activities aimed at (i) rebuilding daily living social and community skills of the patients and (ii) providing a healing, lively and recreational environment to the patients.

8.147 For para-workers, each at RINPAS, Ranchi, GMA, Gwalior and IMH&H, Agra were deputed to carry out the project. An onsite refresher training programme was conducted in April/May03. Phase I of the training was conceptualized as an orientation to the field of mental health care and phase II focused on skills for counseling and follow-up.

8.148 The process of rehabilitating the mentally ill but since cured patients with their families has been underway since the month of September 2003. At least 96 patients from RINPAS, Ranchi and GMA, Gwalior were discharged/reintegrated with their families. One sensitization workshop for attendants and nursing staff of the Gwalior Mansik Arogyashala was conducted in June 2003 to strengthen the collaborative rehabilitation efforts. 11 more such workshops have been planned for the three hospitals.

I] Right to Food

8.149 The Commission took cognizance of the starvation deaths due to the drought in Bolangir District of Orissa in 1997. The Commission vide its proceedings dated 17.02.1998, arrived at a view that some interim measures should be undertaken for an overall period of two years. The Commission also requested the Orissa State Government to constitute a Committee to examine all aspects to the land reforms question in the KBK Districts. The Commission is regularly monitoring the progress of implementation of its directions through its Special Rapporteur.

8.150 The Commission observed that as starvation deaths reported from some pockets of the country are invariably a consequence of mis-governance resulting from acts of omission and commission on the part of public servants, they are a matter of direct concern to the Commission. After due deliberations, the Commission held that to be free from hunger is a Fundamental Right of the people of the country. Starvation, hence, constitutes a gross denial and violation of this right.

8.151 The Commission while considering the above case also discussed the fundamental issue of the nature of right involved in a situation in which deaths occur as a result of starvation or prolonged mal-nutrition. It was argued that while the Constitution recognizes the Right to Food as an integral part of the Fundamental Right to Life, the Relief Manuals and Relief Codes governing relief administration are more or less a replication of the Model Famine Code of 1910 under which relief is administered as an act of benevolence on the part of the State and the status of the 'beneficiary' continues to be that of a recipient of State charity.

8.152 Following this, the Commission felt the need to formulate a programme of action for making Right to Food a reality in the country. With this in view, a meeting was organized, with leading experts on the subject, in January, 2004 to discuss issues relating to 'Right to Food'.

8.153 The points which emerged from the meeting are as under:

- The Government should frame a long-term policy in order to ensure that every citizen in the country has access to adequate food.
- Accountability while implementing government programmes must be made central to issues connected with starvation.
- The systems of delivery need to be firmed up by bringing Panchayats within the ambit of the delivery system.
- Purchasing power of the rural people could be increased by rationalizing employment generation programmes, increase in minimum wages and taking up food-for-work programme.
- Both the political leadership and the bureaucracy be held responsible for deaths due to starvation. The Rural Development Department and the Departments of Food and Agriculture of all States be made accountable.
- The State Governments be asked to initiate timely advance action in the areas where food scarcity occurs as a yearly phenomenon.

- The monitoring system needs to be institutionalized. All the monitoring agencies could co-ordinate with the Commission.
- The Commission could consider intervention in the implementation of the mid day meal scheme.
- Relief bonds could be issued by Government, which may be purchased by the State Governments and lead banks so as to ensure availability of adequate funds for implementation of the programmes.

8.154 The Commission has approved the constitution of a Core Group on Right to Food that can advise on the issues referred to it and also suggest appropriate programmes, which can be undertaken by the Commission.

8.155 On a complaint referred to him by the Commission regarding mass suicides in a farmer's family in the drought prone Koppal District of Karnataka, the Special Rapporteur, Shri K. R. Venugopal visited the village of Muktarmpura in Kustagi taluk of Koppal District on the 20th October, 2003 and conducted a detailed on-the-spot investigation into the case. In addition, he held extensive discussions with the Chief Secretary and other concerned Secretaries to the Government of Karnataka and the District Magistrate, Koppal. The Special Rapporteur made a thorough study of the conditions in the area in regard to the crop conditions, employment programmes, hunger levels, availability of credit, the functioning of the public distribution system, the functioning of the ICDS and how all these impacted on the lives of the farmers, the nutritional status of people living below the poverty line and the response of the State and Central Governments to this situation. He submitted a detailed report to the Commission making several recommendations for action. The Report has been forwarded by the Commission to the Union Ministries of Agriculture and Rural Development, and to the Government of Karnataka for implementation of the recommendations made. Report of follow-up action is awaited.

8.156 Taking suo motu cognizance of a report appearing in "The Hindu" on 19 February, 2004 about a starvation death in Lali Tanda village of Mathampalli mandal of Nalgonda District, Andhra Pradesh, the Special Rapporteur, Shri K. R. Venugopal visited the village and conducted an investigation, which established that this was indeed a case of starvation death. As a result of the Special Rapporteur's visit to Lali Tanda and his discussions with the District Authorities in the context of the inquiry into the case of death by starvation, a package of relief measures has been made available by the District Administration to the victim's family as also to the entire Tanda, and responsibility for negligence fixed. The measures taken have in them all the ingredients of the Right to Food such as a works programme with a food grains component, distribution of ration cards, appointment of a responsible fair price shop dealer, sanction of old age pensions etc.

J] Discrimination Based on Caste

8.157 In the previous reports, the Commission's concern about discrimination faced by persons belonging to the Scheduled Castes was recounted in detail. The Commission is of the firm view that there is a need to combat age-old biases and entrenched attitudes through education and through public information campaigns. As change of attitudes and mindset of civil society is the key to further progress and in this connection, the Commission has been holding workshops and seminars to educate and create awareness amongst the civil society. For the National Human Rights 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. The Commission has been quite vocal and outspoken in defence of such rights.

8.158 The Commission has been deeply concerned about the atrocities against persons belonging to Scheduled Castes. The Commission therefore requested Shri K B Saxena, IAS a senior retired civil servant, to go into this issue. Shri Saxena has completed the study and submitted a comprehensive report with a number of recommendations. In order to monitor the implementation of these recommendations, the Commission set up a Dalit Cell and placed it under the charge of Shri R.S. Kalha, Member of the Commission. The Cell has co-ordinated the printing of the Report submitted by Shri K B Saxena in English, Hindi and other Indian languages. The Commission proposes to send its recommendations regarding the ways and means to prevent atrocities against Scheduled Castes to various authorities, both in the Central and the State Governments, for taking necessary action. The Commission has drawn up a calendar of activities to be taken up by the Dalit Cell in the year 2004-05. These include, among others, the entry of dalits into temples, setting up of an expert group to prepare a manual and to monitor investigations besides holding meetings with NGOs and media persons.

8.159 Shri R S Kalha, Member, represented the Commission at the International Round Table on Race Relations at Auckland, New Zealand from 2-5 February 2004. The Commission's Statement at the Session on 'Key Challenges' is at Annexure 9.

8.160 In addition to redressing individual complaints of human rights violations, the Commission has also been taking up research studies on issues concerning dalits. As reported elsewhere in this report, the Commission monitored, during the year under review the implementation of an action plan drawn up for alleviating the conditions of Musahars, a Dalit community in Bihar. It was based on a research study entrusted by the Commission to Shri A.N. Sinha Institute, Patna. The Commission also granted financial assistance to Maharishi Dayanand University, Rohtak, Haryana to carry out a pilot study on the socio-economic, political and cultural status of dalit women in Haryana, which is presently underway.

8.161 As reported in its previous report, the Commission with the assistance received from the Office of the High Commissioner for Human Rights, published a Handbook on “Discrimination Based on Sex, Caste, Religion and Disability” in order to sensitize teachers. The Commission was assisted in this effort by the National Council for Teacher Education (NCTE). The Handbook was released on 15 January 2003. The National Council for Teacher Education circulated it amongst the Teacher Education Institutions of the country, which number around 2,300. Subsequently, the Commission received a request for further financial assistance from NCTE for printing 3500 more copies of this publication for distribution amongst schools affiliated to the Central Board of Secondary Education, Kendriya Vidyalaya Sangathan, Navodaya Vidyalaya Samiti and others. The Commission decided a revised edition of the Handbook be brought out after certain defects are rectified. Work is presently underway in bringing out a revised edition of the Handbook.

CHAPTER 9

Environmental Issues

9.1 The Commission is deeply concerned about the environmental issues of the country, especially those which impinge on human rights of citizens. The underlying principle, on which the Commission bases its concern is the importance it attaches to the 'Right to Life' of the citizens of this country, a fundamental right provided under Article 21 of the Constitution of India. The Supreme Court of India has passed many land-mark judgments and orders having significant bearing on pollution control and environmental protection. Wide publicity given to these judgments has made the masses aware of their fundamental rights, including the interpretation given by the Court that 'right to life' includes right to a healthy environment.

9.2 The Commission received several complaints relating to environmental issues affecting the human rights of the citizens, namely, safety of mine workers, problem of flurosis caused by polluted drinking water, displacement of persons by development projects and other such issues. The details of issues taken up by the Commission are given as under:-

A] Safety of Mine Workers

9.3 The Commission received a complaint from Shri Rakhohari Biswas, resident of District Dhanbad, Bihar (Now Jharkhand) alleging death of 64 workers due to flooding of water in Gajlitand Colliery belonging to the Bharat Coking Coal Limited (BCCL), Dhanbad. It was alleged that the trapped workers could have been saved by the efforts of the management. It was further alleged that in the Lakurka colliery adjacent to the Gajlitand Colliery, poisonous gas oozing out as a result of emanation of water was adversely affecting the villages in the vicinity. Appeals from the villagers had no effect on the BCCL management. The Commission took cognizance of the matter and called for a report from State Government.

9.4 In the meantime, a report published in weekly "The Week" dated 7 September 1997 stated that Andhra Pradesh Mineral Development Corporation (APMDC) had started quartz mining operations in the villages of Shadnagar in Mahboob Nagar District from 1965 onwards, and, the workers of APMDC were suffering from deadly occupational disorders of Silicosis. It was alleged in the report that the company stopped its operations citing severe

power-cuts and inadequate supply of power, alongwith accumulation of considerable stock of raw quartz as reasons. But the actual reason, allegedly, was that they had foreseen the death and upheaval the disease would leave in its wake. In order to escape the responsibility of bearing the cost of treatment or giving compensation to the workers, the Company decided to halt operations and invoked the provisions of Industrial Disputes Act, 1947 to retrench the workers who were working in the mines and the furnace rooms. The report mentioned that more than 270 villagers had died and the conditions of many others were serious in the absence of medical treatment. The Commission took suo motu cognizance of the news item and called for a report in this regard from the Health Secretary, Govt. of AP. It was decided that the matter be clubbed together with other cases relating to safety of mines.

9.5 The Commission, in its sitting dated 26-12-2001 directed identification of authorities who could be invited to the Commission for an in-depth consideration of the matter, as it would enable it to make necessary recommendations on safety of mine workers. The note prepared by the Law Division of NHRC on these issues was considered by the Commission in its meeting held on 16-01-2002. The Commission directed that before inviting the concerned officers for interaction, it would be appropriate to identify the specific issues/queries in respect of which interaction with the concerned authorities was needed. The Commission requested the DG (I) and Registrar (Law) of the Commission to examine the matter on this basis and identify the issues/queries for the purpose so that the exercise was meaningful. The following issues were suggested for interaction with the authorities identified for the purpose:-

- Steps taken by the management of the company, for provision of safety in accordance with the provisions of the Factories Act 1948 and other Acts governing mining operations;
- Monitoring mechanism set up by the State Governments for ensuring effective implementation of the provision of the relevant Acts by the employers, for the safety of the workers as well as the regular inspection by the State authorities of the concerned mining units;
- The safety measures taken by the employers for prevention of accidents in the mines as well as discharge of poisonous gases, smoke, steam, dust, etc., from the mines and the steps taken for prevention of pollution in the surrounding areas;
- The study by the State authorities of the impact of mining operations on the population in the surrounding areas including environmental pollution, damage to crops, water resources as well as houses inhabited in the surrounding areas;

- Steps taken by the authorities for preventing/ controlling unauthorized habitation in the surrounding areas;
- Steps taken by the mining companies for provision of compensation and relief to mine workers injured as a result of hazardous operations as well as compassionate appointment and/ or compensation for the next of kin of the workers killed in accidents; and
- Steps taken by the State authorities for relief and rehabilitation of population who are affected by mining operations and suffered damage to their land, houses or physical ailments or disease directly attributable to the mining operations in the surrounding areas.

The following authorities were identified for interaction:-

- (a) Secretary, Ministry of Labour, Government of India
- (b) Secretary, Department of Coal, Government of India
- (c) Secretary, Department of Mines, Government of India
- (d) Director General of Mines Safety, Ministry of Labour, Government of India
- (e) Secretary (Mines), Government of Andhra Pradesh
- (f) Managing Director, Andhra Pradesh Mineral Development Corporation
- (g) Secretary, Department of Mines and Geology, Jharkhand, Ranchi
- (h) The Chairman & Managing Director, Coal India Limited, Kolkata; and
- (i) The Chairman & Managing Director, Bharat Coking Coal Limited, Dhanbad

9.6 The list of issues formulated by the Commission was sent to the officers for their response so that the Commission could consider the question of accountability of the concerned authorities/persons for ensuring safe mining operations. The Commission requested them to communicate details of the steps taken by various authorities for the safety of the mineworkers, alongwith matters connected with the working of mines, as well as the impact of mining operations on the local population/inhabitants.

9.7 A meeting is likely to be convened shortly to discuss the issues in detail with the concerned authorities and experts on the subject so as to enable the Commission to formulate specific directions on safety of mine workers and related issues.

B) Safety of Workers Cleaning Drainage/manholes

9.8 The matter relating to the practice of engaging human beings for cleaning drainage/manholes has been taken up by the Commission. The Commission had taken cognizance of a report regarding the death of two Safai Karamcharis working in drainage in New Delhi in the year 2000. In order to ensure safety of the workers engaged in cleaning drainages, the Commission requested Shri R.K. Bhandari, Engineer Member, Delhi Development Authority to prepare a set of comprehensive guidelines and develop a safety code for the operation and maintenance of sewerage systems. The guidelines developed were sent to the concerned authority for compliance in the 2002. In the meantime, another complaint was received stating that the practice of sending human beings, without protective clothing, into manholes for clearing blockages was still prevalent in Chennai and other parts of the country. Acting on the complaint, the Commission sought a reply from the State Government of Tamil Nadu. The Tamil Nadu Government in response informed the NHRC that Manual Scavenging had been totally stopped in the urban local bodies. Secondly, wherever blockages were noticed in sewer lines, equipments were being used for clearing the blocks. The complainant in response reiterated that at least in Chennai city men were still being sent into manholes with no protective clothing.

9.9 As the problem is not confined to Chennai only, the Commission decided to send the Guidelines for Maintenance and Planning of Sewerage System to the concerned authorities in other metropolitan cities for their response. In view of the reported continuance of the practice and the risks involved in it, the Tamil Nadu Government has been requested to inform all the steps taken by them to protect the life of those who are deployed to clean manholes on occasions when the machines breakdown during operations. Authorities in other metropolitan cities have also been asked to report whether the Commission's guidelines have been adopted by them.

9.10 Meanwhile another report concerning the death of 5 workers in a sewage plant of the Delhi Jal Board due to exposure to harmful gases in June 2003, attracted the attention of the Commission. In reply to Commission's notice the Delhi Jal Board has informed that it is undertaking a major exercise by compiling latest available guidelines and the data relating to the maintainance of sewage treatment plants and that the same will be made available to the Commission as soon as it is compiled.

9.11 The Commission has requested Delhi Jal Board to expedite the compilation of the guidelines and send a copy to the Commission for its consideration.

C] Arsenic Poisoning in West Bengal

9.12 Following media reports that over three million people living in nine out of 18 districts of West Bengal have been suffering due to arsenic contamination of drinking water,

the Commission sought a detailed report from the Govt. of West Bengal. Two reports from the Govt. of West Bengal were received and the NHRC forwarded them to the Central Pollution Control Board for expert opinion.

9.13 During the period under report, the comments received from Central Pollution Control Board were considered by the Commission and it desired that the report be forwarded to Govt. of West Bengal for necessary follow up action. The Comments from the Govt. of West Bengal have now been received. The main strategy of the Govt. in tackling the menace is as under:-

- To go in for surface based water supply scheme, wherever available.
- To adopt scale water-harvesting methodologies.
- To undertake extensive water quality analysis in the affected areas by setting up of laboratories.
- Installation of arsenic treatment units, arsenic removal plants, iron elimination plants.
- Implementation of water supply schemes based on rainwater harvesting structure and natural water bodies.
- Implementation of piped water supply schemes based on river water wherever economically and technically feasible.
- Installation of deep aquifer (Arsenic-free tube wells).

9.14 The total risk population in the State is estimated to be approximately 281 lakh which is about 35% of the total population of 802.21 lakh as per the census for the year 2001. As on 31-03-2003, Arsenic Mitigation Schemes worth Rs. 577 crores have been sanctioned against which Central Govt. has released Rs. 224 crores and the State Govt. has provided Rs.191 crores apart from other national programmes. The coverage of the Scheme in rural areas and the requirement of funds has been given in the Statement annexed with the short note. A resource gap of Rs.964 crores has been highlighted for combating the arsenic menace in the State.

9.15 The matter will be further pursued with the Government of West Bengal during the period ahead.

D] Fluorosis

9.16 The Commission's attention has been drawn to fluorosis, a painful and crippling malady which affects multiple tissues, organs and systems. The disease is traceable to excess

fluoride ion levels in the drinking water. An expert study available with the Commission has revealed that there are 196 endemic districts in 19 States. Based on discussions with experts in the field, the Secretary General of the Commission addressed letters to the Chief Secretaries of these States as well as to the Secretary, Health, Government of India seeking the information on the number of hospitals in their states which presently have adequate infrastructure for diagnosing fluorosis correctly with details, about District Hospitals, Teaching Hospitals, General Hospitals in State capitals and what Investigations/Tests are done for the correct and early diagnosis of Fluorosis in their states, and, further, what would be the cost involved in the setting up of the infrastructure for a Fluorosis diagnostic facility per hospital in their states.

9.17 The Commission has received responses only from the State Governments of Gujarat, Haryana, Karnataka, Maharashtra, Orissa, Punjab, Uttar Pradesh and NCT of Delhi. The Commission notes with concern the lack of response from the State Governments on an issue which has a direct impact on the lives of people who are deprived of one of their basic rights i.e. right to clean drinking water and which results in untold miseries to large population located in remote areas of the country.

E] Rehabilitation of People Displaced by Mega Projects

9.18 In the previous annual reports, the Commission's views on the rehabilitation of people displaced by mega projects were spelt out in detail. The Commission expressed the view that the resettlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act itself or be the subject of appropriate separate legislation, so that the issues concerned become justiciable.

9.19 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 urged that the National Policy to be adopted in this respect must be based on principles that are fair, just and transparent and conform to the Constitution and the treaty obligations of this country, particularly International Labour Organization Convention 107, to which India is a party, and which provides for the protection of the rights of indigenous and tribal people. The Commission however notes with regret the inordinate delay on the part of the Central and State Governments to respond positively to the recommendations made by it to protect the rights of citizens who are displaced from their own lands that too without receiving adequate and timely compensation and left to fend for themselves.

9.20 As reported in the previous annual report, the Commission asked the Ministry of Rural Development to supply a copy each of the Project Affected persons (Resettlement and

Rehabilitation) Bill and the Land Acquisition (Amendment) Bill. However, the Ministry of Rural Development has on 25 March 2004 forwarded a copy of the National Policy on Resettlement and Rehabilitation for Project Affected Families - 2003. The Commission has undertaken to carefully examine it and give its comments to the Government.

CHAPTER 10

Research Programmes and Projects

10.1 The Statute of the Commission provides for it to undertake and promote research in the field of human rights (Section 12(g) of the Act). In the previous report, the commission highlighted the need to link research with themes that have practical value for the better protection of human rights. The Commission, has therefore, endeavoured to take up research programmes and field studies which could be structured around the possibility of practical steps being taken at the ground level. The details of other research programmes and projects are given below:

A] A Study to Assess the Degree of Realization of Economic, Social and Cultural Rights in India

10.2 The Commission had entrusted the study to assess the human rights situation in India with particular reference to Economic, Social and Cultural Rights to a Pune based NGO, the National Centre for Advocacy Studies (NCAS).

10.3 The study was conducted in three states of India: Maharashtra, Karnataka and Chhattisgarh. Field surveys were conducted in one development block of each state. The blocks were selected where the majority of the population belonged to the Scheduled Castes and Scheduled Tribes. The field study focused on

- Collection of list of the Below Poverty Level (BPL) families from the identified villages.
- Selection of sample families for the study.
- Collection of primary data from the sample families.
- Visit to ICDS, Government hospitals, fair price shops, schools run by both government and NGOs to verify the primary data.
- Visit to different NGOs in the selected blocks to cross-examine data as well as their contribution to Economic, social and cultural rights.

- During the reporting period, the research instruments and questionnaires were evolved, field tested and improved.

10.4 The final report of the study is expected to be submitted to the Commission shortly.

B] Estimating Precise Cost of Living for Persons with Disabilities – (A Case Study by the National Association for the Blind)

10.5 The Commission approved a proposal of the National Association for the Blind to undertake a study for promoting the concerns of People with Disabilities (PWDs) in general and the visually impaired in particular. The objectives of the study are as follows:

- To enlist the additional cost of living and for additional inputs needed for PWDs.
- To quantify the additional costs, across different regions, of the country and for different types/degree of disability.
- To disseminate information among International bodies, Central Government organizations, State Governments, NGOs on the additional costs for living by PWDs and additional inputs needed.
- To assess the gap between the minimum support needed by PWDs as producers and consumers with what is being provided presently.
- To recommend steps to bridge the gap through better utilization of existing schemes, introduce new schemes (if needed), utilize the community resources and individual professional skills.

10.6 The study is presently underway.

C] A Study of the Efficacy of A District Level Implementation Arm of A National Level Legislation/Policy in A Low Priority Area Like Disability

10.7 The Commission and National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities have jointly taken up the above research study. The objectives of the study are to find out:

- the factors that facilitate the implementation of a national level policy at the district level.
- the factors that impede the successful implementation of a national level policy for the district level.
- the linkages between different level/tiers of service and care providers.
- the strategies of reaching the unreached.

- the barriers that impede integration.
- the strategies to utilize limited resources.
- satisfaction level of the end users.

10.8 The study proposes to cover 15 districts in different states and is presently underway.

D) Nurturing and Recognition of Indian Sign Language for Deaf Persons Action Research

10.9 The development of Sign Language for the deaf has gained momentum across the globe; several countries have recognized Sign Language as the official language of the deaf. In June 1994, representatives of 92 governments and 25 international organizations met at the World Conference on Special Needs Education, held in Salamanca, Spain. They adopted a dynamic new statement on the education of all disabled children, which inter alia 'emphasized the importance of Sign Language as the medium of education for the deaf and which encourages the State to ensure that all deaf persons have access to education in their National Sign Language'.

10.10 Biwako Millennium Framework is a policy guideline for the Second Asian and Pacific Decade of Disabled Persons, (2003-2012). It has identified access to information and communication as one of the 7 priority policy areas for action. The framework encourages "Governments to develop and coordinate a standardized sign language".

10.11 Article 29(1) of the Constitution of India recognizes that any section of the citizens residing in the territory of India or any part thereof, having a distinct language, script or culture of its own shall have the right to speak that language. Several organizations of persons with hearing impairment have consistently emphasised the need for an Indian standard Sign Language. This demand also indicates that the hearing impaired persons in India are still using a primitive and under developed, localised signs in place of a fully developed sign language with its own grammar and other elements. The Commission is of the view that there is a need for systematic nurturing and recognition of a common Indian Sign language. The Commission has accordingly decided to initiate consultations with all concerned in this regard.

E) Impact of Information Technologies on the Freedom of Information Expression and the Communication by People with Disabilities - ICT Desk Research

10.12 Under its Constitution, UNESCO is required to contribute to "advancing the mutual knowledge and understanding of peoples, through all means of mass communication", "to promote the free flow of ideas by word and image", to "maintain, increase and diffuse

knowledge”, and “to give fresh impulse to popular education and to the spread of culture.” In this age of information technology, the UNESCO’s role has become even more important as the information society has impacted every facet of life. While the information generation, processing and sharing is much more efficient, reliable and cost effective via the interoperable networks, its effective utilization by people with disabilities is doubtful. For people with disabilities the design of information, communication technology products, services and the manner in which the content is organized has the potential to widen the social divide. Moreover, the freedom of information, expression and right to communication can be further compromised for people with disabilities in case the diversity of people and the difference of disability remains unrecognized by the regulators and providers of information, products and services.

10.13 With a view to appropriately incorporating disability dimension in the declaration of principles and plan of action to be adopted by the World Summit on Information Society (WSIS), the UNESCO approached the Special Rapporteur, NHRC, in assessing the impact of information technologies on the freedom of information, expression and the communication by people with disabilities. An extensive desk research was undertaken towards this end analyzing legal frameworks, regulations and information policies including the norms and standards on which information products and services are developed and delivered. The findings of this study along with recommendations have been communicated to UNESCO. It is understood that the draft declaration of principles and plan of action evolved during the first phase of WSIS in Dec 2003 at Geneva has several references to persons with disabilities and their concerns.

F) Operation Oasis - A study Related to Mentally ill Persons in West Bengal

10.14 As indicated in its last annual report, the Commission extended financial assistance for the third year to the Kolkata based NGO, SEVAC for its project named ‘Operation Oasis’. The research project has identified various jails and homes in West Bengal and SEVAC has been providing help to the mentally ill persons languishing in those prisons and custodial homes.

10.15 While the project is continuing, SEVAC has submitted a report on the second phase of the project.

10.16 The report reiterated that in most of the cases, mental patients, who have been languishing in prisons and different Custodial Homes, were not officially identified as mentally ill by the concerned authorities. SEVAC has categorized these mental patients into different groups indicating how they end up in Correctional/Custodial Homes, viz: –

- Group-A: Mental patients after being affected by their psychopathology have been found to get involved in criminal activities. Thereafter they have been sent to Correctional Institutions;
- Group-B: Mental patients found loitering aimlessly are apprehended by the police, and, thereafter, framed for petty cases on grounds of suspicion. These persons too are sent to Correctional Institutions as 'under-trials';
- Group-C: Mental patients (women in particular) found loitering aimlessly in an unstable frame of mind are apprehended by the police and sent to Correctional and Custodial Institutions for safe custody; and
- Group-D: A host of wandering mental patients are also arrested by the police and sent to Vagrant Homes being labeled as 'vagrants'.

10.17 According to the report submitted by SEVAC, the concerned authorities are reluctant to identify these people as mental patients just to avoid the burden in respect of making arrangement for their treatment. In the above context, the NHRC has issued directions to the State for periodical medical examination of under-trials/convicted persons in jail. SEVAC made a presentation before the Commission and clarified the issues raised.

10.18 The report of SEVAC was examined and it was found that while care of inmates with mental illness will remain a continuing requirement, the primary responsibility for providing mental health care to these individuals rests with the State Governments, who must also comply with the provisions of the Mental Health Act, 1987. It is inferred from the Report that the State Government is not discharging both these obligations. Since, the Project period was up to March, 2004, SEVAC is of the view that the responsibility for providing health care to the mentally ill, and compliance with the obligations under the Mental Health Act should henceforth be carried forward by the State Government. The response of the State in this regard is not very encouraging.

10.19 The final report of the project is expected in May, 2004.

G) Socio-Economic, Political and Cultural Status of Dalit Women in Haryana

10.20 A Pilot Study entitled "Socio-Economic, Political and Cultural Status of Dalit Women in Haryana" submitted by Maharshi Dayanand University, Rohtak has been approved by the Commission.

10.21 The main objectives of the study are to:-

- survey the socio-cultural and economic status of dalit women through field studies in selected districts in the State of Haryana;

- identify the impediments faced by the dalit women in attaining all round development in social, economic and political field;
- survey the impact of the government's special protective provisions in providing economic, political and judicial relief to the dalit women;
- assess the role of elected representatives in creating awareness among the dalits in general and women belonging to this section in particular; and
- make recommendations for the improvement of the social, economic and political status of dalit women.

10.22 The study would commence in the month of April, 2004 and is to be completed in 18 months' time.

H) Research Study on Domestic Violence Against Women in India: Nature, Causes and Response of Criminal Justice System

10.23 The Commission approved financial assistance for a research study on "Domestic Violence Against Women in India: Nature, Causes and Response of criminal Justice System" proposed by Sardar Vallabhbhai Patel National Police Academy, Hyderabad.

10.24 The objectives of the project are to study the:-

- nature of domestic violence against women in the country;
- extent and types of violence committed against women by family members;
- causes of domestic violence in the country;
- entrenched attitudes and stereotypes held by people which lead to domestic violence;
- attitudes and stereotypes held by police personnel of various ranks about domestic violence, which make them to react to instances of domestic violence in a specified manner;
- effectiveness of the legal provisions regarding domestic violence; and
- recommend suitable interventions for reducing the incidence of domestic violence on the basis of the findings of the study.

10.25 The study is currently under progress. The researcher has been submitting progress report from time to time. The study is likely to be completed by September, 2004

I] Study of the Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000

10.26 The Commission has approved a proposal for undertaking a study of the Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 submitted by the Socio-Legal Information Centre (SLIC), New Delhi.

10.27 The study proposes to review the extent of implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 by interalia carrying out the following:-

- interaction with the nodal Government agencies to check the status of the institutions/ Committees/Boards that ought to be set up under the Act;
- interaction with the nodal Government agencies to ascertain the status regarding framing of rules, appointment of judges, staff etc.;
- find out the different kinds of homes set up or identified for the reception of children falling within the ambit of the Act;
- interviews with key institutions/academicians and child rights groups on their opinion on the proper implementation of the Act;
- examining the obligations cast on the Government and NGOs under the Act and ascertain the status of its implementation;
- examining the status of the special juvenile police unit to be created under the Act;
- making sample studies from the best and worst cases of implementation;
- collecting statistics on the number of children who have been covered by the Act; and
- compiling information with respect to the public interest litigation filed for the implementation of the Act.

10.28 The study would cover 15 states, viz. Andhra Pradesh, Bihar, Delhi, Goa, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Uttaranchal, Uttar Pradesh, West Bengal. The study which commences in the month of April, 2004 and is to be completed in 15 months' time.

J) Study on the Complaints Made by Women at Police Stations at Bangalore

10.29 In the annual report 2001-02, it was reported that the Commission approved a research study on the Complaints made by Women at Police Stations at Bangalore, submitted by Vimochana – a Forum for Women's Rights, an NGO based at Bangalore. The objectives of the study were to:-

- make an overall assessment of the kind of complaints that are made at police stations by women;
- evaluate the manner in which these complaints are being handled by police personnel;
- know the extent of knowledge the complainants have about their legal rights;
- ascertain as to who assists the complainants when they lodge their complaints in the police station;
- suggest measures that may be adopted within police stations and outside with regard to improving citizen's access to FIRs, the procedure of drafting complaints and follow-up on the investigation and prosecution of complaints.

10.30 For this study data has been collected from two police stations – JJ Nagar and Banaswadi. A total of 264 women complainants were interviewed. In-depth interviews of police officials across rank in both the police stations have also been conducted. The Report is being finalised for submission.

K) Research Study Entitled “A Study of the Human Rights Status of Denotified and Nomadic Communities of Delhi, Gujarat and Maharashtra”

10.31 A proposal for undertaking “A Study of the Human Rights Status of Denotified and Nomadic Communities of Delhi, Gujarat and Maharashtra” submitted by Prof. G.N. Devy, Trustee, Bhasha Research and Publication Centre, Baroda has been approved by the Commission.

10.32 The objectives of the proposed study are as follows:-

- To study the economic status and occupational patterns of the communities selected for study;
- To study the patterns of their encounter with the police department;
- To study incidents of custodial deaths of persons belonging to the communities selected for study;
- To study the levels of legal awareness and legal literacy among these communities; and
- To study the engagement of these communities with the electoral processes.

10.33 The study is for a period of one year from the date of commencement.

L) Research Study of the Socio-economic Conditions of Tendu Leaf Pluckers - Orissa

10.34 A Research Proposal titled “Status of Tendu Leaf Pluckers in Orissa – A Study of their Socio-economic Conditions with special reference to Children and the System of Bonded Labour” submitted by the Human Development Society (HDS), New Delhi was approved by the Commission.

10.35 The rationale behind taking up this subject is that tendu leaf pluckers and the beedi rollers are the two most oppressed groups in the tendu leaf divisions of Orissa. The objectives of the project are as under:-

- Find out the socio-economic background of the tendu leaf pluckers;
- Analyze the dynamics of the tendu leaf trade - the role of different actors, the process and the economics of the trade;
- Examine the extent of bonded labour system in tendu leaf trade - relationship between the pluckers and their employers, wages, working conditions etc. in the light of various statutory provisions and guidelines and orders of the Supreme Court, NHRC, etc.
- Examine the extent of child labour in tendu leaf trade;
- Find out the social, economic and other problems faced by the pluckers and their families;
- Suggest remedial measures that can be taken up to address the problems; and
- Create a database on pluckers with a view to helping the policy makers and others concerned with the conditions of the marginalized people, especially the tendu leaf pluckers.

10.36 The study proposes to cover numerically top five tendu leaf divisions of Orissa, viz., Nawarangpur, Jeypore, Padampur, Patnagarh and Angul.

10.37 The duration of the project is 8 months and is expected to be completed in 2004-05.

M) Research Project on the Current Trends in Child Labour in Beedi Industry

10.38 The Commission approved a Research Project titled ‘Current Trends in Child Labour: A Study of Beedi Industry in Bharatpur – II block, Murshidabad District, West Bengal

submitted by the Surul Centre for Services in Rural Area (CSRA) an NGO from the District of Birbhum, West Bengal.

10.39 The Project proposal highlighted the plight of child workers in beedi industry. The objectives of the project are:-

- To highlight the living and working conditions of beedi workers in general and child workers in particular.
- To unveil the social and economic realities that force the children to start beedi rolling at an early age.
- To understand the current trends in child labour in beedi industry and to find a proper explanation as to why child labour in beedi industry is growing, while it is showing, a clear cut decline at national level as a general trend.
- To enumerate Government - NGO level intervention towards protection of rights and rehabilitation programmes for the beedi making child labour.

10.40 The study will focus on home based workers in rural areas. Ten villages will be selected as the study area which would cover about 40% of the beedi making villages of the block. The data would be collected from beedi making children as well as from their parents, employers, local NGOs, blocks, gram panchayats, district officers.

10.41 The time frame of the project is 12 months from the date of its commencement.

CHAPTER 11

Promotion of Human Rights Literacy and Awareness

11.1 The National Human Rights Commission has expressly been mandated to promote Human Rights literacy and awareness vide section 12(h) of the Protection of Human Rights Act, 1993. The Commission has been serving this encompassing purpose within its best means. In a sense the entire range of activities of the Commission are aimed at creating an environment in which rights can be better promoted and protected. The decisions taken by the Commission in respect of complaints, the programmes and projects undertaken, seminars and workshops held and its publications and discourses, all aim to create a culture of human rights in the country. The activities enumerated in this chapter, hence needs to be read in the broad context of the totality of the Commission's endeavours.

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

11.2 In the previous reports, the Commission underscored the importance of drawing up a National Action Plan for Human Rights and also expressed concern over the fact that the matter has been pending for longer than it should. The Commission urged the Government to complete the National Action Plan expeditiously. During the period under review, senior officials of the Commission took up this matter on several occasions with the concerned officials in the Ministry of Home Affairs. The latter informed the Commission that it would seek the Commission's suggestions on the possible components, structure of the draft of the National Plan of Action. It also assured that it would include a representative of the Commission during the deliberations on the draft. Shortly after the closing of the reporting period under review, the Ministry of Home Affairs forwarded a draft prepared in this regard by Shri Sankar Sen, Former IPS and requested the Commission to assist it in evolving the draft National Action Plan. The Ministry of Home Affairs later proposes to discuss this draft in inter-Ministerial meeting before finalization. It is a matter of regret that the Government of India has not made any concerted attempt in preparing the National Action Plan on

Human Rights despite being a party to the Declarations adopted in various international fora, including the Regional Workshops organised by the Office of the UNCHR. The wide range of consultations involved in the development of National Action Plans would have helped the creation of an enabling environment for protection and promotion of human rights in the country. The Commission urges the Govt. of India to take such steps as are necessary to facilitate the development of a National Action Plan which would go a long way in systematically dealing with issues relating to human rights in the country.

11.3 As mentioned in the previous annual report, the Government of India finalized and circulated the National Action Plan for Human Rights Education in 2001, as a part of the observance of the UN Decade for Human Rights Education 1995 –2004. The Action Plan groups its activities under two broad categories:

- i) strategies for raising mass awareness and
- ii) strategies for promoting social empowerment through attitudinal change and the sensitizing of specific target groups, such as the police, security forces, students, judicial officers and others through education and training.

11.4 In order to implement, co-ordinate and monitor the Action Plan, the Ministry of Home Affairs, (MHA), the nodal agency of the Government of India constituted a eight-member core group, headed by Special Secretary, MHA.

11.5 On the request of the NHRC, the Government of India has informed the Commission that the Ministry of Human Resource Development has taken action on re-orientation of syllabus, so as to introduce elements of human rights in school education. Programmes on human rights are also being telecast through 'Gyan Darshan'. Action has been taken to introduce human rights courses in Universities as well as preparation of resource material kit for human rights education. Central Universities like Jamia Millia Islamia conducts post-graduate and Doctorate courses in Human Rights and Duties Education. The University Grants Commission (UGC) provides financial assistance, under the Human Rights and Duties Education Scheme, for organizing seminars, symposia and workshops to Universities and Colleges and for conducting various courses on Human Rights. During the year 2002-2003, the UGC has approved 29 proposals of different Universities and Colleges for organizing seminars, symposia and workshops. The Jamia Millia Islamia, New Delhi and the Jawaharlal Nehru University, New Delhi have been aided for conducting Post Graduate Diploma and Degree Courses in Human Rights and Duties Education.

11.6 The Central Para-military Forces and Training Academies have also introduced human rights courses as part of their training programmes, so as to create better awareness among officers and staff on human rights. In order to familiarize all those involved in human rights education, including the general public, they propose to bring about a booklet of the National Plan of Action on Human Rights Education, so that it can be distributed widely.

They also propose to involve NGOs in the spread of human rights awareness through seminars, workshops etc.

11.7 Though these steps are worthy of appreciation much needs to be done at the governmental level to implement its Plan of Action. The National Human Rights Commission has been persuading the nodal department of the Government in this direction.

11.8 The UN decade for Human Rights Education 1995-2004 has been described (See UN Doc. A/55/360) as a catalytic tool to bring human rights education into policy making at the international, regional and national levels. The sub-Commission on the Promotion and Protection of Human Rights has recommended the proclamation of a Second Decade for Human Rights Education. The National Human Rights Commission (NHRC), is of the opinion that such initiative should be supported. It is understood that declaration of a Second Decade for Human Rights Education would give a fillip to the cause of Human Rights. The on-going Decade has, for all practical purposes, set the tone for developing Action Plans and Human Rights Education by the Government, which was certainly not the ultimate time frame for achieving the object. The process of human rights education is a continuing one. The unfinished task of the first decade could be taken up in the Second Decade. The commission hopes that the Implementation of the National Action Plan for Human Rights Education will proceed carefully, methodically and involve all sectors of the civil society.

B] National Institute of Human Rights

11.9 The National Institute of Human Rights (NIHR) was set up in the National Law School of India University (NLSIU), Bangalore after an MOU signed in September, 1999. The NHRC established a Chair on Human Rights at the NIHR and created an endowment with a one-time contribution of a fund of Rs. 30 lakh, in order to meet the expenses relating to the Chair.

11.10 The National Institute of Human Rights has been a resource extensively used by the Commission in the past. The Commission had frequently consulted the NIHR on various issues. Recently, however, there were fewer consultations, as the NHRC Chair has been lying vacant since June 2001.

11.11 The Commission expressed its concern at the functioning of the National Institute of Human Rights and desired that the Secretary General undertake a detailed review. The Secretary General discussed the matter with the Director of the NLSIU in October, 2003. During the discussion, the Director, NLSIU pointed out two main reasons behind the unsatisfactory functioning of the Institute. Firstly the Chair remained vacant till then. Secondly, the payment of remuneration for a Professor cannot be met out of interest earning of the corpus.

11.12 The Commission desired that the rules of procedure for appointment of the Chair may be amended in consultation with the Director, NLSIU. The meeting for the purpose will be held in April, 2004. Follow up action is being taken by the Commission.

C] Review of the Status of Human Rights Education in India

11.13 It is well recognized that human rights knowledge is not the privilege of a few, but necessary for everybody. Human rights education has, thus, been receiving a lot of attention in order to take human rights knowledge to the wider society. There is a wide range of programmes on human rights education going on at the moment in India. It ranges from introduction of modules at colleges or universities, continuing education programmes for government functionaries to specialized rights knowledge to groups of people.

11.14 The Commission approved a project “A Review of the Status of Human Rights Education in India at the University Level” submitted by the National Institute of Human Rights (NIHR) in the National Law School of India University, Bangalore.

11.15 The main objective of this study is to review and prepare a report on the Human Rights Education in India as the UN Decade for Human Rights Education (1995 - 2004) is drawing to a close. The study will be completed in one year period.

D] Source Material for Human Rights Education in Indian Universities

11.16 As mentioned in the last annual report the Commission approved a project proposal from the Karnataka Women's Information and Resource Centre, KWIRC, Bangalore for developing source material for Human Rights Education in Indian Universities.

KWIRC had earlier prepared seven dossiers concerning

- Land and housing rights;
- Human Rights and the environment;
- Child rights;
- Right to information;
- Home based workers in India – their struggle and emerging role;
- Dalit rights – migration in search of labour and other experiences of Dalits;
- Fish workers' struggle for human rights.

11.17 These dossiers were discussed in a Round-Table Workshop organized in collaboration with NHRC. As a follow up of the workshop, the KWIRC submitted a proposal, which was

approved by the Commission. The following activities were to be undertaken under the project:

- Re-writing of dossiers for the use of grass-root level organizations;
- Preparing the dossiers for the school level;
- Translating the dossiers into two Indian languages, namely Hindi and Kannada;
- Preparing dossiers on three other areas of human rights endeavour:
 - Gandhian struggles for rights, such as Bhoodan and Gramdan;
 - Women's rights to self-determination, including reproductive rights;
 - Rights of the disabled.

11.18 During the year under review, an interim report of the project was received, according to which:

- All the seven dossiers prepared earlier have been improved and revised by the experts and an introductory note was being prepared for the university level.
- Experts / academics have been identified for preparing new dossiers on Reproductive Rights, Rights of the Disabled and the Gandhian Struggles for Rights. The experts / academics assigned to prepare the dossiers have been involved or associated with the respective movements/struggles.
- The draft of the school level dossiers prepared on the Reproductive Rights and Rights of the Disabled were being simplified and edited further to cater the school level students.

11.19 The source material was under the process of finalization at the time of writing this report.

E] Tenth Plan Approach Paper Prepared by UGC on Human Rights Education - Comments of the National Human Rights Commission

11.20 The University Grants Commission constituted a Standing Committee in 1997 within the inter disciplinary group to develop a scheme for the promotion of Human Rights Education. The Committee prepared IXth Plan Approach Paper in 1998 with a view to provide conceptual frame work for the benefit of Indian Universities and Colleges. The Approach Paper took a holistic view of the concept of Human Rights and significance of Human Rights Education and the Objectives and Strategies to be adopted to broaden the

scope of Human Rights Education. Under the Scheme UGC provides financial assistance for the introduction of courses i.e. P.G. Degree, PG Diploma and Certificate courses on Human Rights Education.

11.21 As the Scheme continued in the Xth Plan, the Standing Committee on Human Rights Education was reconstituted by the UGC in 2002 in which the Joint Secretary, NHRC is also a nominated Member. In the Standing Committee meeting in November, 2002, it was agreed to draft the Xth Plan Guidelines on the scheme of Human Rights and Duties Education. The UGC requested NHRC to offer its comments on the draft plan prepared by a Sub-Committee. The draft material was discussed by the Commission. The most glaring discrepancy noted by the Commission was that of renaming the scheme as Human Rights and Duties Education without bringing it to the knowledge of NHRC or perhaps discussing it at an appropriate forum. The draft of the Xth Plan also did not seek to discuss the rationale for renaming the scheme. Although a letter from the UGC earlier mentioned that “on the basis of recommendation of the Hon’ble Justice J.S. Verma Committee on operationalisation of the suggestions to teach Fundamental Duties to the citizens of the country, the scheme was renamed as “Human Rights and Duties Education.” This however did not specify whether the decision of renaming the scheme was discussed and deliberated at an appropriate level.

11.22 The Commission observed that “there undoubtedly is a place for citizenship education, which includes the duties of individuals in a community. As far as Human Rights Education is concerned, it would be appropriate to base the “duties” on Article 51A of the Constitution, Article 29 of the Universal Declaration of Human Rights, the UN ‘Declaration on the Rights and Responsibility of Individuals, groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (1999)’, and the role of individuals, society and State in upholding human rights which occur in the international instruments relating to Human Rights”.

11.23 Given the nature and content of HRE, the nomenclature of the HRE scheme of the UGC and the Model Curriculum may therefore be continued as before as ‘Human Rights Education’. It should broadly continue to be based on the IXth Plan Approach Paper. The Commission, however, welcomed the expansion of the programme to cover more institutions and levels of learning with additional funding.

11.24 The Commission has thus requested the UGC to put up its views on the renaming of the scheme before the Standing Committee as and when it meets to discuss draft Xth Plan Guidelines.

F] Human Rights Training for Civil Servants

11.25 One of the main endeavours of the Commission is to promote citizens increasing and persistent demand for dignity, respect, justice and prevent violations of their human

rights by public servants. For this, it is essential that public servants should be sensitized through training, to meet the human right challenges that they encounter in his work sphere or else violations will continue to escalate and flourish. The emphasis of the Commission has been on willing compliance and not exacted deterrence.

11.26 It was felt that training programmes when properly structured and conducted can have a salutary effect on public servants. The training can help to improve the quality of response and can change their mindset to become more receptive to human rights culture. Thus they may be able to face the variegated compulsive situations with confidence. Such regular sensitization programmes would lead to a higher standard of professional conduct especially amongst the law enforcement officials, civil servants and other segments of the society. Training will essentially enhance the capacity of the officials who have to react to situations and provocations with greater respect for the rights of those involved and also improve the image of the organizations they represent.

11.27 The Commission, during its decade old existence has been groping with large number of HR issues, primarily emerging from the complaints received, relating to issues like, Child Rights, Women's Rights, Bonded Labour, Child Labour, Custodial Management, Custodial Violence, Custodial Deaths, alleged atrocities by Police, pitiable condition in Prisons, persons with Disability, Mentally Ill, Refugees, shortcoming in the Criminal Justice System, Terrorism and Insurgency, Rape and Torture. To cope with such emerging human rights violation trends, we need to focus our attention to sensitize various agencies involved in the functioning of the society and even the NGOs, to heighten respect for human rights, by launching, awareness creating training campaigns. Human rights training on these fronts can contribute most constructively to widen the understanding of human rights and the relationship between respect for such rights and humane governance.

11.28 The Commission took a conscious decision to create a Training Division in September, 2004, to achieve the spelt out objectives. Broad based training strategies were evolved to create a discernible impact on different sections of the society for a better today, and a better tomorrow, in terms of human rights promotion and protection. Inhouse Induction and Post Induction courses were conducted to give exposure to the officers and staff to human rights values and ethos of the Commission. Similarly, training programmes/workshops and seminars were organized for civil servants, police officers, prison official, judicial officers, NGOs and CBO.

11.29 The Training Division conducted the following activities:-

- 1) Two Capsule Training Programmes, were held for Commission's Staff and officials in Nov, 2003 and Feb, 2004. The first programme was aimed at sensitizing and orienting the staff joining the Commission on deputation from different departments to its role functioning and creative activities, also familiarizing

them to the concept and philosophy of human rights, so that they are able to handle the issues being dealt with by them with care, sensitivity and concern. The other programme was aimed at promoting a better understanding and enhancing professional skills in human rights investigation and interviewing techniques. The programme included human rights issues in the context of various International Instruments, the Constitution and legal framework. The investigating officers were geared to operate in the field with greater sensitivity and make inquiries which are more victim oriented.

- 2) A two day Capacity Building Workshop on Economic, Social and Cultural Rights (ESCR) - for Faculty Members of National and State Administrative Training Institutions, Senior Officers of the Central Govt. and the State Human Rights Commissions was conducted in Nov, 2003 in collaboration with the Indian Institute of Public Administration New Delhi. The workshop imparted knowledge pertaining to ESCR and exposed the participants to the role of Human Rights Institutions, Voluntary Sectors involved in the promotion and protection of these rights. It also established the linkages between good governance and Human Rights.

G] Human Rights Training for Police Personnel

11.30 The Commission collaborated with the Commonwealth Human Rights Initiative (CHRI) a prominent NGO, to run a four-day 'Human Rights Sensitization Course', for police officers of Chhattisgarh working in the police stations and the State Human Rights Commission. The workshop was held in February, 2004, at Raipur, Chhattisgarh. The aim was to sensitize the police officers working at the cutting edge level to learn about the core human rights issues being dealt with by them and develop knowledge and skills to promote and protect human rights of citizens in their work sphere.

11.31 Training Programme on 'Human Rights Investigation, Interviewing Skills and Custody Management' was conducted for the Delhi Police officers, in the rank of ACPs, SHOs and Addl SHOs, who are required to be in constant touch with the public in the capital city generally under the glare of constant scrutiny of media and civil society. The training exposure will enable these police officers to carry out their onerous responsibilities with confidence and in consonance with human rights norms, as required by the Constitution and laws of the land.

1) Research Projects on Police Training

11.32 The Commission entrusted the following two research projects to the Sardar Vallabhai Patel National Police Academy, Hyderabad:

- Curriculum Evaluation of Human Rights Education in Police Training Institutions in India; and
- Training and Non-Training Organizational Interventions for Inculcating Human Rights Observance by Police in India.

11.33 In regard to the first project, the NPA undertook the study of various police manuals, as well as Handbooks/Instructions on human rights already in use in various State police organizations; looked in depth at various aspects of day-to-day policing that are closely interwoven with human rights issues. It examined Principal Statutes, Instruments, Protocols, court cases, guidelines, etc. pertaining to human rights. The project has since been completed and the Draft Manual received is being examined in the Commission, for initiating further steps to meaningfully utilize the project outcomes in the interest of the police.

11.34 In the second project, the questionnaires circulated to the stakeholders helped to cover the domains of knowledge, skills and attitudes for the observance of human rights by Constables, Head Constables, Sub Inspectors/Inspectors, Deputy Superintendents of Police/Superintendents of Police. The information thus gathered was collated and analysed and the Draft Manual has been forwarded to the Commission and this is being examined with the help of experts in the field.

2) Promoting Good Custodial Practices

11.35 The Commission, in partnership with the British Council and Shubodaya Centre for Rehabilitation of Victims of Torture & Violence (SORAC), an NGO, had undertaken a Project on the 'Promoting Good Custodial Practices'. The duration of the project being of two and a half years and was expected to be completed by March 2005. The activities envisaged in the project are categorized into four stages and involve, inter-alia, a situational study, a training component, and seminars both at the state as well as at the national level. The project aimed to create co-operation and links, which currently do not exist, between a range of different agencies including human rights activists, doctors, lawyers and the police in order to reduce torture and increase awareness of legal rights and remedies available for torture victims. The project aimed to build trust between the various institutions involved in providing custody through a community-based project.

11.36 A study tour to the UK was arranged by the British Council for selected trainers and the clearance was sought from the Ministry of External Affairs. The Ministry, however, raised objection to the role of the British Council and felt that it was operating outside its defined Charter in India. The Commission, however, took the stand that this project is in the interest of the society and would result in long term gain to all the stakeholders. The purpose of the visit will be to gain learning experience of practices in vogue in UK and aim to promote good custodial practices in this country, as large scale custodial deaths continue

to be reported to the Commission. While the Commission was seriously engaged in clarifying the accruing apprehension of the government position and securing clearance, the project has been prematurely withdrawn by the British Council, bringing an abrupt end to an extremely worthwhile programme. The Commission feels that these are ongoing programmes and should be allowed to continue. The Commission urges the MEA to reconsider its decision.

H] Human Rights Education for Para Military and Armed Forces

11.37 The para-military and armed forces are often called upon to maintain peace and law and order in areas affected by terrorism or insurgency. Given the extraordinary challenges and provocations etc. they face, the value of human rights awareness courses and programmes that are conducted for them can, hardly be over-emphasized. Pursuant to the commission's efforts, the subject of human rights is now included in all of their training courses at all levels. Nevertheless, there have been reports relating to the alleged violation of human rights by the security forces.

11.38 To encourage interaction and experience-sharing between personnel of para-military forces and the Commission, holding of an annual debate competition, both in Hindi and English, was started in 1998. During the year under review, the topic for the annual debate competition was "Special Legislation is necessary for effectively combating terrorism in the country". As in earlier years, this debate attracted enthusiastic participation of the personnel of para-military forces, competing in both languages.

I] Human Rights Training for Judicial Officers, Educators and Activists

11.39 The Commission supported the Indian Social Institute (ISI), another leading NGO to organize three training programmes on, 'Fact Finding Techniques and Report Writing'. Two programmes were held at Delhi in November, 2003 and February, 2004 respectively and one at Udaipur in the end of March, 2004. The response was overwhelming. The participants were social activists, NGO representatives and lawyers. The specialized training will help them to contribute constructively towards the protection of human rights and acquire skills and professional knowledge in their sphere of work and to carry out their inquiries on cases of human rights violation assigned to them by their organization in the field with greater objectivity, and, thereafter, submit credible reports.

11.40 A two days Workshop on 'Human Rights', was organized in collaboration with the Indian Institute of Public Administration (IIPA), New Delhi duly supported by the UGC and Delhi University, for the Delhi University College Teachers. The purpose of the workshop was to orient them to the philosophy, culture, practices and emerging challenges in the human rights field as some of these teachers will be aiding as Coordinators to conduct

Foundation Courses on Human Rights in their Colleges, from the next academic session as per the syllabus drawn up by the UGC.

11.41 The Commission recognizes the urgent need to raise awareness throughout society to combat stereotypes, prejudices and to promote a positive image of persons with disabilities as full and equal members of the society entitled to all the fundamental freedoms and human rights without any discrimination.

11.42 To enhance the capacity of the field level functionaries, policy planners, administrators and disability rights advocates, the Commission continues to follow a two-pronged approach. On one hand the effort is to mainstream disability perspective in all the on going public awareness and educational endeavors and on the other encourage introduction of special training programs with a clear focus on disability. The implementation strategy is also twofold while certain awareness and educational programs are offered directly by the Commission but in majority of cases, it networks with the mainstream institutions imparting training and education.

11.43 During the period under review, many new initiatives were launched to promote human rights perspective on disability. At the same time the programs introduced in the previous year were further improved upon and continued. For instance both summer and winter internship programs are devoting a session on the rights of persons with disabilities.

11.44 Like in the previous year, the Commission has provided inputs to some of the programs introduced by the Indian Institute of Public Administration, New Delhi, for familiarizing senior administrators and academics with the changing approach to disability in human rights paradigm.

11.45 Amongst the new initiatives, introduction of a Module on Human Rights Education in the training of community workers and care providers by the Rehabilitation Council of India has been fruitful.

11.46 Likewise, the Commission extended support to National University of Juridical Sciences, Kolkata, in devising a newly designed paper on the Rights of Persons with Disabilities for the third year law students. We also facilitated a seminar on Disability and provided guidance for writing research papers for the students at NUJS.

11.47 Efforts to standardize course curriculum on the theme of human rights and disability in the legal education could go a long way in preparing a disability sensitive new generation of legal professionals. With this end in view, the NHRC is engaged in designing a course curriculum in consultation with academics and experts in the area of human rights and disability rights. It plans to consult the premier law schools and major universities in modifying legal education by including a module on the rights of the disabled in the graduate level.

11.48 Realizing the real dearth of trainers combining expertise the area of in disability and human rights, the Commission has planned a 'training of trainers' program in which a cadre of about 50 academics and activists would be trained by an esteemed panel of international experts at NLSIU, Bangalore next year.

11.49 A project from the National Institute of Human Rights, NLSIU, Bangalore for "Human Rights Sensitization Programme for the Lower Judiciary for South India" was approved by the Commission. The judiciary is often the last hope for a person whose human rights have been violated and who has tried recourse to every other available remedy. Often it is the judiciary that is the last barrier between the victim and gross injustice. The lower judiciary thus has an important and crucial role to play.

11.50 Under the project, it is proposed to hold four day sensitisation programmes across four Southern States, viz., Tamil Nadu, Kerala, Andhra Pradesh and Karnataka covering various aspects of law and if possible organizing an exposure visit as well for members of the lower judiciary.

11.51 The programmes will be conducted with the cooperation of the judicial academies training institutes of the respective States during April, 2004 and September, 2004. It may be recalled that earlier, two such sensitization programmes have been conducted by the NIHR, NLSIU in Karnataka and Andhra Pradesh during 1999-2000, under the Small Grants Scheme of the Australian High Commission, New Delhi operated through the NHRC. Based on the material compiled and the discussions in the workshops, a Handbook on Human Rights for Judicial Officers was prepared and published.

11.52 The Training Division set up in the Commission is thus fully involved in conducting various sensitisation and training programmes for officials and non-officials. However, the Division is at present managed by a skeletal staff of the Commission. Although the Commission has recommended creation of posts to man the Division, no positive response has been received from the Government. The Commission calls upon the Government to act without delay on the proposal sent by it for creating necessary posts for appointing staff in the Training Division.

J] Internship Programme

11.53 With a view to spreading an awareness of human rights issues among university students, the Commission conducts internship programmes during summer and winter vacations every year. During the year under review, the summer internship programme was held for a period of 30 days from 19 May to 17 June, 2003. The winter internship programme was held from 8 December to 9 January, 2004. In all forty six students from Sri Padmavati Mahila Vishvavidyalayam, Tirupathi; Devi Ahilya Vishvavidyalaya, Indore; National Law Institute University, Bhopal; Lucknow University; ILS College, Pune; Symbiosis Law College;

Pune Ethiraj College for Women, Chennai; Pondicherry University; NALSAR University of Law, Hyderabad; National Law university, Jodhpur; Lady Sri Ram College, Delhi; University of Delhi; Amity Law School, Delhi; Jawarharlal Nehru University; Jamia-Millia Islamia; Aligar Muslim University; Indian Law Institute, New Delhi; Guru Nanak Dev University, Amritsar and Kurukshetra University; participated in the two Internship programmes.

11.54 During the internship the students are apprised of the working of the Commission. They are also made aware of the provisions of the Constitution and the main institutions and international instruments relevant to an understanding of human rights. The interns are provided an opportunity to interact with NGOs working in the field of human rights and are also taken to field visits. In addition the students are assigned research topics to work on.

K] Publications and the Media

1) Booklets on Human Rights Issues

11.55 In the reporting year a booklet giving an overview on the legal protection and policy approach on disability has been published. This short booklet may prove handy in locating major resources needed by persons with disabilities, advocates, government functionaries and scholars. The work on developing manuals for legal practitioners and disability activists is in progress. These manuals would comprise 6 parts covering: Conceptual foundations, Indian Scenario, Civil and Political Rights, Economic Rights, Social and Cultural Rights, An Overview of International Monitoring Mechanisms and Other Procedures.

11.56 The Commission has decided to bring out a series of booklets titled “Human Rights” in collaboration with the NALSAR University of Law, Hyderabad. To begin with booklets on the following themes are proposed to be brought out:-

- Human Rights and the Constitution of India
- International Covenants on Human Rights
- Sexual harassment of women at the work place
- Manual Scavenging
- HIV/AIDS
- Bonded Labour
- Child Labour
- Rights of the Disabled.

11.57 These are to be published in English, Tamil, Telugu, Malayalam and Kannada in the first instance. Publishing the booklets in Hindi and other Indian languages will be taken up shortly.

2) Partnership with the Media

11.58 During the little over 10 years of its existence, the Commission has shared a special relationship with the media. Based on reciprocity in highlighting issues of human rights, the Commission has found a key ally in the media in generating public awareness. The Commission has frequently taken cognizance of human rights violations on the basis of media reports. It has benefited substantially from the editorials, letters and articles that feature in the media. The media has indeed acted as a watchdog for the Commission on many an occasion. The diverse opinions across the country and the world find a voice through the media and it is this, which has prompted the Commission on a daily basis to scan 24 newspapers — regional, national and international. All major weeklies and fortnightlies are also scanned regularly for important news items. The press clippings continue to serve as an important source of information to the Commission for taking suo-motu cognizance. Not just the print media is monitored but even the broadcast and internet is scanned for any news article on human rights. The Commission would like to express its gratitude to the media for the increasing coverage of human rights issues. There has been constant interaction between the Commission and the media. Interviews and observations provided by the Chairperson and Members, on a host of human rights issues have frequently featured in the press. Further, there have been regular briefings for the media, both through press releases and on a one-on-one basis. Indeed, the media has been a key partner of the Commission in promoting and protecting human rights.

3) Monthly Newsletter & Website

11.59 The Commission brings out a monthly Newsletter in English and Hindi. At present 3,600 copies of both versions are dispatched to subscribers across the country and abroad as well. The Newsletter of the Commission continues to be a valuable source of information on the Commission's work programmes and concerns. It has also been providing the gist of important decisions of the Commission in respect of individual complaints addressed to it. The Newsletter continues to be widely appreciated by human rights activists, members of the legal fraternity, administrators, representatives of NGOs, research scholars and students. The Commission receives a regular feed back like letters concerning the Newsletter expressing appreciation and making suggestions for its improvement. The demand to be added to the Commission's mailing list is large and growing. The Newsletter is also much in demand at symposia, seminars and workshops on human rights, whether organized by the Commission itself or by others.

11.60 On the occasion of the workshop for National Human Rights Institutions of the Commonwealth and the Asia Pacific Region held in New Delhi between 26 & 29 May 2003, a special issue of the Newsletter was published. It focused on the Promotion of the Rights of the Disabled, aims and objectives of the workshop, proposal for a U.N. Convention on Disabilities and Intervention of the National Human Rights Commission of India in the field of Disability.

11.61 Newsletters published since 1999 are also available on the Commission's web-page www.nhrc.nic.in. The Commission launched an e-newsletter in the interest of disseminating human rights related information to an even wider audience. The Commission's website is updated regularly and hosts a tremendous amount of information on the Commission.

4) Expert Committee on Human Rights Awareness

11.62 The National Action Plan for Human Rights Education 2001 prepared by the Ministry of Home Affairs has outlined a number of programmes to be undertaken by various Ministries and Departments of the Government for furtherance of human rights education and awareness. The Ministry of Information and Broadcasting has been identified as nodal for the success of raising mass awareness on human rights values.

11.63 The Commission took up the issue with the Ministry of Information and Broadcasting and it was decided that an Expert Committee be constituted for formulating long-term and short-term plans for creating human rights. The Committee which has officers from the I&B units of DD, AIR, PIB & DAVP and officials from the Commission met on 25 March 2004. A number of areas were identified where co-operation between the Ministry of Information and Broadcasting and the Commission could further the cause of creating human rights awareness. The media units are yet to send their response on the areas identified.

5) Films on Human Rights Themes

11.64 Encouraged by the range of number of cases considered by the Commission and the reports of the cases in the media, the Commission has been approached by film makers to undertake projects on human rights issues. This year, work on short duration films on five themes namely, NHRC and its working, Sexual harassment at work place, Manual scavenging, Bonded Labour and Trafficking in women and children have been commissioned through DAVP. The production of these films, which are meant for viewing at training workshops and seminars, is likely to be completed in 2004.

6) Human Rights Day

11.65 The Commission observed Human Rights Day on 10 December by organizing a function at the India Habitat Centre in New Delhi in which His Holiness, the Dalai Lama was the Chief Guest.

11.66 The function began with the rendering of a song titled 'Manav Prem' by students of Delhi's Sardar Patel Vidyalaya. The welcome address was given by Shri P.S.S. Thomas, Secretary General, while the vote of thanks was by Shri Santosh Kumar, Director General (Investigation).

11.67 In his address, His Holiness the Dalai Lama regretted that in the present day world religion, intelligence and power are being used as instruments for exploitation. His Holiness also praised the role played by various human rights organizations across the world in protecting the rights of the people.

11.68 In his address, Dr. Justice A.S. Anand, Chairperson of the Commission stressed the need to make Human Rights the focal point in good governance. He said that unless this is done no progress would be either possible or sustainable as no amount of economic development can be sustained without a baseline of respect for Human Rights.

11.69 Following the practice of earlier years, media units under the Ministry of Information and Broadcasting undertook a number of activities to commemorate Human Rights Day on 10 December 2003. Doordarshan Kendra, Delhi telecast a half-an-hour programme on "Know your Rights" which was the theme for the year 2003.

7) Participation in the World Book Fair

11.70 The Commission made its presence, albeit in a small way at the 16th World Book Fair with the publications and printed matter of the Commission being put on display at Stall No.18. The Fair, which was held from 14 – 22 February 2004, attracted a huge crowd of book lovers and thus it was considered a good platform to create awareness among public on the publications brought out by the Commission issues concerning on Human Rights.

8) Journal of the National Human Rights Commission

11.71 The inaugural issue of the Journal of the Commission was released by the President of India on 10 December 2002. In launching the journal, the Commission expressed the hope that the publication would catalyze new thinking in respect of the protection of human rights and the promotion of human dignity in the country. It was also the purpose of the Journal to facilitate the sharing of ideas, experience and information on human rights issues both at the national and international level. The Journal is expected to facilitate research, provide an important platform for building a body of high quality scholarship on human rights, and bring together the community of human rights scholars. The Journal could, in course of time, be of value in symposia and seminars on important human rights issues and also be a source of new ideas and inspiration for policy makers, offering critical commentary on judicial pronouncements on human rights laws in the best academic tradition.

11.72 The Journal, which is to be brought out annually, will focus on three broad themes. First, each issue will discuss in depth selected new developments in Indian human rights law. Second, the Journal will highlight different on-going struggles for human dignity. Third, the Journal will discuss important developments on selected human rights issues. In addition, the Journal will also review leading books published on human rights nationally and internationally.

11.73 The second issue was brought out in February 2004. The second volume under the heading of Human Rights: Contemporary Challenges, contains articles titled “Human Rights to Development” by Shri Arjun Sengupta; “International Human Rights Law in Domestic Courts: Violence Against Women and Administration of Justice” by Justice Smt. Sujata V. Manohar, Member of the Commission; “Population Stabilization: The Case for a Rights-based Approach” by Shri A.K. Shiva Kumar; “The Criminal (In)justice System” by Shri Rajeev Dhavan.

11.74 Under the section ‘Struggles for Human Dignity’, the Journal contains article on “Rights of Victims in the Indian Criminal Justice System” by Shri S. Muralidhar; “Towards A Right Based Approach in combating HIV” by Shri Anand Grover; “Common concerns about Human Rights and Penal Reform: And our inability to work together” by Ms. Rani Dhavan Shankardas; “Right to Housing – The Indian Scenario” by Miloon Kothari.

11.75 The section on Important Statements/Decisions/Opinions of the Commission inter-alia includes a number of proceedings of the Commission/Declarations/Recommendations adopted in various seminars and workshops.

9) Calendar on Human Rights

11.76 For the second successive year, the Commission brought out a desk calendar on a human rights theme. The calendar for the year 2004 focused on ‘Disability: discrimination, prejudice and invisibility’. It was released by His Holiness the Dalai Lama on 10 December 2003.

10) Other Publications

11.77 The Commission brought out a few publications on certain issues of human rights. It assisted in the printing and publishing of the Book ‘Migrant Labour and Human Rights in India’ edited by Shri K. Gopal Iyer, which was released on 10 December 2003. The book is in five parts with chapter headings with Human Rights Perspective, Migrants at the Place of Origin, Migrants at the Place of Destination, Migrant Labour and Crime, and Trade Union, Law and Migrant Labour.

11.78 A report on ‘Prevention of Atrocities against Scheduled Castes’ by Shri K.B. Saxena, IAS was also published this year.

11.79 A mention has already been made in para 11.54 of this chapter about the projects on the anvil for publication of a booklet series on the themes (i) Know your rights (ii) Sexual harassment of women at the work place (iii) Manual scavenging (iv) HIV/AIDS (v) Bonded Labour (vi) Child Labour (vii) Rights of the Disabled which has been entrusted to the NALSAR, University of Law, Hyderabad. Besides these booklets, an English-Hindi Glossary on Important Human Rights Terms is being prepared by Language Section of Commission.

L) Visits on Behalf of the Commission to Various States

11.80 During the year under report, the Chairperson and other senior officials of the Commission paid visits to several States in the country, including inter-alia, the States of Rajasthan, Karnataka, Jammu & Kashmir, Himachal Pradesh, Maharashtra, Madhya Pradesh and Orissa. The visits provided an opportunity for the Commission to interact with the principal decision makers in the States, as well as with leading non-governmental organisations and human rights groups. 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.

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

CHAPTER 12

International Co-operation

A] Meetings of the International Coordination Committee (ICC) and the Commission on Human Rights

12.1 The Commission had served as an Accredited Member of the International Coordination Committee (ICC) from 1994 to 2002 and as its Chair for a number of years. The coming of age of National Institutions as a group has been vividly demonstrated by their active participation in the Annual Sessions of the Commission on Human Rights.

12.2 The 59th Session of the Commission on Human Rights and the meeting of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC), was held in April, 2003, in Geneva, Switzerland. Dr. Justice A.S. Anand, Chairperson, Shri Virendra Dayal, Member and Smt. S. Jalaja, Joint Secretary of the Commission attended the meetings. The Chairperson also made a Statement on behalf of the Commission. The full text of the statement made by the Chairperson may be seen at Annexure 10. Earlier, the delegation had participated in meetings of the Asia-Pacific Forum of National Institutions and of the 59th Session of the Commission on Human Rights, International Coordinating Committee of National Institutions, which were held in Geneva on 14 and 15 April respectively. The delegation also had an exchange of views with the then UN High Commissioner for Human Rights, Mr. Sergio Vieira de Mello.

12.3 Addressing the UN Commission, Justice Anand stated that national institutions were both the catalysts and monitors of good governance within their respective jurisdictions and could play a unique role in the defence and furtherance of human rights if they were proactive, if they took preventive measures to stave-off or mitigate violations, and if they were fearless in bringing to book those who have violated human rights. "It is therefore a matter of some concern to us if any national institution, whether in our region or elsewhere, is subjected to extraneous political, financial or other unwarranted pressures". In seeking to fulfil its role, he stated that the National Human Rights Commission has, in the past

months, continued to act in defence of a range of civil and political rights, as also economic, social and cultural rights, relevant to the circumstances of our country.

B] Annual Meeting of the Asia Pacific Forum

12.4 The 8th Annual Meeting of the Asia Pacific Forum (APF) was held at Kathmandu from 16 - 18 February 2004, which was attended by representatives of the National Human Rights Institutions of twelve member countries that constitute the Asia Pacific Forum i.e. Nepal, Australia, Fiji, India, Indonesia, Malaysia, Mongolia, New Zealand, Philippines, Republic of Korea, Sri Lanka and Thailand. The full text of the statement made by the Chairperson may be seen at Annexure 11.

12.5 The meet reaffirmed that the structure and responsibilities of national institutions should be consistent with the Paris Principles. In view of the changes in the New Zealand law governing the New Zealand Rights Human Commission the meet reaffirmed the full membership of the New Zealand Human Rights Commission. It also admitted the Afghanistan Independent Human Rights Commission and the Palestinian Independent commission for Citizens Rights as Associate Members of the Forum. As a result, the Forum's overall membership has increased to fourteen institutions. The Forum will assist the new associate members where possible, to become fully compliant with the Paris Principles.

12.6 The Forum's 8th Annual Meet which was co-sponsored by the Office of the United Nations High Commissioner for Human Rights (UNHCHR) saw the participation of the Advisory Council of Jurists (ACJ), representatives from the ILO, UNDP UNESCO, the governments of Australia, India, Indonesia, Nepal, New Zealand, Republic of Korea, Solomon Islands, Taiwan, Thailand, Timor-Leste, United Kingdom and the United States of America, the institutions from Iran, Jordan and the Maldives, the regional Network of National Human Rights Institutions of the Americas, and thirty eight international regional and national non-governmental organizations.

12.7 The Rt. Hon. Surya Bahadur Thapa, Prime Minister of Nepal and Mr. Matthew Kahane, United Nations Resident Coordinator (Nepal), on behalf of Mr. Bertrand Ramchandran, Acting High Commissioner for Human Rights, addressed the inaugural session.

12.8 The need to protect and promote human rights and ensure the rule of law in combating terrorism found mention in the opening statements made by several speakers. This was further elaborated by Dr. Justice A.S. Anand, Chairperson of the National Human Rights Commission, India, in his statement on 'Balancing Human Rights Protection and Security Concerns: Regional Perspective'. The full text of the statement made by the Chairperson is at Annexure....

Business Session

12.9 The issue of the Rule of Law in combating Terrorism, which has been referred to the Advisory Council of Jurists at the 7th annual meet of APF, was examined by it and an interim report was submitted before the 8th annual meet which was debated and unanimously adopted. The ACJ has been asked to submit a final report on the subject. The meet also decided to formulate a new reference to the Advisory Council of Jurists on the issue of Prevention of Torture.

12.10 The Forum also elected The National Human Rights Institutions from Fiji, Nepal, Philippines and the Republic of Korea to be the four regional representatives to the International Coordinating Committee of National Institutions. The Fiji Human Rights Commission will serve on the International Coordinating Committee accreditation sub-committee.

12.11 It unanimously elected the National Human Rights Commission of Nepal (as the current host institution of the annual meeting) to the position of Chairperson of the Forum. The National Human Rights Commission of India (as the host institution for the last annual meeting) and the National Human Rights Commission of the Republic of Korea (as the host institution for the next annual meeting) were also elected unanimously to the two positions of Deputy Chairpersons.

Plenary Session

12.12 The Forum reported on their implementation of the recommendations of the Advisory Council of Jurists' reports on the death penalty, child pornography on the internet and trafficking. A number of Forum Councillors specifically cited the successful implementation of the Advisory Council's recommendations.

12.13 It called on governments of Forum member institutions to strengthen the independence and institutional capacity of national institutions to enable them to carry out their mandates more effectively. In particular, national institutions should be provided with a wide and unrestricted mandate to conduct investigations of human rights violations. Government should also give serious consideration to the determinations and recommendations of national human rights institutions and ensure their effective implementation.

12.14 The Forum welcomed the progress to develop a new international Convention on the Rights of People with Disabilities, as advocated by national institutions at the workshop held in New Delhi, India in 2003. Forum institutions agreed to establish a Working Group to assist in the development of the proposed convention. The Forum welcomed the offer of the OHCHR to continue to support the Forum in these activities.

12.15 The concluding statement highlighted:

- Importance of joint practical collaborative activities with NGOs.
- Congratulated governments of Maldives, Solomon Islands and Temor Leste for deciding to establish human rights institutions, which would be compliant with the Paris Principles.
- Implementation of recommendations of Advisory Council of Jurists' reports on death penalty, child pornography on the internet and trafficking.
- Alleged violations of human rights in Nepal.
- Progress on developing a new International Convention on the Rights of People with Disabilities.
- Governments should sign and ratify Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman and degrading Treatment and its Optional Protocol.
- Consideration of the recommendations of the Advisory Council on 'Terrorism and Rule of Law.'
- Called upon the States to strengthen the national institutions team of OHCHR.

C] Visits, Seminars and Workshops Abroad

12.16 Visits abroad by Chairperson and Members and attending seminars and workshop by the senior officials of the Commission offer a rare opportunity for facilitating exchange of views and information as well as provides exposure to international developments in the area of human rights. During the year under review a number of such visits by Chairperson, Members and senior officers took place. Dr. Justice A.S. Anand, Chairperson visited Tehran, Iran, during 22-26 June, 2003 on the invitation extended by the Islamic Human Rights Commission of Iran through the India's Ambassador.

12.17 Dr. Justice A.S. Anand, Chairperson visited London, UK, during 12-19 July, 2003 on the invitation of British High Commission, New Delhi.

12.18 Shri P.M. Nair, Nodal Officer and, Dr. Savita Bhakhry, Senior Research Officer, visited Kathmandu, Nepal, during 1-4 September, 2003, to prepare the groundwork for signing of a MOU between NHRC-India and NHRC-Nepal on a joint project for combating cross-border trafficking.

12.19 Justice Smt. Sujata V. Manohar visited Arusha, Tanzania, during 5-15 September, 2003, to participate as a keynote speaker in a sub-regional Judicial Colloquium on the

Application of International Human Rights Law at the Domestic Level, with particular reference to the Convention on Elimination of Discrimination Against Women (CEDAW) from 9-11 September, 2003.

12.20 Justice Smt. Sujata V. Manohar, Member, visited Nagoya, Japan during 8-14 October 2003, to attend an international Conference on “Asian Perspectives on International Law in the 21st Century” and to present a paper on Interpersonal Law in India.

12.21 Shri P.S.S. Thomas, Secretary General visited Rome, Italy, during 26-31 October, 2003, to attend the Second Session of the Intergovernmental Working Group for the Elaboration of a set of Voluntary Guidelines to support progressive realization of the right to adequate food in the context of National Food Security, at the FAO Headquarters, Rome.

12.22 Shri P.M. Nair, Nodal Officer and, Dr. Savita Bhakhry, Senior Research Officer, visited Melbourne, Australia, during 21-24 October, 2003, to attend a conference on ‘Stop the Traffic’.

12.23 Shri R.S. Kalha, Member, visited Auckland, New Zealand, during 2-6 February, 2004 to attend the “International Round Table on Race Relations” organised by New Zealand Human Rights Commission & the Office of the High Commissioner for Human Rights.

12.24 Shri P.S.S. Thomas, Secretary General, visited Rome, Italy, during 2-5 February, 2004, to attend the Inter- Sessional Meeting of the Open ended Working Group for the elaboration of a set of voluntary guidelines to support the progressive realization of the Right to Adequate Food in the context of National Food Security organised by the FAO, Rome.

12.25 Smt. S. Jalaja, Joint Secretary in the Commission visited Doha, from 24 March, 2004, to attend the 12th Annual Workshop on Regional Cooperation for the promotion and Protection of Human Rights in the Asia-Pacific Region;

12.26 Shri P.S.S. Thomas, Secretary General and, Shri Ajit Bharihoke, Registrar (Law) visited Nigeria during 23-26 March 2004, to attend an “International Seminar on Commonwealth Human Rights Institutions and Legislatures: Building an effective relationship”.

12.27 Shri Shashi Kant Sharma, Senior Systems Analyst, NIC, attached with the Commission, visited Kathmandu, Nepal during 17-20 March, 2004, to develop a software on Complaints Management System (CMS) Package in the Nepal Human Rights Commission.

D) Exchanges and Other Interactions

12.28 The Commission was pleased to welcome delegations from abroad especially Parliamentary and human rights institutions and provide them with information concerning

the role and functions of NHRC as well as the important human rights issues handled by it. It also shared the best practices and conventions followed by the NHRC. During the year under review, Members of the Sri Lankan Parliamentary Select Committee visited the Commission on 7 March, 2003.

12.29 Senior Officers of the French Civil Service visited the Commission on March 20, 2003.

12.30 European Union Ambassadors called on the Chairperson of the Commission on March 17, 2003.

12.31 A three member Committee of Peace Dialogue Facilitation (CPDF) in Nepal visited the Commission on July 8, 2003.

12.32 A high powered human rights delegation from the Republic of Indonesia visited the Commission on September 11, 2003.

12.33 A delegation of UK's Conservative Parliamentary Friends of India (CPFIND) visited the Commission on October 1, 2003.

12.34 Mr. Dato Param Cumaraswamy, Barrister at Law, Inner Temple visited the Commission on October 31, 2003.

12.35 Ms. Radhika Coomaraswamy, Chairperson, Human Rights Commission of Sri Lanka, visited the Commission on January 8, 2004.

12.36 Lord Justice Robin Auld, UK, visited the Commission on January 27, 2004.

12.37 A delegation headed by the Ombudsman of Ukraine Mrs. Nina Karpachova visited the Commission on January 23, 2004.

12.38 A delegation headed by Mr. Tan Sri Simon Sipaun, Vice Chairman, Malaysian Human Rights Commission visited the Commission on February 20, 2004.

12.39 Mr. Justice John Von Doussa, QC, President, Human Rights & Equal Opportunity Commission (HREOC), Australia, along with Ms. Diana Temby, Executive Director, HREOC, visited the Commission on February 12, 2004.

12.40 A delegation of UK's labour friends of India visited the Commission on February 10, 2004.

12.41 A delegation headed by Mr. Walter Rigamoto, Chairperson, Fiji Human Rights Commission visited the Commission on February 20, 2004.

12.42 A delegation from Policy Division, DFID, London, UK, visited the Commission on February 26, 2004.

E] NHRC-CHRC Linkage Project

12.43 The NHRC initiated a project to promote the human rights of persons with disabilities in a tripartite mode after signing a memorandum of agreement with - Canadian Human Rights Commission and Indira Gandhi National Open University of India on 26th August 2003. This project aims to:

- Create conditions for effective use of human rights instruments for protection of persons with disabilities.
- Enhance visibility of disability concerns in the human rights institutions at all levels.
- Systematically incorporate education, knowledge and awareness about major human rights instruments, and domestic legislations aimed at persons with disabilities.
- Encourage the development of jurisprudence in the areas of human rights of persons with disabilities that may be of use to national and international advocates.

12.44 For the realization of these objectives, a number of activities were planned and initiated during the period under review:

- For the proper management, a project advisory committee has been constituted comprising 5 members. In addition, the commission has designated its Special Rapporteur (Disability), NHRC as the chief coordinator of the project to ensure effective implementation.
- Review of national and international training programs and training materials was undertaken to map resources. The analysis of resources available has been compiled to facilitate the development of training programs in human rights and disability.
- Similarly, a catalogue of disability cases is being compiled to be used by disability rights activists and advocates. Summaries of about 100 cases are being prepared using examples of cases from the Apex Court, various High Courts, Tribunals and quasi Judicial Bodies. Our project partners and foreign authors are also compiling examples of disability cases from their jurisdictions and from the international and regional systems.
- A panel of authors has been identified from across the globe combining expertise in the fields of human rights and disability issues. We have been successful in spotting half a dozen experts from across the globe who have agreed to author training manuals planned under this project.

- Through electronic exchanges and a teleconference held on December 5th, 2003, a manual design and course design for a training of trainers could be finalized. The experts who contributed to the development of training curricula and manual design include :
1. Prof. Marcia Rioux, Director, Disability Studies, York University, Toronto
 2. Prof. Andrew Byrnes, Head-Dept of Law, National University of Australia, Canberra
 3. Mr. Kieren Fitzpatrick, Director, APF, Sydney, Australia
 4. Prof. Amita Dhanda, NALSAR, Hyderabad
 5. Shri S.K. Rungta, Secretary General, National Federation of Blind, New Delhi

This initiative was lead by Ms. Anuradha Mohit, Special Rapporteur Disability with the Commission

- The NLSIU, Bangalore has been identified as a Nodal Agency to carry out first training of trainers program in July 2004. A six-day training program would be offered to a selected group of legal practitioners, academics and activists. The major law schools and universities with law departments, human rights and disability rights organizations have been approached to nominate their representatives for the training program.
- For the second phase of the training a catalogue of topics for individual projects have been prepared as each participant is required to work on a project and subsequently share the findings in a national seminar. A bibliography to aid individual projects has also been compiled which would be further updated in 2004.

12.45 In the nutshell, during the year 2003-2004, the Commission completed the spade work for the introduction of the training of trainers program and for developing manuals to raise awareness and application of International and domestic human rights norms and standards to promote and protect rights of persons with disabilities.

F] NHRC, India – NHRC, Nepal Joint Project for Combating Cross-Border Trafficking

12.46 It had been mentioned in the annual report for the year 2002 – 03 that at the instance of the Asia Pacific Forum, the Commission held preliminary discussions with a team from the National Human Rights Commission of Nepal on 07 November, 2002, to consider the

possibility of devising a joint project to combat cross-border trafficking between India and Nepal.

12.47 In order to have further bilateral dialogue between the two national institutions, it was agreed in the above meeting that a team from NHRC, India would visit the Nepal Human Rights Commission at a mutually convenient date, after which, the visit could be reciprocated by a team from NHRC of Nepal.

12.48 The visit of a team from NHRC, India could not materialise. However, a four member delegation from the Nepal Human Rights Commission, led by Dr. Gauri Shankar Lal Das, Member, NHRC of Nepal, visited the NHRC, India on the 3rd of June, 2003, to further discuss the possible areas of cooperation to combat trafficking of women and children across the Indo-Nepal border. In this meeting that was held under the Chairpersonship of Justice (Smt.) Sujata V. Manohar, Member, NHRC, India, some of the areas suggested by the NHRC, Nepal on which both the Commissions could jointly work together were as follows:-

- Sharing of information/data on trafficking;
- Rescue, rehabilitation and repatriation of trafficked victims;
- Setting up of a cross-border institutional mechanism consisting of Vigilance/Surveillance Committees, especially in areas most vulnerable to trafficking;
- Identifying other areas in which trafficking is increasing, such as, trafficking of boys engaged in jari work;
- Organisation of workshops/sensitisation programmes at the regional level for officials and security personnel posted on the border as well as law enforcement agencies;
- Identification of NGOs who could be involved in the above tasks;
- Work out bilateral agreements within the purview of the SAARC Convention.

The areas suggested by the NHRC, India were:

- The NHRC, Nepal, could conduct an Action Research on Trafficking on the lines of the Action Research Project on Trafficking in Women & Children, being carried out by the NHRC, India. The proposed Action Research could make a survey of blocks prone to trafficking, as well as the push and pull factors contributing to trafficking. The data collected through these surveys could be exchanged and used for evolving a common strategy on combating cross-border trafficking.

- Conducting awareness generation programmes for the community in the catchment districts from where most of the women and children are being trafficked.
- Exchange of information on best practices regarding rescues and rehabilitation.
- To work out a mechanism between the two countries so as to prevent re-trafficking of women and children.
- To work out an arrangement for recording evidence of trafficked victims for prosecution of traffickers in India/Nepal or a third country.

12.49 In this meeting, it was also decided that the Nepal Human Rights Commission would send their response to NHRC, India, in the light of the discussion held and, thereafter, talks could be held between the two Commissions to decide the further course of action.

12.50 In order to carry out the groundwork for evolving a Memorandum of Understanding between the NHRC, India and NHRC, Nepal on the possible areas of cooperation on the issue of combating cross-border trafficking, a team consisting of two officers later visited Kathmandu from 01 – 04 September, 2003. The agenda items that came up for discussions in the meeting included:-

- a. Sharing of information and data on trafficking;
- b. Setting up of Joint Task Force;
- c. Review of laws/treaties;
- d. Listing out Human Rights Principles;
- e. Organisation of Joint Training of Trainers;
- f. Training Module;
- g. Directory of NGOs;
- h. Bilateral Treaty;
- i. Mutual Assistance in Criminal Matters;
- j. Implementing the SAARC Convention;
- k. Joint Work with United Nations and Asia Pacific Forum; and
- l. Setting up of Joint Working Group.

12.51 On the basis of the report submitted by the NHRC, India team, a draft Memorandum of Understanding (MoU) between the two Commissions was drawn up and approved by the Commission. Thereafter, a copy of the MoU was sent to the Ministry of Home Affairs with the request that a 'No Objection' by the Government be conveyed to the Commission in consultation with the Department of Women and Child Development, Ministry of Human Resource Development and the Ministry of External Affairs, so that it could be implemented on priority basis between the two Commissions. It is, however regretted that even after the lapse of three months, the Government has not conveyed, in principle, its no objection to the proposal. The Commission being a member of the International Coordination Committee of National Human Rights Institutions and one of the oldest serving members of the Asia Pacific Forum, is required, as a part of its international obligations, to extend co-operation to sister institutions in the region.

G] Implementation of Commission's Complaint Management System in the Nepal National Human Rights Commission

12.52 The Nepal National Human Rights Commission in partnership with the Canadian Human Rights Commission requested the NHRC, India to help them to instal the Complaint Management System (CMS) developed by the Indian NHRC implemented in their Commission.

12.53 The NHRC India had deputed Shri A.K. Parashar, Deputy Registrar and Shri Shashi Kant Sharma, Senior Systems Analyst, NIC to the Nepal NHRC on their request. They made two visits to the Nepal NHRC between 17-20 March, 2004 and 12-17 April 2004. A series of discussions with the Protection and Monitoring Division (PMD) were held in which various needs were identified. The software was customised as per their needs. The CMS was made operational, both, in Nepalese and English fonts. It also supports the Vikram Samvat date format being used by the Nepal NHRC. The team provided orientation to the IT experts of the Nepal NHRC, in understanding the Master Codes and effective operation of the software. The Staff members of the Protection and Monitoring Division as well as the other Divisions were trained in the operation of the software. After the customization and implementation of the CMS application software, a well-organized and fully computerized database management of complaints is at present established in the Commission for various purposes.

CHAPTER 13

Non-Governmental Organisations

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

13.2 In order to strengthen the relationship with NGOs, the Commission has been holding a series of consultations with NGOs and voluntary organisations engaged with the promotion and protection of human rights, on a regional basis. During the period under review, Regional Consultation with NGOs based in the Western Region was held on 13th June, 2003 at Pune covering the States of Gujarat, Goa, Madhya Pradesh, Maharashtra and Rajasthan. The participants raised several human rights issues demanding attention which, inter-alia, included Child Labour/Child Labour, Discrimination and harassment of Denotified tribes such as Pardhis, denial of minimum wages and substandard working conditions prevailing in sugar factories in Maharashtra, plight of tribals in Maharashtra, adverse impact of globalization, the increasing incidence of prostitution and sexual abuse of children in Goa, pathetic living conditions in jails, the threat of HIV from a human rights perspective,

13.3 A Regional Consultation with NGOs of the North- Eastern Region was also held on the 22nd March, 2004, at Guwahati, covering the States of Tripura, Assam, Meghalaya, Nagaland, Mizoram, Arunachal Pradesh, Manipur and Sikkim. The Consultations provided a useful platform for the NGOs to put forth their perspectives before the Commission. Some of the important issues raised and discussed in the consultation included, the plight of women widowed as a result of counter insurgency operations, problem of overcrowding in Jails in Tripura, lack of sensitivity in dealing with disability related issues by the concerned authorities and, gender justice related issues.

13.4 The Core Group constituted under section 12(a) of the Protection of Human Rights Act, 1993 to encourage the efforts of the Non-Governmental Organisations (NGOs) and

institutions engaged in the field of human rights continues to have frequent meetings to interact, discuss, review and monitor various human rights issues.

13.5 Four meetings of the Core Group on NGOs were held during the year under review. The Core Group continued to provide the Commission with crucial inputs regarding the hopes, aspirations and expectations of the Civil society from the Commission. The issues deliberated in the meetings, inter-alia, included

- the continuing practice of manual scavenging in many States;
- the delay in the implementation of the Right to information Act by Government;
- the need for enacting the Whistleblowers Act;
- the urgent need to protect human rights defenders and;
- delay in the implementation of the Ahmadi Committee recommendations by the Government.

13.6 Action Aid, India, one of the members of the Core Group presented a status report on the following projects/studies taken up by them on the recommendations of the Group in its earlier meetings:

- Begging, Begging Laws & Recommendations
- Rehabilitation of Patients in Mental health Institutions
- Manual Scavenging
- Jail Study
- Survey on the implementation of the guidelines issued by the Supreme Court in their judgement dated 13.8.97 on the Vishaka Vs the State of Rajasthan. (The relevant information is given in para 7.27 Chapter 7 on Rights of Women and Children)

13.7 The Commission, during the course of the year, provided financial assistance to a number of organisations/institutions for conducting various programmes on issues concerning human rights:

- An amount of Rs. 50,000/- was sanctioned to Nirmal Foundation Trust, Gujarat for organisation of tribal welfare camps in the Khedbrahma Taluka of Gujarat.
- An amount of Rs. 20,000/- was sanctioned to Dr. V.M. Peshwe, Maharashtra for publication of his book in Marathi language titled “ International Criminal Court Under Rome Statute 98”.

- An amount of Rs. 10,000/- was sanctioned to the Centre for Youth and Social Development, Bhubaneswar, for the Workshop on Good Governance and Right to Information held on the 15th September, 2003.
- An amount of Rs. 25,000/- was sanctioned to Shri A.B. Tripathy, Special Rapporteur, for holding of workshop on HIV/AIDS in Cuttack, organised by the Indian Medical Association on the 20th April, 2003.
- An amount of Rs. 25,000/- was sanctioned to “Sidhant” for conducting State level training cum workshop on human rights education in Cuttack .
- An amount of Rs. 36,000/- was sanctioned to Age-Care India, New Delhi for organising a Seminar on the problems of Human Rights of the Aged in New Delhi.
- An amount of Rs. 1,05,000/- was sanctioned to SERVE, Kolkata for the purpose of organisation of a debate amongst students, teachers and parents, on current education structure and the human rights of the students.
- An amount of Rs.1,00,000/- was sanctioned to Citizenship Development Society, New Delhi for organising a seminar on human rights.

13.8 The Commission has also sanctioned research projects involving NGOs, the details of which have been given in Chapter 10 – “Research Programmes and Projects”.

13.9 The Commission has continued to work closely with NGOs in respect of the specific issues which had been identified in discussions between the Core group and the Commission which includes systemic reforms in police and jail administration, matters relating to custodial institutions of various kinds, including women’s homes, children’s homes and the like; the rights of persons with disabilities, especially women and those belong to disadvantaged sections of society; issues relating to Dalits; incidents of communalism related violation of human rights and the human rights of un-organised workers in both urban and rural areas.

CHAPTER 14

State Human Rights Commissions and Human Rights Courts

14.1 The Commission is of the view that better protection of human rights can be ensured if all the States set up human rights commissions. State Human Rights Commissions have been set up so far only in the States of Assam, Chhattisgarh, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal.

14.2 The Commission in its earlier annual reports has stated that, both in respect of Human Rights Courts and State Human Rights Commission, 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.

14.3 The Government in its memorandum of action taken report for the year 2001-02 has mentioned that it has impressed upon the State Governments, which has not established State Human Rights Commissions, to do at the earliest and for designation of Human Rights Courts as required under the Protection of Human Rights Act, 1993. The recommendations of the Commission regarding ensuring of quality, both in terms of personnel and financial autonomy, have also been conveyed appropriately to the State Governments for necessary action by the Government.

14.4 The Commission, however, notes with regret the delay on the part of the State Governments in the setting up of State Human Rights Commissions and providing necessary staff and infrastructural support for their smooth functioning. The Commission at present is overburdened with too many complaints on alleged human rights violations numbering approximately 70,000 to 80,000 per year. Only with the setting up of full fledged and fully equipped State Human Rights Commissions can this burden on the NHRC be lessened to some degree.

14.5 To strengthen the National and State Human Rights Commissions for effective implementation of the provisions of Protection of Human Rights Act, a meeting of the National Human Rights Commission and various State Human Rights Commissions was held on the 30th January, 2004, in New Delhi. Based on the suggestions received from the State Commissions, the following agenda was taken up for discussion in the meeting:

- Coordination and sharing of information between the SHRCs and the Commission.
- Training, Awareness Building and Publication of human rights issues in regional languages
- Substantive human rights issues suggested by the SHRCs such as problems in jails.

14.6 Under section 30 of the Protection of Human Rights Act, the State Governments may, with the concurrence of the Chief Justice of the concerned High Court, by notification specify for each district a Human Rights Court to try the offences arising out of the violation of Human Rights. The Commission time and again has stated that in order to give a better focus to this laudable provision and to provide justice at the district level itself in case of human rights violations, the section needs amendment. Further the lack of clarity as to what offences, precisely, can be clarified as human rights offences, has been the biggest impediment in the effective functioning of human rights courts, which have been set up by some of the States. It urged the Central Government through its annual reports for amendment of Section 30 of the Protection of Human Rights Act, 1993. It is rather unfortunate that the Central and State Governments have so far failed to resolve issues that are creating impediments in the setting up of fully functioning Human Rights Courts. We do hope that by the time the next annual report is written, action would be taken to accomplish this so that the Commission is not required to repeat the same observation year after year.

Implementation of the Complaints Management System (CMS) in the State Human Rights Commissions

14.7 The Punjab State Human Rights Commission (PSHRC), Chandigarh, made a request to the NHRC for helping them instal the CMS in the their office. As a gesture of mutual cooperation between the NHRC and PSHRC, the NHRC nominated a team of two NIC officials, Shri Shashi Kant Sharma, Senior Systems Analyst, and Shri Vikas Agrawal, System Analyst to assist the PSHRC in the month of May 2003. The NIC team reviewed the IT setup at the PSHRC and suggested its upgrading. In the month of June 2003, the CMS was customized and implemented at the PSHRC as per their requirements. Finally, in the month of September, 2003 NIC team visited the PSHRC for post implementation review. Necessary modifications were incorporated. The NIC has also customized 11 reports of daily use and they are found to be working satisfactorily. The CMS at present is working successfully at the Punjab State Human Rights Commission.

14.8 The Rajasthan State Human Rights Commission (RSHRC), Jaipur also requested the NHRC to assist them to instal the CMS in their Commission. The NIC team from NHRC visited the RSHRC in the month of Feb 2004. A detailed report has been submitted to the RSHRC, Jaipur by the NIC team.

CHAPTER 15

Complaints before the Commission

A] Number and Nature

15.1 During the year under review, the Commission had a total number of 1, 18, 502 cases to consider which included cases brought forward from previous years as well as fresh institution during the current year. During the period from 1 April 2003 to 31 March 2004, the Commission disposed of 57,694 cases (Annexure 12). The State-wise and Category-wise details of cases are shown in Annexures 13 (a) to (c).

15.2 At the end of the reporting period i.e. as on 31 March 2004, the total number of cases pending with the Commission was 60,808, which included 4,767 cases awaiting preliminary consideration and 56,041 cases in respect of which reports were either awaited from the authorities concerned or the reports had been received and were pending further consideration within the Commission itself (Annexure 14).

15.3 The total number of cases registered in the Commission 2003-2004 was 72,990, while the corresponding figure for the year 2002-2003 was 68,779. Of the cases that were registered during the year under review, 71,427 cases were complaints of alleged human rights violations besides 1463 cases relating to intimations of custodial deaths and 100 relating to police encounters. Of the custodial deaths that were reported in the course of the year 2003-2004, 1 death occurred in the custody of defence / para-military forces, 162 deaths occurred in police custody, while 1300 in judicial custody, most of the latter resulting from illness, old age or similar factors. (Annexure 15).

15.4 The details in respect of complaints registered last year again confirm the assessment made by the Commission in the preceding annual reports that, after successive years of rapid increase, the number of complaints received by the Commission now appears to have stabilized. As in the past, the largest number of complaints registered was from the State of Uttar Pradesh; they numbered 40,396 or 56.5 percent of the total number of complaints registered by the Commission. Delhi followed Uttar Pradesh, with 4610 complaints while

Bihar coming third with 4392 complaints. It would appear that the establishment of State Human Rights Commissions have not so far led to any significant reduction in the number of complaints being received by the National Human Rights Commission from Uttar Pradesh. Human Rights Commissions have not been set up either in Bihar or Delhi so far.

15.5 Of the total number of 57,694 cases disposed of in 2003-2004, 35,300 were dismissed 'in limini', while 13,415 were disposed of with directions to the appropriate authorities for remedial measures. 342 intimations relating to custodial deaths, 17 cases of encounter deaths and 8,620 other cases were also disposed of after calling for reports from the concerned authorities. In the latter group, 5 cases pertained to alleged disappearances, 660 cases to illegal detention/ illegal arrest, 420 cases of alleged false implication, 1 case of alleged custodial violence, 34 cases of alleged 'fake encounters', 1766 instances related to failure to take appropriate action and 2344 complaints related to other alleged police excesses. During the period under review, the Commission dealt with a number of complaints relating to rights of women. 61 cases of allegations of violating the dignity of women - 92 cases alleging sexual harassment of women - 209 cases alleging abduction, rape and murder - 616 cases relating to dowry deaths, 266 cases of dowry demand - 139 cases alleging exploitation of women and 176 cases alleging rape of women were disposed of. The Commission also disposed of 10 cases concerning child labour, 3 cases relating to child marriages and 29 cases of bonded labour. The Commission also dealt with complaints relating to conditions in prisons. 81 cases alleging harassment of prisoners, 14 cases alleging lack of medical facilities in jails and 120 cases relating to other aspects of conditions in jails were disposed of by the Commission with appropriate recommendations. In addition to the above, 161 cases alleging atrocities against members of the Scheduled Castes/Scheduled Tribes were disposed of by the Commission, as also 1 case of communal violence and 1412 cases of other categories. The State-wise position in respect of these cases may be seen at Annexures 12 (a) to (c).

15.6 Since its establishment in October 1993, the Commission has directed that interim relief to the extent of Rs. 9,84,10,634/- to be paid in 581 cases. During the year 2003-04, the Commission recommended that interim relief amounting to Rs. 7,42,000/- be paid in 22 cases.

B] Computerisation of Complaint Handling Mechanism

15.7 The Commission has been using latest Information Technology tools to ease out the previously existing complaint handling mechanism with the help of NIC since 1994. The NIC has developed and implemented the software, Complaint Management System (CMS) for the Commission and it is found working successfully since 25th August 2000. This new work environment has increased productivity of the staff members substantially; thereby helping the Commission in handling the disposal of cases more efficiently. The CMS application software contains information about 4,42,743 complaints along with their follow-up of action as on 31st March 2004.

15.8 The installation of the CMS has helped the Commission to introduce transparency in its functioning by providing information on status of complaints at the Facilitation Centre set up by the Commission. This is an On-Line facility by which the status along with complete details about a case is made available as and when desired by the Complainant / Victim / anyone concerned from the Facilitation Counter. It is catering to, on an average, 50 complainants per day.

15.9 The Commission has further extended CMS to help the public by developing and hosting a query module for complaint, status on internet information on the current status of a case, complainant's details, victim's details and last order / direction / recommendations given by the NHRC. It supports search based on file number, complainant's details, victim's details and incident details. This website had nearly 1,53,000 hits till 31st March 2004.

C] Investigation of Cases

15.10 The investigations ordered by the Commission are carried out by the Investigation Division of the Commission which is headed by an officer of the rank of Director General of Police. He is assisted by a DIG, three Senior Superintendents of Police and 21 other investigators of various ranks. The Investigation Division, acting under directives of the Commission collects facts in respect of complaints received by the Commission and to place those facts before the Commission. The Division also monitors cases in respect of which the Commission has ordered investigation by the CID or CBI.

15.11 The investigation of cases by its own team helps the Commission in ascertaining the facts in respect of complaints received by it directly in the shortest possible time. This is an invaluable aid to the Commission in the discharge of its duties.

15.12 During the year 2003-2004, the Commission directed its Investigation Division to look into 3538 cases, as compared with 3005 cases in the preceding year. Of these cases 2918 related to the 'collection of facts' from different parts of the country. In 51 instances, however, the Commission directed that teams of the Commission conduct inquiries on the spot. These inquiries were conducted mainly in Uttar Pradesh, Delhi Haryana, Bihar, Punjab, Rajasthan and Madhya Pradesh.

15.13 Investigation Division also continued to assist the Commission in the onerous task of processing and scrutinizing the large number of cases of custodial deaths reported to it over the years. The details of that effort are provided in Chapter IV of this report. Further, the analysis and advice of the Investigation Division was frequently requested by the Commission in respect of complaints alleging deaths in fake encounters, or the violation of human rights resulting from false implication in cases, illegal detention, torture, and other acts of wrong-doing by the police.

15.14 The Commission has been making certain recommendations through its annual reports for strengthening the Investigation Division by sanctioning additional posts and bringing about changes in the conditions of service of its personnel with a view to facilitate the appointment of well qualified and trained man power. The Commission is still awaiting the Govt. to fulfil its assurance it had given in the Action Taken Report for the year 2001-2002.

D] Illustrative Cases 2002-2003

a) Deaths in Police Custody

1) Death of Zakir in Police Custody at Pushp Vihar Police Station, New Delhi (Case No. 525/30/2001-2002-CD)

15.15 The Commission was informed by the Dy. Commissioner of Police (South District.), Delhi of the custodial death of Zakir in the Police Station of Pushp Vihar, New Delhi on 12 May 2001. The Commission registered a case and called for relevant report from the concerned authority. In view of the conclusion arrived in the magisterial inquiry with regard to the custodial death of Zakir that “the death was caused by use of blunt force during the course of interrogation and detention in the Police Chowki, Pushp Vihar” and that the involved police officers were prosecuted by the Government of National Capital Territory of Delhi, the Commission awarded immediate interim relief under section 18(3) of the Protection of Human Rights Act, 1993. It also issued a show cause notice to the Government of National Capital Territory (NCT) of Delhi.

15.16 In response, the Government of NCT brought to the notice of the Commission that the accused had already been charge-sheeted and the case was pending in the Court for verdict and that in the given circumstances they had no objection to pay interim relief to the bereaved family.

15.17 Upon consideration of their response, the Commission directed the Government of NCT of Delhi to pay Rs. 2.00 lakhs as immediate interim relief to the next of kin of the deceased.

15.18 Pursuant to the directions given by the Commission, the Government of NCT indicated that a cheque for Rs. 2.00 lakhs had been delivered to Ms. Jannat, wife of Late Shri Zakir, and the proof of the payment was also submitted. In the light of the action taken by the Government of NCT of Delhi, Commission decided to close the case.

2) Death of Madan Bhilala in Police Custody at Balawar Police Station, Distt. Khargaon: Madhya Pradesh (Case No. 71/12/2001-2002-CD)

15.19 The case relates to the custodial death of Madan Bhilala in Balawar Police Station, District Khargaon, Madhya Pradesh on 27 April 2001. On perusal of the post-mortem report,

the Commission noticed that the cause of death was hypovolemic shock due to dehydration. The Commission also observed that according to the findings in the magisterial enquiry, the deceased was kept in illegal detention since 21 April 2001 at Balwara Police Station and that the police was responsible for the death of the deceased.

15.20 In response to Commission's show cause notice issued to the Government of Madhya Pradesh, as to why Rs. 1.00 lakh be not paid as immediate interim relief under section 18(3) of the Protection of Human Rights Act, 1993 to the next of the kin of the deceased and appropriate action taken against the errant police officials, the State Government requested the Commission to re-consider the matter as the cause of death of Madan Bhilala was due to dehydration and not police torture.

15.21 On further re-examination, the Commission did not find any ground to recall its earlier order. The Commission noticed that the magisterial inquiry had indicated that the death was due to dehydration caused by diarrhoea as per the Medical Officer's report. The Commission held that these findings clearly indicated that the death was not merely due to illegal detention of the deceased, but also, negligence in providing medical care while he was in detention. The Commission, therefore, directed the State Government to pay a sum of Rs. 25,000/- as immediate interim relief to the legal heirs of the deceased.

15.22 Pursuant to the Commission's directions, the Government of Madhya Pradesh had sent a report indicating that an amount of Rs. 25,000/- was paid to the legal heirs of the deceased. Proof of payment was also furnished to the Commission. Since the directions of the Commission were complied with and the compensation was paid to the next of the kin of the deceased, the case was closed.

3) Death of Chhigga in the Police Custody at P.S. Sirsi, District Guna: Madhya Pradesh (Case No. 1800/12/2000-2001-CD)

15.23 The Commission initiated proceedings in this case on the basis of an intimation received from the Superintendent of Police, District Guna, Madhya Pradesh about the death of Chhigga on 16 October 2000 in police custody at Police Station Sirsi, District Guna, Madhya Pradesh.

15.24 Upon consideration of the report of magisterial inquiry, the Commission held that inability to provide proper and regular treatment while in police custody caused the death of Chhigga. The Commission further held that though the injuries caused to him were not attributed to any maltreatment by police personnel, the negligence of the concerned public servants in not providing the timely medical treatment during police custody was the immediate and proximate cause of death.

15.25 In response to the show cause notice issued by the Commission, the Government of Madhya Pradesh stated that as no police personnel were held responsible for the death

of Chhigga in the magisterial inquiry, it would not be appropriate to grant interim relief to the family of the deceased. Upon considering the report, the Commission felt that the response given by the Government of Madhya Pradesh to the show cause notice was not satisfactory as both the magisterial inquiry and the report of the District Magistrate, Guna unequivocally showed that the injuries received by Chhigga in a scuffle, which eventually caused his death, were compounded due to non-availability of proper and timely medical treatment while he was in the police custody. According to the magisterial inquiry report, the deceased, who was sent for treatment to the hospital while in police custody, was denied food on the ground that it was not available in the hospital. He was also asked to pay Rs. 35/- for the X-ray. On being informed by the deceased that he did not have any money with him, he was sent away to get money for getting the X-ray done and purchase of medicine, although technically he was still in custodia-legis. All this signified that the hospital was not functioning in a proper way. The Commission therefore directed the Chief Secretary to consider asking the Health Secretary to look into the functioning of the hospital and take such remedial steps as deemed necessary.

15.26 Accordingly, the Commission recommended that the next of kin of the deceased Chhigga be paid a sum of Rs. 20,000/- by way of immediate interim relief under section 18(3) of the Act. Pursuant to the Commission's directions the Government of Madhya Pradesh informed that the payment of Rs. 20,000/- has been made to the next of the kin of the deceased. The case is being monitored by the Commission.

b) Death in Judicial Custody

4) Death of Sanjay Sharma in District Jail, Mathura: Uttar Pradesh (Case No: 41373/24/2000-2001-CD)

15.27 The Commission initiated proceedings on the basis of an intimation received regarding the death of Sanjay Sharma, an under-trial prisoner, on 21 March 2001 in the District Jail, Mathura. Based on the records of the case, the Commission noted that there had been negligence on the part of authorities in providing medical treatment to Sanjay Sharma. In response to the show cause notice issued by the Commission, the Government of Uttar Pradesh sent a report stating that Dr. A.K. Yadav, Medical Officer was issued a show cause notice and that a criminal case was also registered against the errant police officials and that the case was under investigation.

15.28 Upon perusal of the report, the Commission held that the pendency of civil or criminal proceedings or investigation was no ground for not granting any immediate interim relief. The Commission noted that a show cause notice was issued to the concerned Medical Officer for the negligence in treating the deceased, and, that a criminal case was also registered against the errant police officials. Based on these facts, the Commission held that there was a prima facie violation of human rights relating to the life of the deceased.

15.29 Having regard to the facts and circumstances of the case, the Commission directed the Government of Uttar Pradesh to pay a sum of Rs. 50,000/- to the next of kin of the deceased as immediate interim relief and also to intimate the status of the cases registered against the concerned officials. The case is being monitored by the Commission.

**5) Death of an Under-trial Prisoner, Tachi Kaki: Arunachal Pradesh
(Case No. 14/2/2002-2003-CD)**

15.30 The Commission was informed of the custodial death by the State of Arunachal Pradesh stating that one under-trial prisoner, Tachi Kaki, was arrested in a case on 25 July 2002 for offences under sections 140/352/397 of the IPC. There were other cases also pending against him. On 28 July 2002 after he was interrogated at the Police Station, Basar, and was being taken to the lock-up at about 8 p.m. he tried to run away from the custody of the police. Seeing this, a sentry raised an alarm and he was chased among others, by Assistant Sub-Inspector A. Bharali who accidentally fired from his service revolver from a very close range. This caused the death of the accused on the spot.

15.31 The magisterial inquiry was held in the matter and it was found that the police official did fire at the deceased, which was not warranted.

15.32 On consideration of the report, the Commission noted that there was no occasion for the ASI, A. Bharali to fire at the accused Tachi Kaki after he was apprehended while escaping from the police station. The Commission was therefore of the opinion that keeping in view the facts and circumstances of the case there were reasons to believe that the human rights of the deceased were violated by the police personnel, and, therefore it issued a show cause notice to the State Government as to why an immediate interim relief under section 18(3) of the Protection of Human Rights Act, 1993 be not granted to next of the kin of the deceased. In response, the State Government of Arunachal Pradesh have communicated their decision to provide an immediate ex-gratia relief of Rs. 50,000/- to the next of kin of the deceased and that its payment would be intimated to the Commission. The case is being monitored by the Commission.

c) Custodial Torture

6) Harassment and Torture of Jagannath Shaw by the RPF Staff: West Bengal (Case No: 118/25/2002-2003)

15.33 The complaint relates to harassment and humiliation meted out to one Jagannath Shaw of Raniganj, Burdwan, West Bengal by two members of the Railway Protection Force on 6 April 2002.

15.34 A report received from Divisional Railway Manager, Asansol stated that an inquiry had been conducted by CIB/HQ and a charge sheet for imposing a major penalty under rule 153 of the RPF Rules, 1987 had been issued to the Sub Inspector S.C. Sahay and Head Constable G.K. Sinha who were involved in the incident. The Commission vide its proceedings dated 20 February 2003 directed that a notice be issued to the Eastern Railways, Calcutta to show cause as to why immediate interim relief under section 18(3) of Protection of Human Rights Act be not given to the victim. In response, the concerned Railway authorities informed that the errant officials were already being dealt within the Department for which a major penalty was also likely to be imposed on them and that there was no provision under the Railway Act. to grant interim relief in such cases.

15.35 On consideration of the aforesaid report, the Commission vide its proceedings dated 31 March 2004 observed that it was strange that the Railway authorities were insensitive towards the value of human rights of an individual and that they also appeared to be oblivious of the provisions of The Protection of Human Rights Act, 1993. It further noted that under the provisions of the Act, if prima facie, it was brought to the knowledge of the Commission that there has been violation of the human rights of an individual, immediate interim relief under section 18(3) of the Act could be awarded irrespective of any other proceedings initiated in the matter, whether it be by the concerned Department, or by any other authority, or court. Accordingly, the Commission directed that Rs. 10,000/- be paid as immediate interim relief under section 18(3) of the Protection of Human Right Act 1993. The case is being monitored by the Commission.

d) Police Harassment

7) Complaint from Sarita Sahu, Resident of Ranchi: Jharkhand (Case No. 974/34/2001-2002)

15.36 The Commission took cognizance of a complaint dated 14 October 2001 from Sarita Sahu, a resident of Tharapkhana, Ranchi, alleging that on 28 September 2001 at 10.30 p.m., a police party ransacked her house, picked her up, her brothers as well as her parents and took all of them to the office of the Superintendent of Police, Ranchi on charges of acting in a blue film entitled "Chhamia". The police got a report printed in a local daily 'Prabhat Khabar' on 29 September 2001 that three girls were arrested in connection with the production of the blue film. Besides she was abused and assaulted by the police and was also forced to pose for photographs.

15.37 In response, the Director General and Inspector General of Police, Ranchi, Jharkhand submitted the report stating that the matter was investigated by the CID and the charges levelled by the complainant against the police were found to be largely true. A range of acts of omission and commission on the part of Ranchi Police had been exposed. The then Superintendent of Police, Ranchi was primarily held responsible for the incident. The CID

also found nine police personnel responsible for this incident against whom departmental action was being taken.

15.38 Upon consideration of the report, the Commission held that Sarita Sahu and her family members were subjected to mental agony, harassment and humiliation by the police and directed the State Government to show cause as to why interim relief be not granted to the victim under section 18(3) of the Protection of Human Rights Act. In response to the show cause notice issued by the Commission, the Government of Jharkhand intimated that the matter was investigated by the CID and that on the basis of their report, explanations have been called for from the concerned police personnel and that necessary action would be taken after they had tendered their replies. The report further stated that as regards the payment of compensation, the State Government shall abide by the directions/recommendations of the Commission.

15.39 Having regard to the facts and circumstances of the case, the Commission directed the Government of Jharkhand to pay Rs. 1,00,000/- (Rupees One Lakh only) to the complainant as “interim relief” under section 18(3) of the Act for causing mental agony, harassment and humiliation to the complainant and other members of her family. The Commission further directed the DGP, Jharkhand to intimate the outcome of the departmental action initiated against the errant police personnel on the basis of the findings of the CID report. The case is being monitored by the Commission.

e) Illegal Detention and Torture

8) Unlawful Detention of Manoharan: Tamil Nadu (Case No:213/22/2001-2002)

15.40 A telegraphic complaint was received from M. Meena stating that a case Cr. No. 334/01 under section 147/342/363/506 of the IPC was registered against her brother-in-law, Varadarajan and that the police was searching for him. On the night of 27 May 2001, the police, however, picked up her husband, Manoharan, and took him to the police station, where he was unlawfully detained and brutally tortured.

15.41 A report received from the Superintendent of Police, Tiruchirapalli confirmed that the complainant’s husband Manoharan was unlawfully arrested by the Deputy Superintendent of Police, Jayashree and Constable G. Rajasekaran and detained at the police station, Tiruchirapalli without any valid reason.

15.42 In response to a show cause notice, the Government of Tamil Nadu forwarded the report of the DG(P), Chennai, Tamil Nadu stating that there was no ill treatment meted out to the complainant’s husband and that he was detained in the police station for inquiry. Manoharan had also stated that he was treated by the police decently and therefore grant of interim relief to Manoharan was not warranted.

15.43 Having regard to the facts and circumstances of the case, the Commission observed that the enquiry revealed that the Deputy S.P. of Tiruchirapalli had unlawfully detained Manoharan in the police station and caused him mental agony, although there was no case pending against him. Therefore there was no valid ground to review the earlier directions of the Commission.

15.44 The Commission therefore directed the State Government of Tamil Nadu to pay a sum of Rs. 50,000/- as immediate interim relief to Manoharan and initiate a departmental enquiry against erring police officials for his wrongful confinement.

15.45 Pursuant to the Commission's directions, a compliance report has been submitted by the State Government of Tamil Nadu.

9) Illegal Detention and Torture in Police Station, Shikarpur: Uttar Pradesh(Case No. 17171/24/1999-2000)

15.46 The Commission received a complaint from Ganga Prasad a resident of District Bulandshahar, Uttar Pradesh alleging illegal detention and torture of his son Prahlad Swaroop and one Satish, son of Chiranjilal by police personnel belonging to Police Station, Shikarpur at the instance of Zamindars in the village.

15.47 Upon consideration of the report received from the Senior Superintendent of Police, Bulandshahar, the Commission vide its proceedings dated 22 February 2002 directed that a copy of the report be sent to the complainant for his comments. In his response, the complainant reiterated his allegations and again submitted copies of medical reports of his son Prahlad and Satish along with affidavits from some of the villagers in support of his allegations. The Commission in its subsequent proceedings dated 21 August 2002 noted that the medical examination of Prahlad Swaroop and Satish that was conducted on 17 August 1999 clearly showed that the injuries inflicted on Prahlad Swaroop and Satish were by some hard and blunt object. It therefore directed the State Government of Uttar Pradesh to show cause as to why an immediate interim Relief under section 18(3) of the Act be not awarded to the victims in this case. The Commission did not receive any response from the Chief Secretary, Government of Uttar Pradesh. However, the Senior Superintendent of Police, Bulandshahar forwarded an inquiry report submitted by Additional Superintendent of Police of District, Khurja. In the detailed report of Additional Superintendent of Police, District Khurja, the allegations of the complainant stood substantiated. Keeping in view the findings recorded by the Additional Superintendent of Police, District Khurja and taking note of the fact that the Chief Secretary, Government of Uttar Pradesh had not shown any cause against the grant of immediate interim relief, the Commission vide its proceedings dated 23 July 2003 directed that a sum of Rs. 10,000/- be awarded to each of the two victims viz. Prahlad Swaroop and Satish by the State of Uttar Pradesh. The case is being monitored by the Commission.

f) Death in Police Firing

10) Death of Salman Dinkar Padvi in Police Firing: Maharashtra (Case No. 1332/13/2000-2001/FC)

15.48 Dinakar B. Padvi, Nandurbar, Maharashtra filed a complaint with the Commission alleging that on 28 June 2000 one leopard entered Khapar town in Taluk Akkalkua, Nandurbar, Maharashtra. Intrigued by the leopard many people gathered to see it. The Police too tried to catch the leopard alive but as they did not succeed, they opened fire. According to the complainant, his son Salman Dinkar Padvi was seriously injured in the police firing and later succumbed to his injuries in the government hospital. The Commission called for a report in this matter from the Director General of Police, Maharashtra. In response the Deputy Conservator of Forests admitted to the fact that Salman Dinkar Padvi had died in the police firing. The Commission also observed that simply because it was an accidental death it did not absolve the State Government of its responsibility to pay immediate interim relief under section 18(3) of the Act. to the legal heirs of the deceased, who according to the complainant, was the only bread-winner of the family.

15.49 Considering the fact that the sole bread-winner of the family had died in the firing, the Commission directed that it be inquired from the Chief Secretary whether the State Government had given any relief – ex-gratia or otherwise- to the next of kin of the deceased and, if not, whether the Government was considering the grant of some monetary relief to the next of kin.

15.50 In a subsequent report, Superintendent of Police, Nandurbar, Maharashtra sent a report stating that the dependents of the victim Salman Dinkar Padvi had been granted relief of Rs. one lakh from the Chief Minister's Relief Fund and also confirmed disbursement of the amount. The Commission has since closed the case.

11) Death of Sonali Bose in a Shoot out by Police in Agra: Uttar Pradesh (Case No. 13664/24/2002-2003-FC)

15.51 The Commission took suo-motu cognizance of the news item titled "Again UP cops kill wrong target: student" and "Mistaken identity: Police shoots girl" which appeared in The Indian Express and the Statesman respectively on 18 July 2002. It was alleged that Sonali, a 2nd year Post Graduate student of S.N. Medical College in Agra was shot dead by the police on the Agra-Mathura road on 16 June 2002 when she and her friend were returning in a car to Agra. Subsequently, the Commission also received a complaint from Chinmoy Bose, father of late Sonali Bose praying for appropriate action against the errant policemen.

15.52 The report received from the Government of Uttar Pradesh stated that the life of Sonali Nandini Bose was brought to an end in a shoot out by the police due to negligence and over-enthusiastic action on the part of the concerned police officials. After considering all the facts and circumstances of the case, the Commission issued a notice to the State Government to show cause as to why an immediate interim relief of Rs. 5.00 lakhs be not granted to the next of the kin of Sonali Bose.

15.53 In response to the notice, the Government of Uttar Pradesh informed the Commission that a sum of Rs. 25,000/- had been sanctioned to the family of the victim, and both departmental action as well as criminal prosecution, had been instituted against the delinquent police officials. However, the State Government considered the award of immediate interim relief of Rs. 5.00 lakhs to be on the higher side.

15.54 Not agreeing with the Government of Uttar Pradesh, the Commission held that the grant of Rs. 5.00 lakhs as immediate interim relief under section 18(3) of the Act in the admitted circumstances of the case was neither excessive nor unreasonable. The Commission, therefore, asked the Government to send a report on the action taken to the Commission.

15.55 Pursuant to the Commission's directions, the Government of Uttar Pradesh submitted a compliance report stating that Rs. 5.00 lakhs was sanctioned to the next of kin of the deceased, Sonali Bose. It also confirmed that all the three delinquent police officials were sent to judicial custody. Permission was also sought from the Ministry of Home Affairs for handing over the case to the CBI. Since the State Government complied with the orders of the Commission, the case was accordingly closed.

g) Violation of Rights of Children/ Women

12) Kids Slogged 12 hours a Day Paid @ Rs. 5/- a Week: Delhi (Case No. 1868/30/2001-2002)

15.56 The Commission took suo-motu cognizance of a news paper report which indicated that 8 child labourers, between the age of 8 to 11 years were made to work in an embroidery factory at Garhi, Lajpat Nagar, for 12 hours a day and in return were paid only Rs. 5/- per week. Coupled with this, they were forced to work under humiliating circumstances and that they were terrorised and assaulted.

15.57 The Commission directed its Investigation Division to conduct an on-the-spot investigation and submit a report. The report of the Investigation Division revealed that eight child labourers were forced to work by their employer in inhuman and miserable conditions and were not paid full wages, besides being subjected to mental and physical torture. As directed by the Commission, this report was sent to the Government of National Capital Territory of Delhi and the Commissioner of Police, Delhi for taking appropriate action. In response, an Action Taken Report was received from the Deputy Commissioner

of Police (Vig.) and the Government of NCT of Delhi stating that two cases were registered against the owner of the factory and the accused was also arrested. A charge sheet was also filed and the case was pending trial. The Report further stated that the investigation in Case FIR No. 299/02 registered at Lajpat Nagar Police Station had resulted in a Challan being filed in the Court.

15.58 On perusal of the reports, the Commission observed that all the eight children were produced before the Metropolitan Magistrate, Delhi on 5 September 2001, and handed over to their biological parents through 'PRAYAS' an NGO in Delhi. The Commission therefore directed PRAYAS to report on the present condition and well being of these children and also to make such investigation as it considered proper. The Commission also asked the Chief Secretary, Government of National Capital Territory of Delhi to inform it whether any proceedings were launched for the recovery of minimum wages, at least, for eight children who were being paid @ Rs. 5/- a week only for working 12 hours a day and if so, the results thereof.

15.59 The Joint Labour Commissioner, from the Office of the Labour Commissioner, Government of National Capital Territory of Delhi further submitted a report indicating that since five of the children were restored to their parents and had gone out of Delhi, statements of only three children could be recorded and that a case under the Child Labour (Prohibition & Regulation) Act, 1986 was filed against the employer in the Court of Metropolitan Magistrate. Regarding filing of claim to recover the wages under the Minimum Wages Act, the report further indicated that the claim could not be filed before the Claim Authority appointed under Section 20 of the Act, as at the time of inspection by the Inspectorate of the Department, the children were not found working in the establishment which was lying closed, but efforts would be made to file a claim for recovery of wages before the Authority under Section 21 of the Delhi Shops & Establishments Act, 1954. The case is being monitored by the Commission.

13) Alleged Illegal Detention of a Girl Child: Orissa (Case No: 80/18/2003-2004(WC))

15.60 A news item regarding the arrest of a minor girl, who was accused of committing the murder of two children which attracted considerable media coverage and invoked much public anger, was brought to the notice of the Commission by Shri A.B. Tripathy, Special Rapporteur of the Commission. The Police was accused of illegal detention of the girl child.

15.61 In the preliminary enquiry report submitted by the Special Rapporteur of the Commission, it was revealed that as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, the child was required to be kept in a Juvenile Home as she was not released on bail. The Commission also noted that though the Parliament

enacted the Juvenile Justice (Care & Protection of Children) Act in the year 2000, the Act has not been fully implemented in the State of Orissa so far. Further, no Juvenile Justice Board had been set up nor were there any special homes as stipulated under the Act where children in conflict with Law ought to be kept if not released on bail. The report highlighted the shortcomings in the implementation of law in cases of children who were in conflict with the law. The Commission, therefore, issued notices to the Chief Secretaries of all States and Union Territories to furnish the following information:-

- (a) Have the provisions of Juvenile Justice (Care & Protection of Children) Act, 2000 (for short 'Act') been implemented in the State?
- (b) Have the Juvenile Justice Boards and Protective Homes constituted under section 4(1) and 8(1) of the Act respectively been set up in the State and, if so, details thereof;
- (c) Are there Certified Homes or Special Homes constituted under section 9 of the Act in which the child will be kept if not released on bail?
- (d) Are there Child Welfare Committees constituted under section 29 of the Act, and
- (e) Are there Children's Homes constituted under section 34 of the Act?

15.62 In response, 34 States/ Union Territories informed the Commission that the provisions of the Juvenile Justice Act, 2000 have either fully or partially been implemented or are being implemented. The complete report from the State of Karnataka was still awaited. The Commission intends to issue appropriate directions in the matter once it receives complete information from all the States/ Union Territories.

14) Harassment, Misbehaviour and Injury Caused to U.K. Vajpayee, ANM.: Uttar Pradesh (Case No: 29929/24/2000-2001)

15.63 Justice Shri Ranganath Mishra, Member of Parliament and Chairman, Human Rights Committee of the All India Congress Committee, Delhi referred a complaint alleging harassment, misbehaviour and injuries caused to Usha Kiran Vajpayee, ANM., while on duty under the Pulse Polio Programme by the policemen of PS Dakor, District Jalaun, Uttar Pradesh which resulted in the amputation of one of her legs.

15.64 In response to the notice issued by the Commission, the Government of Uttar Pradesh sent a report stating that a charge-sheet had been filed in the Court against the delinquent police officials. On consideration of the report, the Commission found that the injury resulting in the amputation of one of the legs of the victim required consideration

for the grant of immediate interim relief under section 18(3) of the Act and, accordingly issued show cause notice to the Government of Uttar Pradesh.

15.65 In spite of the notice which was followed by a reminder, no reply was received from the Government of Uttar Pradesh. The Commission, therefore, held that obviously the Government of U.P. had no cause to show against the award of immediate interim relief to the victim. The Commission observed that the facts of this case disclosed gross violation of human rights resulting in the amputation of the leg of the victim, Usha Kiran Vajpayee, who was nearly 37 years of age at the time of the incident. As a result of amputation of one of her legs, she has to contend with permanent disability for life. The circumstances in which the victim was made to flee to save herself from the clutches of the delinquent policemen were also significant in the context. The Commission therefore awarded Rs. 5.00 lakhs as immediate interim relief to the victim Usha Kiran Vajpayee to be paid by the Government of Uttar Pradesh.

15.66 In response, the Government of Uttar Pradesh informed that a charge sheet had been filed against the delinquent police officials. The State Government stated the award of immediate interim relief of Rs. 5.00 lakhs was excessive and suggested that an amount of Rs. 1.00 lakh which was already paid to the victim as immediate interim relief be considered as reasonable.

15.67 Not agreeing with the State Government, the Commission held that the grant of Rs. 5.00 lakhs as immediate interim relief under section 18(3) of the Act, in the admitted circumstances of the case, was meant as an application of balm on the wounds of the concerned woman and that the amount was not excessive and strongly reiterated the Commission's earlier directions and rejected the request made by the Government of Uttar Pradesh to reduce the amount. In response the Government of Uttar Pradesh intimated that an amount of Rs. 1,00,000/- has already been paid to the victim, Usha Kiran Vajpayee and the balance amount of Rs. 4,00,000/- had been sanctioned to her. The case is being monitored by the Commission.

15) Rape of 17 Women, Including Complainant and her Mother: Gujarat (Case No: 256/6/2003-2004(WC))

15.68 Bilkis Yakub Rasul, a resident of Godhra, Gujarat, by her petition dated 29 April 2003 brought to the notice of the Commission that her house was attacked after the Godhra train carnage of 27 February 2002 whereby she got separated from her husband. While she was proceeding towards Devgadhi Baria along with her mother, sister and fourteen other women, some miscreants raped her and the other women. With the help of police she reached Limkheda and lodged a complaint. However, nothing had been done by the Government or the police to bring the culprits to justice in spite of the fact that more than one year had passed. The police did not arrest the culprits although she had clearly given the names

and other particulars about them in her complaint. She further stated that the police in its report to the Court had passed certain comments and made observations and accusations against her, questioning her integrity and credibility which affected her life and dignity.

15.69 She further informed the Commission that the investigation into her case has been hopelessly prejudiced and that she has no confidence in the functioning of the local police, sincerity of the investigation as well as the functioning of various State machineries and functionaries. She requested the Commission to take up her case, provide justice to her and also make available adequate security as she feared threat to her life.

15.70 The Commission vide its order dated 16 June 2003 directed its Special Rapporteur, Shri Nampoothiri to assist the complainant, Bilkis Yakub Rasul to pursue legal remedies in this case and also offered financial and legal assistance to her. With the assistance provided by the Commission, a writ petition was filed in the Supreme Court for setting aside order dated 25 March 2003 passed by the Judicial Magistrate vide which the final report in the case submitted by the police was accepted. In the said writ petition, orders were passed by the Supreme Court for carrying out fresh investigation in the case by the CBI.

15.71 Pursuant to the orders of the Supreme Court, the CBI undertook the investigation and arrested 14 persons, including some police officials.

15.72 In the meantime, the Special Rapporteur of the Commission, forwarded an application made by the complainant seeking assistance from the Commission regarding appointment of a lawyer during the forthcoming trial of the case. The Commission vide its proceedings dated 24 March 2004 acceded to the request made by the complainant and asked Shri Nampoothiri, Special Rapporteur, NHRC to take steps for engagement of a competent lawyer in consultation with the Commission and the complainant, for which the Commission shall bear the expenses, if any. The Commission also requested its Special Rapporteur to keep the Commission apprised of further developments in the case from time to time. The case is being monitored by the Commission.

h) Rape

16) Rape of Four Year Girl Belonging to Bhil Adivasi Community: Delhi Case No: 3703/30/2002-2003(WC)

15.73 A case of alleged rape of a four year old girl XYZ, belonging to Bhil Adivasi community by one Billu, a 26 year old truck driver was brought to the notice of the Commission by a social activist. So brutal was the act of rape that the victim had to undergo an operation in Safdarjung Hospital to channelise the body waste out through the abdomen. This apart, two more operations were later performed on the victim to repair her ruptures.

15.74 On consideration of the report submitted by its own Investigation Division, the Commission noted that the police had taken appropriate action in registering the said case on time and that the offender too had been arrested. However, looking at the plight of the victim, the Commission requested the Chief Secretary, NCT of Delhi to grant relief to the victim and her family on humanitarian grounds. In response, the Government of NCT of Delhi informed the Commission that an amount of Rs. 25,000/- as assistance from Lt. Governor / Chief Minister Relief Fund was sanctioned and paid to the victim's mother.

15.75 Further at the instance of the Commission, PRAYAS, an NGO, agreed to undertake the responsibility of helping the girl child with suitable medical care and in providing her further assistance, including shelter. The Medical Superintendent of Safdarjung Hospital also informed the Commission that the victim was given proper medical care and the child had recovered well. The mother of the child too was satisfied regarding the medical treatment given at the Hospital.

15.76 The Government of NCT of Delhi further informed the Commission that a cheque of Rs. 50,000/- as financial assistance was sent to DCP(South) Delhi for handing it over to the victim's family. The Commission, thus wrote back to the Government of NCT of Delhi to confirm whether the cheque was handed over or not. The Commission also directed the Government of NCT of Delhi to ensure that the amount be kept in a fixed deposit in the name of the minor girl and that the mother could withdraw the amount of interest of maintenance and medical expenses of her minor daughter. Further, the fixed amount should be made payable to the minor girl on her attaining majority. In view of the fact that 'PRAYAS' has been in touch with the victim and her mother to render them assistance, the Commission recorded its satisfaction with the role of 'PRAYAS' in helping the unfortunate girl child and closed the case.

17) Rape of a Ten Year Old Girl Inmate of the Juvenile Observation Home, Raichur: Karnataka (Case No. 32/1/1999-2000(WC)/FC)

15.77 The Commission took cognizance of a complaint received from Juvenile Rights Forum, Hyderabad, Andhra Pradesh alleging that a 10 year old girl, an inmate of the Juvenile Observation Home, Raichur, Karnataka was transferred on 10 July 1998 to Girls' Juvenile Home, Hyderabad where at the time of her admission and again on 3 August, 1998 she was found to be bleeding from her vagina. On examination by the doctors at Niloufer Hospital on 11 September 1998, it was opined that she had been subjected to 'brutal rape'. It was further alleged that the police, after registering a case under section 376 IPC did not conduct proper investigation.

15.78 In response, the Director General & Inspector General (P) Andhra Pradesh submitted the investigation report stating that as certified by the Medical Officer, Raichur, the girl was in a normal condition when she was sent with two male escorts to Hyderabad from

Raichur. On 2 September 1998, the Matron of the Observation Home at Hyderabad, however, reported that the child was bleeding profusely and therefore she was taken to Niloufer Hospital where the doctors, after medically examining her on 3 September 1998 opined it to be a case of sexual rape. A case was registered on 11 September 1998 under section 376(2)(f)IPC at Kachiguda Police Station, Hyderabad.

15.79 On consideration of the aforesaid reports, the Commission directed the State Police to step up efforts for completion of investigation in the case and to pay “interim compensation” of Rs. 50,000/- to the parents of the girl who had been subjected to rape while in the Juvenile Home.

15.80 Pursuant to the Commission’s directions, the Government of Andhra Pradesh informed the Commission that: i) disciplinary action had been taken against the doctors who did not give the correct medical report of the child that has resulted in stopping two of their annual increments without cumulative effect; ii) an amount of Rs. 50,000/- had also been paid to Smt. Nagamani, mother of the victim on 29 May 2001 through a demand draft; and iii) the criminal case for the offence under section 376 (2)(f) IPC read with Section 109 IPC was pending trial in the Court.

15.81 The Commission considered the report and decided to close the case.

18) Rape in Ranchi Police Station: Jharkhand (Case No. 415/34/2001-2002-AR/FC)

15.82 The Commission took cognizance of a press report which appeared in the ‘The Indian Express’ dated 15 July 2001 stating that ABC, a widowed mother of three children, was allegedly raped on 13 July 2001 inside the Police Post at Khadgarha, Jharkhand by police Constable, Chakkan Sao.

15.83 In response to the notice issued by the Commission, the Chief Secretary and DGP, Jharkhand submitted a report indicating that a case No.69/2001 dated 14 July 2001 under section 376 IPC was registered at Lower Bazar Police Station and the accused Constable was arrested and sent to judicial custody. Subsequently, a report received from the Deputy Inspector General (HR), Jharkhand further stated that on completion of investigation of the case, a charge-sheet had also been filed in the Court on 31 July 2001.

15.84 On consideration of the aforesaid report, the Commission vide its proceedings dated 26 December 2001 and 6 October 2003, directed to call for information as to whether any compensation had been granted as required under the provisions of the Scheduled Caste/ Scheduled Tribe (Prevention of Atrocities) Act, 1989 to the victim. In response, the Special Secretary (Home Department.), Government of Jharkhand sent a report stating that the victim had been paid an amount of Rs. 25,000/- which was 50% of Rs. 50,000/- payable in

accordance with Entry 11, Schedule (Annexure I) of the Scheduled Caste/Scheduled Tribe Prevention of Atrocities Rules 1995 for the commission of offences as defined in Section 3(1) (xi) of the SC/ST (Prevention of Atrocities) Act, 1989 and the balance amount of Rs. 25,000/- would be paid after the decision was pronounced by the Court. The Commission vide its proceeding dated 24 March 2004 opined that since action has been taken by the State Government and as the matter was sub-judice, no further action was called for and accordingly the case was closed.

i) Child Marriages

19) Child Marriages: Chhattisgarh (Case No: 56/33/2003-2004)

15.85 The Commission took suo-motu cognizance of a newspaper report which indicated that on 4 May 2003 on the occasion of 'Akti' or 'Akshaya Tritiya', a festival for marrying dolls celebrated all over Chhattisgarh every year, weddings of hundreds of under-age or very young children were performed, despite the Government's preventive efforts. A survey conducted by the Forum for Fact-finding Documentation and Advocacy during that time also indicated that more than 1,000 child marriages took place in Sarguja. Other agencies too reported 100 marriages in Urla and Kumhari area of Raipur District in the first fortnight of April, 2003.

15.86 The report received from the Special Secretary, Women & Child Development, Government of Chhattisgarh indicated that various steps have been taken by the State Government to prevent child marriages. The report further mentioned that child marriage being a social issue could be curbed only slowly and gradually by spreading awareness in the society and that sincere efforts have been made in the past years by the State Government to prevent child marriages.

15.87 On considering the report, the Chhattisgarh State Human Rights Commission was requested by the Commission to examine the status of cases relating to child marriages in different villages of Chhattisgarh, of which it appeared to have taken cognizance.

15.88 In response, the Joint Secretary, Chhattisgarh State Human Rights Commission intimated to the Commission that the State Human Rights Commission had taken suo-motu cognizance of the issue of one thousand child marriages in village Bhaiyyathan, District Sarguja on 7 February 2003. The State Human Rights Commission had also taken cognizance of the child marriages which took place in the year 2002 on 24 April 2002 whereby it gave detailed instructions to the Government of Chhattisgarh. Acting on the directions of the Chhattisgarh State Human Rights Commission, the Collectors and Superintendents of Police Chhattisgarh correspondingly had also taken action. The Special Secretary, Women and Child Development Department, Government of Chhattisgarh also sent a report dated 5 July 2003 indicating the efforts being made by the State Government to prevent and check incidents of child marriages in the State.

15.89 The Commission appreciated the efforts made by the Chhattisgarh State Human Rights Commission in the matter and also appreciated the various steps which had been taken and were further being taken by the Women and Child Development Department, Government of Chhattisgarh in the said matter.

15.90 However, the Commission emphasised that mass awareness campaigns with a view to sensitize the villagers should continue to receive priority both by the Government of Chhattisgarh and the Chhattisgarh State Human Rights Commission so as to bring to an end to the evil of child marriages. The Commission was of the considered opinion that taking appropriate steps for education of the girl child, would also be helpful in eradicating the evil of child marriage. The Chief Secretary, Government of Chhattisgarh was requested to personally look into the matter for providing education to girl children in all the districts and, more particularly, in the districts where the practice of child marriage was rampant. The case is being monitored by the Commission.

j) Vulnerable Sections of Society

20) Death of Officiating Headmaster of Government School, Rajasmand: Rajasthan (Case No. 1727/20/2001-2002)

15.91 The Commission received a complaint from P.L. Mimroth, General Secretary, Society of Depressed People for Social Justice alleging that one Mohan Lal Regar, a Scheduled Caste, Officiating Headmaster of Government Secondary School, Kalesaria, Rajasmand was forced to commit suicide due to harassment, humiliation by caste name and beating by the school staff and teachers. The victim allegedly had complained to the local authorities against harassment to him, but no action was taken.

15.92 Pursuant to Commission's directions, Inspector General of Police (Human Rights), CB CID, Crime Branch, Rajasthan sent in a report stating that the victim had made an attempt to commit suicide on 18 August 2001 in village Anjana by hanging from a ceiling fan. Eventually, he was brought to Devgarh Hospital, where unfortunately he died. The three accused persons Leeladhar, Assistant Teacher, Natwar Lal, Junior Clerk and Manoj Kumar, P.T.I. were arrested and a challan too was submitted against them in the court. The case was pending in the Court of District and Sessions Judge, Rajasmand, Rajasthan.

15.93 On consideration of the aforesaid report, the Commission vide its proceedings dated 29 January 2003 directed to issue notice to the Chief Secretary and Director General of Police, Government of Rajasthan asking them to inform whether any relief had been granted to the next of kin of the victim under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Rules, 1995 for the insult, humiliation and intimidation suffered by the victim as well as action taken with regard to the complaint which had been lodged by the deceased with the Education Department about the harassment meted out

to him. In response the Superintendent of Police, CB CID, Rajasthan sent a report stating that a charge sheet had already been filed against the accused persons in the court and the matter was currently sub-judice. The report further stated that the employees had already been placed under suspension. The report also revealed that the wife of the deceased had since been appointed as Class IV employee in the Education Department and that all the admissible benefits under the Department Rules had been given to her by the Education Department of the State Government. Further report received from Home (Human Rights) Department, Government of Rajasthan revealed that Rs. 25,000/- as financial assistance to the next of kin of the deceased under Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1995 had been paid to the wife of the deceased Mohan Lal. On further consideration of the aforesaid reports the Commission noted the overall developments with satisfaction that had taken place in the matter and decided to close the case.

21) Rehabilitation of Leprosy Patients Camping in Amarjyoti Leprosy Rehabilitation Society: Haryana (Case No. 2135/7/2002-2003)

15.94 J.J. Bonney, Executive Secretary, Maximising Employment to Serve the Handicapped, Uday Park, New Delhi in a complaint had drawn the attention of the Commission to the plight of about 63 people, affected by leprosy who were camping in Amarjyoti Leprosy Rehabilitation Society and were being evicted from there without being provided with any alternative site for rehabilitation.

15.95 Upon considering the matter, the Commission felt that the plight of the leprosy affected individuals appeared to be a human problem and directed that copies of the reports received from Chairperson, Haryana Urban Development Authority, Haryana and Deputy Magistrate, Jhajjar be forwarded to the Chief Secretary, Government of Haryana so that the matter could be examined and whether afresh the sufferings of those people could, in any way, be mitigated by providing them with some rehabilitation area since they were sought to be dispossessed from Amar Jyoti Leprosy Rehabilitation Colony at Bahadurgarh.

15.96 In a report sent to the Commission, the Home Department of Government of Haryana stated that since the inhabitants of the above colony were encroachers on the acquired HUDA land, it would not be possible to rehabilitate them. The report further said that the jhuggi jhopri colony dwellers had filed a civil writ petition (No. 11637) in 1996 in this regard wherein the Punjab and Haryana High Court ordered for allotment of EWS plots to the jhuggi jhopri colonies existing on the acquired land of HUDA and that the HUDA had challenged the order of the High Court in the Supreme Court through an SLP. The report also stated that the State Government had taken a decision that the residents of Amar Jyoti Leprosy Society will not be disturbed till the decision of the Supreme Court in civil appeals.

15.97 The Commission on consideration of the report received from the Under Secretary (Home), Government of Haryana closed the case, as no further action was called for on its part.

k) Rights of Physically Handicapped

22) Provision of Seats in All Medical Courses for Physically Handicapped Candidates: Delhi (Case No: 1023/30/2002-2003)

15.98 The Commission received a complaint dated 21 June 2002 from Desh Raj, an orthopaedically challenged person with more than 50% disability of lower limbs residing in Mandawali-Fazalpur, Delhi stating that he had appeared in the Medical entrance examination 2002 conducted by the University of Delhi. He had alleged that there was no provision of reservation for candidates who were physically handicapped and that the result of entrance examination for admission in MBBS/ BDS Course 2002 announced by the University also did not display any separate merit list of candidates who were handicapped.

15.99 In response, the Deputy Registrar (Medical), University of Delhi, vide his letter dated 23 July 2002 stated that there was no provision for reservation of seats for physically handicapped candidates in MBBS/ BDS courses in University of Delhi. Moreover, the Medical Council of India had held that Section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which refers to reservation of posts falls under the Chapter of "Employment" and as such did not apply to reservation of seats in educational institutions.

15.100 On considering the report, the Commission observed that the view taken by the Dy. Registrar (Medical), University of Delhi was erroneous. It appeared that the law laid down by the Supreme Court of India, which is the law of land, in various judgements had been overlooked. As directed by the Commission a copy of the judgement of the Supreme Court in Civil Appeal No. 7892 of 2001 and 6120 of 2001 dealing with the subject was forwarded to the Registrar, Delhi University to re-examine the matter in the light of those decisions.

15.101 Pursuant to the Commission's directions, the Assistant Registrar (Medical), Faculty of Medical Sciences, University of Delhi vide letter dated 14 November 2003 submitted a further report indicating that a provision of reservation of 3% seats in all medical courses for physically handicapped candidates, in accordance with section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has been made and the complainant Desh Raj, Son of Ratti Ram was admitted to the MBBS course of the University.

15.102 The Commission considered the report and closed the case.

l) Rights of HIV Patients

23) Medical Treatment to XXX, an HIV Positive Patient at LNJP Hospital: New Delhi (Case No:1698/30/2003-2004)

15.103 The Commission received a complaint dated 18 September 2003 from XXX, an HIV positive patient stating that he had been denied treatment both by the Government and non-government hospitals. He also alleged that he had got dialysis conducted at the Apollo Hospital, New Delhi after incurring a huge expenditure but no surgery was performed to remove the stones at the Apollo Hospital. After his admission to All India Institute of Medical Sciences, he was discharged after 15 days. He complained that during his stay at the Lok Narayan Jaiprakash Hospital from 2 September, 2003 to 9 September, 2003, he was again refused dialysis.

15.104 In response to the Commission's notice, the Medical Superintendent, AIIMS submitted a report stating that the patient was examined by Urologist and Nephrologist on various occasions and was found clinically stable and did not require dialysis immediately during his admission. His renal function too showed an improvement and was consistent with standard clinical care. The patient was discharged only when his condition was found to be stable and was asked to report after 15 days for review and follow-up but he did not report again.

15.105 The Superintendent LNJP Hospital had also sent a report together with the updated status and progress report of the patient Surjit Singh.

15.106 Upon considering the progress report, the Commission found that subsequent to the intervention by the Commission, treatment had been given to the patient and he was being given proper medical treatment and no further action by the Commission at this stage was called for.

15.107 However, the Commission, informed the Medical Superintendent LNJP Hospital that it would continue to give proper treatment to Surjit Singh and other such HIV positive patients and that hospital should continue to offer proper treatment to the poor patients so that they may not approach the Commission in future. With this direction the matter was closed by the Commission.

m) Rights of Mentally Challenged

24) Intimation from IG(Prison) Delhi Regarding Prisoner Shri Charanjeet (Case No: 3628/30/2001-2002)

15.108 The Commission received a letter from the office of the Director General Prisons, Delhi stating that an under-trial prisoner, Charanjit Singh, had been languishing in the

Tihar Jail since 28 October 1985. The prison authorities had observed that the prisoner had already spent around 16 years in jail and even if he was convicted, his case would have to be placed before the Government for premature release. They also stated that there was no one to stand surety for him and that he was mentally frail.

15.109 Deeply concerned by the need to protect the human rights of this undertrial prisoner, the Commission decided to file an application in the High Court of Delhi under section 482 Cr.P.C. seeking the quashing of the trial in view of the inordinate delay in reaching a conclusion. The Commission asked Ms. Meenakshi Arora, Advocate, to file an application in this regard. On 7 November 2002, the High Court of Delhi allowed the intervention application and directed the counsel to furnish a list of organizations to whom custody of the accused could be entrusted. The matter was then taken up by the Commission with the Department of Social Welfare, Government of the National Capital Territory of Delhi, which suggested the name of “Care Foundation”. However, the “Care Foundation” informed the Commission that they did not have any residential facilities for the rehabilitation of such persons.

15.110 The High Court then issued directions that Charanjit Singh be transferred to the Institute of Human Behaviour and Applied Sciences, Shahdra for treatment. Subsequently, he was taken to LNJP Hospital and Deen Dayal Upadhyay Hospital. As the Institute of Human Behaviour and Allied Sciences indicated that it was not interested in keeping Charanjit Singh, the High Court of Delhi asked the Commission to identify an appropriate institution/ organization where he could be kept. The Commission, accordingly, identified VIMHANS and Helpage India as possible institutions, and held consultations with them.

15.111 Pursuant to the Commission’s efforts, VIMHANS agreed to extend medical facilities and treatment, free of cost, to Charanjit Singh and Help Age India too offered to take over the petitioner and accommodate him in their half-way home or old-age home free of cost after VIMHANS certified that the condition of the patient was stable. The offer of VIMHANS and Helpage India were brought to the attention of the High Court by the Commission.

15.112 The High Court subsequently issued notice to VIMHANS and Helpage India to ascertain their consent. When this was confirmed by these two organizations, the High Court issued directions on 31 July 2003 to shift Charanjit Singh to VIMHANS within one week. The High Court also directed that in the event of any medical emergency arising which cannot be treated at VIMHANS, Charanjit Singh could be taken to any other Government Hospital or Apollo Hospital or Batra Hospital, which shall treat him without any charge. The High Court exempted Charanjit Singh from any further personal appearance before the trial court and asked the jail authorities to submit a report on his medical status to the trial court. In view of the order of the High Court dated 31 July 2003, the case was closed by the Commission.

n) Negligence of Electricity Authorities

25) Power Department's Negligence Kills Five Year Old Boy: Goa (Case No: 33/ 5/2000-2001/FC)

15.113 Cyril Fernandes, Human Rights Monitoring Society, Goa had sent a newspaper clipping of Gomantak Times dated 25.8.2000 which reported the death of a five year old boy due to alleged negligence of Goa State Electricity Department. The press report indicated that a five year old boy, Mahabub Imam Navalgund, while playing with two of his friends noticed some guavas on a tree. In his excitement to pluck some guavas, he came into contact with the electric wires entangled to the tree and was electrocuted. It was alleged that immediately after the mishap, the electricity officials rushed to the site before the arrival of the police and repaired the wire which was dangling from the pole.

15.114 In response to a notice from the Commission, a report was submitted by Chief Electrical Engineer and Ex-Officio Additional Secretary, Government of Goa, stating that the cause of the accident was due to snapping of live low tension bare aluminium conductor. Though fuses are provided at the distribution transformer for protection, these fuses could not blow off as the ground on which the conductor has snapped is a sandy area and the distribution transformer (supply source) is 0.5 Kms away from the accident spot. Since the fault current is not sufficient to blow the fuses due to high impedance, the snapped conductor remained live. The Victim who was playing near the vicinity came in contact and got electrocuted. In another report, the Under Secretary (Home), Government of Goa, also intimated that an amount of Rs. 10,000/- as a special case had been sanctioned by the Compensation Committee to be paid to the parents of the deceased boy upon furnishing an affidavit by them. Yet another report dated 3.7.2002 wherein it has been stated that the payment of the compensation is awaited for want of furnishing of a death certificate of the deceased by his parents.

15.115 Upon perusal of the aforesaid report the Commission vide its proceedings dated 25 August 2003 held that the death of Mahabub Imam happened due to electrocution on 24 August 2000 at Gauravaddo, Calangute is well established. The cause of accident, according to the report, was due to snapping of live high tension bare aluminium conductor and the non-blowing of fuses provided at the distribution transformer. The Commission was of the view that it is now a settled matter under law that the supplier of electricity is liable for the damage caused without proof that it had been negligent and the liability in its case is strict. Keeping in view the established facts and circumstances of the case, the Commission considered it appropriate to issue a notice to the Chief Secretary, Government of Goa to show cause why immediate interim relief of Rs. 1 lakh under section 18(3) of the Protection of Human Rights Act, 1993 be not paid to the next of kin of the deceased boy.

15.116 In pursuance to the show cause notice, the Chief Secretary, Government of Goa had sent a report stating that as directed by the Commission Rupees one lakh had been sanctioned and paid by cheque to the parents of the deceased boy after tracing their address in Karnataka. In view of the action taken by the State Government the case was closed by the Commission.

26) Death of Dirisam Lajer Due to Electrocuting: Andhra Pradesh
[Case No. 147/1/2001-2002(FC)]

15.117 The Commission received a complaint from the widow of one Dirisam Lajer, who died as a result of electrocution in Katuru, Krishna District, Andhra Pradesh on 24 May 1999. She alleged that when her husband had gone to the field for collecting fodder, he came in contact with a live electric wire lying on the ground and was electrocuted. She in her complaint to the Commission thus prayed for the grant of financial assistance. Accordingly, the Commission issued a notice to the Chief Engineer, Southern Power Distribution Company, Andhra Pradesh.

15.118 In response to the notice issued by the Commission, the Chief Engineer, Southern Power Distribution Company of Andhra Pradesh Limited admitted that on 24 May 1999 R-Phase Conductor of the L.T.3.0.4 Wire Line under Katuru Sub-Station-II snapped due to heavy gale and rain and had fallen on the sugar cane plantation without touching the ground. Dirisam Lajer while going through the sugar cane field came into contact with the snapped conductor and got electrocuted. It was further stated that the Managing Director of the said Power Distribution Company had sanctioned an ex-gratia amount of Rs. 10,000/- to the legal heir of the deceased.

15.119 On consideration of the report, the Commission observed that a sum of Rs. 10,000/- as ex-gratia compensation to the widow of the deceased was grossly inadequate. The Commission also observed that a precious life was lost due to electrocution. The rule of strict liability must apply in such a case. It was a clear case of negligence on the part of the supplier of electricity in maintaining the services in safe conditions.

15.120 Having regard to the facts and circumstances of the case, the Commission issued a show cause notice to the Chairman and Managing Director of Southern Power Distribution Company of Andhra Pradesh Limited, Tirupati to show cause why a sum of Rs. One lakh be not awarded to the complainant as "interim compensation" under section 18(3) of the Act. In response, the Chairman and MD, Southern Power Distribution Co. of Andhra Pradesh Ltd submitted that D.Lajer died accidentally as a result of contact with a live wire which was snapped due to heavy gale and rain and further there was no negligence on the part of any public servant and the death of the complainant's husband was due to an accident as a result of the snapping of the conductor. All precautions had been taken by the concerned authorities to ensure the safety of human beings while laying and maintaining the electric

lines in Katuru village and periodical inspection was also carried out to ensure the safety of the villagers.

15.121 Therefore, no negligence can be attributed to any public servant for the unforeseen mishap. It also submitted that under Section-36 of the said Act read with NHRC (Procedure) Regulations of 1994, the Commission shall not enquire into any matter after expiry of one year from the date on which the act constituted the violation of human rights is alleged to have been committed. Since the accidental death of the deceased had taken place on 24 May 1999 the complainant cannot approach the Commission after the expiry of one year from the date of the happening of the incident.

15.122 On consideration of the aforesaid matter, the Commission vide its proceedings dated 5 March 2004 observed that the Commission finds that a precious life had been lost due to electrocution and it is not merely the absence of negligence on the part of a public servant which may make it liable for such like incident but the failure of the public servant to prevent the foreseeable risk inherent in the very nature of the activity of the Board and failure of its duty to take care. The Commission observed that such cases invite the invocation of the principles of “strict liability” and the argument that the non-petitioner has neither been negligent nor responsible for the incidents is not available in cases based on strict liability. That is the legal position. However, a case like the present one, requires consideration not on technicalities or legalities but on humanitarian grounds. The Commission observed that an ex-gratia compensation of Rs. 10,000/- given to the widow of the deceased for the loss of her husband, was grossly inadequate. The Commission requested the Chairman & MD, K. Ranganatham of Southern Power Distribution Company of A.P. to personally look into the matter and overlooking the technicalities and legalities see what further ex-gratia amount could be given to the widow to tide over her difficulties. A humane approach to the issue was recommended. The Commission also pointed out that the policy to award ex-gratia compensation of Rs. 10,000/- in cases of death by electrocution, does require a fresh look by the authorities and it is hoped that the same would be considered in its correct perspective. The case is being monitored by the Commission.

o) Bonded Labour

27) Non – Implementation of the High Power Committee’s recommendations on Bonded Labour of East Kameng District, Andhra Pradesh [Case No: 12/2/1999-2000 (FC)]

15.123 Omak Apang, the then Minister of State for Tourism, Government of India forwarded a petition received from Kashok Hale, President, All Puroik Welfare Society, Naharlagun, Arunachal Pradesh regarding non-implementation of the High Power Committee’s recommendations on Bonded Labour of East Kameng District, Arunachal Pradesh which was constituted on the behest of the Supreme Court Order Ref. No. 2AB(W) 22/97 dated

23 December 1998. It was alleged that although according to the 1991 Census, the number of bonded labourers were 3,542 but actually their number was more than 5,000-7,000 in the East Kameng District, most of whom had not been identified.

15.124 Pursuant to the Commission's directions, the report submitted by Shri Sudarshan Agarwal, the then Hon'ble Member of the Commission was sent to the Chief Secretary, Government of Arunachal Pradesh as well as to the Secretary, Ministry of Home Affairs for their response. The State Government of Arunachal Pradesh submitted its report stating that 882.4 hectares of land had been selected and also a model village was established for settlement of the freed bonded labourers and 2,992 bonded labourers were released and paid Rs.2992 lakhs as subsistence allowance @ Rs. 1,000/- each.

15.125 Subsequently, the Commission received a report from the Ministry of Labour which indicated that the Sponsored Plan Scheme had been modified from 1 April 2000 and rehabilitation grant was raised to Rs. 20,000 per freed bonded labour. Further in respect of North-Eastern States, 100% rehabilitation grants would be provided by the Central Government. In addition, grants-in-aid would also be provided to the State Government for conducting survey for identification of bonded labourers, awareness generation activities, evaluatory studies and monitoring and review of the implementation of the Bonded Labour Act, 1976.

15.126 On further consideration of the matter, the Commission directed the Union Ministry of Labour as well as the Government of Arunachal Pradesh to send progress reports in respect of progress made towards eradication of the bonded labour system.

15.127 In a subsequent report, the State Government indicated that 373 out of 2992 freed bonded labourers had been rehabilitated in January 2002 by paying rehabilitation grant to the tune of Rs. 70.84 lakhs @ Rs. 19,000/- per person under the approved scheme. The remaining 2588 bonded labourers, out of 2,619 bonded labourers, had also been rehabilitated in March, 2002 and 31 bonded labourers had since died. The report also indicated that a sum of Rs. 491.75 lakhs had been spent out of a total grant of Rs. 497.64 lakhs provided by the Central Government and the balance amount of Rs. 5.89 lakhs could not be utilised due to death of 31 bonded labourers.

15.128 On consideration of the matter, the Commission noted that the Government of Arunachal Pradesh, Deptt. of Labour had submitted the utilisation certificate of Central assistance provided under the Centrally Sponsored Scheme for Rehabilitation of bonded labours of Arunachal Pradesh. Since appropriate action had been taken, the case was closed by the Commission.

28) 400 Bonded Labourers Working in Chauna Stone Mines, District Gwalior Madhya Pradesh [Case No: 1351/12/2001-2002(FC)]

15.129 The Commission received a complaint from one Butan son of Pitam residing in Madhya Pradesh that was forwarded by Prof. Sheotaj Singh, Bonded Labour Liberation

Front alleging that about 400 bonded labourers had been working in Chauna Stone mines in District Gwalior and they were not paid their wages; besides they were tortured and harassed.

15.130 On consideration of the report submitted by Shri Chaman Lal, Special Rapporteur, NHRC, the Commission asked the Government of Madhya Pradesh to direct the Labour Commissioner, Madhya Pradesh to ensure a comprehensive inspection of these establishments and also to ensure strict enforcement of all Labour Laws, particularly, the Minimum Wages Act.

15.131 On perusal of the report submitted by the Labour Commissioner, Madhya Pradesh, the Commission observed that the District Administration had freed Butan along with 43 other persons on 9 July 2002 and all of them had been sent to District Guna as per their wishes. The report was however silent as to what action was taken against the persons with whom Butan and 43 others were engaged as bonded labourers and about the relief and rehabilitation measures that had been taken for the freed bonded labourers. The Commission, therefore, further asked the Government of Madhya Pradesh to furnish the information with regard to the manner in which action had been taken regarding Batan and 43 others as indicated above. In a subsequent report, Labour Department, Government of M.P. spelt out the steps taken by the Government of Madhya Pradesh for rehabilitation of bonded labourers freed in July 2002 and also indicated the action taken against the guilty employers.

15.132 On consideration of the report, the case was closed by the Commission.

29) Bonded Labourer in the Powerloom Factory, Distt. Periyar, Tamil Nadu (Case No. 22/212/96-LD(FC))

15.133 A complaint was received from Thenmozhi, Periyar District, Tamil Nadu alleging that her aunt, Madeswari who had been working as a bonded labourer in the powerloom factory owned by K. Nallusamy and K. Duraisamy in Periyar District, Tamil Nadu for 1½ years against an advance amount of Rs. 12,000 managed to repay the advance amount but the factory owners still demanded Rs. 24,000 more from them. Madeswari somehow managed to escape from the clutches of K. Nallusamy and K. Duraisamy along with her husband and daughters, and that she also found a new employment and started staying with the petitioner. It was further alleged that when Madeswari and her husband were away, Nallusamy and Duraisamy, the factory owners forcefully abducted the petitioner and her aunt's two minor daughters and they were compelled to sign fake loan documents of Rs. 64,000. When Madeswari and her husband came in search of their children and the petitioner, they were also compelled to work.

15.134 Not satisfied with the report received from Director General of Police, Government of Tamil Nadu, the Commission requested Shri K.R. Venugopal, Special Rapporteur, NHRC

to enquire and submit a report. The Commission, on consideration of the recommendations made by Shri K.R. Venugopal, Special Rapporteur directed vide its proceedings dated 26 December 2000 that the same be forwarded to the Chief Secretary, Government of Tamil Nadu for comments. An interim report dated 11 November 2002 submitted by the Adi Dravidar and Tribal Welfare Department, Government of Tamil Nadu indicated that the State officials had been instructed to take necessary action against the police officers concerned, as also to inquire into the action taken by the Collectors of Salem District from 1996 onwards and the arrangements made for reorientation of senior officers of the Government with regard to abolition of Bonded Labour System in Tamil Nadu. The report further indicated that the Court had carefully examined the merit of the case and decided to sanction a sum of Rs. 25,000/- to Thenmozhi.

15.135 On perusal of the above report on 20 October 2003 the Commission expressed its dissatisfaction and further directed to send the records to Shri K.R. Venugopal, Special Rapporteur, NHRC to take up the matter with the State Government for appropriate action and report.

15.136 In response, Shri Venugopal pursued the matter with the State Government as a result of which the Adi Dravidar and Tribal Welfare Department, Government of Tamil Nadu intimated that the State Government has decided to pay a total amount of Rs. 1.00 lakhs (including Rs. 25,000/- already paid) to Thenmozhi.

15.137 On consideration of aforesaid report, the Commission on 24 March 2004 appreciated the stand taken by the State Government and agreed to the payment of Rs. one lakh (including the amount of Rs. 25,000/- already paid) to Thenmozhi and asked the State Government to intimate the Commission whether the actual payment has been made to Thenmozhi and if so, send a copy of the proof of payment. The case is being monitored by the Commission.

p) Other important cases

30) Militants Attack 'Langer'- "7 Vaishno Devi Pilgrims Killed": Jammu & Kashmir [Case No: 58/9/2003-2004(FC)]

15.138 The Commission took suo-motu cognizance of media reports on the outrageous terrorist attack of Langer at Ban Ganga near Katra, Distt. Udhampur, Jammu & Kashmir on their way to the Vaishno Devi Shrine on 21 July 2003, killing seven devotees, including a child and injuring many innocent civilians. The Commission had consistently taken the position that such criminal acts were wholly unjustified and were violative of every conceivable human right. The Commission therefore called upon the authorities to ensure that the full force of the law must be brought to bear in dealing with such acts of terrorism and bringing to justice those who perpetrate or abet them. The Commission extended its deepest condolences to the families of those who had lost their lives or been injured in the terrorist attack.

15.139 In response the report received from the Director General of Police, Jammu & Kashmir indicated that two grenades were hurled by suspected anti-national elements into the open compound of 'Langar' at Banganga, which resulted in the death of six persons and injuries to fifty others. At the time of the attack, CRPF personnel along with local policemen were deployed on the track near the 'Langar'. On 10 August 2003, one Mohd. Yousuf alias Mithu, resident of Bagani Basantgarh was apprehended and during sustained interrogation, he admitted that he along with two militants, namely Sahil of Pakistan and Mohd. Abdullah of Doda were responsible for the grenade explosion at Gulshan Langar Ban Ganga on 21 July 2003. Further investigation in the case was in progress. The report further stated that in view of the increased rush of pilgrims on account of Amarnath Yatra, the security arrangements were reinforced by deputing one Trg. Coy of CRPF, which carries out long-range patrol in the surrounding high altitudinal areas. Pursuant to this attack, the arrangements have been further strengthened and the small hill feature to South-East of 'Langar' is being patrolled continuously to ensure that a repeat of this incident does not take place. Arrangements for the security of the Shrine are also being periodically reviewed.

15.140 On consideration of the report the Commission directed DG(P), Jammu & Kashmir to indicate whether any compensation/ ex-gratia or otherwise has been paid to the next of kin of those killed at Vaishno Devi in the terrorists attack.

15.141 Pursuant to the Commission's directions the DG(P), J&K had sent a report stating that ex-gratia relief @ Rs. 1 lakh each has been sanctioned and paid to the next of kin of 6 deceased killed in the bomb blast on 21 July 2003. Since action had been taken by the State Government, the Commission decided that no further action was called for in this case and accordingly closed the case.

31) Medical Treatment to Ailing Syed Ali Shah Geelani, Veteran Political Leader: Jammu & Kashmir (Case No: 1271/34/2002-2003/FC)

15.142 The Commission was seized of the complaint from the Secretary General, Jammat-e-Islami, Jammu & Kashmir, alleging ill-treatment meted out to ailing Syed Ali Shah Geelani, veteran political leader of J&K, who was detained in Birsa Munda Central Jail, Ranchi in Jharkhand under the Public Safety Act, though the doctors attending on him in Jail had recommended that he be immediately shifted to AIIMS, New Delhi. It was further alleged that the State/ Central Governments had taken no steps for shifting him to AIIMS deliberately on the grounds of non-availability of proper security arrangements for his treatment in the hospital.

15.143 The Commission called for a report in this matter from the Secretary, Ministry of Home Affairs. In response to the notice issued by the Commission, the Government of Jammu & Kashmir submitted a report stating that Geelani has been moved to the Tata

Memorial Hospital, Mumbai and that the State Government had borne the entire expenditure of the treatment of Syed Ali Geelani at Tata Memorial Hospital, Mumbai. In view of the action taken by the Government the case was closed by the Commission.

q) Action Taken on the Cases Reported in the Annual Reports for the Year 2001-2002 and 2002-2003

15.144 As many readers of the annual reports of the Commission have continued to express an interest in knowing about the action taken on the cases reported in the preceding annual reports. Information in respect of the cases reported in the annual reports of 2001-2002 and 2002-2003 has been updated and further action taken in respect of those cases in summary form has been included in following paragraphs:-

2001-2002

1) Harassment and illegal Detention of Farmers: Uttar Pradesh (Case No. 9480/24/1999-2000)

15.145 This case relates to the alleged detention of several farmers for several days in a lock-up by the Tehsil authorities of Azamgarh District in order to recover arrears of land revenue from them and the inhuman treatment meted out to them while in illegal detention.

15.146 Upon consideration of the report received from the Government of Uttar Pradesh, the Commission directed the State Government to pay Rs. 10,000/- as immediate interim relief to each of the persons detained.

15.147 Pursuant to Commission's directions, the District Magistrate, Azamgarh informed the Commission that a sum of Rs. 10,000/- had been paid as compensation to the complainant Lalji Yadav.

15.148 Upon further consideration of the aforesaid report, the Commission in its proceedings dated 05 November 2003 observed that the report was however totally silent about the payment of compensation to other persons allegedly detained for recovery of arrears of land revenue although particulars of such persons were furnished by the complainant in his complaint. The Commission further directed the Government of UP that if it is established that others too were detained in the same manner as the complainant, then the authorities should follow the directions of this Commission dated 17 September 2001 in their cases also. With this direction the case was closed by the Commission.

2) Death in Firing by Armed Forces, Manipur (Case No. 25/14/1999-2000)

15.149 The Commission took cognizance of a press report alleging that atleast five persons including minors had been killed and three others injured when personnel of the Central Reserve Police Force opened indiscriminate fire at Lower Lamka road in the aftermath of an attack by underground activists on their colleagues on 21 July 1999. The same matter had also been taken up by the Manipur Human Rights Commission which, after having an 'on-the-spot' study conducted by one of its Members on 22 July 1999 referred the matter to this Commission.

15.150 On consideration of the aforesaid report, the Commission held that the Central Reserve Police Force personnel had opened fire indiscriminately that resulted in the death of three civilians and a fireman and injuries to four persons. The Commission vide its order dated 28 September 2001 thus directed that immediate interim relief of Rs. 02.00 lakhs be paid to the next of kin of each of the deceased and Rs. 25,000/- to each of the four injured.

15.151 In pursuance of the Commission's directions, the Ministry of Home Affairs sent a report enclosing therewith the copy of the sanction order for the payment of Rs. 10,75,000/- as interim compensation to the next of kin of the five deceased civilians and three injured persons. However factum of payment is awaited.

3) Case of Jalil Andrabi, Advocate: Jammu & Kashmir (Case No. 9/123/95- LD)

15.152 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 matter is still pending before the High Court of Jammu & Kashmir, and the outcome thereof is awaited.

4) Death in Police Firing: Bihar (Case No. 2489/4/1999-2000 and 2314/4/1999-2000)

15.153 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.

15.154 Pursuant to the Commission's directions dated 3 January 2002, the Government of Jharkhand paid Rs. 02.00 lakhs to the wives of deceased Shankar Mahato and Dilip Kumar. Factum of payment has also been received.

5) Rights of Persons with Disabilities: Commission Provides Assistance to C S P Anka Toppo, a Blind Medical Student to Enable him to Complete MBBS Course (Case No. 1754/30/2000-2001)

15.155 One C S P Anka Toppo approached the Commission on 01 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).

15.156 In compliance to the directions of the Commission, both the AIIMS as well as the MCI forwarded to the Commission certain guidelines which they had framed to deal with cases of visually impaired students. The Commission however decided to further intervene in the matter and discussed the same with Dr P Venugopal, Director, AIIMS alongwith the Dean, Professor H K Tiwari and Registrar Shri V P Gupta. As a result, Dr Toppo was also allowed to complete his internship in the Department of Community Medicine as a special case. As the needful was accomplished and no further action was called from anybody, the case was closed by the Commission on 17 December 2003. The Commission also appreciated the co-operation extended by the Director and the other authorities of AIIMS in resolving the issue.

2002-2003

6) Death in Custody of Former Sarpanch of Gogon Village, Chuhur Singh due to Negligence: Punjab (Case No. 431/19/2000-2001)

15.157 The Commission took suo motu cognizance of a newspaper report published in "The Tribune" of 11 September 2000 about the death of a former Sarpanch of Gogon Village, Chuhur Singh, while in police custody on 10 September 2000. The victim had allegedly been arrested in a poppy-husk smuggling case and had died in the hospital while in custody.

15.158 In its order dated 22 May 2002 the Commission considered the reply from the Government of Punjab which stated that the question of compensation be kept in abeyance till the finalization of the enquiry. The Commission, however, overruled this objection and pointed out the purpose of Section 18 (3) of the Act, viz. the provision of immediate interim relief in instances where a strong prima facie case of the violation of human rights had been made out. This did not need to await determination of final liability in another proceeding. The Government of Punjab was accordingly directed to pay the compensation.

15.159 In response, the Government of Punjab has submitted its report stating that a Departmental Inquiry was being conducted against ASI Kapur Singh and that its earlier prayer made to the Commission to keep the matter related to payment of compensation in abeyance till finalisation of inquiry be considered.

15.160 The Commission by its proceedings dated 22.5.2002 rejected the stand taken by the State Government and directed it to comply with the directions. The compliance report is still awaited despite reminders. The matter is being pursued by the Commission.

**7) Death of Bujhai in Police Custody due to Torture: Uttar Pradesh
(Case No. 4238/96-97/NHRC)**

15.161 The Commission received a communication dated 2 August 1996 from the Superintendent of Police, Ambedkar Nagar, Uttar Pradesh concerning the death of Bujhai on 30 May 1994, while in police custody, in connection with case No. 54/94 registered against the deceased for murder. The magisterial enquiry referred to conflicting statements and, therefore, recommended a CID enquiry. Accordingly, case No. 121/96 was registered at Bevana Police Station for investigation.

15.162 In its order dated 11 March 2002, the Commission sought information on the current status of the prosecution and issued notice to the Chief Secretary, Uttar Pradesh to show cause as to why immediate interim relief under section 18(3) of the Act be not awarded to the next of kin of the deceased. As no reply was received from the State of Uttar Pradesh in spite of reminders, by its order dated 12 June 2002 the Commission held that the Government of Uttar Pradesh has no cause to show against the award of immediate relief and proceeded to award immediate interim relief of Rs. 1,00,000 to the next of kin of the deceased.

15.163 Pursuant to Commission's directions, the Government of Uttar Pradesh has submitted the compliance report indicating that payment of Rs. 1 lakh had been paid to Roshan Lal, son and legal heir of the deceased on 7 September 2003. As the State Government had complied with the directions of the Commission, the case was closed by the Commission on 17 November 2003.

**8) Custodial Torture of Zamir Ahmed Khan: Uttar Pradesh
(Case No. 14071/24/2001-2002)**

15.164 The National Commission for Minorities on 25 July 2001, referred a complaint by Zahir Ahmed Khan alleging the illegal detention of his brother, Zamir Ahmed Khan, by the Sub-Inspector and two constables of Bugrasi Chowki, Bulandshahar, Uttar Pradesh during the night of 29 March 2001. It was further alleged that he was brutally beaten by the police while in custody and that he had been released in the afternoon of 30 March 2001.

15.165 Upon consideration of the magisterial inquiry report and report received from Senior Superintendent of Police, Bulandshahar, Uttar Pradesh, the Commission directed the Government of Uttar Pradesh to show cause as to why immediate interim relief be not granted to the victim and further directed to proceed with the disciplinary action initiated

against the errant police personnel. Subsequently, in view of the fact that no response was received from the Government of Uttar Pradesh within the time stipulated, the Commission awarded an amount of Rs. 20,000/- as immediate interim relief to the victim of custodial torture by its proceedings of 27 May 2002. In response, the Government of Uttar Pradesh requested the Commission to reconsider its recommendation for the grant of interim relief on the grounds that the victim did not sustain any grievous injuries. The Commission rejected the stand taken by the State Government and reiterated the recommendation for payment of compensation to the victim.

15.166 In response, the Senior Superintendent of Police, Bulandshahar Uttar Pradesh vide its letter dated 11 February 2004 informed that an amount of Rs. 20,000/- had been paid to the victim on 7 November 2003. The said amount of compensation had been ordered to be recovered from the erring police officials. An amount of Rs. 13,334/- recovered from the 2 police officials had already been deposited with the State Government and the balance of Rs. 6,666/- would be recovered from Constable Ghan Shyam.

9) Police High-handedness Against a Teacher in Kota: Rajasthan (Case No: 1603/20/2001-2002)

15.167 The Commission received a complaint dated 10 October 2001 from Prem Chand, a teacher in the Government School at Kota, alleging that on 29 September 2001 he was picked up by the local Sub-Inspector, illegally detained, falsely implicated in a case, tortured and denied food and water during the period of his detention.

15.168 Upon consideration of the report received from The Superintendent of Police Kota, Rajasthan the Commission by its proceedings dated 14 February 2003 issued a show cause notice to the Chief Secretary, Government of Rajasthan as to why immediate interim relief be not given to the victim.

15.169 On further consideration of the report received from the Government of Rajasthan, the Commission observed that the State Human Rights Commission, Rajasthan was seized of the matter and therefore the case was closed with the directions that the Commission be kept informed of the final outcome of the departmental proceedings initiated against delinquent police officials. Information about the final outcome of departmental proceedings is awaited.

10) Negligence of Police Personnel Leading to Wrongful Confinement of Ikram-ud-din: Uttar Pradesh (Case No. 23239/24/1999-2000)

15.170 The Commission received a complaint dated 14 January 2000 from Ikramuddin, a resident of District Bagpat, Uttar Pradesh alleging that a case was registered at the Police Station Baraut against Ikramu, a resident of Baraut. During trial, the accused did not appear

in the court and a non-bailable warrant was issued against him. The police instead of arresting Ikramu, arrested Ikramuddin on 20 June 1999, despite his protest. He was released on bail by the court, after filing an affidavit that he was not the accused in the case.

15.171 Having regard to these facts which were admitted by the police, the Commission held that the complainant had suffered great financial loss and mental agony due to wrongful confinement on account of negligence of police official and issued a show cause notice to the Government of Uttar Pradesh. Upon consideration of the report received from the Special Secretary, Home Department, Uttar Pradesh, the Commission by its proceedings dated 11 October 2002 held that the complainant had been compelled to remain in jail for about one and a half months and that he had incurred an expenditure of Rs. 10,000/- to get himself released and therefore directed the State of Uttar Pradesh to pay a sum of Rs. 50,000/- as immediate interim relief to the complainant.

15.172 The compliance report from the Chief Secretary, Government of Uttar Pradesh is still awaited. The matter is being pursued by the Commission.

11) False Implication of Navi Ullah under NDPS Act: Uttar Pradesh (Case No. 13501/24/2000-2001)

15.173 P.S. Chhabra, Additional Session Judge, Lalitpur, sent a copy of his judgement dated 29 July 2000 in a case under Section 20 of the NDPS Act acquitting the accused, Navi Ullah, and holding that the accused was falsely implicated by the police, violating his human rights. The judgement contained a request that an independent investigation be made by the National Human Rights Commission, or by some other agency, so that action could be taken against the errant police personnel.

15.174 On consideration of this matter in its proceedings of 13 January 2003, the Commission awarded an amount of Rs. 1,00,000 as immediate interim relief to be paid to Navi Ullah by the Government of Uttar Pradesh. The State Government was also directed to inform the Commission of the outcome of the departmental action taken against the delinquent public servants.

15.175 Pursuant to Commission's directions, Government of Uttar Pradesh had sanctioned Rupees one lakh to the victim Navi Ullah as interim relief and on conclusion of the departmental proceedings, the delinquent officials were censured.

12) Custodial Death of Under-trial Prisoner, Harjinder alias Jinda, due to Negligence: Uttar Pradesh (Case No. 8437/24/1999-2000-CD)

15.176 The Commission received intimation from the Superintendent of Police, District Khiri, Uttar Pradesh on 20 August 1999 of the custodial death of an under-trial prisoner,

Harjinder alias Jinda, on 19 August 1999.

15.177 Since no reply was received from the State Government to the show cause notice within the time stipulated, the Commission, in its proceedings dated 14 June 2002 concluded that the undertrial prisoner Harjinder, had died in judicial custody for the reasons recorded in the findings of the Executive Magistrate, i.e. "negligence and callousness on the part of police personnel". The Commission also held that the State was vicariously liable for the death of the undertrial prisoner. Accordingly, it recommended a sum of Rs. 1,00,000 as immediate interim relief to the next of kin of the deceased.

15.178 In response, the State Government of U.P. submitted a report stating that there is no justification for grant of an interim relief as the allegations of torture by the police had not been established in the CB/CID inquiry and that the deceased died due to drowning in the Nallah.

15.179 On consideration of the aforesaid report, the Commission directed Director General (Investigation) to examine the entire record and submit a report. The matter is under active consideration by the Full Commission.

13) Murder of Manak Ram and Grievous Injuries to his Son in Jail: Rajasthan (Case No. 263/20/98-99-ACD)

15.180 The Commission received a complaint dated 26 April 1998 from Gumna Ram, a resident of District Jodhpur, Rajasthan, alleging the murder of a prisoner, Manak Ram, on 16 January 1998 by Bhim Singh Purohit and others in the premises of Mandor open jail. The accused also attacked Manak Ram's son, Mangi Lal one of whose hands was amputated and he also sustained a grievous injury in one of his ears.

15.181 Upon consideration of the report received from the Government of Rajasthan, the Commission by its proceedings dated 22 May 2002 directed the Government of Rajasthan to pay a sum of Rs. 2,00,000 to the family of the deceased Manak Ram and a sum of Rs. 1,00,000 to Mangi Lal because of the disability suffered on account of the amputation of a hand and the grievous injury to one ear.

15.182 The Government of Rajasthan had intimated compliance of the recommendations made by the Commission on 26 May, 2002 as well as on 30 April 2003, stating that Ladhi alias Radha, wife of the deceased had been paid Rs. 2 lakhs and the son of the deceased, Mangi Lal had been paid Rs. 1 lakh out of a total financial assistance of Rs. 3 lakhs and the challan had also been filed in the court. The case as such, was closed by the Commission.

**14) Atrocities on Inmates by the Superintendent of Probation
Home: Jharkhand (Case No. 177/34/2001-2002)**

15.183 The Commission received a complaint dated 6 May 2001 from Kumri Sita alleging maladministration in the Probation Home, Devghar where girls were lodged. It was alleged that the girls were not being looked after properly and that they were being deprived of food, clothing and medicines. As a result, a girl inmate reportedly died on 2 February 2001. The complaint also alleged that some of the girls were beaten by the staff of the Home during April 2001 and that, as a result, one of the girls had escaped from the Home.

15.184 Having regard to the clear violation of human rights, on 3 December 2002, the Commission issued notice to the Chief Secretary, Government of Jharkhand, asking him to show cause as to why immediate interim relief be not granted to the inmates named in the report.

15.185 As of 31 March 2004 the response of the Government of Jharkhand was awaited and the matter was being pursued by the Commission.

**15) Exploitation of Child Labourers in Tonk: Rajasthan
(Case No. 817/20/2001-2002)**

15.186 The Commission received a complaint on 20 July 2001 from Mahavir Prasad alleging that Babu Lal Baswal, a manufacturer of carpets, had employed child labourers. They were reportedly being exploited, made to work under oppressive conditions and not being paid wages.

15.187 Having regard to the employment of a number of child labourers by the accused in contravention of the provisions of Section 3 of the Child Labour (Prohibition & Regulation) Act, 1989 and the institution of cases in the court against the offending employer, by its proceedings dated 2 May 2002 the Commission directed the District Magistrate, Tonk, Rajasthan to prepare a list of child labourers who were employed by carpet weaving unit, to recover a sum of Rs. 20,000/- per child from the offending employer, and to deposit that sum in a fund to be known as the Child Labour Rehabilitation cum Welfare Fund. The State Government was also directed to contribute Rs. 5,000/- per child to the said fund in accordance with the directions of the Apex Court. The Commission directed that the fund so generated shall form a corpus, the income of which shall be used only for the concerned children.

15.188 The complete compliance report from the District Collector, Tonk Rajasthan is still awaited and the matter is being pursued by the Commission.

16) Death of a Minor Boy, Chanderpal, Owing to Negligence by the Police: Uttar Pradesh (Case No. 11150/24/1999-2000)

15.189 On 29 July 1999, the Commission received a complaint from Kalyan Singh, a resident of village Bhan, Pauri Garhwal alleging that on 9 June 1999, his son Chanderpal, aged 14 years, was shot dead by the Assistant Sub-Inspector with his revolver.

15.190 In view of the fact that the death of Chanderpal was admitted to have occurred as the result of the act of a police official, the Commission issued a show cause notice to the Commissioner of Police, Delhi. Upon consideration of the matter the Commission by its proceedings dated 11 October 2002, held that the Deputy Commissioner of Police had failed to give a satisfactory explanation to the show cause notice and directed the Government of NCT of Delhi to pay a sum of Rs. 1,00,000 to the complainant as immediate interim relief under Section 18(3) of the Act.

15.191 Pursuant to the directions of the Commission, the Commissioner of Police, Delhi had submitted that on account of acquittal of the accused by the trial court, Delhi police is not liable to pay any compensation to the victim and accordingly requested for recall of order of the Commission directing payment of interim relief. On consideration of the copy of the judgement of the acquittal, the Commission observed that the accused had been acquitted. It also transpired from a perusal of the record that the Superintendent of Police, Pauri Garhwal had informed the Commissioner of Police, Delhi that no appeal had been filed against the judgement of the trial court in any higher court. Taking note of it, the Commission recalled its order of payment of interim relief dated 11 October 2002 and closed the case.

17) Bonded Child Labour: Andhra Pradesh [Case No. 443/1/2001-2002(FC)]

15.192 The Commission received a petition dated 24 August 2001 alleging the existence of child labour and the exploitation of minor girls through their employment in hazardous work in cottonseed farms, tiles units, quarries and bidi manufacturing units in the districts of Mehaboob Nagar, Krishna and Nizambad in Andhra Pradesh.

15.193 In response to directions issued by the Commission, a detailed report dated 19 July 2002 was received from the Government of Andhra Pradesh stating that the State Government was implementing an action plan to eradicate child labour in the State by the year 2004 in a time-bound manner. The Commission on consideration of the comments of Sh. K.R. Venugopal, its Special Rapporteur, on the child labour situation in Andhra Pradesh asked the State Government to forward a copy of its plan to the Commission alongwith the details of the follow-up steps taken by them.

15.194 The matter is being pursued by the Commission.

18) Atrocities on Scheduled Castes/ Scheduled Tribes-killing of Five Dalits: Haryana (Case No. 1485/7/2002-2003/FC)

15.195 The Commission took suo motu cognizance of a newspaper report entitled “Five Dalits lynched in Haryana” published in the Indian Express of 17 October 2002. The report stated that five dalits, all in their twenties, were beaten to death on 15 October 2002 in Jhajjar District, Haryana. The victims were reported to have been dragged by a mob out of a police post where they had taken refuge and lynched allegedly in the presence of the City Magistrate, the Deputy Superintendent of Police of Jhajjar and Bhadurgarh, the Block Development Officer and at least 50 policemen.

15.196 In its proceedings dated 31 March 2003, the Commission noted that upon its intervention, the Government of Haryana had paid compensation of Rs. 500,000 to the family of each of the deceased persons and further provided employment to the dependents of those five persons. The State Government had also decided to take disciplinary action against all the errant officers. In noting these actions, the Commission called for information from the Government of Haryana on the outcome of current status of the disciplinary proceedings, as well as details in respect of the dependents who had been provided employment by the State.

15.197 In response, a communication was received from the Under Secretary, Home stating as under:-

- (a) Paid compensation of Rs. Five lakhs to each of the family of the deceased.
- (b) Provided employment to one dependent from the family of each of the five deceased who had been lynched.
- (c) Imposed punishment of stoppage of two increments permanently on 11 police personnel; and
- (d) Disciplinary enquiry in respect of five other police officials had been initiated and was under progress.

15.198 The Commission considered that no further action in this matter was called for. Accordingly the case was closed. However, the State Government was asked to communicate the result of the disciplinary enquiry against the five officials, which was in progress, to the Commission.

19) Harassment of Shri Kumpampadom Thomas Skaria, by an Immigration Officer at the Mumbai Airport: Maharashtra (Case No. 263/13/2000-2001)

15.199 The Commission received a complaint on 25 February 2000 from Kumpampadom Thomas Skaria, a citizen of the United States of America of Indian origin, stating that

he had arrived at Mumbai Airport on 6 March 1999 to attend to the last rites of his father who had passed away in Kerala. Despite his passport and visa being in order, he stated he was harassed by the Immigration Officer on the grounds that his entry visa had been tampered with. He was not allowed to visit his native village in Kerala, but was sent back to the USA from Mumbai airport itself. He added that, as a result, he suffered great mental agony and torture and incurred a huge financial loss.

15.200 In view of the prima facie case against the delinquent public servants viz., the Immigration Officer and a senior Police Officer, a show cause notice was also issued to them to show cause as to why action be not recommended against them. Upon receiving the response of the concerned Government departments, the Commission reiterated that the petitioner had been refused entry for no fault of his at a time when he had come to attend his father's funeral. The Commission, therefore, stressed the need to make amends to assuage the hurt feelings of the petitioner.

15.201 On 31 July 2002, the Commission noted that instruction have been issued to the immigration authorities to prevent the repetition of such unfortunate incidents in the future. The Commission also noted that a decision had been taken to offer a free return air-package to the complainant and his wife to visit his native place in Kerala and relatives in India. The report further added that the modalities were being worked out in consultation with the concerned departments.

15.202 The compliance report from the Dy. Secretary (F), Ministry of Home Affairs vide letter dated 16 September 2003 had been received stating that the Government of India had instructed the Embassy of India in Washington to hand over two complementary return air tickets to K. Thomas and his wife to enable them to visit India as a measure of recompense.

15.203 On consideration of the matter, the Commission on 20 October 2003 directed to forward a copy of the letter dated 17 September 2002 received from the complainant K. Thomas Skaria to the Secretary, Ministry of Home Affairs, Government of India for his response and comments. The Commission further directed the Ministry of Home Affairs to inform the Commission whether the two complimentary return air tickets had been delivered to Thomas Skaria and his wife, and, if so when. Reply in the matter is awaited and the matter is being pursued by the Commission.

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

15.204 Earlier annual reports of the Commission have dealt, in great detail, the efforts of the Commission since 1996 to deal with the allegations of deaths by starvation in the KBK districts of Orissa and the remit of the Supreme Court to the Commission to pursue and monitor this matter.

15.205 In the course of the year 2002-2003, on consideration of the compliance report submitted by the Government of Orissa, the Commission directed the State Government to intimate the progress made with regard to the amendment of Orissa Relief Code and Dr. Amrita Rangasami, Director, Centre for Study of Administration of Relief (CSAR) was also requested to forward the note of suggestions relating to calamity relief expeditiously.

15.206 In response, the State Government of Orissa vide communication dated 19 December 2003 submitted a report of physical progress, in terms of expenditure incurred up to the end of September, 2003, under various heads of Revised Long Term Action Plan for the KBK Districts. As regards the amendment of the Orissa Relief Code, the State Government had stated that the same was under process and the report would be furnished to the Commission after its finalisation. The note of suggestions relating to calamity relief and the method of its utilisation from Dr. Amrita Rangasami is still awaited. The matter is periodically being monitored by the Commission.

CHAPTER 16

Administration and Logistic Support

16.1 The total sanctioned strength of the Commission remained at the level of 341 posts. As of 31 March 2004, 306 officers and staff were in position. Efforts were continued to be made by the Secretariat of the Commission to fill up the vacant posts. The constantly increasing workload of the Commission has necessitated the engagement of consultants to cope with the additional work. Since the Commission must proceed with care to build and develop its own cadre, a variety of methods are still being employed to appoint staff in the Commission which include the appointment of personnel on deputation, re-employment and direct recruitment. In the meantime, the process of absorption of employees working in the Commission has been continued and permanent absorption of staff members in the grades of Inspector, Assistant, Personal Assistant, Private Secretary and Staff Car drivers was taken up during the year under review.

A] Special Rapporteurs

16.2 The scheme of having Special Rapporteurs to assist the Commission in discharging its demanding and sensitive responsibilities continued during the year 2003-04. Shri Chaman Lal continued to serve as Special Rapporteur for issues such as Custodial Justice, Prison Reforms, Bonded Labour, Child Labour, monitoring of the functioning of the Agra Protective Home and the three mental hospitals in Agra, Gwalior and Ranchi. Details of the work undertaken by him are fully covered in chapters 4 and 8. Shri K.R. Venugopal is looking after the issue of bonded labour in the states of Karnataka, Andhra Pradesh, Tamil Nadu, Kerala, Andhra Pradesh and UT of Pondicherry. He participated in several conferences and workshops that aimed at contributing to the protection and enhancement of human rights. He participated in the State Level Workshops organised by the Tamil Nadu Government for Convergence of Services for Elimination of Child Labour conducted in collaboration with the UNICEF at Chennai. He also participated in the meeting of the State High Level Monitoring Committee on Bonded Labour set up at his instance by the State Government

with the Chief Secretary and several senior Secretaries to the State Government. As part of the continuing training and sensitisation efforts he delivered two lectures at IIM, Bangalore on 'Food Security and Policy making processes in the PM office' to the senior officers of the Indian Administrative Service and various other Central Services. Besides, he delivered a lecture at the IIPA, New Delhi on "Overview of Economic, Social and Cultural Rights" conducted by the Commission and the IIPA for the faculty members of the National and States Training Institutes, National and State Human Rights Commissions.

16.3 Shri P.G.J. Nampoothiri has continued to serve as Special Rapporteur to primarily look after the matters relating to Civil and Political Rights in the State of Gujarat such as Gujarat Earthquake and events that occurred in Gujarat after the Godhra tragedy. He continued to assist the Commission in coordinating with the State Government and reporting on all matters relating to the communal disturbance in Gujarat on the directions of the Commission. He also organised the Western Regional Consultation of NGOs at Pune on 13th June 2003. Shri A.B. Tripathy also has continued to serve as Special Rapporteur to look after the issues on Custodial Justice, Civil and Political Rights in the States of Orissa and Jharkhand. He was instrumental in organising the North-Eastern Regional Consultation of NGOs at Guwahati on 22 March 2004. He also assisted the Commission in organising a number of seminars/workshops by the NGOs in the two States. He also undertook visits to jails in Jharkhand and Orissa. Ms. Anuradha Mohit has continued to serve as Special Rapporteur (Disabilities) and is looking after the issues relating to disability. Details of the work undertaken by her have been included on chapters 2 and 12.

B] Core Groups

16.4 It has already been reported in the earlier annual reports of the Commission that a number of core groups have been set up in the Commission to advise it in handling a wide range of issues that come up before the Commission from time to time or when it is required to pronounce its views on several Acts, Bills and other Statutes.

16.5 The core groups consist of very eminent persons or representatives of bodies engaged in specialised areas who voluntarily agree to serve as members of such groups. So far, the Commission has constituted core group of NGOs, Lawyers, Medical Professionals, Experts on the subject of Disability. The activities of these core groups have been covered in the write-ups on the related subjects elsewhere in this report. In the year under review the Commission decided to constitute a core group on 'Right to Food' with the following composition, keeping in view the serious human rights problems concerning the issue:-

1. Shri K.R. Venugopal
2. Dr. Amrita Rangasami
3. Dr. N.C. Saxena

4. Prof. Jean Dreze
5. Prof. Ravi Srivastava
6. Dr. A.K. Shiva Kumar

C] Use of Official Languages

16.6 The Commission has been receiving complaints and reports in Hindi as well as in various regional languages. During the year 2003-04 the Official Languages Division of the Commission received about 125 complaints/representations, responses of complaints, reports etc. in Hindi and about 3200 letters, complaints/representations in other Indian Regional Languages and six letters/representations in foreign languages for translation into English. The Section is also responsible for translation of the monthly Newsletter, annual report and budget documents of the Commission into Hindi.

16.7 A Hindi fortnight was observed from 15th to 29th September 2003, to promote the progressive use of Hindi in the Commission.

16.8 In order to increase the awareness about Human Rights, an Award Scheme for Creative Writing on Human Rights in Hindi had been instituted in the year 1998. During the period 2002-03, 40 entries were received under this Scheme. The entries were evaluated and six writers were awarded cash awards at a function organised on 18th March 2004. The details of the awardees are given in the next paragraph.

16.9 Dr. K.S. Dwivedi for his book titled 'Manav Adhikar Darshan' and Dr. Sushil Kumar Bhatia for his book titled 'Bhartiya Sanskriti Ke Panch Adhyaya' shared the first prize of Rs. 25,000. Dr. (Mrs.) Deepa Singh and Shri K.P. Singh co-authors of the book titled 'Manavadhikar Aur Pulis Tantra' were awarded the second prize of Rs. 20,000/-. Dr. Vikram Singh author of book titled 'Manavadhikar Aur Pulis' and Shri Vinod Kumar Mishra author of book titled 'Manavadhikar Aur Vikalangan Ke Kanooni Adhikar' shared the third prize of Rs. 15000/-.

16.10 For the first time a one day workshop on the Role of the Official language Hindi and other Regional Languages in the Protection and Promotion of Human Rights was organised by the Commission in Delhi on 16th March 2004. The workshop was inaugurated by the Hon'ble Chairperson Dr. Justice A.S. Anand who stressed on the need for the use of regional languages in reaching out to make the common man aware of his rights.

16.11 It was decided to bring out a bilingual Glossary of Human Rights terms, which would facilitate examination of complaints, police reports and forensic reports etc. The English-Hindi version of the Glossary was prepared during this period and is under print.

16.12 The Commission decided to bring out a Hindi magazine containing articles from eminent writers relating to Human Rights issues, annually. Smt. Mahashweta Devi, a well known writer, social worker and Gyan Peeth Award winner is the honorary chief editor of the magazine which is likely to be published early next year.

16.13 It was also decided to translate International Conventions, covenants and Treaties on Human Rights in Hindi. The work of translation by experts in the field is being carried out. The translated version is likely to be brought out early next year.

D] Library

16.14 The Library of the National Human Rights Commission is for research and reference purposes primarily for officials working in the Commission. It however, provides consultation facilities to interns, research scholars and other working in the field of Human Rights. It maintains liaison with almost all the libraries in New Delhi through inter-library loan facility. Presently the library houses 10,084 books, subscribes 33 journals, 26 magazines, 23 newspapers (including 5 regional newspapers). During the year 2003-04 library added 2260 new books on Human Rights or having relevance to human rights issues.

E] Funds

16.15 Under Section 32 of the Protection of Human Rights Act, 1993, the Commission is granted financial assistance by way of grants-in-aid after due appropriation made in this behalf by the Parliament. During 2003-2004, the Commission received Rs.1133 lakh (Rs. 1033 Non-plan and Rs.100 lakh Plan) under Revised Estimates as grants-in-aid. The expenditure of the Commission during the year was Rs.1061.15 lakh.

16.16 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 & Auditor General of India (C&AG) audits the accounts of the Commission. The Comptroller & Auditor General of India have certified the accounts of the Commission for the year 2001-2002 and the accounts are under print, thereafter they shall be placed before each house of Parliament as required under Section 34 of the Protection of Human Rights Act, 1993. The Accounts for the year 2002-2003 have been audited by the office of the DGACR, New Delhi on behalf of the C&AG in February, 2004. The Audit Report thereon is still awaited.

F] Manavadhikar Bhavan

16.17 Ever since its inception, the Commission has been desirous of having its own office building commensurate with its status as an independent and autonomous National Human Rights Institution. In the year reported upon, the Commission continued its efforts to have

its own office building, 'Manavadhikar Bhavan' constructed in the space allotted in Block 'C' of the office complex premises in INA area. An amount of Rs.1.62 crore has been released so far to the Ministry of Urban Development/CPWD towards the cost of land and construction of the building. Although it is more than a year since a block has been allotted to NHRC in the INA area for construction of the Bhavan, the Ministry of Urban Development is yet to start the construction, let alone complete the formalities before that. The Commission expresses its concern about the undue delay in the starting of the construction of the building and expresses the hope that this would be done without further delay. The Commission urges the Ministry of Urban Development to take up the construction of the building without delay.

CHAPTER 17

Summary of Principal Recommendations and Observations

17.1 The principal recommendations and observations contained in the annual report for the year 2003-2004 are summarised below.

General

17.2 The Commission would like to emphasise, once again, that any delay in placing its annual report before Parliament, not only deprives the Commission from getting a feedback about the action taken by the Government, but also the Members of Parliament and the public, an opportunity to discuss its contents at the earliest and most appropriate time. Thus, the Commission has consistently urged the Central Government to expeditiously place its annual report before Parliament, together with the Memorandum of Action Taken. This is envisaged under the Protection of Human Rights Act, 1993. **(Para 1.4)**

Issues Concerning Gujarat

17.3 A major development in the Gujarat issue during 2003 – 2004 (the period under review in the present report) was the trial of the case, which has come to be known as the “Best Bakery Case”. A charge sheet was filed against 21 accused. The trial commenced before the Fast Track Court on 20th February 2003. The Trial Court heard arguments of the prosecution and the defence on 21st June 2003 and reserved its judgment. This was delivered on 27th June 2003, acquitting all the 21 accused. **(Para 3.2)**

17.4 The Commission on 30.6.2003 called for a copy of the judgment of the trial court along with information on the action, if any, proposed against the acquittal, from the Govt. of Gujarat. However, no response from the Chief Secretary was received to the Commission’s communication of 30th June, 2003. Thereafter the Commission sent a team of officers to Vadodara to collect the record of trial from the trial court. Taking note of the report submitted by its team and other relevant material, including the statement of Ms. Sheikh

Zahira Bibi, made before the Commission, seeking assistance of the Commission for retrial of the case, the NHRC, on 30th July, 2003, under provisions of Section 18(2) and other enabling provisions contained in the Protection of Human Rights Act, 1993, proceeded to file an Special Leave Petition, before the Hon'ble Supreme Court. In the Special Leave Petition, the Commission raised not only issues of miscarriage of justice as a result of acquittal of all the accused in the Best Bakery Case, but larger issues touching upon the credibility of criminal justice delivery system; protection of witnesses and victims of crime; the postulates of a fair trial and the need to lay down guidelines, in the face of case after case failing, particularly critical cases, on account of witnesses turning hostile at the trial. This was needed to restore the credibility of criminal justice delivery system, which had come under serious challenge. NHRC also prayed for an order to "reinvestigate" the Best Bakery Case by C.B.I. and for its "retrial" outside Gujarat. As acquittal order in the Best Bakery Case has been set aside by the Supreme Court and others issues raised in the petition are still under consideration of the Supreme Court. **(Para 3.6)**

17.5 The Commission has continued to be concerned about the relief, rehabilitation and resettlement of the victims of communal violence in the State of Gujarat who were 'displaced' following the Godhra riots. The Commission had proposed several measures in that behalf. However, the experience of the Commission has been that the State Government in responding to the recommendations of the Commission regarding the relief and rehabilitation of victims, has been less than forthcoming or cooperative. The efforts of the Commission have not led to initiation of any substantial additional measures or even adequate speedy measures relating to relief, rehabilitation and resettlement of the unfortunate victims. **(Para 3.21).**

Terrorism and Human Rights

17.6 As terrorism aims at the destabilisation of civil society and the undermining of State institutions it is essential that it be firmly resisted. The Commission would therefore like to reiterate its conviction that the police and armed forces of the State, backed by all elements of civil society, have a duty to fight and eliminate terrorism. However this must be done in a manner that upholds the Constitution of the Republic, the laws of the land, the rule of Law, and the Treaty commitments of the State. **(Paras 4.4 and 4.6).**

17.7 The Commission is convinced that due observance of human rights is not inimical to the promotion of peace and security. On the contrary, any lasting peace and long term national security, depends upon adherence to respect for human rights. It follows, therefore, that anti-terrorism measures taken must be consistent with democracy and human rights, which are the fundamental values of our society. **(Para 4.5).**

17.8 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 the 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 causing of death. **(Para 4.7).**

17.9 The Commission takes this opportunity to once again draw attention to its earlier recommendations in respect of the armed forces made in its preceding report, including inter-alia its view that the Central government should direct the armed forces, including the para-military forces to report to the Commission- as does the police- any case of death of a person while in custody. This requirement, if observed, would go a long way towards ending acts of custodial violence and the possibility of extra judicial killings. Such a development could transform the conduct of the armed forces, including para military forces and reduce any allegations that are brought against them. **(Para 4.9).**

Custodial Violence

17.10 Custodial violence brings about a chasm between the Police and members of the public. Transparency in arrest, medical examination at given intervals, honest record keeping, increasing awareness about human rights, improved interrogation skills are some of the means of reducing incidences of custodial violence. 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 this regard. It accordingly urges all State Governments to pay more attention to such matters. **(Paras 4.19 & 4.24).**

17.11 Ever since the Commission was established in October 1993, it has received reports of a total 10,058 deaths having occurred in police or judicial custody. An analysis of deaths that occurred in judicial custody call for better prison management, a properly 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 reiterates its recommendations that in all these areas, all State Governments should pay more attention. **(Para 4.27).**

Encounter Deaths

17.12 The Commission issued guidelines in respect of procedure to be followed by all State Govts. in dealing with deaths that occurred in encounters with the police. These were circulated to all Chief Secretaries of States and Administrators of Union Territories on 29.3.1997. In order to bring about transparency and accountability of public servants, the Commission revised the existing guidelines on 2.12.03. It was emphasised that all States must send intimation to the Commission of all cases of deaths arising out of police encounters. The Commission also recommended a modified procedure to be followed by all State Govts. **(Paras 4.29 & 4.30).**

17.13 The Chief Ministers and Administrators of all States have been directed to send a six monthly statement of all cases of deaths in police action in the States/ UTs through

the Director General of Police to the Commission by the 15th Day of January and July respectively in the proforma devised for the purpose. **(Para 4.31)**

Police Reforms and the Criminal Justice System

17.14 The need for independence of the Police from political interference, and steps to improve efficiency and modernize training programmes have been highlighted time and again by various experts and organizations. Several Police Commissions have submitted their reports recommending reforms in police organisational structure and functioning, but no concrete action has been taken on these reports. **(Para 4.35)**

17.15 The Central Government in response to the Commission's recommendations, in its earlier annual reports such as implementation of some of the important recommendations of the National Police Commission for improving the quality of policing in the country, has taken some concrete steps towards modernization of the police. The Commission wishes to reiterate its earlier stand that the steps to modernize the police are welcome, and are in fact necessary, but not sufficient to bring about the necessary systemic reforms in the police force. **(Para 4.37)**

17.16 The Memorandum of Action Taken prepared by the Central Government in response to the annual report for 2000 - 2001 had stated, inter- alia, that all the recommendations made by the Padmanabhaiah Committee had been accepted and the State Governments had been requested to implement such recommendations as relate to them. The progress made in this regard needs to be reviewed / monitored at the highest level. **(Para 4.38)**

17.17 The Commission has been receiving complaints, inter alia, of police wrong doings and their complicity in the violation of human rights and failure to provide justice to those who have been harmed. The Commission had referred in its earlier reports to the large-scale violation of human rights in Gujarat starting with the tragedy in Godhra on 27.2.2002. The Commission once again urges both the Central and State Governments to act with determination to implement the various police reforms recommended to it in various proceedings and earlier reports of the Commission. **(Para 4.39)**

17.18 The Supreme Court has, way back in 1993, held in Sheela Barse Vs Union of India that no person should be held in jail merely on ground of mental illness. The Commission has found that the directions of Apex Court are not being complied with in many States/UTs. The Chairperson, NHRC had therefore, written to all Chief Ministers/Administrators of States/UTs in 1996, drawing their attention to the directions of the Supreme Court and requested them to ensure its strict enforcement. **(Para 4.91)**

17.19 As indicated in the previous reports, the Commission has been urging the Ministry of Home Affairs and the State Governments to implement the recommendations of a report

entitled “State of the Art Forensic Sciences: For Better Criminal Justice”, which was prepared by a Core Group of Experts constituted by the Commission. **(Para 4.100)**

17.20 The Commission has noted that the steps have been taken by the Ministry of Home Affairs to implement certain recommendations. During the year, the Ministry of Home Affairs has been requested to expedite the following:-

- (i) Action taken on the remaining recommendations made by the Core Group;
- (ii) Implementation of the decisions taken by the Core Group; and
- (iii) Response, if any, received from the State Governments to MHA's letter dated 13-11-2001. **(Paras 4.101 & 4.102)**

Amendments to Laws

17.21 The Draft Child Marriage Restraint Bill recommending substantial changes in the Child Marriage Restraint Act (CMRA), 1929, as approved by the Statutory Commission, was sent for consideration and appropriate action to all State Governments/Union Territories as well as to the Department of Women and Child Development, Ministry of Human Resource Development, Government of India. A copy of the Draft Bill was also forwarded for information to the Ministry of Home Affairs and the Ministry of Law and Justice, Government of India. All States/Union Territories have been reminded once again to respond to the Commission on this subject at the earliest. **(Para 5.9 & 5.10)**

17.22 The Government, in its Action Taken Report on the Commission's annual report for the year 2001-02 has stated that an Inter-ministerial Committee which was set up to examine the proposed amendments of the Protection of Human Rights Act 1993, keeping in view Objects and Reasons of the Act, the role of other Commissions and the overall context of their functioning as also the socio political and economic conditions, etc, has since completed its examination and has submitted its findings to the Government for action. The Government is likely to finalize its views in the matter soon. The Commission notes with a sense of deep regret and anguish that, till date, these amendments have not seen the light of day. The Commission hopes that the Government would move expeditiously in notifying the amendments without further loss of time. **(Paras 5.15 & 5.17)**

17.23 The Commission would also like to draw attention to a specific amendment proposed to Section 19 of the Act in the above proposal referred to the Government. In its Action Taken Reports on the annual reports of the Commission for the years 2000-01 and for the year 2001-02, the Government has reiterated the view that the provisions of Section 19 of the Act, as they exist, do not necessitate any change. The Commission

would like to reiterate its earlier view that the present system of enquiry into allegations of human rights violations by the armed forces is not working satisfactorily. The Commission would like to once again urge the Government to review its stand in the matter. **(Para 5.16)**

17.24 The Commission in its earlier annual reports had recommended that the Government of India examine and become a party to Optional Protocols 1 and 2 to the Convention on the Rights of the Child, dealing with the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. During the year under review, the Department of Women and Child Development has informed the Commission that they have circulated the draft Note for the Cabinet to the concerned Ministries and Departments, including the Ministry of Home Affairs, for their comments and views. However, the Ministry is yet to convey its decision on the recommendations made to the Commission. **(Para 5.18)**

17.25 The Commission has in past reports emphasized that India should ratify the International Convention Against Torture. The Commission feels concerned over the delay in ratification of this Convention and hopes that the concerned Ministries of the Govt. of India will expeditiously process the ratification. **(Para 5.20).**

17.26 The Commission is of the firm view that a binding instrument on the theme of disability in international law would give “status, authority and visibility” to disability issues which cannot be achieved through the process of reform of existing international instruments and monitoring mechanisms. It also recognizes that by tailoring the existing rights to the specific circumstances of people with disabilities, the treaty would enable the State Parties to understand their obligations in clear terms and it would set clear goals for the development of disability-inclusive systems and processes. **(Para 5.41)**

17.27 Recognizing the inherent dignity, autonomy and right to participation of persons with disabilities and the important role which all sectors of Government have in creating a disability inclusive society, the Commission advised all the Ministries and Departments in the Government of India to:

- (1) Appoint a nodal officer to coordinate disability issues in consultation with people with disabilities representing various disability organizations.
- (2) undertake a systematic review of the development programmes and schemes to incorporate a disability dimension and to remove discriminatory provisions.
- (3) introduce disability specific programmes and schemes where it is not possible to enable equal participation by persons with disabilities.

Response and follow up action from the Government is awaited. **(Para 5.46)**

Health and Human Rights

17.28 The present system of Emergency Medical Service (EMS) in the country is functioning sub-optimally and requires up-gradation. The report of the Group of Experts set up by the Commission on EMS revealed the lacunae which exist in the present EMS and made a number of recommendations for implementation in the short-term and in the long term, including enunciation of a national accident policy and establishment of a central coordinating, facilitating, monitoring and controlling committee for Emergency Medical Services (EMS) under the aegis of Ministry of Health and Family Welfare. On 11 May 2004, the Commission asked the Union Health Secretary, Director General of Health Services, Government of India and the Chief Secretaries of all States and Administrators of Union Territories to have appropriate follow-up action initiated on these recommendations and also intimate the action taken to the Commission. **(Para 6.9)**

17.29 The Commission took up the issue of illegal trade in human organs and referred it to its Core Group on Health. Based on the recommendations of the NHRC's Core Group, the Chairperson of the Commission on 29 January 2004 addressed letters to the Prime Minister of India as well as to the Chief Ministers of States/Union Territories urging them to initiate action on the above recommendations. Follow up action is awaited. **(Paras 6.13 & 6.14)**

17.30 The Commission took cognizance of a media report, which was carried by NDTV, on the grave threat posed by AIDS in Andhra Pradesh. The Commission recommended that (a) public health action should focus on preventing mother to child transmission of the virus and measures to achieve this objective should receive prioritized attention from health policy makers at both central and state level and (b) a wider programme for the prevention of HIV/AIDS should conform to the recommendations made by NHRC as a follow-up of the national consultation jointly organized by the NHRC and UNAIDS in November 2000. The Commission is of the view that there should be a renewed effort by various authorities to increase awareness about HIV/AIDS in the schools/colleges and amongst the general public. **(Paras 6.16, 6.17 & 6.19)**

Rights of Women and Children

17.31 The Advisory Council of Jurists (ACJ) of the Asia-Pacific Forum of National Human Rights Institutions that met in New Delhi on the 11th and 12th of November 2002, at its Seventh Annual Meeting, deliberated on the role of National Human Rights Institutions in the Prevention of Trafficking in Women and Children, and also submitted its final report. The final report submitted by the ACJ contains the recommendations of the Council on the

issue of Trafficking. Subsequently, the Commission in its meeting held on 03.9.2003 adopted the recommendations made by the Council in its report. Accordingly, the report has been sent to the concerned Ministries with the request that action taken on the recommendations be reported to the Commission. **(Paras 7.13 & 7.14)**

17.32 The Commission in its last annual report mentioned that it had organised a one-day Sensitisation Programme on Prevention of Sex Tourism and Trafficking on 12 January 2003 in Mumbai in collaboration with the United Nations Development Fund for Women (UNIFEM) and the Women's Institute for Social Education, an NGO based in Mumbai. The Commission had accepted the recommendations made during the sensitization programme and desired that follow-up action be taken. The Commission has forwarded these recommendations to the Tourism Secretaries and the Secretaries in-charge of Women Welfare of all the States/Union Territories for taking appropriate action on them and requested to send the action taken report to the Commission. The Commission is yet to receive the action taken reports from Union/State Governments. **(Para 7.15)**

17.33 At the instance of the Commission, Action Aid India, a member of the Core Group on NGOs set up by the Commission, volunteered to undertake a survey on the implementation of the guidelines issued by the Supreme Court in their judgement dated 13.08.1997 in Vishaka vs. State of Rajasthan. The NGO conducted the survey in approximately 850 government offices, comprising state and district level departments, directorates and institutions in nine States viz. Andhra Pradesh, Bihar, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu, Uttar Pradesh and West Bengal. The report was sent to all concerned. Their response is still awaited. The Commission hopes that immediate action would be taken by them on the findings of the study carried out by Action Aid. **(Paras 7.21 & 7.23)**

17.34 The issue of harassment of women passengers in trains has been a subject of immense concern to the Commission. In the annual report for the year 2002 – 03, the Commission listed certain recommendations that it had made to the Railway Board as well as the follow-up action on those recommendations. The Commission notes with concern that the Railway Ministry is yet to implement some of the important recommendations made by it for bringing solace and a sense of security to thousands of women passengers travelling by trains to different destinations in the country. **(Paras 7.24 & 7.27)**

17.35 In its preceding annual report, the Commission reported that it had organised a Colloquium on Population Policy – Development and Human Rights on 9th and 10th January, 2003 in New Delhi in collaboration with the Department of Family Welfare, Ministry of Health and Family Welfare and the United Nations Population Fund. It was also reported that the recommendations made and the Declaration adopted in the Colloquium were sent to all the State Governments/Union Territory Administrations for compliance. The Commission hopes that the State Governments would expedite sending their reports to the

Commission on the recommendations made by it on this important issue, which has a bearing on the rights of the vulnerable sections of society. **(Paras 7.43 to 7.46)**

Rights of the Vulnerable

17.36 The Commission communicated a comprehensive set of recommendations to various Ministries and Departments of Government of India and the State Governments for proper implementation of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. From the progress reports received it appears that disability related policy tends to be couched in a welfare model. The emphasis of the disability schemes and programs is focused on rehabilitation of persons with disabilities and there is a corresponding neglect in improving the systemic and structural inadequacies. **(Para 8.79)**

17.37 In States like Rajasthan, Punjab, Madhya Pradesh, Andhra Pradesh, Karnataka, Tamil Nadu, Gujarat and in the Union Territory of Chandigarh, a positive impact of the proper implementation of the Disabilities Act 1995 is quite visible. However, no significant improvements were recorded in a majority of States and Union Territories. **(Para 8.80)**

17.38 As per Entry 9 in the List II of Schedule 7 of the Constitution, the subject of 'Relief to the Disabled and Unemployable' is the responsibility of the State Governments. Despite the Constitutional mandate, most of the State Governments have neither introduced any law nor have introduced the State Policy on Disability so far. Some schemes have been introduced to provide scholarships, pensions, assistive devices, Braille books, out of turn houses etc. But, their impact has been insignificant. **(Para 8.82)**

17.39 While it appeared that steps were being taken in some States to merge the Denotified Tribes and Nomadic Tribes with other categories of disadvantaged sections of the society and provide them the appropriate benefits, the Commission cannot but observe that it continues to receive complaints alleging the violation of the human rights of persons who constituted the Denotified Tribes and Nomadic Tribes. The Commission also observed that a de-facto situation is still prevailing in which persons belonging to these groups are singled out for arbitrary and discriminatory treatment. **(Para 8.93)**

17.40 The Commission feels that establishment of Half-way Homes duly funded by the Ministry of Social Justice and Empowerment is an urgent need of all the three mental hospitals. The Commission hopes that the Ministry will take immediate necessary action in the matter. **(Para 8.141)**

17.41 With a view to preparing a plan of action for improving conditions in mental hospitals in the country and enhancing awareness of the rights of those with mental disabilities, the Commission entrusted a research project on "Quality assurance of Mental Hospitals" to the National Institute of Mental Health & Neuro Sciences (NIMHANS) at

Bangalore. The Report prepared by NIMHANS entitled “Quality Assurance in Mental Health” was sent to all the Mental Hospitals and to the State Health Secretaries for necessary follow up action. As per the Memorandum of Action Taken on the annual report of the Commission for 2001-02, the Government has sent the views of the Commission to the States/Union Territories that appropriate action could be taken for the proper care of those suffering mental disabilities. While some States have reported follow up action, regrettably, there has been no enthusiastic response from other States despite persuading them from time to time. **(Para 8.144)**

17.42 The Commission observed that as starvation deaths reported from some pockets of the country are invariably a consequence of mis-governance resulting from acts of omission and commission on the part of public servants, they are a matter of direct concern to the Commission. After due deliberations, the Commission held that to be free from hunger is a Fundamental Right of the people of the country. Starvation, hence, constitutes a gross denial and violation of this right. It was argued that while the Constitution recognizes the Right to Food as an integral part of the Fundamental Right to Life, the Relief Manuals and Relief Codes governing relief administration are more or less a replication of the Model Famine Code of 1910 under which relief is administered as an act of benevolence on the part of the State and the status of the ‘beneficiary’ continues to be that of a recipient of State charity. **(Para 8.150 & 8.151)**

17.43 The Commission’s attention has been drawn to fluorosis, a painful and crippling malady which is traceable to excess fluoride ion levels in the drinking water. The Secretary General of the Commission addressed letters to the Chief Secretaries of the 19 States affected by the malady, as well as to the Secretary, Health, Government of India seeking the information on the number of hospitals in their states which presently have adequate infrastructure for diagnosing fluorosis correctly with details, about District Hospitals, Teaching Hospitals, General Hospitals in State capitals and what Investigations/Tests are done for the correct and early diagnosis of Fluorosis in their states, and, further, what would be the cost involved in the setting up of the infrastructure for a Fluorosis diagnostic facility per hospital in their states. The Commission has received responses only from the State Governments of Gujarat, Haryana, Karnataka, Maharashtra, Orissa, Punjab, Uttar Pradesh and NCT of Delhi. The Commission notes with concern the lack of response from the State Governments on an issue which has a direct impact on the lives of people who are deprived of one of their basic rights i.e. right to clean drinking water and which results in untold miseries to large population located in remote areas of the country. **(Para 9.17)**

17.44 In the previous annual reports, the Commission’s views on the rehabilitation of people displaced by mega projects were spelt out in detail. The Commission expressed the view that the resettlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act

itself or be the subject of appropriate separate legislation, so that the issues concerned become justiciable. The Commission however notes with regret the inordinate delay on the part of the Central and State Governments to respond positively to the recommendations made by it to protect the rights of citizens who are displaced from their own lands that too without receiving adequate and timely compensation and left to fend for themselves. **(Paras 9.18 & 9.19)**

17.45 Article 29(1) of the Constitution of India recognizes that any section of the citizens residing in the territory of India or any part thereof, having a distinct language, script or culture of its own shall have the right to speak that language. The Commission is of the view that there is a need for systematic nurturing and recognition of a common Indian Sign language. **(Para 10.11)**

Research Projects

17.46 As indicated in its last annual report, the Commission extended financial assistance for the third year to the Kolkata based NGO, SEVAC for its project named 'Operation Oasis'. The report of SEVAC was examined and it was found that while care of inmates with mental illness will remain a continuing requirement, the primary responsibility for providing mental health care to these individuals rests with the State Governments, who must also comply with the provisions of the Mental Health Act, 1987. The response of the State in this regard is not very encouraging. **(Para 10.14 & 10.18)**

Human Rights Education

17.47 In the previous reports, the Commission underscored the importance of drawing up a National Action Plan for Human Rights and also expressed concern over the fact that the matter has been pending for longer than it should. The Commission urges the Govt. of India to take such steps as are necessary to facilitate the development of a National Action Plan which would go a long way in systematically dealing with issues relating to human rights in the country. **(Para 11.2)**

17.48 The UN decade for Human Rights Education 1995-2004 has been described (See UN Doc. A/55/360) as a catalytic tool to bring human rights education into policy making at the international, regional and national levels. The sub-Commission on the Promotion and Protection of Human Rights has recommended the proclamation of a Second Decade for Human Rights Education. The National Human Rights Commission (NHRC), is of the opinion that such initiative should be supported. The commission hopes that the Implementation of the National Action Plan for Human Rights Education will proceed carefully, methodically and involve all sectors of the civil society. **(Para 11.9)**

TRAINING

17.49 The Commission, in partnership with the British Council and Shubodaya Centre for Rehabilitation of Victims of Torture & Violence (SORAC), an NGO, had undertaken a Project on the 'Promoting Good Custodial Practices'. A study tour to the UK was arranged by the British Council for selected trainers and a clearance was sought from the Ministry of External Affairs. The Ministry, however, raised objection to the role of the British Council and felt that it was operating outside its defined Charter in India. The Commission feels that these are on-going programmes and should be allowed to continue. The Commission urges the MEA to reconsider its decision. **(Paras 11.35 & 11.36)**

17.50 The Training Division set up in the Commission is fully involved in conducting various sensitisation and training programmes for officials and non-officials. However, the Division is at present managed by a skeletal staff of the Commission. Although the Commission has recommended creation of posts to man the Division, no positive response has been received from the Government. The Commission calls upon the Government to act without delay on the proposal sent by it for creating necessary posts for appointing staff in the Training Division. **(Para 11.52)**

International Co-operation

17.51 In order to carry out the groundwork for evolving a Memorandum of Understanding between the NHRC, India and NHRC, Nepal on the possible areas of cooperation on the issue of combating cross-border trafficking a draft Memorandum of Understanding (MoU) between the two Commissions was drawn up and approved by the Commission. It is, however regretted that even after the lapse of three months, the Government has not conveyed, in principle, its no objection to the proposal. The Commission being a member of the International Coordination Committee of National Human Rights Institutions and one of the oldest serving members of the Asia Pacific Forum, is required, as a part to its International obligations, to extend co-operation to sister Institutions in the region. **(Paras 12.50 & 12.51)**

State Human Rights Commission

17.52 The Commission, however, notes with regret the delay on the part of the State Governments in setting up of State Human Rights Commissions and providing necessary staff and infrastructural support for their smooth functioning. The Commission at present is overburdened with too many complaints on alleged human rights violations numbering approximately 70,000 to 80,000 per year. Only with the setting up of full fledged and fully equipped State Human Rights Commissions can this burden on the NHRC be lessened to some degree. **(Para 14.4)**

Human Rights Courts

17.53 Under section 30 of the Protection of Human Rights Act, the State Governments may, with the concurrence of Chief Justice of the concerned High Court, by notification specify for each district a Human Rights Court to try the offences arising out of the violation of Human Rights. It is rather unfortunate that the Central and State Governments have so far failed to resolve issues that are creating impediments in the setting up of fully functioning Human Rights Courts. **(Para 14.6)**

Manavadhikar Bhavan

17.54 Ever since its inception, the Commission has been desirous of having its own office building commensurate with its status as an independent and autonomous National Human Rights Institution. The Commission expresses its concern about the undue delay in the starting of the construction of the building and expresses the hope that this would be done without further delay. The Commission urges the Ministry of Urban Development to take up the construction of the building without delay. **(Para 16.17 & 16.18)**

Sd/-
(A.S. Anand)
Chairperson

Sd/-	Sd/-	Sd/-	Sd/-
(Sujata V. Manohar)	(Y. Bhaskar Rao)	(R.S. Kalha)	(P.C. Sharma)
Member	Member	Member	Member

New Delhi
27th August 2004

Concluding Statement - Promoting the Rights of People with Disabilities: Towards a New UN Convention, New Delhi, India 26-30 May 2003

INTRODUCTION

1. National Human Rights Institutions (NHRIs) from the Commonwealth and Asia Pacific region, consisting of NHRIs from Afghanistan, Australia, Fiji, Ghana, India, Iran, Republic of Korea, Malawi, Malaysia, Mauritius, Mongolia, Nepal, New Zealand, Nigeria, Northern Ireland, Philippines, South Africa, Sri Lanka, Thailand and Uganda, met in New Delhi, India from 26th to 29th May 2003 to discuss a proposal to develop a comprehensive and integral United Nations Convention to promote and protect the rights of persons with disabilities.
2. The workshop participants expressed their gratitude to the National Human Rights Commission of India for hosting and organising the workshop in partnership with the Asia Pacific Forum of National Human Rights Institutions, the British Council and the United Nations Office of the High Commissioner for Human Rights and to the United Kingdom Foreign and Commonwealth Office and the United Nations Office of the High Commissioner for Human Rights for their financial support.
3. Participation also included representatives from governments, non-governmental organisations, international agencies and experts working in the field of human rights and disability.
4. Dr Justice A.S. Anand, Chairperson of the National Human Rights Commission of India and the Chairperson of the Asia Pacific Forum of National Human Rights Institutions,

Dr Morna Nance, Acting Director, British Council India and Mr Orest Nowosad, United Nations Office of the High Commissioner for Human Rights, spoke at the inaugural session. In their statements the distinguished speakers highlighted the important role of national human rights institutions in protecting and promoting the human rights and dignity of persons with disabilities and in the possible development of a proposed new United Nations Convention in this respect.

5. The workshop held nine working sessions relating to various aspects of the rights of persons with disabilities. It considered, inter alia, country papers on the impact of national legislation and administrative practice; the role of NHRIs in promoting the rights of persons with disabilities; “mainstreaming disability” – experiences of UN Conventions (hard instruments); existing (soft) UN instruments relevant to disability; international monitoring mechanisms and complaints procedures; the nature and key elements of the proposed new Convention on disability – perceptions of NHRIs and NGOs; and partnership strategies for action in the lead up to the new UN Convention.

6. Following detailed discussions on each of the above matters, the workshop adopts the following preliminary conclusions and recommendations to the Ad Hoc Committee. These are without prejudice to the more detailed positions that NHRIs may adopt, individually or jointly, as work on the new Convention proceeds.

CONCLUSIONS AND RECOMMENDATIONS TO THE AD HOC COMMITTEE ADOPTED BY THE NEW DELHI WORKSHOP

The NHRIs present at the workshop from the Commonwealth and Asia Pacific region:

7. Welcome the decision of the United Nations General Assembly to establish an Ad Hoc Committee to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities (the Convention).

8. Welcome the decision of the Ad Hoc Committee to specifically invite NHRIs to participate in their work and agree to respond positively to the invitation and to make available suggestions and proposals to be considered in the development of the proposed Convention.

9. Request the United Nations and the Ad Hoc Committee to take the necessary measures to ensure the participation of persons with disabilities in their activities and ensure the widest possible participation of organisations of persons with disabilities.

10. Strongly affirm the need for the development of a comprehensive and integral Convention.

11. Stress that the Convention should be a 'rights based' instrument built on international human rights norms and standards and social justice. It should be informed by the overarching principle that all persons with disabilities, without exception, are entitled to the full benefit and enjoyment of all fundamental human rights and freedoms on the basis of equality, dignity and without discrimination.

12. Stress that the situation of all disability groups and the diverse conditions related to gender, race, colour, age, ethnicity and other considerations must be taken into account when elaborating the Convention.

13. Propose that the following elements should be included in the proposed Convention.

PREAMBLE

14. The Preamble to the Convention should:

- stress the need for the Convention;
- recognise the value and applicability of existing international human rights instruments (both hard and soft) to disability;
- recognise the impact of dual disadvantage and multiple discrimination faced by individuals such as, women, children or indigenous people with disabilities, or other status, and
- stress the Convention's links to these instruments and the need for a comprehensive rights based treaty.

OBJECTIVES

15. The objectives of the Convention should:

- recognise that persons with disabilities are entitled to the full range of civil, political, economic, social and cultural rights;
- recognise the progressive realisation of certain rights;
- ensure that the principles of non-discrimination and equal opportunity apply to persons with disabilities;
- acknowledge that the lack of provision of reasonable accommodation and/or positive actions to eliminate barriers to full participation is a form of discrimination; and
- promote international cooperation to support national efforts.

DEFINITIONS

16. With regard to the definition of 'disability' the Convention should:

- stress that disability is not an individual pathology. It has a range of implications for social identity and behaviour, and largely depends upon the context and is a consequence of discrimination, prejudice and exclusion.
- not be restrictive. For example it should cover physical, sensory, intellectual, psychiatric and multiple disabilities. Disability can be permanent, temporary, episodic and perceived.

17. With regard to the definition of 'discrimination' the Convention should:

- address all forms of discrimination including direct, indirect, hidden and systemic discrimination;
- recognise that equality of opportunity requires that any relevant restrictions or limitations caused directly or indirectly by a disability should be remedied by appropriate modifications, adjustments or assistance;
- require affirmative action, reasonable accommodation or 'special measures' to provide barrier free access in all spheres for full participation and to provide enabling environments, where necessary, in order to achieve equality of opportunity and treatment. Such action or measures should not be regarded as discrimination.

SCOPE

18. The Convention shall apply both to public and private institutions and spheres.

STATE PARTY OBLIGATIONS

19. The Convention should place a positive obligation on State Parties to take legislative, programmatic and policy actions to achieve the Convention's objectives.

20. The Convention should recognise the responsibility of State Parties to ensure an enabling environment and a barrier free society.

SPECIFIC ARTICLES

21. The full range of civil, political, economic, social and cultural rights contained in existing international human rights instruments should be incorporated in the Convention.

22. In addition to the application of existing international human rights law, the Convention should contain specific articles dealing with specialised areas and issues relating to civil, political, economic, social and cultural rights that, by the very nature of the context of disability, require codification, with due respect being paid to the principles of natural justice.

MONITORING

23. The Convention should have an effective monitoring mechanism which includes the possibility of conducting inquiries into systemic violations.

24. Any expert committee established under the Convention should include persons with disabilities.

25. The Convention should include national institutional frameworks to monitor and promote compliance with the Convention, in which national human rights institutions can play a constructive role.

APPENDIX – ADDITIONAL CONCLUSIONS AND RECOMMENDATIONS

The workshop also made the following conclusions and recommendations to other bodies.

RECOMMENDATIONS TO NATIONAL HUMAN RIGHTS INSTITUTIONS

26. NHRIs should inform their governments about the importance of developing a comprehensive and integral Convention and recommend that they actively support its development.

27. NHRIs should raise awareness within their respective societies about the importance of developing the proposed Convention while, at the same time, ensuring the implementation of existing international human rights standards relating to the rights of persons with disabilities.

28. NHRIs should consult with persons with disabilities and relevant non-governmental organisations about the development of the proposed Convention.

29. NHRIs should continue to participate actively in the development of the proposed Convention.

30. NHRIs should establish and strengthen a disability rights component in their work, including their complaint handling procedures.

31. NHRIs should take the necessary measures to ensure the participation of persons with disabilities in their activities.

RECOMMENDATIONS TO THE UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

32. The United Nations Office of the High Commissioner for Human Rights is encouraged to continue to support to the extent possible within available resources, including through technical cooperation and advocacy, the effective participation of NHRIs and their regional associations in the development of the proposed Convention.

33. The United Nations Office of the High Commissioner for Human Rights is encouraged to support the work of NHRIs in the protection and promotion of the rights of persons of disabilities at the national level.

34. The United Nations Office of the High Commissioner for Human Rights is encouraged to assist in the establishment of a disability ‘focal points’ network amongst NHRIs and to facilitate the establishment of a comprehensive and accessible website on issues relating to disability.

35. The United Nations Office of the High Commissioner for Human Rights is encouraged to continue to work with other partners, as exemplified by this workshop, in the promotion and protection of the rights of persons with disabilities.

RECOMMENDATIONS TO THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

36. The Asia Pacific Forum of National Human Rights Institutions should continue to provide support, as requested, for the activities of its member institutions in the development of the proposed Convention.

37. The Asia Pacific Forum of National Human Rights Institutions should, on request, support the work of its member institutions in the protection and promotion of the rights of persons of disabilities at the national level.

38. The Asia Pacific Forum of National Human Rights Institutions should continue to implement the decisions of its members relating to the rights of persons with disabilities reached at its Seventh Annual Meeting.

39. The Asia Pacific Forum of National Human Rights Institutions should, in consultation with the United Nations Office of the High Commissioner for Human Rights, seek to arrange

for the circulation of the paper prepared for the New Delhi workshop entitled “Promoting the Rights of People with Disabilities: Towards a new UN Convention” as a conference paper of the Ad Hoc Committee.

RECOMMENDATIONS TO THE BRITISH COUNCIL

40. The British Council should continue to support the effective participation of NHRIs in the development of the proposed United Nations Convention.

41. The British Council is encouraged to continue to work with other partners as exemplified by this workshop in the promotion and protection of the rights of persons with disabilities.

Statement Showing Details of Custodial Deaths Reported by the State/UT Governments from 1.4.2003 to 31.3.2004

S.No	State/UT	PC	JC	Total
01	Andhra Pradesh	10	114	124
02	Arunachal Pradesh	2	1	3
03	Assam	6	18	24
04	Bihar	9	139	148
05	Goa	-	-	-
06	Gujarat	20	37	57
07	Haryana	2	49	51
08	Himachal Pradesh	-	2	2
09	J & K	-	-	-
10	Karnataka	4	52	56
11	Kerala	4	51	55
12	Madhya Pradesh	3	30	33
13	Maharashtra	32	148	180
14	Manipur	-	-	-
15	Meghalaya	3	3	6
16	Mizoram	-	2	2
17	Nagaland	-	-	-

S.No	State/UT	PC	JC	Total
18	Orissa	1	52	53
19	Punjab	7	81	88
20	Rajasthan	5	45	50
21	Sikkim	-	-	-
22	Tamil Nadu	12	106	118
23	Tripura	-	-	-
24	Uttar Pradesh	18	199	217
25	West Bengal	13	43	56
26	A & N Islands	-	-	-
27	Chandigarh	-	4	4
28	Dadra & N. Haveli	-	-	-
29	Daman & Diu	-	-	-
30	Delhi	3	22	25
31	Lakshadweep	-	-	-
32	Pondicherry	1	-	1
33	Chhattisgarh	2	42	44
34	Jharkhand	3	53	56
35	Uttaranchal	2	7	9
	Total	162	1300	1462

During the year 2003-2004, one death took place in the custody of para-military forces, thus total no. of deaths comes to 1463.

NB: PC-Police Custody, JC- Judicial Custody, CN-Cumulative No. w.e.f 1.4.2003

ANNEXURE 3

PARA 4.30

Letter from the Chairperson of the Commission dated 2nd December 2003 to the Chief Ministers of States and Administrators of Union Territories on modified procedure/guidelines to be followed by the State Govts in all cases of deaths in the course of police action

Justice A.S. Anand
Chairperson
(Former Chief Justice of India)

2nd December, 2003

Dear Chief Minister,

Death during the course of a police action is always a cause of concern to a civil society. It attracts criticism from all quarters like Media, the general public and the NGO sector.

The police does not have a right to take away the life of a person. If, by his act, the policeman kills a person, he commits an offence of culpable homicide or not amounting to murder, unless it is established that such killing was not an offence under the law. Under the scheme of criminal law prevailing in India, it would not be an offence if the death is caused in exercise of right of private defence. Another provision under which the police officer can justify causing the death of a person, is section 46 of the Criminal Procedure Code. This provision authorizes the police to use reasonable force, even extending up to the causing of death, if found necessary to arrest the person accused of an offence punishable with death or imprisonment for life. Thus, it is evident that death caused in an encounter if not justified would amount to an offence of culpable homicide.

The Commission while dealing with complaint 234 (1 to 6)/ 93-94 and taking note of grave human rights issue involved in alleged encounter deaths, decided to recommend

procedure to be followed in the cases of encounter death to all the states. Accordingly, Hon'ble Justice Shri M.N. Venkatachaliah, the then Chairperson NHRC, wrote a letter dated 29/3/1997 to all the Chief Ministers recommending the procedure to be followed by the states in "cases of encounter deaths" (copy enclosed for ready reference).

Experience of the Commission in the past six years in the matters of encounter deaths has not been encouraging. The Commission finds that most of the states are not following the guidelines issued by it in the true spirit. It is of the opinion that in order to bring in transparency and accountability of public servants, the existing guidelines require some modifications.

Though under the existing guidelines, it is implicit that the States must send intimation to the Commission of all cases of deaths arising out of police encounters, yet some States do not send intimation on the pretext that there is no such specific direction. As a result, authentic statistics of deaths occurring in various states as a result of police action are not readily available in the Commission. The Commission is of the view that these statistics are necessary for effective protection of human rights in exercise of the discharge of its duties.

On a careful consideration of the whole matter, the Commission recommends following modified procedure to be followed by the State Governments in all cases of deaths in the course of police action:-

- A. When the police officer in charge of a Police Station receives information about the deaths in an encounter between the Police party and others, he shall enter that information in the appropriate register.
- B. Where the police officers belonging to the same Police Station are members of the encounter party, whose action resulted in deaths, it is desirable that such cases are made over for investigation to some other independent investigating agency, such as State CBCID.
- C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall invariably be investigated by State CBCID.
- D. A Magisterial Inquiry must invariably be held in all cases of death which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.
- E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/ police investigation.

- F. Question of granting of compensation to the dependents of the deceased would depend upon the facts and circumstances of each case.
 - G. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/ recommended only when the gallantry of the concerned officer is established beyond doubt.
 - H. A six monthly statement of all cases of deaths in police action in the State shall be sent by the Director General of Police to the Commission, so as to reach its office by the 15th day of January and July respectively. The statement may be sent in the following format along with post-mortem reports and inquest reports, wherever available and also the inquiry reports:-
1. Date and place of occurrence
 2. Police Station, District.
 3. Circumstances leading to deaths:
 - i. Self defence in encounter
 - ii. In the course of dispersal of unlawful assembly
 - iii. In the course of effecting arrest.
 4. Brief facts of the incident
 5. Criminal Case No.
 6. Investigating Agency
 7. Findings of the magisterial Inquiry/enquiry by Senior Officers:
 - a. disclosing in particular names and designation of police officials, if found responsible for the death; and
 - b. whether use of force was justified and action taken was lawful.

It is requested that the concerned authorities of the State are given appropriate instructions in this regard so that these guidelines are adhered to both in letter and in spirit.

With regards,

Yours sincerely,

Sd/-
(A.S. Anand)

All Chief Ministers

ANNEXURE 4

PARA 4.33

Statement Showing the State-wise Position on Number of Complaints in Respect of Deaths that have Allegedly Occurred as A Result of Fake Encounters by Police and Fake Encounters by Armed Forces and Para-military Forces

2003-2004

S.No.	Name of State/UT's	Fake Encounter		
		Police Forces	Armed Forces	Para-military
1	ANDHRA PRADESH	9		
2	ARUNACHAL PRADESH			
3	ASSAM		1	1
4	BIHAR	5		
5	GOA			
6	GUJARAT			
7	HARYANA	2		
8	HIMACHAL PRADESH			
9	JAMMU & KASHMIR		1	
10	KARNATAKA	2		
11	KERALA			
12	MADHYA PRADESH	4		
13	MAHARASHTRA	4		

S.No.	Name of State/UT's	Fake Encounter		
		Police Forces	Armed Forces	Para-military
14	MANIPUR		1	
15	MEGHALAYA			
16	MIZORAM			
17	NAGALAND			
18	ORISSA			
19	PUNJAB	1		
20	RAJASTHAN			
21	SIKKIM			
22	TAMILNADU	3		
23	TRIPURA	2		1
24	UTTAR PRADESH	68		
25	WEST BENGAL			
26	A&N ISLANDS			
27	CHANDIGARH			
28	DADRA & NAGAR HAVELI			
29	DAMAN & DIU			
30	DELHI	1		
31	LASHADWEEP			
32	PONDICHERRY			
33	CHHATTISGARH			
34	JHARKHAND	2		
35	UTTARANCHAL	6		
99	FOREIGNERS			
	TOTAL	109	3	2

ANNEXURE 5

PARA 4.34

State-wise position on the total number of complaints in respect of deaths which occurred as a result of police encounters and Army firings

S.No.	Name of State/UT's	Death in police encounter	Death in Army firing	Total
1	ANDHRA PRADESH	16		16
2	ARUNACHAL PRADESH			0
3	ASSAM	7	3	10
4	BIHAR	1		1
5	GOA			0
6	GUJARAT			0
7	HARYANA	1		1
8	HIMACHAL PRADESH			0
9	JAMMU & KASHMIR		1	1
10	KARNATAKA	4		4
11	KERALA			0
12	MADHYA PRADESH	3		3
13	MAHARASHTRA	5		5
14	MANIPUR			0
15	MEGHALAYA			0
16	MIZORAM			0
17	NAGALAND			0

S.No.	Name of State/UT's	Death in police encounter	Death in Army firing	Total
18	ORISSA			0
19	PUNJAB			0
20	RAJASTHAN			0
21	SIKKIM			0
22	TAMILNADU	6		6
23	TRIPURA			0
24	UTTAR PRADESH	48		48
25	WEST BENGAL	2		2
26	A&N ISLANDS			0
27	CHANDIGARH			0
28	DADRA & NAGAR HAVELI			0
29	DAMAN & DIU			0
30	DELHI	1		1
31	LASHADWEEP			0
32	PONDICHERRY			0
33	CHHATTISGARH			0
34	JHARKHAND	1		1
35	UTTARANCHAL	5		5
99	FOREIGNERS			0
	TOTAL	100	4	104

Sl.No.	State	Total Regis- tration	Police Forces	Armed Forces	Para- military	Fake Encounter		
						Police Forces	Armed Forces	Para- military
1	ARUNACHAL PRADESH	41	8	0	2	0	0	0
2	ASSAM	207	42	18	6	0	1	0
3	MANIPUR	37	3	8	12	0	1	0
4	MEGHALAYA	20	7	0	2	0	0	0
5	MIZORAM	5	0	0	0	0	0	0
6	NAGALAND	11	1	0	2	0	0	0
7	TRIPURA	36		1	4	2	0	1
	Total	357	61	27	28	2	2	1

Letter from the Chairperson of the Commission dated 1st July 2003 to the Chief Justices of all High Courts suggesting measures for reducing the congestion of under-trials in the State prisons

1st July, 2003

Dear Chief Justice,

I am writing to you on a matter, which has been a source of concern to you as well as to myself - **the plight of under-trial prisoners.**

While as Chief Justice of India, I had written to the Chief Justices of all the High Courts on 29th November, 1999 about the plight of under-trial prisoners languishing in jails, even in cases involving petty and bailable offences merely for the reason that they were not in a position to furnish bail bonds to get released on bail. I had suggested that every Chief Metropolitan Magistrate or the Chief Judicial Magistrate of the area in which a District Jail falls, may hold its court once or twice in a month in jail, depending on the workload, to take up the cases of those under-trial prisoners who were involved in petty offences and or were keen to confess their offences. I had tried to monitor the progress of action initiated by most of you on my suggestion and pursued the matter further vide my letters dated 14 April 2000 and 11 January 2001.

I wish to continue my efforts in regard to under-trial prisoners in my capacity as the Chairperson of the NHRC which has been considering human rights of prisoners as an area of special concern ever since its establishment in 1993.

Visiting jails to study the living conditions of prisoners is one of the mandatory functions of the Commission as spelt out in section 12 (c) of the Protection of Human Rights Act 1993.

Visits to jails in various States by the Members and senior officers of the Commission especially the Special Rapporteurs bring out a very dismal picture of prison life in our Country. The Commission has observed that in most States jails are overcrowded, standard of sanitation and hygiene is poor, medical facilities are inadequate and the overall atmosphere is depressingly sad. Overcrowding which throws every system and facility out of gear, is found to be the root-cause of the deplorable living conditions in our jails. It constitutes a glaring violation of the basic human right to life which means life with dignity.

For the past two years, the Commission has been conducting biannual analysis of prison population by obtaining data of prison population from all the States/Union Territories as of 30 June and 31 December of every year. I thought, I should share with you an important feature of the analysis of prison population as of 30 June 2002 conducted recently. The analysis reveals that:

- i) Prison population of the entire country was 3,04,813 against the built-in capacity of 2,32,412. It shows an overcrowding of 31.2% for the country as a whole. However, in some States/UTs such as Delhi, Jharkhand, Chhattisgarh, Gujarat, Haryana and Bihar, prison population is 2 to 3 times of the total capacity of all the jails.
- ii) Under-trial constitute about 75% of the prison population in the country as a whole. The proportion of under-trials to the total prison population is 80% or more in 7 States and one U.T. It is 100% in the Union Territory of Dadar and Nagar Haveli.
- iii) State/UT-wise position of jail population, degree of overcrowding and percentage of under-trials is given in the Annexure attached to this letter.

The Commission finds that despite several pronouncements of the Hon'ble Supreme Court of India and certain High Courts on the subject, under-trials are languishing in jails in large numbers all over the country. Slow progress of cases in Courts and the operation of the system of bail to the disadvantage of the poor and the illiterate prisoners is responsible for the pathetic plight of these "forgotten souls" who continue to suffer all the hardships of incarceration although their guilt is yet to be established. It is the overwhelming congestion of under-trials in jails which is making it difficult for the Prison Administration to ensure that the basic minimum needs of the prisoners such as accommodation, sanitation and hygiene water and food, clothing and bedding and medical facilities are satisfied.

I am sure you appreciate and share the Commission's concern for human rights of the prisoners. In my opinion, the following measures may be found useful in reducing the congestion of under-trials in the prisons of your State:

- i) Regular holding of special courts in jails and its monitoring by the Chief Justice/senior Judge of the High Court.
- ii) Monthly review of the cases of under-trials in the light of the Supreme Court's judgment in Common Cause vs. Union of India [1996(4) SCC 775 and 1996 (6) SCC 775]: In this judgment, the Supreme Court has issued clear directions for (a) release on bail and (b) discharge of certain categories of under-trials specified in the judgment.
- iii) Release of under-trials on Personal Bonds: A number of under-trials are found to be languishing in jails even after being granted bail simply because they are unable to raise sureties. Cases of such under-trials can be reviewed after 6-8 weeks to consider their suitability for release on personal bonds, especially in cases when they are first offenders and punishment is also less than 2/3 years.
- iv) Visit to District and Session Judge to Jail: The Jail Manuals of all the States contain provisions for periodical visit of the District and Session Judge as an ex-officio visitor to jails falling within their jurisdiction. Besides ensuring an overall improvement in management and administration of the Prison, such visits can help in identifying the cases of long-staying under-trials, which need urgent and special attention. The Commission has observed a mark improvement in the situation in the States where this obligation is being discharged seriously and sincerely by the subordinate judiciary. It would be useful to issue directions for such visits by all the ex-officio visitors to jails following in their jurisdictions.

May I also request you to keep us informed at the NHRC about the Action Taken so that we are in a position to circulate the same to other States with a view to bring about uniformity as well as intensity.

I shall feel privileged to receive any suggestions from you to deal with the problems of under trial prisoners.

With warm regards,

Yours sincerely,

Sd/-
(A.S.Anand)

Encl: As above

To

All the Chief Justices of High Courts

CUSTODIAL JUSTICE CELL
PRISON STATISTICS AS ON 30-6-02

Sl. No.	STATES	Jails Capacity	% overcrowding, (-) means idle capacity	% UTs
1	ANDHRA PRADESH	10794	20.51	67.07
2	ARUNACHAL (No Jail)	0		
3	ASSAM	6193	11.64	64.15
4	BIHAR	21759	73.78	86.27
5	CHHATTISGARH	4438	110.16	52.42
6	GOA	294	39.46	60.49
7	GUJARAT	5418	100.22	73.70
8	HARYANA	5567	99.95	68.60
9	HIMACHAL PRADESH	868	0.92	54.45
10	JAMMU & KASHMIR	3100	-58.55	91.67
11	JHARKHAND	5788	164.86	83.26
12	KARNATAKA	9191	11.37	79.34
13	KERALA	5904	-9.40	68.52
14	MADHYA PRADESH	16239	65.87	56.94
15	MAHARASHTRA	19004	16.62	69.65
16	MANIPUR	1170	-66.07	92.19
17	MEGHALAYA	500	-2.60	94.66
18	MIZORAM	1012	0.89	79.14
19	NAGALAND	1160	-47.24	89.87
20	ORISSA	7542	53.78	75.03
21	PUNJAB	10854	16.97	68.24
22	RAJASTHAN	15707	-22.67	63.84
23	SIKKIM	100	72.00	51.16
24	TAMIL NADU	19240	-55.62	36.16
25	TRIPURA	744	34.81	57.93
26	UTTAR PRADESH	32380	69.84	87.37
27	UTTARANCHAL	2433	0.82	79.13
28	WEST BENGAL	19666	-25.88	79.42
	Total States	227065	28.74	73.94

Sl. No.	STATES	Jails Capacity	% overcrowding, (-) means idle capacity	% UTs
	Union Territories			
29	ANDAMAN & NICOBAR	229	3.49	24.05
30	CHANDIGARH	1000	-57.30	74.24
31	DADAR & NAGAR HAVELI	40	-22.50	100.00
32	DAMAN & DIU	120	-57.50	68.63
33	DELHI	3637	217.40	78.52
34	LAKSHADWEEP	16	-100.00	
35	PONDICHERRY	305	-7.21	55.48
	TOTAL UTs	5347	135.14	76.84
	All India	232412	31.19	74.06

Report of Group of Experts on the Aspects of ‘Emergency Medical Services in India’ – Present Status and Recommendations for Improvement

INTRODUCTION

1. India is undergoing a transition in almost all spheres of health. Due to increased urbanization, changing life styles and enhanced life expectancies, there is a definite epidemiological metamorphosis in the disease pattern, mortality and morbidity. Industrialization, increased vehicular traffic, automation, terrorism and social violence are some of the factors responsible for making trauma cases reach epidemic proportions. Trauma has been dubbed **“the forgotten epidemic”** and the **“neglected disease of modern society”**. It kills and maims hundreds of thousands of individuals annually and costs society billions of dollars through direct expenditure and indirect losses. Health care delivery including Emergency Medical Services (EMS) accordingly has to match the existing and emerging needs. In spite of the monstrous situation, it is ironic that the trauma management is not well organized, especially in the developing countries. The situation is **especially worrisome in India** where thousands of people die annually in road traffic accidents for want of proper trauma care facilities. Provision of emergency medical care for trauma related emergencies as well as other medical and surgical emergencies, is a necessity of a welfare state. **It is not only a social commitment but also a constitutional obligation since right to health and medical care is a fundamental right under Article 21 read in conjunction with Articles 39(c), 41 and 43 of the constitution.**

EXISTING SCENARIO

2. Accidents both in the developed and developing countries rank amongst the leading cause of mortality and morbidity. Globally trauma is one of the leading causes of death and disabilities. It is definitely one of the most tragic and expensive health problems. A recent report of the National Crime Records Bureau reveals one accident every two minutes in India. For every trauma related death, there are many injured and disabled persons. The male age group of 15-40 yrs is the most affected by trauma. The cost of trauma in terms of direct costs and loss in terms of productive life are astronomical. Apart from trauma and accidents there are other surgical and medical emergencies, which need attention. Some of the major external causes of injuries are – road traffic injuries, falls, fall of objects, burns, poisoning, drowning, animal related injuries, suicides – attempted suicides & violence of various types. Along with this, disasters in India are a major medical emergency care. These disasters would be fall of high rise and other buildings, floods, cyclones, fires and poisoning. **It is estimated that nearly 4,00,000 persons loose there live due to injuries, nearly 75,00,000 persons are hospitalized and 35,00,000 persons have minor injuries receiving emergency care at various places in India.** The medical, surgical and pediatric emergencies are also major events requiring immediate interventions to save lives and to extend medical care. In most of these injury prone situations, it is the young people specially, children, women and elderly who are at greater risk of sustaining injuries. It is imperative that EMS are planned and operated comprehensively and effectively to cater to the requirements.

3. Experiences of developed countries have shown that a significant number of deaths are preventable with appropriate pre-hospital and trauma care services. This has been possible with better timing and quality of acute interventions, better training and reorganization of emergency medical care services, establishment of trauma care systems, combination of basic and advanced life support systems and better diagnosis and management of injuries. Such systems have not been developed in India and have resulted in more deaths and injuries. The various components of emergency medical care services are:
 - (a) Availability of trained personnel
 - (b) Appropriate communication systems
 - (c) Adequate transportation
 - (d) Facilities in emergency rooms
 - (e) Referral and transfer based on triage
 - (f) Inter hospital and intra hospital referral services

- (g) Adaptation of evacuation policies
 - (h) Accessibility, availability, affordability and awareness about emergency care
 - (i) Consumer information and participation and
 - (j) Scientific information systems
4. The present EMS in the country is functioning sub optimally and require up gradation. The main lacunae that exist in the EMS are as follows.
- (a) Absence of an integrated EMS. EMS is effectively operational only at a few tertiary care institutions.
 - (b) Lack of facilities, infrastructure including communication and trained manpower especially at the primary and secondary healthcare institutions. Some elements of emergency care exist only in urban areas, while the large proportion of population lives in rural areas without access to care. This requires travel for longer distances to reach the urban hospital and precious time is spent in transportation without adequate medical care.
 - (c) Absence of a comprehensive policy at the National level related to accidents/trauma care/injury cases.
 - (d) Absence of a central coordinating body at National/State level integrating/optimizing EMS related activities.
 - (e) Health care facilities are generally not suitably prepared to respond to emergencies. The preparedness level of medical and paramedical staff in dealing with emergencies and trauma management in India is lacking on all fronts. There are no trained Trauma specialists nor any trained Para-medical staff and technicians. Rapid response system including effective referral linkages is poorly developed/absent.
 - (f) Emergency and Pre-hospital care are not closely integrated with hospital care and rehabilitative care within the broad EMS care and post-operated component are not integrated as essential components of EMS.
 - (g) Non-availability/non existence of data, surveillance, monitoring and/or analysis related to EMS. Absence of trauma audits and evaluatory research even in urban areas has been conspicuous.
 - (h) Non-existence of Emergency Medicine as a specialty.
 - (i) Lack of training facilities for doctors, paramedical and general public on emergency/First Aid Management.
 - (j) At times there is considerable delay in receiving appropriate medical care since medical attendants and the general public fear being implicated in Medico legal cases.

- (k) Delay in reaching definitive hospitals due to improper/inadequate referral procedures / transportation.
- (l) Provision of care is being delayed by private hospitals due to medico legal complexities and inability of patients to pay.
- (m) The costs of emergency care are substantial. Patients not covered by insurance scheme or health care provision of their respective employment are unable to meet the costs of emergency care.
- (n) Lack of sustainable administrative, financial and legislative mechanisms for emergency care.
- (o) Lack of minimum and basic standards for EMS in terms of personnel, equipment and facilities. Uniform and specific guidelines and protocols for care at different levels have not been identified or implemented in the country.

5. Centralized Accident and Trauma Services (CATS)

Although CATS was well conceptualized and planned but its execution has been very poor. The following drawbacks/lacunae exist in the system.

- (a) The ambulances are only patient carrying vehicles and not patient “caring” vehicles. Their staffing, equipment, maintenance and continued training of staff are far below the desired level. Only 20 to 25% ambulances are road worthy thus only 7 to 8 road worthy ambulances are available to the entire Delhi metropolis.
- (b) Besides this the communication facilities are extremely poor and there is lack of co-ordination and non existing accountability/responsibility.
- (c) Public education about the existing facilities like CATS is almost non existing.
- (d) Involvement of NGOs and voluntary agencies is only during disasters and that too poorly co-coordinated with no integration with pre-hospital services.

Recommendations

6. *Essential Requisites.* The Main Requisites are as Follows:-

- (a) EMS must provide holistic management of medical and surgical emergencies including trauma.
- (b) Establishment of a database for EMS with a focus on crucial elements of EMS care, manpower, facilities in selected centers of the country.

- (c) Establishment of a multidisciplinary and multisectoral committee at the National and State levels for policy making, planning and implementation of EMS.
- (d) Enunciation and implementation of a comprehensive National Accident with clearly defined, time bound goals and objectives along with resources Accident Policy.
- (e) Networking amongst all agencies associated with EMS.
- (f) Training of medical, paramedical and general public in emergency/first aid management.
- (g) Infrastructure including equipment augmentation/availability for provision of effective EMS.
- (h) Awareness of the available facilities and actions to be taken at various levels for provision of emergency care.
- (i) Referral system at different levels of health care delivery system for effectivity and optimization of resources.
- (j) Additional budget allocation in the ministry of health for developing, implementing and scientific EMS systems. for improvement in EMS.
- (k) Implementation of improvement steps in a phased but time bound manner.

7. Details of Recommendations

(a) Comprehensive EMS

EMS must provide holistic management of medial emergencies, both trauma and disease related. All components of care i.e. pre-hospital, hospital and post hospital related to EMS must be catered to. EMS should have response readiness for preventive and early warning service as well as to medical/surgical emergencies including trauma.

(b) Committees

Establishment of multi-disciplinary and multi-sectoral Committees at the National and State levels for policy making, planning, implementation and monitoring. A lead technical group should also be formulated along with these committees. These committees should have members from the concerned departments such as Ministry of Health and Family Welfare, Ministry of Defense, Ministry of Transport, local bodies, private hospitals, NGO's etc.

(c) National Accident Policy

The Government should enunciate a comprehensive National Accident Policy with detailed objectives, suggestions, organizational structure, staffing and training. A proposed National Accident Policy is appended at Appendix-A for guidelines.

(d) Networking

Networking of information, materials and/or manpower is essential for optimization of resources, the National Trauma Center “Jai Prakash Narayan Apex Trauma Center” being established at New Delhi may be utilized as a networking hub for the State of Delhi. Other regional institutions should be identified in different parts of the country (State Capitals/Medical Colleges) – Telemedicine may also be utilized for optimization and effectivity.

(e) Regional Referral System

It is essential for healthcare services to have an effective functional regional referral system. It has advantages of user convenience, appropriate use of facilities and, optimum use of resources. Medical colleges in State may be designated as referral centers for the adjacent/nearby 3-4 districts. The referral flow/system will be from dispensaries to PHCs to CHC to District Hospitals to Medical Colleges. For referral system to function efficiently it is essential that the EMS is strengthened at all levels ie dispensaries, PHCs, CHC, district hospitals and Medical Colleges. Networking in terms of communication, materials, transport and manpower must be ensured between the various healthcare institutions. Information available already should be utilized to develop a implementable plan of action. It is essential that layout and design of the accident and emergency services are standardized.

(f) Pre-hospital Care

Pre hospital care of emergency cases is at present the weakest link in the EMS at all levels of healthcare delivery. There is near dysfunctional and redundant ambulance services. The pre-hospital care in terms of availability of ambulances, communication and training for staff needs to be augmented. There is need to effectively network and coordinate the existing ambulances for effective use with a common number across the country and states. The recommendation of these in the proposed National Accident Policy appended at Appendix ‘A’ should be implemented.

(g) Development of Emergency Medicine as a Specialty

- (i) In India Emergency Medicine is not recognized as a specialty. Interns or residents usually staff the emergency services with very minimal specific training in emergency medicine. The main changes that will accrue if Emergency Medicine is developed as a specialty are:
 - i. a. It will facilitate prompt evaluation of Emergencies.
 - i. b. It ensures comprehensive diagnostic work up in a single setting.

- i. c. It minimizes the need for inter departmental and inter hospital transfers thus facilitating patient care.

All India Institute of Medical Sciences (AIIMS), New Delhi and PGIMER, Chandigarh and in other regional centers should commence a course in Emergency Medicine to facilitate the introduction of the course in other medical colleges..

(h) Training

It is essential that structured training is imparted to doctors, paramedical, fire personnel, police personnel and general public in emergency procedures/First Aid measures. Such training should be conducted at District Hospitals, Medical Colleges. A short-term crash course should be developed for district hospitals, corporation hospitals and rural hospitals covering basic principle of EMS over a period of 3 days. Standardized, comprehensive and structured First-Aid training, Basic Life Support and Advanced Life Support for personnel working at various levels of healthcare institutions should be planned and implemented in all states. Training in First Aid should also be imparted to children in high schools and colleges to increase awareness the schools, teachers and the general public through TV programs and by NGOs, so that maximum number of persons are aware of the measures to be undertaken in an emergency till a doctor/healthcare are available. Radio and TV program like “*Doctor Ke Aaney Tak*” can be introduced for educating general public in providing first aid and before victim is shifted to healthcare institution.

8. Phased Plan of Action

It is essential that recommendations should be implemented within a specified time frame. The appropriate authorities as per the following time frame should implement the recommendations enumerated.

Recommendations

(a) For immediate implementation

- (i) Enunciation of a National Accident Policy.

Action by: Ministry of Health and Family Welfare, Government of India.

- (ii) Establishment of a central coordinating, facilitating, monitoring and controlling committee for Emergency Medical Services (EMS) under the aegis of Ministry of Health and Family Welfare as advocated in the National Accident Policy at Appendix- “A”

Action by: *Government of India.*

- (iii) Designating 3-4 districts to Medical colleges, which will act as referral centers to their respective earmarked districts in each state and UT.

Action by: Ministry of Health and Family welfare, Government of India in conjunction with State Governments.

- (iv) Establishment of Centralized Accident and Trauma Services in all districts of all States and various union territories along with strengthening infrastructure, pre-hospital care at all government and private hospitals.

Action by: *Central and State Governments*

- (v) Development of computerized information base at all levels of health care to help in perspective policy planning and networking.

Action by: *Central and State Governments.*

- (vi) There is a need to establish a National Trauma Registry for data collection and analysis.

Action by: *Central Government.*

- (vii) Information dissemination to all of the existing facilities, legislations, referral system, existing networking to facilitate EMS health care utilization.

Action by: *State and Central Governments.*

- (viii) States to develop proposals for up-gradation of EMS with organizational infrastructure and financial details for appraisal by Ministry of Health and Family Welfare and Planning Commission.

- (ix) Training in EMS to be organized in the Medical Colleges and other regional areas.

- (x) The existing expert group constituted by the NHRC will further recommend the infrastructure facilities, equipment, staffing and training at various levels of healthcare delivery viz primary health centers, sub-district/taluka hospitals, district hospitals, medical colleges and teaching institutions.

(b) Recommendation for Long Term Implementations (5 years).

- (i) Implementation of the proposed recommendations of the National Accident Policy.

- (ii) The speed and efficiency are the two most vital considerations for any trauma care services. It would be ideal to setup a well equipped and adequately trained staffed trauma center at Regional and National level. All District Hospitals to have specialized multidisciplinary trauma care facilities.
- (iii) Establishment of Emergency Medicine as a specialty.
- (iv) **Dedicated communication toll free number to respond for emergency. The access code of such a dedicated number should be such that it is easily remembered by all e.g. 4444 or 9999 and should be common for the entire nation.** The interface system should be able to receive multiple calls at any one time and also coordinate a speedy response.
- (v) The golden quadrangular road project presently under progress should have a communication call center, Ambulance equipped and staffed as recommended in the National Accident Policy every 30 Kms. Emergency care centers manned by paramedical staff should be established every 50 kms. All the National Highways should also have the same facilities.
- (vi) Constitution of a committee by the NHRC to monitor the progress of implementation of recommendations at National and State level.

APPENDIX 'A'

NATIONAL ACCIDENT POLICY

1. Aim

The aim of the National Accident Policy is to have a comprehensive guideline document for planning and implementing measures for injury prevention, mitigation, management and rehabilitation.

2. Objectives

The main objectives of National Accident Policy will be

- (a) Providing trauma care services to all citizens of India.
- (b) Providing adequate and prompt relief to trauma victims and reducing the resulting disablement.
- (c) Undertaking such measures as are necessary to prevent or reduce trauma accidents and the disability of accident victims.
- (d) Training staff in trauma accidents, prevention and relief.
- (e) Furthering research in the fields of trauma accidents, prevention and management of accident victims.
- (f) Creating community awareness and undertaking community education and participating in trauma accident prevention.

3. Organisational Set Up

(a) Accident Prevention and Relief Authority

There should be a multi-disciplinary and multi-sectorial committee at the national level, which should be responsible for policy making, planning and implementation of activities to prevent accidents and provide relief to accident victims. Representatives from all concerned ministries such as that of Transport, Tourism, Civil Aviation, Railways, Health, Home, Finance, Law, Industry and Agriculture should be a part of this body. The chairman of this body should be secretary, Ministry of Health and Family Planning. The day-to-day routine co-ordination activities should be carried out on behalf of this body by a technical expert (medical), who should be designated as Director, (Accident, Prevention and Relief Program).

Similar organizations should be set up at state level to co-ordinate and carry out accident prevention and relief activities in their respective states. The state committees should work in collaboration with each other and with the National Accident Prevention Authority. This authority would when necessary form appropriate subcommittees and expert bodies for in-depth study of problems.

Sub committees could initially be constituted for domestic and recreational accidents, transport accidents, occupational accidents and natural disasters.

(b) Surveillance and Monitoring

Surveillance and monitoring of all accidents are necessary to determine the magnitude and nature of the problem and also to identify psychosocial and environmental factors responsible for accident prevention programs. To enable such monitoring to be effective, all accident cases should be made notifiable as in the case of infectious diseases.

(c) Accident Analysis Center

A National Accident Analysis Center should be set up. This should be linked to state level analysis centers, which should have feeder networks in all large cities. The national/state centers should analyze and publish accident data periodically and carry out research on preventive measures. This should aim at developing simple trauma registries in all places and institutions with technical expertise should undertake detailed studies.

(d) Management of Accident Victims

Accident being one of the major causes of death and disability in the productive period of life, i.e. 15 to 40 years, management of accident victims should be a matter of serious concern to all concerned and should receive top priority in any health care delivery system. In view of rapid industrialization, wide spread use of mass road transport for goods and increasing mechanization of agriculture, accidents are no longer a purely urban problem. A very large number of villagers sustain mutilating injuries to their extremities in the agriculture sector as a result of threshers, chaff cutting and hulling machines.

Management of trauma requires not only correct and adequate treatment but it is more important that such treatment be instituted, without undue loss of time. Community awareness and community education is, therefore necessary so that accidents are reported without delay to both the investigative (police) as well as rescue (Medical) authorities. Medical management of the victims should receive priority over all legal and other formalities.

(e) Accident Rescue Squad

This should consist of fully equipped vehicles and sufficient number of trained rescue personnel. In such areas where a good network of motor able roads exist, adequate fleet of ambulance vehicles viz 4 wheeled / motor cycle / scooter designed for accident relief works should be provided. In inaccessible areas such vehicles could be improvised using the local mode of transport, e.g. bullock carts and boats. The responsibility for maintenance and upkeep shall rest with the local authorities. All ambulances should have two-way radio control with hospital and local police headquarters. A camera to photograph the accident victims at the spot should be provided in each vehicle. All vehicles should be provided with equipment required for resuscitation of the injured.

All personnel should be specifically and adequately trained and this training should include first aid, basic resuscitative procedures, recognition of injuries and their severity, communication skill and vehicle driving in case of emergencies. A minimum of two such trained persons in addition to the driver should man each vehicle. Rescue squad personnel should be posted for short periods regularly in accident units and designated hospitals for purpose of continuing education. Mobile medical team, if required, in specific instance may be sent from designated hospitals.

The National Highways including the ongoing Golden Quadrangular Project should have Ambulance Stations every 30 kms. and Emergency Care Centers every 50 kms.

(f) Institutional Management

Since in a vast country such as India requirements vary from place to place, a multi-tier system needs to be evolved consisting of accident receiving stations, accident units and designated hospital for accidents.

(g) Accident Receiving Stations

These should operate in rural areas and areas of low accident density and should function primarily as first aid centers dealing with minor injuries including simple fractures. More serious accidents, if any, should after first aid, be shifted to the nearest accident unit/designated hospital by locally available ambulance. Any primary health center or block level dispensary could be organized as an accident receiving station.

(h) Accident Units

At least one accident unit for every 100,000 to 250,000 population in low accident density areas and for every 10 sq. km. radius in high accident density areas needs to be set up. Any taluka/sub divisional hospital could be suitably modified and

equipped for this purpose. These should cater to the bulk of casualties, undertake resuscitative measures and carry out routine treatment of injuries. The bulk of fractures both simple and compound requiring closed manipulation, internal fixation of simple fractures, hand and abdominal injuries and patients with head and chest injuries requiring observation could be effectively dealt with at these units.

An inpatient complement of 15-50 beds depending upon local needs and the local accident rates would need to be provided in all centers.

(i) Designated Hospitals

Every accident unit should be linked to a designated hospital. These hospitals should be able to handle all major trauma cases. Each designated hospital should have its own accident unit and rehabilitation wing. It should have highly trained and competent staff in all specialties. While it would be ideal to have neurosurgical and thoracic surgery facilities in all designated hospitals, it is realized that such facilities may not be available because of the high cost and lack of trained manpower. It is important, however, that at least one designated hospital in each state should have these facilities. This hospital could function as a referral unit for specialized neuro and thoracic surgical work.

1. Prevention of Accidents

Preventive measures and strategies must be ensured. Some of the aspects which must receive due consideration are:-

- (a) First aid training and medical fitness as a prerequisite to obtain a driving license.
- (b) Mandatory use of safety devices such as seat belts and helmets for appropriate vehicle drivers and passengers.
- (c) Strict enforcement of law relating to violation of traffic rules and safety prevention.
- (d) Mandatory use of safety devices in industry and agriculture.
- (e) Widespread training in first aid, so that at least one member in each family knows basic first aid.
- (f) Inclusion of accident prevention and first aid in school curriculum.
- (g) Extension of insurance scheme to cover all categories of workers including agriculture and self employed. Promotion of prevention measures should be in-built in such an insurance scheme.

- (h) Periodic review of laws relating to accident prevention.
- (i) Educational programs for prevention of accidents through Media etc.

5. Training Services

Training services are necessary not only for medical and paramedical personnel concerned with accident victims but also for employers and employees of industrial sectors and the community at large.

(a) Regional Training Institutions

Five regional training institutions should be set up in each of the regions of the country, i.e. central, north, south, east and west for advanced training methodology of accident management and prevention. Regular refresher courses should be undertaken for medical and senior paramedical staff. It is necessary that a three months orientation cum refresher course is provided every five years to all medical staff of the designated hospitals.

(b) Designated Hospitals

These should provide training facilities for all categories of Para medical staff including rescue personnel. Staff from the accident receiving stations should be provided regular refresher course at these hospitals. A two-year diploma course for rescue personnel and technicians could be conducted at these hospitals. Regular orientation classes for nursing personnel should be conducted.

6. Accident Education Programs

There should be regular accident prevention campaigns and programs for community education and participation. Such programs should concentrate on school children, teachers, employers and employees, both in the organized as well as unorganized sectors. The population at large should be motivated to take advantage of first aid course conducted in these units regularly. The personnel attached to the accident receiving stations should carry out similar motivation and training program in accident prevention, awareness and first aid.

7. Implementation of Policy and Resource Mobilization

While formulating such a National Accident Policy due consideration should be given to the constraints of finances, technical know how, manpower, cultural and social factors. Existing facilities should as far as possible be integrated, augmented, suitably modified and modernized. Implementation of this policy aims at reducing the number of accidents and their resulting disability. This would reduce the load on the general surgical teams, thereby increasing their efficiency and reducing the hospital expenditure.

Subsequently, financial input would have to be provided for capital expenditure in the form of physical facilities and equipment and additional posts in all categories will have to be created. Resources for these can be mobilized by including the scheme as a national plan project spread over 3-5 year plans. A financial outlay on such a scheme will be more than compensated by eliminating loss to the exchequer on account of avoidable accidents and improving the national economy by reducing man-hours lost, reducing hospital expenditure per patient, shorter hospital stay and reduction in the permanent disability extent of accident victims.

8. Ambulances:

Well equipped & adequately staff ambulances play an important role in pre-hospital care.

(a) Number

Suggested norms – 1 ambulance for 50,000 population.

(b) Deployment

For response time of 15 minutes:

1 ambulance could be considered to cover an area of 10 km. radius

To be need based and flexible, keeping in view the following

- Accident prone areas
- Disaster prone areas
 - o Response vehicles for transportation
 - o Ambulance providing BLS
 - o One ambulance per district to provide ALS

Ambulance Design/Attributes:

- Patient compartment
- Driver compartment
- Accommodation for
 - o Two Junior Ambulance officers
 - o Two lying patients
 - o Equipment and supplies

- Other Design Features for smooth Ride
- Augmented suspension system
- Freedom from noise and vibration
- Ease for loading/unloading
- Ventilation/Air conditioning
- Maximum fluorescent Lighting
- Minimum Acceptable Measurements;

Staffing Patterns

- Same as that existing is recommended, i.e.
 - o Graduates with multidisciplinary skills
 - o 1 Ambulance station officer per Ambulance Station
 - o 2 Junior ambulance officers per shift per ambulance
 - o 1 Multipurpose attendant per shift per station
- +30% training and leave reserve:-
- Continuous Training to be given to all staff in
 - o First AID
 - o CPR
 - o Wireless communication
 - o Driving
- Training syllabus to be revised regularly to keep pace with the advances in Trauma Management.
- One ALS (Advanced Life Support) equipped ambulance per district.

Equipment for BLS (Basic Life Support)

- ❖ For Airway maintenance
 - o Oropharyngeal airway of different sizes
 - o Nasopharyngeal airway of different sizes

- ❖ For artificial ventilatory support.
 - o Self filling bag valve mask units
 - Adult - Pediatric
 - o Pocket face mask with 1 way valve for oronasal ventilation
 - o Jaw lock
 - o Oxygen therapy equipment
 - 1 fixed system of 3000 L reservoir
 - 1 portable system of 100 L
- ❖ Suction equipment
 - o 1 fixed airflow >30L/min with vacuum of 300 mm Hg within 4 seconds
 - o 1 portable suction operated by motor/hand/foot.
- ❖ For Patient Monitoring Activities
 - o Sphygmomanometer (Adult & Pediatric)
 - o Dual head stethoscope
 - o Skin temperature indicating devices
- ❖ Equipment for Advance Life Support
 - o Venous cut down kit
 - o Tracheal intubations kit
 - o Plural decompression kit
 - o Tracheotomy kit
 - o Minor surgical repair kit
 - o Portable cardiac monitor and Defibrillator
- ❖ Material and Supplies
- ❖ Two way communication facilities
- ❖ Public Address systems
- ❖ Warning Light Systems

Motor cycle/scooter ambulances must also be planned and deployed. This will be useful in areas where traffic intensity is high or when there is non-availability of roads for 4-wheeled ambulances manoeuvrability. The motorcycle / scooter ambulances must be equipped with life saving medicines and equipment including portable oxygen cylinder. Personnel trained in emergency care should man these.

Terms of Reference of the Group

1. To study the existing system for emergency medical care in India.
2. To study the existing system for emergency medical care (Centralised Accident & Trauma Services) set up by the Ministry of Health & Family Welfare in the National Capital Territory of Delhi.
3. To suggest appropriate models of emergency medical care which should be developed by different States/Union Territories and their essential components.

Group of Experts

The group comprised of the following members:

1. *Dr. P.K. Dave, Rockland Hospital, B-33/34, Qutab Institutional Area, New Delhi-110016.*
2. *Dr. N.S. Laud, Breach Candy Hospital, 60-A, Bhulabhai Desai Road, Mumbai-400026.*
3. *Prof. I.K. Dhawan, Retd. Professor, AIIMS and presently with Sita Ram Bharatiya Institute of Medical Sciences, Delhi.*
4. *Dr. Shakti Kumar Gupta, Additional Professor, Deptt. of Hospital Administration, AIIMS, New Delhi.*
5. *Dr. Salunke, Director of Health Services, Govt. of Maharashtra*
6. *Dr. B.M. Das, Director (EMR), Directorate General of Health Services, Delhi.*
7. *Dr. Rajendran, Senior Civil Surgeon, Madras Medical College, Chennai.*
8. *Dr. Surinder Katyal, Senior Medical Officer, Trauma Centre, Karnal.*
9. *Dr. G. Gururaj, Additional Professor, National Institute of Mental Health & Neuro Sciences (NIMHANS), P.O. Box. No.2900, Bangalore-500029.*
10. *Lt. Col. (Dr.) Sunil Kant, Office of DDGMS (Personnel), Office of the Directorate of DG, AFMC, New Delhi.*

ANNEXURE 8

PARA 6.14

Letters from the Chairperson of the Commission dated 29th January 2004 to the Prime Minister of India as well as the Chief Ministers of State/UTs on the Remedial Measures Suggested to Check Illegal Trade in Human Organs

D.O.No.11/5/2001-PRP&P

29 January 2004

Dear Prime Minister,

The Commission is deeply concerned about the illegal trade in human organs and in particular, trade in kidneys which often involves exploitation of poor people and violation of their human rights. There are reports of organ trafficking involving clinicians, managers of clinical centers, middlemen and others. The National Human Rights Commission has come across a number of instances in which the 'compassionate donor' provision in the Organ Transplantation Act is being abused. In many cases, the donor is an unrelated and unacquainted person who is lured into donating an organ such as the kidney by financial offers made by or on behalf of the prospective recipient.

The practice of 'organ purchase' has acquired the dubious dimensions of 'organ trade' with touts operating as middlemen, and creation of allegedly false records of a compassionate donation. While several steps are reported to have been initiated in Karnataka to make the review process stricter, in the media there are disturbing reports of this pernicious practice being widespread in Tamil Nadu, Andhra Pradesh and a number of other States. This illegal trade in human organs is unethical and is a serious violation of human rights.

The Commission had constituted a Core Group of medical experts to go into issues relating to public health and human rights and in particular about the trade in human organs. They have collectively expressed the view that the clause relating to 'compassionate donation' in the Organ Transplantation Act has been frequently exploited in an unethical manner, which is violative of human rights. They have suggested certain remedial measures.

Having considered the matter in depth, the Commission recommends that the proposed remedial measures, which are enclosed, be adopted. I am also writing to the Chief Ministers of all States and Union Territories with a request to initiate action on the Commission's recommendations.

May I request you kindly to have appropriate action initiated by the Central Government in this regard.

With warm regards,

Yours sincerely,

(A.S.Anand)

Encl: as above

Shri Atal Bihari Vajpayee
Hon'ble Prime Minister
South Block
New Delhi - 110011

D.O. No.11/5/2001-PRP&P

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The practice of 'organ purchase' has acquired the dubious dimensions of 'organ trade' with touts operating as middlemen, and creation of allegedly false records of a compassionate donation. While several steps are reported to have been initiated in Karnataka to make the review process stricter, in the media there are disturbing reports of this pernicious practice being widespread in Tamil Nadu, Andhra Pradesh and a number of other States. This illegal trade in human organs is unethical and is a serious violation of human rights.

The Commission had constituted a Core Group of medical experts to go into issues relating to public health and human rights and in particular about the trade in human organs. They have collectively expressed the view that the clause relating to 'compassionate donation' in the Organ Transplantation Act has been frequently exploited in an unethical manner, which is violative of human rights. They have suggested certain remedial measures.

To curb this abuse, the Commission recommends that the remedial measures which are enclosed be adopted. I request you to direct the concerned authorities to implement these measures. It would also be useful if the situation is monitored at the highest level at regular intervals. It would be appreciated if a report on the action taken on the above recommendations could be sent to the Commission at the earliest.

With regards,

Yours sincerely,

Encl: as above

(**A.S. Anand**)

To

All Chief Ministers of States /UTs

ANNEXURE

Remedial Measures suggested by NHRC to all States/UTs to check illegal trade in human organs

- a) State Medical Councils should screen the records of hospitals performing organ transplants (especially kidney transplants) and estimate the proportion of transplants which have been made through a 'compassionate donor' mechanism. In case of kidney transplants, wherever the proportion has exceeded 5% of the cases performed in any of the past 5 years, the State Medical Council should initiate a full fledged enquiry into the background of the donors and the recipients, as well as a careful documentation of the follow-up health status of the donor and the nature of after care provided by the concerned hospital. Wherever police enquiries are needed for such background checks, the help of the State Human Rights Commission may be sought for providing appropriate directions to the State agencies.
- b) Cadaver Transplant programmes should be promoted to reduce the demand for 'live donors'.
- c) Facilities for chronic renal dialysis should be increased and improved in hospitals, to provide alternatives to kidney transplantation.
- d) Better facilities should be provided for transparent and effective counseling of prospective donors.
- e) Wherever possible, a mechanism should be established for independent verification of the veracity of 'compassionate donation' by a group of experts which is external to the hospital wherein the transplant procedure is proposed to be performed.

ANNEXURE 9

PARA 8.159

Statement Made by Shri R.S. Kalha, Hon'ble Member, National Human Rights Commission of India on behalf of the NHRC of India at International Race Relations Round Table, Auckland, New Zealand, 2-5 February 2004

Race Relations in the 21st Century

Session on Key Challenges (9 am on 3 February 2004)

The Indian population is a homogenous mix and as such there are no distinct races. Racial Discrimination is, therefore, a non-existent issue in India. Discrimination based on religion, race, caste, sex, place of birth or any of them has been proscribed by the Indian Constitution (Article 15).

At the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001, the National Human Rights Commission of India expressed 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.” It added that it was not the “nomenclature” of the form of discrimination that must engage our attention, but the fact of its persistence. The Commission observed that the Constitution of India, in Article 15, expressly prohibits discrimination on 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 the 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 concluded that this was, above all, a national responsibility and a moral imperative that can and must be honoured.

Article 17 of the Constitution abolishes 'untouchability' and makes the enforcement of any disability arising out of 'untouchability' an offence punishable in accordance with law. The Parliament has already enacted the Protection of Civil Rights (Anti-Untouchability) Act, 1955. However, there are instances reported from certain pockets of the country about caste-based discrimination, denial of access to public wells/bathing ghats and temples. The persistence of manual scavenging, bonded labour and child labour, which affects, among other sections, members from the Scheduled Castes, is also a cause for serious concern. The National Human Rights Commission of India has, therefore, taken up the issues with the concerned States and the Central authorities with a view to eliminate these practices in a time-bound manner. In response to a letter from the Chairperson of our Commission, the Prime Minister of India informed him that the need to end the degrading practice of manual scavenging was included as a part of the 15-point initiative announced on the Independence Day, 15 August 2002.

To give a clear expression to Constitutional provisions, an impressive range of legislative measures have been enacted to end discrimination against Scheduled Castes and Scheduled Tribes. These inter-alia include:

- The Protection of Civil Rights (Anti-Untouchability) Act, 1955.
- The Bonded Labour (Abolition) Act, 1976.
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.
- And various land reform acts.

The Government of India has also set up the National Commission for Scheduled Castes and Scheduled Tribes to protect and promote the rights of these sections. In addition, National Human Rights Commission of India has not only been taking up individual complaints of rights violations faced by these sections but also issues like elimination of manual scavenging and bonded labour etc. which affect them.

- Despite the affirmative action and 'compensatory discrimination' permitted under the Constitution and the range and scope of measures envisaged under those provisions, the regrettable fact remains that social injustice and the exploitation of Scheduled Castes, Scheduled Tribes and other weaker sections have not as yet been eliminated from our society. The challenge therefore lies in translating these legal provisions into reality and in strict enforcement of the existing laws. The key lies in the vigorous implementation of the full range of existing legal provisions.

- Despite the various efforts by the State, which have included perhaps the most far-reaching programmes of affirmative action ever undertaken in a democratic society anywhere in the world, the National Human Rights Commission of India remains deeply and painfully aware that atrocities against dalits recur (as sadly against other vulnerable sections of society as well), while serious gaps between policy directives and reality persist. There are many reasons for this: historical and cultural, economic and social, political and administrative, to name but a few.
- The crimes committed against the Scheduled Castes remain a cause of great concern to the Commission. According to the National Crime Records Bureau Report, Crime in India (2001), 33,501 crimes against Scheduled Castes were registered in 2001 as compared to 25,455 in the previous year (2000).

Education Gap

The education gap between persons belonging to the Scheduled Castes and Scheduled Tribes and the general population is a cause for concern to the National Human Rights Commission of India. While the special programmes and attempts made to improve literacy amongst Scheduled Castes resulted in dramatic increase in the literacy levels by over three times in the three decades between 1961 and 1991 in the case of Scheduled Castes, they were still quite low compared to the level of literacy of the population as a whole.

Economic Empowerment

- The access of persons belonging to Scheduled Castes to land and other productive resources is a challenge and is often the source of confrontation with other sections of the society.
- On the developmental side many steps have been initiated for amelioration of the economic conditions of the Scheduled Castes and Scheduled Tribes with special outlays being made, as also the earmarking of funds for special component plans, etc. If, however, the progress has not been up to expectation, the reasons are to be found, inter alia, in the failure to improve access to education and the failure of the land reform movement in certain parts of the country. Progress on these fronts would have provided the Scheduled Castes and Scheduled Tribes access to usable capital and, most of all, helped alter the social environment in which discrimination has otherwise been able to persist.

The Challenge of Entrenched Attitudes:

There is a need to combat age-old biases and entrenched attitudes through education and through public information campaigns. The National Human Rights Commission is firmly

of the view that the need to change attitudes and mindsets of civil society is the key to further progress and in this connection, the Commission has been holding workshops and seminars to educate and create awareness amongst the civil society.

Conclusion

For the National Human Rights Commission of India, 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. The Commission has been quite vocal and outspoken in defence of such rights. On the occasion of Human Rights Day function organized by the Commission on 10 December 2003, the Chairperson of our Commission, Dr. Justice A.S. Anand said:

“By virtue of the responsibilities entrusted to NHRC, the Commission needs to be constantly vigilant and outspoken in the defence of human rights. In a democratic polity it is essential that criticism is received with respect even if not always with full agreement. The capacity to differ with civility and mutual respect is the hallmark of a democratic society and essential to the well being of a society.” 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.

The Commission draws 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.’

ANNEXURE 10

PARA 12.2

Statement of Chairperson, NHRC to the 59th Session of the Commission on Human Rights, Geneva, April 2003

Madam Chairperson,

Thank you for giving me the floor.

I speak on behalf of the National Human Rights Commission of India of which I have recently been appointed the Chairperson. I had earlier had the privilege of serving as the Chief Justice of the Supreme Court of India between 1998-2001.

The experience of the Indian Commission indicates, as does my personal experience both in the Supreme Court and now in the Commission, that there is a natural symbiosis, indeed a synergy, between the work of an independent judiciary and an independent human rights institution.

We therefore agree with the view of Mr. Vieira de Mello, eloquently expressed earlier in this Session, that the key to the protection of human rights around the world lies in the development of independent “national protection systems based on the rule of law.”

We welcome, in particular, his emphasis on the need for “practical activity” if the cause of human rights is to be properly served. That cause is ill-served if politicised, or if it falls victim to empty rhetoric or double-standards. All of us have much to learn from each other. No country has an impeccable human rights record.

Madam Chairperson,

In the view of our Commission, the work of the High Commissioner in support of national institutions has been one of the most worthwhile activities of the United Nations in respect of human rights over the past decade. It should therefore be strengthened. We believe that the High Commissioner can find a wealth of experience within the growing number of national institutions, upon which he can draw, in order to pursue and supplement his “practical activities” around the world. This experience is rooted in the realities of working at the level where it most counts – the ground level, within each nation, where the hard work, in the final analysis, has to be done.

Madam Chairperson,

The National Human Rights Commission of India has, in the past year, continued to inter-act closely and beneficially with the Office of the High Commissioner and other national institutions, both at the regional and the global levels, in addition to pursuing its fundamental responsibilities within India itself.

At the regional level, it hosted and assumed the chair of the Seventh Annual Meeting of the Asia-Pacific Forum (APF), held in New Delhi between 11-13 November 2002. The Meeting admitted the national institutions of Malaysia, the Republic of Korea and Thailand as full members of the Forum, thus increasing their number to 12. The Meeting, which was also attended by observer institutions, governmental and non-governmental organizations, discussed, among other things, the role of national institutions in the Prevention of Trafficking in Persons, and in the effort to develop an International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities.

The work of the Asia-Pacific Forum is greatly enhanced by the opinions it receives from its Advisory Council of Jurists, comprising some of the most eminent legal luminaries of the region. At its last meeting, the Forum had before it the views of the Advisory Council of Jurists on the issue of Trafficking. The Forum has now sought the advice of that group on the issue of the primacy of the Rule of Law in countering terrorism world-wide while protecting human rights – a matter of critical importance in this day and age. We are of the view that the jurisprudence being developed in our region both by our courts and by our national institutions can be of interest and benefit to others as well.

At the global level, our Commission has served as a member of the International Coordination Committee of national institutions from 1994 to 2002 and as its Chair for a number of those years. It believes, however, that it is a healthy principle to rotate the membership and chair of such bodies, whether at the global or regional levels, on a regular basis. It hopes that this principle will be followed at both levels since a desire to participate in the better protection of human rights is the desire of people in all regions and nations, and the monopoly of none.

Madam Chairperson,

It is our view that national institutions are both the catalysts and monitors of good governance within their respective jurisdictions and can play a unique role in the defence and furtherance of human rights if they are pro-active, if they take preventive measures to stave-off or mitigate violations, and if they are fearless in bringing to book those who have violated human rights. It is therefore a matter of some concern to us if any national institution, whether in our region or elsewhere, is subjected to extraneous political, financial or other unwarranted pressures.

In seeking to fulfil its role, our Commission has, in the past months, continued to act in defence of the range of civil and political rights, as also economic, social and cultural rights, relevant to the circumstances of our country. Our efforts are documented at some length in our Annual Reports to Parliament, the monthly Newsletters that we publish and, increasingly, on our web-site. By way of illustration:

- Despite frequent and unspeakable acts of terrorism directed against innocent civilians in the country – notably in the Akshardham Temple in the State of Gujarat and in Nadimarg village in the State of Jammu and Kashmir recently – the Commission has reiterated its stand in respect of the Prevention of Terrorism Act, indicating that it intends to fulfil its responsibility under its Statute to ensure that the Act is not implemented in a manner that is violative of human rights, the Constitution and treaty obligations of the country.
- The Commission has continued to press for the implementation of its recommendations in respect of the tragic human rights violations that occurred in Gujarat last year, starting with the burning of the Sabarmati Express in Godhra on 27 February 2002 and continuing with the violence that ensued. The Commission has urged the authorities of the country, at the highest level, to ensure that justice is done, that civil and criminal action is taken against those guilty of acts of omission or commission, and that appropriate reparation is provided, individually and collectively, to those who have suffered.
- As regards economic and social rights, the Commission has taken the view that the Right to Food is inherent to a life with dignity under Article 21 of the Constitution, which is an enforceable right, and it has made detailed recommendations in respect of allegations relating to deaths by starvation in the State of Orissa.
- Given the importance of the linkages between Population Policy, Development and Human Rights, the Commission held a colloquium on these matters where detailed discussions were held in respect of the use of ‘incentives and disincentives’

in the framing of Population Policies and emphasis was laid on the need to protect the reproductive rights of women.

- Further, in recent months, the Commission has taken a number of steps in respect of Trafficking. It has pursued its nation-wide Action Research on Trafficking in Women and Children and organized a sensitization programme on the prevention of sex tourism and trafficking;
- The Commission has made detailed recommendations to the Central and State Governments in respect of issues relating to vulnerable sections of society including those with disabilities, dalits, tribals, bonded and child labour.
- Protection of the rights of minorities has been a matter of particular importance to the Commission.

Madam Chairperson,

These are deeply troubled times in which we live. Everywhere the pervasive threat of terrorism has cast a pall on efforts to promote and protect human rights, for terrorism is deeply hostile to human rights, including the most fundamental of all rights, the right to life itself. The Commission has always held the view that the actions which any State takes to fight and triumph over this evil must themselves fall within the parameters of the Rule of Law and conform to the high standards that we have set for ourselves – in our Constitutions, our laws, and in the great human rights treaties adopted since the founding of the United Nations.

With the sound of gun-fire and the cries of the innocent victims of violence ringing in our ears, I feel it appropriate to conclude these comments with the words of advice and caution of Mahatma Gandhi who wisely observed:

“Peace will not come out of a clash of arms, but out of justice lived and done”

That is a message we can well remember today.

Thank you.

Brief Presentation by the NHRC in the Session on “Balancing Human Rights Protections and Security Concerns: Regional Perspectives” on 18.2.2004 at the Eighth Annual Meeting of the Asia Pacific Forum, Kathmandu, Nepal

Terrorism poses a serious threat to national and international security. India has been a victim of terrorist attacks since 1980s. In the recent years, vicious terrorist attacks have occurred against democratic institutions, army camps, places of worship and facilities used by the civilians. By way of illustration, in the State of Jammu & Kashmir alone, terrorist attacks occurred in the Raghunath Mandir, in Jammu, on 30 March 2002, when 30 persons were killed and 17 injured; in Rajiv Nagar, Jammu, on 13 July 2002, when 28 persons were killed and 27 injured; in the Nunwan Camp in Anantnag on 6 August 2002, when 9 Amarnath pilgrims were killed and 3 others injured; and in Nadimarg, Pulwama district, when 24 Kashmiri Pandits were killed. In the State of Gujarat, an outrageous terrorist attack occurred on 24-25 September 2002, in the Akshardham Temple in Gandhinagar, taking the lives of 28 civilians; in addition, two security personnel lost their lives and six others were injured in seeking to protect the civilians and flush out the terrorists.

These incidents brought into sharp focus the need to combat and triumph over the evil of terrorism. India's lonely fight against terrorism for many years is now joined by other countries after recent instances of international terrorism. The National Human Rights Commission of India examined the issues both of terrorism as a factor that inhibits the enjoyment of human rights as also adherence to human rights standards in the fight against terrorism, on several occasions.

Terrorists are the sworn enemies of human rights and there can be no equivocation on this matter. The National Human Rights Commission of India is of the firm view that

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.

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'

While an acceptable definition of terrorism still eludes the international community, the Supreme Court of India, as far back as in 1994, in a Bench in which I was a Member, dwelt at length on it and also drew a distinction between a criminal act and a terrorist act. In the Judgment in *Hitendra Vishnu Thakur v. State of Maharashtra* [(1994) 4 SCC 602], which has been used extensively in the work of UN and other international organizations, the Supreme Court of India said:

"... .. It may be possible to describe it (Terrorism) as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of any ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquility of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that 'terrorism' is generally an attempt to acquire helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation."

In an opinion dated 14 July 2000, the Commission dwelt at length on various provisions of the Prevention of Terrorism Bill 2000 (proposed by the Law Commission in its 173rd Report and introduced in Parliament), and opposed that Bill, *inter alia*, because it did not conform to international human rights standards. In that opinion, the Commission had observed that there were now twelve global treaties pertaining to the subject of international terrorism. However, despite this array of international instruments, the Commission noted that it remained essential, both to the cause of human rights and to the fight against terrorism, that the measures required to be taken under each of these Conventions were fully and meticulously under-taken, both in terms of appropriate legislation, where this may still be needed, and in terms of other practical arrangements essential to the effective implementation of these Conventions. The Commission had accordingly urged the Government of India to do so and, in particular, to enact a suitable law to deal with the financing of terrorism.

In that same opinion, the Commission had also stated that

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

The Commission accordingly expressed

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

Such a course, the Commission stated, was

“consistent with our country’s determination to combat and triumph over terrorism in a manner also consistent with the promotion and protection of human rights.”

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, while balancing security with Human Rights considerations, expressed its opinion thus:

'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, 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 Commission is of the firm view 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 and the core values of the Constitution.

In the face of terrorism, there can be no doubt that the State has not only the right, but also the duty, to protect itself and its people against terrorist acts and to bring to justice those who perpetrate such acts. The manner in which a State acts to exercise this right and to perform this duty must be in accordance with the Rule of Law. The Supreme Court of India has, in DK Basu vs. State of West Bengal, cautioned that the

"Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to terrorism: that would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure that the various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves."

The consistent position developed by the Commission in respect of anti-terrorism legislation has been elaborated in greatest detail in the Opinions that it wrote on 14 July 2000 and 19 November 2001, in respect of the Draft Prevention of Terrorism Bill, 2000 and the subsequent Prevention of Terrorism Ordinance, 2001, both of which it opposed, as it had, in February 1985, opposed the continuance of the Terrorist & Disruptive Activities Act (TADA). The full text of the Opinions of the Commission has been placed on its web-site www.nhrc.nic.in.

On 26 March 2002, the Prevention of Terrorism (Second) Ordinance, 2001 was enacted into a Law following a Joint Session of Parliament. The Commission therefore took the position that it respects the constitutional process leading to the adoption of this Act, even though it had made known its opposition to the contents of the Act before it was enacted. The Commission retains the responsibility under its own Statute to ensure that

the Act is not implemented in a manner that is violative of human rights, the Constitution, the laws of the land and the treaty obligations of the country.

The Prevention of Terrorism Act, 2002 defines terrorism in far greater detail. It seeks to deprive the beneficiaries of the proceeds of terrorism. It contains some safeguards against the possibility of abuse. There are severe penalties attached to the abuse of the process of law and malicious prosecution by police. Specific safeguards are provided for, in the Act with a view to prevent the possibility of the misuse of the special powers given to the investigating authorities and address the concern of violation of human rights. The Act raises the ban on the admissibility of confessions obtained in police lock ups and sanctions penalties for police officers found guilty of invoking the law against citizens on malafide grounds. Act essentially has limited application and extends to acts, which threaten the unity, security, integrity or sovereignty of India. Special Courts can take cognizance of an offence under the Act only after the sanction of State Government or the Central Government; investigation of an offence under the Ordinance can be done by an officer not below the rank of Deputy Superintendent of Police; confession made before a police officer to be recorded before a magistrate within 48 hours; information of arrest of the accused to be given to a family member after arrest and this fact to be recorded by the police officer and allows presence of counsel during the interrogation of the accused.

India has a well-established judicial system, which has been consistently alive to the need to uphold fundamental rights of individuals in light of the constitutional provisions as well as human rights. On 16 December 2003, the Supreme Court of India in the People's Union for Civil Liberties & Another. Vs. Union of India (2003 (10) SCALE 967), while dismissing petitions challenging constitutional validity of the Prevention of Terrorism Act, 2002, however held that mere support to banned terrorist organization is not sufficient for prosecution under POTA. Criminal intention must be proved. The Supreme Court has moderated Section 21 of POTA, which deals with offences relating to the support given to terrorist organization, which was cast in a manner that virtually invited gross abuse. Similarly, it reduced the rigour of Section 49(7) of the Act by holding that an accused under the POTA could seek bail even before the expiry of one-year period.

The Commission has expressed its view that, when compared with TADA, the Prevention of Terrorism Act does contain some provisions that are aimed at providing safeguards against its possible misuse but emphasized that these safeguards are insufficient and more safeguards are required. It, therefore, continues to be the duty of the Commission to monitor the implementation of the Act with vigilance and to ensure that the provisions of the Act are not abused or human rights violated.

Section 60 of the Prevention of Terrorism Act, 2002 provides that the Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees for the purposes mentioned in the Act. The Government took notice of the view of the Commission about the need of providing more safeguards and set up a Central Review Committee under Section 60 of the Act on 4 April 2003 under the Chairmanship of a former Chief Justice of the Punjab and Haryana High Court, with the following Terms of Reference:

- (i) the Review Committee shall take a comprehensive view of the use of the said Act in various States and shall be empowered to entertain complaints or grievances with regard to enforcement of the said Act and accordingly, give its findings and suggestions for removing the shortcomings, if any, in the implementation of the said Act; and
- (ii) the Review Committee shall suggest measures to ensure that the provisions of the said Act are invoked for combating terrorism only.

Since the recommendations or directions of the Review Committee except those explicitly provided in the said Act were not binding on the Central Government and the State Governments and were only advisory in nature under the existing provisions, the Parliament amended Section 60 of the Prevention of Terrorism Act, 2002 through the Prevention of Terrorism (Amendment) Ordinance, 2003 (Ord. 4 of 2003) which was promulgated on 27th October 2003 to remedy the lacuna. This step is in keeping with the concerns expressed by the Commission of providing more safeguards against misuse and abuse of the POTA and to protect Human Rights. According to new sub-sections which were inserted in Section 60 of this Act,

- “(4) Without prejudice to the other provisions of this Act, any Review Committee constituted under sub-section (1) shall, on an application by any aggrieved person, review whether there is a *prima facie* case for proceeding against the accused under this Act and issue directions accordingly.
- (5) Any direction issued under sub-section (4), —
 - (i) by the Review Committee constituted by the Central Government, shall be **binding** on the Central Government, the State Government and the police officer investigating the offence; and
 - (ii) by the Review Committee constituted by the State Government shall be **binding** on the State Government and the police officer investigating the offence.
- (6) Where the reviews under sub-section (4) relating to the same practice under this Act, have been made by a Review Committee constituted by the Central Government and a Review Committee constituted by the State

Government, under sub-section (1), any direction issued by the Review Committee constituted by the Central Government shall prevail.

- (7) Where any Review Committee constituted under sub-section (1) is of opinion that there is no *prima facie* case for proceeding against the accused and issue directions under sub-section (4), **then, the proceedings pending against the accused shall be deemed to have been withdrawn from the date of such direction.**

The Ordinance was replaced by the Prevention of Terrorism (Amendment) Act, 2003. According to the Statement of Objects and Reasons of the Prevention of Terrorism (Amendment) Act, 2003, these amendments empower the Review Committee to review, "on an application by an aggrieved person, whether there is a *prima facie* case for proceedings against the accused under the Act and issue directions accordingly. The directions of the Review Committee shall be binding on the Central Government, the State Government and the police officer investigating the offence. Where the directions relating to the same offence under the said Act, have been made by a Review Committee constituted by the Central Government and the Review Committee constituted by the State Government, the directions of the Central Review Committee shall prevail over those of the State Review Committees." The allegations of misuse and abuse of provisions of the Act are receiving attention of the Commission.

I may be permitted to conclude by quoting from a Lecture on 'Terrorism – An affront to Human Rights: challenge for democracies' delivered by me at the International Institute for Strategic Studies, London on 7 May 2002:

"Global awakening about human rights and the threat that terrorism has posed to human rights of the people all over the world is necessary. It is wrong to be selective about violation of human rights and the perpetrators of terrorism. Such selective approach leads to double standards, which make the motives of the protagonists of human rights suspect. It also indirectly lends support to terrorists and terrorism. All nations must, therefore, co-operate to relentlessly and without any compromise fight terrorism. The liberal democracies should unite to condemn and combat terrorism. Concerted steps at a global level will have to be taken to tackle terrorism and safeguard human rights. But let me emphasise that in doing so, the approach should be human, rational and secular. It must be consistent with democratic principles. Any kind of partisan and sectarian approach would be counter-productive. We need to strike a balance between the liberty of an individual and the requirements of security of state and sovereignty and integrity of the nation while keeping an open mind to fight

terrorism. A limited approach may help eliminate some present terrorists but not the causes or the phenomenon of terrorism, which produces terrorists; and that too at the cost of violation of human rights of many innocents. A proper balance between the need and the remedy requires respect for the principles of necessity and proportionality. We must avoid a descent into anarchy – in which the only rule is ‘might is right’– combating terrorism should not be used as an excuse to suspend all the rules of international law and domestic civil liberties.”

(Emphasis added)

ANNEXURE 12

PARA 15.1

Statement Showing State-wise Disposal of Cases During the Year 2003-2004

S. No.	Name of the State / Union Territory	Dismissed in limini	Disposed of with directions	Concluded after receipt of reports			Total
				Complaints Cases	Custodial Death cases	Encounter Death cases	
1	2	3	4	5	6	7	8
1	ANDHRA PRADESH	446	161	145	36	7	795
2	ARUNACHAL PRADESH	18	9	10	3	0	40
3	ASSAM	111	15	22	11	0	159
4	BIHAR	2171	853	343	41	1	3409
5	GOA	24	5	13	0	0	42
6	GUJARAT	737	192	87	12	0	1028
7	HARYANA	1467	564	358	11	0	2400
8	HIMACHAL PRADESH	98	20	20	2	0	140
9	JAMMU & KASHMIR	96	23	24	0	0	143
10	KARNATAKA	329	87	114	16	0	546
11	KERALA	135	30	33	17	0	215
12	MADHYA PRADESH	1430	326	492	15	1	2264
13	MAHARASHTRA	1344	415	413	26	0	2198

S. No.	Name of the State / Union Territory	Dismissed in limini	Disposed of with directions	Concluded after receipt of reports			Total
				Complaints Cases	Custodial Death cases	Encounter Death cases	
1	2	3	4	5	6	7	8
14	MANIPUR	7	3	7	0	0	17
15	MEGHALAYA	11	1	1	2	0	15
16	MIZORAM	1	1	2	0	0	4
17	NAGALAND	7	0	2	0	0	9
18	ORISSA	552	237	143	15	0	947
19	PUNJAB	484	166	56	12	0	718
20	RAJASTHAN	1224	415	285	7	0	1931
21	SIKKIM	3	0	0	0	0	3
22	TAMILNADU	746	269	262	11	0	1288
23	TRIPURA	16	4	7	0	0	27
24	UTTAR PRADESH	18907	7839	4939	37	8	31730
25	WEST BENGAL	530	146	51	20	0	747
26	A & N ISLANDS	7	3	1	0	0	11
27	CHANDIGARH	51	17	8	2	0	78
28	D & NAGAR HAVELI	3	1	1	0	0	5
29	DAMAN & DIU	2	1	0	0	0	3
30	DELHI	2273	892	426	12	0	3603
31	LAKSHADWEEP	2	1	1	0	0	4
32	PONDICHERRY	23	14	4	0	0	41
33	CHHATTISGARH	252	56	33	17	0	358
34	JHARKHAND	835	302	98	16	0	1251
35	UTTARANCHAL	913	334	215	1	0	1463
36	FOREIGNERS	45	13	4	0	0	62
	TOTAL	35300	13415	8620	342	17	57694

Dismissed In Limini	35330
Disposed of with Directions	13415
Concluded	8989
Pending Disposal	8620

ANDHRA PRADESH	415	ANDHRA PRADESH	171
ARUNACHAL PRADESH	14	ARUNACHAL PRADESH	9
ASSAM	108	ASSAM	15
BIHAR	2184	BIHAR	855
GOA	25	GOA	5
GUJARAT	746	GUJARAT	196
HARYANA	1508	HARYANA	574
HIMACHAL PRADESH	99	HIMACHAL PRADESH	21
JAMMU & KASHMIR	90	JAMMU & KASHMIR	22
KARNATAKA	325	KARNATAKA	87
KERALA	132	KERALA	31
MADHYA PRADESH	1445	MADHYA PRADESH	325
MAHARASHTRA	1373	MAHARASHTRA	435
MANIPUR	7	MANIPUR	2
MEGHALAYA	11	MEGHALAYA	1
MIZORAM	1	MIZORAM	1
NAGALAND	7	NAGALAND	0
ORISSA	529	ORISSA	215
PUNJAB	474	PUNJAB	162
RAJASTHAN	1229	RAJASTHAN	415
SIKKIM	3	SIKKIM	0
TAMILNADU	763	TAMILNADU	260
TRIPURA	16	TRIPURA	4
UTTAR PRADESH	18896	UTTAR PRADESH	7750
WEST BENGAL	519	WEST BENGAL	147
A & N ISLANDS	7	A & N ISLANDS	6
CHANDIGARH	51	CHANDIGARH	17
D & NAGAR HAVELI	3	D & NAGAR HAVELI	1
DAMAN & DIU	2	DAMAN & DIU	2
DELHI	2239	DELHI	883
LAKSHADWEEP	2	LAKSHADWEEP	1
PONDICHERRY	23	PONDICHERRY	14
CHHATTISGARHs	249	CHHATTISGARH	55
JHARKHAND	837	JHARKHAND	302
UTTARANCHAL	909	UTTARANCHAL	337
FOREIGNERS	45	FOREIGNERS	10

ANNEXURE 13

PARA 15.1

Statement Showing State-wise Number of Cases Pending as on 01/04/2003

S.No.	Name of the State / Union Territory	Cases awaiting preliminary consideration			
		Complaints	Intimation about Custodial Deaths	Intimation about Encounter Deaths	Total
1	2	3	4	5	6
1	ANDHRA PRADESH	53	5	0	58
2	ARUNACHAL PRADESH	5	0	0	5
3	ASSAM	10	0	0	10
4	BIHAR	425	0	0	425
5	GOA	2	0	0	2
6	GUJARAT	72	0	0	72
7	HARYANA	267	0	0	267
8	HIMACHAL PRADESH	11	0	0	11
9	JAMMU & KASHMIR	11	0	0	11
10	KARNATAKA	46	1	0	47
11	KERALA	21	0	0	21
12	MADHYA PRADESH	175	0	0	175
13	MAHARASHTRA	155	3	0	158
14	MANIPUR	3	0	0	3
15	MEGHALAYA	1	0	0	1
16	MIZORAM	1	0	0	1
17	NAGALAND	1	1	0	2
18	ORISSA	75	1	0	76
19	PUNJAB	180	0	0	180
20	RAJASTHAN	272	1	0	273
21	SIKKIM	0	0	0	0
22	TAMILNADU	136	6	0	142
23	TRIPURA	4	0	0	4
24	UTTAR PRADESH	1800	2	0	1802
25	WEST BENGAL	51	1	0	52
26	A & N ISLANDS	6	0	0	6
27	CHANDIGARH	2	0	0	2
28	D & NAGAR HAVELI	0	0	0	0
29	DAMAN & DIU	0	0	0	0
30	DELHI	235	2	0	237
31	LAKSHADWEEP	1	0	0	1
32	PONDICHERRY	3	0	0	3
33	CHHATTISGARH	38	0	0	38
34	JHARKHAND	144	0	0	144
35	UTTARANCHAL	82	0	0	82
36	FOREIGNERS	11	0	0	11
	TOTAL	4299	23	0	4322

Pendency of cases where reports have either been received or awaited from the State Authorities			
Complaints	Custodial Death Cases	Encounter Death Cases	Total
7	8	9	10
685	164	13	862
38	8	0	46
216	49	2	267
3620	228	838	56
33	93	0	126
459	0	3	462
1367	57	51	429
99	3	0	102
425	4	2	431
427	107	2	536
165	57	1	223
1506	60	4	1570
1267	205	21	1493
66	0	1	67
18	5	1	24
14	2	0	16
25	1	0	26
610	39	0	649
802	134	0	936
2110	90	33	2233
6	0	0	6
808	122	2	932
41	3	0	44
18681	313	103	19097
503	95	3	601
3	0	0	3
39	5	0	44
6	0	0	6
0	0	0	0
2854	50	10	2914
2	0	0	2
14	1	0	15
174	26	0	200
989	50	2	1041
885	20	3	908
23	0	0	23
38980	1991	219	41190

* Annexure is based upon updated computer data after physical verification of files undertaken during the current year.

ANNEXURE 13(a)

PARA 15.1

State/Union Territory-wise Statement of Category of Report Cases Disposed of During the Year 2003-2004

Sl.No.	Name of the State / Union Territory	Disappearance	False implication	Custodial Violence
1	2	3	4	5
1	ANDHRA PRADESH	0	5	0
2	ARUNACHAL PRADESH	0	0	0
3	ASSAM	0	0	0
4	BIHAR	0	16	0
5	GOA	0	0	0
6	GUJARAT	0	6	0
7	HARYANA	0	37	0
8	HIMACHAL PRADESH	0	1	0
9	JAMMU & KASHMIR	0	1	0
10	KARNATAKA	0	6	0
11	KERALA	0	1	0
12	MADHYA PRADESH	0	29	0
13	MAHARASHTRA	1	15	1
14	MANIPUR	0	0	0
15	MEGHALAYA	0	0	0
16	MIZORAM	0	0	0
17	NAGALAND	0	0	0
18	ORISSA	0	6	0
19	PUNJAB	0	3	0
20	RAJASTHAN	0	9	0
21	SIKKIM	0	0	0
22	TAMILNADU	0	23	0
23	TRIPURA	0	0	0
24	UTTAR PRADESH	4	227	0
25	WEST BENGAL	0	2	0
26	A&N ISLANDS	0	0	0
27	CHANDIGARH	0	2	0
28	DADRA & NAGAR HAVELI	0	0	0
29	DAMAN & DIU	0	0	0
30	DELHI	0	13	0
31	LAKSHADWEEP	0	0	0
32	PONDICHERRY	0	0	0
33	CHHATTISGARH	0	0	0
34	JHARKHAND	0	4	0
35	UTTARANCHAL	0	14	0
36	FOREIGNERS	0	0	0
	TOTAL	5	420	1

Illegal arrest	Unlawful detention	Failure in taking action	Alleged Fake Encounters	Other Police excessess	Total
6	7	8	9	10	11
2	14	27	13	32	93
0	0	1	0	0	1
0	1	4	0	6	11
3	6	81	1	50	157
0	0	2	0	4	6
3	4	17	2	18	50
0	14	92	0	56	199
0	0	7	0	3	11
0	0	0	0	5	6
3	8	14	0	27	58
0	5	7	0	5	18
5	14	125	2	94	269
1	11	55	2	60	146
0	0	1	0	1	2
0	0	0	0	0	0
0	0	0	0	0	0
0	0	0	0	1	1
1	5	28	0	24	64
1	1	13	1	11	30
1	8	57	0	39	114
0	0	0	0	0	0
10	39	48	0	64	184
0	0	1	0	2	3
147	301	1003	13	1651	3346
0	1	14	0	8	25
0	0	0	0	0	0
0	0	0	0	3	5
0	0	0	0	0	0
0	0	0	0	0	0
3	29	99	0	90	234
0	0	0	0	0	0
0	0	0	0	2	2
1	0	3	0	7	11
0	2	22	0	17	45
7	9	45	0	64	139
0	0	0	0	0	0
188	472	1766	34	2344	5230

ANNEXURE 13(b)

PARA 15.1

State/Union Territory-wise Statement Of Category Of Report Cases Disposed Of During The Year 2003-2004

Sl.No.	Name of the State / Union Territory	Indignity to women	Sexual Harassment	Abduction Rape & Murder
12	13	14	15	16
1	ANDHRA PRADESH	2	2	1
2	ARUNACHAL PRADESH	0		0
3	ASSAM	0		1
4	BIHAR	7	4	9
5	GOA	0		1
6	GUJARAT	0		0
7	HARYANA	3	2	15
8	HIMACHAL PRADESH	0		0
9	JAMMU & KASHMIR	0	1	0
10	KARNATAKA	1		2
11	KERALA	0		0
12	MADHYA PRADESH	4	4	5
13	MAHARASHTRA	1	0	7
14	MANIPUR	0	0	1
15	MEGHALAYA	0	0	0
16	MIZORAM	0	0	0
17	NAGALAND	0	0	0
18	ORISSA	1	2	3
19	PUNJAB	1	2	2
20	RAJASTHAN	5	7	11
21	SIKKIM	0	0	0
22	TAMILNADU	0	1	1
23	TRIPURA	0	0	0
24	UTTAR PRADESH	26	50	128
25	WEST BENGAL	0	0	0
26	A&N ISLANDS	0	0	0
27	CHANDIGARH	0	0	0
28	DADRA & NAGAR HAVELI	0	0	0
29	DAMAN & DIU	0	0	0
30	DELHI	5	7	18
31	LAKSHADWEEP	0	0	0
32	PONDICHERRY	0	0	0
33	CHHATTISGARH	1	1	1
34	JHARKHAND	1	3	0
35	UTTARANCHAL	3	6	3
36	FOREIGNERS	0	0	0
	TOTAL	61	92	209

Dowry death or its attempt	Dowry demand	Exploitation of women	Rape of Women	Total
17	18	19	20	21
1	1	0	1	8
0	0	1	0	1
0	0	0	0	1
66	10	6	15	117
0	0	0	0	1
0	1	0	0	1
34	12	3	11	80
0	0	1	0	1
3	0	0	0	4
4	1	0	2	10
2	0	1	0	3
26	10	4	8	61
14	3	3	0	28
0	0	0	1	2
0	0	0	0	0
0	0	0	0	0
0	0	0	0	0
14	6	4	4	34
2	4	1	0	12
29	14	11	11	88
0	0	0	0	0
1	1	2	2	8
0	0	0	0	0
379	177	75	108	943
2	4	2	0	8
0	0	0	0	0
0	0	0	0	0
1	0	0	0	1
0	0	0	0	0
20	9	12	3	74
0	0	0	0	0
0	0	0	0	0
3	0	3	1	10
10	4	5	5	28
5	9	5	4	35
0	0	0	0	0
616	266	139	176	1559

ANNEXURE 13(c)

PARA 15.1

State/Union Territory-wise Statement Of Category Of Report Cases Disposed Of During The Year 2003-2004

Sl.No.	Name of the State / Union Territory	Child Labour	Child Marriage	Bonded labour	Harassment of prisoners
22	23	24	25	26	27
1	ANDHRA PRADESH	3	0	0	0
2	ARUNACHAL PRADESH	0	0	2	0
3	ASSAM	0	0	0	0
4	BIHAR	0	0	2	2
5	GOA	0	0	0	2
6	GUJARAT	0	0	0	2
7	HARYANA	0	0	5	2
8	HIMACHAL PRADESH	0	0	0	0
9	JAMMU & KASHMIR	0	0	0	0
10	KARNATAKA	2	0	1	8
11	KERALA	0	0	0	1
12	MADHYA PRADESH	0	0	1	11
13	MAHARASHTRA	4	0	4	8
14	MANIPUR	0	0	0	0
15	MEGHALAYA	0	0	0	0
16	MIZORAM	0	0	0	0
17	NAGALAND	0	0	0	0
18	ORISSA	0	0	0	4
19	PUNJAB	0	0	3	2
20	RAJASTHAN	0	0	0	6
21	SIKKIM	0	0	0	0
22	TAMILNADU	0	1	1	4
23	TRIPURA	0	0	0	0
24	UTTAR PRADESH	1	2	9	16
25	WEST BENGAL	0	0	0	1
26	A&N ISLANDS	0	0	0	0
27	CHANDIGARH	0	0	0	0
28	D & NAGAR HAVELI	0	0	0	0
29	DAMAN & DIU	0	0	0	0
30	DELHI	0	0	1	9
31	LAKSHADWEEP	0	0	0	0
32	PONDICHERRY	0	0	0	1
33	CHHATTISGARH	0	0	0	0
34	JHARKHAND	0	0	0	2
35	UTTARANCHAL	0	0	0	0
36	FOREIGNERS	0	0	0	0
	TOTAL	10	3	29	81

Lack of medical facilities in Jails	Jail conditions	Atrocities on SC/ST	Communal Violence	Others	Total	Grand Total (11+21+33)
28	29	30	31	32	33	34
0	2	1	1	37	44	145
0	0	0	0	6	10	10
0	0	0	0	10	10	22
2	1	6	0	56	69	343
0	0	0	0	4	6	13
0	2	7	0	25	36	87
0	6	4	0	62	79	358
0	0	1	0	7	8	20
1	0	0	0	13	14	24
0	6	0	0	29	46	114
0	0	0	0	11	12	33
3	11	13	0	123	162	492
0	56	1	0	166	239	413
0	1	1	0	1	3	7
0	0	0	0	1	1	1
0	0	0	0	2	2	2
0	1	0	0	0	1	2
1	3	5	0	32	45	143
0	0	1	0	8	14	56
0	3	16	0	58	83	285
0	0	0	0	0	0	0
0	4	7	0	53	70	262
0	0	0	0	4	4	7
4	8	89	0	521	650	4939
0	2	0	0	15	18	51
0	0	0	0	1	1	1
0	0	0	0	3	3	8
0	0	0	0	0	0	1
0	0	0	0	0	0	0
2	9	1	0	96	118	426
0	0	0	0	1	1	1
0	0	0	0	1	2	4
0	1	1	0	10	12	33
1	1	2	0	19	25	98
0	1	5	0	35	41	215
0	2	0	0	2	4	4
14	120	161	1	1412	1831	8620

Grand Total = 1559+5230+1831 = 8620

Disappearance	5
False Implication	420
Custodial Violence	1
Illegal arrest	188
Unlawful Detention	472
Failure in Taking Action	1766
Alleged Fake Encounters	34
Other Police excesses	2344
Indignity to Women	61
Sexual Harassment	92
Abduction Rape & Murder	209
Dowry death or its attempt	616
Dowry Demand	266
Exploitation Of Women	139
Rape of women	176
Child Labour	10
Child Marriage	3
Bonded Labour	29
Harassment of Prisoners	81
Lack Of Medical Facilities in Jails	14
Jail Condition	120
Atrocities on SC/St	161
Communal Violence	1
Others	1412
	8620

ANNEXURE 14

PARA 15.2

Statement Showing State-wise Number of Cases Pending as on 31/3/2004

S.No.	Name of the State / Union Territory	Cases awaiting preliminary consideration			
		Complaints	Intimation about Custodial Deaths	Intimation about Encounter Deaths	Total
1	2	3	4	5	6
1	ANDHRA PRADESH	111	2	4	117
2	ARUNACHAL PRADESH	4	0	0	4
3	ASSAM	18	0	0	18
4	BIHAR	326	1	0	327
5	GOA	3	0	0	3
6	GUJARAT	159	1	0	160
7	HARYANA	315	0	0	315
8	HIMACHAL PRADESH	14	0	0	14
9	JAMMU & KASHMIR	12	0	0	12
10	KARNATAKA	65	1	0	66
11	KERALA	22	0	0	22
12	MADHYA PRADESH	213	0	0	213
13	MAHARASHTRA	368	1	0	369
14	MANIPUR	3	0	0	3
15	MEGHALAYA	2	0	0	2
16	MIZORAM	0	0	0	0
17	NAGALAND	1	0	0	1
18	ORISSA	107	0	0	107
19	PUNJAB	49	0	0	49
20	RAJASTHAN	174	0	0	174
21	SIKKIM	0	0	0	0
22	TAMILNADU	140	0	0	140
23	TRIPURA	2	0	0	2
24	UTTAR PRADESH	1946	2	0	1948
25	WEST BENGAL	55	0	0	55
26	A & N ISLANDS	2	0	0	2
27	CHANDIGARH	16	0	0	16
28	D & NAGAR HAVELI	2	0	0	2
29	DAMAN & DIU	0	0	0	0
30	DELHI	292	1	0	293
31	LAKSHADWEEP	1	0	0	1
32	PONDICHERRY	11	0	0	11
33	CHHATTISGARH	46	0	0	46
34	JHARKHAND	141	0	0	141
35	UTTARANCHAL	123	0	0	123
36	FOREIGNERS	11	0	0	11
	TOTAL	4754	9	4	4767

Pendency of cases where reports have either been received or awaited from the State Authorities			
Complaints	Custodial Death Cases	Encounter Death Cases	Total
7	8	9	10
782	250	16	1048
39	8	0	47
238	62	8	308
4751	334	8	5093
34	0	0	34
567	137	3	707
1850	97	5	1952
126	3	0	129
494	4	2	500
471	146	6	623
171	95	1	267
1445	78	6	1529
1497	361	26	1884
86	0	1	87
18	9	1	28
14	4	0	18
27	1	0	28
772	77	0	849
1188	210	0	1398
2528	133	33	2694
7	0	0	7
939	230	8	1177
52	3	0	55
27289	491	143	27923
661	133	5	799
8	0	0	8
56	7	0	63
7	0	0	7
3	0	0	3
3797	62	11	3870
2	0	0	2
20	2	0	22
199	53	0	252
1287	90	0	1377
1182	28	0	1210
43	0	0	43
52650	3108	283	56041

Grand Total = 4767+56041 = 60808

ANNEXURE 15

PARA 15.3

Statement Showing State-wise Number Of Cases/ Intimations Registered During The Year 2003-2004

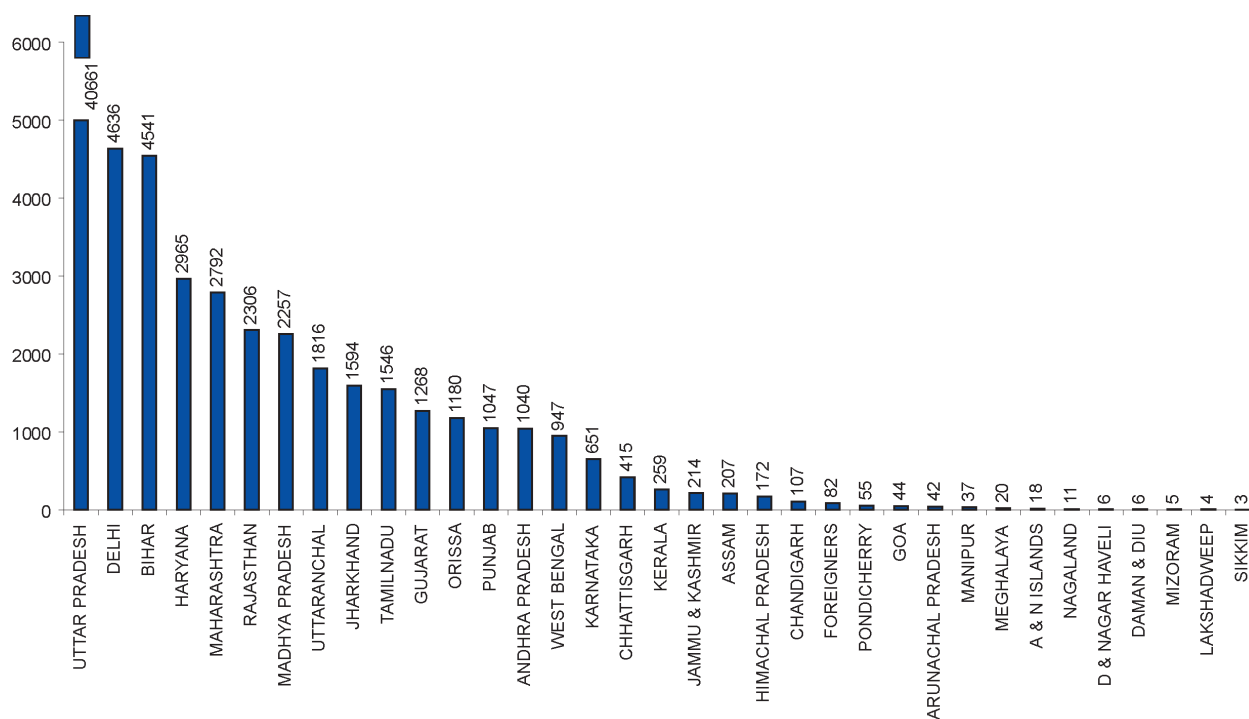
S.No.	Name of the State / Union Territory	Complaints
1	2	3
1	ANDHRA PRADESH	900
2	ARUNACHAL PRADESH	38
3	ASSAM	176
4	BIHAR	4392
5	GOA	44
6	GUJARAT	1211
7	HARYANA	2913
8	HIMACHAL PRADESH	170
9	JAMMU & KASHMIR	214
10	KARNATAKA	591
11	KERALA	204
12	MADHYA PRADESH	2221
13	MAHARASHTRA	2607
14	MANIPUR	37
15	MEGHALAYA	14
16	MIZORAM	3
17	NAGALAND	11
18	ORISSA	1127
19	PUNJAB	959
20	RAJASTHAN	2256
21	SIKKIM	3
22	TAMILNADU	1422
23	TRIPURA	36
24	UTTAR PRADESH	40396
25	WEST BENGAL	889
26	A & N ISLANDS	18
27	CHANDIGARH	103
28	D & NAGAR HAVELI	6
29	DAMAN & DIU	6
30	DELHI	4610
31	LAKSHADWEEP	4
32	PONDICHERRY	54
33	CHHATTISGARH	371
34	JHARKHAND	1537
35	UTTARANCHAL	1802
36	FOREIGNERS	82
	TOTAL	71427

Intimation received about Custodial Deaths				Intimation received about Encounter Deaths	Total
Police Custody	Judicial Custody	Defence/ Para-military	Custodial rapes		
4	5	6	7	8	9
10	114	0	0	16	1040
2	1	1	0	0	42
6	18	0	0	7	207
9	139	0	0	1	4541
0	0	0	0	0	44
20	37	0	0	0	1268
2	49	0	0	1	2965
0	2	0	0	0	172
0	0	0	0	0	214
4	52	0	0	4	651
4	51	0	0	0	259
3	30	0	0	3	2257
32	148	0	0	5	2792
0	0	0	0	0	37
3	3	0	0	0	20
0	2	0	0	0	5
0	0	0	0	0	11
1	52	0	0	0	1180
7	81	0	0	0	1047
5	45	0	0	0	2306
0	0	0	0	0	3
12	106	0	0	6	1546
0	0	0	0	0	36
18	199	0	0	48	40661
13	43	0	0	2	947
0	0	0	0	0	18
0	4	0	0	0	107
0	0	0	0	0	6
0	0	0	0	0	6
3	22	0	0	1	4636
0	0	0	0	0	4
1	0	0	0	0	55
2	42	0	0	0	415
3	53	0	0	1	1594
2	7	0	0	5	1816
0	0	0	0	0	82
162	1300	1	0	100	72990

State Wise List of Cases Registered during 2003-2004

For Details see Annexure-15

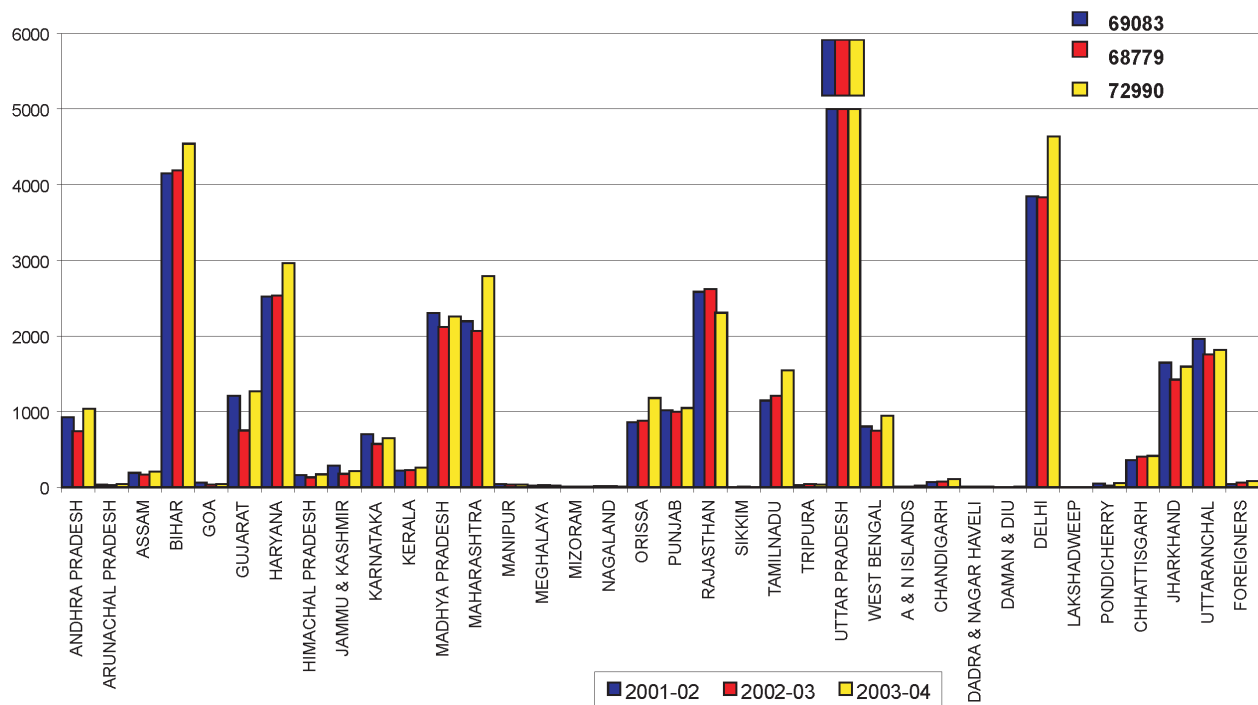
Total Cases-72990



List of Cases Registered during the last three years i.e. 2001, 2002, 2003

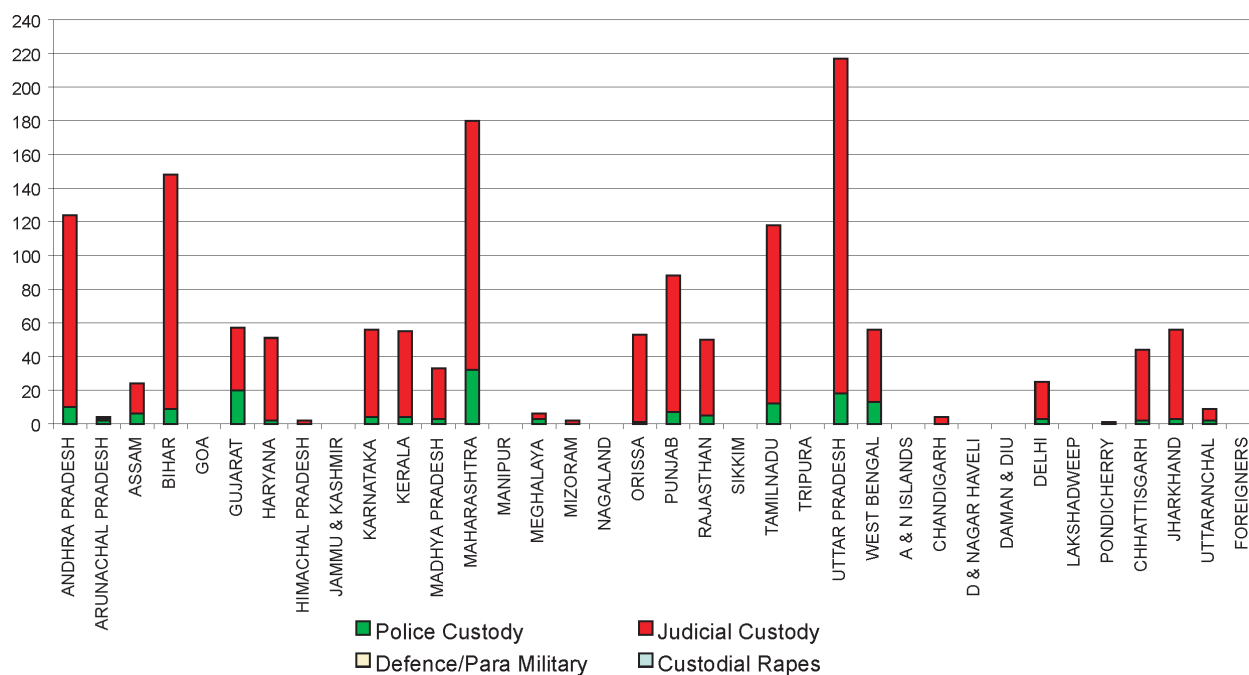
For Details see Annexure-15

Total Registration During Year



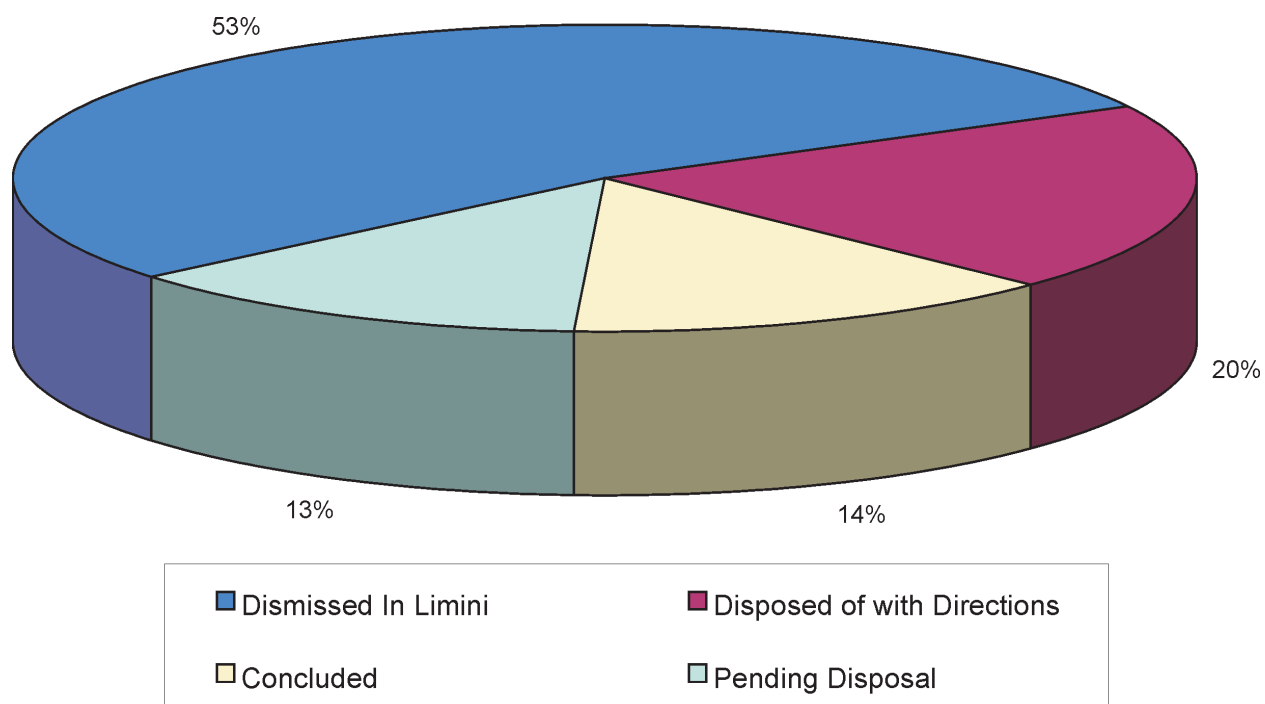
State wise list of intimations registered relating to Custodial Death/Rape during the Year 2003-2004

For Details see Annexure-15



Cases disposed of/pending disposal by the Commission during the Year 2003-2004

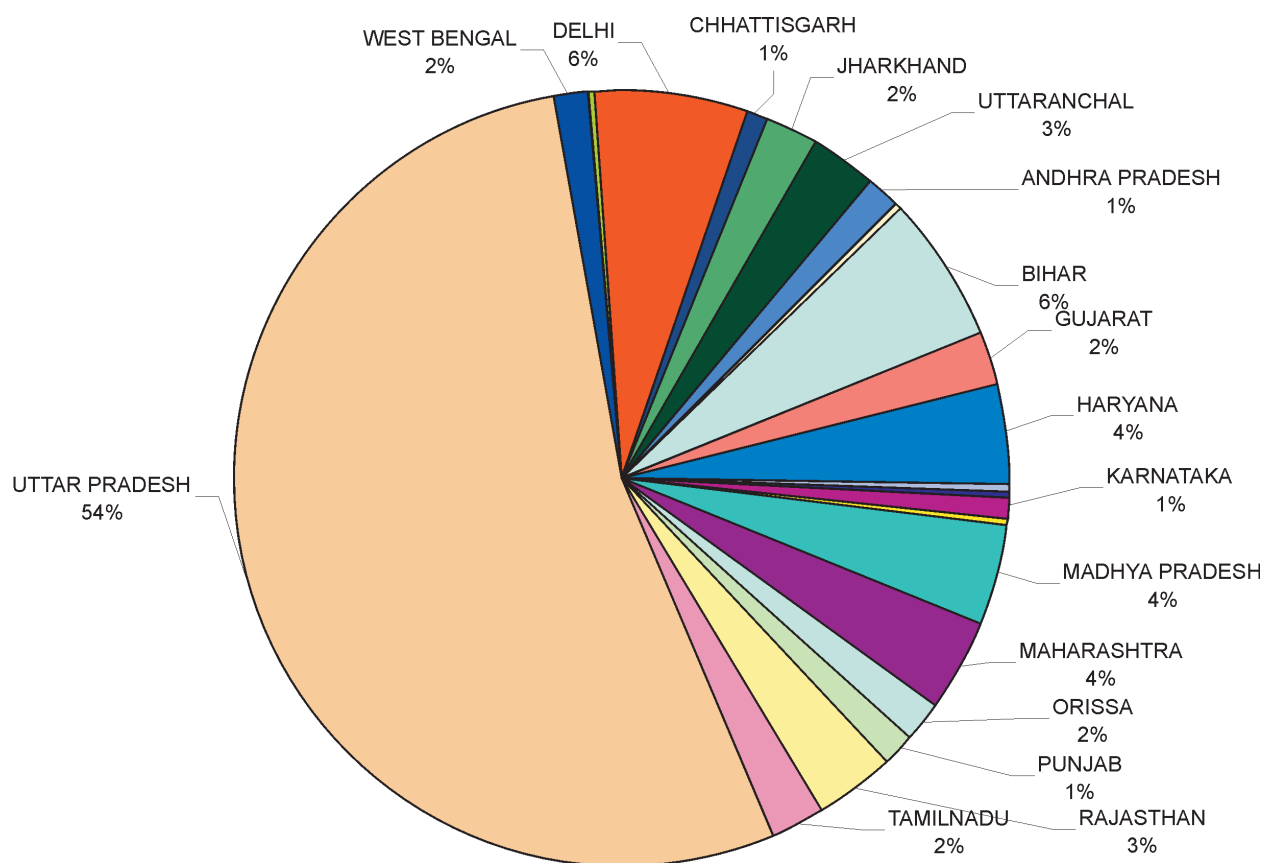
For Details see Annexure-12



Cases dismissed in limini during the year 2003-2004 States/UTs with a dismissal rate of more than 1%

For Details see Annexure-12

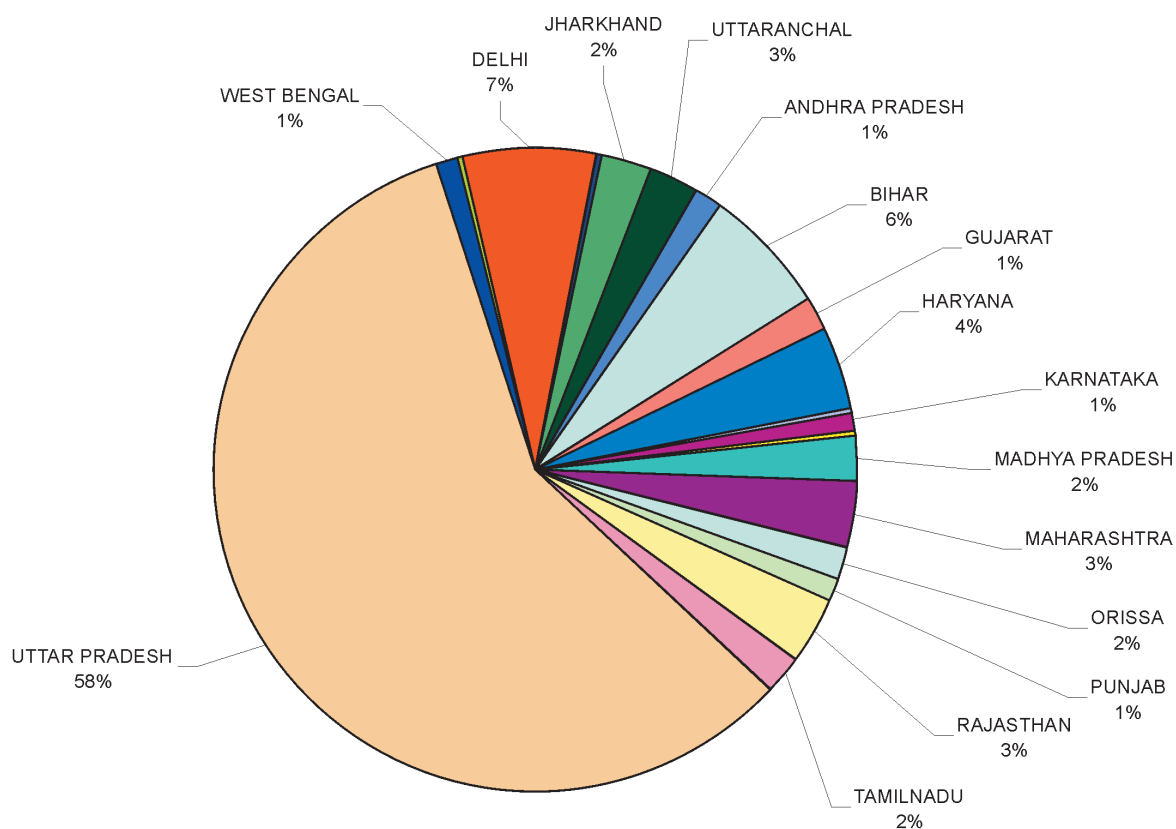
Total Cases-35300



Cases Disposed of with directions during the year 2003-2004 States/UTs with a dismissal rate of more than 1%

For Details see Annexure-12

Total Cases-13415



Nature and Categorisation of the cases Disposed of by the Commission During the year 2003-2004

For Details see Annexure-I3-a,b,c

Total Cases-8620

