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National Human Rights Commission

ANNUAL REPORT 2002-2003

National Human Rights Commission

ANNUAL REPORT 2002-2003



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Preface

A decade has passed since the National Human Rights Commission was established on 12 October 1993. This is the tenth annual report of the Commission.

It seeks to carry forward the narrative of the Commission's efforts to fulfil the mandate conferred on it by the Protection of Human Rights Act, 1993, the objective of which was to ensure the 'better protection' of human rights in the country. The present report contains a retrospective look at the past decade and then focuses, in detail, on the year 2002-2003.

By its very nature the report is subjective since it is being written by the Commission itself.

The objective assessment of the Commission's endeavours must come from the people of India, whom it seeks to serve in all of their rich diversity and varying circumstances. Not unexpectedly, given the seriousness of the issues that the Commission has faced and the variety of expectations concerning it, diverse views have been expressed on the worth of the Commission's efforts.

This is as it should be, particularly in a democracy as vibrant as that of our Republic. But one fact does emerge clearly. An institution that was unknown ten years ago is now very much part of the life of the nation and, increasingly, of consequence to the quality of its governance.

Each day, hundreds of our compatriots seek the intervention of the Commission for the redressal of their grievances, stemming from what they perceive to be the violation of their human rights. They belong to all parts of India and to all of its

communities. Within the past ten years, there can be no doubt that the awareness of the rights guaranteed by the Constitution, and included in the international instruments to which India is a State party, has increased dramatically.

This has not been unrelated to the efforts of the Commission to spread the message of human rights throughout the country and to promote a culture of such rights.

Indeed, and perhaps ironically, even the sharpest critics of the Commission often speak of it as if it has been in existence since the founding of the Republic and accuse the Commission of being unresponsive to human rights violations that occurred long before it was even established.

Such critics are entitled to their views, but they appear to be mis-informed about the provisions of the Protection of Human Rights Act, 1993 which expressly preclude the Commission from inquiring into any matter "which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force" or to inquire into any matter "after the expiry of one year from the date on which the act constituting the violation of human rights is alleged to have been committed." They also appear to be unaware that the Commission sought an amendment to these provisions of the Act, along with others, over three years ago, but that its recommendations in this respect are yet to be acted upon.

Be that as it may, the 3,75,758 cases that the Commission has registered in the past decade indicate emphatically that the people of India are increasingly aware of their rights, and that they want the Commission to intervene to have their rights respected and protected.

In that sense, it can with reason be asserted that the Commission has contributed to a deepening of the meaning of democracy in the country. Free and fair elections are central to the concept. But democracy does not stop with electoral triumph. It exists to ensure the rights of the people of the country, in all of their diversity and varying aspirations. Those rights are guaranteed by independent institutions, functioning without fear or favour.

In such a context, the rule of law is not a luxury, nor are justice and the protection of human rights incidental issues. They are the heart and soul of the democratic enterprise.

They are also essential to the creation of a State at peace with itself and at peace with the world. For without justice and respect for human rights, there can be no lasting peace, nor can a democracy be true to its intrinsic principles.

While this report was under preparation, in a speech delivered in Chandigarh on 29 September 2003, the President of India, Dr. A.P.J. Abdul Kalam, spoke with great wisdom on the theme 'Justice & Human Rights for National Development.' He stated:

"Our individual and localized interests have to be harmonized within the larger pluralistic order so as to give primacy to human rights For a peaceful human life, law and justice have to assist. If justice fails to protect human rights, the nation fails."

It is precisely this concern, that justice and respect for human rights must march hand-in-hand for the greater good of the country, that has illumined the path of the Commission over the past decade, including during the year 2002-2003.

It has also been this concern that has motivated the Commission to intervene, even while this report was being finalized, in respect of the human rights situation in Gujarat and to file, inter alia, a Special Leave Petition before the Supreme Court on 31 July 2003, under Article 136 of the Constitution, with the prayer that the Apex Court set aside the judgement of the Trial Court in the Best Bakery Case, issue directions for further investigation by an independent agency and order re-trial of the case in a competent court located outside the State of Gujarat. Stating that the concept of a fair trial was a constitutional imperative and that, when a criminal goes unpunished, society suffers and the criminal is encouraged, the Special Leave Petition also expressed the view that it was imperative in the interests of justice for the Hon'ble Supreme Court, in exercise of its powers under Article 142 of the Constitution, to lay down guidelines and directions in relation to protection of witnesses and victims of crime in criminal trials which can be adhered to both by the prosecuting and law enforcement agencies as well as by the subordinate Judiciary. This was essential to enhance the efficacy of the criminal justice delivery system.

The same concern for justice has driven the Commission consistently to insist that those responsible for human rights violations, anywhere in the country, must be held accountable, individually, for their acts.

Individual accountability is essential for another reason: only when it is clear that no one is above the law, will those who may be inclined to commit serious crimes and human rights violations be deterred from doing so.

Thus, peace within a pluralistic society, like peace within the global community, rests on the pillars of justice and individual accountability.

In such a society, a central purpose of good governance must be the defence of human rights, and fundamentalism of every hue and colour must be guarded against as inimical to human rights and to the true interests of civil society.

The concern for justice has also underwritten the views of the Commission on the vexed issue of terrorism. The Commission is in no doubt that the State has the unquestionable right, and indeed the duty, to combat and triumph over terrorism. The Commission is of the view, however, that those in authority must take the greatest care to ensure that counter-terrorism measures do not mutate into measures that cloak, or justify, the violation of human rights, or corrode the sacred trust of democratic government from within.

The Commission is acutely aware of the complexity of protecting human rights in the new international climate prevailing since 11 September 2001 and the adoption of Security Council resolution 1373 of 28 September 2001, which made it obligatory for States to take a number of specific measures, and to cooperate, in the fight against terrorism. The Commission has noted, however, that the Security Council has since adopted resolution 1456 of 20 January 2003, to which is attached a Declaration on how this fight must be conducted. That Declaration, *inter alia*, asserts:

"States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international, in particular international human rights, refugee, and humanitarian law."

As in the past, the themes of justice and human dignity run like a seamless thread through the Commission's efforts, rendering indivisible its work for civil and political rights, on the one hand, and economic, social and cultural rights, on the other.

On all of these matters, the views and actions of the Commission are recounted in detail in the chapters that follow. Those chapters deal, *inter alia*, with the range of civil liberties, including the protection of human rights in areas affected by terrorism and insurgency; custodial and 'encounter deaths'; systemic reforms of the police, prisons, and criminal justice system; they deal with the laws and international instruments relevant to the protection of human rights; the right to health; the rights of women and children, including the grave question of trafficking; the rights of vulnerable sections of society, particularly Dalits and Adivasis; the rights of those displaced by mega-projects and those exploited by child and bonded labour; the rights of the disabled and the need for a new

international convention to reinforce respect for those rights; the effort to generate human rights awareness and literacy, to undertake research projects and programmes; and to encourage the efforts of non-governmental organizations, the essential partners of the Commission. In addition, the report deals with the efforts of the Commission to ensure appropriate action on the complaints addressed to it, summaries being provided of some of the principal cases handled during the year under review.

In his speech in Chandigarh on 29 September 2003 cited earlier in this Preface, the President also observed:

"It is necessary to work towards a Unity of Minds. It is the citizen's responsibility to do everything possible to protect the rights of every individual, without stamping out their individual characteristics and basic identity."

The Commission is deeply appreciative of this fervent call by the President to respect human rights. It is indeed the responsibility of all citizens, and the constitutional duty of the Central and State Governments, to honour this call.

The Protection of Human Rights Act, 1993 is premised on the mutually reinforcing character of the efforts that are to be made by the Commission and by the Governments, both at the Centre and in the States. A 'Unity of Minds' is indeed required to ensure the better protection of human rights in the country.

It is with this in mind that the Commission dedicates this annual report to the people of India, and submits it to the Central Government to place before each House of Parliament, in accordance with section 20 of the Act.

Sd/-
(A.S. Anand)
Chairperson

Sd/-
(Sujata V. Manohar)
Member

Sd/-
(Virendra Dayal)
Member

Sd/-
(Y. Bhaskar Rao)
Member

Sd/-
(R.S. Kalha)
Member

New Delhi
14 November 2003

Introduction

CHAPTER 1

1.1 This is the tenth annual report of the National Human Rights Commission. It covers the period 1 April 2002 to 31 March 2003.

1.2 The ninth such report, which covers the period 1 April 2001 to 31 March 2002, has not been placed before Parliament as of the time of writing the present report, even though that report was sent to the Central Government on 3 July 2002. The delay in the tabling of the ninth report, together with the required Memorandum of Action Taken, has resulted in a corresponding delay in releasing its contents to the public. In the process, both the elected representatives of the people of India and the people of India themselves have, once again, been denied timely and comprehensive information on the work and concerns of the Commission. The delay has also meant that the present report has been written without Parliament, the public and this Commission being informed of the action, if any, taken on the observations and recommendations contained in the preceding report.

1.3 The eighth annual report of the Commission, for the period 1 April 2000 to 31 March 2001, was submitted to the Central Government on 31 December 2001. It was tabled in both Houses of Parliament in December 2002, together with a Memorandum of Action Taken, in accordance with the procedure envisaged under Section 20 (2) of the Protection of Human Rights Act, 1993. As a result, the Commission was able to release that report to the public only in December 2002, a full year after it was submitted.

1.4 Section 3(2) of the Protection of Human Rights Act, 1993 states that:

"The Commission shall consist of :-

- (a) a Chairperson who has been a Chief Justice of the Supreme Court;
- (b) one Member who is, or has been, a Judge of the Supreme Court;
- (c) one Member who is, or has been, the Chief Justice of a High Court;
- (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights."

Section 3(3) of the Act adds that:

"The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12."

1.5 While Sections 4, 5 & 6 of the Act proceed to spell out the detailed procedures to be followed in respect of the appointment, removal and terms of office of the Chairperson and Members who constitute the Commission under section 3(2) of the Act, no such details are contained in the Act in respect of those who are "deemed to be Members of the Commission" under the provisions of Section 3(3) of the Act; their methods of appointment, removal and terms of office being determined by the statutes that govern the respective Commissions of which they serve as Chairpersons.

1.6 In the course of the year under review, and in accordance with Section 6(1) of the Act, the Chairperson of the Commission, Justice J.S. Verma, completed his term of office on 17 January 2003, upon attaining the age of seventy years. He was succeeded by Dr. Justice A.S. Anand, who assumed charge as Chairperson of the Commission on 17 February 2003. Dr. Justice A.S. Anand had served as Chief Justice of the Supreme Court of India from 10 October 1998 to 1 November 2001.

1.7 Earlier, Dr. Justice K. Ramaswamy had completed his term of office on 12 July 2002, also having attained the age of seventy years. As of 31 March 2003, the post vacated by him remained vacant, as did that which had been held by Shri Sudarshan Agarwal, whose term of office as a Member had similarly come to a close on 18 June 2001. Among the other Members serving

and appointed under the provisions of Sections 3(2) and 4 of the Act, Justice Smt. Sujata V. Manohar and Shri Virendra Dayal continued in office throughout the period under review.

1.8 As regards those who are "deemed to be Members of the Commission" under the provisions of Section 3(3) of the Act, Dr. Bizay Sonkar Shastri and Dr. Poornima Advani continued in office as the Chairpersons, respectively, of the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women. However, Justice Shri Mohammed Shamim, Chairperson of the National Commission for Minorities, completed his term of office on 23 January 2003 and was succeeded by Dr. Tarlochan Singh, who assumed charge of that office on 10 February 2003.

1.9 Shri P.C. Sen remained Secretary-General and Chief Executive Officer of the Commission during the period under review, with Shri Y.N. Srivastava continuing to serve as Director-General (Investigation). Shri S.C. Verma, Registrar (Law) completed his term with the Commission on 15 November 2002.

Ten years of the Commission in retrospect

CHAPTER 2

2.1 On 12 October 2002, the Commission completed nine years of its existence and entered the tenth. This report, therefore, provides an opportune occasion to reflect, briefly, on the evolution of the Commission and its principal concerns over the past decade.

A] Working of the Statute

2.2 There was considerable skepticism initially, not least among NGOs, human rights activists and others, as to whether the Statute of the Commission was strong and unambiguous enough to ensure the "better protection" of human rights in the country, which was the avowed purpose of the Protection of Human Rights Act, 1993.

2.3 The Commission, for its own part, from the very first year of its existence, felt the need to propose amendments to that Act in order to ensure that its provisions would help, and not inhibit, or lend themselves to inhibiting, the "better protection" of human rights in the country. By the sixth year of its existence, in the light of the experience gained, the Commission felt constrained to request a former Chief Justice of India, Justice Shri A.M. Ahmadi, to head a high-level Advisory Committee to make a comprehensive assessment of the need for structural changes and amendments to the Act. The advice of that Advisory Committee was carefully considered by the Commission in February 2000 and its own proposals for amendments to the Act were transmitted to the Central Government in March 2000. Those proposals were annexed in full

to the Commission's annual report for 1999-2000 and highlighted again in its annual report for 2001-2002. It remains a matter of regret to the Commission that, despite the passage of considerable time, the proposals are still pending consideration as, in the words of the Government, they are "very sensitive and have far-reaching consequences."

2.4 In the meantime and over the years, it has become necessary for the Commission to build on such strengths as its Statute contains, and to construe its other provisions in such ways as are most compatible with the high purposes of the Objects and Reasons of the Act. In proceeding in this manner, the Commission has been guided by a well-established principle relating to the wording of Statutes, namely, that their texts must not lend themselves to interpretations that defeat the very intention of the legislation in question, or lead to unreasonable and untenable consequences. Illustrations of the efforts of the Commission in this respect are recounted, in particular, in its annual report for 2001-2002.

2.5 Of key concern to the Commission has been the need to maintain and strengthen its independence and functional autonomy, which are essential characteristics of a National Institution constituted and working in accordance with the "Principles relating to the status of National Institutions" (the "Paris Principles") that were, inter alia, endorsed by the World Conference on Human Rights held in Vienna in June 1993 and by the General Assembly of the United Nations in its resolution 48/134 of 20 December 1993.

2.6 Central to the independence of the Commission, as experience has shown, have been the provisions of the Statute relating to the criteria to be observed in the selection of its Chairman and four Members who constitute the Commission under Section 3(2) of the Protection of Human Rights Act, 1993; the method of their appointment (Section 4 of the Act); removal (Section 5); and terms of office (Section 6). As observed in Chapter I, however, these provisions do not apply to the Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes, and the National Commission for Women, who are "deemed to be Members of the Commission" under the terms of Section 3(3) of the Act, their methods of appointment, removal and terms of office being governed by the statutes and rules of the respective Commissions of which they are the Chairpersons. It is for this reason that Parliament, in its wisdom, limited the role of the "deemed Members" to the functions specified in section 12(b) to (j) only. No other role was assigned to them under the Act.

2.7 Of great value to the reach and strength of the Commission has been the range of functions assigned to it under Section 12 of the Act. This broad mandate, too, has confirmed the reputation of the Commission as a National Institution working in accordance with the "Paris Principles." Of particular consequence to the Commission has been the capacity conferred on it, under Section 12(b) of the Act, to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court, a provision that has been invoked repeatedly over the years. Of special importance, too, has been the provision contained in Section 18(2) of Chapter IV of the Act relating to Procedure, which enables the Commission, upon the completion of an inquiry held under this Act, to "approach the Supreme Court or the High Court concerned for such directions, orders or writs as that court may deem necessary." That provision, too, has been used to good effect over the years and has helped to define the unique character and capabilities of the Commission.

2.8 Despite these evident strengths, the past decade has also made clear - both to the Commission and perceptive observers of its work - the weaknesses and lacunae of the Protection of Human Rights Act, 1993. It is these weaknesses that the Commission has sought to have rectified, preferably along the lines of the recommendations that it has already made for the amendment of its Statute, which are recounted in detail in earlier annual reports. Principal among these are:

- The definition of armed forces (section 2.1): The Commission has proposed that the definition should include only the "naval, military and air force" and exclude the para-military forces.
- The definition of "International Covenants" (section 2.1(f)): The Commission has proposed that the definition should include not only the 1966 International Covenant on Civil and Political Rights and 1966 International Covenant on Economic, Social and Cultural Rights, but also "any other Covenant or Convention which has been, or may hereafter be, adopted by the General Assembly of the United Nations."
- The procedures to be followed "with respect to the armed forces" (section 19(1) and 19(2) in particular) which have, in the Commission's view, resulted in instances of a lack of accountability and, indeed, of opacity in dealing with allegations of human rights violations.

- The wording of section 20(2), which has resulted in delays in tabling the annual reports before Parliament and, consequently, in making them available to the public.
- The wording of section 36(1) which can be used to block the "better protection" of human rights in the country and which should be amended to give the National Human Rights Commission an over-arching ability to oversee issues of human rights violations and their remedies.
- The need to give the National Human Rights Commission certain powers of judicial superintendence, and powers similar to those under Article 136 of the Constitution, in order to prevent the adoption of erroneous positions in respect of the violation of human rights, or the taking of actions by a variety of Commissions in the country in ways that are contrary to established principles of human rights law and jurisprudence.
- The need to modify the provisions of section 36(2) in the interests of justice where, for any reason, the National Commission or a State Commission is satisfied, for reasons that should be recorded, that there are good and sufficient reasons for taking cognizance of a matter after the expiry of one year.
- The Commission is also of the view that the present section 37 of the Act should be omitted. Instead, it has proposed the inclusion of a provision similar to Article 139A of the Constitution, so that the National Human Rights Commission may be enabled, in appropriate cases, to establish uniformity in respect of the handling of cases that raise similar issues.

B] Handling of complaints

2.9 A clear indication of the trust reposed in the Commission by the people of the country - and an equally clear indication of their yearning for a mechanism to redress their human rights grievances - is to be found in the number of complaints addressed to the Commission over the years.

2.10 This number has increased exponentially. By way of illustration, in the first six months of the Commission's existence, October 1993-31 March 1994, the Commission registered 496 cases. This number grew to 6,987 in 1994-95; 10,195 in 1995-96; 20,514 in 1996-97; 36,791 in 1997-98; 40,724 in 1998-99;

50,634 in 1999-2000; 71,555 in 2000-01; and 69,083 in 2001-2002. In the current year, the number of such cases was 68,779, indicating that a 'plateau' has been reached and that the growing number of State Commissions are also increasingly receiving, and attending to, complaints.

2.11 Over the period October 1993-31 March 2003, therefore, the Commission has registered a total of 3,75,758 cases, of which 3,65,995 had been taken up for consideration by the latter date. By any yardstick, this makes the caseload of the Commission exceedingly heavy, and far greater than that of any other National Institution for the Promotion and Protection of Human Rights anywhere else in the world, or any other National Commission having a statutory basis in this country.

2.12 Of the 3,38,111 cases disposed of, 1,69,459 (50.12%) have been dismissed in limini. In addition, 77,400 cases (22.89%) have been disposed of with specific directions after the initial examination of the complaint by the Commission. The balance of 91,252 cases (26.99%) were concluded after considering the reports received following the issuance of notice by the Commission and such subsequent inquiries or investigations that were necessary. The cases included a large number of instances in which the grievances of the complainants were redressed. In respect of many of these cases, the Commission considered it necessary to give detailed directions. These directions included, in 559 instances, the payment of "interim relief" under Section 18(3) of the Act to the victims of human rights violations or to their family members; they also included, in 295 cases, directions for the initiation of departmental proceedings or the prosecution of public servants responsible for the violation of human rights. In various instances, specific measures have been recommended for the remedying of the wrongs committed; in yet other instances, "guidelines" have been issued to regulate the conduct of public servants in respect of the manner in which they must view and handle matters relating, for instance, to deaths in custody, "encounter" deaths, arrest and detention, the use of polygraph tests, the conduct and videography of post-mortem examinations, etc.

2.13 It is important to underline that the complaints received by the Commission have come to it from all segments of society, from all communities, including members of the armed forces, and from all parts of the country, including areas affected by terrorism, insurgency and inter-communal tension. In attending to them, the Commission has, in a sense, played a healing, therapeutic role: holding out the hope and prospect of justice and fair play even to those who have felt most vulnerable and alienated.

2.14 The Commission has constantly needed to monitor and improve the handling of its immense case-load. As early as 1997-98, a pro-bono management study was undertaken to examine how best it could function and a number of significant steps were set in motion to ensure better management and productivity. These have included:

- computerization of the entire case-load;
- issuance of "practice directions" on a wide variety of matters;
- 'fast-tracking' of certain categories of complaints;
- 'clubbing' together of similar complaints for procedural purposes;
- appointment of 'special rapporteurs' and 'special representatives' of exceptional calibre to assist the Commission;
- establishing of 'human rights cells', with the cooperation of the State Governments, in the Offices of the Directors-General of Police;
- establishing of Core Groups of experts on selected subjects, constituted from among eminent persons dealing with those subjects;
- specialized training of the staff of the Commission and of others, including representatives of NGOs, associated with the work of the Commission.

2.15 For all of the considerable efforts made, the Commission cannot say that it is satisfied with its handling of the complaints before it. Delays can and do occur at various stages of the processing of complaints and it will be essential constantly to review and seek improvements to the quality and working methods employed by the Commission. It will also help greatly if Human Rights Commissions of true calibre were established, and then appropriately supported in all of the States, and if the Human Rights Courts envisaged under section 30 of the Act were indeed set-up along the lines foreseen and if matters relating to their competence and jurisdiction were properly and definitively clarified.

C] Positions taken by the Commission on major human rights issues

2.16 A seamless thread connects the principal concerns of the Commission, diverse and varied though these may appear to be. That is the thread of human

dignity, the defence of which is at the core of the Commission's vocation and at the heart of the Constitution of our Republic.

2.17 In the paragraphs that follow, an attempt is made to provide a summary of the major positions and actions that the Commission has taken in respect of these concerns.

1) Terrorism & Human Rights

2.18 The Commission has repeatedly and unequivocally condemned all acts of terrorism, and those who perpetrate such acts, as deeply hostile to human rights, including the most fundamental of all rights, the right to life itself. The Commission has therefore focused on the grave challenge posed by such acts with great care, enunciating its position on the principles that should guide the country in dealing with this menace.

2.19 While the Commission is convinced that the battle against terrorism must be fought boldly and won, it has taken the position that the Constitution of our country has, as its core values, both the defence of national integrity and of individual dignity; these were not incompatible as objectives but entirely consistent with each other; that there was a need to balance the two; and that any law or measures devised to combat terrorism had to be in harmony with the Constitution, the international treaties to which India was a party, and respectful of the principles of necessity and proportionality.

2.20 The position of the Commission has found expression, over the years, inter alia, in a letter that was addressed by its Chairperson to all Members of Parliament on 20 February 1995, urging that the Terrorist & Disruptive Activities (Prevention) Act, 1987 be not renewed. It was subsequently expressed in detail in Opinions that the Commission recorded 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. More recently, the position of the Commission has been set out comprehensively in a statement of 21 February 2003. All of these texts are available on the web-site of the Commission (www.nhrc.nic.in).

2.21 The Commission has been especially concerned that the rights of the victims of terrorism must be protected and that every possible assistance should be accorded to them by the State, whether at the level of the Central

Government or the competent State Government. Since 1995-96, the Commission has been continuously seized of the problems facing some 300,000 Kashmiri Pandits who have been compelled to leave the Valley. The Commission has made, and pursued, a series of far-reaching recommendations to assist them in practical ways. It has also monitored the situation, inter alia, in the North-Eastern States and in areas affected by "naxalite" activity, making observations and recommendations as the need arose.

2) Guidelines in respect of Custodial deaths/rapes, Post-Mortem examinations, "Encounters", and other related issues

2.22 As early as 14 December 1993, the Commission instructed all Chief Secretaries to ensure that all cases of custodial death and rape are reported to it within twenty-four hours of occurrence, failing which an adverse inference would be drawn by the Commission. On 10 August 1995, all Chief Ministers were requested to ensure that all post-mortem examinations of deaths in custody be videographed. On 27 March 1997, Chief Ministers were additionally requested to adopt a Model Autopsy Form, prepared by the Commission, and to use for this purpose. In all, over 5,500 cases of custodial death have been reported to the Commission since it was established. These cases have been meticulously reviewed in the Commission, with the help of its Investigation Division, and appropriate orders passed in respect of them.

2.23 The issue of "encounters" was the subject of detailed hearings by the Commission in 1996-97, comprehensive guidelines being sent to Chief Ministers on 27 March 1997 in respect of the manner in which such "encounters" should be investigated and reported upon.

2.24 Guidelines were also issued in respect of certain other practices having a bearing on human rights. For instance, on 11 January 2000, guidelines were issued in regard to the use of polygraph tests, and on 22 November 2000, Chief Ministers were sent a letter providing detailed guidelines on the subject of arrest and detention.

2.25 The need for India to accede to the 1984 Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment was first raised by the Commission in 1994-95. To deal with all of the arguments and objections that had been raised in respect of this matter, the Commission

presented a comprehensive memorandum to the Prime Minister on this subject in April 1997. That analysis contributed in large measure to India signing the Convention on 14 October 1997. Ratification, however, is still awaited, despite the repeated urgings of the Commission.

3) Police, Prisons and the Administration of Criminal Justice

2.26 The issue of police reform was first raised by the Commission in 1995-96. The Commission urged the Government to implement key recommendations contained in the Second Report of the Police Reforms Commission which dated back to 1979 and dealt, inter alia, with the need to insulate the investigative work of the police from political and other "extraneous" influences. Subsequently, detailed submissions were made to the Supreme Court on this matter in the case Prakash Singh vs. Union of India. The needed reforms, however, remain elusive and the country has continued to pay an unconscionable price as a result. Indeed, the Commission has recently been constrained to revert to this matter in a different context: its Proceedings of 1 April and 31 May 2002 in respect of the situation in Gujarat deal at some length with the imperative need to proceed expeditiously with police reform and the grave consequences that can and have resulted - in more than one State - from a failure to act on this subject.

2.27 The need to re-write the Indian Prisons Act, 1894 was initially raised by the Commission in 1994-95 and has been pursued ever since, progress to alter their Acts and Manuals along contemporary lines having recently been made in certain States. In addition, the Commission has made continuous efforts to address issues such as over-crowding in jails, the lack of sanitation, delays in trial, the health of prisoners, the payment of wages, the remission of sentences and the release of prisoners sentenced to life imprisonment.

4) The Three "Unfreedoms" - Hunger, Illiteracy, Early Death: Striving for Economic and Social Rights

2.28 India is a party to the 1966 International Covenant on Economic, Social and Cultural Rights which specifically recognizes the "fundamental right of everyone to be free from hunger"; the "right of everyone to education", asserting that "primary education shall be compulsory and free to all"; and the "right of everyone to the highest attainable standard of physical and mental health."

The Commission has construed these requirements to mean that the State has an obligation to ensure that these rights are respected. It has taken the view that, in the Indian context, the provisions of Article 21 of the Constitution have been judicially interpreted to expand the meaning and scope of the right to life to include these rights and to make the latter guaranteed fundamental rights which are enforceable by virtue of the remedy provided under Article 32 of the Constitution.

The Commission has, therefore:

- Monitored, since 1997, the situation in the "KBK" districts of Orissa particularly in respect of the manner in which recurrent allegations of death by starvation have been handled both in that State and elsewhere in the country;
- Insisted, since 1994, on the right to free and compulsory education, not least as a means of ending child labour;
- Emphasized, in a Workshop organized in April 2000, the need to end iron and iodine deficiency and maternal anaemia, which were adversely affecting the right to health of women, and the mental and physical health of the unborn and infant child;
- Held a major Regional Consultation on Public Health and Human Rights in April 2001, dealing inter alia with access to health care, tobacco control and nutrition;
- Held a National Consultation on HIV/AIDS and Human Rights in November 2000.

2.29 On each of these matters, the recommendations of the Commission have been pursued with Government at the highest level.

5) The Rights of Women and Children

2.30 The Commission's efforts to protect and promote the rights of women and children have involved in a variety of inter-connected ways over the past decade. Thus:

- Issues relating to discrimination against women and children and gender-related violence were examined in some detail in the annual report for 1993-94.

- In the next year, the Commission concentrated on the need for the provision of free and compulsory primary education upto the age of 14 years and amendments to the Child Labour (Prohibition & Regulation) Act, 1986 as being essential to the ending of child labour in the country. This position was reiterated in succeeding years.
- The violation of the rights of women and children was next considered from the angle of health. The issue of maternal anaemia was first identified as a human rights issue in 1996-97. Thereafter, in 2000, as indicated earlier, came the workshops and consultations on Public Health and Human Rights, and Human Rights and HIV/AIDS, both of which had direct relevance to the rights of women and children.
- In 1997-98, the Commission began its efforts to amend the Child Marriage Restraint Act 1929, a matter on which it submitted detailed proposals to Government in the year 2000-2001.
- In 1998-99, the Commission recommended the prohibiting of employment of children below the age of 14 years by Government servants, a matter on which appropriate orders were subsequently issued by the Central and a number of State Governments.
- The issue of "discrimination" as a cause of human rights violations was examined in great detail in the Commission's annual report for 1999-2000, especially in relation to gender and caste-based discrimination. A series of recommendations were made on these issues, the performance of the country being measured against the Fundamental Rights and Directive Principles enshrined in the Constitution, the international instruments to which India was a State Party, the decisions of the Supreme Court (notably in Vishaka and Others vs. State of Rajasthan), and the laws of the land. For the first time, too, the Commission examined the proceedings and recommendations of certain Treaty Bodies before which India had presented its country reports and made its own recommendations concerning the steps that Government should take. Specifically, the Commission commented on matters relating to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and discrimination affecting dalits, an issue which had been considered by the Treaty Body constituted under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). In so doing,

the Commission also dealt with the issue of "multiple" forms of discrimination experienced by women, children and dalits.

- The succeeding annual report, covering the year 2000-2001, analysed the Human Rights dimensions of "Census 2001", commenting on the male:female sex-ratio in the country at large, and in certain States in particular where the ratio of females was especially low. The Commission called for policies, programmes and laws to reduce the disparities that continued to exist between males and females in respect of access to education, nutrition and health care. It also called for a concerted effort to end the misuse of sex-determination tests which had encouraged the evil practice of female foeticide, a gross violation of the right to life and the worst possible form of discrimination based on sex.
- During the year 2000-2001, the Commission appointed one of its Members to serve as its Focal Point on the Human Rights of Women, including matters relating to Trafficking, and a series of research and practical programmes were initiated thereafter.
- The issue of Sexual Harassment at the Workplace also began to receive the concentrated attention of the Commission.
- A number of other programmes and issues relating to women were pursued including, inter alia, the increase in the maintenance allowance for divorced women as provided for in section 125 CrPC; the protection of the anonymity of victims of rape; the condition of widows in Vrindavan; the nomenclature to be used in official documents for addressing the wives of persons who have died; the conditions of women in prisons, custodial homes and institutions for the mentally ill; the establishment of a cell within the Commission to examine complaints received in respect of women.
- As regards child labour, throughout the past decade, the Commission has sought to end the employment of children in hazardous industries. In particular, programmes have been pursued in the carpet belt of Uttar Pradesh, in the glass and bangle industries of Ferozabad, the lock industry of Aligarh and the silk industry of Karnataka. Of special importance has been the rigorous monitoring undertaken by Special Rapporteurs of the Commission, both in respect of child labour and bonded labour in a number of key States around the country. A constant

leitmotif of the Commission has been its insistence on the provision of free and compulsory education for children up to the age of 14 years, and the allocation of an appropriate level of resources to achieve this objective.

6) The Issue of "inclusiveness": Rights of Marginalized and Vulnerable Sections of Society

2.31 For the Commission, the thread of "human dignity" connects all rights, making them indivisible. Further, the protection of those rights rests on the pillars of equality under the law and the prohibition of discrimination, inter alia on grounds of religion, race, caste, sex or place of birth. From its earliest years, therefore, the Commission has:

- Taken note of the "ancient societal wrongs" that made some Indians less equal than others and the tenacity of long-standing attitudes that - based ostensibly on religion or custom - were inimical to a proper respect for the rights of all of the people of the country. The Commission made it its mission to combat the prejudices that had resulted in the persistence of such situations, despite the demands of the Constitution and a variety of laws.
- Placed special emphasis on securing the rights of Dalits and Adivasis, paying careful attention to the complaints that it received alleging acts of discrimination, "untouchability", violence against the human person, atrocities of various kinds, and high-handedness by public servants and others.
- Sought, in particular, to bring to an end two pernicious and demeaning practices which affected members of the Scheduled Castes and Scheduled Tribes in large measure: manual scavenging and bonded labour. The former issue was first taken up by the Commission in 1996-97. In recent years, it has been the matter of successive communications at the highest level from Chairpersons of the Commission to the Prime Minister of India and the Chief Ministers of States. The latter subject, the eradication of bonded labour, as mentioned earlier, has been a "core" concern of the Commission from its very first year; in addition, it is a responsibility especially entrusted to the Commission through a 1998 remit of the Supreme Court.

- Further, the views of the Commission in respect of discrimination based on "race", "caste" and "descent" were crystallized and authoritatively enunciated in the statement that was made on its behalf at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban between 31 August-8 September 2001. The Commission 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.
- Subsequent to the Durban Conference, the Commission set in train a number of measures to ensure appropriate follow-up to the decisions taken in respect of the issues discussed at that Conference.
- **Rights of Persons displaced by Mega Projects:** This has concerned the Commission continuously since 1996-97 when the plight of those dispossessed by the Bargi dam first came before the Commission. In the light of that situation, and other comparable situations, the Commission in 2000-2001 spelt out the need for a revised national policy to deal with greater sensitivity with this issue. Specifically, the Commission has urged that the resettlement and rehabilitation of persons displaced through the acquisition of land for such projects should be part of the provisions of the Land Acquisition Act itself, or be the subject of appropriate separate legislation, so that they are justiciable. The views of the Commission have been transmitted to the Cabinet.
- **Rights of the Disabled:** The Commission urged the adoption and proper implementation of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In 2000-2001, however, it considered it appropriate and necessary to propose a number

of detailed amendments to that Act. The Commission also intervened in numerous instances to assist individuals experiencing harassment, intolerance or discrimination on grounds of disabilities. In a notable case concluded in 2002 after a number of hearings, a medical student, who had lost his eyesight while still studying for an MBBS degree at the All India Institute of Medical Sciences (AIIMS), was enabled to complete his studies and take his final examination. A Core Group on Disability was appointed in 2001-2002, as also a Special Rapporteur to assist the Commission in the better fulfilment of its responsibilities.

- **Rights of the Elderly:** While, over the years, the Commission often acted upon complaints received from the elderly, its involvement in respect of this issue increased substantially in 2000 when it participated in the work of the National Council for Older Persons and commented on the Action Plan (2000-2005) prepared by the competent Ministry. From that year onward, the Commission has kept closely in touch with groups involved with the rights of older persons and has been transmitting suggestions to the Union Government as and when necessary.
- **The Rights of Denotified and Nomadic Tribes:** The Commission has, over the years, been seized of numerous complaints alleging harassment and brutality in the treatment accorded to members of the "denotified and nomadic tribes" by public servants, especially the police. A number of recommendations have been made by the Commission in this respect and efforts are also being made through training institutes to reorient the thinking of public servants in regard to problems faced by members of this group.
- **Rights of Minorities:** The most critical test of the "inclusiveness" of a society is the manner in which it protects the rights of its minorities. For the Commission, the Constitution, the laws of the land and the treaty obligations of the State have been the constant measure by which it has judged the conduct of those against whom allegations have been brought of the violation of the rights of members of minority communities of the country. In addition to handling numerous individual complaints containing allegations of discrimination or victimization, the Commission has accorded the highest priority to reminding public servants throughout the country - and particularly in States from which such complaints have come in large measure - that they must uphold the Constitution and laws of the land or face the censure of the Commission if they fail to discharge

their solemn responsibilities in this respect. The issue has therefore featured prominently in meetings that the Commission has called of Chief Secretaries and Director-Generals of Police and in visits undertaken by the Chairperson and others of the Commission to the States. On occasion, too, the Commission has added the weight of its own opinion to issues that have been taken up by the National Commission for Minorities and on which the latter has sought its support.

- **Rights of Persons affected by Natural Disasters:** There was a quantum leap in the Commission's construction of its responsibility to promote and protect economic and social rights when it chose to take suo motu cognisance of the situation arising from the devastating cyclone that struck Orissa in October 1999. The Commission considered it essential to intervene in order to ensure that the rights of the affected population - particularly the most vulnerable - were properly protected and that the most disadvantaged did not become the least assisted in the wake of the catastrophe. The positive consequences of the Commission's intervention in Orissa, set the precedent for similar action by the Commission in the aftermath of the catastrophic earthquake that devastated large areas of Gujarat in January 2001. Here again, the focus of the Commission on issues of good governance and on the needs of the most vulnerable sections of society helped ensure that an appropriate perspective - imbued with human rights values - was maintained in dispensing assistance to the affected population.

7) Review of Legislation and Treaties

2.32 In the course of the years, starting with its views on TADA, the Commission has commented on some twenty acts, bills or ordinances having human rights implications - related, inter alia, to anti-terrorism legislation, the special powers of the armed forces, certain provisions of the Indian Penal Code and the Criminal Procedure Code, the Police and Prisons Acts, the rights of women and children, bonded labour, the rights of Dalits and Adivasis, issues relating to health and education, refugees, and the right to information.

2.33 In a number of instances, notably in respect of torture, the rights of women and children, and refugees, the Commission has taken the initiative to call for an examination of the existing position and the taking of specific steps that would ensure the better protection of human rights.

8) Human Rights Education and the "Multiplier Effect" of Core Groups

2.34 All of the work of the Commission since its earliest days has, in a sense, aimed at creating a "culture of human rights" in the country. In the course of the past decade, however, the Commission has specifically taken a number of steps to further human rights education. These steps have, inter alia, included:

- Working with the Ministry of Human Resource Development, the National Council for Educational Research and Training (NCERT) and the National Council for Teacher Education (NCTE) to prepare materials for education at all levels of schooling;
- Working with the University Grants Commission (UGC) for the development of courses at the university level;
- Endowing a chair for Human Rights at the National Law School of India University in Bangalore;
- Encouraging courses on human rights in the training institutes for public servants, the police, para-military forces and army;
- Producing a handbook for judicial officers;
- Interacting with diverse groups, ranging from medical practitioners to Rotarians and the leadership of political parties, urging them to keep human rights issues on their respective agenda.
- Encouraging and supporting the efforts of non-governmental organizations, as their role is of central importance to the better protection of human rights in the country.

2.35 Critical to the out-reach of the Commission has been the extraordinary manner in which persons of the highest talent and repute have unhesitatingly rallied to the cause of human rights, readily participating in the "Core Groups" established by the Commission for issues relating to health, disabilities, cooperation and coordination with non-governmental organizations, and for legal advice. Together with the Special Rapporteurs and Special Representatives appointed by the Commission, they have provided a "multiplier effect" to the efforts of the Commission, giving to it a vast infusion of high ability and public support.

9) Summing up

2.36 From the foregoing, it will be seen that much has been endeavoured and achieved in the past ten years. Yet those who strive for the promotion and protection of human rights can never be satisfied with their efforts and, certainly, that postulate applies to the Commission. A year after it was established, the annual report of the Commission observed:

"The Commission cannot begin to assert that its efforts have transformed the human rights ethos in the country or that it has as yet adequately developed a capacity to defend the least powerful of the citizens of India. But it can assert that its efforts have begun to strengthen the hands of the just and the compassionate, of whom there are legion in this country, in all States and in all walks of life."

2.37 That statement remains substantially true even today. But in the course of the past decade, despite its inadequacies of which it is acutely aware, the Commission has - in the public estimation - evolved from being a body that was initially viewed with unconcealed skepticism to one that is widely viewed as an instrument of good governance, on which increasing reliance can and is being placed by the citizens of India to ensure the defence of their rights and the verities of the Constitution of their Republic.

2.38 In the chapters that follow, this Report will elaborate on the major efforts of the Commission over the past year in respect of many of themes that have been touched upon briefly in this chapter. It will commence that process by bringing up-to-date its proceedings and actions in respect of the human rights situation in the State of Gujarat, which continues to be a cause of concern to this Commission and to numerous others in this country who are keen to see that the Constitution and laws of the land are upheld and that justice is done to those whose rights have been violated.

Situation in Gujarat

CHAPTER 3

3.1 The preceding annual report of the Commission dealt in some detail with the human rights situation in Gujarat, beginning with the tragedy that occurred in Godhra on 27 February 2002 when the Sabarmati Express was attacked and set on fire, and the large-scale communal violence that subsequently ensued.

3.2 That report, inter alia, referred to the circumstances in which the Commission took suo-motu cognizance of the situation on 1 March 2002, its subsequent Proceedings of 6 March 2002, the visit of the high-level team of the Commission led by its then Chairperson to Gujarat between 19-22 March 2002, and the Proceedings of the Commission dated 1 April 2002 and 31 May 2002, both of which were annexed in full to that report given the importance of the issues that they considered.

3.3 It is a matter of some regret to the Commission that the principal recommendations and observations made by it in those Proceedings, particularly in paragraph 21 of the Proceedings of 1 April 2002 and paragraphs 19, 20, 27, 29 & 64 of the Proceedings of 31 May 2002, received an inadequate response from the Government of Gujarat. In consequence, it came as no surprise to the Commission that many of the grave misgivings that it expressed in those Proceedings subsequently proved to be well-founded. Sadly, therefore, the initial failure to protect human rights was compounded by the failure - at least thus far - to provide justice to those whose rights had been violated.

3.4 This being said, for reasons of brevity, the present report will not traverse

again the ground that has already been covered in the preceding report. This report will, instead, provide an account of the principal developments that have occurred since then. A narrative of these developments is provided below.

3.5 On 1 July 2002, the Commission noted that there were imminent plans to hold a series of Gaurav Yatras all over Gujarat from 4 July 2002 and that, in addition, Jagannath Rath Yatras were scheduled to be held on 12 July 2002 in over seventy locations in the State. Media reports and a report from the Commission's Special Rapporteur in Gujarat, Shri P.G.J. Nampoothiri, indicated that there was widespread apprehension, both within sections of the Administration and among members of the public, that this could re-ignite communal violence in the State.

3.6 The Commission, accordingly, in Proceedings recorded on 1 July 2002, asked the State Government to take due care - both at the political and at the administrative level - to prevent situations arising that could have the potential to endanger lives and property and lead to the violation of human rights. In this connection, the Commission also drew particular attention to its Proceedings of 31 May 2002, in which it underlined the unambiguous duty of the police and the magistracy to fulfil their statutory responsibilities under the laws of the land and in accordance with the circulars and guidelines already issued by the Central Government on matters relating to the promotion of communal harmony and the maintenance of law and order. The Commission observed that these laws and directives clearly laid down the manner in which the police and magistracy are expected to function. The Commission added that "any failure to discharge their responsibilities in accordance with those statutory provisions, circulars and guidelines would render the delinquent public servants personally liable and accountable for their conduct." The Commission concluded by observing that it remained "fundamentally important, in such circumstances, that those responsible for the promotion of communal harmony and the maintenance of law and order - whether in the political or administrative leadership - should discharge their duties in the present and future in accordance with the Constitution and the relevant statutory provisions, or be answerable for such acts of omission or commission that result in the violation of the law and the rights to life, liberty, equality and dignity of their fellow human beings."

3.7 Following consideration of the situation at the highest levels of the Central and State Governments, a decision was taken to postpone the Gaurav Yatras.

3.8 Throughout the period under review, the Commission continued to receive detailed reports from its Special Rapporteur in Gujarat, who monitored with great dedication the degree of compliance - or rather of non-compliance - of the Commission's recommendations by the Government of Gujarat, relating the realities on the ground to the relevant Proceedings of the Commission and the responses and reports of the State Government. In the course of performing his duties, Shri Nampoothiri extensively toured the districts of Kheda, Anand, Panchmahals, Vadodara and Sabarkantha, visiting some two dozen villages, in addition to several areas of Ahmedabad which had been severely affected by the violence that had occurred. In the process, he visited 22 relief camps which were providing temporary accommodation to those affected by the riots (these camps were officially closed on 30 June 2002, though a number of displaced persons are yet to be provided with permanent or adequate solutions to their problems). Shri Nampoothiri also held discussions as and when needed with representatives of non-governmental organizations providing succour and relief to the affected persons and intervened, on numerous occasions, with the competent public servants whose duty it was to maintain law and order, investigate and prosecute those responsible for the carnage and the violation of human rights and who, additionally, were responsible for the over-all conditions in the camps and the provision of appropriate compensation to the victims of the violence or to their next-of-kin.

3.9 As various aspects of the situation continued to disturb the Commission greatly, its then Chairperson, Justice Shri J.S. Verma, shortly before he relinquished office, considered it his duty to address a letter to the Prime Minister of India on 3 January 2003, setting out these concerns. The full text of that letter may be seen at Annexure 1.

3.10 In that letter, Justice Verma, after referring to the recommendations contained in the Commission's Proceedings of 1 April and 31 May 2002, went on to observe:

"..... with great respect, that if our country should fall short in rendering justice, promptly and effectively, to the victims, their families, dependants and other persons or groups connected with the victims, a serious travesty of the law will occur with potentially grave consequences, not only to those immediately affected, but to the reputation of our country and its institutions of governance, including the judiciary and the National Human Rights Commission."

The letter then stated:

"Regrettably, to date, in spite of the recommendations made by the Commission, not enough has been done to assure the victims, the country and the world at large, that the instruments of the State are proceeding with adequate integrity and diligence to remedy the wrongs that have occurred."

The letter added:

Contemporary human rights jurisprudence requires that the victims must have ready access to the legal system; that prompt and effective steps are taken to ensure that effective disciplinary, administrative, civil and criminal action is taken against those guilty of acts of omission or commission resulting in the violation of human rights; that reparation is provided, individually or collectively, to those who have suffered; that the reparation is proportionate to the gravity of the violations and damage that occurred, and that it include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The letter concluded with the following:

"I turn to you, Mr. Prime Minister, both as Head of Government and as a person with a deep and abiding understanding of the issues at stake, to express my anguish in respect of this matter as I prepare to relinquish office.

I should be deeply grateful if you could kindly monitor the situation and issue directives to the competent authorities, both at the State and Central levels, to ensure that justice is done along the lines outlined in this letter and set-out in greater detail in the earlier recommendations of the Commission. Your personal involvement in this essential effort would, I am sure, be deeply appreciated by my successor and colleagues in the Commission, no less than by myself. It would also accord, I am sure, with the wishes of all who have the best interests of our country at heart, whether within India or in the wider international community. I have no doubt, the number of such people in our country is overwhelming."

3.11 Following assumption of the office of Chairperson of the Commission by Dr. Justice A.S. Anand, the Commission continued its strenuous efforts to ensure that the purposes of justice would be met in Gujarat, both in terms of bringing to book those who had been responsible for the violation of human rights and in terms of providing appropriate levels of protection and compensation to the victims of violence. To this end, repeated consultations were held with the Commission's Special Rapporteur and others in a position to help and advise, and a number of practical proposals and measures were devised to assess and ameliorate the situation.

3.12 These measures and steps are being recounted in the present report, in the paragraphs that follow, even though they were taken after 31 March 2003, i.e. the completion of the year under review. They are being recorded in order to provide, readily, an up-to-date account of the actions of the Commission in respect of a situation that has continued to be of great concern to the Commission.

3.13 On 9 May 2003, the newly appointed Chief Secretary of Gujarat, accompanied by the Resident Commissioner of Gujarat based in New Delhi, called upon the Chairperson and Members of the Commission. In that meeting, the Commission raised the following issues with the Chief Secretary:

- (i) It was recalled that the Commission had urged, in its Proceedings of 1 April and 31 May 2002, that certain critical cases be entrusted to the CBI. These included the cases relating to the Godhra incident, the Chamanpura (Gulbarga Society) incident, the Naroda Patiya incident, the Best Bakery case in Vadodara, and the Sadarpura Case in Mehsana district. It was stated in the meeting that the CBI may be entrusted with the investigation of those cases where charge-sheets had not yet been filed in the Courts.
- (ii) It was noted that there was a conflict of opinion regarding relief measures. While the Government claimed that relief had been given to all riot-affected people, the affected people complained that there had been no proper disbursement of relief. The Commission stated that it would therefore be desirable to set-up a Grievance Redressal Authority, to be nominated by the National Human Rights Commission with assistance from the Government, to whom grievance can be made. This measure would instill confidence in the affected people.

- (iii) Regarding the rehabilitation of victims, it was stated that a survey may be got conducted, even jointly, by members nominated by the National Human Rights Commission and the State to find out who all have been rehabilitated, the rehabilitation package and the manner of their rehabilitation.
- (iv) It was stated that a survey be undertaken of the persons affected by the riots who are still living in camp-like conditions with a view to ascertaining the reasons for their not going back.
- (v) It was added that there was a requirement to identify the confidence-building measures which need to be taken in Gujarat and to ensure the setting-up of special courts to ensure fair trials.
- (vi) Details were sought about the restoration of tombs and holy places destroyed during the riots and details of any schemes framed for their restoration.

3.14 The Chief Secretary was requested to respond to these issues after consulting the competent authorities of the State. A letter dated 28 May 2003 was subsequently received from the Chief Secretary, along with a report. Finding that the issues raised in the discussion of 9 May 2003 were not addressed in this letter or its enclosure, which was nothing more than a summary of previous reports submitted by the State of Gujarat in response to the earlier Proceedings of the Commission dated 1 April and 31 May 2002, the Commission summoned the Resident Commissioner of Gujarat, stationed in New Delhi, for a further discussion on 3 June 2003. The latter then stated before the Commission that he had been advised by the Chief Secretary to inform the Commission that the report submitted by him on 28 May 2003 was not a response to the issues raised on 9 May 2003, but only an interim report.

3.15 Subsequently, a further letter dated 25 June 2003 was received from the Chief Secretary, together with three enclosures. The first enclosure was a note on 'relief and rehabilitation measures', the second was a single-page statement giving the number of First Information Reports that had been lodged, and numbers relating to the 'prosecution and progress of criminal cases;' while the third was a copy of a letter dated 9 June 2003 from the Chairman of the National Commission for Minorities which was unrelated to any of the issues raised by the National Human Rights Commission with the Chief Secretary but which expressed thanks for the arrangements made for the visit of the

National Commission for Minorities to Gujarat. The letter of the Chief Secretary, itself, reiterated the view that "the State Government strongly feels that there is no case to hand over to CBI as the criminal prosecution is already under way." The letter added, "the State Government is of the opinion that transfer of cases may delay the process of justice." Referring to the visit of the National Commission for Minorities to Gujarat, the Chief Secretary stated that he had "personally attended their programmes along with all senior officers of the State Government," that "a group of leaders of the minority community called on the Hon. Chief Minister and had cordial discussions" and that the "atmosphere had substantially improved as all activities, viz. social, economic and educational, are back to normal." The letter concluded with the statement, "It will be our constant endeavour to maintain harmony, peace and goodwill in Gujarat."

3.16 As the Commission did not consider that the letter of the Chief Secretary had adequately covered the various issues raised with him in the discussion held on 9 May 2003, the list of six points enumerated in paragraph 3.12 above, together with the minutes of the discussion held with the Resident Commissioner on 3 June 2003, were sent to the Chief Secretary seeking a fuller response.

3.17 In the meantime, parallel to these exchanges with the Chief Secretary and Resident Commissioner, and in the light of disturbing reports relating to developments in Gujarat, the Commission recorded the following in its Proceedings of 21 May 2003:

"The Commission is given to understand that some cases arising out of the Godhra and post-Godhra violence are now under trial in various courts. It also understands that the Justice Nanavati Commission of Inquiry is recording evidence of witnesses as per its terms of reference. The right to fair trial is a constitutional imperative. The fairness of a trial includes, necessarily, proper protection of the rights of the accused, as also the capacity of witnesses to come forth to make true and faithful statements in respect of matters within their knowledge without any fear or favour. Fair trial also envisages a fair deal to the victims of crime.

In the light of the earlier recommendations made by this Commission on 1 April and 31 May 2002, and being conscious of the critically important issues involved in this matter, the Commission would like to know from the Director-General of Police, Gujarat:

'whether any measures have been taken to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses who have to depose either in court or before the Commission of Inquiry and, if so, the nature of that protection to enable them to depose freely and fearlessly.'

The Director-General of Police shall send a report in this behalf to the Commission within two weeks."

3.18 A report dated 3 June 2003 was received from the Director-General of Police. It stated that a total of 2037 cases had been charge-sheeted in various criminal courts in the State. Responding to the specific query put to him, the Director General indicated that in the absence of any specific complaint from any witness/victim, it would not be possible for the State Police to accord protection to each and every witness/victim. He added that witnesses are free to approach police officers to seek protection and further submitted that prompt action had been taken to provide due protection to witnesses/victims when so requested in the following cases:

- (i) "Ahmedabad City Naroda Police Station CR No. 238/02 and Naroda Police Station CR No. 100/02. In these cases witness Nadeem Mohammad Ali Saiyed, r/o Jubapura, Ahmedabad City, had filed SCA No. 488/02 before the Hon. High Court of Gujarat for police protection. Accordingly, he has been provided with a Constable (in 2 shifts), with effect from 5.9.2002.
- (ii) During the visit of Hon. Justice Nanavati Commission to Banaskantha district on 30.4.2003, some Muslim victims of village Navasesan, taluka Deodar, had requested for police protection. From that day onwards, 7 Border Wing Police Jawans along with 2 Mounted Policemen had been deployed in that village, which arrangement has continued till date."

The Director General of Police then assured the Commission that

"..... all the Superintendents of Police and Commissioners of Police have been duly instructed to ensure that the protection is given immediately whenever any witness/victim requests the same or expresses apprehension to his safety."

3.19 The Commission took note of this response in its Proceedings dated 16 June 2003 and expressed the hope that witnesses/victims will appear before

the trial courts or the Commission of Inquiry, as the case may be, and make true and faithful statements in respect of matters within their knowledge without any fear or favour. The Commission added that should any effort be made to intimidate them or tamper with their evidence by any agency, the witnesses/victims should approach the Superintendent of Police of the concerned area with a complaint and seek protection. "In case of police inaction on their report," the Commission stated, "the witnesses/victims may bring the matter to the notice of the Special Rapporteur of NHRC, Shri Nampoothiri, who will take up the matter with DGP(Gujarat) and send intimation to the Commission." The Special Rapporteur was asked to apprise the witnesses/victims about the assurance of DGP(Gujarat) personally or through the concerned NGOs, the Commission also expressing the hope that the assurance would help in having fair trials conducted.

3.20 On 30 June 2003, however, the Commission noted in its Proceedings that all of the accused in the Best Bakery Case had been acquitted. It will be recalled that this was one of the five cases in respect of which the Commission had recommended investigation by the CBI, fourteen persons having been killed in the premises of the Best Bakery after it was set on fire during the communal violence that engulfed the State. Upon learning of the acquittals, the Commission immediately requested the Chief Secretary, Government of Gujarat, to forward to the Commission, within one week, a copy of the judgement of the Trial Court. The Commission additionally asked the Chief Secretary to inform it of what steps, if any, the Government of Gujarat was proposing to take against the order of acquittal.

3.21 Subsequently, "keeping in view the seriousness of the issues involved in the order of acquittal in the Best Bakery Case," the Commission considered it appropriate, "to immediately depute a team of the Commission to proceed to Vadodara to inspect the records of the case, examine the judgement and all other relevant materials and submit a report to the Commission." The team consisted of Shri Ajit Bharihoke, Registrar, NHRC, Shri Sudhir Chowdhary, DIG (Investigation), NHRC, and Shri P.G.J. Nampoothiri, Special Rapporteur, NHRC. The team was authorized to associate any local lawyer for assistance in consultation with the Special Rapporteur. The Hon'ble Acting Chief Justice of the Gujarat High Court, the Trial Court and the State Government were requested to extend all possible assistance and facilities to the team to carry out the mandate of the Commission, the team being asked to submit its report within one week.

3.22 Thereafter, on 6 July 2003, no reply having been received from the Chief Secretary of Gujarat in response to the Proceedings of 30 June 2003, the Commission observed that, for an effective enquiry, it was necessary to examine the charge-sheet filed u/s 173 Cr.P.C. in the Best Bakery Case and the complete record of the Trial Court including the judgement. The Trial Court was therefore requested to furnish a copy of the above-mentioned records to the NHRC team, which had been specially authorized in this behalf by the Commission u/s 13 of the Protection of Human Rights Act, 1993. The Director General of Police was also requested to extend necessary protection, security and all possible assistance to the team to carry out the mandate of the Commission.

3.23 The team was in Ahmedabad and Vadodara on 7 and 8 July 2003 respectively and brought back with it to New Delhi the relevant materials pertaining to the Best Bakery Case. Thereafter, in a meeting of the Commission on 11 July 2003, it was decided to request eminent lawyers to examine the entire record and to give their advice on the future course of action. On the same date, viz. 11 July 2003, one of the principal prosecution witnesses in the Best Bakery Case, Sheikh Zahira Bibi Habeebullah, members of whose family had died in the carnage in the Best Bakery, made a statement before the Commission after requesting an opportunity to do so. She said, inter alia, that under threat to her life and the life of remaining members of her family, she had resiled in the Trial Court from the earlier statement that she had made to the police. She also named certain persons who were responsible for her resiling from her earlier statement and sought the help of the Commission to re-open the Best Bakery Case. The entire statement of Sheikh Zahira has been placed on record by the Commission.

3.24 On 31 July 2003, in response to repeated requests from representatives of the print and electronic media regarding the action being taken by it in the Best Bakery Case, the Commission set out its position in the following words:

"Deeply concerned about the damage to the credibility of the criminal justice delivery system and negation of human rights of victims, the National Human Rights Commission, on consideration of the report of its team which was sent to Vadodara, has today filed a Special Leave Petition under Article 136 of the Constitution of India in the Supreme Court with a prayer to set aside the impugned judgement of the Trial Court in the Best Bakery case and sought directions for further investigation by an independent agency and retrial of the case in a competent court located outside the State of Gujarat.

The NHRC has, inter-alia, contended in the SLP which was filed on 31 July 2003, that:

- The concept of fair trial is a constitutional imperative and is explicitly recognized as such in the specific provisions of the Constitution including Articles 14, 19, 21, 22 and 39A of the Constitution as well as the various provisions of the Code of Criminal Procedure 1973 (Cr.P.C).
- The right to fair trial is also explicitly recognized as a human right in terms of Article 14 of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by India and which now forms part of the statutory legal regime explicitly recognized as such under Section 2(1)(d) of the Protection of Human Rights Act, 1993.
- Violation of a right to fair trial is not only a violation of a fundamental right under our Constitution but also violative of the internationally recognized human rights as spelt out in the ICCPR to which India is a party.
- Whenever a criminal goes unpunished, it is the society at large which suffers because the victims become demoralized and criminals encouraged. It therefore becomes the duty of the Court to use all its powers to unearth the truth and render justice so that the crime is punished.
- It is, therefore, imperative in the interests of justice for the Hon'ble Supreme Court, in exercise of its powers under Article 142 of the Constitution, to lay down guidelines and directions in relation to protection of witnesses and victims of crime in criminal trials which can be adhered to both by the prosecuting and law enforcement agencies as well as the subordinate judiciary. This is essential in order to enhance the efficacy of the criminal justice delivery system.
- The Commission has also filed a separate application (on 31 July 2003) under Section 406 Cr.P.C. before the Supreme Court for transfer of four other serious cases, namely, 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."

3.25 As these matters are now before the Hon'ble Supreme Court, it would be inappropriate for the Commission to comment any further on them in this Report.

3.26 It would, however, be appropriate to refer to the case of Bilkis Yakub Rasul, whom a team headed by its then Chairperson, Justice J.S. Verma, had met in the Iqbal Primary School Relief Camp in Godhra during the course of their visit to Gujarat from 19-22 March 2002. In the report of that visit, the Commission *inter alia* recorded:

"Bilkis, about 25 years, of Mora village in Morva (H. Taluka) said that she was raped by a group of persons at village Randikapura in Limkheda Taluka of District Dahod. The D.M. informed that her complaint was recorded by the Executive Magistrate in which she named 12 persons. The F.I.R. was also registered and transferred to Limkheda police station for further action. In the F.I.R. she had mentioned only three names. Additional names mentioned before the Executive Magistrate are being intimated to the S.P. Dahod."

3.27 On 29 April 2003, Bilkis approached the Commission again, addressing a petition to it, in which she recounted her ordeal in detail, and stated that she had "recently come to know that the police had told the court that the real accused persons could not be traced and that is why the case cannot go ahead." She added, "I have further come to learn that the Court had approved the stand of the Police. All this was done without informing me of the developments at any stage. The police have not arrested the culprits although I have very clearly given their names with particulars in my complaint." In her petition to the Commission, Bilkis requested the Commission to take up her case so that justice may be done; she also requested that adequate security be provided to her as she feared a threat to her life.

3.28 Pursuant to this petition, Shri P.G.J. Nampoothiri, Special Rapporteur of the Commission in Gujarat informed the Commission that Bilkis wished to pursue the legal remedies in her case and wanted to file a case in the Supreme Court of India. It was further reported by him that she did not have the means to pursue the legal remedies and that she sought the help of the Commission to provide her legal assistance for pursuing her case in the Supreme Court. The Commission accordingly advised Shri Nampoothiri to contact the former Secretary, Supreme Court Bar Association, Shri Ashok Arora, for his advice. The Commission also indicated that it could offer financial/legal assistance to Bilkis for pursuing legal remedies.

3.29 On 25 August 2003, a Writ Petition (Criminal) No. 118 of 2003 was filed by Bilkis Yakub Rasool in the Supreme Court against the State of Gujarat with

the following prayers:

- (i) To issue a writ, order, direction of an appropriate nature to quash and set-aside the order dated 25.3.2003 passed by Learned Judicial Magistrate Ist Class at Limkheda accepting the final report submitted by the police in relation to FIR No. 59/2002;
- (ii) To issue a writ of mandamus or a writ, order, direction of appropriate nature to quash and set-aside the final report submitted by the Gujarat police Limkheda in relation to FIR No. 59/2002 of the Learned Judicial Magistrate Ist class at Limkheda;
- (iii) To issue a writ of mandamus or a writ, order, direction of an appropriate nature to direct the Director, CBI to conduct an independent investigation into the mass gang-rape on women belonging to minority community as disclosed in FIR No. 59/2002;
- (iv) To pass appropriate directions against the State of Gujarat to take action against the police officers found guilty of abusing the power and for dereliction of duty and to grant appropriate compensation to the victims.

3.30 The aforesaid matter came up before the Supreme Court on 8 September 2003, when it directed that notices be issued to the respondents, namely the Secretary, Home Department, Government of Gujarat, Sachivalaya, Gandhinagar and the District Superintendent of Police, District Dahod, Gujarat.

Civil Liberties

CHAPTER 4

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

4.1 Throughout the year under review, Governments and civil society across the globe focused on ways of combating and triumphing over terrorism.

4.2 India was no exception. Its experience of this scourge, including cross-border terrorism, has been longer than that of other countries. Over the years, only too often, India has had to fight its battle alone.

4.3 In the course of the year 2002-2003, vicious acts of terrorism continued to be perpetrated in various parts of the country. Thus, 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.

4.4 In the face of such evil, 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.

4.5 The manner in which a State acts to exercise this right and to perform this duty can, however, have the most profound effect on the character of a society and the manner in which it treats issues of human rights and human dignity. Thus, the Supreme Court has observed in *DK Basu vs. State of West Bengal* 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."

4.6 Indeed, throughout the debate on this subject, both at the national and at the global level, the view has been insistently expressed by those who are concerned with the protection of human rights that the means adopted to defeat terrorism must be consistent with the rule of law, including international human rights law.

4.7 Given the global campaign to eliminate the practice and threat of terrorism, it would be useful, at this stage, to recall some of the major developments in respect of international human rights law, not least because of their relevance to our country.

4.8 There are now twelve international conventions relating to terrorism that have been adopted within the context of the United Nations. While these conventions thus far lack a clear and commonly - agreed definition of terrorism, a comprehensive draft convention is currently under consideration of the United Nations General Assembly and an effort is, inter alia, being made to fill this gap. The Commission commends the Government of India's efforts to secure agreement on such a convention. Further, even though terrorism has yet to be authoritatively defined in an international instrument, States have already agreed on some of its core elements.

4.9 Thus, the Declaration on Measures to Eliminate International Terrorism, adopted by the UN General Assembly on 9 December 1994 and annexed to its

resolution 49/60, states that terrorism includes:

'criminal acts intended or calculated to provoke a state of terror in the general public, and groups of persons or particular persons for political purposes.'

The Declaration goes on to assert categorically that all such acts

'are in any circumstances unjustifiable, whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious, or other nature may be invoked to justify them.'

4.10 The General Assembly has, in addition, passed a series of resolutions on the subject 'Human Rights & Terrorism,' the first of which was adopted on 20 December 1993 (A/RES/48/122). In these resolutions, the General Assembly has unequivocally condemned

'all acts, methods and practices of terrorism in all its forms and manifestations, whenever and by whomever committed, as activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity of States, destabilizing legitimately constituted governments, undermining pluralistic civil society and having adverse consequences on the economic and social development of States.'

The resolutions of the General Assembly, on 'Human Rights and Terrorism' have, in addition, consistently called upon States,

'in accordance with international standards of human rights, to take all necessary and effective measures to prevent, combat and eliminate terrorism.'

Resolutions in a similar vein have also been regularly adopted by the UN Commission on Human Rights.

4.11 A resolution of the United Nations General Assembly dealing specifically with the subject "Protection of human rights and fundamental freedoms while countering terrorism" was adopted for the first time on 18 December 2002 (A/RES/57/219). That resolution affirmed that

'States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.'

The resolution also

'Encourages States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of United Nations human rights treaty bodies.'

4.12 Those United Nations human rights treaty bodies have also, in recent months, while fully recognizing the legitimate security concerns of States and their duty to protect their citizens from terrorist acts, focused on how this should be done while respecting the human rights obligations of States.

4.13 Thus, for instance, as indicated in a "Digest of Jurisprudence of the UN & Regional Organizations on the Protection of Human Rights while Countering Terrorism," recently published by the UN High Commissioner for Human Rights:

- On 22 November 2001, the UN Committee against Torture reminded States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of the non-derogable nature of most of the obligations undertaken by them in ratifying the Convention. It will be recalled that Government of India signed this Convention on 14 October 1997 but is yet to ratify it.
- On 10 December 2001, 17 special rapporteurs and independent experts of the UN Commission on Human Rights issued a joint statement, in the aftermath of the tragic events of 11 September 2001, reminding states of their obligations under international law to uphold human rights and fundamental freedoms. They warned against human rights violations and measures that targeted particular groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media.
- On 8 March 2002, the UN Committee on the Elimination of Racial Discrimination requested States to ensure that measures taken against

terrorism 'do not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin.' India is a State party to the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

- For its part, the UN Human Rights Committee, set-up under the 1966 International Covenant on Civil and Political Rights, has systematically raised questions during its examination of State reports regarding the compatibility of measures taken by States to counter terrorism with their obligations under that Covenant (ICCPR). It will be recalled that India is a State party to the Covenant, and that specific reference is made in section 2 (1)(d) & (f) of the Protection of Human Rights Act, 1993 to that Covenant. Of particular importance, in this connection, is General Comment No. 29 on Article 4 of the ICCPR, which was adopted by the Human Rights Committee on 24 July 2001. It deals at length with the issue of when and which rights can be derogated from, and to what extent, under the provisions of the Covenant.

4.14 In this connection it is also important to recall that Security Council resolution 1373 of 28 September 2001 established new international legal obligations on States to take a number of specific measures, and to cooperate, against terrorism. In far-reaching proceedings dealing with the implications of this resolution, the Human Rights Committee has stressed, *inter alia*, that legislation enacted pursuant to Security Council resolution 1373 must be in 'full conformity' with the ICCPR, and that 'fear of terrorism does not become a source of abuse' of human rights.

4.15 These developments and observations of UN Treaty Bodies have been recorded at some length because of the global context in which our country is having to combat and eliminate terrorism and the treaty obligations that India is required to observe. They are also recalled because of the stand that this Commission has taken in respect of anti-terrorism legislation. That stand was reiterated in a signed statement issued by the Commission on 21 February 2003, which reads as follows:

- "(i) The Commission has, over the years, developed a consistent position in respect of anti-terrorism legislation. This position 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 1995, opposed the continuance of the Terrorist & Disruptive Activities Act (TADA). The full text of the Opinions of the Commission may be seen on its web-site www.nhrc.nic.in.

- (ii) The essence of the Commission's view is expressed in its Opinion of 19 November 2001, in which it is, *inter alia*, stated:

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

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

- (iii) Subsequent to the promulgation of the Prevention of Terrorism Ordinance, 2001, an effort was made to replace it by a Prevention of Terrorism Bill, 2001. That Bill, however, could not be introduced and considered by the Lok Sabha during its winter session before Parliament was adjourned sine die on 19 December, 2001. The Prevention of Terrorism (Second) Ordinance, 2001 was therefore promulgated on 30 December, 2001. Thereafter, on 26 March 2002, the Prevention of Terrorism (Second) Ordinance, 2001 was enacted into a Law following a Joint Session of Parliament.
- (iv) 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 and the treaty obligations of the country.
- (v) 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 Commission, however, is of the view that these safeguards are insufficient. It therefore remains 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.

- (vi) 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."

4.16 In the light of this position, the Commission has 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. Further, the Commission has continued to act promptly in respect of all complaints received from areas affected by terrorism or insurgency, pursuing to the full the possibilities open to it under the Protection of Human Rights Act, 1993, despite the limitations of that Act.

4.17 In the course of the year under review, the human rights situation in Jammu & Kashmir continued to receive the close attention of the Commission. A number of favourable developments eased the political situation in the State. In a resounding triumph for democracy, free and fair elections were successfully held in the State in October 2002 despite the menacing threats of terrorists and their masters. New policies were then introduced by the incoming government with the avowed purpose of providing a 'healing touch.' Further, for its part, the Central Government took a series of steps in respect of Kashmir. For instance, on 22 July 2002, Shri Arun Jaitley, Member of Parliament, was appointed Representative of the Government of India for holding discussions with nominees of the State Government and other relevant groups/persons on the issue of devolution of powers with regard to Jammu & Kashmir and matters related thereto. Subsequently, Shri N.N. Vohra, who had formerly served as Union Home Secretary and Principal Secretary to the Prime Minister, was asked to initiate and carry forward a dialogue with the elected representatives, various organizations and concerned individuals in the State of Jammu & Kashmir.

4.18 Despite these positive developments, according to figures released by Government of India, 4038 incidents were recorded during the year 2002 involving militants; the number of civilians killed was 1008 compared to 996 in the preceding year; the security forces themselves took 453 casualties, compared to 536 in the previous year; while 1,707 militants were killed, including 508 who were foreigners.

4.19 For its part, the Commission received 285 complaints from the State of Jammu & Kashmir in the course of the year under review, many of which listed a dozen or more instances alleging serious violations of human rights. In respect of each of complaints, notices were issued by the Commission, as appropriate, to the competent authorities of the State Government and to the Ministry of Defence and/or the Ministry of Home Affairs, calling for the submission of detailed investigation reports. In each case, after examining the reports, the Commission issued appropriate directions. As in the past, the complaints covered a wide range of allegations, including those of enforced disappearances, illegal detention and torture, custodial death, extra-judicial killings and fake encounters.

4.20 In particular, the Commission made an analysis of complaints relating to allegations of enforced and involuntary disappearances. Because of considerable discrepancies in reports and statements made in respect of the numbers and persons involved, the Commission specifically asked the State Government to indicate:

- i. whether the State Government has established a system to record allegations of enforced or involuntary disappearance and, if so, the nature of that system;
- ii. the number of such allegations recorded by it, the details of the system established thus far to investigate such allegations and the results, thus far, of such investigations;
- iii. the measures that are being taken to prevent the occurrence of enforced or involuntary disappearance; and
- iv. the measures that are being taken to bring to book those who may have been involved in such disappearances and to provide justice to those who have suffered.

The Commission intends to pursue these matters upon receiving the response of the State Government. It has also asked the Association of Parents of Disappeared Persons, from whom it had received a complaint, to provide it with certain clarifications and such additional details that it may have in respect of this matter. The Commission urges all concerned to cooperate fully in ascertaining the numbers and whereabouts of those who are alleged to have disappeared, so that this deeply disturbing issue is comprehensively addressed.

4.21 The Commission also continued to monitor developments in respect of matters of which it had taken cognizance earlier. Thus, in regard to the five

persons who were killed in Patribal by the security forces in the aftermath of the Chittisinghpura tragedy, the Commission was dismayed to learn from media reports that the samples selected by officials of the State Government for DNA testing had been tampered with. The Commission was informed thereafter that the State Government had constituted a Commission of Inquiry headed by Shri Justice G.A. Kuchai to look into this matter and to fix responsibility on the delinquent public servants responsible for this wrong-doing. On 16 January 2003, the Government of Jammu & Kashmir formed a Cabinet sub-committee to examine the Justice Kuchai Commission's report and to suggest further action on it in order to ensure that no guilty person escaped prosecution.

4.22 As regards the case of Jalil Andrabi, who was abducted and subsequently died, no progress was reported during the past year. The case remained sub-judice before the High Court of Jammu & Kashmir. Despite a notice having been served on the army to produce the officer suspected of being involved in this matter, this had not been done. Once again, the Commission urges the Central Government to ensure that action is taken to resolve this painful matter which has been a source of continuing embarrassment to the country.

4.23 Throughout the year under review, the Commission continued to be deeply involved in efforts to monitor and alleviate the problems being faced by members of the Kashmiri Pandit community, of whom some 300,000 have been compelled to leave the Valley since the insurgency began.

4.24 It will be recalled that, upon the recommendation of the Commission, a committee had been constituted at the State-level to examine and expeditiously resolve the difficulties being faced by the Kashmiri Pandits. To this end, the Commission had also appointed its Special Rapporteur to serve on the committee and to keep the Commission regularly informed of the efforts being made.

4.25 It was a matter of deep regret to the Commission, as also to the Kashmiri Pandits that, in the year 2000-2001, the committee had not been meeting with the regularity expected of it. The matter had therefore been taken up by the former Chairperson of the Commission at the highest echelons of the State Government when he had visited Jammu & Kashmir.

4.26 With the change in Government in the State following the election conducted in October 2002, fresh impetus was given to the efforts of this Commission by its new Chairperson, who visited Jammu accompanied by the Special Rapporteur of the Commission. In a meeting that was convened in

Jammu, in which were present the Relief Commissioner and other concerned officers of the State, the Special Rapporteur provided an account of his visit to the various relief camps. The victims of the Nadimarg tragedy recounted the events in the vicinity of their village immediately prior to the terrorist attack of 24 March 2003 and their sufferings thereafter. The General Secretary of the State Kashmiri Pandits Conference, together with other representatives of the community, spoke in detail of the difficulties that they had, and were, experiencing. Representations by the various groups were submitted to the Chairperson including one from the President and members of the Jammu & Kashmir Sharanarthi Action Committee who informed the Chairperson of the problems they had experienced since being displaced from Pakistan-Occupied-Kashmir in 1947.

4.27 In his comments to the gathering, the Chairperson explained the nature of the obligation of the State Government, arising out of the fundamental right to life, to ensure that the Kashmiri Pandits were assisted and supported in a manner consonant with the right to a life with dignity. It was the duty of the State not only to ensure that their basic needs were properly met, but that their self-respect and self-confidence were restored and their sense of belonging revived. In this context, a number of specific measures were identified, which required to be taken, to improve the living conditions in the camps. These related, inter alia, to the improvement of the water-supply and sanitation facilities, medical facilities in the primary health centres and medical supplies, specialized treatment for illnesses such as diabetes, cardiac problems and psychiatric disorders and the provision of laboratories and libraries in the camp schools. Decisions were also taken to strengthen the administrative arrangements in the camps so as to ensure that the problems of the Kashmiri Pandits were acted upon with promptness and understanding. In this connection, it is also worthy of note that the Committee constituted on the recommendation of the Commission to look into the grievances and difficulties of the Kashmiri Pandits - which had been dormant for many months - met again, the Special Rapporteur of the Commission participating fully in its proceedings.

4.28 Pursuant to the visit of the Chairperson, steps have been initiated by the Government of Jammu and Kashmir to ensure water supply at Nagrota, Muthi and Purkhu camps and to improve sanitation facilities in camps. The State Government decided to upgrade the health centres in the camps to four regular primary health centers, which would have the authorized infrastructure and a regular supply of medicines. The Commission is also ensuring that specialists, including psychiatrists, visit the camps periodically. The Relief Commissioner

has been asked to prepare a list of terminally and dangerously ill patients in order to arrange specialist treatment and financial assistance out of the Chief Minister's Fund. The Integrated Child Development Services Centres (ICDS) provided at the camps are being strengthened. Efforts are also on to improve the laboratory and library facilities in the migrant schools. The Commission has indicated its willingness to support a fresh proposal of the State Government to enhance the monthly subsistence cash allowance provided to the residents of the camps.

4.29 It is unfortunately evident, however, that there remain elements in existence who are determined to commit acts of terror in the State, despite, and perhaps because of, the efforts to restore peace and confidence. Paragraph 4.3 above lists some of the more vicious incidents that occurred during the reporting period, among them the outrageous terrorist attack that occurred on 24 March 2003 in village Nadimarg, district Pulwama, Jammu & Kashmir, claiming the lives of 24 Kashmiri Pandits, including 11 women and children.

4.30 Taking suo motu cognizance of media reports in respect of this matter, including reports indicating that the victims were murdered despite the presence of a police picket in the vicinity, the Commission expressed its deepest anguish and concern over the incident. It also issued notice on 26 March 2003 to the Chief Secretary and Director General of Police, Jammu & Kashmir, and to the Secretary, Ministry of Home Affairs calling for reports on the tragedy and an indication of the measures taken, or planned to be taken, to enhance the security of the affected community and to ameliorate the sufferings of the families of those who had been killed or traumatized. The Commission further noted that an unspeakable act of violence had taken innocent lives once again, testimony to the depravity of those who engaged in terrorist acts. The Commission unequivocally condemned such acts and their perpetrators as deeply hostile to all human rights, including the right to life itself. The Commission observed that the attack was doubly reprehensible as it had taken place at a time when fresh efforts were underway to bring peace and reconciliation to the State of Jammu & Kashmir, objectives to which the terrorists were fundamentally opposed.

4.31 As the Commission also received petitions in respect of this tragic incident from the Kashmiri Samiti and the Panun Kashmir Movement, copies of those petitions were also transmitted to the concerned authorities for their consideration and comments in connection with the reports that they were requested to prepare for the Commission.

4.32 Regrettably, the ugly hand of terrorism was in evidence in a wide range of brutal acts spread over the country. Thus, on 25 September 2002, sharing the nation's shock and grief, the Commission strongly condemned the outrageous terrorist attack which occurred against innocent civilians in the Akshardham temple in Gandhinagar on 24 September 2002, continuing into the morning of 25 September 2002. The Commission observed that it had consistently taken the position that such criminal acts are in any circumstances unjustifiable, whatever reason may be invoked to justify them. They were violative of every conceivable human right and the full force of the law must be brought to bear in dealing with such acts of terrorism and in bringing to justice those who perpetrate or abet them. In the same Proceedings, the Commission extended its deepest condolences to the families of those who had lost their lives or been injured in the terrorist attack, including those of the security forces. The Commission expressed its great appreciation of the prompt statements made by the leaders of political parties, as also leaders of various communities, urging that inter-communal harmony be maintained. It also urged all elements of civil society to cooperate fully with the authorities in their effort to maintain law and order and to preserve and protect the human rights of all of the people of Gujarat and, indeed, of the country as a whole. The Commission stressed that nothing should be done to divert the attention of the authorities from the fulfillment of their responsibilities in this respect, nor should any encouragement be given to any act or statement that could exacerbate the present situation.

4.33 Despite the provocation of terrorist acts, the Commission remained true to the duties entrusted to it under the Protection of Human Rights Act, 1993. It thus initiated and pursued action in respect of the 224 complaints that it received alleging the violation of human rights by personnel of the army and the 138 complaints of such violations by personnel of the para-military forces.

4.34 According to information provided by the Ministry of Defence, in the course of 2002-2003, the latter itself received some 60 complaints, alleging the violation of human rights by army personnel. Of these complaints, investigation in respect of 18 cases had been completed, while 42 cases were under investigation as of 31 March 2003. In two cases, the allegations made were found to be true and punishment was awarded. In one of these cases, relating to Jammu & Kashmir, the accused person was dismissed from service after serving three months of rigorous imprisonment. In contrast to the Ministry of Defence, the Ministry of Home Affairs has sent a 'nil' report to the Commission for the first two quarters of 2002-2003, and no report for the subsequent two

quarters of the year, in respect of allegations of violations of human rights by personnel of the para-military forces. The 'nil' reports appear to be indicative of a lack of seriousness on the part of those who are meant to monitor allegations of possible human rights violations by members of the para-military forces. If the number of complaints received by the Commission alleging violations of human rights by personnel of the para-military forces is any indication, it seems inconceivable that no such complaints were received directly by any of the para-military forces or by the Ministry of Home Affairs. The Commission therefore urges the Ministry of Home Affairs to look into this matter with greater care and sensitivity than appears to be the case at present.

4.35 The Commission also continued to monitor and act upon complaints received from North-Eastern States. In one important case, which the Commission had pursued since 1997, when a complaint was received from the Chairman, Kuki Movement for Human Rights, alleging that a certain Haosinglun Changsam had been kidnapped and subsequently murdered on 7 March 1997 by personnel of 32 Rashtriya Rifles in Charachaud district of Manipur, the Commission concluded that the injuries caused to the deceased appeared to have been the result of close range firing on a vital part of the body, rather than the result of cross-firing in the dark when the deceased supposedly attempted to escape from the custody of the army. Upon considering the response received from the Ministry of Defence, the Commission concluded on 8 August 2002 that a sum of Rs. 1,00,000 be paid to the next-of-kin of Haosinglun Changsam as monetary relief and issued a directive to that effect.

B] Custodial Deaths

4.36 The curbing of custodial violence has been a major objective of the Commission ever since it was established. It will thus be recalled that, as early as 14 December 1993, the Commission issued instructions that it must be informed of any incident of custodial death or rape within 24 hours of its occurrence; it was added that the failure to report promptly would give rise to the presumption that an attempt was being made to suppress the incident. In subsequent instructions, it was stated that information on custodial deaths was to be followed by a post-mortem report, a videography report on the post-mortem examination, an inquest report, a magisterial enquiry report, a chemical analysis report, etc. In order to avoid delays in the scrutiny of such cases, the Commission issued additional guidelines in December 2001 asking the States to send the required reports within two months of the incident; it

was underlined, *inter alia*, that the post mortem report should be submitted in accordance with a new format that had been devised by the Commission.

4.37 The Commission has noted, over the years, that its instructions have, by and large, been followed by the agencies of the State. It has also been observed, however, that when there have been delays in reporting such incidents, the Commission has had good reason to draw an adverse inference as to the conduct of the public servants involved. In such instances, it has often proven necessary to probe further, to see as to whether the death has been caused by custodial violence or negligence, and to take the matter to its logical conclusion.

4.38 The pursuit of the truth in such cases is of crucial importance to the protection of the rights of those who are in the custody of the State. When a wrong has been done, it is not surprising that an effort is sometimes made to conceal the truth or to underplay the responsibility of those involved. What is surprising, however, is the effort that has sometimes been made to block the jurisdiction of the National Human Rights Commission by invoking the provisions of section 36(1) of the Protection of Human Rights Act, 1993 by asserting that another Commission has taken cognizance of a custodial death prior to the National Human Rights Commission. As observed in the preceding annual report of this Commission, in order to prevent such stratagems, there is obvious need to amend section 36(1) of the Act along the lines already recommended by the Commission. The delay in proceeding with the amendments to the Act is clearly detrimental to the better protection of human rights in the country.

4.39 In the course of the year under review, the separate Cell established in the Investigation Division to scrutinize incidents of custodial violence continued to perform its duty. This Cell was entrusted with the task of obtaining the relevant documents from the concerned authorities and then critically analyzing that material with a view to assisting the Commission in deciding whether any further action was required to be taken in respect of such incidents. In each instance, the precise nature of the decision rested with the Commission itself.

4.40 In the year 2002-2003, the figures reported to the Commission were 183 deaths in police custody and 1,157 deaths in judicial custody making a total of 1,340 deaths in custody as against a total of 1,307 such deaths in 2001-2002, of which 165 occurred in police custody, 1,140 in judicial custody and 2 in the custody of para-military forces. The increase in the number of deaths, both in

police and in judicial custody in 2002-2003, though not alarming, is certainly disquieting. While the number of deaths in judicial custody has to be viewed in the context of the total number of prison inmates during a given period, the figures once again confirmed the view of the Commission that there is need for better custodial management and a more profound orientation of police personnel in matters relating to human rights. To further this objective, the Commission organized a series of workshops around the country, the details of which are given later in this report.

4.41 As regards the deaths that occurred in police custody in the course of the year 2002-2003, the reports indicated that there was a decline in the number of such cases in the states of Andhra Pradesh, West Bengal, Madhya Pradesh, Orissa, Uttaranchal and the National Capital Territory of Delhi. However, there was an increase in such deaths in the states of Assam, Bihar, Gujarat, Haryana, Karnataka, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and Jharkhand.

4.42 The State-wise position indicating the number of custodial deaths reported to the Commission in 2002-03 may be seen at Annexure 2.

4.43 During the year under review, the Commission considered it essential to recommend the payment of interim relief under section 18(3) of the Protection of Human Rights Act, 1993 in respect of 20 cases of custodial death, in an amount of Rs. 20,95,000. The Commission also called for the initiation of disciplinary/legal proceedings against delinquent public servants in 6 such cases. In the preceding year, the Commission had ordered such relief in 7 cases of custodial death, and disciplinary/legal proceedings in 7 cases.

4.44 Since the Commission was established in October 1993 it has, until now, received a total of 8,596 reports of deaths that occurred in police or judicial custody. An analysis of 6,552 such cases indicates that some 80 per cent of the deaths that occurred in judicial custody were attributable to causes such as illness and old age. The remaining 20 per cent occurred for a variety of reasons including, in certain cases, illness aggravated by medical negligence, violence between prisoners, or suicide. It is these latter cases that have exercised the Commission over the years, requiring it to issue specific directions in respect of individual cases of such deaths, and also to call for systemic measures to improve prison conditions. The views of the Commission urging better maintenance and running of prisons, better trained and more committed staff, including medical staff, and an improvement in the capacity of prisons to deal

with mental illness and morbidity among inmates have been conveyed to the State Governments on a regular basis and there has been persistent follow-up in respect of these matters. It remains essential, in the view of the Commission, that the State Governments give greater attention to the better management of prisons. This matter is dealt with in greater detail in paragraphs 4.66 - 4.90 of this report.

C] Encounter Deaths

4.45 The allegation of extra-judicial killings resulting from 'fake encounters' is an extremely grave one. Whenever a complaint making such an allegation has been received by the Commission, therefore, it has been necessary to ensure that enquiries were instituted and action taken in accordance with the guidelines issued by the Commission on 29 March 1997.

4.46 During the course of the year 2002-03, the Commission was informed of 83 instances of police encounters by the authorities of various States, 41 of which related to the State of Uttar Pradesh, 10 to Maharashtra and 7 to Andhra Pradesh. A statement indicating the numbers of such cases and the action taken on them by the Commission may be seen at Annexure 3.

4.47 By their very nature, such complaints take time to enquire into, analyze and conclude with appropriate directions. In the course of the year 2002-03, the Commission concluded 22 cases out of 55 cases pending from the year 2001-02 and 3 out of the 83 cases that were received in the year 2002-03 (Annexure 4). Each of these cases will be monitored carefully and each will be pursued vigorously by the Commission until the conclusion can be reached that all necessary steps have been taken in respect of them.

4.48 The guidelines that the Commission issued on 29 March 1997 in respect of encounter deaths arose from hearings that the Commission conducted in respect of allegations of extra-judicial killings of members of the People's War Group in 'fake' encounters involving the police of Andhra Pradesh. The human rights implications of the situation remain of great concern to the Commission. The murderous acts of violence and terror for which the People's War Group is responsible must be condemned unreservedly. In addition, however, the Commission remains firmly of the view that each case involving an extra-judicial killing by the police should be diligently investigated in accordance with the guidelines of the Commission and that those guilty of 'fake' encounters

must be brought to book. In pursuing this matter, the Commission has remained in touch with Shri S.R. Sankaran, Convenor of the Committee of Concerned Citizens and leading NGOs of the State dealing with the defence of civil liberties. Clearly, there is need to break the cycle of violence that has continued for far too long and exacted too high a price in human life. The Commission is only too aware that this will not be easy to achieve, given the disruptive nature of the terrorism and violence that has, repeatedly, barred the road to peace. Yet it is necessary to persevere in spite of the odds. The Commission has, therefore, consistently welcomed all of the efforts made over the years to secure peace. It very much hopes that those endeavours will continue to be made and that they will succeed, despite the grave and often murderous provocations that occur.

4.49 In the present climate in which the threat of terrorism is pervasive and acts of terror are only too frequent and real, the Commission - in fulfillment of its duties under the Protection of Human Rights Act, 1993 - has had to remain doubly vigilant to ensure that the Constitution and the Rule of Law are upheld, despite the evident dangers and difficulties. For reasons dwelt upon at length earlier in this report, the Commission cannot acquiesce in the view that extra-judicial killings should be taken for granted, or accepted as a norm of behaviour, even when it comes to dealing with those who are alleged to be terrorists. The Commission thus considered it necessary, for instance, to seek information in regard to what came to be known as the "Ansal Plaza shoot-out case" in New Delhi. Even in that instance, the Commission felt it was essential to draw the attention of the Delhi Police to the need to observe its guidelines in respect of the investigation of deaths occurring in police encounters.

D] Systemic Reforms: Police

4.50 With every passing year, the evidence before the Commission mounts that there must be major police reforms in the country if the human rights situation is to improve, if the investigation work of the police is to be insulated from 'extraneous influences', and if the police is to regain the public trust that is essential for the proper discharge of its duties as a key element of the criminal justice system of the country.

4.51 The major areas where reforms are needed to ensure and restore the integrity of the police have been identified by this Commission, among others,

in affidavits filed before the Supreme Court in the matter of Prakash Singh vs. Union of India which relates, specifically, to the question of police reforms.

4.52 The Memorandum of Action Taken, prepared by the Central Government in response to the Commission's annual report for 2000-01 states, inter alia, that the Government is fully seized of the matter relating to police reforms. It adds that most of the recommendations made by the Padmanabhaiah Committee have been accepted and that the State Governments have been requested to implement such recommendations as relate to them. It is also said that some recommendations need further examination by the Ministry of Home Affairs and that Government is taking steps to modernize the police force in the States, for which purpose the level of the Central allocation under the existing Police Modernization Scheme has been enhanced to Rs. 1000 crores per annum, subject to a matching contribution by the State Government. This, it is said, will enable the State Police Departments to improve forensic laboratories, upgrade training institutions, provide better communication systems, etc.

4.53 The Commission welcomes these developments to modernize the police force. However, the central element in re-gaining public trust and in ensuring that human rights are respected, lies in insulating the investigation work of the police from 'extraneous influences' and removing the 'Damocles sword' of arbitrary transfers of Director-Generals of Police and other key officers that has been used to weaken the capacity of the police to function without fear or favour.

4.54 It is this loss in capacity that has led to wide-spread allegations of police wrong-doing, or complicity in the violation of human rights, and the failure to provide justice to those who have been wronged.

4.55 And it was to this weakness of the police that the Commission drew attention in its annual report for 2001-02, when it observed that recent events in various States of the country had underlined the need to proceed without delay to implement the reforms that had already been recommended by it - and by others - to preserve the integrity of the investigation process and to insulate it from extraneous influences.

4.56 Experience of the year 2002-03 confirms the earlier assessment of the Commission. The failure to investigate with integrity has, too often, resulted in a failure to provide justice. The Commission has, thus, continued to receive

numerous complaints of police complicity in wrong-doing. No country can afford to let its criminal justice system slide downward in public trust and esteem. Institutions that function with integrity are the hallmark of a democratic society no less than are free and fair elections. It therefore becomes critically important that the basic reforms that are required for the greater good of the country must be implemented without prevarication or procrastination, setting aside considerations of political or other expediency.

4.57 The Commission therefore urges, once again, that the police reforms in respect of which it has made specific recommendations - and that are outlined in detail in its earlier annual reports and in its submissions before the Supreme Court in the case *Prakash Singh vs Union of India* - be acted upon without further delay. The Commission earnestly requests that this matter be taken up at the highest political level in the country, in a non-partisan spirit, so that the over-arching need to act in furtherance of the Constitution and the Rule of Law is the sole guide in the consideration and implementation of the needed reforms.

E] Working of Human Rights Cells in State Police Headquarters

4.58 Human Rights Cells were established in the police headquarters of the respective States upon the recommendation of this Commission. The guidelines for the functioning of these Cells were also devised by the Commission in close consultation with the State Governments.

4.59 In many respects, these Cells have served to provide a vital link between the Commission and the State Governments. They have facilitated the investigating of complaints, the submission of reports to the Commission and, in general, the efficiency of the human rights mechanisms in the States and their capacity to respond to enquiries from this Commission.

4.60 Yet, the Commission is constrained to observe, the performance of the Cells has, for a variety of reasons, been uneven. On occasion, they have lacked in the quality of their infrastructure and personnel. At times, and more seriously, they have not been tenacious enough in pursuing matters, with the human rights perspective being their sole guiding light.

4.61 It remains essential, therefore, in the view of the Commission, that greater importance be given to the quality and commitment of those who are appointed to head these cells, and that those so appointed receive the administrative support that they need both in terms of material and personnel resources. The Cells can and do play an important role in furthering the protection of human rights in the States. The greater the reason, therefore, that their standards should, in all respects, be of the highest. The Commission thus urges all State Governments to ensure that the quality of these Cells is maintained at the highest level. The Commission remains of the opinion that the Cells constitute a vital link in the chain of institutional mechanisms to further the better protection of human rights in the country.

F] Human Rights and Administration of the Criminal Justice System

4.62 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.

4.63 In its Memorandum of Action Taken on the Commission's annual report for 2000-2001, the Central Government has stated that, in order to strengthen and improve the system, a number of steps have been taken. It is thus indicated that 900 fast track courts are now functioning and 421 such courts are likely to be functional soon. The expectation is expressed that these courts will dispose of long-standing sessions cases, important criminal cases and other civil cases during the period 2000-2005.

4.64 The Commission welcomes these developments. It would, however, like to observe that an increase in the number of fast track courts will not, by itself, result in an improvement in the quality of the criminal justice system. Most conspicuously, as far as human rights are concerned, the Commission has observed, and this report has recorded specific instances elsewhere in this document, that the failure to investigate properly, compounded by the failure to prosecute diligently, and the failure to provide protection to witnesses and victims, can lead to a failure to provide fair trial. It therefore remains essential, in the view of the Commission, that a comprehensive approach be adopted in seeking to reform and revitalize the administration of the criminal justice system in the country.

4.65 The Commission has noted, in this connection, that the Committee under the Chairmanship of Justice Shri V. S. Malimath has now submitted its recommendations in respect of the reform of the Criminal Justice System. The Commission intends to examine those recommendations most carefully. In doing so, it will obviously be guided by the central responsibility entrusted to it under its Statute viz., to ensure the better protection of human rights in the country, not their diminishing.

G] Custodial Institutions

1) Visits to Jails

4.66 The protection of the human rights of prisoners has been one of the prime concerns of the Commission ever since it was established in October 1993. The effort continued to be given the highest priority during the period under review. Visits to jails in the various States/UTs were therefore undertaken regularly on behalf of the Commission, in fulfillment of the statutory responsibility entrusted to the Commission under section 12 (c) of the Protection of Human Rights Act, 1993.

4.67 Thus, Justice Smt. Sujata V. Manohar, Member, visited the Central Jail, Gwalior, Madhya Pradesh on 24 March 2003. She reviewed and commented upon the living conditions of the prisoners and, in particular, the problems of women prisoners and the special needs of the children staying with them. Further, a number of complaints received from the prisoners regarding the denial of parole were transmitted to the Director General (Prisons), Madhya Pradesh for examination and report.

4.68 Shri S. V. M. Tripathi, Special Representative of the Commission for Uttar Pradesh visited the Central Prison, Varanasi on 27-28 May 2002. His report indicated overcrowding, poor sanitation and the lack of adequate medical facilities. He also commented adversely on matters relating to the payment of wages to prisoners working in the jail factory and in respect of the granting of parole to convicts. He observed that a number of appeals of prisoners against the sentence of life imprisonment imposed on them, were pending in the Allahabad High Court for more than 12 years.

4.69 Shri A.B. Tripathy, Special Representative of the Commission for Orissa visited Circle Jail, Baripada on 20 September 2002. He found that the jail was

overcrowded (42%) and lacking in sanitation facilities. His report spoke of the plight of undertrials who had been languishing in the jail for long periods and of pending wage claims of prisoners engaged in the factory section. The reports of both of the Special Representatives were considered by the Commission and forwarded to the concerned Governments with appropriate recommendations.

4.70 Shri Chaman Lal, Special Rapporteur of the Commission and Chief Coordinator, Custodial Justice Cell, carried out detailed inspections of the District Jail, Meerut, Uttar Pradesh (17 June 2002), the District Jail, Karnal, Haryana (8 July 2002), the Central Jail, Bhatinda, Punjab (17-18 July 2002), the Central Jail, Patiala, Punjab (16-17 July 2002), the Central Jail, Gwalior, Madhya Pradesh (13 August 2002), the Central Prison, Vellore and the Special Womens Prison, Vellore, Tamil Nadu (28 September 2002), the Central Prison, Buxar, Bihar (30 January 2003), the Model Prison, Beur, Patna, Bihar (1-2 February 2003), the Central Jail, Coimbatore, the Open Air Jail, Singanallur and the Sub-Jail, Coonoor, Tamil Nadu (8-10 February 2003).

4.71 In addition to making a broad assessment of the living conditions, state of sanitation, extent of medical cover and the availability of recreational facilities, the Special Rapporteur dealt with the specific problems of convicts and under-trials, meeting them in small groups. Detailed comments were made on:

- The working of the system in respect of furlough, parole and pre-mature release - the maximum number of complaints were in regard to these matters.
- The inordinate delay in the disposal of appeals against life sentences, many of which had been pending in the High Courts for several years.
- The cases of under-trials, which were examined in light of the pronouncements of the Supreme Court; also monitored was the compliance of the directions of the Chief Justice of India, made in 1999, in respect of the holding of Courts in jail premises particularly to deal with cases involving petty offences.
- The availability of police escorts for producing under-trial prisoners in court, as also an examination of facilities for vocational training and the engagement of prisoners in gainful work.

- The functioning of the system of Board of Visitors was reviewed - it has, in recent years, become defunct in most of the States/Union Territories.
- The specific cases of prisoners who required surgical/specialist treatment in hospitals outside of the prison premises were examined, and action initiated in respect of them.

4.72 Each of the reports of the Special Rapporteur was considered by the Commission and appropriate directions were given to the competent authorities. Compliance of these directions has been monitored on a continuing basis. Thus, for example, the Action Taken Reports received from the Government of Jharkhand in respect of the jails of Ranchi and Jamshedpur, which were visited in 2001-02, show considerable improvement in respect of sanitation facilities, health-care, provision of escorts, production in court, holding of Lok Adalats, sanction of special diet to children and the functioning of jail factories. Some improvement has also been effected in the district jail, Karnal, the district jail, Meerut, the central jail, Gwalior and the central prison, Vellore. While the cases of certain of the under-trial prisoners to whom the Commission drew attention have been transferred to fast-track courts, others have been released on bail after scrutiny of their cases. Compliance of the Commission's directions in regard to the central jail, Patiala, the central jail, Coimbatore, the central jail, Buxar and the model prison, Beur, Patna is being pursued.

2) Prison population

4.73 It is an unfortunate reality that the living conditions of prisoners in most of the jails in the various States/Union Territories leave much to be desired. Overcrowding is the main reason for this, a principal reason being the presence of under-trial prisoners who languish in jail for long periods because of the slowness of the judicial process.

4.74 The Commission has been compiling and analyzing prison statistics since 2000 in order to assess the magnitude of the problem in every State/Union Territory. The analysis is based on prison statistics, as of 30 June and 31 December each year, which are obtained by the Commission. During the past year, the Commission analyzed data relating to the prison population as of 31 December 2001 and 30 June 2002. The salient points arising from this analysis are provided in the succeeding paragraphs.

3) Analysis of Prison Population as of 31 December 2001

4.75 The total prison population of the country was 3,00,811. This indicated an overcrowding of 32.33% against the authorized capacity of 2,27,313. Twelve States/Union Territories, namely, Delhi, Jharkhand, Haryana, Chhattisgarh, UP, MP, Bihar, Sikkim, Andaman & Nicobar Islands, Orissa, Gujarat and Tripura experienced overcrowding ranging from 39% to 189%. Delhi with an overcrowding of 189%, had the dubious honour of heading the list. It was followed by Jharkhand (183%), Haryana (158%), Chhattisgarh (114%) and Uttar Pradesh (90%).

4.76 Nine States and five Union Territories were found to have idle capacity in their jails. These were: Manipur, Tamil Nadu, Jammu & Kashmir, Nagaland, West Bengal, Rajasthan, Uttaranchal, Mizoram, Kerala, Lakshadweep, Daman & Diu, Chandigarh, Dadra & Nagar Haveli and Pondicherry.

4.77 Under-trial prisoners constituted 75.09% of the total prison population for the country as a whole. The proportion of under-trial prisoners was more than 80% of the prison population in ten States/Union Territories. These were: Meghalaya (97.30), Dadra & Nagar Haveli (95.83), Manipur (93.99), Jammu & Kashmir (89.90), Uttar Pradesh (89.77), Bihar (85.77), Jharkhand (85.37), Mizoram (82.83), Nagaland (82.08) and Karnataka (80.47). In Tamil Nadu and the Andaman & Nicobar Islands, less than 50% of the prison population were under-trial prisoners, the figures for them being 32.78% and 42.29% respectively.

4.78 Women comprised 3.08% of the total jail population in the country. Dadra & Nagar Haveli was at the top of the table, 12.5% being women prisoners, followed by Mizoram (8.83%) and Punjab (5.48%). Tripura, Andaman & Nicobar Islands, Chandigarh, Meghalaya, Nagaland, Sikkim and Kerala had less than 2% as women prisoners.

4) Analysis of prison population as of 30 June 2002

4.79 The total prison population was now 3,04,893, which indicated an overcrowding of 31.19%, the authorized capacity having increased to 2,32,412. As the population of India, according to the 2001 census, was 1,02,70,15,247 persons, India had 29.69 prisoners per hundred thousand of the population. Mizoram, with 114.59 prisoners per hundred thousand of the population, was at the top of the chart, while Jammu & Kashmir with 12.76 prisoners per

hundred thousand of the population was, interestingly, at the bottom of the chart among the States.

4.80 Overcrowding exceeded the all-India average of 31.19% in 12 States/ Union Territories, namely, Delhi, Jharkhand, Chhattisgarh, Gujarat, Harayna, Bihar, Sikkim, Uttar Pradesh, Madhya Pradesh, Orissa, Goa and Tripura. Delhi, as in the past, had the most overcrowded jails (217%) followed by Jharkhand (165%) and Chhattisgarh (110%). Jails had idle capacity in 12 States/Union Territories, namely, Manipur, Jammu & Kashmir, Daman & Diu, Chandigarh, Tamil Nadu, Nagaland, West Bengal, Rajasthan, Dadra and Nagar Haveli, Kerala, Pondichery and Meghalaya. However, because of the uneven distribution of the jail population, it was observed that even in these States, certain sub-jails and district jails were overcrowded.

4.81 Under-trials constituted 74.06% of the total prison population in the country, which was similar to the 75.09% as of 31 December 2001. Eight States/ Union Territories had under-trial prisoners exceeding 80% of the total prison population. These were: Dadra & Nagar Haveli (100%), Meghalaya (94.66%), Manipur (92.19%), Jammu & Kashmir (91.67%), Nagaland (89.87%), Uttar Pradesh (87.37%), Bihar (86.27%), Jharkhand (83.24%). Only two States, namely, Tamil Nadu (36.16%) and Andaman & Nicobar Islands (24.05%) had less than 50% of the prisoners who were under-trials.

4.82 Women constituted 3.42 % of the total prison population. Mizoram with 10.19% had the highest percentage, followed by Tamil Nadu (6.59%), Dadra and Nagar Haveli (6.45%), Andhra Pradesh (5.52%) and Kerala (5.38%).

4.83 Children upto the age of 5-6 years are permitted to stay with their mothers who are in jail. A total of 1,369 children were there living with their mothers. This meant that 13.15% of the women prisoners had their children with them. West Bengal, with 234 such children, had the highest number in the country, followed by Uttar Pradesh (219), Bihar (196) and Madhya Pradesh (138).

5) Sensitization of Jail Staff

4.84 The sensitization programme for Jail Superintendents and Jailers, which the Commission started in 2000-01, continued during the period under review. One-day workshops were held in Sambalpur, Orissa (24 August 2002),

Hyderabad, Andhra Pradesh (27 November 2002) and Vellore, Tamil Nadu (7 February 2003). These workshops were conducted by the Chief Coordinator of the Custodial Justice Cell. Shri A.B. Tripathy, Special Representative of the Commission for Orissa and Shri B.B. Mohanti, Additional DGP and IG of Prisons and Director, Correctional Services, Orissa were also associated with the conduct of the workshop in Sambalpur (Orissa). It was inaugurated by Justice Shri P.K. Tripathy, judge of the Orissa High Court, Cuttack. Dr. G.K. Rath, Professor and Shri J. Patjoshi, Senior Lecturer, both from the Department of Law, Sambalpur University and Dr. G.S. Sharma, Reader, LR Law College, Sambalpur were the Guest Lecturers. The workshop was attended by 36 Superintendents of Prisons and 30 Prison Welfare Officers including three officers who were women. A notable feature of the workshop was the interaction with a group of prisoners, both convicts and under-trials, representing the principal jails of Orissa. It provided a useful insight into the major problems faced by the prisoners.

4.85 The workshop in Hyderabad was organized with the active cooperation and participation of Shri K.R. Venugopal, Special Rapporteur of the Commission and Shri M.A. Basith, Director General and Inspector General of Prisons and Correctional Services, Andhra Pradesh. It was inaugurated by Shri T. Devender Goud, Minister for Home and Cinematography, Andhra Pradesh. Shri S. Govindarajulu, Chief Legal Advisor, CBCI, Hyderabad was invited to address the participants on the major judgements of the Supreme Court relevant to the rights of prisoners and prison conditions. The workshop was attended by 35 officers of the rank of Superintendent of Central Prisons and also by Deputy Superintendent heading district jails, district sub-jails and some jailors.

4.86 The workshop for Jail Superintendents of Tamil Nadu was held at the Regional Institute of Correctional Administration (RICA), Vellore on 7 February 2003. Shri M.G. Tavarkhod, Director, RICA and the Additional Director General of Police and Inspector General, Prisons, Tamil Nadu were associated with workshop. It was inaugurated by Justice Shri K. Venkataswamy, a retired Judge of the Supreme Court. Nineteen Superintendents, one Deputy Superintendent and nine Assistant Jailers, representing eight Central Prisons, two women prisons and eleven sub-jails, attended the workshop.

4.87 Initiatives taken by the Commission aimed at improving conditions in jails formed part of the programme content. The concluding session of each workshop was devoted to an open discussion on the problems of administration, finance, security and discipline being experienced by jail officials. This helped

in identifying the infrastructural inadequacies and other deficiencies in the prison administration in the States concerned.

4.88 The Chief Coordinator, Custodial Justice Cell and the Special Representative, Orissa undertook a review of the jail infrastructure and connected facilities in that State. They submitted a comprehensive report to the Commission with a number of specific recommendations designed to improve the state of the buildings, sanitation and water supply, the staff position, medical facilities, the scale of diet, jail industries and housing facilities for the jail staff. The report is under consideration of the Commission.

6) Prison Reforms

4.89 The Commission has been advocating the replacement of the archaic Indian Prison Act of 1894 by a Model Prison Bill which would be uniformly applicable throughout the country. In the year 1996, the Commission had prepared and circulated an outline of a Model Prison Bill and urged all the States to have appropriate resolutions passed in their respective legislatures so that a new Act could be adopted by Parliament under Article 252 of the Constitution of India. While this process was underway, the Ministry of Home Affairs entrusted a related task to the Bureau of Police Research and Development. On 27 December 2002, the Commission thus received for its comments, from the Union Home Secretary, a Draft Model Prison Manual prepared by a Committee headed by the Director General, Bureau of Police and Research Development. After that Draft Prison Manual was examined by the Custodial Justice Cell, the Commission considered the matter and forwarded its comments to the Ministry of Home Affairs on 11 February 2003.

4.90 The Commission remains of the view that there is need, in the first instance, to enact a new Prison Act, as recommended by the Mulla Committee on Jail Reforms. That Act could provide the most appropriate and contemporary legal basis for a new Manual. The Commission therefore urges the Union Home Ministry to pursue this matter further.

7) Visits to other Correctional Institutions/Protection Homes

4.91 Shri S. V. M. Tripathi, Special Representative of the Commission, visited the State Observation Homes in Pauri and Uttarkashi on 20-21 April 2002.

He also visited the State 'Balika Niketan' in Dehradun on 23 May 2002. His reports indicated that these institutions were under-utilized, living conditions were unsatisfactory and medical facilities utterly lacking. His reports were considered by the Commission and transmitted to the Government of Uttaranchal for remedial action.

H] Improvement of Forensic Science Laboratories

4.92 As indicated in 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.

4.93 The Commission has noted that steps have been taken by the Ministry of Home Affairs to implement certain of the 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 Memorandum of Action Taken on the annual report of the Commission for the year 2000-2001, the Central Government also stated that the remaining recommendations were being examined for implementation and that the State Governments had also been asked to indicate, by 20 May 2002, the action that they were taking in respect of the recommendations.

4.94 As many of the State Governments had not replied by that date, the Commission decided to pursue this matter with them. Letters were, accordingly, addressed to the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Manipur, Meghalaya, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal urging them to implement the recommendations of the Commission and to send their reports on the action taken by them. These reports will be analyzed and the matter pursued in the period ahead.

4.95 The Commission would like to reiterate that inadequacies in the Forensic Science Services in the country have adversely affected the administration of criminal justice, with serious consequences for the protection of human rights. The Government of India and the State Governments are, therefore, requested once again to implement swiftly the recommendations of the Commission in this regard.

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

CHAPTER 5

A] Prevention of Terrorism Act, 2002 (POTA)

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 earlier annual reports of the Commission. They will not therefore be repeated here. Most recently, 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 has been reproduced in paragraph 4.15 of the present report.

5.2 In that statement, the Commission inter alia noted that the Prevention of Terrorism (Second) Ordinance, 2001 had been enacted into a law on 26 March 2002, 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 emphasized that it "retains its responsibility under its own Statute to ensure that the Act is not implemented in a manner violative of human rights, the Constitution and the treaty obligations of the country." Further, while noting that, "when compared with TADA," the Prevention of Terrorism Act "does contain some provisions aimed at providing safeguards against its possible misuse," the Commission stated that it was "of the view that these safeguards are insufficient." The Commission therefore asserted that it "remains the duty of the Commission to monitor implementation of the Act with vigilance and to ensure that the provisions of the Act are not abused or human rights violated."

5.3 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, the young and old alike.

5.4 Thus, for example, a report appeared in the Times of India of 20 February 2003 according to which nearly 200 persons had been arrested in the State of Jharkhand under the Prevention of Terrorism Act allegedly for "supporting Naxals." They included a 12 year old boy, Gaya Singh, and an 81 year old man, Rajnath Mahto. The report stated that, in all, 10 children had allegedly been arrested under the Act, and the social profiles of the arrested, prepared by the police, showed that they were farmers, students or daily-wage earners. Taking suo motu action on this report, the Commission issued notice to the Chief Secretary and Director-General of Police, Government of Jharkhand and to the Secretary, Ministry of Home Affairs, Government of India. Soon after, the Commission was informed by the Ministry of Home Affairs that Gaya Singh was aged 17 years and was lodged in the Remand Home, Ranchi. He was an accused in Manika P.S. Case No. 42/2002 of Latehar District. The Commission was also informed that Rajnath Mahto was aged 45 years and not 81, as reported in the Press. He, and one Janki Bhuiya, aged 18 years, were accused in Keredari P.S. Case No. 7/2002 under POTA and other Acts. It was added in the letter that the Special Judge had quashed the POTA sections in this case and all the accused would be tried under the normal laws. As of 31 March 2003, the proceedings before the Commission were still under way.

5.5 As of the time of writing this report, it is evident that a wide spectrum of the political leadership of the country is increasingly concerned at the manner in which the Act is being applied. This comes as no surprise to the Commission, which had forewarned of its probable consequences. The Commission has thus noted with interest that as of the time of writing this report, the Government of India has itself established a Review Committee under the Chairmanship of Justice Shri Arun Saharya, 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.

The impact of the work of the Review Committee will be of interest to the Commission.

5.6 The Commission would like to observe that the constitutionality of the Act has been challenged by a number of non-governmental organizations and human rights activists before the Supreme Court of India, which is seized of the matter.

5.7 The Commission would like to recall, in this connection, the words of the Supreme Court, expressed in 1994, in the case *Hitendra Vishnu Thakur & others vs. State of Maharashtra* when it stated:

"No civilized country could allow terrorism to flourish, but one has to differentiate between a criminal and a terrorist. While all terrorists are criminals, it does not necessarily mean that all criminals are terrorists."

The Apex court went on to observe:

"Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA"

5.8 The Court's prudent and cautionary words in respect of the misuse of the Terrorist and Disruptive Activities (Prevention) Act, 1987 deserve to be carefully reflected upon by those now implementing the Prevention of Terrorism Act, 2002. It should not be said that, once again, the distinction between the 'terrorist' and the 'criminal' has been blurred, that the Act has been used in arbitrary and discriminatory ways, or that its stringent provisions have been set in motion when recourse to the ordinary courts and the normal penal law of the land would have sufficed.

5.9 For its part, the Commission will necessarily continue to monitor the implementation of the Prevention of Terrorism Act 2002 with great care.

B] Child Marriage Restraint Act, 1929

5.10 The problem of child marriage in certain parts of the country, especially in the States of Rajasthan and Chhattisgarh, has been of continuing concern to the Commission. In its annual report for 2001-02, the Commission reported that it had requested its Member, Justice Smt. Sujata V. Manohar, to study the Child Marriage Restraint Act, 1929 and to offer her comments on it. Justice Smt. Sujata V. Manohar proceeded to make a number of specific suggestions to deal with the issue of child marriage and to amend the Act. Her views, which are summarized in the preceding annual report of the Commission, were discussed in detail in a meeting organized by the Commission on 6 February 2002 at which, among others, the Secretary, Department of Women and Child Development (DWCD) was present. In that meeting, the amendments proposed by Justice Smt. Sujata V. Manohar, were agreed upon with minor modifications. They may be seen in Annexure 5 to the annual report for 2001-2002. The proposals were thereafter placed before a meeting of the Statutory Commission held on 3 May 2002, to which the "deemed Members" of the Commission were invited, when the proposals were approved.

5.11 A copy of the Draft Child Marriage Restraint Bill 2002, as approved by the Statutory Commission, was then sent for information, consideration and appropriate action to the concerned Secretaries of all the State Governments/ Union Territories as well as to the Secretary, 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 Secretary, Ministry of Home Affairs and the Secretary, Ministry of Law and Justice, Government of India.

5.12 During the course of the year under review, the State Governments of Bihar, Maharashtra, Punjab and Dadra & Nagar Haveli have conveyed their concurrence to the amendments proposed by the Commission. The States of Andhra Pradesh, Orissa, Uttar Pradesh and the Union Territory of Chandigarh have made certain suggestions, which the Commission is examining. The other States/Union Territories have been reminded to respond to the Commission on this subject.

C] Protection from Domestic Violence Bill, 2002

5.13 The Protection from Domestic Violence Bill 2002, drafted by the

Department of Women and Child Development in consultation with the Ministry of Law, Justice & Company Affairs was introduced in Parliament on 8 March 2002. Thereafter, the Bill was referred to the Standing Committee of Parliament pertaining to the Ministry of Human Resource Development for further examination and the suggesting of 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.

5.14 The provisions of the Draft Bill and the report containing the recommendations of the Standing Committee were examined carefully by the Commission and its detailed suggestions were forwarded to the Department of Women and Child Development on 30 January 2003. These may be seen at Annexure 5 to the present report.

D] Implementation of Treaties & Other International Instruments

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

5.15 In its annual report for 2000-2001, the Commission had recommended that the Government of India examine and become party to Optional Protocols 1 and 2 to the Convention on the Rights of the Child, dealing respectively with the sale of children, child prostitution and child pornography, and the involvement of children in armed conflict. The Memorandum of Action Taken on the annual report for 2000-2001 states that the Department of Women and Child Development is presently examining the issues connected with the signing of the Optional Protocol 1 and 2 and that the views of the Ministry of External Affairs have been communicated to the Department of Women and Child Development. The Commission urges the Government of India to complete the examination of these Protocols expeditiously and to take the necessary action along the lines already recommended by it.

2) 1977 Protocols to the 1949 Geneva Conventions

5.16 The Commission had asked the Government of India to 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 a thorough examination of the additional protocols was underway and that, once that examination had been completed, it would revert to the Commission on this matter. The Commission requests the Government of India to complete its examination of the 1977 Protocols at the earliest and to provide its comments to the Commission.

3) Convention Against Torture

5.17 Pursuant to the Commission's recommendation, the Government of India signed the Convention Against Torture on 14 October 1997. However, some six years later, it has not yet ratified the Convention. This delay has given rise to serious concerns, both within the country and in major external forums, including treaty bodies. It has also affected adversely the capacity of the law enforcement agencies of the country to secure the extradition of those wanted for serious crimes. This has been of detriment to the national interest.

5.18 The Commission has noted that, according to the Memorandum of Action Taken on the Commission's annual report for 2000-2001, the views of the Ministry of External Affairs have now been formulated and are being discussed with the concerned Government functionaries and institutions to examine, inter alia, the requirement of enabling legislation.

5.19 The Commission would like to reiterate that, in its view, the ratification of the Convention is long over-due. As indicated earlier, Article 21 of the Constitution already covers this area effectively. Further, the right against torture has been judicially recognized by the Supreme Court as a Fundamental Right. The delay, therefore, is deeply embarrassing to the country and inexplicable to those who are interested in the better protection of human rights. It casts an unnecessary shadow on the intent of the Government, where none should exist.

4) Convention and Protocol on the Status of Refugees

5.20 The Commission has stressed the need for a comprehensive national legislation to deal with refugee situations facing our country and to distinguish bona fide refugees from economic migrants, illegal immigrants and other foreigners. The Commission expressed the hope that the action initiated by the Central Government in this respect would be completed within a clearly

defined time frame and that it would be consonant with the decisions of the Supreme Court, as well as with the principal international instruments on this subject, notably the 1951 Convention relating to the Status of Refugees and the 1967 Protocol.

5.21 In the Memorandum of Action Taken on the Commission's annual report for 2000-2001, the Government of India has indicated that issues concerning the 1951 Convention and the 1967 Protocol were being examined by the Ministry of External Affairs, along with the drafting of a national legislation on refugees. This adds little to what the Commission had been told a year earlier. It remains the view of the Commission that greater priority should be given to this matter by the Government of India, for the existing laws, regulations and practices in respect of refugees are inadequate to the present times and the possible challenges that are likely to arise in the future. The absence of appropriate national legislation, of the quality and content recommended by the Commission, also sits ill with the continuing responsibilities devolving on the Government of India as a member of the Executive Committee of the Programme of the United Nations High Commissioner of Refugees (UNHCR).

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

5.22 In the last decade, India has worked towards providing a comprehensive legal framework for its citizens with disabilities. Four landmark acts have been adopted, the titles of which are given in paragraph 5.23 below. The objective of these acts has been to equalize opportunities, enhance participation, deal with problems of discrimination and, more importantly, ensure the enjoyment of all basic and fundamental rights by persons with disabilities. The enactment of these laws has also marked a change in the perception of disability-related issues: the focus shifting from one based on charity to one inspired by the concept of rights.

5.23 In the course of the year, with the help of its Special Rapporteur (Disability), Ms. Anuradha Mohit, the Commission undertook a review of the functioning and implementation of these acts, namely, the Mental Health Act, 1987, the Rehabilitation Council of India Act, 1992, the Persons with

Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999.

5.24 The review indicated that the slow and uneven implementation of these Acts had caused a high degree of dissatisfaction among persons with disabilities and their families. The findings also revealed certain common factors that hampered the implementation of these laws by the State and local authorities.

5.25 In this connection, it is important to recall an Order made by the High Court of Patna on 22 October 2002, in the case Mamta Kumari v/s The State of Bihar & Orissa in which it was stated:

"The Governments and people at large are not conscious of the rights of persons with disabilities and the lack of interest in implementing the Persons with Disabilities Act, 1995 can be seen as inaction on the part of the State Governments in planning for the disabled."

5.26 In the same Order, the Court expressed its deep concern that funds allocated for schemes envisaged under the Disabilities Act had either not been committed, or had remained under-utilized even when allocations had been made. The Court then remitted this matter to the National Human Rights Commission for appropriate action.

5.27 It was in pursuance of this Order that the Commission made a compilation of all the provisions under the law dealing with the introduction of schemes for persons with disabilities, grouping these under five broad headings, viz., prevention and early detection of disability, education, employment, affirmative action and non-discrimination. The Commission proposes to collect detailed information from the concerned authorities under these headings with a view to examining where the shortcomings have occurred in implementation and where remedial action is required.

5.28 In the meantime, the Commission has issued detailed guidelines to the State Governments, through its letter dated 27 December 2002, (see Annexure 6) asking each of them to constitute a task force to frame a State policy and a State plan of action in respect of persons with disabilities. The full details of these guidelines are given in Chapter VIII of this report.

F] Towards a New International Convention

5.29 In December 2001, the United Nations General Assembly in its resolution 56/168, recognized that Governments, UN bodies and NGOs had not been successful in promoting full and effective participation and opportunities for persons with disabilities in economic, social, cultural and political life. Expressing its deep concern "about the disadvantages faced by 600 million disabled around the world", the General Assembly called for the establishment of an Ad Hoc Committee to consider proposals for a "Comprehensive and Integral International Convention taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development". The Ad Hoc Committee met subsequently and, for its part, invited National Institutions, among others, to participate in the discussions on this subject.

5.30 It was in this context that the Seventh Meeting of the Asia Pacific Forum of National Human Rights Institutions (APF) was held in New Delhi between 11 - 13 November 2002. In that meeting, Forum Members agreed to respond positively to the invitation of the United Nations Ad Hoc Committee to participate independently and in their own capacity in the development of a possible new convention. In December 2002, through its resolution A/RES/57/229, the United Nations General Assembly endorsed the invitation of the Ad Hoc Committee to National Institutions to participate in the consideration of this matter, making this the first instance in the history of the United Nations in which National Institutions have been involved in the treaty-making process of a human rights convention.

5.31 This Commission is firmly of the opinion that a coherent and integrated human rights approach to disability cannot be developed under the present treaty system and that a comprehensive convention is required to give status, authority and visibility to disability issues within a human rights framework. In the view of the Commission, a single comprehensive treaty would enable the State parties to understand their obligations in clear terms and give both States and civil society a clear objective, viz., the furtherance and fulfillment of the rights of the disabled in a holistic manner. In taking this view, the Commission has been mindful of contemporary international law which recognizes that all States have a duty, under Article 56 of the Charter of the United Nations, to ensure respect for and to observe human rights, including the incorporation of human rights standards in their national legislation. More importantly, the Commission has been guided by the provisions of Article 51(c) of the Constitution which, assert, as a Directive Principle, that the State shall

endeavour to "foster respect for international law and treaty obligations in the dealings of organized peoples with one another." The Commission has, accordingly, worked actively to mobilize support for a comprehensive convention for the promotion and protection of the rights of people with disabilities. It has also strongly encouraged the Government of India to play a constructive and leading role in the process of treaty elaboration.

5.32 Thus, in a meeting of experts jointly organized by the United Nations and the Government of Mexico in June 2002, the Special Rapporteur of the Commission played an active role in the discussions relating to a possible convention. The Commission also advocated the need for such a convention in an Inter-governmental Meeting convened by UNESCAP in Japan in October 2002. Further, in the course of the period under review, the Commission started planning for a workshop of national institutions of the Commonwealth and Asia-Pacific region to discuss the nature and elements of a new convention and to discuss strategies for effective participation in future meetings of the Ad Hoc Committee of the General Assembly.

G] Furtherance of 1993 United Nations Standard Rules on Equalization of Opportunities for Persons with Disabilities

5.33 The United Nations Commission on Human Rights has, since the adoption of its resolution 2000/51, recognized the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities as an "evaluative instrument to be used to assess the degree of compliance with human rights standards concerning disabled people". That Commission also observed that any violation of the fundamental principle of equality, or any discrimination or other negative differential treatment of persons with disabilities, was inconsistent with the United Nations Standard Rules and constituted an infringement of the human rights of persons with disabilities.

5.34 In order to encourage the use of the Standard Rules for policy formulation and the evaluation of the performance of States, the Commission participated in a meeting convened by the World Health Organization in Nepal in August 2002 for countries of the South Asia region. The Special Rapporteur of the Commission provided the meeting with an analysis of Rules 1 to 4, concentrating on the implications for the health sector.

5.35 The Commission, through its Special Rapporteur, has also been providing inputs to UNESCO's Information Division regarding freedom of information and the right to communication of people with disabilities. On the domestic front, in January 2003, the Commission advised the Ministry of Urban Affairs and Employment to take a lead in constituting a joint task force, comprising representatives of the relevant ministries, departments and disability NGOs to identify barriers to access; suggest areas of research; suggest amendments or additions to the present laws, policies and regulations concerning Information, Communication Technologies (ICTs), broadcasting, telecommunication and transport systems; and to produce a policy framework for creating a barrier-free infrastructure for people with disabilities.

Right to Health

CHAPTER 6

A] Re-constitution of the Core Advisory Group on Health

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

6.2 It was to strengthen its own understanding of the issues involved and to promote the view that the right to an adequate level of health-care was essential to a life with dignity, that the Commission in 1998 constituted a Core Advisory Group on Health, headed by its Chairperson and comprising Professor V. Ramalingaswamy, Dr. Shanti Ghosh, Dr. Prema Ramachandran, Professor Pravin Visaria, Professor N. Kochupillai, Professor K. Srinath Reddy (Convenor) and Professor L.M. Nath. The Group was specifically requested to prepare a plan of action for systemic improvements in the health delivery systems of the country and to advise and assist the Commission on issues relating to health as a human right.

6.3 Upon the passing away of Prof. V. Ramalingaswamy, the Commission reconstituted the Core Group on Health, with Dr. N.H. Antia, Director, the Foundation for Research in Community Health, Pune kindly agreeing to join the Group. In addition to the above Members of the Group, Ms. Rekha Sharma, Chief Dietician, AIIMS and Dr. H.K. Sudarshan, Chairman, Task Force on

Health and Family Welfare, Government of Karnataka, were co-opted as Members of the Group.

B] Public Health and Human Rights

Implementation of the recommendations of the Regional Consultation on Public Health and Human Rights

6.4 On 4 July 2002, the Commission convened a meeting to review the progress of implementation of the recommendations of the "Regional Consultation on Public Health and Human Rights" which it had organized on 10-11 April 2001 in collaboration with the Ministry of Health and Family Welfare and the WHO. It was attended, among others, by Dr. R.V.V. Ayyar, Secretary, Department of Women and Child Development, Shri S.K. Naik, Secretary, Department of Health, and Dr. S.P. Agarwal, Director General of Health Services.

6.5 In the course of that meeting, the view was expressed that the empowerment of people was essential to ensuring accountability in the health sector and that, as far as the Commission was concerned, its primary focus should be on efforts to improve the design and delivery of primary health care in the country. It was, accordingly, decided that the Commission and the Ministry of Health and Family Welfare would jointly convene a National Consultation to review strategies for strengthening primary health care. The Consultation would involve all stakeholders from the central and state levels. It was also decided that the Commission would subsequently monitor the adoption of those strategies and the progress of their implementation, so as to ensure that the citizen's right to essential primary health care is appropriately protected. The suggestion was made that the base provided by the National Law Schools may be strengthened and expanded to provide platforms for partnerships to promote Public Health laws in their development and application. For its part, WHO would take follow-up action at the national and regional levels to strengthen and expand networks for promoting capacity building in the domain of Public Health Law.

6.6 The meeting reviewed in detail the recommendations relating to 'Access to Health Care' and 'Emergency Medical Care'. The Commission requested the Ministry of Health and Family Welfare and the Department of Women and Child Development to provide their written comments and status reports on

each of the recommendations made during the April 2001 Regional Consultation. The two key action points which emerged from the meeting were:

- the joint organization, by the Commission and Ministry of Health and Family Welfare, of a National Consultation on Strengthening Primary Health Care, and
- the Constitution of an Expert Committee by the Commission, with the participation of Ministry of Health and Family Welfare, to review and reform Emergency Medical Care Services in urban and rural settings.

C] Maternal Anaemia and Human Rights

6.7 Central to the Commission's concerns in respect of the right to health has been its anxiety about the deleterious effects of maternal anaemia both on the mother and on the child. The Commission has, thus, taken-up the issue of the widespread prevalence of iron deficiency among expectant mothers, which has resulted not only in high infant and maternal mortality but also in low birth-weight related developmental disabilities, particularly among economically disadvantaged sections of society.

6.8 It was in order to evolve a plan of action for systemic improvements in the health care delivery system, that a two-day Workshop on Health and Human Rights, with special reference to maternal anaemia was organized by the Commission on 26-27 April 2000 in partnership with the Department of Women & Child Development and UNICEF. The recommendations of that Workshop were transmitted to the concerned Ministries of the Central Government for appropriate action.

6.9 A report received from Ministry of Health & Family Welfare pursuant to that Workshop indicates that they have taken the following steps to eliminate anaemia in pregnant adolescent women as well as pre-school children:

- Iron folic tablets are supplied to all the Public Health Centres/Sub-centres in the country. The Multipurpose Health Worker (Female)/ANM and other paramedical workers in the sub-centres and primary health centres and the front line workers of the Integrated Child Development Services (ICDS) also assist in IFA tablet distribution and education to mothers on prevention of anaemia.
- For improving the maternal and child health care services in the remote

rural areas of the country, Reproductive Child Health (RCH) camps are being organized in 1020 Public Health Centres in 17 States; this would be done once in every two months in these Public Health Centres.

- Nutrition education was undertaken through the Information, Education and Communication (IEC) programme in order to promote the regular intake of iron rich foods by all age groups, the consumption of foods that increase the absorption of iron, (like Vitamin C rich foods), the avoidance of items like tea/coffee which inhibit absorption, and the growing of iron rich fruits and vegetables in home garden. Information and education on a wide range of women's health issues, including anaemia was provided through grass-root level schemes funded by the Ministry, such as the Mahila Swasthya Sangh Scheme, the ZSS-IEC scheme and through the wide network of concerned NGOs and self help groups.

6.10 The Department of the Indian System of Medicine and Homeopathy, Ministry of Health & Family Welfare has indicated that it has taken up a Pilot Project jointly with the Department of Family Welfare for the mainstreaming of Ayurveda/Siddha approaches in the National RCH Programme at the Primary/Health Care level. The Government has also released grants for the first preparatory phase of a 30-month operational research programme in 10 PHCs/Districts in five States, viz., Rajasthan, Himachal Pradesh, Tamil Nadu, Kerala and Karnataka. The Central Council for Research in Ayurveda and Siddha (CCRAS) and the Indian Council of Medical Research (ICMR) have drafted a project report, training module for service providers, handbook for service providers and IEC material. Suitable interventions from Ayurveda/Siddha have been developed for ante-natal, post natal, and neo-natal care, and also for common ailments faced by the new born and by children. The report states that maternal anaemia is being treated as part of ante-natal care and that attention was being paid both to preventive and curative aspects of anaemia.

6.11 The Workshop had laid particular stress on the need for a literacy campaign to bring about awareness amongst women concerning maternal anaemia. Four recommendations pertaining to education and awareness in respect of maternal anaemia, were thus sent to the Department of Elementary Education & Literacy, Ministry of Human Resource Development, Government of India for the taking of appropriate action. The report of that Department was awaited.

Rights of Women and Children

CHAPTER 7

7.1 As indicated in earlier annual reports, the Commission requested Justice Smt. Sujata V. Manohar to serve as its Focal Point on matters relating to the Human Rights of Women, including Trafficking. During the course of the year under review, a number of important developments took place in respect of these issues.

A] Trafficking in Women and Children

1) Action Research on Trafficking in Women and Children

7.2 In the preceding year, the Commission and UNIFEM jointly began an Action Research Programme on Trafficking in Women and Children in India. Work continued on that project during the year 2002-03. The Institute of Social Sciences, New Delhi is the nodal NGO coordinating the research programme. Because of the nature of the problem, the services of a senior police officer from the Indian Police Service have also been requisitioned to work as a nodal officer with the Commission.

7.3 The main objectives and structure of the Action Research have been delineated in the annual report for the year 2001-2002. In consonance with the objectives of the Action Research, eleven research partners have been identified to collect information from the affected districts of Andhra Pradesh, Bihar, Goa, Karnataka, Maharashtra, the North-Eastern States, Rajasthan, Tamil Nadu, Pondicherry, Uttar Pradesh, West Bengal and the NCT of Delhi.

The Action Research, in particular, would also cover the metropolitan cities of Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad, which are the demand areas.

7.4 Given the character of the Action Research, information is being collected from the victims of trafficking as well, especially those who have been rescued and those who are still in situations of exploitation, such as prostitutes, bonded labourers, child labourers, beggars, etc. The source areas for this information are rescue homes, red light areas, night shelters, juvenile homes and the like. Women and children in mental homes and protective homes are particularly vulnerable to sexual and other forms of exploitation. The research is also expected to look into other aspects of trafficking, including trafficking for purposes such as slavery, servitude, camel racing, etc. Further, the research is looking into the health dimensions of trafficking, particularly the risk of HIV/AIDS, and the resultant lowering of the age at which children are being trafficked.

7.5 To begin with, a one-day Technical Consultation for the National Level Action Research on Trafficking in Women and Children was held at the Institute of Social Sciences, New Delhi on 9 October 2001. This Consultation focused on the methodology of the Action Research.

7.6 Thereafter, 11 Consultation Meetings/Workshops have been organized in different parts of the country, involving all stakeholders, viz, the local NGOs, the police, government officials and others, with a view to identifying local issues and sensitizing them about the problem of trafficking as well as to facilitate the research initiated by the Commission. The response has been excellent. The nodal officer of the Commission has also addressed several police training programmes in different States to create awareness among the police on trafficking offences.

7.7 A valuable consequence of the Action Research has been the creating of a network of nodal officers on trafficking involving all the States / Union Territories in the country. Two nodal officers have been nominated by each State Government / Union Territory, one representing the Police Department who deals with investigation, detection, prosecution and prevention of trafficking and the other representing the welfare agencies dealing with rescue, rehabilitation, reintegration and economic / social empowerment of the victims and prospective victims.

7.8 A National Conference of all these nodal officers was held in New Delhi on 29 October 2002. The Conference served to orient the nodal officers in respect of the various issues relating to trafficking in women and children and laid the foundation for the setting-up of a national network under the aegis of the NHRC. In this Conference, the Terms of Reference detailing the duties and responsibilities of nodal officers, drafted by the Commission, were also discussed and finalized. They have now been forwarded by the Commission to all the Chief Secretaries of the States and Union Territories. The network is a permanent one which will deal with all aspects of trafficking, facilitate detection, arrest and prosecution of traffickers and help rehabilitation programmes.

7.9 Keeping in view the objectives of the Action Research, eight different kinds of interview schedules have been devised for collecting information from the trafficked female survivors (rescued victims), trafficked active sex workers, traffickers, brothel owners, rescued trafficked child labourers, police officials, clients and the community. All the research partners engaged in the Action Research were given orientation training as to how to administer the different kinds of interview schedules in the field and collect the relevant data from the field.

7.10 The final report of the Action Research is expected to be completed by March, 2004.

7.11 Through the Action Research, the Commission is endeavouring to create an authentic database so as to strengthen the vulnerable groups in the supply zones both economically and socially. In the process, it also proposes to sensitize the public and the law enforcement agencies to the grave dangers inherent in trafficking and the need for its prevention. It is further the endeavour of the Commission to strengthen laws and law enforcement processes, punish traffickers, revamp rescue and rehabilitation programmes, and help NGOs to take advantage of the National Plan of Action of the Government of India for this purpose.

2] Trafficking in Women and Children: Manual for the Judiciary for Gender Sensitization

7.12 It had been mentioned in the annual report for 2001-02 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. That committee, which met under the Chairmanship of Justice (Smt.) Sujata V. Manohar, and comprised representatives of the Department of Women and Child Development (DWCD), Ministry of Home Affairs, National Commission for Women, UNICEF, UNIFEM, Lawyers' Collective and the Joint Women's Programme, recommended that the National Law School of India University (NLSIU), Bangalore be commissioned to prepare the manual.

7.13 The NLSIU, accordingly, prepared a draft outline of the manual which was discussed in a meeting of the committee that was convened by the Commission on 15 April 2002. In that meeting, it was decided that the NLSIU, in preparing the manual, should keep in mind that its objectives should be to:

- sensitize the judges on issues related to trafficking as a whole;
- sensitize the judges on how women and children experience law and related support services in order to enable them to take proactive decisions which would be most beneficial to the victim in a given case;
- study and critically analyze the experiences of the victim in various institutions established for the purpose;
- study and critically analyze the trends in judicial decisions and the law in cases related to trafficking, so as to gain an insight into the factors affecting the decision-making process and the gaps therein;
- critically study the mode and manner in which the victim finally arrives before the Court to give testimony before the judge, and to draw parallels with other cases before him/her (this should be trend-specific in relation to particular geographical areas); and
- analyse the experiences of the victims in various institutions.

7.14 In the light of these objectives, it was decided that, for the purpose of drafting the manual, information would be collected from the following ten States, namely, Karnataka, Madhya Pradesh, West Bengal, Orissa, Tamil Nadu, Goa, Maharashtra, Delhi, Rajasthan and Andhra Pradesh. Further, the proposed methodology for drafting of the manual would be two-fold:

- collecting information from judicial officers in the ten identified States through a mail-questionnaire, so as to assess their understanding of issues surrounding trafficking;

- convening two-day State level Consultations, one day with NGOs and the police, and the other with the judicial officers and public prosecutors.

7.15 In addition, it was also proposed that a National Consultation would be convened to pre-test the draft manual once it was ready. It was further decided that visits would be made by the project staff of NLSIU to the concerned NGOs working with sex workers or children of sex workers or child sex workers, state homes for women and juvenile homes for girls so as to enable them to assess the magnitude of the problem of trafficking in each of the States proposed to be studied. During these visits, the project staff would also interact with advocates and members of the judiciary so as to ascertain their views.

7.16 At the time of writing this report, the NLSIU had convened state-level consultations with the concerned NGOs, police, public prosecutors and judicial officers of Karnataka, Andhra Pradesh and Goa and had also collected information from the judicial officers of these States using the questionnaire that had been devised. Work on the preparation of the draft manual is well underway.

3] Sensitization Programme on Prevention of Sex Tourism and Trafficking

7.17 The Commission, in collaboration with the United Nations Development Fund for Women (UNIFEM) and the Women's Institute for Social Education, Mumbai organized a one-day Sensitization Programme on Prevention of Sex Tourism and Trafficking on 12 January 2003 in Mumbai. The participants included key administrators, policy makers, lawyers, human rights experts, senior representatives of hotel and tourism industry and representatives of non-governmental organizations working in the field, in addition to personnel of the Commission.

7.18 The primary objective of the programme was to sensitize senior representatives of the hotel and tourism industry on various issues relating to sex tourism and trafficking.

7.19 Keeping in view this objective, the programme deliberated on two main themes: 'Legal Dimensions of Sex Trafficking' and 'Sex Trafficking and Links with Tourism: Perspectives, Solutions and Challenges'. Participants in the programme expressed concern that sex tourism and trafficking were organized

activities, exploiting the vulnerability of women and children in our society. The participants recommended that there was need to:

- Evolve a comprehensive integrated approach for the prevention and protection of women, and children of both sexes, from sexual exploitation in the hotel, tourism and allied industries. Simultaneously, there is also a need to evolve a strategy to prosecute all those who indulge in the exploitation of women and children for the purposes of sex tourism and trafficking. In this way, a 'Zero Tolerance to Demand' could be created in the hotel and tourism industry.
- Create a vigilant atmosphere against violators within the hotel and tourism industry by promoting "Whistle Blowers".
- Hold regular sensitization programmes for the following groups of persons in order to make them aware of the various issues relating to sex tourism and trafficking, as well as to make "Human Rights in Practice" a management philosophy:
 - Staff and other functionaries in the hotel and tourism sector;
 - journalists, tour operators, airline operators and other institutions and personnel associated with the hotel and tourism industry ; and
 - adolescents and youth groups.
- Further, in order to prevent sex tourism and trafficking, special attention ought to be given to:
 - vulnerable areas like massage parlours, escort services, party hostesses, attendants / companions etc;
 - preparation/development of Guidelines/ Handbooks/ Manuals for prevention of sex tourism and trafficking in the hotel and tourism industry;
 - development and distribution of brochures and flyers for addressing the international tourists on the legal repercussions of sex tourism and trafficking;
 - development and distribution of in-flight videos on national and international flights addressing the issue of sex tourism and trafficking; and
 - development and distribution of different kinds of awareness material such as posters/hoardings etc., on the issue of prevention of sex tourism and trafficking for the benefit of the general public.

There was also a need to:

- Create a network for the exchange of information on new developments in respect of national/international initiatives against sexual exploitation of women and children in the hotel and tourism industry.
- Implement existing laws on prevention of sex tourism and trafficking in a more stringent manner. Where necessary, the laws should be amended or strengthened and law enforcement agencies must be sensitized to sex tourism and trafficking.
- Expand the existing rehabilitation services for rescued victims of sex tourism and trafficking and to improve the quality of services available there.

Further,

- The sensitization programme called upon the hotel and tourism industry to adopt a code of conduct amongst association(s) of hoteliers and tour operators for prevention of sex tourism and trafficking.
- In order to evolve an effective strategy to combat sex tourism and trafficking as well as to monitor the performance of hotel and tourism industry, there was need to organize a meeting of State Secretaries of Tourism in the near future.
- The participants also expressed the view that there was need to create a task force to ensure the effective implementation of strategies devised to prevent and detect sex tourism and trafficking, and to prosecute traffickers as well as sex tourists in the country where the crime is committed and/or in the country to which the offender belongs.

7.20 In a meeting held on 15 January 2003, the Commission accepted the above recommendations made during the one-day sensitization programme and decided to initiate follow-up action on it.

4) NHRC, India - NHRC, Nepal Joint Project for Combating Cross-Border Trafficking

7.21 On 7 November 2002, the Commission held preliminary discussions with a team from the National Human Rights Commission of Nepal to consider the

possibility of devising a joint project to combat cross-border trafficking between India and Nepal.

7.22 Both Commissions were of the view that a reciprocal arrangement between them, to help deal with this problem, would have beneficial consequences for the promotion and protection of human rights in their respective countries. It was, therefore, felt that a strategy ought to be developed between the two Commissions for the prevention, rescue, rehabilitation and repatriation of trafficked women and children. As the production of victims as witnesses often posed a problem, especially when the victims had been repatriated to their respective countries, it was suggested that a scheme of victim-friendly procedures would need to be worked out whereby victims are not subjected to harassment.

7.23 It was decided during the exchange-of-views that a small group would be constituted, including selected officials from the respective Governments, to work on a collaborative programme to combat cross-border trafficking between India and Nepal. The recommendations of the group could then be transmitted to the respective Governments for consideration and implementation.

7.24 It was further decided that a team from NHRC, India would visit the National Human Rights Commission of Nepal at a mutually convenient date, after which the visit could be reciprocated by a team from NHRC, Nepal.

5) Steps for Prevention of Cross-Border Trafficking

7.25 Manav Seva Sansthan, "SEVA", an NGO based in Gorakhpur and engaged in the prevention of cross-border trafficking of women and children along the Indo-Nepal border, wrote to the Commission suggesting that a variety of measures be taken to prevent trafficking on the border.

7.26 This matter was considered by the Commission and it was decided that the Director General (Investigation) should take up this matter with the Director General of Police, Uttar Pradesh and other concerned States bordering Nepal and Bangladesh.

7.27 Pursuant to this decision, the Director General (Investigation) wrote to the Directors General of Police of Uttar Pradesh, Bihar and West Bengal requesting that all the border check-posts be instructed to extend help and

cooperation to Manav Seva Sansthan "SEVA", as and when required, in order to help in the prevention of trafficking of women and children across the border. It was also suggested that whenever an offender indulging in trafficking is caught by the concerned NGO and produced before the police officer in-charge of the check post, appropriate legal action should be initiated forthwith. This could include the institution of a criminal case against the offender, if a cognizable offence is made out. All of the three Directors General of Police were also requested to inform the Commission of the action taken in this regard.

7.28 As of the time of writing this report, the Government of Uttar Pradesh has indicated that appropriate action has been taken by it in accordance with the suggestions of the Commission. The matter is being pursued with the other States.

B] Combating Sexual Harassment of Women at the Work Place

7.29 The year under review saw the continuation of the Commission's efforts to combat sexual harassment at the work place.

7.30 In its preceding annual report, the Commission had indicated that, based on decisions taken in a meeting convened under the Chairpersonship of Justice (Smt.) Sujata V. Manohar on 1 March 2001, the Commission had written to the Department of Personnel and Training (DOPT) recommending that "the findings of the Complaints Committee in all matters pertaining to sexual harassment at the place of work should be considered as final against the delinquent official, as this would lead to an early decision on the sensitive issue, and save the victim from undue harassment. For this purpose, the inquiry conducted by the Complaints Committee should be deemed as the inquiry conducted in a departmental inquiry under the disciplinary proceedings drawn up against the delinquent official".

7.31 The Department of Personnel and Training had, thereafter, in consultation with the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs), replied to the Commission on 15 June 2001 stating that while the Complaints Committee has been envisaged under the judgment of the Supreme Court, the CCS (CCA) Rules, 1965 have been framed under the proviso to Article 309 of the Constitution of India which have statutory force. It was added that Rule 14(2) of these rules provides that whenever the disciplinary authority

is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against the Government servant, it may itself inquire into or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof. The disciplinary authority or another authority appointed by it has to follow the prescribed procedure under these rules. Since the Supreme Court in Vishaka's case has also held that appropriate disciplinary action should be initiated by the employer in accordance with the relevant service rules, the disciplinary inquiry ought to be held under Rule 14, which does not envisage appointment of a Complaints Committee. The Complaints Committee also does not have the requisite expertise required in the matter and, therefore, would not be in a position to follow the prescribed procedures under the rules. In view of the above, the letter stated that the Complaints Committee cannot be deemed to be the inquiring authority within the ambit of Rule 14(2) of the CCS (CCA) Rules, 1965.

7.32 In view of the above, the Commission sought the advice of Shri P. Chidambaram, Senior Advocate, Supreme Court of India. He has opined that there is no legal impediment to amending the Service Rules in such a manner that the inquiry conducted by the Complaints Committee be treated as a departmental inquiry. The issue was, therefore, taken up by the Chairperson of the Commission with the Minister of Law, Justice and Company Affairs for the making of suitable amendments in the CCS (CCA) Rules, 1965. A letter was also written to the DOPT. The DOPT in consultation with the Ministry of Law, Justice and Company Affairs, has once again stated, in a letter to the Commission dated 20 September 2002, that there is no need to amend the CCS (CCA) Rules or to make the Complaints Committee an Inquiring Authority in the matter.

7.33 To allay the apprehension of the Commission that the Disciplinary Authorities may not act promptly on the report / recommendations of the Complaints Committee, the DOPT has, however, issued an Office Memorandum dated 12 December 2002 to all the Ministries / Departments of the Government of India clarifying that the findings of the Complaints Committee regarding sexual harassment of the complainant / victim will be binding on the Disciplinary Authority to initiate disciplinary proceedings against the Government servant(s) concerned under the provisions of the CCS (CCA) Rules, 1965. The report of the Complaints Committee should be treated as a preliminary report against the accused Government servant.

7.34 All the Ministries/Departments have also been requested by the DOPT, through the above-mentioned Office Memorandum, to bring those instructions to the notice of all concerned and ensure that necessary follow-up action is taken on the report of the Complaints Committee without delay.

7.35 In parallel to this exchange of letters with DOPT, the then Chairperson of the Commission wrote a letter on 26 June 2002 to the Minister for Law, Justice and Company Affairs, Government of India requesting him to take an initiative in the matter and to suitably amend the CCS Rules so as to make it mandatory under those CCS Rules to constitute a Complaints Committee in accordance with the Supreme Court guidelines in order, inter alia, to investigate complaints of sexual harassment and to provide that its report should form the basis for the Disciplinary Committee to take necessary action.

7.36 Further, with a view to examining how the legal fraternity could implement the guidelines and norms prescribed by the Apex Court, a high-level meeting was convened in the Commission on 29 July 2002 at which were present leading members of the Bar. That meeting specifically discussed how the Bar Council of India, the Supreme Court Bar Association, various other Bar Associations and the State Bar Councils could be involved in spreading awareness about the guidelines, as well as the setting-up of effective complaints mechanisms to deal with the problem of sexual harassment in the legal profession. After a detailed discussion, it was agreed that:

- There was need to reiterate the guidelines and norms as prescribed by the Supreme Court in *Vishaka v/s State of Rajasthan* in a more forceful manner for the legal profession as well. It was agreed that the Bar Associations, being non-statutory bodies, could set up a complaints mechanism without any delay to deal with complaints of sexual harassment of women in the legal profession as well as women litigants.
- It was agreed that the Bar Council of India should accordingly set up a suitable complaints mechanism. This would not only spread awareness of the guidelines and norms prescribed by the Apex Court in the *Vishaka v/s State of Rajasthan* judgment but also ensure discipline amongst the legal fraternity.
- It was decided that there was need to suitably amend the Advocates Act, 1961 so as to make provision for an appropriate complaints mechanism. However, on a suggestion made by Shri P. Chidambaram, Senior Advocate, Supreme Court, it was decided that until such time as the

necessary amendments were carried out in the Act, the Bar Council, in accordance with the provision laid down in Section 9 of the Advocates Act, 1961, could set up a Disciplinary Committee exclusively to deal with cases of sexual harassment and, accordingly, co-opt an active senior woman advocate as the Chairperson of that Committee as envisaged in the complaints mechanism referred to in the Vishaka judgment. The constitution of such a Disciplinary Committee under Section 9 of the Advocates Act, 1961 would be an effective mechanism as it would have disciplinary implications and, further, act as a deterrent against those who attempt to sexually harass any woman.

- It was felt that the Complaints Committee proposed to be set up under Section 9 of the Advocates Act, 1961 in the Bar Council of India and in various other State Bar Councils would have to be more rigorous so as to take action against the offenders.
- It was decided that once the complaints mechanism is set up in the Bar Council of India, the Bar Association of India, the Supreme Court Bar Association and the High Court Bar Associations, the Commission would take the initiative of training all the Complaints Committee members, which would be in accordance with one of the statutory functions of the Commission requiring it to spread human rights literacy and promote awareness.
- Shri Raju Ramachandran, Senior Advocate, Supreme Court and Smt. Kamini Jaiswal, Advocate, Supreme Court also raised the point that if the Vishaka guidelines are to be implemented in letter and spirit, the judiciary at all levels needs to be included in the process since the Courts are also work places of women. Shri Raju Ramachandran said that he would send a letter to the Commission on this matter for its consideration.

7.37 Subsequently, Shri Ramachandran wrote a letter to the Commission on 30 July 2002 stating that "for a woman lawyer, the 'workplace' comprises not just her senior's chamber, the bar library, canteen or corridor but also the Court room. There are well-known instances of women lawyers feeling that the behaviour of judges towards them has been inappropriate". It was accordingly decided by the Commission that the Chairperson may write a letter to the Chief Justice of India in the matter. The Chairperson, thereafter, wrote a letter to the Chief Justice of India on 15 November 2002, a copy of which is enclosed at Annexure 8.

C] Harassment of Women Passengers in Trains

7.38 The issue of harassment of women passengers in trains has been a subject of continuing concern to the Commission. In its preceding annual report, the Commission provided details of certain recommendations that it made to the Railway Board with a view to checking, from time to time, whether adequate action was being taken on those recommendations.

7.39 In response to the recommendations of the Commission, the Railway Board authorities informed to the Commission in August 2002 that the following measures had been taken by them:

- Instructions had been issued to the Zonal Railways for making the FIR forms available in the relevant languages on all routes of the trains.
- An informal discussion was held by the Railway Board with the representatives of Jagori, an NGO based in Delhi, so as to prepare and present some graphics to be displayed in the coaches.
- The Railway Board had also consulted Jagori to assist them in the designing of publicity material relating to the prevention of sexual harassment in trains. Once this was handed over by Jagori, the publicity exercise would be initiated by the Railway Board.
- Instructions had been issued to the Zonal Railways for tackling the nuisance in an effective manner on the trains and routes/sections from which the maximum number of complaints were reported. Instructions had also been given to the Railway Protection Force (RPF) personnel to play a proactive role.
- A discussion had been held with the representatives of Jagori at which they were requested to prepare a two-day module for the Probationers of the Traffic and Security Department.
- The Ministry of Home Affairs had also advised the State Governments/ Union Territory Administrations to take necessary action on the recommendations made by the Commission to constitute State Level Coordination Committees, with representatives from the Railway Protection Force (RPF)/the Government Railway Police (GRP) and the Zonal Railway Administration of their own area as members, to periodically review the progress of implementation of the measures taken for the safety of women passengers.

D] Rehabilitation of Destitute Women in Vrindavan

7.40 The Commission has, for the past years, been engaged in efforts to improve the status and uphold the rights of destitute and marginalized women, particularly widows, living in the area of Vrindavan. The preceding annual report of the Commission listed certain decisions that had been taken in a meeting with senior officials of the Governments of Uttar Pradesh as well as of West Bengal on 23 August 2001.

7.41 In pursuance of this matter, a meeting was convened once again by Justice Smt. Sujata V. Manohar on 3 October 2002. The meeting was attended, among others, by a former Member of the Commission, who had visited Vrindavan in Uttar Pradesh on 5-6 December 2001 and the Secretary, Department of Women & Child Development (DWCD), Ministry of Human Resource Development, Government of India. In this meeting, all aspects of the issue relating to the welfare of the destitute/marginalized women living in Vrindavan were discussed at length and the following decisions/suggestions made:

a) Accommodation/Housing

7.42 As decided in the meeting held the previous year, two additional buildings had been taken on rent in order to accommodate more women; both the buildings were expected to become functional by the end of October 2002.

7.43 With a view to providing both young and elderly destitute women with safe accommodation for group living, it was noted that a piece of land measuring 0.809 hectares had been purchased in Vrindavan by the State Government for housing/accommodating 1,000 women. Possession of this land was to be taken over by the District Administration, Mathura shortly and the construction of the building would start as soon as the State Government decided upon the allocation of the construction work of the building to identified agencies such as the PWD/ HUDCO, etc.

b) Pensions

7.44 During the deliberations held on 23 August 2001, representatives of Government of Uttar Pradesh had promised to raise the existing pension amount of Rs. 125 to Rs. 250 per month. However, as this assurance had not been fulfilled, the view was taken that the State Government should be able

to arrange for the enhancement of this pension to Rs.250 for the Vrindavan destitute women from funds allocated and available to the District of Mathura under other Schemes. It was further decided that the pensions should be disbursed through cheques, in order to avoid malpractice of any kind.

7.45 Since the majority of the destitute women living in Vrindavan belonged to West Bengal, the Commission had also taken up the issue of the enhancement of pensions 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. This matter will be further examined by the Commission.

c) Health Care

7.46 It was stated that regular medical check-up and treatment were being provided to the destitute women in Vrindavan through health camps organized by the Chief Medical Officer twice a month. Medicines were also being provided free of charge. A lady doctor visited all the women twice a week for their medical care/treatment. In addition, Helpage India and various other NGOs were also providing healthcare to these women.

7.47 The Commission also stressed that one or two additional Mobile Medicare Units should be arranged by the State Government, as assured by them during the meeting held in the preceding year.

d) Providing LPG Connections

7.48 With a view to providing safe cooking arrangements, 20 gas connections with 25 LPG cylinders had been provided for community cooking.

e) Income Generation

7.49 Of the estimated 3,000 destitute/marginalized women living in Vrindavan, approximately 1,900 were too old to undertake any income-generating work. It was their desire to concentrate on puja, singing bhajans and doing thakur

seva. At present, some 165 women were engaged in tailoring, making candles, pickles, pappads, etc. Another 440 women were trained and skilled in these professions but needed financial support and the requisite equipment. A few others were also interested in taking up such income-generation work. It was, however, felt that instead of asking these women to sell pickles / pappads etc, the skilled amongst them could be encouraged to become trainers and their services utilized for Government-run projects as this would enable them to live with dignity.

f) Social Security Cards

7.50 It was considered desirable to issue social security cards to all the destitute women living in Vrindavan and to register these cards with the District Magistrate, Mathura.

g) Cremation

7.51 It was stated that appropriate financial provision had been made to meet the costs of the cremation rites of destitute women.

h) Awareness Programme/Publicity

7.52 Since most of the destitute women living in Vrindavan spoke Bengali but were illiterate, there was a communication gap in creating awareness amongst them of the facilities available to them. It was, therefore, felt desirable that radio/T.V./loud speakers should be used by the State Government, instead of the print media.

E] Colloquium on Population Policy - Development and Human Rights

7.53 The Commission, in collaboration with the Department of Family Welfare, Ministry of Health and Family Welfare and the United Nations Population Fund organized a two-day Colloquium on Population Policy - Development and Human Rights on 9-10 January 2003 in New Delhi. Participants at the two-day Colloquium included administrators, policy makers from State and Central Governments, human rights experts and representatives of non-governmental organizations working in the field. The main objective of the Colloquium was to initiate a dialogue, having the perspective of both development and human

rights, in respect of the implementation of effective population policies at the Centre and State levels as well as deliberate on the mechanisms to achieve this objective.

7.54 Keeping in view the objective, the Colloquium deliberated upon the following themes; 'Development and Evolution of Population Policy'; 'Population Policy and Legal Instruments'; 'Population Policy and Socio-Legal Perspective'; 'Impact of Two Child Norm'; and 'Concerns in Framing Population Policies'. An important feature of the Colloquium was the presentations made by representatives of State Governments that had framed their population policies.

7.55 Inaugurating the Colloquium, the then Union Minister of Health and Family Welfare, Shri Shatrughan Sinha, outlined the population policy of the country and inter alia said, "the validity and sanction of any policy or legislation has to be rooted in the gamut of human rights it seeks to protect or promote. The Family Welfare Programme in India is voluntary and promotive in nature. The National Population Policy (NPP) aims at providing the widest range of services without any form of coercion". He added that the Ministry of Health and Family Welfare was impressing upon State Governments the need 'to make enhanced investments in human development for improving the quality of life'.

7.56 Criticizing those States which have framed population policies inconsistent with the spirit of the NPP, the Minister said that the NPP did not provide for any individual incentives or disincentives because these tend to hit the poor the hardest. Some States had framed policies that did not reflect the objectives of the NPP in its true spirit, he added.

7.57 The Minister also called for upholding the right to privacy and confidentiality of the woman, the right of the woman to decide when and how many children she will bear, the right to information and prior consent for any treatment proposed, and the right to be medically examined in a dignified and responsible manner.

7.58 Speaking on the occasion, the then Chairperson of the Commission, pointed out that coercive population control methods were not part of the NPP. However, some States, in their policies, appeared to have deviated from that policy and to have adopted disincentives and imposed penalties. These disincentives were violative of the constitutional guarantees of the rights of

women and children. He lauded the assurances given by the Minister of Health and Family Welfare that the NPP would be implemented in a non-coercive manner. He called for a rights-based approach to population policies and urged the State Governments, especially those of Uttar Pradesh, Madhya Pradesh, Rajasthan, Maharashtra and Haryana, to review their policies. Uniform standards, consistent with the NPP, were necessary to achieve the objective of population stabilization. The 'means', he emphasized, should be as important as the 'end'.

7.59 The Colloquium concluded by expressing concern that the population policies framed and rigorously implemented by some of the State Governments reflected a coercive approach through use of incentives and disincentives, which was inconsistent with the spirit of the National Population Policy, 2000. Such an approach violated the rights of a large section of the population, especially the marginalized and the vulnerable, including women. The Colloquium therefore recommended that the State Governments / Union Territories should exclude these discriminatory and coercive measures from population policies.

7.60 The Commission appreciates the views that were expressed by the Union Minister of Health and Family Welfare and others who participated in the Colloquium. It intends to monitor this issue carefully, so as to ensure that population policies and programmes adopted by certain State Governments, do not result in the violation of human rights, especially those of women. In order to pursue this matter, the Commission has written to the Union Minister of Health and Family Welfare as well as to the Chief Ministers / Administrators of all the States / Union Territories to comply with the Recommendations and Declaration that was adopted at the Colloquium (Annexures 9 and 10).

7.61 In response, the Governments of Karnataka, Orissa, Maharashtra, National Capital Territory (NCT) of Delhi, Jammu & Kashmir, Jharkhand, Uttaranchal, Bihar and Punjab have written to the Commission that they were looking into the matter, but their definitive reports were awaited as of the time of writing this report.

7.62 The Chief Minister of the NCT of Delhi has further stated that the recommendations made during the course of the Colloquium were very progressive and that she would have them examined on priority by the concerned Minister of Health. She added that her Government had launched a special initiative to empower women, especially those belonging to the economically weaker sections of society through the 'Stree Shakti' programme.

7.63 In pursuance of the directions of the Chief Minister, the Health and Family Welfare Department of the Government of NCT of Delhi has communicated to the Commission that the enforcement of the Pre-natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994 in Delhi is a step forward towards implementation of recommendations adopted in the two-day Colloquium organized by the Commission. In this context, the appointment of 'Appropriate Authorities' in nine districts, in order to generate awareness about this Act and its implementation amongst the medical fraternity, as well as the general public, has been a major break-through in discouraging sex discrimination tests.

7.64 The Health and Family Welfare Department of the Government of the NCT of Delhi has also informed the Commission that steps are being taken to set-up a Delhi Population Commission and that the recommendations adopted in the Colloquium were broadly covered in the Terms of Reference of the proposed Population Commission. The proposed Population Commission would now prepare the guidelines for implementation of the Action Plan on the Strategic Themes for achieving the 14 National Socio-Demographic Goals set by the NPP by 2010. Moreover, in order to prevent the taking of coercive approaches which adversely affected the human rights of disadvantaged and marginalized sections of society, the recommendations of the Colloquium had been forwarded to the Directorate of Family Welfare, Government of NCT of Delhi for proper implementation.

7.65 The Chief Minister of Uttaranchal has stated to the Commission that the State of Uttaranchal had adopted a holistic approach and formulated an integrated Health and Population Policy and that this policy placed special emphasis on reaching out to women, children, the elderly and the disadvantaged sections of the society. The Policy also states that the Government of Uttaranchal will largely depend on persuasive measures, rather than coercive ones, to change the behaviour of people, using strategic communication approaches. At the same time, legislative measures were going to be introduced to control patterns of behaviour detrimental to the health of people. In his letter, the Chief Minister has also stated that the State Health and Population Policy takes into account the recommendations and the Declaration adopted at the Colloquium and that the State would streamline its systems to encourage adherence to ethics, openness, accountability and information sharing in all transactions. As the Health and Population Policy had been framed by the State, the Chief Minister of Uttaranchal added, "we are now

working on an operational plan for policy implementation. The concerns raised by the Commission shall be duly taken into account while translating our Policy into action".

Rights of the Vulnerable

CHAPTER 8

A] Abolition of Child and Bonded Labour

8.1 The problems of child labour and bonded labour remained central concerns of the Commission during the period under review. The paragraphs that follow will deal, first, with the child labour situation in the States of Madhya Pradesh, Jharkhand, Rajasthan, Bihar and Uttar Pradesh, second, with the bonded labour situation in these States and, third, with the efforts made in respect of child labour and bonded labour in the southern States of Andhra Pradesh, Tamil Nadu, Karnataka and Kerala.

1) Child Labour: Efforts in the States of Madhya Pradesh, Jharkhand, Rajasthan, Bihar and Uttar Pradesh

8.2 Dr. Justice K. Ramaswamy, Member, reviewed the child labour situation and the enforcement of the Child Labour (Prohibition & Regulation) Act 1986, in the States of Madhya Pradesh (MP), Jharkhand and Rajasthan, where he was assisted by Shri Chaman Lal, Special Rapporteur of the Commission. The latter, in addition to monitoring the enforcement of the Child Labour Act and the functioning of the National Child Labour Project (NCLP) in the carpet-belt of Uttar Pradesh, carried out a detailed review of the child labour situation in Bihar. The salient points emerging from the reviews that were undertaken, are indicated below.

Madhya Pradesh

8.3 The review indicated that, according to the 1991 census, the estimated number of working children in Madhya Pradesh was 9,57,000. In as many as ten districts (all tribal districts), the percentage of working children in the total child population of the 5-14 age group was more than 10%; it was as high as 25.5% in Jhabua. The incidence of child labour in Madhya Pradesh is prominent in the agricultural sector, in bidi making, the brick-kiln, the stone and slate quarries.

8.4 The survey of child labour undertaken in Madhya Pradesh, in accordance with the directions of the Supreme Court in 1996-97 in the case of M.C. Mehta vs. State of Tamil Nadu and others, led to identification of 8739 children in hazardous occupations and 3056 in non-hazardous occupations/processes. The survey also resulted in the identification of six districts, namely, Damoh, Raisen, Sagar, Tikamgarh, Jabalpur and Rewa as child labour-prone districts. All of the 8739 child labourers identified in hazardous occupations/processes were released. Only 6663 of them were, however, admitted to schools. Three thousand and thirty three recovery notices were issued against 3854 employers for recovery of compensation at the rate of Rs. 20,000 per child labourer. However, 1537 employers were able to obtain stay orders from the High Court. Out of a total recoverable amount of Rs.16,93,00,000, only a paltry sum of Rs.1,45,000 had therefore actually been recovered in the six districts of Indore, Dhar, Sagar, Seoni and Mandsaur.

8.5 The Labour Department had been carrying out regular inspections to detect cases of child labour after the survey of 1997, but only 73 children were detected working in hazardous occupations/processes until the end of February 2002. A total of 3649 criminal cases had been launched against the employers under the Child Labour Act after the survey. However, only 289 cases had thus far been decided by the courts, with 286 cases resulting in acquittal.

8.6 The districts of Mandsaur, Gwalior and Ujjain are covered under the National Child Labour Project (NCLP). Gwalior and Ujjain have 40 schools with a capacity of 50 students each. However, Mandsaur which was also sanctioned 40 schools initially, is now running only 4 schools with a total strength of 488 students.

8.7 Madhya Pradesh, alongwith Maharashtra, Tamil Nadu and Uttar Pradesh, has been selected for the Child Labour Elimination Project and GOI-USDOL

(Government of India and US Department of Labour). The Project has identified 12 hazardous sectors as priority areas for the eradication of child labour. Bidi-making, responsible for a sizeable number of child labourers in Madhya Pradesh, is one of them. In Madhya Pradesh, the scheme is meant to be implemented in Jabalpur, Sagar, Damoh, Satna and Raisen.

8.8 A heartening feature of the situation in Madhya Pradesh is the increasing involvement of Panchayati Raj bodies in the eradication of child labour. With a view to de-centralizing responsibility for enforcement of the Child Labour Act, the State Government has vested various Panchayati Raj bodies, zila panchayats, janpad panchayats and gram panchayats with the powers of inspectors under the Child Labour Act. The District Planning Committees constituted in the State have also been vested with powers to monitor and review the action taken, inter-alia, under the Child Labour Act.

Jharkhand

8.9 The review indicated that a total of 3570 children were detected in hazardous and 6375 in non-hazardous occupations/processes as a result of the survey conducted in 1996 under the directions of the Supreme Court. No information could be furnished by the State Government regarding the educational rehabilitation of children withdrawn from labour and the economic rehabilitation of the affected families in accordance with the directions given by the Supreme Court in Writ Petition No.465/86, M.C. Mehta vs. State of Tamil Nadu and others. No action was taken to recover the fine of Rs.20,000 per child labourer from the offending employers, nor was any prosecution launched. There had hardly been any drive after 1997 to detect child labour and to enforce the Child Labour Act, even though this serious violation of the rights of the child persists in most parts of the State.

8.10 Five districts of Jharkhand, namely, West Singhbhum, Pakur, Garhwa, Dumka and Sahibganj are covered under the National Child Labour Project. A total of 144 National Child Labour Project schools were imparting accelerated primary education to 5700 children.

Rajasthan

8.11 The review of the child labour situation indicated that a total of 3026 children were identified as having been engaged in hazardous occupations/processes as a result of the survey ordered by the Supreme Court on 10

December 1996. Only 2504 of them were withdrawn from child labour and only 2070 of them were admitted to schools. No periodical surveys were conducted to detect, release and rehabilitate the child labourers after the survey of 1997. In September 2000, a survey was conducted in Jaipur in order to launch the ILO-IPEC Action Programme. It led to the detection of 9673 working children in the age groups of 5-7, 8-12 and 13-16 years. The follow-up of the survey was not intimated to the Commission. It was, however, stated that a fresh survey had been started in January 2002 for the detection of child labour. The report required to be sent to the Commission by the end of May 2002 was, however, not received until 31 March 2003. There had been no progress in respect of the recovery of a fine of Rs.20,000 from each of the offending employers. Only an insignificant amount of Rs.60,000 had been recovered until the date of the review, against recovery certificates issued in 2701 cases. Prosecution remained as neglected as before.

8.12 Six districts of Rajasthan, namely, Jaipur, Udaipur, Ajmer, Jodhpur, Alwar and Tonk are covered under the National Child Labour Project. A total of 180 NCLP schools with capacity of 50 students each are being run by 59 NGOs. A mid-day meal programme has been extended to children in NCLP schools, who were also being provided free text-books and free medicines under the Prime Minister's Gramodaya Yojana.

Bihar

8.13 The review, was carried out by Shri Chaman Lal, Special Rapporteur, in Betiah, West Champaran on 21 October 2002. Bihar has the dubious distinction of providing migrant child/bonded labourers for the carpet belt in Uttar Pradesh. A number of children belonging to the districts of Araria, Khagaria, Saharsa, Supaul, Darbhanga, Katihar and Madhubani have been rescued from the captivity of unscrupulous employers in Allahabad, Bhadoi and Mirzapur.

8.14 A total of 21,281 children were found working in hazardous occupations/processes as a result of the State-wise survey ordered by the Supreme Court. Only 14,367 (60%) were actually withdrawn from child labour and 11,265 of them were admitted to the formal or non-formal system of schooling. Although 2853 notices were issued for recovery of Rs.20,000 per child labourer from the offending employers, a sum of only Rs. 80,000 was actually recovered. There had been no systematic survey after that which was conducted in 1997 to detect child labour.

8.15 National Child Labour Projects are in operation in three districts, namely, Jamui, Saharsa and Nalanda. A total of 85 schools - 40 in Saharsa with a strength of 50 each, 20 in Jamui with a strength of 100 each and 25 in Nalanda with a strength of 100 each were sanctioned. A total of 6382 children were receiving accelerated primary education with supplementary nutrition and a stipend of Rs. 100 each in these schools.

Uttar Pradesh

8.16 The Special Rapporteur visited Kanpur, Lucknow and Allahabad from 3-5 June 2002 to review developments concerning the child labour situation in the carpet belt. He also visited Kanpur, Allahabad, Mirzapur, Bhadoi and Varanasi once again from 11-15 March 2003 for this purpose. His reports indicated following broad situation in the State.

8.17 During the period 1 April 2002 to 31 March 2003, a total of 448 children were detected as being engaged in hazardous occupations/processes and 1159 in non-hazardous occupations/processes in Uttar Pradesh. This number included 180 and 214 children respectively detected in the carpet belt districts viz. Varanasi, Jaunpur, Gautambudh Nagar (Bhadoi), Mirzapur, Sonbhadra and Allahabad. With this, the total number of children withdrawn from hazardous occupations in Uttar Pradesh since the survey of 1996-97 ordered by the Supreme Court comes to 28,862. As far as the non-hazardous occupations/processes were concerned, 32,973 children were identified as working in them during this period. Out of the total of 61,835 children engaged in labour, as many as 53,141 (85.9%) had been admitted to schools. This included 10,600 children of the carpet belt districts. This presents a very satisfactory picture of educational rehabilitation of the released children.

8.18 Notices were issued for recovery of Rs.30,52,83,000 at the rate of Rs.20,000 per child labour from the offending employers. A number of orders have been stayed by the courts. In such circumstances, the Commission finds it remarkable that an amount of Rs. 89,52,792 has actually been collected in Uttar Pradesh. This includes Rs. 16,13,569 collected from the districts in the carpet belt.

8.19 A total of 23,382 affected families of children withdrawn from hazardous work were to be rehabilitated in accordance with the directions of the Supreme Court. Only 4594 of them (19.7%) were actually provided some relief under the Poverty Alleviation Programme. The Commission has been informed that 6753

families already had some means of employment. As many as 4,250 families reportedly did not come forward to receive any help, and 5202 migrant families left for their native places. The Commission finds it hard to accept this account at its face value. This still leaves a balance of 2583 families, who were required to be rehabilitated. The number of affected families of the carpet belt was 7502, of whom 1775 families were rehabilitated as a result of monitoring by the Commission.

8.20 The National Child Labour Project is in operation in 11 districts of Uttar Pradesh including Varanasi, Bhadoi, Mirzapur and Allahabad of the carpet belt. A total of 470 schools were sanctioned including 20 each for Bhadoi and Mirzapur and 40 each for Varanasi and Allahabad. At present, only 462 schools are in operation. Five schools of Ferozabad and three schools of Mirzapur have been temporarily closed. Against a total capacity of 26,500 students, 24,421 are presently receiving education in these schools. Two hundred and thirty eight schools are being run by the NGOs and 224 schools by the Project Societies. The Commission has recommended greater involvement of NGOs in the running of these schools. The Special Rapporteur has commented adversely on the functioning of the Project Society in Mirzapur.

8.21 From the fore-going, it will once again be seen that efforts to end child labour have varied in quality and intensity from State to State. While it can certainly be said that the vigilance of the Commission has created greater awareness and, in certain instances, encouraging results, it is also clear that despite all of the efforts made and the pronouncements of the Supreme Court, child labour persists in the country. In its preceding annual report, the Commission noted with some concern that there were a number of reasons for this including, regrettably, the inherent deficiencies in the existing legislation relating to child labour. As that report spelt out the areas in respect of which the Commission felt there was need to amend the Child Labour (Prohibition and Regulation) Act, 1986, this report will not repeat those recommendations. The deep anguish of the Commission is that no specific steps appear to have been taken in this respect by the competent authorities despite the imperatives of the Constitution, contained in Article 24 read with Articles 21, 39(e), 39(f) and 45, and also the provisions of a number of United Nations human rights treaties, principally the Convention on the Rights of the Child, 1989 to which India is a State party.

8.22 As the present situation remains unsatisfactory, the Commission reiterates its recommendation that the Government of India act with speed and clarity

to re-write the laws relating to child labour, and work diligently and in coordination with the State Governments to achieve, within a reasonable time-frame, the free and compulsory education for the children of our country that has been promised by the Constitution.

2) Bonded Labour: Efforts in the States of Madhya Pradesh, Jharkhand, Rajasthan, Bihar and Uttar Pradesh

8.23 The Commission remained deeply involved in the monitoring of the implementation of the Bonded Labour System (Abolition) Act 1976, as requested by the Supreme Court in its order of 11 November 1997, passed in Writ Petition (Civil) No. 3922 of 1985. The order stated, inter alia, that the concerned authorities would promptly comply with the directions given by the NHRC in this regard. In the course of the period under review, Dr. Justice K. Ramaswamy, Member, assisted by Shri Chaman Lal, reviewed the bonded labour situation in Rajasthan, in a meeting held in Ajmer on 4-5 April 2002; in Madhya Pradesh, in a meeting held in Bhopal on 25-26 April 2002 and in Jharkhand, in a meeting held in Ranchi on 22-23 June 2002. Shri Chaman Lal visited the carpet belt districts of Uttar Pradesh from 3-6 June 2002 and from 11-15 March 2003 and conducted a review of the bonded labour situation in the State. He undertook a review of the Bonded Labour situation in Bihar, holding a meeting with the senior officials of the Labour Department in Betiah, West Champaran on 20-21 October 2002.

8.24 The salient points emerging from the reviews undertaken in the State of Madhya Pradesh, Jharkhand, Bihar and Uttar Pradesh are indicated below.

Madhya Pradesh

8.25 A Working Group set up by the Planning Commission has identified 20 districts of Madhya Pradesh as sensitive from the standpoint of bonded labour. Vigilance committees have been constituted in 44 out of a total of 45 districts of the State. Vigilance committees are in place in all the 183 sub divisions of the State. According to information received from the Ministry of Labour, Government of India, a total of 12,822 bonded labourers were identified for release in Madhya Pradesh in the period between 1997 and 2002. Of these labourers, 11,897 had been rehabilitated with Central assistance in the amount of Rs. 1,46,35,000. A total of 328 bonded labourers had been identified and released in six districts of the State, namely, Vidisha, Raisen, Ratlam, Indore,

Shahdol and Satna after the transfer of the subject of bonded labour to the Labour Department in February 2000. One hundred and sixty of them were migrant labourers - 17 from UP and 143 from Chhatisgarh who were returned to their parent States. No information could be furnished about their rehabilitation. The remaining 168, including seven released bonded labourers, who were received in Ratlam (Madhya Pradesh) from Dadri (Haryana), were required to be rehabilitated by the Government of Madhya Pradesh. The Commission notes with satisfaction that 164 of them have actually been rehabilitated. Of the remaining 11, nine were paid the minimum interim grant of Rs. 1000 each but were reported to have become untraceable thereafter. Two out of the total of seven persons received in Ratlam from Haryana in 1999-2000 were not paid any assistance before they became untraceable.

8.26 The Commission was informed that the District Magistrates of the concerned districts were making every effort to trace the 11 released labourers and provide them the benefits of the Centrally sponsored scheme. A total of 13 cases under the Bonded Labour Act have been registered in regard to 328 bonded labourers released since 1999-2000.

Jharkhand

8.27 Fifteen districts of Jharkhand have been identified as bonded labour prone districts. The District level vigilance committees have been constituted only in 12 out of the total of 22 districts until the time of the review (22-23 June 2002). Sub-divisional vigilance committees were in place in only 15 out of a total of 33 sub-divisions. The Government notification empowering the Executive Magistrates under section 21 of the Act, to exercise the powers of First Class Judicial Magistrates, had been issued only for eight out of the 22 districts until the time of review. A total of 5,344 bonded labourers had been detected in Jharkhand but all these cases pertain to the period immediately after 1976 when the Bonded Labour Act was introduced. Of them, 5,342 were reported to have been rehabilitated. The Labour Secretary admitted that there had been no detection of bonded labourers in any of the districts of Jharkhand during the last 4-5 years. The Commission had, on 19 February 2002, provided a list of 40 bonded labourers of Jharkhand released in districts of the carpet belt of Uttar Pradesh during the period 1994-2001 to the Labour Secretary, Jharkhand. The Labour Secretary stated that another list of 76 such persons had been received by him from an NGO, the South Asian Coalition on Child Servitude. He added that a total of 76 released bonded labourers out of a total of 116 persons could be traced and that their rehabilitation was in progress.

Rajasthan

8.28 Vigilance committees had been constituted at the district and sub-divisional level in all of the 32 districts of the State and they were meeting regularly. Eleven districts had been identified as bonded labour prone districts. Members of gram sabhas, ward sabhas and panchayats were involved in the identification of bonded labourers. As mentioned in the preceding annual report of the Commission, the rehabilitation of 100 released bonded labourers was pending at the end of 2000-01. Three of them were reported to have died. Fifty six of them were reported to have become untraceable. Only 40 had been rehabilitated. One case was still pending. Fifteen bonded labourers were identified and freed on 5 February 2002 from a brick kiln in district Jaipur. Confirmation about their rehabilitation was awaited despite reminders to the Government of Rajasthan.

8.29 A total of 341 prosecutions had been launched till the date of review under the Bonded Labour Act. Ninety two had resulted in conviction and 162 in acquittal. Fifty seven cases were reported as pending and 30 as dropped. The Commission expressed satisfaction with the progress shown since the last review. However, in light of reports indicating that bonded labour was still prevalent in some parts of Rajasthan, the Commission indicated that the drive for the identification and release of bonded labourers needs to be intensified.

Bihar

8.30 The review meeting was held in Betiah, West Champaran on 20-21 October 2002. Twenty six out of a total of 38 districts in the State have been identified as bonded labour prone districts. Although the Labour Commissioner stated that vigilance committees were in place in all the 38 districts and 115 sub divisional headquarters of the State, actual confirmation from the districts was available only in respect of 11 districts and 16 sub-divisions. After considering the report of the Special Rapporteur, the Commission directed the State to confirm, by the end of December 2002, that vigilance committees had indeed been constituted in all the districts and sub divisional headquarters. It is a matter of regret that the Action Taken Report received from the Commissioner-cum-Secretary, Department of Labour, Employment and Training vide his letter of 6 January 2003, confirms that vigilance committees have been constituted only in 11 districts and 20 sub divisional headquarters.

8.31 A total of 7,995 bonded labourers have been identified in the area now included in Bihar, after the creation of Jharkhand, since the enforcement of the Bonded Labour System (Prohibition) Act 1976. Until 31 March 2002, 7780 of them had been actually rehabilitated. Of the remaining, 115 were reported to be untraceable. There has been no detection of bonded labour in the State after 1986. In the year 2001, 37 bonded labourers including 15 children were detected in States outside Bihar (UP & Gujarat) and returned to their parent districts. All of them had been rehabilitated under the centrally sponsored scheme of the Government of India. In 2001-02, 50 migrant bonded labourers were received back - 38 after detection in Uttar Pradesh and 12 in Delhi. Their rehabilitation was in progress. The Commission had supplied the State Government with a list of 143 migrant labourers of Bihar, released during the period 1994-1999, whose rehabilitation had not been taken up. The Commission noted with satisfaction that 114 bonded labourers out of this group had been located. Six of them were found to have already been rehabilitated. The rehabilitation of the remaining 108 was being processed. The Action Taken Report of 6 January 2003 indicates that the share of the State for the rehabilitation of 42 bonded labourers had already been released to the concerned districts. In the year 2002-2003, (upto 30 September 2002), 272 bonded labourers had been identified and released in district Betiah and 22 migrant labourers had been received back after detection in Uttar Pradesh in 2002-03; their rehabilitation was being processed.

8.32 Information about prosecutions of offenders under the Bonded Labour Act was not made available to the Commission at the time of the review. The Action Taken Report of 6 January 2003 is also vague, giving no worthwhile information concerning the disposal of cases, pendency and conviction rate. Aspects relating to the prosecution of cases is thoroughly neglected.

8.33 The Ministry of Labour, Government of India had, in August 2000, offered 13 bonded labour prone States, including Bihar, a special grant of Rs. 10,00,000 for awareness generation, Rs. 10,00,000 for a survey on bonded labour in five selected districts (to be completed in three years) and Rs. 5,00,000 for impact and evaluation studies in five districts. The grant was released to the Government of Bihar in 2001-02 but funds had not been made available to the concerned Department until the date of review i.e. 21 October 2002. Funds, only for the survey, had been made available to Patna, Nalanda, Navada, Mungher and West Champaran districts, as mentioned in the Action Taken Report of 6 January 2003.

Uttar Pradesh

8.34 The review conducted on 7 July 2001, to which reference is made in the Commission's annual report for 2001-02, had indicated the existence of vigilance committees in 57 out of a total of 70 Districts and in 190 out of a total of 299 sub divisions. The Commission has noted with satisfaction that vigilance committees are now in place in all 70 districts and 287 out of a total of 296 sub divisions (the number of sub divisions had been earlier wrongly given as 299). Proposals for constitution of sub divisional committees at six places are pending approval of the Government. Proposals were awaited from the district magistrates in respect of the remaining three sub divisions. However, the Commission is constrained to record that there has been no detection of bonded labour by the vigilance committees anywhere in the State so far. Whenever detections have been made, this has been as the result of initiatives taken by NGOs, or by the Commission itself, in response to petitions received by it.

8.35 A total of 165 bonded labourers were identified and released in 2002-03 (up to 31 January 2003). With this, the total number of bonded labourers identified and released since the survey of 1996-97 ordered by the Supreme Court, comes to 2225. Of this number, 1426 were migrant workers. It has been observed by the Commission that the migrant bonded labourers are often hurriedly dispatched to their native districts without even initiating the mandatory action required under the law for their rehabilitation. In many cases, even the release orders have not been issued and the district magistrates of the native districts were seldom informed. After the frequent intervention of the Commission, matters have improved, but not enough. The Union Labour Ministry is aware of the fact that the rehabilitation of migrant labourers is not being pursued effectively by any agency. The Commission has also brought this matter to the notice of the Supreme Court through its periodical reports.

8.36 Out of the total of 2225 released bonded labourers, 799 belonged to Uttar Pradesh itself and were required to be rehabilitated in that State. Thirteen of them either died, or become untraceable, or refused to receive any rehabilitatory assistance. Thirty one bonded labourers, whose homes were in Uttar Pradesh but who were released in other States, were received back and were required to be rehabilitated in Uttar Pradesh. The current status of the 817 cases requiring rehabilitation in Uttar Pradesh is as follows:

- Total number of bonded labourers to be rehabilitated 817

● Number of bonded labourers rehabilitated	317
	(including 8 in 2002-03)
● Cases under processing in district Sonebhadra	11
	(funds received)
Balance	459

8.37 It would be clear from the facts indicated above that the rehabilitation of identified and released labourers has been extremely slow. Delay in the receipt of funds from the Government of India is often cited as the reason for this. However, it has been observed that the State Government has itself been late in sending the necessary utilization certificates to the Centre; further, the State Government has not confirmed, in a timely way, the budgetary allocations made by it for purposes of the matching share of the rehabilitation grant. It is these factors that explain the delay in the release of the Central grant.

8.38 The Government of India had released a grant of Rs.25,00,000 in October 2001 for awareness generation (Rs.10,00,000), survey (Rs.10, 00,000) and evaluatory studies (Rs.5,00,000) in Uttar Pradesh. However, the districts in which the survey work and evaluatory studies were to be undertaken, have been divided. No work could thus be started under these schemes until 31 March 2003 because the funds deposited in the account of the State Government in October 2001 had not actually been made available to the Labour Department. The Commission also observed that the immediate grant of Rs.1000 as subsistence allowance, required to be provided to every released bonded labourer under the Centrally sponsored scheme, was not being paid because no provision had been made for this essential relief measure in Uttar Pradesh thus far. Given this situation, Dr. Justice K. Ramaswamy, Member of the Commission wrote to both the Chief Minister and the Chief Secretary of Uttar Pradesh on 13 June 2002 but no action had been taken by the Government of Uttar Pradesh on this matter until 31 March 2003.

8.39 The Commission has directed that all of the 13 (now 16) bonded labour prone States identified by the Ministry of Labour, Government of India should send a status report on the detection and rehabilitation of bonded labourers as of 31 December 2001 and, in addition, a quarterly statement in respect of the detection and rehabilitation of bonded labourers as from 1 January 2002 onward. Thus far, only six States, namely, Orissa, Bihar, Uttar Pradesh, Maharashtra, Gujarat and Arunachal Pradesh are furnishing this information regularly. Haryana and Punjab sent initial status reports but are not sending

their quarterly reports regularly. The Commission has noted with some dismay that the States of Andhra Pradesh, Karnataka, Jharkhand, Tamil Nadu, Chhatisgarh and Madhya Pradesh have not even replied as yet. It is also worth recording that the Governments of Gujarat, Uttaranchal and Kerala have been asserting regularly that the problem does not exist in their respective States.

3) Child Labour and Bonded Labour: Efforts in the Southern States of Andhra Pradesh, Tamil Nadu, Karnataka and Kerala

8.40 Shri K R Venugopal, Special Rapporteur of the Commission continued to monitor closely matters relating to the abolition of the Bonded Labour System in the Southern States. In pursuing his responsibilities, he interacted regularly with the Chief Secretaries, as also the nodal Secretaries dealing with the subject of bonded labour in the Governments of these States with a view to reviewing the implementation of the various provisions of the Bonded Labour System (Abolition) Act, 1976. Since many of those engaged in child labour are, in reality, bonded child labour, Shri Venugopal included the whole question of child labour in his remit and has been working for its abolition as well.

8.41 In the course of his efforts, the Special Rapporteur devised proformae to be used to gather and monitor data showing the progress of work in terms of the number of bonded labourers identified by the Government agencies and by the NGOs, the number released, the number rehabilitated, the quality of rehabilitation, financial allocations provided in the budget, actual expenditure incurred, utilization certificates submitted to the Government of India for their part of the financial outlays provided to the State, the number of employers of bonded labour prosecuted, the status of formation of the district level and sub divisional level vigilance committees and nature of meetings held by them.

8.42 The review meetings held with the Chief Secretaries and nodal Secretaries examined the quality and accuracy of the information supplied by the States, and sought to improve the strategies adopted for the identification and rehabilitation of the released bonded labourers and the prosecution of employers who had engaged the bonded labourers. The Special Rapporteur, as a matter of strategy, also called to these review meetings the concerned District Magistrates, especially from areas where work has been sluggish.

8.43 The main thrust of the Special Rapporteur's effort has been to influence

policy at the highest level so as to create a culture of convergence and effective coordination of the policy efforts of the various Departments of the Government that, in one manner or another, have the responsibility for this work and then to get down to the field to evaluate how the Governments are implementing the policy commitments made by them. The effort is thus multi-pronged and not confined to any one level of governance. As a rule, convergence is sought to be encouraged among the Departments of Education, Women and Child Welfare, Labour, Rural Development, Cooperation, Scheduled Castes and Scheduled Tribes Welfare and Revenue, some of which are, themselves, the nodal Departments for bonded labour and child labour. Poverty strategies, including the importance of credit, and the involvement of NGOs, have been central to the Special Rapporteur's effort. It has been the Special Rapporteur's view that policy answers are necessary for problems of this magnitude and that, therefore, it is essential to remain in touch with policy makers, not least because of the rapid turn-over of senior secretaries to Government in the States, including at the level of Chief Secretary.

8.44 In the course of the year 2002-03, the Special Rapporteur thus held five review meetings in Tamil Nadu, five in Andhra Pradesh, five in Karnataka and one in Kerala. Of these, one meeting in Karnataka and two meetings in Andhra Pradesh were held at the district level, involving in particular the District Magistrates, Superintendents of Police and other senior district officers, the purpose being to instruct and sensitize them.

8.45 It is important to mention that, in addition to the broad mandate entrusted to him in regard to bonded labour, the Commission has also entrusted several sensitive enquiries to Shri Venugopal in respect of complaints received from the four Southern States.

8.46 In looking into these, the Special Rapporteur has also sought to involve and engage the officers of the State. Thus, when the Special Rapporteur proceeded to Kurnool in Andhra Pradesh in May, 2002 to investigate the case of two bonded child labourers who had been kept in chains, he 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, along with the District Magistrate and Superintendent of Police of the District. Likewise, in a notorious case in Hongarahalli, Mandya district, Karnataka, where bonded labour had been kept in chains, upon learning that the Government public prosecutor was himself involved in prosecution witnesses turning hostile in the Special Court, Shri Venugopal proceeded to Mandya on 13 April 2002 for a

personal enquiry, taking with him the District Magistrate and Superintendent of Police. On 28 November 2002, the Chief Secretary, Government of Andhra Pradesh, held a video-conference with all District Magistrates of the State on the subject of bonded labour; this was followed by detailed instructions on the implementation of the Act by the Principal Secretary, Social Welfare, and the Commissioner of Labour, Andhra Pradesh.

8.47 As for the involvement of NGOs, the Special Rapporteur has regularly held discussions with them during his visits to the various States of the region and has sought their inputs and cooperation in the work of the Commission. In this spirit, he participated in a rally of released bonded labourers at HD Kote of Karnataka in May, 2002 organized by the an NGO, JEEVIKA, to create awareness of the bonded labour problem and to show the Commission's solidarity with the cause of bonded labour abolition.

8.48 Further to a successful effort in 2001 to get the Government of Karnataka to formulate an Action Plan for the Elimination of Child Labour in that State, Shri Venugopal urged the Government of Tamil Nadu to prepare a similar Action Plan for the elimination of Child Labour in Tamil Nadu. As part of this effort, in November 2002, he furnished to the Tamil Nadu Government various inputs relevant to the preparation of the Action Plan. The Commission is happy to note that a Plan is now under preparation in Tamil Nadu.

8.49 It will be recalled that, with encouragement from the Special Rapporteur, the Government of Tamil Nadu had, in the year 2000, formulated a Manual for the Elimination of Bonded Labour. The Special Rapporteur subsequently persuaded that Government to formulate, in addition, a model Comprehensive Rehabilitation Plan for released Bonded Labourers in Tamil Nadu. The draft was completed in November 2002 and forwarded by the Special Rapporteur to the Secretary General of this Commission on 3 December 2002 for the information of the Commission. This Plan will make for effective and verifiable implementation of the mandate of the Supreme Court. It will also be a valuable instrument for the mobilization of a higher level of resources.

8.50 As part of the continuing training and sensitization effort, in May 2002, Shri Venugopal visited the Lal Bahadur Shastri National Academy of Administration, Mussoorie and addressed the IAS probationers on Human Rights. In September 2002, he called on the Chief Minister of Kerala and addressed the senior All India Services officers of the Government of Kerala

on a rights-based approach to poverty eradication in a programme of training organized by the NHRC at the State Government's Training Institute in Trivandrum.

B] Rehabilitation of People Displaced by Mega Projects

8.51 In the previous two annual reports, the Commission's views on the rehabilitation of people displaced by mega projects were spelt out in detail. The Commission expressed the opinion that the resettlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act itself, or be the subject of appropriate separate legislation, so that the issues concerned become justiciable. During the year under review, the Commission took up this matter with the Union Ministry of Rural Development on several occasions, reminding the latter of its views.

8.52 The National Committee for Protection of Natural Resources (NCPNR), an NGO, in its letter dated 11 October 2002 stated that the Ministry of Rural Development had drafted a 'Project Affected Persons Rehabilitation and Resettlement Bill 2002' (PAP-R&R) and circulated it among the Group of Ministers for their comments. However, they alleged that the Ministry of Rural Development was silent on their long-standing demand that the rehabilitation and resettlement provisions be made part of the Land Acquisition Act itself. As the draft Bill had not been released to the public, they were not able to ascertain whether the proposed legislation contained the salient features of the alternate Land Acquisition, Rehabilitation and Resettlement Bill, 2000 drafted by voluntary organizations, whose approach had been endorsed by the Commission. The NCPNR also requested the Commission's support to ensure that the PAP-R&R draft Bill, or any other proposal to amend to the Land Acquisition Act, include the provision that rehabilitation and resettlement facilities be provided in advance before actual acquisition of land takes place.

8.53 Upon considering the above communication, the Commission requested the Ministry of Rural Development to furnish a copy of each of the relevant Bills so as to enable it to examine whether its recommendations had been accepted or not.

8.54 In response, the Ministry of Rural Development stated as follows:

"Project Affected persons (Resettlement and Rehabilitation)

Bill - The Ministry has submitted its proposal to the Standing Committee of Secretaries (SCOS) and would consider the subject after comments from different Ministries/Departments have been received. The approval of the SCOS is still awaited.

Land Acquisition (Amendment) Bill - The Ministry of Rural Development, subsequently, received two new proposals on this subject. The two proposals were incorporated and submitted to the Ministry of law for concurrence."

8.55 The Ministry of Rural Development further stated that: "Both the above proposals are still under consideration of the Government. Since the Bills have not been finalized as yet, therefore, it is not possible to provide copies of these Bills".

8.56 The Commission regrets the long delay that has occurred in respect of these matters. Under the terms of the Protection of Human Rights Act, 1993, the Commission has frequently commented on issues relating to legislation that is under consideration. It therefore finds it difficult to understand why the draft bills are being withheld from it. The Commission has, accordingly, asked its Secretary-General to pursue this matter with his counterparts and report back to the Commission.

C] Rights of the Disabled

8.57 Some 50 to 60 million of the people of India experience physical, intellectual or psychological impairment of varying degrees, temporarily or permanently. Their lives are often handicapped by social, cultural, economic, infrastructural and attitudinal barriers which hamper their access to opportunities and their capacity to enjoy rights on equal terms. The Commission is strongly of the view that people with disabilities have the potential to contribute richly to the life of the nation, including its development, provided their rights are protected, dignity restored and the difference of ability recognized. The Commission has therefore adopted a carefully structured approach to ensure that persons with disabilities increasingly enjoy the range of human rights to which they are entitled. To assist it in this endeavour, the

Commission appointed Smt. Anuradha Mohit, former Deputy Chief Commissioner for Persons with Disabilities, Government of India, to be its Special Rapporteur in dealing with issues concerning persons with disabilities.

8.58 During the period under review, the Commission adopted an in-house disability policy and an agenda for action. The overarching aim of the policy is to incorporate the disability perspective in all aspects of the work of the Commission and, laterally, promote new disability norms and standards based on human rights values. The critical areas for intervention by the Central, State and local governments were identified and recommendations were communicated, along with suggested actions for the achievement of targets. The Commission is alive to the fact that disability combined with other factors such as gender, caste, location, economic and cultural status can create complex barriers resulting in discrimination on multiple grounds. The strategy to combat such discrimination must therefore be equally comprehensive, if persons with disabilities are to be enabled to exercise their rights and freedoms fully.

8.59 In the course of the year under review, the Commission made a series of recommendations to promote and protect the rights of persons with disabilities. These were conveyed to the competent authorities in the States and in the Centre and an outline of those recommendations is given below:

- **State Policy:** It was indicated that the States should evolve a 'Disability State Policy and Agenda for Action' with the aim of
 - Fulfilling their obligations under the Constitution and disability related laws;
 - Optimally utilizing resources allocated under different schemes for the empowerment of people with disabilities;
 - Enabling equal and even growth of the infrastructure for the delivery of basic goods and services to all people with disabilities.
- **Barrier Free Infrastructure:** The Government of India and State Governments were asked to elaborate and adopt National/State policies on accessible infrastructure for persons with disabilities in order to ensure barrier-free access to the built environment, the transport system, telecommunications, information and broadcasting and public facilities.
- **Vertical Integration:** It was stated that all Ministries/Departments and

specialized institutions for women, children, youth, Scheduled Castes, Scheduled Tribes and other special groups must integrate the disability concern in their policies, programmes and schemes.

- **Implementation of Laws:** State Governments, Union Territories Administrations and, Local Authorities were asked to frame and introduce schemes, rules, regulations and pass administrative orders, to bring into force the various provisions of the Disabilities Act, 1995. It was added that amendments must be carried out to remove inconsistent and derogatory provisions.
- **Check Exploitation:** It was stated that the Government must create conditions for preventing begging by the disabled and their exploitation by mafia gangs operating and maintaining beggary. The Centre, States, and local authorities must take steps to prohibit NGOs and the media from portraying a negative image of persons with disabilities for the purpose of raising funds.
- **Minimum Standards:** It was proposed that an independent authority needs to be established with the aim of regulating, standardizing, monitoring and supervising the working of institutions imparting education, training and rehabilitation services to people with disabilities.
- **Social Security:** It was urged that governments, at all levels, need to provide a realistic social security plan for all people with disabilities living below the poverty line.

The full text of the Chairperson's letter to the various Union Ministers and Chief Ministers of States/Administrators of Union Territories is at Annexures 6 & 7.

Incorporation of a Disability-Perspective in the Commission's Publications

8.60 For the effective enjoyment of the whole range of human rights by people with disabilities, it is important that the disabled, the providers of public goods and services, and also those responsible for the maintenance of law and order and the judiciary, are sensitized to the fact that people with disabilities have the same rights as others. To enable them to exercise these rights, special

entitlements and benefits have been accorded by means of special laws, policies, programmes and schemes. The widespread knowledge of these measures is thus of vital importance if those in authority, and society in general, are to assist in enabling people with disabilities to fulfil their rights. The Commission has, therefore, accorded high priority to creating a wider and deeper understanding of these rights. Thus, in all training materials for public servants, an effort is being made to introduce an outline on the rights of persons with disabilities and the obligations of the various authorities of the State. A handbook for sensitizing teachers and teacher-educators was released on 16 January 2003 which addresses, through educational intervention, discrimination generally including discrimination resulting from disability. The Manual on Human Rights for District Magistrates, being developed jointly by the Commission and the Lal Bahadur Shastri National Academy of Administration, contains a separate chapter on disability issues. The inaugural issue of the Journal of the Commission, released on 10 December 2002 on the occasion of Human Rights Day, contained a major article on the Rights of the Disabled.

Training in respect of the Rights of the Disabled

8.61 The Internship Programme of the Commission is an ongoing and important activity aimed at sensitizing the younger generation. The Programme design incorporates the disability perspective.

8.62 The training programmes for junior administrators being conducted by the Institute of Secretarial Training and Management also includes a half-day session on the rights of the disabled to which Special Rapporteur of the Commission provides inputs. In the same way, in the courses conducted by the Indian Institute of Public Administration for District Collectors in February 2002, in partnership with the National Trust, various policy approaches to disability were discussed, with emphasis being placed on the human rights model, to which the Commission made a substantial contribution. A human rights input was also provided in the NCERT's training workshops for the orientation of teacher-trainers, and the principals of regular schools; it was pointed out that the concept of 'inclusive education' must include material of relevance to people with disabilities.

Research Studies on Disability

8.63 The Commission decided to undertake collaborative research studies to investigate and document the broad systemic factors that hampered participation,

and perpetuated marginalization of sections of society on grounds of physical and mental disability. The scope of the studies is not confined to fact finding; instead, the studies seek to explore how society can itself respond more effectively to the needs of those who have been marginalized. The studies are premised on an assumption that public policy and programs should aim to reduce civic inequalities and address social and economic disadvantages. More importantly, based on the findings of the studies, the Commission intends to recommend new norms and standards of social justice, citizenship and social well-being that are in keeping with human rights values.

8.64 A two-pronged strategy has been adopted by the Commission to promote disability-inclusive research. While the endeavour is to include the disability-perspective in all research initiatives of the Commission, disability-specific research studies have also been encouraged. To start with, the disability dimension was added in the "Action Research Project on Trafficking in Women and Children in India" to which reference is made in Chapter VII of this report. In the same manner, a study aiming to examine the human rights situation in India, with particular reference to the degree of enjoyment of Economic, Social and Cultural Rights (ESCR) by marginalized groups will also examine the question from the perspective of people with disabilities. In addition, two research projects are being undertaken exclusively in the area of disability. The gist of these two projects is provided below.

8.65 In the first project, the Commission is working in partnership with the National Association for the Blind to conduct a study that would estimate the costs that would be involved in providing a 'level playing field' for people with disabilities. The specific objectives of this study are to:

- Assess the gap between the minimum support needed by persons with disabilities as contributors to the economy and as users of social services with what is being provided presently.
- Assess the additional cost of living, as a consequence of inaccessible infrastructure and services.
- Quantify the direct, indirect and opportunity cost for treatment, rehabilitation and compensatory assistive devices.
- Recommend measures for bridging the gap, and to redefine the poverty-line criteria, taking into account the extra costs of living for a person having physical, intellectual or psychological impairment.

As of the time of writing this report, the study has commenced.

8.66 The second research project is being undertaken in partnership with the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. The aim of the project is to strengthen district-level administrative mechanisms so that they can implement national policies and schemes more effectively at the grass-root level. The specific objectives of the study are to:

- Ascertain the factors that impede the successful implementation of the national-level policy and schemes for the disabled at the district level.
- Investigate the factors that facilitate the implementation of a national-level policy and schemes at the district level.
- Understand the critical linkages that are required for better coordination and convergence, disability being a multi dimensional issue requiring cross - sectoral intervention.
- Evolve strategies for reaching persons with disabilities in hitherto unreached areas.

Quality Assurance in Mental Hospitals - Mental Hospitals at Ranchi, Agra and Gwalior

8.67 The Commission continued to oversee the functioning of the Ranchi Institute of Neuro-Psychiatry and Allied Sciences (RINPAS), the Institute of Mental Health and Hospital (IMHH), Agra and the Gwalior Mansik Arogyashala (GMA), in accordance with the mandate given to it by the Supreme Court in an order dated 11 November 1997 in the case of Rakesh Chandra Narayan and others vs. State of Bihar and others.

8.68 The management of these institutions had earlier come under the scrutiny of the Supreme Court through writ petition (civil) No.339/86-901/93 and 80/94 and writ petition (civil) No. 448/94 in the case of Rakesh Chandra Narayan and others vs. State of Bihar and others. By its order dated 8 September 1994, the Apex Court had, after considering the report submitted by the Union Health Secretary, directed that a number of steps be taken to improve the overall functioning of these institutions, the purpose being to:

- Develop diagnostic and therapeutic facilities for patients;
- Improve social and occupational rehabilitation facilities for them;

- Start professional and para-professional training in the fields of psychiatry, clinical psychology, psychiatric social work and psychiatric nursing;
- Expand mental health services at the community level by providing training to medical and para-medical personnel in the field; and
- Conduct research in the field of behavioural and neuro-sciences.

8.69 Since the remit of the Supreme Court was received by the Commission, successive Chairpersons have personally monitored the implementation of the Supreme Court's directives. As occasion provided, both they and various Members of the Commission visited these institutions. The Commission has, in particular, relied on its Special Rapporteur, Shri Chaman Lal, to follow the progress in the implementation of the Supreme Court's directives. To this end, during the period under review in the present report, the Special Rapporteur visited the Institute of Mental Health and Hospital, Agra (IMHH) on 28 February 2002, the Ranchi Institute of Neuro-Psychiatry and Allied Sciences (RINPAS) on 22 June 2002 and the Gwalior Mansik Arogyashala (GMA) on 12 August 2002. During the period under review, Justice Smt. Sujata V. Manohar visited the Gwalior Mansik Arogyashala (GMA) on 24 March 2003. The Commission's interventions covered both procedural and substantive issues.

8.70 The Commission is pleased to note that the admission and discharge procedure in these institutions has been streamlined and brought in consonance with the provisions of the Mental Health Act, 1987. The percentage of involuntary admissions has been brought down to less than 10% and the discharge of cured patients is now proceeding smoothly. With increasing emphasis on converting closed wards into open wards, the average length of stay of patients has come down considerably. It is now as low as ten days in the Gwalior Mansik Arogyashala for patients whose families are staying with them.

8.71 Diagnostic and therapeutic facilities have been improved considerably at RINPAS and IMHH Agra. However, they are still not upto the mark at the GMA, where psycho-diagnostic facilities and appropriate behavioural techniques could not be developed adequately owing to the acute shortage of clinical psychologists and psychiatric social workers. Despite repeated directions of the Commission, the Government of Madhya Pradesh has not been able to fill the post of Director and provide the sanctioned number of psychiatrists, clinical psychologists and psychiatric social workers.

8.72 The living conditions of patients, the quality of food and the administration of drugs have improved in all of the three institutions. Satisfactory arrangements for occupational therapy have also been developed at RINPAS, where a number of patients, both male and female, are receiving training and also earning through the application of their skills in trades such as weaving, carpentry, tailoring, basket making, paper work etc. The number of patients so engaged has increased from 311 in 2000-01 to 433 in 2001-02 to 780 in 2002-03. As many as 150 of them have acquired the status of skilled workers while 299 of them have semi-skilled status, both groups having attained the ability to sustain their livelihood after they are released. At IMHH Agra, only 8 patients work in the kitchen and 28 work in agriculture. Occupational therapy facilities are, unfortunately, totally missing in the GMA, where the sanctioned posts of Occupational Instructors and Occupational Therapists are lying vacant. Efforts are underway to develop these facilities both at IMHH and the GMA.

8.73 Although training facilities for professional and para-professional staff have not yet been adequately developed in accordance with the directions of the Supreme Court, RINPAS has been recognized as a teaching centre for MBBS students and has, at present, 28 students working on M.Phil and Ph.D courses in clinical psychology and psychiatric social work. The GMA is providing training to undergraduate students studying for the MBBS and also post-graduate students of medicine. It is, in addition, providing a 2-3 week programme in psychiatric training to students of four nursing colleges. During January-February 2003, Medical Officers of nearby districts were given a two week orientation in psychiatry. The IMHH Agra has imparted orientation training in mental health to 18 batches in 2002-03.

8.74 As regards the expansion of mental health services at community level, good progress has been achieved by all three institutions. RINPAS sends a medical team comprising a psychiatrist, para-medical staff and students once a week to Jhona block, which is located at a distance of 40 kms from RINPAS. Door-to-door surveys and the creation of awareness about mental illnesses are being undertaken by M.Phil/Ph.D students under the community health programme. The impact of this work is evident from the increase in the number of out-patients, while they used to number 1 or 2 per week before this programme commenced, their number had now become 25-30 per week. RINPAS has also been selected as the nodal point for the District Mental Health Programme in Dumka.

8.75 IMHH Agra sends a team comprising a psychiatrist, clinical psychologist

and psychiatric social worker once a week to the mental health clinic in the Community Health Centre, Farah, (Mathura) and the Community Health Centre, Sadapad, (Hathras). The GMA is running an extension clinic at the Medical College, Gwalior (daily) and the Civil Hospital, Murar (fortnightly).

8.76 Halfway Homes have been established in Agra, with the help of NGOs, for cured patients who are males. Similar facilities have been established for both male and female patients at the GMA. One hundred male and 54 female patients were returned to their families through the efforts of these Homes.

8.77 In the preceding annual report it was indicated that a group headed by Justice (Smt.) Sujata V. Manohar, Member of the Commission, had been constituted to deal with the vexing problem of the rehabilitation of cured mental patients who were either destitute or had been abandoned by their families. The group held three meetings during the period under review and took up the categorization of patients in the three institutions with a view to gauging their individual needs and designing personalized rehabilitation plans for them. The categories comprised the following:

- Patients who have recovered and can be reintegrated with the family by arranging persuasion/counselling of their families;
- Patients whose families cannot be traced but who have recovered and can live semi-independent and protected lives within groups in the local community. Arrangements for such patients have to be made through the massive participation of the NGO sector and with help from the Ministry of Social Justice and Empowerment;
- Patients who are chronically ill and have been abandoned within the institution for a long time and require a protective setting. Long Stay Homes would have to be created for such patients.

8.78 The position of women in mental homes is particularly vulnerable and there is a need for special programmes for their rehabilitation particularly since they are not easily accepted back by their families even after they are cured. The Commission has, therefore, made special efforts to establish Halfway Homes, using the help of appropriate NGOs. As indicated in paragraph 8.76, such Homes have already started functioning in Agra and Gwalior, in each of which there are two Homes, one for men and the other for women. In order to provide economic empowerment and to promote their self-reliance, vocational training is being emphasized in them. The number of family wards has also been increased in these Homes. With the help of volunteers provided by Action

Aid India, the counselling of the patients has been started at the IMHH Agra and GMA Gwalior. Efforts are also being made to provide counselling facilities for the families of the patients.

D] Rights of the Elderly

8.79 As reported in the preceding annual report, the Commission is represented on the National Council for Older Persons in the Ministry of Social Justice and Empowerment. The Commission has requested Shri K B Saxena, IAS (Retd), formerly Secretary to Government of India, to study existing schemes for the elderly and pensioners. The study is being undertaken keeping in mind various suggestions that have been made by the Commission and the concerned Ministries.

E] Problems of Denotified and Nomadic Tribes

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

8.81 The eminent activist and author, Smt. Mahasvetadevi, President, Denotified & Nomadic Tribals Rights Action Group, sent a petition to the Commission in May, 1998 on the plight of the Denotified and Nomadic Tribal Communities of India referring to their ill-treatment by the administration, and by the police in particular. It will be recalled that the Commission, thereafter, convened a meeting of the Chief Secretaries and senior officers of a number of concerned States on 15 February 2000 to deal further with this matter.

8.82 A number of specific recommendations were then made to the State Governments and, subsequently, the Commission made efforts to follow-up on those recommendations. Regrettably, the situation on the ground has not yet perceptibly altered for the better and the responses of most State Governments have been desultory.

8.83 In its annual report for the year 2000-2001, the Commission had urged greater sensitivity at the highest political and administrative level to the problems of these tribes. In its Memorandum of Action Taken, the Central Government indicated that the recommendations and observations of the Commission had been conveyed to the concerned State Governments. It was added that, in so far as the de-notified tribes and notified tribal communities included in the list of Scheduled Castes were concerned, the Government had already enacted a special Act, namely, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to protect them against atrocities.

8.84 The Central Government has further indicated that the Ministry of Social Justice and Empowerment, which is the administrative ministry for the implementation of the above Act, provides financial assistance to the States and Union Territories for effective implementation of the Act. The Denotified Tribes and Nomadic Tribes categorized as Scheduled Tribes are entitled to the benefits available under various central sector and centrally sponsored schemes such as hostels, scholarships, vocational trainings, educational development in low literacy pockets and various programmes being undertaken for the generation of employment and the alleviation of poverty.

8.85 On the recommendation 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 have been received from the States of Karnataka and Madhya Pradesh, while the States of Andhra Pradesh, Gujarat and Rajasthan have indicated that action is being taken by them. The Government of Punjab expressed the view that there is no need to continue with the separate Habitual Offenders Act, as the IPC and CrPC covered the activities, in question. No reply has been received from Maharashtra and a reminder has been sent to them. The Government of Karnataka has indicated that all the Denotified Tribes and Nomadic Tribes in the State have been included under the SC/ST and OBC categories and are being given all the benefits available for each of the categories. Therefore, it does not consider it necessary to carry out a separate enumeration of these communities. The Madhya Pradesh Government has stated that the majority of persons belonging to these communities have been included under the SC/ST and OBC categories. The State Government added that it had requested the Union Ministry of Home Affairs to undertake an enumeration of those communities that have not been included under the SC/

ST and OBC categories. As regards the repealing of the Habitual Offenders Act, the Madhya Pradesh Government stated that no action was contemplated.

8.86 The Chairperson of the Commission in a meeting on 4 September 2002 with the Chief Secretary and other senior officials of West Bengal Government discussed the issue of Denotified Tribes and Nomadic Tribes with them. The Chief Secretary indicated that the instructions received from the Commission had been circulated amongst all concerned. However, the State of West Bengal no longer had any Denotified Tribes or Nomadic Tribes. The Lodha tribe, which used to be called a Denotified Tribe in the past, is now considered a primitive tribe group (PTG) along with the Toto and Birhors. It was also stated that Habitual Offenders Act is not in vogue in West Bengal.

8.87 The Commission has taken note of these responses. While it appears that steps are being taken in some States to merge the Denotified Tribes and Nomadic Tribes with other categories of disadvantaged sections of 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. There is, evidently, a de-facto situation still prevailing in which persons belonging to these groups are singled out for arbitrary and discriminatory treatment. It is this situation which concerns the Commission, and which requires it to continue to pursue this matter.

F] Manual Scavenging

8.88 There are few practices still prevailing that are more degrading and violative of human rights than manual scavenging. That is why the Commission has, over the years, 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.

8.89 Earlier reports of the Commission have recounted the efforts made to deal with this issue. As a first step, the Commission constituted a high level group to elaborate recommendations and to pursue plans to end manual scavenging within a fixed time-frame. The Secretary General of the Commission pursued this matter with his counterpart in the Ministry of Urban Development and Poverty Alleviation, which is the nodal Ministry dealing with this subject. That Ministry, in turn, reported that it had been impressing upon all the State

Governments and Union Territories from time to time to adopt the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The Commission, for its part, also has urged all the State Governments and Union Territories to work with greater determination to implement the Act so as to ensure that the dehumanizing practice could be effectively stopped.

8.90 In pursuance of this objective, the Chairperson of the Commission addressed a letter to the Prime Minister on 14 August 2001, on the eve of Independence Day, stating that the Commission was constrained to observe that the requisite sensitivity and commitment to the cause of eradicating manual scavenging appeared to be lacking on the part of Government. He urged the Prime Minister to consider the desirability of making an announcement on Independence Day to the effect that, by 2 October 2002, the country would have no dry latrines. This was followed by another letter to the Prime Minister dated 12 August 2002 reiterating the Commission's serious concern on this issue. In response to the letter, the Prime Minister informed the Chairperson 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.

8.91 So far, 26 States and all the Union Territories have either accepted the Central Law or enacted their own laws. The Commission would like to reiterate that leadership and determination to end this unacceptable practice must come from the highest political echelons failing which, manual scavenging will persist in spite of laws that are enacted. There is therefore need to mobilize political cadres and social activists to ensure that this practice, which constitutes a gross violation of human rights and an assault on the dignity and worth of human person, is brought to an end. Its persistence flies in the face of the constitutional guarantee of a life with dignity for every human being in the country.

8.92 The Commission has therefore 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 thus 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. The representatives of the State Governments reported the actions taken by each of them in respect

of the following matters:

- Adoption of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993;
- Surveys 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 the building bye-laws not to sanction the construction of new buildings and also not to issue completion certificates unless there are provisions for pour-flush latrines; and
- Passing resolutions to fix a final date by which the State shall be free of dry latrines.

8.93 Certain States stressed that considerable funds would be required to convert dry latrines into wet latrines and suggested increased funding from the Government of India and international sources. The Commission emphasized that the States and Central Government needed to pool their resources together to ensure that the practice of manual scavenging is eradicated once and for all.

8.94 The Ministry of Urban Development & Poverty Alleviation was urged to consult technical experts to devise workable solutions and alternative technologies. The Ministry of Urban Development & Poverty Alleviation was also asked to examine whether the central scheme needed to be revised in order to remove flaws in it in order to enable the States to avail of funds under the scheme. The Department agreed to undertake periodical reviews in this connection and to monitor progress in this respect.

8.95 In an attempt to promote the construction of wet latrines in private homes, a low cost scheme for the construction of wet latrines, developed by the Socio Economic Units Forum, an NGO working in the State of Kerala, was considered by the Commission on 16 January 2002. It was decided that the details of the scheme should be sent to the State Governments so as to enable them to avail of the services offered by the NGO. The Governments of Assam, Himachal Pradesh, Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tripura and West Bengal have initiated action in this regard. Replies from the other States are awaited.

G] Human Rights in Situations of Natural Disasters

1) Monitoring of Cyclone Reconstruction Work in Orissa

8.96 Earlier annual reports have contained the major recommendations made by the Commission on 8 December 1999 and 21 August 2000 in respect of the protection of human rights of the population affected by the super-cyclone that hit Orissa in October 1999. During the course of the year under review, the Commission continued to monitor the steps taken by the Government of Orissa to implement those recommendations, the Commission receiving quarterly reports on the situation from the State Government.

8.97 The Commission thus noted that progress continued to be made to build cyclone-resistant facilities. For instance, the Government of Orissa, had proposed to construct cyclone resistant RCC structures for 5786 primary schools and 1117 high school buildings. By 31 December 2002, the construction of 5230 such primary schools and 799 high schools had been completed.

8.98 Further, as was mentioned in the preceding annual report of the Commission, 100 multi-purpose cyclone shelters (MPCS) - 60 under the Chief Minister's Relief Fund and 40 with the World Bank assistance - were to be taken up by the State. The construction of 43 multi-purpose cyclone shelters under the Chief Minister's Relief Fund had been completed till 31 March 2003. Construction was progressing satisfactorily at the remaining 17 sites. Progress of construction of the 40 multi-purpose cyclone shelters with World Bank assistance was found to be slow. Work had been started and was progressing satisfactorily only at 19 sites. The report for the quarter ending 31 March 2003 indicated that work at the additional 19 locations would be started after finalization of tenders. Construction of the remaining two MPCS could not be taken up owing to a dispute over the site.

8.99 The Commission has noted with satisfaction the progress achieved in bringing into operation of 41 Integrated Child Development Scheme (ICDS) Projects including 27 sanctioned in the wake of the super-cyclone. The Child Development Project Officers had been posted in as many as 39 of these projects and vacancies of anganwadi workers and helpers had been filled to the extent of 92% and 99.6%, respectively.

8.100 In its proceedings of 8 December 1999, the Commission had recommended that proper inquiries be made into the allegations of delay in the opening of

the gates at Ramel Dam, the non-opening of the gates of Vidhya Dhar Barrage at Hathghar Dam and negligence in not regulating water from Hathghar Dam which had aggravated the impact of the floods in Keonjhar town and Bhadarak municipality area. On being informed that an inquiry conducted by an expert committee had held only a junior engineer solely responsible for this mishap, the Commission requested the State Government to re-examine the issue so that the full facts could be established and all those responsible for negligence and the failure to act appropriately were properly identified. The Commission has subsequently been informed by the Government that it has passed orders to initiate departmental proceedings against one Superintending Engineer, one Executive Engineer and one Assistant Engineer, in addition to the Junior Engineer who had earlier been held to be solely responsible. The Commission is of the view that a thorough inquiry, fixing responsibility on those responsible for the negligence and mishap, will send an important message to public servants that dereliction in the performance of duties, which have a bearing on the protection of human rights - including the right to life - is unacceptable and will not go unnoticed and unpunished.

8.101 The Special Rapporteur of the Commission had observed, in a report on his visit to the affected districts, that the State Government had overlooked the payment of mandatory compensation under the Orissa Relief Fund to fishermen for the loss of boats and nets. Upon the recommendation of Commission, an amount of Rs.1,55,373,000 was subsequently allocated for payment to the affected fishermen at the rate of Rs.3000 per boat and Rs.1500 per net. The Commission is happy to record that a total amount of Rs.1,15,808,000 had, in fact, been disbursed to the affected fishermen by the end of March 2003.

8.102 One of the recommendations of the Commission made in the aftermath of the cyclone related to the establishment of a professional body of personnel to take up the restoration of essential services like power, water, telephone communication etc. in the wake of a natural disaster. A specialized outfit, called the Orissa Disaster Rapid Action Force (ODRAF), has since been constituted within the Orissa State Armed Police for this purpose. In the first phase, three units of the ODRAF, with a total strength of 100 personnel, have been constituted and stationed at three strategic locations. Two more units will be added. The selected personnel have been given specialized training by the Central Reserve Police Force (CRPF) Training Centre, Mukamghat and the Civil Defence Training Centre, Howrah and Nagpur. ODRAF units have been provided equipment to rescue people trapped in buildings, save drowning

persons, provide first-aid, re-establish surface communication, set up temporary camps at the site of disaster and assist accident victims etc. The Commission would like to express its appreciation to the Government of India for having taken these constructive steps.

8.103 In retrospect, it appears that the involvement of the Commission in the protection of human rights of those who had been struck by this major national calamity was, without doubt, helpful - and it was so perceived by the State Government and by the affected population. The action of the Commission also established an important precedent for National Institutions: there was a distinct role for them to play in situations arising out of major natural calamities. That role was to ensure that human rights and human dignity - especially of the most vulnerable groups - were respected even in times of such crises. Indeed, there was need for special vigilance in ensuring that this should be so in the face of calamities.

2) Gujarat Earthquake

8.104 It was for these reasons, too, that the Commission took suo-motu cognizance of the situation arising in Gujarat that arose as a result of the devastating earthquake that struck that State on 26 January 2001. The Commission immediately obtained a report from its Special Rapporteur, Shri P.G.J. Nampoothiri, on the relief and rehabilitation measures being taken. The Commission also decided to depute Shri N. Gopalaswami, the then Secretary General of the Commission to visit the affected areas and submit his report. The reports submitted by Shri Gopalaswami and Shri Nampoothiri were considered by the Commission in a meeting held on 29 May 2001, when recommendations were made for immediate action by the concerned authorities in Gujarat and in the Government of India. Details of those recommendations were included in the annual report of the Commission for the year 2001-2002, which also recounts in full the follow-up measures taken by the Commission until 31 March 2002.

8.105 In the course of the year 2002-03, the Core Group set-up by the Commission to monitor the situation continued to do so on a regular basis and to report to the Commission. It will be recalled that the Core Group consist 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

considered the reports of the Core Group as and when they were received, making appropriate directives/recommendations as required.

8.106 In February 2003, the Special Rapporteur submitted a report commenting, specifically, on aspects of the relief effort that related to the assistance of persons who had been disabled in the earthquake. He observed, inter alia that:

- The assistance granted to paraplegics had been raised to Rs.2000/- per month and that they had started receiving such grants. However, many of those who had been rendered paraplegic had become victims of depression and needed greater attention;
- Difficulties were being experienced by the injured persons in getting temporary and permanent disability certificates; this hampered their claims for financial assistance;
- Closer monitoring was required to ensure the implementation of model standards in town planning and construction, so as to make the environment more friendly; and
- The Government has recently issued orders appointing some physiotherapists to assist the disabled.

8.107 It will be recalled that the monitoring of the post-earthquake relief and rehabilitation effort provided an interesting example of the complementarity of the higher judiciary of the country and the Commission. Thus, the High Court of Gujarat sent a copy of its 17 February 2001 judgement in the case *Bipinchandra J. Diwan vs. State of Gujarat* to the Commission for "necessary action and intervention if necessary in re-dressing the complaints of violation of human rights in accordance with the provisions of Section 12 (b) of the Protection of Human Rights Act, 1993." The High Court also associated the District Judge in each district as an Ombudsman to receive complaints from the affected persons and to take these up with the authorities in order to provide quick relief and, for this purpose, also activate the legal aid authorities.

8.108 Thus during the course of the year 2002-03, after the Special Rapporteur of the Commission visited a number of villages in Kutch District, he also held meetings with the District Judge, Bhuj. In addition, the Special Rapporteur met with the Collector, Bhuj and other district officials. On a number of occasions, he also inter-acted with senior executives of the Gujarat State

Disaster Management Authority (GSDMA) to bring to their notice such shortcomings as he observed in the rehabilitation work.

H] Racism: World Conference in Durban: discrimination based on 'race', 'caste' and 'descent'

8.109 In its preceding annual report, the Commission had referred in detail to the position that it had taken and the Statement that it made at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban between 31 August - 8 September 2001. The Commission had also indicated, in its report for the year 2001-2002, that it intended to take follow-up action on the Declaration and Programme of Action that were adopted in Durban, and also on the Statement that was jointly agreed upon by the forty-seven National Institutions for the Promotion and Protection of Human Rights that were present in Durban for the Conference.

8.110 It will be recalled that the Commission had, in Durban, expressed its views on discrimination based on 'race', 'caste' and 'descent' and had taken the position that, while "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 was, "above all, a national responsibility and moral imperative" to ensure that discrimination based on 'race', 'caste' and 'descent' are brought to an end in our country and that the constitutional guarantees against discrimination are vigorously implemented and honoured. In pursuance of this Statement and this objective, during the year under review, the Commission requested Shri K.B. Saxena, IAS (Retd.) to carry out a study on atrocities against the Scheduled Castes and suggest appropriate recommendations to address this serious issue. Shri K.B. Saxena, accordingly, undertook the study and submitted his report entitled "Prevention of atrocities against Scheduled Castes: Policy and Performance: Suggested Interventions and Initiatives for NHRC" on 25 November 2002. The Commission discussed the recommendations made by Shri K.B. Saxena in his report and, thereafter, decided that a special Cell may be constituted in the Commission to monitor their implementation. The Cell has since been constituted and has initiated action on the implementation of these recommendations.

8.111 Further, with assistance received from the Office of the United Nations High Commissioner for Human Rights, the Commission took up the task of

preparing 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. The Handbook was released on 15 January 2003. In follow-up action, the National Council for Teacher Education is circulating this Handbook amongst the Teacher Education Institutions of the country, which number around 2,300.

Research Programmes and Projects

CHAPTER 9

9.1 The Statute of the Commission requires it to undertake and promote research in the field of human rights (Section 12(g) of the Act). The Commission's endeavour has been to ensure that its efforts in this area are of greater depth and range in each succeeding year. In addition to a research link-up with the National Law School of India University, Bangalore, the Commission has strengthened arrangements at its own headquarters for research. The Commission has also enlisted young interns to participate in its research work. For the Commission, it has become increasingly important to link research with themes that have practical worth for the better protection of human rights. The Commission has therefore, endeavoured to take up research programmes which could be structured around the possibility of practical steps being taken at the ground level. Thus, the research has not only been directed to ascertain ground realities, build data-bases, etc., but also to set up networks in the country that can be activated to promote and protect human rights and combat violations of such rights. The Action Research on Trafficking in Women and Children, which has been described in detail in Chapter VII, is one such instance. The details of other research programmes and projects are given below.

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

9.2 In order to prevent the employment of children below the age of 14 years

by Government servants, the Commission had recommended that the relevant Service Rules governing the conduct of Central and State Government employees be amended to achieve this objective.

9.3 The Union Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) indicated, in response, that the Central Government had amended the All India Services (Conduct) Rules, 1968 as well as the Central Civil Services (Conduct) Rules, 1964. As stated in the annual report for 2000-01, the Central Government also transmitted the amended rules to all States for the taking of appropriate action.

9.4 Most of the States have now carried out the required amendments in the Conduct Rules of their employees. The four States which are yet to do so are Arunachal Pradesh, Manipur, Rajasthan and Uttaranchal. They have been reminded to take the appropriate action.

9.5 The Commission is of the view that this matter should not rest with the amendment of Conduct Rules. The Rules must be monitored with zeal, if the odious practice of employing children as domestic help is to end. Instances have come to the attention of the Commission, notably through reports in the press, that government servants are, on occasion, still violating the amended Rules. In such instances, the Commission has taken-up the matter with the State Government concerned. Given these circumstances, it remains essential for the Commission to remain vigilant in respect of this matter.

B] Musahar - a Socio-Economic Study

9.6 As indicated in its preceding annual report, the Commission supported a socio-economic study that was undertaken by the A. N. Sinha Institute of Social Studies, Patna in respect of the Musahar community who live mostly in Bihar, Jharkhand and Madhya Pradesh. The Musahars are amongst the most deprived and neglected communities included in the Scheduled Castes.

9.7 After the study was completed, the implementing agency submitted its report with recommendations to the Commission. The Commission thereafter considered that report carefully and decided that it should be further examined by Shri K. B. Saxena, IAS (retd.) and that his advice should be sought in preparing an action plan to alleviate the conditions of the Musahars.

9.8 Shri Saxena accordingly examined the recommendations contained in the report and submitted an action plan (Annexure 11), as requested by the Commission. In that plan, he outlined the specific steps that should be taken by various departments of the Government of India and the Government of Bihar to assist the Musahars. He emphasized, in particular, the need for housing and the assistance that could be provided through the Indira Awas Yojana and Jawahar Rozgar Yojna. He outlined, in addition, the schemes required for drinking water, nutrition, education, health, the welfare of women, food security, poverty alleviation, social security, allotment of land, skill development, panchayats, and ways of dealing with atrocities.

9.9 After considering the action plan prepared by Shri Saxena, the Commission recommended that it be sent to the concerned Ministries/Departments in the Government of India and the Government of Bihar. The matter will be pursued by the Commission.

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

9.10 There is an increasing realization that human rights are indivisible and inter-related and that the proper realization of economic, social and cultural rights is essential to the full enjoyment of civil and political rights. The Commission has, therefore, entrusted the National Centre for Advocacy Studies (NCAS), a Pune based NGO, with a study that will assess the human rights situation in India with particular reference to economic, social and cultural rights.

9.11 The objectives of this study are to:

- Analyze the Government's initiatives and interventions in terms of allocation of resources for the realization of economic, social and cultural rights, especially the rights to food, health and education, with particular reference to the marginalized (adivasis, dalits, women and children);
- Learn of civil-society initiatives to help people claim their economic, social and cultural rights;
- Understand how far people are getting benefits from the governmental initiatives pertaining to economic, social and cultural rights.

9.12 The study will be conducted in three states of India: Maharashtra, Karnataka and Chhattisgarh. Field surveys will be conducted in one development block of each state. The blocks will be chosen where the majority of the population belong to the Scheduled Castes and Scheduled Tribes. The study will evaluate the initiatives of Government towards creating an atmosphere for the enjoyment of economic, social and cultural rights. It will also indicate the present role of civil-society groups in seeking to facilitate the achievement of these rights.

D] Human Rights of Persons with Disabilities - An NHRC-CHRC linkage project

9.13 As of 31 March 2003, efforts to start a linkage project between the National Human Rights Commission (NHRC) and the Canadian Human Rights Commission (CHRC) had reached a stage where they would soon be finalized. The project would deal with the 'Human Rights of Persons with Disability.' Indira Gandhi National Open University (IGNOU) has been identified as the nodal agency for the implementation of the project. This linkage project will:

- Raise awareness of the human rights of persons with disabilities;
- Improve the technical capabilities of NHRC and CHRC;
- Strengthen the project management capabilities of NHRC and CHRC.

Further, in cooperation with the Canadian Human Rights Commission, this Commission has decided to develop three manuals: one for legal practitioners; another for academics; and a third for disability-rights activists. The first manual will explore the domestic legal framework, to establish its relevance for persons with disabilities. The second manual will familiarize the readers with the complaints and redressal mechanisms available for the disabled under the domestic laws. The third manual will serve as a step-wise guide on international norms and standards, including reporting and remedial procedures available under various international human rights instruments.

9.14 The signing of the Memorandum of Understanding between the CHRC, NHRC and IGNOU was expected to take place imminently.

E] Operation Oasis - A study related to mentally ill persons in West Bengal

9.15 As indicated in earlier annual reports, the Commission has been funding a 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 mentally ill persons languishing in them. The project, which has been underway for two years, was extended for a third year after the Commission considered and approved a request received from SEVAC. In making its request to the Commission, SEVAC stated that:

- The State Government of West Bengal had not yet developed any system for the continuation of treatment of the mentally ill patients identified by SEVAC in the Correctional/Custodial institutions. If the project came to an abrupt end, these ailing people would not receive the psychiatric treatment and care that they required.
- The existence of the mentally ill patients in the Correctional/Custodial institutions had not yet been officially accepted by the State Government. Consequently, no strategy has been prepared to adopt short term/long term policies to cater to the needs of these patients who had been languishing in Correctional/Custodial institutions.
- In the preceding two years, the SEVAC team had been able to restore/release some 30 mentally ill patients who had been living in jails/vagrant homes.

9.16 In granting the extension of the project for a third year (2003-04), the Commission stated that other, similar institutions, may also be identified for the purpose of carrying out such research work. They, too, could be considered by the Commission for possible financial assistance, depending on the merit of their work.

F] Project for developing resource material for Human Rights Education in Indian Universities

9.17 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. The

proposal was in follow-up of a Round Table Workshop on Human Rights Education, organized by the KWIRC in collaboration with the Commission in October 2002, in which seven dossiers relating to economic, social and cultural rights were discussed. Each of the dossiers had been authored by an expert who was deeply involved in, or closely associated with, the relevant human rights movement. The dossiers concerned:

- 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.

9.18 The Advisory Committee of the University Grants Commission (UGC) subsequently expressed its appreciation and approval of the dossiers and recommended that they be used in the various centers which are engaged in Human Rights Education.

9.19 The project proposal approved by the Commission aims at continuing the effort to develop source material on Human Rights Education, drawing on India's own experiences.

9.20 The following activities are being 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.

9.21 The Project will be completed within one year.

Promotion of Human Rights Literacy and Awareness

CHAPTER 10

10.1 The Protection of Human Rights Act 1993, in section 12(h), has expressly mandated the Commission to promote human rights awareness and literacy. In a sense, the entire range of the activities of the Commission serve this broad, encompassing purpose. The decisions that the Commission takes in respect of individual or group complaints, the programmes and projects that it undertakes, the seminars and workshops that it holds, the research it generates, its publications and discourses, all aim to create a culture of human rights in the country - an environment in which rights can be better promoted and protected. This chapter, therefore, needs to be read in the broad context of the totality of the Commission's endeavours as recounted in this annual report. The chapter will focus on such aspects of the effort to promote human rights awareness and literacy as are not covered in other parts of this report.

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

10.2 The Commission's views on the importance of drawing up a National Action Plan for Human Rights were mentioned in detail in the preceding annual report. During the period under review, progress in this regard was reviewed by the Secretary General of the Commission with the Special Secretary (CS), Ministry of Home Affairs, Government of India. The Commission was informed that the Government of India have been taking steps to formulate the National Plan of Action on Human Rights in consultation with all concerned. The Commission was also informed that once the draft plan is

available, the Ministry of Home Affairs intends to hold a seminar, to which a representative of the Commission will be invited, to discuss and finalize it for adoption. As the matter has been pending for longer than it should, the Commission urges that action to draft the National Action Plan for Promotion and Protection of Human Rights now be completed expeditiously.

10.3 The Government of India has, on the other hand, finalized its Action Plan for Human Rights Education, albeit rather belatedly, as part of the observance of the UN Decade for Human Rights Education 1995-2004. That Action Plan groups 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.

10.4 In the Memorandum of Action Taken on the Commission's annual report 2000-2001, it has been stated that the "National Action Plan for Human Rights Education has been adopted by academic institutions, bureaucracy and the police. The various authorities, which are involved in the implementation, have already commenced the implementation of the Human Rights Education Awareness Programme. The Ministry of Human Resource Development (Department of Secondary & Higher Education), which has a major role to play in the spread of human rights education throughout the country, has taken action by reorientation of school syllabus to bring out the element of human rights, preparation of media animation programmes which are being telecast through 'Gyan Darshan', introducing elements of human rights in foundational courses at graduate level in Universities and Colleges, conducting specialized courses and programmes in Universities, preparation of resource material kit for human rights education in collaboration with the British Council etc. The Central Paramilitary Forces and Police Training Academies have also introduced modules on human rights as part of their training programmes so as to create a better awareness among officers and men on human rights. The Lal Bahadur Shastri National Academy of Administration has also introduced human rights as a subject as part of the training programmes. Government proposes to carry-forward this progress made in human rights education to other sections of the society and also involve NGOs in this task". The Commission welcomes these developments and expresses the hope that the implementation of the National Action Plan for Human Rights Education will proceed carefully, methodically and involve ever-widening sections of society.

10.5 With regard to the mass awareness programme, the National Action Plan for Human Rights Education identified Doordarshan and AIR as nodal media units. The Commission, therefore, pursued the matter with the Ministry of Information and Broadcasting to have follow-up action initiated on the Action Plan. The Secretary General of the Commission met with the Secretary, Ministry of Information and Broadcasting to discuss ways of promoting human rights awareness through the various media units working under the Ministry of Information and Broadcasting. A number of action points emerged for joint co-operation. They included, inter alia, greater coverage to human rights issues in Doordarshan news programmes, preparation of radio and TV spots linking societal issues and problems with human rights; developing hand books of human rights for media persons; posters on human rights issues, etc. A group is to be set up consisting of officers from the Commission and representatives of Doordarshan, All India Radio, Directorate of Audio and Visual Publicity and Press Information Bureau to work out the issues to be considered and the steps to be taken jointly by the Ministry of Information and Broadcasting and the Commission, both on a short term and long term basis, for the spreading of human rights awareness.

10.6 The University Grants Commission has informed the Commission that a number of new Universities/Colleges have, during recent years, introduced Certificate, Diploma and Degree Courses on Human Rights and Duties Education.

10.7 Degree courses in human rights were recently started in Berhampur University, Berhampur; Jamia Millia Islamia, New Delhi; Maharishi Dayanand University, Rohtak; Ethiraj College for Women, Chennai and Mahatma Gandhi University, Kottayam.

10.8 Diploma Courses were introduced in J.N. Vyas University, Jodhpur; Mohanlal Sukhadia University, Udaipur; University of Kalyani, Kolhapur; Madurai Kamraj University, Madurai; Himachal Pradesh University, Shimla and the University of Kashmir, Srinagar.

10.9 Certificate courses were started in SNTD Women's University, Mumbai; Arunachal University, Itanagar; Manipur University, Imphal; Swami Ramanand Teerth Marathwada University, Nanded; Lanka Govt. College, Churachandpur, Manipur; and Stella Maris College, Chennai.

B] Human Rights Training for Civil Servants

10.10 Given the importance of human rights training for civil servants, the Commission continued to interact with the Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussoorie, the Sardar Vallabhai Patel National Police Academy, Hyderabad and other national and state level training institutions. The then Secretary General of the Commission visited the Lal Bahadur Shastri National Academy of Administration in June 2002 and reviewed the progress of two research studies on 'Insurgency and Human Rights Violations in J&K and in the North-East' and 'Tribals, Environment and Violations of Human Rights' entrusted by the Commission to LBSNAA. He also reviewed the progress in the preparation of a manual on Human Rights for District Magistrates. In July 2002, a meeting was held in the Commission, with the selected resource persons, to further discuss the modalities of the preparation of the manual and, thereafter, a suitable template was designed. The objectives of the manual are to:

- Sensitize District Magistrates / District Collectors / Deputy Commissioners on human rights issues;
- Sharpen their professional knowledge and skills and strengthen human rights values;
- Foster and promote a culture of human rights at all levels in district Administration;
- Provide a legal framework for enhanced respect for and protection of Human Rights at the district level;
- Enable the District Magistrates / District Collectors / Deputy Commissioners to effectively meet the challenges of socio-political change and economic development in so far as these relate to the domain of their public duties.

10.11 The LBSNAA has approached eminent persons to write, among other topics, on the maintenance of public law and order, custodial justice, rights of women, children, dalits, minorities, the disabled, etc. At the time of writing this report, efforts were underway on to finalize the manual at an early date.

10.12 The Commission also organized a two-day Workshop on Economic, Social and Cultural Rights (ESCR) for senior IAS officers in September 2002 in Thiruvananthapuram, Kerala, in partnership with the Institute of Management of the State Government.

C] Human Rights Training for Police Personnel

- 1) Joint Project with the British Council - Human Rights Investigation and Interviewing Skills & Human Rights and Custody management

10.13 In view of continuing demands from various quarters, the training programme on Human Rights Investigation & Interviewing Skills and Human Rights & Custody Management, organized during 2000 - 2002 by the Commission and the British Council, was redesigned as a 5-day integrated package. Police officials from Delhi and the States of Jammu & Kashmir, Himachal Pradesh, Punjab, Haryana, Rajasthan, Uttar Pradesh, Uttaranchal, Assam and Union Territory of Chandigarh attended the training.

2) Research Projects on Police Training

10.14 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.

10.15 The objectives of the first study are to:

- Identify human rights education domains (knowledge, skills and attitudes) relevant to the police for training and 'non-training interventions' at police training institutions;
- Critically appraise the training courses being conducted for police personnel in the human rights area by considering the following dimensions:
 - Objectives of the course
 - Training methodology
 - Participants' feedback
 - Organizations' feedback on the courses
- Validate the course design in human rights education for police

personnel of various ranks (police constables, sub-inspectors and deputy superintendents of police).

- Study the training and 'non-training interventions' for human rights education at the National Police Academy, in consonance with its Mission Statement which focuses on the development of sensitivity to human rights.

10.16 The objectives of the second study are to:

- Identify human rights observance (knowledge, skills and attitudes) relevant to the police for training and other interventions by the police in India.
- Evolve training strategies for the various identified knowledge, skills and attitudinal domains related to human rights observance by the police in India.
- Recommend 'non-training interventions' for human rights observance by the Police in India.

10.17 In relation to the first study, a Workshop has been organized for selected District Superintendents of Police in order to identify human rights concerns in day-to-day policing. Along with this, the National Police Academy has also undertaken the study of various police manuals as well as Handbooks/Instructions on human rights already in use in various State police organizations. The Commission suggested that this study could be used to prepare a manual on human rights for Superintendents of Police which could be in two parts: in the first part, human rights issues could be interwoven with various aspects of day-to-day policing; the second part could be in the form of an annexure which contains the principal statutes, instruments, protocols, court cases, guidelines, etc. pertaining to human rights. The project has since been completed and the draft manual evolved by the National Police Academy has been sent to Commission for its comments. At the time of writing of this report, the draft manual is being examined in the Commission.

10.18 As part of the second study, questionnaires have been developed to cover the domains of knowledge, skills and attitudes for the observance of human rights by constables, sub-constables, sub-inspectors/inspectors, deputy superintendents of police/superintendents of police. The information thus received from these questionnaires will result in the identification of the gaps and form the basis for recommending training and other interventions.

3) Promoting Good Custodial Practices

10.19 The Commission, in partnership with the British Council and Shubodaya Centre for Rehabilitation of Victims of Torture & Violence, an NGO, has undertaken a Project on the 'Promoting Good Custodial Practices'. The duration of the project is two and a half years and is 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 aims 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. It is also expected that the project will build trust between the various institutions involved in providing custody through a community-based project.

D] Human Rights Education for Para Military and Armed Forces

10.20 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. Further, to encourage interaction and experience-sharing between personnel of para-military forces and the Commission, 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. During the year under review, the Commission and Army Headquarters continued to interact on a number of issues relating to the protection and promotion of human rights.

E] Internship Programme

10.21 The Commission has been holding an Annual Summer Internship

Programme since the year 1998, in order to spread awareness of human rights issues among university students. This programme is open to students pursuing graduate and post-graduate studies in Law, Political Science, Sociology, Criminology, Human Rights etc. The Summer Internship Programme could, however, accommodate only a limited number of students, while the requests for participation in the programme kept mounting. With a view to giving more students an opportunity to participate in the programme, a Winter Internship Programme was also introduced by the Commission from the year 2000.

10.22 The Summer Internship Programme was held from 20 April to 21 May 2002. Fourteen students from the Banaras Hindu University and the Universities of Lucknow, Jammu, Arunachal Pradesh, Guru Nanak Dev and Government Law College, Ernakulam, Kerala participated. The Winter Internship Programme was held from 4 December 2002 to 3 January 2003. Twenty three students from Maharishi Dayanand University, Jawahar Lal Nehru university, Guru Nanak Dev University, Amritsar, Aligarh Muslim Univeristy and Jamia Milia Islamia participated in it.

10.23 During the Internship Programme, the students study 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 taken on field visits and given an opportunity to interact with NGOs working in the field of human rights. In addition, they work on research topics which are assigned to them.

F] Visits abroad: Conferences, Seminars and Workshops

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

10.24 The International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) is a representative body of national human rights institutions established for the purpose of creating and strengthening national human rights institutions which are in conformity with the Paris Principles.

10.25 The United Nations Commission on Human Rights is the central human rights forum of the world organization. The Commission sets standards to govern the conduct of States and also acts as a forum where countries, large and small, non-governmental groups and human rights defenders around the world can voice their concerns. The meeting of the ICC is held in conjunction with the annual meeting of the United Nations Commission on Human Rights.

10.26 The Commission was represented at the meetings of the International Coordination Committee and of the United Nations Commission on Human Rights which were held in Copenhagen and Geneva in April, 2002. The delegation comprised Justice J.S.Verma, then Chairperson, Shri Virendra Dayal, Member and Smt S.Jalaja, Joint Secretary.

Other Seminars and Workshops

10.27 Justice J.S. Verma, then Chairperson, presented a paper on "Thomas Jefferson: Rights and the Contemporary World" at a Conference held in Bellagio, Italy from 3-8 June 2002.

10.28 Smt. Maushumi Chakravarti, Information Officer and Shri Shashi Kant Sharma, Senior Systems Analyst, National Informatics Centre visited Johannesburg, South Africa to attend a workshop from 12-14 March, 2002 dealing with the subject 'Commonwealth Human Rights Network'.

10.29 The Joint Secretary, Smt S. Jalaja represented the Commission in a Workshop on National Human Rights Institutions, Human Rights Education, Media and Racism held in Sydney, Australia from 15-16 July 2002.

10.30 Dr. Savita Bhakhry, Senior Research Officer represented the Commission in a Regional Training Programme on human rights for staff of the National Human Rights Institutions of the Asia Pacific Region, which was held in Bangkok, Thailand from 21 October 2002 to 01 November 2002.

10.31 Justice (Smt) Sujata V. Manohar, Member, represented the Commission in the International Conference on "Path breaking strategies in the Global Fight against Sex Trafficking", in Washington, USA held from 22-26 February 2003.

G] Publications and the Media

Journal of the National Human Rights Commission

10.32 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 catalyse 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 to 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.

10.33 The Journal, which will 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.

10.34 The inaugural issue, under the heading of Human Rights: New Dimensions, contained articles entitled "Human Rights Redefined: The New Universe of Human Rights" by Justice J. S. Verma, then Chairperson of the Commission; "The Constitution and Human Rights: An Overview" by Shri Fali S. Nariman, Senior Advocate, Supreme Court of India; "Evolution of the National Human Rights Commission, 1993-2002: A Decennial View" by Shri Virendra Dayal, Member of the Commission.

10.35 Under the section 'Struggles for Human Dignity', the Journal contains article on "Domestic Violence and the Law" by Ms. Indira Jaising, Senior Advocate, Supreme Court of India; "Rights of Tribals" by Shri B.D. Sharma, Former Commissioner, Scheduled Castes and Scheduled Tribes; "Rights of Dalits" by Prof. G. Haragopal, Department of Political Science, Central

University, Hyderabad; "Rights of the Disabled" by Ms. Anuradha Mohit, Special Rapporteur for the Commission on Disability Issues. Under the section on current issues, there are notes under the headings "Gujarat Intervention" by Shri Dipankar Gupta, Senior Advocate, Supreme Court of India; "Right to Know" by Ms. Kamini Jaiswal, Advocate, Supreme Court of India. The section also includes certain extracts of the recent proceedings of the Commission, notably on Gujarat; its Opinion on The Freedom of Information Bill, 2000; and the Statement of the Commission at the World Conference on Racism, held in Durban. The section on books includes a review of Professor Upendra Baxi's recent study "Future of Human Rights" by Shri G. Mohan Gopal, Director and Professor of Law, National Law School of India University, Bangalore.

10.36 For the second successive year, the Commission produced a calendar dealing with human rights themes. The calendar for the year 2003 focussed on THE FIRST TEN YEARS: A DECADE OF NHRC's INITIATIVES. It was released by the President of India on 10 December 2002.

10.37 In the month of November 2002, the Commission brought out, in the form of a publication, a compilation of all of the major Proceedings of the Commission on the human rights situation in Gujarat, beginning with the tragedy that occurred in Godhra on 27 February 2002 and the violence that ensued subsequently. The publication has been widely received in circles interested in human rights.

10.38 In January 2003, the Commission brought out a Handbook entitled "Discrimination based on sex, caste, disability and religion" with a view, primarily, to sensitize teachers.

10.39 The monthly Newsletter of the Commission continued 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 flow of 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. Newsletters published since 1999 are also available on the Commission's web-

page www.nhrc.nic.in. The Commission proposes to launch an e-newsletter in the interest of disseminating human rights-related information to an even wider audience.

10.40 On the occasion of the 7th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, held in New Delhi in November 2002, a special issue of the Newsletter was published. It focused on the Asia Pacific Forum, its objectives, activities, earlier meetings, member profiles and the working of the Advisory Council of Jurists of the Forum.

10.41 The Commission has been maintaining its clipping information service in the form of a computerized database. Newspaper clippings can thus be retrieved newspaper-wise, date-wise and topic-wise. This service has provided a very useful source of information not only to the Commission, but also to a number of research scholars, students and media-persons, who have easy access to it. The clippings are sourced from 26 newspapers, both national and regional, that are scanned daily in the Commission for news items relating to human rights. All major weeklies and fortnightlies are also scanned regularly for important news items. The clippings continue to serve as an important source of information to the Commission for taking suo-motu action.

10.42 The Commission would once again like to express its thanks 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 variety of human rights issues, have featured frequently in the press. Further, there have been regular briefings for the media, both through press releases and on a one-to-one basis. Indeed, the media has been a key ally of the Commission in promoting and protecting human rights. As in the past, the Commission has frequently taken cognizance of human rights violations on the basis of media reports.

10.43 Encouraged by the range and 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 have projects on human rights issues. The Asia Pacific Forum has made a film on the work of major national institutions in the region, giving considerable prominence to the efforts of this Commission, particularly in respect of its work on child labour.

10.44 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 2002. Various Regional Kendras of Doordarshan have organized panel discussions on human rights and related issues. Another important activity during the period under review was the production of a four-part serial on human rights by the Doordarshan Kendra, Bhubneshwar, based on a script and concept provided by Shri A.B. Tripathy, Special Representative of the Commission.

H] Visits on behalf of the Commission to various States

10.45 During the year under report, the Chairperson, Members, Special Rapporteurs and senior officials of the Commission paid visits to several States in the country including, inter-alia, the States of Andhra Pradesh, Rajasthan, Karnataka, Tamil Nadu, West Bengal, Kerala, Gujarat, Uttar Pradesh and Bihar. Some of the important issues which were taken up with the State Governments on a regular basis were:

- i) Functioning of Human Rights Cells set up in the offices of the Directors General of Police;
- ii) Combating sexual harassment at the workplace;
- iii) Follow - up action on the Commission's report on the human rights of persons affected by HIV/AIDS;
- iv) Abolition of manual scavenging.

10.46 The visits provided an opportunity for the Commission to interact with the principal decision makers in the State, as well as with leading non - governmental organisations and 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.

10.47 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 utilised 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.

Annual Meeting of the Asia Pacific Forum

10.48 The Seventh Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions was held in New Delhi, India from 11-13 November, 2002. It was inaugurated on 11 November, 2002 by the Prime Minister of India, Shri Atal Bihari Vajpayee.

10.49 Participants from the member institutions of the Asia Pacific Forum (APF) viz., Australia, Fiji, India, Indonesia, Mongolia, Nepal, New Zealand, Philippines and Sri Lanka and the newly joined institutions Malaysia, Republic of Korea and Thailand - attended the three-day meeting.

10.50 Also present, as observers, were representatives from the governments of Australia, Myanmar, New Zealand, Thailand, the Timor - Leste; human rights institutions from Afghanistan, Iran, New Zealand and Palestine; and international, regional and national non - governmental organizations.

10.51 The National Human Rights Commission of India, as the host institution of the seventh annual meeting, was unanimously elected to the position of Chairperson of the Forum. The National Human Rights Commission of Sri Lanka, as the host institution of the last annual meeting and, the National Human Rights Commission of Nepal, as the host institution for the next annual meeting, were elected unanimously to the two positions of Deputy Chairpersons. The national human rights institutions of Australia, Fiji, Nepal and the Philippines were elected to be the four representatives of the region in the International Coordination Committee of National Human Rights Institutions.

10.52 In the course of the meeting, the Forum decided to respond positively to an invitation of the United Nations Ad - hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, addressed to national institutions, to participate independently in the development of a new International Convention on this subject. The forum also considered the issue of trafficking in depth, hearing, in the course of its proceedings, the views of international experts and non - governmental organisations and the views of its Advisory Council of Jurists. The Forum welcomed the agreement of the National Human Rights Commission of India and Nepal to work together on this issue.

10.53 A copy of the Concluding Statement of the seventh annual meeting is at Annexure 12.

Non-Governmental Organizations

CHAPTER 11

11.1 The Protection of Human Rights Act, 1993, expressly requires the Commission, under section 12(i) of that Act, to encourage the efforts of non-governmental organizations (NGOs) and institutions working in the field of human rights. This is a responsibility of utmost importance to the Commission and to the better protection of human rights in the country. Indeed, over the past decade, almost every major undertaking of the Commission has benefitted from, and been influenced by, its close working relationship with NGOs, many of whom have been defending and furthering human rights with great fervour and courage. In order to strengthen and consolidate this relationship, the Commission has been holding a series of consultations with NGOs, on a regional basis. This has proven to be of considerable value both to the Commission and to the NGOs, reinforcing their understanding of each other and their capacity to work together in the furtherance of rights across the country.

11.2 To facilitate contacts and consultations with NGOs, the Commission constituted a Core Group of leading representatives of NGOs on 17 July 2001, the membership of which has been indicated in the preceding annual report. Shri Chaman Lal, Special Rapporteur of the Commission was asked to serve as the Convenor of the Core Group. During the year under review, the fifth meeting of the Core Group was held in June 2002 and a number of practical projects were taken up in pursuance of that meeting.

11.3 Regional consultations with NGOs have so far been organized by the Commission for the northern region in New Delhi on 13 March 2001 and for

the eastern region in Bhubaneswar on 29 January 2002. The Commission also held a consultation with NGOs of the southern region in Chennai in May, 2002. In this consultation, NGOs from the States of Kerala, Tamil Nadu, Karnataka, Andhra Pradesh and Pondicherry participated. The consultations provided a useful platform for the NGOs to put forth their perspectives and difficulties before the Commission. The Commission, for its part, gained a first hand account of the ground realities prevailing in these States as far as human rights were concerned.

11.4 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. These included: 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 belonging to disadvantaged sections of society; issues relating to Dalits; incidents of communalism-related violations of human rights; and the human rights of un-organized workers in both urban and rural areas. Specific instances of cooperation between the Commission and NGOs in respect of these matters are recounted under the relevant chapters of this report.

State Human Rights Commissions and Human Rights Courts

CHAPTER 12

A] State Human Rights Commissions

12.1 The Commission has been following the efforts of the State Governments to set up State Human Rights Commissions, an enabling provision for which exists in the Protection of Human Rights Act, 1993. The Commission is happy to note that the Government of Uttar Pradesh has set up a State Human Rights Commission. They now exist in the States of Assam, Chhattisgarh, Himachal Pradesh (disbanded and since re-constituted), Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. The Commission would like to reiterate the hope that those State Governments which have not yet set up Human Rights Commissions will do so at an early date. The existence of a State Human Rights Commission is a strong indication of the degree of a State Government's commitment to human rights. These Commissions assist the governments concerned in fulfilling their constitutional obligations and responsibilities.

12.2 Several State Human Rights Commissions have evinced interest in the working of the National Human Rights Commission and the methodologies and procedures adopted by it. Particular interest has been shown in regard to the Complaints Management System (CMS), for which a software module had been developed by this Commission with the assistance of the National Informatics Centre (NIC). It is used for the handling and monitoring of action taken by the Commission on complaints. The system has been of great value to the

Commission and to complainants; it has also added transparency and accountability to the work of the Commission.

12.3 In interacting with the National Human Rights Commission, certain of the State Human Rights Commissions have expressed their unhappiness over the difficulties they are experiencing in terms of lack of support, both financial and otherwise. The Protection of Human Rights Act, 1993, envisaged a network of Commissions, at the National and State levels, working in complementarity with each other for the better protection of human rights in the country. Under the Act as it is at present, the National Human Rights Commission is not in a position to make any recommendations regarding issues before the State Human Rights Commissions. It was in light of this that an amendment to the Act was proposed by the National Human Rights Commission with the aim of developing a mechanism that would govern inter-institutional relationships between the National Human Rights Commission and the State Commissions, including the grant of powers of superintendence to the former, similar to those under Article 136 of the Constitution. Strong Commissions reinforce each other, and add substantially to the creation of better governance and a more humane society. It is therefore of great interest to the country as a whole that full support is extended by the Central and State Governments to the Commissions, in order to ensure that the scheme of the Act is respected and its objectives are achieved. The Commissions should be viewed as instruments that contribute to the better protection of human rights, supplementing the work of Governments, it being an obligation of the State to protect the human rights of its people. The Commission urges both the Central and the State Governments to keep this goal constantly in mind.

12.4 The Commission had observed in its preceding report that among the North-Eastern States, Assam and Manipur had established State Human Rights Commissions and that the other States of the region were, in principle, in favour of having Commissions. However, financial and administrative reasons were holding them back and there was need to think further how best the States of the North-Eastern region could have access to one or more Human Rights Commission. Unfortunately little progress appears to have been made in that respect even though, it would clearly be of benefit to the region if such Commissions were established. The Ministry of Home Affairs is therefore once again requested to consult with the State Governments concerned so that appropriate arrangements are made for the North-Eastern States. The well-being of the people of those States is of the greatest consequence to the country.

B] Human Rights Courts

12.5 It remains a matter of regret to the Commission that the promise of section 30 of the Protection of Human Rights Act, 1993, has not been fulfilled even ten years after the adoption of the Act. It will be recalled that, under section 30 of the Act, for the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification specify for each district a Court of Session to be a Human Rights Court to try the said offences.

12.6 While a number of States have notified such Courts, a lack of clarity has persisted as to what offences, precisely, can be classified as human rights offences. For its part, the Commission has proposed a precise amendment to section 30 of the Act, which may be seen in Annexure 1 of the annual report for 2001-2002. Regrettably, in the absence of any definitive action having been taken on that proposal, these Courts have not been able to adequately discharge the purpose for which they were designated.

12.7 The Commission therefore requests the Central Government to give this matter the attention it deserves. The objectives of the Protection of Human Rights Act, 1993 should not be thwarted by difficulties of the kind that at present persist, despite clear recommendations having been made on how to resolve them.

Complaints Before the Commission

CHAPTER 13

A] Pendency

13.1 At the beginning of the reporting period i.e. as on 1 April 2002, the total number of cases pending before the Commission was 56,462. These included 31,923 pending cases which, inadvertently, had not been reflected in the pendency of cases in earlier reports. There were also 11,589 cases awaiting preliminary consideration as on 1 April 2002 and 12,950 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 as of 31 March 2002. The details are given in Annexure 13.

Number and Nature

13.2 During the year under review, the Commission registered 68,779 new cases and thus it had a total of 1,25,241 cases to consider, of which 56,462 were cases from earlier years. During the period 1 April 2002 - 31 March 2003, the Commission disposed of 82,231 cases. The State-wise and category-wise details are shown in Annexures 14 and 15 (a) to (c).

13.3 At the end of the reporting period i.e. as on 31 March 2003, the total number of cases pending before the Commission was 43,010, which included 9763 cases awaiting preliminary consideration and 33,247 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 (see Annexure 16).

13.4 The total number of cases registered in the Commission in 2002-2003 was 68,779 while the corresponding figure for the year 2001-2002 was 69,083. Of the cases that were registered during the year under review, 67,354 were complaints of human rights violations, 1340 related to custodial deaths, 2 concerned custodial rapes and 83 related to police encounters. Of the custodial deaths that occurred in the course of 2002-03, 183 deaths occurred in police custody and 1157 in judicial custody, most of the latter resulting from illness, old age or similar factors (see Annexure 17).

13.5 The figure in respect of complaints registered, confirms the assessment made by the Commission in the preceding annual report 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 40,612 or 60.3 per cent of the total number of complaints registered by the Commission. Bihar followed Uttar Pradesh, with 4028 complaints; Delhi was third with 3796 complaints. It will be interesting to see whether the establishment of a State Human Rights Commission in Uttar Pradesh in the course of the year 2002-2003 will lead to a decline in the number of complaints from that State to the National Human Rights Commission in succeeding years.

13.6 Of the total number of 82,231 cases disposed of in 2002-2003, 26,128 were dismissed 'in limini', 17,262 were disposed of with directions to the appropriate authorities for remedial measures and 38,438 cases were disposed of after calling for reports from the concerned authorities. Of the latter group, 263 cases pertained to disappearances, 3595 cases related to illegal detention/illegal arrest, 2783 cases alleged false implication, 706 cases alleged custodial violence, 118 cases alleged 'fake encounters', 9978 instances related to failure to take appropriate action, and 9622 complaints related to other police excesses. During this period, the Commission also disposed of 118 cases specifically alleging that the dignity of women had been violated, 159 cases alleging sexual harassment, 289 cases alleging abduction, rape and murder, 845 cases relating to dowry deaths, 448 cases of dowry demand, 200 cases alleging the exploitation of women and 400 cases alleging the rape of women. The Commission also disposed of 50 cases concerning child labour, 26 cases relating to child marriages and 161 cases alleging bonded labour. In respect of conditions in prisons, 434 cases relating to harassment of prisoners, 44 cases of lack of medical facilities in jails and 229 cases relating to other aspects of jail conditions were disposed of by the Commission. In addition to the above, 542

cases alleging atrocities against members of the Scheduled Castes / Scheduled Tribes were disposed of by the Commission, as were 21 cases of communal violence and 7,407 cases of various other categories. The State-wise position in respect of these cases may be seen at Annexures 15 (a) to (c). The Commission is constantly seeking to refine and improve its system for categorizing the complaints received by it and to complete action on them with greater speed and efficiency.

13.7 Since its establishment in October 1993, the Commission has directed that compensation in the amount of Rs. 9,76,68,634/- be paid in 559 cases. During the year 2002-03, the Commission recommended that compensation amounting to Rs.31,40,000/- be paid in 39 cases. Further, the Commission directed that disciplinary action/prosecutions be undertaken in 5 cases.

13.8 The Commission would like to reiterate that it is of utmost importance that both the Central and State Governments respond promptly to requests for reports made by the Commission. Further, they need to act without delay on its varied recommendations in respect of individual cases. The Protection of Human Rights Act 1993 is based on the premise that the fullest cooperation will be extended to the Commission by both the Central and State Governments. It is therefore incumbent on them to assist the Commission in its efforts to dispose of cases promptly and efficiently, in order to ensure that the better protection of human rights, as envisaged under the Act, is achieved.

B] Investigation of Cases

13.9 The Investigation Division of the Commission is headed by an officer of the rank of Director General of Police. The Director General (Investigation) is assisted by a DIG, three Senior Superintendents of Police and 20 other investigators of various ranks.

13.10 The prime responsibility of the Investigation Division, acting under directives of the Commission, is to collect facts in respect of complaints received by the Commission and to place those facts before the Commission with speed and accuracy. In instances where the reports received from the concerned governmental authorities are inadequate, or the facts collected by the Investigation Division point to the need for further inquiry, the Commission dispatches teams from the Investigation Division for inquiries and investigation

on the spot. The Division also monitors cases in respect of which the Commission has ordered investigation by the CID or CBI.

13.11 During the year 2002-03, the Commission directed its Investigation Division to look into 3,005 cases, as compared with 2,688 cases in the preceding year. Of these cases, 2,092 related to the 'collection of facts' from different parts of the country. In 130 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.

13.12 The Commission also directed the Investigation Division to assist it in the onerous task of processing and scrutinizing the large number of cases of custodial death 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.

13.13 Given the nature and workload of the Investigation Division, the Commission had made certain recommendations in its report for 2001-2002 in respect of the numbers and conditions of service of those working in that Division. As those matters are still unresolved, the Commission reiterates the hope that they will be acted upon positively and expeditiously.

C] Illustrative Cases 2002-2003

13.14 As is clear from the foregoing, the Commission has been receiving a wide range of complaints relating to human rights violations. They include cases alleging custodial deaths, torture, police high-handedness, violations committed by security forces, prison conditions, rights of women and children and other vulnerable sections, bonded labour, negligence of public authorities, etc. The Commission has frequently been issuing press releases in respect of the more prominent cases, information concerning which is often also included in the monthly Newsletter and placed on the website. The Commission has also established a web-based facility which enables complainants to know the status of their cases. The summaries of 26 representative cases follow:

POLICE EXCESSES

a) Custodial Deaths

1) **Death in custody of former Sarpanch of Gogon Village, Chuhur Singh due to negligence: Punjab (Case No.431/19/2000-2001)**

13.15 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.

13.16 In response to the Commission's notice, the District Magistrate, Hoshiarpur, submitted a report. It indicted the Assistant Sub-Inspector, Mahilpur Police Station, for negligence. It was indicated in the report that he had acted against the advice of the doctor on emergency duty, and had taken Chuhur Singh to the court thus worsening his condition. A departmental enquiry had, therefore been initiated against the Assistant Sub Inspector. The report, however, denied any torture or beating by the Mahilpur police, as alleged by relatives of the deceased.

13.17 In view of this finding of negligence in providing timely medical aid, the Commission issued a notice to the Chief Secretary, Government of Punjab to show cause, within four weeks, as to why Rs. 50,000/- be not paid as immediate interim relief under section 18 (3) of the Act to the next of kin of the deceased.

13.18 In its proceedings 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 Commission observed that the concept of immediate interim relief ceases to be meaningful if it is subjected to the final determination of the existence of the guilt of the violator. The Government of Punjab was accordingly directed to pay the compensation.

2) Death of Bujhai in police custody due to torture:
Uttar Pradesh (Case No.4238/96-97/NHRC)

13.19 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.

13.20 Upon consideration of the report received from the police authorities of the State, and given the inconsistencies that had been noted in respect of this case, the Commission directed its own Investigation Division to look into this matter. Pursuant to the recommendation of the Investigation Division, the Commission directed the State Government to have the matter investigated by the CB CID. Pursuant to this directive, the State CB CID submitted a report on 28 December 2000 in which it stated that 11 police officials had been held responsible for committing offences under various provisions of the Indian Penal Code (IPC) and that chargesheets had been submitted in the court.

13.21 In its proceedings 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.

3) Death of Radhey Shyam in police custody due to torture:
Rajasthan (Case No.205/20/1999-2000-CD)

13.22 On 12 May 1999, the Commission was informed by the Superintendent Police, District Jhalawar, of the death of Radhey Shyam, son of Ram Lal Darji, resident of Bacchapur, District Ratlam, Madhya Pradesh in the custody of Gangdhar Police Station, Jhalawar District, Rajasthan during the night of 6 May 1999.

13.23 Upon notice being served to the Government of Rajasthan, the Home (HR) Department sent a report to the Commission dated 2 April 2000. It indicated that Radhey Shyam along with two others, was arrested in case No.65/99 on 5 May 1999 by police personnel of Ganadhar Police Station. He was brought to the police station and subjected to torture during interrogation. His dead body was, thereafter, disposed of in order to destroy evidence, and his family members were threatened. The State Government registered a case and entrusted investigation to CB CID. During investigation, a crime was established against the Station House Officer and four constables. The State Government had paid an ex-gratia amount of Rs.50,000/- to the next of kin of the deceased.

13.24 After considering the report, the Commission asked for a progress report and information concerning the outcome of the action initiated by the State Government against the concerned public servants. It also issued notice to the Chief Secretary, Government of Rajasthan to show cause why a further sum be not awarded under section 18 (3) of the Act as immediate interim relief. By its proceedings dated 13 May 2002, the Commission considered the reply submitted by the Government of Rajasthan, which stated that a charge-sheet had been submitted against the guilty police personnel in a court of law and that the amount of Rs.50,000/- already paid to the next of kin of the deceased be accepted as the final payment for the custodial death of the deceased.

13.25 The Commission held that the amount paid was inadequate compensation for the life of a human being and directed the Government of Rajasthan to pay a further amount of Rs.1,00,000 to the next of kin of the deceased. In response, the State Government of Rajasthan indicated that it had paid the additional amount of Rs.1,00,000 on 19 August 2002, in compliance with the directive of the Commission.

4) Death of Karan Singh in police custody due to violence: Madhya Pradesh (Case No.1935/12/2000-2001-CD)

13.26 The Commission received a communication dated 24 October 2000 from the Collector and District Magistrate, Morena, Madhya Pradesh stating that, on the basis of an information received, police personnel from the Ambah Police Station had conducted a raid and arrested persons involved in gambling on 24 October 2000. It was further stated that one of them, Karan Singh, who was in an intoxicated condition, was admitted in the Ambah Hospital, District Morena where he expired.

13.27 Upon notice being issued to the Home Secretary, Government of Madhya Pradesh, the Sub Divisional Magistrate, Ambah sent a copy of the magisterial inquiry report on 16 February 2001 which stated that Karan Singh had died in the custody of Ambah Police Station on 24 October 2000 due to custodial violence and that the Assistant Sub Inspector and Head Constable were responsible for his death.

13.28 On 26 February 2002, the Commission called for a report on the legal and departmental action taken against the delinquent police personnel who had been held responsible for the death of Karan Singh and also issued notice to the Government of Madhya Pradesh to show cause as to why immediate interim relief under section 18 (3) of the Act be not granted. The Home Department, Government of Madhya Pradesh, submitted a report dated 5 June 2002 which indicated that, on the basis of a case under section 304 and 34 IPC read with 3 (2) 5 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the accused had been arrested, produced in court and a charge-sheet had been filed in court on 10 May 2001. Further, the widow of the deceased had been paid interim relief in the amount of Rs.1,50,000 on 6 November 2000. The balance of Rs.50,000/- would be paid upon the completion of the case in the court. In the light of the action taken by the State Government, the Commission decided to close the case.

5) Death of Surendra in police custody: Kerala (Case No. 13353/96-97/NHRC)

13.29 The Commission received a complaint dated 21 December 1996 from the Christian Cultural Forum alleging the custodial death due to torture of Shri Surendran, a resident of Kazhakkottam, Kerala, in police custody in Kazhakkottam, on 19 December 1996. The victim was taken into custody the previous day, but was not produced before a Magistrate within 24 hours as required. The Christian Cultural Forum requested the Commission to take action against the guilty police personnel.

13.30 In response to the Commission's notice, a report submitted by the Government of Kerala admitted that the death had occurred in police custody. By its proceedings dated 17 August 1999, the Commission accordingly directed the Government of Kerala to pay a sum of Rs.300,000 to the next of kin of the deceased. It also stated that the State CID should conduct an investigation in respect of this matter with a view to prosecuting the errant police personnel

and that, in addition, appropriate disciplinary action should be taken against the police personnel responsible for the death.

13.31 The Government of Kerala challenged the order of the Commission 17 August 1999 before the Kerala High Court at Ernakulam in Writ Petition No.14275 of 2000 on the grounds that the Commission did not have the jurisdiction to issue these directions. The State Government argued that the directions had been issued in violation of Sections 17 & 18 of the Protection of Human Rights Act 1993, as they had been made without conducting a proper enquiry and without giving an opportunity to the State and the police officers against whom the complaint was made. The High Court, by its order dated 6 August 2002, found that the post-mortem report indicated ante-mortem injuries including abrasions and contusions. As this was a proven case of custodial death, the High Court did not find any justification for interfering with the directions of the Commission. The writ petition was, therefore, dismissed.

b) Custodial Torture

6) Custodial torture of Zamir Ahmed Khan: Uttar Pradesh (Case No. 14071/24/2001-2002)

13.32 The National Commission for Minorities, on 25 July 2001, referred a complaint by Shri 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. Though he was examined in the Government hospital for the injuries, he was allegedly threatened by the police not to complain against them. A prayer was, therefore, made for action against the guilty police personnel.

13.33 The Additional District Magistrate, Bulandshahar in his magisterial report dated 1 August 2001 concluded that the police had picked-up Zamir Ahmed from his house, beaten him in custody and illegally detained him in violation of the law. The Magistrate also concluded that the Station House Officer, Bugrasi Chowki was responsible for the abuse of power and recommended suitable action against him.

13.34 The Senior Superintendent of Police, Bulandshahar, through his letter dated 7 December 2001, indicated that the complainant had filed a case against the accused police personnel under the relevant sections of the IPC in a court of law and that the matter was sub judice. Pending consideration of the matter by the court, he stated that further action would be inappropriate.

13.35 After considering this matter, the Commission observed:

"It is well-settled and hardly requires any elaboration that the pendency of a case either in the criminal or civil court for any other relief is no ground to keep in abeyance the disciplinary proceedings. Even otherwise, the standard of proof required for taking action in any disciplinary proceeding is of 'greater probabilities', as against 'proof beyond reasonable doubt' in a criminal proceeding. In the present case, the mere fact that the magisterial inquiry has already recorded a finding as above, is sufficient for the disciplinary proceedings to continue as well as for this Commission to award "immediate interim relief" under Section 18(3) of the Protection of Human Rights Act, 1993, which jurisdiction is attracted the moment a strong prima facie case of violation of human rights is made out."

13.36 The Commission accordingly directed the Government of Uttar Pradesh to show cause as to why immediate interim relief under Section 18 (3) of the Act be not granted to the victim. The concerned departmental authorities were also directed to proceed further with the disciplinary action initiated against the errant police personnel.

13.37 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 in its proceedings of 27 May 2002. The Government of Uttar Pradesh was asked to submit the compliance report within eight weeks. Further, in view of the lack of response in respect of the disciplinary action against the delinquent police personnel, the Senior Superintendent of Police, Bulandshahar was called upon to submit a report, within four weeks.

13.38 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 and, therefore, any

financial relief would be inappropriate. The Commission rejected the stand taken by the State Government and observed as under:

"The custodial torture is the clear finding reached in the magisterial inquiry itself. The insensitivity depicted in the letter of the Government of Uttar Pradesh where it says that payment of the amount does not appear to be proper because there was no serious injury caused to the victim, is disturbing. Custodial torture even without inflicting any visible injury would justify award of some compensation and disciplinary action against the delinquent police personnel. It is not necessary to say anything further in this connection except to reiterate the recommendation for payment of the above amount to the victim which is done hereby."

13.39 The Government of Uttar Pradesh has since initiated disciplinary action against the errant police personnel. However, a compliance report in respect of the payment of interim relief is awaited.

7) Police beating of Jagdish Kawale leading to grievous injuries: Maharashtra (Case No. 1585/13/2001-2002)

13.40 The Commission received a complaint dated 8 November 2001 from Shri Sudhir T. Dhurwey, an advocate, alleging that Shri Jagdish Kawale, a resident of Pauni, District Bhandara, Maharashtra was mercilessly beaten by a police official of Pauni Police Station on 2 March 2001. The victim suffered grievous injuries resulting in a fracture to one leg and he also had to spend a considerable amount of money for his treatment in the Bhandara Government Hospital.

13.41 In response to a notice to the Superintendent of Police, Bhandara, Maharashtra, a report was received indicating that departmental action had been instituted against the Assistant Sub-Inspector involved in this incident and that he had been punished by the stoppage of his increment. A charge-sheet had also been filed in a criminal case under the relevant sections of IPC against the concerned official and the matter was sub-judice.

13.42 In view of the strong prima-facie case against the Assistant Sub-Inspector, which was also reflected in the departmental action against him, the Commission on 12 September 2002 issued a show-cause notice to the Government of Maharashtra for the grant of immediate interim relief. In

response, the Home Department, Government of Maharashtra stated that since the police authorities had taken just and proper action, it would not be appropriate to grant immediate interim relief until the decision were known in respect of the two cases pending in court - one filed against the complainant by the Assistant Sub-Inspector, and the other filed by the police against their own errant colleague.

13.43 The Commission held that the grant of interim relief did not depend upon the outcome of any trial proceedings, whether criminal or departmental, and that it had power to grant immediate interim relief in those cases where a strong prima facie case was made out for violation of the victim's human rights. Having regard to the circumstances of the case, including medical reports submitted in support of the victim's claim of serious injuries inflicted by the Assistant Sub-Inspector of Police, the Commission, by its proceedings dated 2 March 2003, recommended that State Government a sum of Rs.50,000/- to the victim as immediate interim relief. The State was allowed liberty to recover the said amount from the Assistant Sub-Inspector of Police, after notice to him and after taking appropriate proceedings in accordance with law. In compliance with the Commission's recommendation, the Government of Maharashtra issued the necessary sanction for the payment of interim relief.

8) Police high-handedness against a Teacher in Kota: Rajasthan (Case No. 1603/20/2001-2002)

13.44 The Commission received a complaint dated 10 October 2001 from Shri 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.

13.45 Upon notice being issued to the Superintendent of Police, Kota, the Commission received an investigation report which indicated that, while executing a warrant of arrest issued by the Court of Chief Judicial Magistrate, the complainant was mistakenly picked-up by the police instead of his name-sake, the latter being wanted in a criminal case. For this lapse on the part of the Sub Inspector, departmental action had been initiated against him.

13.46 In view of the illegal detention of the complainant and the clear violation of his human rights, the Commission in its proceedings dated 14 February 2003 issued a notice to the Chief Secretary, Government of Rajasthan to show cause,

within 6 weeks, as to why immediate interim relief under Section 18 (3) of the Act be not given to the victim. As of 31 March 2003, the response of the Government of Rajasthan was awaited.

c) Police Harassment

**9) Negligence of police personnel leading to wrongful confinement of Ikram-ud-din: Uttar Pradesh
(Case No. 23239/24/1999-2000)**

13.47 The Commission received a complaint dated 14 January 2000 from Shri 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. A prayer was, therefore, made for stern action against the errant police officials and for compensation.

13.48 Upon notice being issued, the Superintendent of Police, Bagpat submitted a report which indicated that the Sub-Inspector, Head Constable and the Constable of Police Station, Baraut had been found guilty of dereliction of duty inasmuch as they did not make a proper verification before arrest and also because they had made wrong entries in the record. A departmental inquiry had been instituted against the errant police officials.

13.49 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 officials and directed the issue of a show cause notice under Section 18(3) of the Act to the Government of Uttar Pradesh.

13.50 In response to the show cause notice, a report was submitted by the Special Secretary, Home Department, Uttar Pradesh indicating that the errant police personnel had been awarded the punishment of censure. The report added that since the police had not beaten and caused injuries to the complainant, he was not entitled to any financial assistance.

13.51 By its proceedings dated 11 October 2002, the Commission 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. Having regard to all the circumstances of the case, the Commission therefore directed the State of Uttar Pradesh, through its Chief Secretary, to pay a sum of Rs.50,000/- as immediate interim relief under Section 18(3) of the Act, to the complainant within 8 weeks.

10) False implication of Navi Ullah under NDPS Act:
Uttar Pradesh (Case No.13501/24/2000-2001)

13.52 Shri P.S. Chhabra, Additional Sessions 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.

13.53 In response to the notice issued to the Chief Secretary, Government of Uttar Pradesh to show cause as to why immediate interim relief under Section 18 (3) of the Act be not granted on the basis of the findings recorded in the above judgement, the Government of Uttar Pradesh submitted a report stating that, as a result of an inquiry, the Inspector of Police Station, Talbehata, and a Sub-Inspector had been found guilty of non-compliance with the provisions of the NDPS Act and departmental proceedings had been initiated against them. The response was, however, silent on the grant of interim relief.

13.54 After considering this matter in its proceedings of 13 January 2003, the Commission awarded an amount of Rs.100,000 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.

DEATH BY NEGLIGENCE IN JUDICIAL CUSTODY

11) Death of Shibu - delay in the provision of timely medical aid: Kerala (Case No. 136/11/2000-2001-ACD)

13.55 The Commission received a complaint dated 24 June 2000 from Shri M.

Unnikrishanan Namboodiri, a resident of Palakkad, Kerala alleging that Sibul alias Sreekuttan expired in the sub-jail, Kottayam while in judicial custody. The petition alleged that Sibul suffered from a pain in his chest but the prison superintendent and a police constable on duty delayed his admission in hospital, which led to his death.

13.56 In response to a notice issued by the Commission to the Director General of Police, Kerala, the SDM, Kottayam submitted a magisterial inquiry report dated 22 April 2000. It stated that the deceased was arrested in connection with crime No.41/2000 and was remanded to the sub-jail, Kottayam on 6 April 2000. The condition of the deceased worsened on 9 April 2000 but timely action was not taken to extend medical care to him. He died during the night of 9 April 2000. The Superintendent, sub-jail, Kottayam was responsible for not taking the proper steps and not issuing directions to the staff to provide immediate medical assistance to the under-trials.

13.57 In its proceedings of 20 November 2000, the Commission held that Sibul appeared to have died because of the denial of timely medical aid, which showed gross negligence on the part of the jail prison superintendent. The Commission, therefore, directed the Government of Kerala to initiate departmental proceedings against the Jail Superintendent for dereliction of duty and also issued notice to the Chief Secretary, Government of Kerala to show cause as to why immediate interim compensation of Rs.50,000/- be not paid to the next of kin of the deceased.

13.58 The Government of Kerala submitted a reply dated 26 June 2001 indicating that the mother of the deceased had filed a Writ Petition before the Kerala High Court which had directed CBI investigation into the case. The Government, therefore, submitted that it would be premature to consider the payment of any compensation as any laxity on the part of the jail authorities in giving timely treatment could be established only after getting the report of the CBI. The Commission was, therefore, requested to defer its decision on the show cause notice until a final decision was arrived at on the basis of the inquiry report to be submitted by the CBI before the court, as directed by the High Court of Kerala.

13.59 The Commission considered the stand taken by the Government of Kerala and held that the law relating to immediate interim relief is laid down under Section 18 (3) of the Protection of Human Rights Act, 1993. Immediate interim relief under Section 18 (3) has to be co-related to the injury or loss

which the victim or the members of the family suffered owing to the violation of human rights by public servants. The Commission took the view that the award of immediate interim relief is not dependent upon proof of criminal liability beyond reasonable doubt or the result of the investigation being conducted by the CBI etc. Accordingly, by its proceedings dated 14 June 2002, the Commission directed the Government of Kerala to pay a sum of Rs.50,000 as interim relief to the next of kin of the deceased. In compliance, the Government of Kerala submitted a report dated 16 October 2002 enclosing a copy of the sanction issued for the payment of Rs.50,000 to the next of kin of the deceased.

12) Custodial death of under-trial prisoner, Harjinder alias Jinda, due to negligence: Uttar Pradesh
(Case No.8437/24/1999-2000-CD)

13.60 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.

13.61 Upon notice being issued to the Government of Uttar Pradesh, the Home Secretary, Uttar Pradesh submitted an investigation report. It stated that a magisterial enquiry had been held in the case, which concluded that the deceased had died owing to the carelessness and casualness of police officials, while the deceased was being taken to the court under police custody. The police officials responsible were also named in the magisterial enquiry report. However, in view of an inconsistency between the findings of the magisterial enquiry report and the postmortem report, the latter indicating that the deceased had died due to "asphyxia as a result of ante-mortem drowning", the Commission in its proceedings dated 23 May 2001, directed the Government of Uttar Pradesh to entrust the matter to the CB CID for further investigation. It also directed the State Government to show cause as to why suitable interim compensation be not paid to the next of kin of the deceased.

13.62 Since no reply was received from the State Government 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, ie. "negligence and casualness on the part of police personnel".

13.63 The Commission also held that the State is vicariously liable for the death of the undertrial prisoner. Accordingly, it recommended a sum of Rs.100,000 as immediate interim relief to the next of kin of the deceased.

13) Murder of Manak Ram and grievous injuries to his son in jail: Rajasthan (Case No.263/20/98-99-ACD)

13.64 The Commission received a complaint dated 26 April 1998 from Shri 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; he also sustained a grievous injury in one ear. The complainant sought action against the accused and payment of compensation.

13.65 Upon notice being issued to the Government of Rajasthan, the Commission received an investigation report which indicated that, in respect of the murder, a case had been registered at the Police Station, Mandor under various sections of the IPC read with Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. A charge-sheet had been filed against the accused. The report further stated that the accused had made an unauthorized entry into the open jail and had committed the offences in quarter.

13.66 In its proceedings dated 22 May 2002, the Commission directed that a sum of Rs.2,00,000 was required to be paid by the State Government of Rajasthan, in accordance with Sl.No.20 of Annexure I of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Rules, 1995 read with Rule 12(4) of the said Rules framed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to the family of the deceased Manak Ram. Further, under Sr. No. 19 of the said Rules, a sum of Rs.100,000 was required to be paid to Mangi Lal because of the disability suffered on account of the amputation of a hand and the grievous injury in one ear. Seventy five percent of the amount was to be paid forthwith, since the charge-sheet had been filed in the court. The Commission, therefore, asked the Government of Rajasthan to make immediate payment in the discharge of its statutory obligations, and to submit a compliance report within eight weeks. Ancillary action was also recommended against the public servants who might be found responsible for any dereliction of duty. The Commission received a report indicating compliance in respect of payment of interim relief by the State Government. A report on the action initiated against the guilty public servants was still awaited.

MEDICAL NEGLIGENCE

14) Removal of uterus due to medical negligence: Rajasthan (Case No. 1518/20/2000-2001)

13.67 The Commission received a complaint on 30 November 2000 from Ms. Sangeeta Kumari alleging that a 24 year-old woman, Bimla Devi, who was diagnosed as having a stone in her stomach, was admitted in the Sawai Mansingh Medical Hospital, Jaipur. She was operated on 11 November 2000 and her uterus was removed owing to the negligence of the doctors. The complainant added that Bimla Devi would have to undergo another operation for the removal of the stone. A prayer was, therefore, to protect the human rights of the victim and to take action against the errant doctors.

13.68 Upon notice being issued to the Government of Rajasthan, the Deputy Secretary, Government of Rajasthan submitted a report stating that the doctor involved, as well as the person in-charge of the unit responsible for the removal of the uterus of the victim, had been suspended and had been served with charge-sheets.

13.69 In light of the above, the Commission concluded on 3 April 2002 that the victim deserved compensation for the great loss suffered by her. It therefore issued notice to the Government of Rajasthan to show cause, within 6 weeks, as to why a sum of Rs.100,000 be not paid to Smt. Bimla Devi and the amount recovered from the salary of the concerned doctors.

VIOLATION OF RIGHTS OF CHILDREN/WOMEN

15) Atrocities on Smt Usha Kiran Vajpayee by police personnel: Uttar Pradesh (Case No.29929/24/2000-2001)

13.70 On 19 December 2000, the All India Congress Committee Human Rights Department, through its Chairman, Justice Ranganath Misra, M.P, referred a complaint to this Commission from Atwal Singh Chauhan, Advocate and President, District Congress Human Rights Department, Jalaun, Uttar Pradesh. According to that complaint, on 10 December 2000, while Smt. Usha Kiran Vajpayee, aged 37 years, was performing her duties on the Pulse Polio Day, four constables who were in a drunken state misbehaved with her and outraged her modesty. When she protested, she was chased by the four constables who

shot at her. The constables were overpowered by the villagers and handed over to senior officers. The victim was admitted in the Jhansi Medical College Hospital, where her one foot had to be amputated to save her life.

13.71 Upon notice being issued to the Chief Secretary and the Director General of Police, Uttar Pradesh, the Government of Uttar Pradesh reported that the four constables had been suspended and, after magisterial enquiry, action had been initiated against them by the filing of a charge-sheet. By its proceedings dated 26 December 2001, the Commission issued a show cause notice to the Chief Secretary, Government of Uttar Pradesh to show cause as to why immediate interim relief be not awarded to the victim under Section 18 (3) of the Act.

13.72 In view of the gross violation of the human right of the victim, resulting in the amputation of a leg, and the permanent disability caused to her, and in the absence of a reply to the show cause notice from the Government of Uttar Pradesh, the Commission decided, in its proceedings of 13 May 2002, to award Rs.5,00,000 as immediate interim relief to the victim to be paid by the Government of Uttar Pradesh. While the State Government subsequently reported that an ex-gratia amount of Rs.1,00,000 had been paid to the victim on 21 March 2001, a compliance report in respect of the interim relief of Rs.5,00,000 awarded by the Commission remained under consideration of the State Government as of 31 March 2003.

16) Atrocities on inmates by the Superintendent,
Probation Home, Devghar: Jharkhand
(Case No. 177/34/2001-2002)

13.73 The Commission received a complaint dated 6 May 2001 from Kumari Sita Kumari alleging mal-administration 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. That girl had made a complaint to the Deputy Commissioner, Devghar and narrated the difficulties faced by the inmates.

13.74 Upon notice being issued to the Deputy Commissioner, Devghar, the

Commission received a report confirming that the allegations had been found to be true. Departmental action had, accordingly, been initiated against the Superintendent of the Probation Home. During the inquiry, food and other essentials had also been found to be of poor quality. The inquiry also revealed ill treatment and beating of the inmates by the Superintendent.

13.75 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 under Section 18 (3) of Protection of Human Rights Act be not granted to the inmates named in the report. As of 31 March 2003, the response of the Government of Jharkhand was awaited and the matter was being pursued by the Commission.

17) Exploitation of child labourers in Tonk: Rajasthan (Case No. 817/20/2001-2002)

13.76 The Commission received a complaint on 20 July 2001 from Shri Mahavir Prasad alleging that Shri 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. The complainant further stated that he had not been paid contracted wages for the work that he had done for Shri Babu Lal Baswal.

13.77 Upon notice being issued to the District Collector, Tonk, Rajasthan, the Commission received a report which indicated that no child labourers had been found to be working at the alleged site at the time of an inspection that had been conducted by the Assistant Labour Commissioner on 25 July 2001. However, the enquiry indicated that some child labourers were employed by the complainant at the loom belonging to Babu Lal and had not been paid wages for the months of April, May and June. A claim petition had been filed in the competent court on 25 July 2001. In compliance with the directions of the Apex Court, 11 cases of child labour had been instituted in the competent court against Shri Babu Lal Baswal.

13.78 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, 1986 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 the child labourers who were employed by the 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 & 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 child.

18) Death of a minor boy, Chanderpal, owing to negligence by the Police, Uttaranchal
(Case No.11150/24/1999-2000)

13.79 On 29 July 1999, the Commission received a complaint from Shri 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.

13.80 Upon notice being issued, the Senior Superintendent of Police, Pauri Garhwal sent a report admitting the killing of Chanderpal by an Assistant Sub-Inspector, who was employed with the Delhi Police. 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 under Section 18(3) of the Act.

13.81 In reply to the show cause notice, a report received from the Deputy Commissioner of Police, Vigilance, Delhi indicated that the Assistant Sub-Inspector took his service pistol to Bhuvenshvari Temple, District Pauri Garhwal. He was arrested in case No.64/1999 under Section 304A IPC by the Police Station, Laxman Jhula, for causing the death of Chanderpal and was placed under suspension, the case was pending trial in court.

13.82 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, within six weeks, a sum of Rs.1,00,000 to the complainant as immediate interim relief under Section 18(3) of the Act.

19) Bonded child labour: Andhra Pradesh
(Case No. 443/1/2001-2002/FC)

13.83 The Commission received a petition dated 24 August 2001 alleging 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 Nizamabad in Andhra Pradesh.

13.84 In response to directions issued by it on 15 October 2001, the Commission received a detailed report dated 19 July 2002 from the Government of Andhra Pradesh. It stated, in essence, that the Government was implementing an action plan to eradicate child labour in the State by the year 2004 in a time-bound manner.

13.85 The Commission then obtained the comments of Shri K.R.Venugopal, its Special Rapporteur, on the child labour situation in Andhra Pradesh. In his report, Shri Venugopal highlighted two incidents of children who had been used as bonded labourers and kept in chains by their employers in Kurnool district, Andhra Pradesh.

13.86 On 10 March 2003, the Commission considered the report and the comments of the Special Rapporteur.

13.87 It proceeded to ask the State Government to forward a copy of its plan to the Commission alongwith the details of the follow-up steps taken by the State Government based on that action plan.

13.88 The matter remains under the consideration of the Commission, the issue of child and bonded labour being of utmost importance to it.

20) Violation of the rights of children arising out
of the practice of rituals: Tamil Nadu
(Case No. 558/22/2002-2003)

13.89 The Commission took suo-motu cognizance of a news item in the Indian Express of 22 August 2002 entitled "105 kids 'buried' for a minute, Tamil Nadu Minister watches: Madurai: Parents take part in shocking temple ritual."

13.90 According to that news item, at least 105 children were "buried" alive for "just one minute" in Perayur village, 46 kms from Madurai, to propitiate two female deities. It was alleged that the children - who were first rendered unconscious - were placed in makeshift graves, covered completely, kept there for 60 seconds and then pulled out. The entire episode took place in the presence of the Minister for Housing and Urban Development of the Government of Tamil Nadu.

13.91 On 26 August 2002, the Commission issued notice to the Chief Secretary and the Director General of Police, Tamil Nadu asking for their report on the incident and a clear indication of the action, if any, taken to stop this inhuman practice as well as action, if any, taken against the persons involved in organizing and perpetrating this practice.

13.92 On 16 October 2002, the Commission considered the reply received from the Government of Tamil Nadu. The Commission noted that the concerned Minister had resigned, but considered that this was not an adequate answer to this deplorable practice. The Commission emphasized that such a ritual should not only be banned, but that effective measures should be taken to ensure that it did not take place again. The Commission therefore asked the Chief Secretary of the State Government to indicate the measures taken to end this practice and also to indicate the action taken against the persons responsible for permitting such a ritual to be held.

13.93 On 12 March 2003, the Commission considered the response of the Government of Tamil Nadu. It noted that the Government of Tamil Nadu had enacted a law, the Tamil Nadu Prohibition of Ritual and Practice of Burying Alive of a Person Act, 2002, to end the burying alive of persons in such rituals.

13.94 The Commission expressed the hope that the Act would be implemented meticulously and proceeded to close this matter.

VIOLATION OF THE RIGHTS OF THE VULNERABLE SECTIONS OF THE SOCIETY

21) Atrocities on Scheduled Castes/Scheduled Tribes - killing of five Dalits: Haryana (Case No. 1485/7/2002-2003)

13.95 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 and that two of them had been torched. The victims were reported to have been dragged by a mob out of a police post where they had taken refuge and lynched 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.

13.96 Upon notice being issued to the Chief Secretary and the Director General of Police, Haryana, a report dated 23 October 2002 was received from the Director General of Police, Haryana. It stated that, on 15 October 2002, five persons named Virender, Tota Ram, Raju, Daya Chand and Kailash were going to Gurgaon carrying animal hides and a cow in a vehicle. They stopped near Dulina and started removing the skin of the cow on the road side. About 40-50 persons who had gathered there, however, thinking that the cow was being slaughtered by the five persons, gave them a severe beating. The five persons were taken to the Police Post Dulina and a case was registered. In the meantime, the mob, which had grown in size to about 400-500, became extremely violent and threw brickbats and stones at the police personnel who were present, injuring many of them. The mob, in its frenzy, also lynched the five persons who had been seen with the cow. The report added that a case had been registered at the Jhajjar Police Station in this regard and that a special investigation team had been constituted for to conduct the investigation. Further, the Government of Haryana appointed Shri R.R. Banswal, IAS, Commissioner, Rohtak to conduct an inquiry into the whole incident. The Haryana Government had also announced an ex-gratia relief of Rs.1,00,000 to each of the families of the deceased persons. A similar report was also submitted by the Chief Secretary, Government of Haryana.

13.97 In proceedings held on 13 January 2003, the Commission considered a report dated 5 December 2002 that had been submitted by the Commissioner, Rohtak. It stated, inter alia:

"At the initial stage, when the mob of 50-60 had gathered and the situation was peaceful, the police had sufficient time to shift the five persons who were badly beaten by the public to a safer place or to a hospital providing medical aid

The police personnel posted at the police post did not assess the sensitivity of the situation and dealt with the matter in a causal manner

They did not take stern action against the violent mob and only kept on pacifying and pushing the mob. They also did not inform the district heads i.e. Deputy Commissioner and Superintendent of Police, Jhajjar

The Duty Magistrates also did not act properly in discharge of their duties".

13.98 The Commissioner, Rohtak observed that the mob had committed a ghastly act, crossing all limits of humanity, in lynching the five persons. He added that the police personnel had failed to save the precious lives of the five innocent persons from the hands of the cruel mob. 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/ current status of the disciplinary proceedings, as well as details in respect of the dependents who had been provided employment by the State.

22) Suicides of farmers: Andhra Pradesh (Case No. 444/1/2001-2002/FC)

13.99 Dr. Y.S. Rajasekhara Reddy, Leader of Opposition, Andhra Pradesh Legislative Assembly, submitted a petition in September, 2001 alleging that about 117 farmers had committed suicide in the year 2000 and about 160 persons had committed suicide during the period January-September, 2001. The total number of suicides during the last 5-6 years was stated to be about 2000 according to newspaper reports. Subsequently, the Commission received a further complaint, on the same matter, from Shri M.Shyam Prasad.

13.100 In response to a notice issued by the Commission, the State Government of Andhra Pradesh submitted a report listing the various short and long term measures undertaken by the Government to deal with the situations, including the payment of ex-gratia relief to the affected families, sanction of houses under the Indira Awas Yojana Scheme, admission of children into residential schools, pensions to old-age persons, economic support schemes under waiver of debt for two years and the sanction of fresh loans and reduction in rates of interest.

13.101 The Commission considered the above report and, thereafter, obtained the comments of the petitioner on it. It then referred the matter to Shri K.R.Venugopal, Special Rapporteur of the Commission for his comments. In his detailed report, Shri Venugopal made a number of far-reaching suggestions relating, inter alia, to the regularization of the private trade in seeds and pesticides and in respect of fertilizer-pricing.

13.102 The Commission subsequently directed that the gist of the suggestions made by Shri Venugopal be transmitted to the Government of Andhra Pradesh for its consideration and response.

13.103 The views of the Government of Andhra Pradesh are awaited and the matter remains before the Commission.

HUMAN RIGHTS VIOLATIONS BY SECURITY FORCES

23) Kidnapping and killing of Harsinglhun Changsan by personnel of 32 Rashtriya Rifles: Manipur (Case No. 19591/96-97/NHRC)

13.104 The Commission received a complaint dated 19 March 1997 from Shri T. Lunkim, Chairman, Kuki Movement for Human Rights, Manipur alleging that Mr. Haosinglhun Changsan was kidnapped and killed on 7 March 1997 by personnel of 32 Rashtriya Rifles (RR) in Churachand District of Manipur. The body of the victim bore multiple bullet injuries and had visible signs of torture when handed over to the police by the 32 RR personnel.

13.105 Upon notice being issued to the Ministry of Home Affairs, Government of India and the Chief Secretary, Government of Manipur, the former sent a report dated 3 February 1998 which stated that Changsan was apprehended on 6 March 1997 on the basis of specific information against him. He reportedly confessed his involvement with a militant outfit and a weapon was also recovered from his possession. He accompanied the army during the night of 6 March 1997 to guide them to the spot where a weapon was hidden. During an ambush and the resultant shoot-out with the militants, he tried to escape and, in the cross firing which ensued, he suffered injuries. A FIR was reportedly lodged with the police station. The post-mortem report received from the Government of Manipur, however, indicated that there were as many as 14 injuries on different parts of the body of the victim. There were 14 entrance wounds and 13 exit wounds, along with other injuries, on the body.

13.106 The Commission concluded that the injuries caused to the deceased appeared to have been the result of close-range firing on a vital part of the body, rather than the result of cross-firing in the dark when the deceased supposedly attempted to escape from the custody of the army.

13.107 Having regard to the totality of circumstances, the Commission issued a show cause notice to the army officials to show cause as to why an amount of Rs. 1,00,000 be not given as interim relief under section 18 (3) of the Act.

13.108 Upon considering the response received from the Ministry of Defence, the Commission concluded, on 8 August 2002, that a sum of Rs. 1,00,000 be paid to the next-of-kin of Haosinglun Changsam as monetary relief and issued a directive to that effect.

OTHER IMPORTANT CASES

24) Death due to Electrocution (Case No. 17324/24/1999-2000)

13.109 The Commission received a complaint dated 16 October 1999 from Smt. Leelawati, a resident of District Unnao, Uttar Pradesh alleging that on 31 May 1997, an electric pole in her village fell on her and her son Govind. This resulted in the death of her son and grievous injuries to her, leading to the amputation of a hand, making her permanently disabled. She had been paid a mere Rs.20,000/- for the death of her only son and Rs.12,000/- for the injuries suffered by her, in March 1999. A prayer was made for an independent investigation into the negligence of the Electricity Department and payment of adequate compensation.

13.110 Upon notice being issued to the Chairman, Uttar Pradesh State Electricity Board, a report was received indicating that the amount of compensation paid was in conformity with a circular/ guidelines of July 1996. The report, however, denied that the electric pole had either fallen on the ground, or on the petitioner and her son. The death of Govind and the permanent disability suffered by the complainant were, however, not disputed. The Commission held that the fact that some compensation had been paid according to the rules of the Electricity Board was, in itself, sufficient acknowledgement of the negligence of the Electricity Department for this incident. The Commission observed that, apparently, proper care was not taken

to prevent the occurrence of such incidents. As the facts made out a clear case of violation of the human rights of the petitioner and her son, a show cause notice was issued to the Chairman, Uttar Pradesh State Electricity Board to show cause as to why immediate interim relief under Section 18(3) of Act be not granted.

13.111 As no reply was received within the time stipulated, the Commission took the view that doctrine of strict liability enunciated by the Apex Court in the case *M.P. State Electricity Board Vs. Sahil Kumari & Others*, (AIR 2002 SC 551) applied to this case. The Commission therefore held that the payment of compensation in the amount of Rs.20,000/- for the death of Govind and Rs.12,000/- for disability caused to the complainant, Smt. Leelawati, was grossly inadequate in the circumstances of the case. In its proceedings of 26 August 2002, the Commission therefore directed the Uttar Pradesh Power Corporation Ltd to pay an amount of Rs.2,00,000 on both counts as appropriate immediate interim relief under Section 18(3) of the Act. The amount was to be in addition to the total sum of Rs.32,000/- already paid to the complainant. The General Manager, U.P. Power Corporation Ltd., by his letter dated 31 December 2002, reported compliance with the Commission's directions.

25) Harassment of Shri Kumpampadom Thoman Skaria, by an Immigration Officer at the Mumbai Airport: Maharashtra (Case No.263/13/2000-2001)

13.112 The Commission received a complaint on 25 February 2000 from Shri 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.

13.113 Upon notice being issued, a report was received from the Ministry of External Affairs, Government of India, New Delhi. It stated that the visa issued by the Indian Embassy in Washington DC to Shri Skaria on 19 August 1998 contained a hand written correction of the date by the Visa Clerk, a local employee of the Embassy. Since this was a human error, without any malafide

intention, the Deputy Chief of Mission, by his letter dated 3 November 1999, had apologized to the complainant for the inconvenience caused to him. The Ministry added that the Immigration Officer appeared to have acted on the suspicion that Shri Skaria had altered the visa, although he had travelled to India on the same visa earlier without any problem.

13.114 The Commission observed that the complainant was refused entry for no fault of his own and that, too, when he had come to attend his father's funeral. He had thus indeed suffered great mental agony, indignity and financial loss due to the insensitivity and callousness of the officers on duty. The Ministry of External Affairs was therefore asked to show cause, within 6 weeks, as to why immediate interim relief be not granted to the complainant under Section 18 (3) of the Act.

13.115 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.

13.116 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. The petitioner was also informed of the status of the case. The Commission, thereafter, held a hearing in which all the concerned Ministries and officials concerned were present.

13.117 On 12 June 2002, the Commission heard the explanations offered by the officers present at the hearing and, in particular, those who were involved at the stage of immigration in Mumbai and whose actions led to the unfortunate incident. The Commission indicated to them that it was not satisfied with the explanations given by them in regard to the conduct of the immigration officers at Mumbai and that it would proceed to make its recommendations in this matter unless the Government of India wanted to reconsider its stand in the light of these facts of the case and offer a fresh response to the show-cause notice given to it under section 18(3) of the Act.

13.118 On 31 July 2002, the Commission noted that instructions 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. The proceedings are continuing.

26) Measures to prevent deaths due to Starvation: Orissa (Case No.37/3/97-LD)

13.119 Earlier annual reports of the Commission have recounted, in great detail, the efforts of the Commission since 1996 to deal with 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.

13.120 In its annual report for the year 2001-2002, the Commission had narrated the efforts and achievements that had been made in respect of certain interim measures undertaken in the KBK Districts in regard to programmes relating to Rural Water Supply & Sanitation (RWSS), Primary Health Care, Social Security Schemes, the Soil Conservation Programme, the Rural Development Programme and Afforestation.

13.121 In the course of the year 2002-2003, two hearings were held on the issues raised by this case. In the first hearing, held on 10 October 2002, the Commission considered the Action Taken Report submitted by the Government of Orissa with regard to the points raised in the report of the Special Rapporteur, Shri Chaman Lal, based on his visit to the KBK Districts from 14-22 November 2001. The Commission also considered a submission made by one of the petitioners, Dr. Amrita Rangasami, Director, Centre for the Study of Administration of Relief, on the nature of the constitutional right involved in the present case and the apparent inconsistency between the policies being pursued by the State Government and that right.

13.122 At the end of the hearing, the Commission directed the State Government to submit a comprehensive response to the issues that have been raised and asked Shri Jayant Das, Senior Advocate, Government of Orissa, to arrange a meeting of the Chief Secretary, Orissa with Dr. A. Rangasami and the Special Rapporteur of the Commission in order to arrive at a consensus on the points that had been raised. A meeting was accordingly held in Bhubaneswar on 5 December 2002 which proved to be very useful.

13.123 In the second hearing of the case, held on 7 January 2003, the Commission noted with satisfaction the completion of the tasks and objectives given to the State Government and touched upon the long-term measures to find a permanent solution to the problem of recurring drought and deprivation in the KBK area.

13.124 The Commission took note of the Long Term Action Plan launched by the Government of Orissa in 1995-96 to accelerate the pace of development in the KBK districts, which was subsequently altered and re-named the Revised Long Term Action Plan (RLTAP). The RLTAP focuses on 11 key sectors of Rural Development: Agriculture, Horticulture, Watershed Development, Afforestation, Rural Employment, Irrigation, Health, Emergency Feeding, Rural Drinking Water Supply, Rural Connectivity and Welfare of Scheduled Castes and Scheduled Tribes. The RLTAP has been prepared to cover the period from 1998-99 to 2006-07 and has three objectives: drought proofing, development saturation and poverty alleviation, and improvement in the quality of life of the people in the KBK region.

13.125 At the conclusion of the hearing, the Commission considered it appropriate to forward to the Government of India the requests of the State Government that:

- The RLTAP should be made an integral part of the Tenth Plan document and accorded formal approval in its entirety;
- The year-wise availability of funds should be indicated for the entire Tenth Plan period and funds should be released well in advance in order to obviate the ad-hoc nature of the current arrangements.

13.126 The Commission has also supported the State Government's request that the KBK region of Orissa should be considered for Special Category Status in view of the persistent problems of chronic destitution, hunger, ill-health, poverty and unemployment affecting much of its population. In addition, the Commission endorsed the suggestion of Shri Sanjay Parikh, Counsel for the petitioners, that a comprehensive system be evolved to monitor the execution of the action plan in an open and transparent manner.

Right to Food:

13.127 Responding to the submissions made by Dr. Amrita Rangasami, the Commission expressed the view that the Right to Food is inherent to a life with dignity and Article 21, which should be read with Articles 39(a) and 47

of the Constitution to understand the nature of the obligations of the State in order to ensure the effective realization of this Right. Article 39(a) of the Constitution, enunciated as one of the Directive Principles fundamental in the governance of the country, required the State to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people as a primary responsibility. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfillment of the obligations of the State set out in Articles 39(a) and 47. The reading of Article 21 together with the obligations of the State under Articles 39(a) and 47, places the issue of food security in the correct perspective. The Right to Food is thus a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution. The requirements of the Constitution preceded, and are consonant with, the obligations of the State under the 1966 International Covenant on Economic, Social and Cultural Rights to which India is a party. The Covenant, in Article 11, expressly recognizes the right of everyone to an adequate standard of living, including adequate food. The Commission also held that "starvation deaths reported from some pockets of the country are now invariably the consequence of mis-governance resulting from acts of omission and commission on the part of public servants" and that they were, therefore, of direct concern to the Commission under the provisions of the Protection of Human Rights Act 1993.

13.128 The Commission further held that the Right to Food implies the right to food at appropriate nutritional levels. It also implies that the quantum of relief to those in distress must meet those levels in order to ensure that the Right to Food is actually secured and does not remain a theoretical concept. The Commission has further held that destitution and the continuum of distress should be viewed as the necessary conditions for the prevalence of starvation, setting aside the present practice of insisting on mortality as proof of starvation. There was thus a concomitant need for a paradigm shift in public policies and relief codes in this respect.

13.129 The details of the proceedings of the Commission on the 'Right to Food' may be seen at Annexure 18.

d) Action Taken on the Cases reported in the Annual Report 2001-2002

13.130 As many readers of the annual reports of the Commission have

continued to express an interest in knowing of the action taken on the cases reported upon in the preceding annual report, the present report contains a section that up-dates information in respect of the cases reported in the annual report of 2001-2002. The position in summary form, is indicated in the succeeding paragraphs.

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

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

13.132 Upon consideration of the matter, the Commission, by its order dated 30 July 2001, directed the Government of Maharashtra to pay a sum of Rs.300,000 as immediate interim relief to the next of kin of the deceased under Section 18 (3) of the Act. As the State Government complied with the directions of the Commission, the case was closed on 3 October 2002.

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

13.133 The Commission received a complaint from the Uttar Pradesh Parjapati Samaj Vikas Parishad alleging that one Ram Kishore, a driver employed by M/s Goodwill Enterprises, Mohan Nagar, Ghaziabad had been killed while in police custody. The complainant stated that Ram Kishore had realized an amount of Rs.1,50,000 from certain parties in Meerut on behalf of his employers on 15 July 1993. However, later that day he had been the victim of an armed robbery in Modi Nagar in which incident all the money had been taken away from him. Despite this, he was handed over to the police by his employers for interrogation, in the course of which he was tortured in the police station. Ram Kishore was not released in spite of approaches being made to the District Magistrate and Senior Superintendent of Police, Ghaziabad. He died during the night of 23 July 1993. Thereafter, in order to hush-up the case, the dead body

was taken to the District Hospital, Ghaziabad and the postmortem report was manipulated as to the cause of death, the evidence of torture having been destroyed. The Commission was requested to intervene, investigation was sought by the State Criminal Investigation Department (CID), and compensation urged for the widow of the victim.

13.134 Since no reply was received from the Government of Uttar Pradesh to the show cause notice issued to it, the Commission directed the payment of compensation in the amount of Rs.300,000 as immediate interim relief to the next of kin of the deceased. The State Government issued the necessary sanction for the payment of this amount.

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

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

13.136 Upon consideration of the report submitted by the Home Secretary, Government of Uttar Pradesh, the Commission held this to be a case of negligence on the part of the doctor and the police resulting in the death of Lallan. A show cause notice was, therefore, issued to the Chief Secretary, Uttar Pradesh asking as to why immediate interim relief be not granted to the next of kin of the deceased. The Commission also recommended initiation of disciplinary action against the doctor and the delinquent police officials. Since no reply was received from the Government of Uttar Pradesh to the show cause notice, the Commission by its order dated 28 January 2002 directed the Government of Uttar Pradesh to pay Rs.100,000 as immediate interim relief to the next of kin of the deceased and to initiate departmental action against the Senior Medical Officer (SMO) Pratapgarh and the other delinquent police officials. A compliance report in this case is still awaited and the matter is being pursued by the Commission.

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

13.137 The Commission received a complaint from one Smt. Vijay Lakshmi alleging that Manoj Kumar, her son, had been implicated in a false case under

Section 307 IPC, that he had been tortured in police custody and that this had resulted in his death on 8 August 1996.

13.138 Upon consideration of the report submitted by the Chief Secretary and the Director General of Police, Uttar Pradesh, the Commission held that the death of the victim occurred while in custody and that there were injuries on various parts of his body. The Commission also noted that the doctor concerned with the treatment of Manoj Kumar in the hospital had not acted responsibly. Accordingly, a show cause notice was issued to the Government of Uttar Pradesh asking as to why compensation in an amount of Rs. 200,000 be not granted to the next of kin of the deceased as immediate interim relief, and action taken against the delinquent police officers. Since no reply was received to the show cause notice, the Commission, by its order dated 24 September 2001, recommended that the State Government pay Rs.200,000 as immediate interim relief to the next of kin of the deceased and also directed the initiation of disciplinary proceedings/ prosecution against the delinquent public servants. As the compliance report is still awaited, the matter is being pursued.

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

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

13.140 By its proceedings dated 16 March 2001, the Commission had recommended the payment of a sum of Rs.100,000/- to the next of kin of the deceased and also directed that disciplinary action be taken against the concerned officers. As the State Government complied with the Commission's directions, the case was closed on 4 March 2003.

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

13.141 The Commission received a complaint from one Kameshwar Singh, a resident of Vaishali District, Bihar, alleging that on 25 August 1993 his brother, Nageshwar Singh, had died due to custodial torture by the Railway Police,

Barauni in the police station of Vidurpur District in Bihar. He further alleged that the victim had been illegally detained in the police station and humiliated in public.

13.142 On the basis of the report received from the Director General of Police, Bihar establishing, prima facie, that the death of the victim had been caused due to torture in police custody, the Commission recommended departmental action against the errant police personnel and awarded compensation in the amount of Rs.300,000, as interim relief to the dependents of the deceased. The compliance report is awaited and the matter is being pursued.

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

13.143 One Madhukar Jetley, an advocate, resident of Lucknow, Uttar Pradesh submitted a complaint dated 27 April 2000 alleging false implication and illegal detention in case No.514/99 under Section 387 IPC. In response to a notice from the Commission, the Government of Uttar Pradesh submitted a copy of the Crime Branch Criminal Investigation Department (CB-CID) inquiry report, which confirmed that the complainant had been falsely implicated and that a report had been filed against the complainant, Smt. Rohini Chandra, u/s 182/211 IPC for filing a false case. Both the Investigating Officers had been found guilty of falsely implicating the victim and of extorting Rs. 1,000 from him.

13.144 The Commission by its proceedings dated 3 November 2000 directed the Government of Uttar Pradesh to pay an amount of Rs.50,000/- as compensation to the victim for his illegal detention and false implication by the police. The Director General of Police, Uttar Pradesh was also directed to inform the Commission of the action taken against the errant police personnel and the recovery of the compensation amount from them.

13.145 The Government of Uttar Pradesh has indicated that it has paid the compensation to the victim as directed by the Commission. A report on the action taken against the errant police personnel is awaited.

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

13.146 One Dayashankar Vidyalankar, a resident of Haridwar, Uttranchal

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

13.147 The Commission recommended the payment of a sum of Rs.10,000 to the petitioner by the Ministry of Railways. This has been paid.

13.148 In view of the compliance report received from the Ministry of Railways, Government of India, the Commission closed the case on 1 April 2002.

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

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

13.150 Upon notice being issued, a report was received from the Deputy Commissioner of Police, Zone-VII Mumbai. It admitted that the complainant was innocent and that his detention and torture were unjustified. The report also mentioned that the guilty constable had been awarded a minor punishment and the delinquent Sub Inspector had been transferred. The Commission directed the Police Commissioner, Mumbai to re-examine the matter to ensure that the errant police personnel were awarded punishment commensurate with the wrong done by them. A show cause notice was also issued to the State Government to indicate as to why Rs.30,000/- be not awarded as immediate interim relief to the victim. The reply submitted by the State Government was considered by the Commission and, in its order dated 10 April 2001, while holding that the guilt of the public servants had been established, the Commission directed the State Government to pay a sum of Rs.30,000/- as compensation to the complainant for violation of his human rights. As the State Government has complied with the Commission's directions, the case has been closed.

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

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

13.152 A compliance report was received from the Senior Superintendent of Police, Ghaziabad stating that the compensation of Rs.25,000/- had been paid to the victim. The case was accordingly closed on 21 June 2002.

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

13.153 The Commission received a reference dated 9 March 2000 from the Human Rights Court, Kanpur Nagar, relating to the death in judicial custody of one Jasveer Singh. The Court had come to the conclusion that the deceased had been denied proper and timely medical attention while in custody, on account of which he had died of acute intestinal obstruction. The Court further held that the death in custody of the said undertrial was the result of gross negligence and carelessness on the part of the public servant in whose custody the deceased was at that time. An amount of Rs.2,70,000 was determined by the Court as appropriate compensation to be paid to the dependents. Since no specific power is given under the Act to such a Court to award compensation to the victim, in addition to or apart from any provisions under the Criminal Procedure Code, or award punishment to the guilty under the IPC or any other relevant law, the Human Rights Court referred the issue of compensation to the NHRC.

13.154 The Commission considered the facts and circumstances of the case together with the finding reached by the Learned Judge of the Human Rights Court, Kanpur. On 20 September 2001, the Commission recommended to the

State of Uttar Pradesh that it make payment of Rs.270,000 as immediate interim relief to the next of kin of the deceased, it also recommended the identification and initiation of disciplinary proceedings/ prosecution against the delinquent public servants. As of 31 March 2003, the compliance report was awaited and the matter was being pursued.

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

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

13.156 In view of the findings of negligence/ lapses on the part of the prison administration, the Commission issued a show cause notice to the State Government asking as to why immediate interim relief be not paid to the next of kin of the deceased. As no reply was received from the State Government in respect of the show cause notice, the Commission by its order dated 3 July 2001 awarded a sum of Rs.75,000/- as immediate interim relief to the next of kin of the deceased. As the State Government complied with the direction of the Commission, the case was closed.

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

13.157 The Commission received a complaint from Faridabad, Haryana

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

13.158 Upon consideration of the report submitted by the Home Secretary, Government of Haryana, which indicated that payment had been made by way of interim relief, the Commission observed that the quantum of interim relief had to be paid in accordance with the scale laid down in the Schedule to the Rules made under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. While holding that the State Government could not prescribe any amount of relief which is below the minimum prescribed under the Schedule to the Rules referred to above, the Commission by its order dated 18 March 2002 directed the Government of Haryana to pay a minimum of Rs.50,000 to the victim. The State Government, which had initially paid a sum of Rs. 6250 to the victim, has subsequently paid the balance of Rs.43,750/-.

14) Death of 12 years old child worker, Naushad: Karnataka
(Case No.452/10/2000-2001)

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

13.160 The report received from the Government of Karnataka stated that action had been taken against the employer according to law and added that departmental action had been instituted against the doctors of Victoria Hospital, Bangalore for their misconduct. The inquiry report submitted by the State Government in respect of the departmental action had been taken up for close scrutiny and comments of the State Government have been called for on the discrepancies. The matter is still under consideration.

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

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

13.162 The Commission pursued the matter, asking what action, if any, the Chief Minister proposed to take concerning the continuation of the Minister of State in the Government, stating that his continuation in that capacity would run counter to basic rudiments of the rule of law. As press reports appeared indicating that the Chief Minister had taken strong exception to the proceedings of the Commission, the Commission felt constrained to reiterate to view with greater clarity, stating that the continuation of the principal accused of such an offence in the State Cabinet was an erosion of law and, as a consequence, a serious violation of human rights. Following further investigation, and DNA testing which established that Shri Mushahary in the father of the child, the Government of Assam informed the Commission on 20 March 2002 that it had filed charge-sheets against seven accused, five of whom had been arrested, including Shri Mushahary. The case was therefore closed by the Commission.

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

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

13.164 The Commission considered the report submitted by the Government of Uttar Pradesh which admitted detention of farmers in the lock-up and added

that there were no provisions for providing food to the detenues. The Commission held that the Revenue Authorities did not appear to have followed the law laid down by the Supreme Court and also failed to discharge their obligation to make arrangements for proper food during the period of detention. It, therefore, directed the State of Uttar Pradesh to pay Rs.10,000/- as immediate interim relief to each of the persons detained. The compliance report is awaited.

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

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

13.166 In its order dated 31 May 2002, the Commission examined the provisions of the Protection of Human Rights Act 1993 and examined the scope of its powers under section 19 of that Act. The Commission concluded, after an examination of all of the facts, that Mohammed Tayab Ali had indeed been taken in custody by the 17 Assam Rifles and that the custodian had been unable to prove satisfactorily the lawful termination of custody, when he was alive. The Commission therefore held the 17 Assam Rifles accountable for his disappearance and awarded an interim relief of Rs.300,000 to the complainant and her children. The Ministry of Defence reported compliance with the Commission's directions and made payment of the amount of compensation by cheque dated 18 February 2002. The case was therefore closed.

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

13.167 The Commission took suo motu cognizance of a press report alleging that at least 5 persons including a minor had been killed and three others injured when personnel of the Central Reserve Police Force (CRPF) opened indiscriminate fire at Churachandpur's Lower Lamka road in the aftermath

of an attack by underground activists on their colleagues on 21 July 1999. The same matter 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.

13.168 After considering the 'on-the-spot' study of the State Human Rights Commission and the report received from the Ministry of Home Affairs, the Commission held that the CRPF personnel had opened fire indiscriminately, an action that had resulted in the death of 3 civilians and one fireman and injuries to 4 persons. The Commission, by its order dated 28 September 2001, directed for the payment of immediate interim relief of Rs.200,000 to the next of kin of each of the deceased and Rs.25,000/- to each of the 4 injured. As of 31 March 2003, the compliance report was awaited.

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

13.169 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 Habeas Corpus Petition No.32/96 before the High Court of Jammu and Kashmir and the National Human Rights Commission also intervened in this case.

13.170 The outcome of this case, which is pending before the High Court of Jammu & Kashmir, is awaited.

20) Death due to Electrocution - strict liability of the State:
Jharkhand (Case No.1509/4/2000-2001)

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

13.172 The Commission considered the response submitted by the Bihar State Electricity Board and, in adopting the doctrine of strict liability recognised and applied by the Apex Court in the case of M.P. Electricity Board Vs. Shail

Kumari, recommended the payment of Rs.200,000 by the Bihar State Electricity Board, as interim relief to the next of kin of the deceased. In view of the compliance report received from the Bihar State Electricity Board, the case was closed on 29 January 2003.

21) Killing of Mohinder Singh in police firing: Jammu & Kashmir (Case No.253/9/2000-2001)

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

13.174 In response to a notice from the Commission, the Office of the Deputy Commissioner, Jammu submitted a reply dated 22 December 2001 stating that a magisterial inquiry had been ordered to ascertain the circumstances leading to the death of the victim. The report added that, in the meantime, the State Government had granted ex-gratia relief amounting to Rs.100,000 to the next-of-kin of the deceased.

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

13.175 The Commission received complaints seeking compensation for the families of two innocent persons killed in a police firing in Bokaro, Bihar, on 4 November 1999. The killings had allegedly occurred when a peaceful dharna had been organized against police inaction in respect of a case of kidnapping and murder of an 8 year old girl. It was alleged that the Sub Divisional Magistrate and Deputy Superintendent of Police had ordered a lathi charge without any provocation on the part of the crowd and, later, the police had resorted to firing on the crowd which had led to the killing of two persons.

13.176 In response to a notice from the Commission, the report received from the Director General of Police, Bihar indicated that the guilty police officials had been suspended and departmental action initiated against them, the Commission on 3 January 2002 recommended to the Government of Jharkhand to pay Rs.200,000 as immediate interim relief to the next of kin of each of the deceased under Section 18 (3) of the Act. The compliance report is awaited.

23) Protection of human rights defenders: False implication of Lalit Uniyal, Uttar Pradesh
(Case No.773/24/1999-2000)

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

13.178 Upon consideration of the report submitted by the Government of Uttar Pradesh as well as the investigation report submitted by its Investigation Division, the Commission directed investigation by State CID. On consideration of the report submitted by the CID, the Commission recommended action against the delinquent public servants and also issued a show cause notice to the State Government to indicate as to why interim relief under Section 18 (3) of the Act be not granted to the complainant. The response of the Government of Uttar Pradesh was awaited. The matter is being pursued by the Commission.

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

13.179 One C.S.P. Anka Toppo approached the Commission on 1 September

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

13.180 Following intervention by the Commission and repeated interactions with the authorities in AIIMS, a methodology was worked out to enable Shri Toppo to appear for his final MBBS examination. Shri Toppo appeared and passed the examination. The Commission then took up consideration of wider aspect of the issue, seeking the laying-down of a methodology/ guidelines for the benefit to other disabled persons in the country. The pursuance of that objective, the Commission initiated a further dialogue with the authorities of AIIMS and the Medical Council of India. The matter remains under consideration of the Commission.

Administration and Logistic Support

CHAPTER 14

14.1 The total sanctioned strength of the Commission remained at the level of 341 posts. As of 31 March 2003, 289 officers and staff were in position. Efforts continued to be made by the Secretariat of the Commission to fill the vacant posts. The constantly increasing workload of the Commission has necessitated the engagement of consultants to cope with the additional work. In this connection, government has granted a special dispensation to the Commission to engage upto 20 such consultants. 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; these 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 continuing, and permanent absorption has taken place in the grades of Inspector, Assistant, Personal Assistant, Private Secretary and Staff Car drivers during the year under review.

14.2 The Commission has also institutionalized an internship system for talented students, both from India and abroad, to spend time at the Commission. The details of this programme may be seen in Chapter X. Certain of the interns have been selected for short-term contracts at the Commission and have been assigned specific responsibilities for which they have an aptitude and for which the Commission needs their skills.

A] Special Rapporteurs/Representatives

14.3 The scheme of having Special Rapporteurs to assist the Commission in

discharging its demanding and sensitive responsibilities continued during the year 2002-03. Thus, Shri Chaman Lal, Shri K.R. Venugopal, and Ms. Anuradha Mohit continued to serve as Special Rapporteurs of the Commission, looking after key human rights issues including, for instance, prison reform, bonded labour, child labour, disability issues, the monitoring of the functioning of the Agra Protective Home and of the three mental hospitals in Agra, Gwalior and Ranchi. Shri P.G.J. Nampoothiri served as the Special Rapporteur of the Commission in Gujarat and Shri A.B. Tripathy was re-designated as Special Rapporteur for the States of Orissa and Jharkhand. Shri P.G.J. Nampoothiri's work concerned with the issues relating to the Gujarat Earthquake and events that occurred in Gujarat after the Godhra tragedy. Shri A.B. Tripathy paid special attention to human rights of persons in custody and human rights education.

B] Core Groups

14.4 In previous reports, details have been provided of the Commission's Core Group on public health, and of the Core Groups constituted of eminent lawyers and NGO representatives, as also those concerned with disability issues. During the period under review, the Core Groups advised the Commission on several issues of importance, which were referred to them. The Commission is deeply grateful to the members of the Core Groups for their invaluable contribution to the promotion and protection of human rights.

C] Use of Official Language

14.5 The Commission has an Official Language Section functioning under the supervision of an Assistant Director. The Section is responsible for the translation of complaints/representations and responses received in regional and foreign languages. During the year 2002-2003, this Section received about 150 complaints/representations, responses to complaints, reports etc. in Hindi and about 5519 letters, complaints/representations in regional languages and also 5 letters/representations in foreign languages for translation into English.

14.6 The Hindi Section is also attending to the translation of the monthly Newsletter, annual report and budget documents of the Commission. In addition to the routine communications, all guidelines/instructions/orders of the Commission are also translated into Hindi by the Language Section of the Commission.

14.7 In order to encourage the use of Hindi among officials of the Commission in their day-to-day official work, a Hindi fortnight was observed from 16-30 September 2002.

14.8 The scheme for giving cash awards to writers for original work in Hindi, as well as for the translation into Hindi of books in English and regional languages relating to human rights, was continued during the year. The Commission has also decided to publish a magazine on human rights in Hindi. An advisory board for the publication of the Hindi magazine has been constituted and its first meeting was held on 25 March 2003. A number of other projects are underway, such as the translation into Hindi of major international conventions and other human rights instruments.

D] Library

14.9 The library of the Commission is meant for research and reference purposes, primarily by those working in the Commission. It is increasingly, however, also being used by interns, research scholars and others working in the field of human rights. The staff of the library maintain liaison with almost all of the libraries in New Delhi through inter-library loan facilities. At present, the library has 7128 books and it subscribes to 33 journals, 22 magazines and 23 newspapers (including 4 regional newspapers). During the year 2002-03, the library added 1255 new books on human rights, or having relevance to human rights, to the titles that it had acquired in earlier years.

E] Exchanges and other Interactions

14.10 The Commission continued to receive numerous visitors and delegations, both Indian and foreign, who were keen to learn of its work and understand its functioning. The Commission attached great importance to such interactions. They served to inform the visitors of the principal human rights issues facing the country and the commitment of the Commission to help deal with them.

14.11 In addition to academics, scholars and human rights activists who have visited the Commission, several high-level functionaries/delegations from abroad called on the Commission for an exchange-of-views. In certain instances, these exchanges have been with National Institutions for the Promotion and Protection of Human Rights established in other countries. In yet other

instances, they have been with delegations of countries considering whether to establish such institutions.

14.12 In addition to frequent visits from members of the diplomatic corps stationed in New Delhi, visitors to the Commission in the course of the year 2002-2003 included:

- Mr. Ruud Lubbers, UN High Commissioner for Refugees, who visited the Commission on 23 May 2002 and met with the Chairperson and Members. Among the issues discussed were the possible moves to develop a national legislation on refugee issues;
- Mr. Miguel Alfonso Martinez, Member of the Sub-Commission on the Promotion and Protection of Human Rights, who called on the Commission on 27 September 2002;
- A 15 Member delegation of the Joint Parliamentary Committee on Human Rights of the United Kingdom, Great Britain and Northern Ireland, headed by Mr. Jean Corston, MP; they visited the Commission on 8 October 2002;
- A delegation from the National Human Rights Commission of Mongolia, led by Dr. Suren Tserendorj, Chief Commissioner, visited the Commission from 6 to 9 November 2002;
- A delegation from the Nepalese Human Rights Commission visited the Commission on a study tour from 6 to 9 November 2002;
- A Select Committee of the Sri Lankan Parliament visited the Commission between 7-10 March 2003 to study the functioning of the Commission;
- Senior civil servants from France, who were attending a training course organized by the Indian Institute of Public Administration, called on the Commission on 20 March 2003, to discuss the working of the Commission; and
- A delegation from the European Union, which called on the Commission on 17 March 2003.

F] Financial Assistance to Organizations

14.13 The Commission, in pursuance of Section 12(i) of the Protection of Human Rights Act, 1993, encourages the efforts of non-governmental organizations working in the field of human rights. As part of this endeavour

the Commission continued to provide financial assistance, on a limited scale, but carefully devised criteria, to institutions and organizations undertaking workshops and projects organized by them in the field of human rights. The workshops and projects conducted/ supported by the Commission included:

- A one day workshop on the 'Role of Law in Combating Casteism and Communalism' organized by the National Law School of India University, Bangalore in May 2002;
- A workshop on 'Dowry Issues and Challenges' organized by the All India Democratic Women's Association (AIDWA), New Delhi, in August 2002;
- A project on 'Training Counselling for victims of Gujarat Violence' taken up by the Society for Mental Health, New Delhi in August 2002.
- A National Round Table on Communalism & Human Rights held in partnership with the National Law School of India University, Bangalore, in August 2002;
- A two day workshop for senior IAS officers, which was held in Kerala in September 2002 at the Institute of Management in Government, on the theme of Economic, Social and Cultural Rights (ESCR);
- A translation into Tamil of the Commission's Guidelines and Instructions, which was prepared by People's Watch, Tamil Nadu;
- A workshop for Jail Superintendents of Tamil Nadu was held at Regional Institute of Correctional Administration, Vellore in February, 2003;
- National Centre for Advocacy Studies, Pune for a research project on Economic, Social and Cultural Rights;
- National Association of the Blind, New Delhi for a research project on the rights of the disabled;
- SEVAC, a Kolkata based NGO, for a research project on the rights of the mentally ill;
- Action Aid, for a research project on the working of the criminal justice system; and
- Karnataka Women's Information and Resource Centre, Bangalore for a project on Human Rights Education.

G] Funds

14.14 Under section 32 of the Protection of Human Rights Act, 1993, the

Commission is granted financial assistance by the Central Government by way of grants-in-aid after due appropriation made in this behalf by Parliament. During 2002-2003, the Commission received Rs. 860 lakh in Non-Plan and Plan funding, under the Revised Estimates as grants-in-aid as against the original Budget Estimate of Rs. 732 lakhs. Expenditures of the Commission during the year amounted to Rs. 817.62 lakhs. The Accounts for 2002-2003 have been prepared and submitted to the Comptroller and Auditor General of India for audit.

14.15 The accounts of the Commission are prepared in a format prescribed by the Central Government under the NHRC (Annual Statement of Account) Rules, 1996. The Comptroller and Auditor General of India have conducted the audit of the accounts of the Commission for the year 2001-2002 during January 2003. The audit certificate is awaited. As soon as it is received, it is proposed to print the accounts for the year 2001-2002 along with the audit certificate, and send the document to Government. Thereafter, the document will be placed before each House of Parliament as required under section 34 of the Protection of Human Rights Act, 1993.

H] Manavadhikar Bhavan

14.16 The Commission was allocated land for its office building, 'Manavadhikar Bhavan', in Block C of the office complex premises in the INA area, New Delhi. The foundation stone for the building was laid by the Hon'ble Shri Bhairon Singh Shekhawat, Vice President of India on 14 January 2003.

14.17 An amount of Rs. 62 lakhs has been released so far to the Ministry of Urban Development/CPWD towards the cost of the land and construction. The CPWD is in the process of completing the detailed drawings and the construction is scheduled to begin during the year 2003-2004.

Summary of Principal Recommendations and Observations

CHAPTER 15

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

15.2 The delay in the tabling of the ninth report, together with the required Memorandum of Action Taken, has resulted in a corresponding delay in releasing its contents to the public. In the process, both the elected representatives of the people of India and the people of India themselves have, once again, been denied timely and comprehensive information on the work and concerns of the Commission. The delay has also meant that the present report has been written without Parliament, the public and this Commission being informed of the action, if any, taken on the observations and recommendations contained in the preceding report (**Para 1.2**).

15.3 The Commission, from the very first year of its existence, has felt the need to propose amendments to the Protection of Human Rights Act, 1993 in order to ensure that its provisions would help, and not inhibit, or lend themselves to inhibiting, the "better protection" of human rights in the country. By the sixth year of its existence, in the light of the experience gained, the Commission felt constrained to request a former Chief Justice of India, Justice Shri A. M. Ahmadi, to head a high-level Advisory Committee to make a comprehensive assessment of the need for structural changes and amendments to the Act. The advice of that Advisory Committee was carefully considered by the Commission in February 2000 and its own proposals for amendments to the act were transmitted to the central Government in March 2000. Those proposals were annexed in full to the Commission's Annual Report for 1999-

2000 and highlighted again in its Annual Report for 2001-2002. It remains a matter of regret to the Commission that, despite the passage of considerable time, the proposals are still pending consideration as, in the words of the Government, they are "very sensitive and have far-reaching consequences." **(Para 2.3)**

15.4 Of key concern to the Commission has been the need to maintain and strengthen its independence and functional autonomy, which are essential characteristics of a National Institution constituted and working in accordance with the "Principles relating to the status of National Institutions" (the "Paris Principles") that were, inter alia, endorsed by the World Conference on Human Rights held in Vienna in June 1993 and by the General Assembly of the United Nations in its resolution 48/134 of 20 December 1993.

Central to the independence of the Commission, as experience has shown, have been the provisions of the Statute relating to the criteria to be observed in the selection of its Chairman and four Members who constitute the Commission under Section 3(2) of the Protection of Human Rights Act, 1993; the method of their appointment (Section 4 of the Act); removal (Section 5); and terms of office (Section 6). As observed in Chapter I, however, these provisions do not apply to the Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes, and the National Commission for Women, who are "deemed to be Members of the Commission" under the terms of Section 3(3) of the Act, their methods of appointment, removal and terms of office being governed by the statutes and rules of the respective Commissions of which they are the Chairpersons. It is for this reason that Parliament, in its wisdom, limited the role of the "deemed Members" to the functions specified in section 12(b) to (j) only. No other role was assigned to them under the Act. **(Para 2.5 & 2.6)**

15.5 For all of the considerable efforts made, the Commission cannot say that it is satisfied with its handling of the complaints before it. Delays can and do occur at various stages of the processing of complaints and it will be essential constantly to review and seek improvements to the quality and working methods employed by the Commission. It will also help greatly if Human Rights Commissions of true calibre were established, and then appropriately supported in all of the States, and if the Human Rights Courts envisaged under section 30 of the Act were indeed set-up along the lines foreseen and if matters relating to their competence and jurisdiction were properly and definitively clarified. **(Para 2.15)**

15.6 In respect of the situation in Gujarat, it is a matter of some regret to the Commission that the principal recommendations and observations made by it in its Proceedings, particularly in paragraph 21 of the Proceedings of 1 April 2002 and paragraphs 19, 20, 27 29 and 64 of the Proceedings of 31 May 2002, received an inadequate response from the Government of Gujarat. In consequence, it came as no surprise to the Commission that many of the grave misgivings that it expressed in those Proceedings subsequently proved to be well-founded. Sadly, therefore, the initial failure to protect human rights was compounded by the failure - at least thus far - to provide justice to those whose rights had been violated. **(Para 3.3)**

15.7 In a letter to the Prime Minister dated 3 January 2003, Justice Shri J.S. Verma, after referring to the recommendations contained in the Commission's Proceedings of 1 April and 31 May 2002, went on to observe,

"..... with great respect, that if our country should fall short in rendering justice, promptly and effectively, to the victims, their families, dependants and other persons or groups connected with the victims, a serious travesty of the law will occur with potentially grave consequences, not only to those immediately affected, but to the reputation of our country and its institutions of governance, including the judiciary and the National Human Rights Commission."

The letter then stated:

"Regrettably, to date, in spite of the recommendations made by the Commission, not enough has been done to assure the victims, the country and the world at large, that the instruments of the State are proceeding with adequate integrity and diligence to remedy the wrongs that have occurred."

The letter added:

Contemporary human rights jurisprudence requires that the victims must have ready access to the legal system; that prompt and effective steps are taken to ensure that effective disciplinary, administrative, civil and criminal action is taken against those guilty of acts of omission or commission resulting in the violation of human rights; that reparation is provided, individually or

collectively, to those who have suffered; that the reparation is proportionate to the gravity of the violations and damage that occurred, and that it include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

(Para 3.10)

15.8 Following assumption of the office of Chairperson of the Commission by Dr. Justice A.S. Anand, the Commission continued its strenuous efforts to ensure that the purposes of justice would be met in Gujarat, both in terms of bringing to book those who had been responsible for the violation of human rights and in terms of providing appropriate levels of protection and compensation to the victims of violence. To this end, repeated consultations were held with the Commission's Special Rapporteur and others in a position to help and advise, and a number of practical proposals and measures were devised to assess and ameliorate the situation. **(Para 3.11)**

15.9 On 9 May 2003, the newly appointed Chief Secretary of Gujarat accompanied by the Resident Commissioner of Gujarat based in New Delhi, called upon the Chairperson and Members of the Commission. In that meeting, the Commission raised six specific issues with the Chief Secretary.....

As the Commission did not consider that the letters of the Chief Secretary dated 28 May and 25 June 2003 had adequately covered the various issues raised with him in the discussion held on 9 May 2003, the list of six points together with the minutes of the discussion held with the Resident Commissioner on 3 June 2003, were sent to the Chief Secretary seeking a fuller response. **(Para 3.13 & 3.16)**

15.10 Parallel to these exchanges with the Chief Secretary and Resident Commissioner, and in the light of disturbing reports relating to developments in Gujarat, the Commission in its proceedings of 21 May 2003 inter alia asked the Director General of Police, Gujarat to spell out 'whether any measures have been taken to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses who have to depose either in court or before the Commission of Inquiry and, if so, the nature of that protection to enable them to depose freely and fearlessly.' A report dated 3 June 2003 was received from the Director General of Police and it was considered by the Commission on 16 June 2003. **(Para 3.17, 3.18 & 3.19)**

15.11 On 30 June 2003, the Commission noted in its Proceedings that all of

the accused in the Best Bakery Case had been acquitted. It will be recalled that this was one of the five cases in respect of which the Commission had recommended investigation by the CBI, fourteen persons having been killed in the premises of the Best Bakery, after it was set on fire during the communal violence that engulfed the State. Upon learning of the acquittals, the Commission immediately requested the Chief Secretary, Government of Gujarat, to forward to the Commission, within one week, a copy of the judgement of the Trial Court. The Commission additionally asked the Chief Secretary to inform it of what steps, if any, the Government of Gujarat was proposing to take against the order of acquittal.

Subsequently, "keeping in view the seriousness of the issues involved in the order of acquittal in the Best Bakery Case," the Commission considered it appropriate, "to immediately depute a team of the Commission to proceed to Vadodara to inspect the records of the case, examine the judgement and all other relevant materials and submit a report to the Commission."

Thereafter, on 6 July 2003, no reply having been received from the Chief Secretary of Gujarat in response to the Proceedings of 30 June 2003, the Commission observed that, for an effective enquiry, it was necessary to examine the charge-sheet filed u/s 173 Cr.P.C. in the Best Bakery Case and the complete record of the Trial Court including the judgement.

The team of the Commission was in Ahmedabad and Vadodara on 7 and 8 July 2003 respectively and brought back with it to New Delhi the relevant materials pertaining to the Best Bakery Case. ... On 11 July 2003, one of the principal prosecution witnesses in the Best Bakery Case, Sheikh Zahira Bibi Habeebullah, members of whose family had died in the carnage in the Best Bakery, made a statement before the Commission after requesting an opportunity to do so.

On 31 July 2003, in response to repeated requests from representatives of the print and electronic media regarding the action being taken by it in the Best Bakery Case, the Commission set out its position in the following words: "Deeply concerned about the damage to the credibility of the criminal justice delivery system and negation of human rights of victims, the National Human Rights Commission, on consideration of the report of its team which was sent to Vadodara, has today filed a Special Leave Petition under Article 136 of the Constitution of India in the Supreme Court with a prayer to set aside the impugned judgement of the Trial Court in the Best Bakery case and sought

directions for further investigation by an independent agency and retrial of the case in a competent court located outside the State of Gujarat.

The NHRC has, inter-alia, contended in the SLP which was filed on 31 July 2003, that:

- The concept of fair trial is a constitutional imperative and is explicitly recognized as such in the specific provisions of the Constitution including Articles 14, 19, 21, 22 and 39A of the Constitution as well as the various provisions of the Code of Criminal Procedure 1973 (Cr.P.C).
- The right to fair trial is also explicitly recognized as a human right in terms of Article 14 of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by India and which now forms part of the statutory legal regime explicitly recognized as such under Section 2(1)(d) of the Protection of Human Rights Act, 1993.
- Violation of a right to fair trial is not only a violation of a fundamental right under our Constitution but also violative of the internationally recognized human rights as spelt out in the ICCPR to which India is a party.
- Whenever a criminal goes unpunished, it is the society at large which suffers because the victims become demoralized and criminals encouraged. It therefore becomes the duty of the Court to use all its powers to unearth the truth and render justice so that the crime is punished.
- It is, therefore, imperative in the interests of justice for the Hon'ble Supreme Court, in exercise of its powers under Article 142 of the Constitution, to lay down guidelines and directions in relation to protection of witnesses and victims of crime in criminal trials which can be adhered to both by the prosecuting and law enforcement agencies as well as the subordinate judiciary. This is essential in order to enhance the efficacy of the criminal justice delivery system."

.... "The Commission has also filed a separate application (on 31 July 2003) under Section 406 Cr. P.C. before the Supreme Court for transfer of four other serious cases, namely, the Godhra incident, Chamanpura (Gulbarga society) incident, Naroda Patiya incident and the Sadarpura case in Mehsana district, for their trial outside the State of Gujarat." (**Para 3.20, 3.21, 3.22, 3.23 & 3.24**)

15.12 In the face of evil 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 can, however, have the most profound effect on the character of a society and the manner in which it treats issues of human rights and human dignity. Thus, the Supreme Court has observed in *DK Basu vs. State of West Bengal* 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."

Indeed, throughout the debate on this subject, both at the national and at the global level, the view has been insistently expressed by those who are concerned with the protection of human rights that the means adopted to defeat terrorism must be consistent with the rule of law, including international human rights law.

The Commission has 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. Further, the Commission has continued to act promptly in respect of all complaints received from areas affected by terrorism or insurgency, pursuing to the full the possibilities open to it under the Protection of Human Rights Act, 1993, despite the limitations of that Act. **(Para 4.4, 4.5, 4.6 & 4.16)**

15.13 According to figures released by Government of India, 4038 incidents were recorded during the year 2002 involving militants; the number of civilians killed was 1008 compared to 996 in the preceding year; the security forces themselves took 453 casualties, compared to 536 in the previous year; while 1,707 militants were killed, including 508 who were foreigners.

For its part, the Commission received 285 complaints from the State of Jammu & Kashmir in the course of the year under review, many of which listed a dozen or more instances alleging serious violations of human rights. In

respect of each of complaints, notices were issued by the Commission, as appropriate, to the competent authorities of the State Government and to the Ministry of Defence and/or the Ministry of Home Affairs, calling for the submission of detailed investigation reports. In each case, after examining the reports, the Commission issued appropriate directions. As in the past, the complaints covered a wide range of allegations, including those of enforced disappearances, illegal detention and torture, custodial death, extra-judicial killings and fake encounters. **(Para 4.18 & 4.19)**

15.14 In respect of the situation in Jammu and Kashmir, the Commission made an analysis of complaints relating to allegations of enforced and involuntary disappearances. Because of considerable discrepancies in reports and statements made in respect of the numbers and persons involved, the Commission specifically asked the State Government to indicate:

- i. whether the State Government has established a system to record allegations of enforced or involuntary disappearance and, if so, the nature of that system;
- ii. the number of such allegations recorded by it, the details of the system established thus far to investigate such allegations and the results, thus far, of such investigations;
- iii. the measures that are being taken to prevent the occurrence of enforced or involuntary disappearance; and
- iv. the measures that are being taken to bring to book those who may have been involved in such disappearances and to provide justice to those who have suffered.

The Commission intends to pursue these matters upon receiving the response of the State Government. It has also asked the Association of Parents of Disappeared Persons, from whom it had received a complaint, to provide it with certain clarifications and such additional details that it may have in respect of this matter. The Commission urges all concerned to cooperate fully in ascertaining the numbers and whereabouts of those who are alleged to have disappeared, so that this deeply disturbing issue is comprehensively addressed. **(Para 4.20)**

15.15 As regards the case of Jalil Andrabi, who was abducted and subsequently died, no progress was reported during the past year. The case remained sub-judice before the High Court of Jammu & Kashmir. Despite a notice having been served on the army to produce the officer suspected of being involved in

this matter, this had not been done. Once again, the Commission urges the Central Government to ensure that action is taken to resolve this painful matter which has been a source of continuing embarrassment to the country. **(Para 4.22)**

15.16 Throughout the year under review, the Commission continued to be deeply involved in efforts to monitor and alleviate the problems being faced by members of the Kashmiri Pandit community, of whom some 300,000 have been compelled to leave the Valley since the insurgency began.

It will be recalled that, upon the recommendation of the Commission, a committee had been constituted at the State-level to examine and expeditiously resolve the difficulties being faced by the Kashmiri Pandits. To this end, the Commission had also appointed its Special Rapporteur to serve on the committee and to keep the Commission regularly informed of the efforts being made.

It was a matter of deep regret to the Commission, as also to the Kashmiri Pandits, that in the year 2000-2001, the committee had not been meeting with the regularity expected of it. The matter had therefore been taken up by the former Chairperson of the Commission at the highest echelons of the State Government when he had visited Jammu & Kashmir. **(Para 4.23, 4.24 & 4.25)**

15.17 The General Secretary of the State Kashmiri Pandits Conference, together with other representatives of the community, spoke in detail of the difficulties that they had, and were, experiencing. Representations by the various groups were submitted to the Chairperson. In his comments to the gathering, the Chairperson explained the nature of the obligation of the State Government, arising out of the fundamental right to life, to ensure that the Kashmiri Pandits were assisted and supported in a manner consonant with the right to a life with dignity. It was the duty of the State not only to ensure that their basic needs were properly met, but that their self-respect and self-confidence were restored and their sense of belonging revived. In this context, a number of specific measures were identified, which required to be taken, to improve the living conditions in the camps. These related, inter alia, to the improvement of the water-supply and sanitation facilities, medical facilities in the primary health centres and medical supplies, specialized treatment for illnesses such as diabetes, cardiac problems and psychiatric disorders and the provision of laboratories and libraries in the camp schools. Decisions were also

taken to strengthen the administrative arrangements in the camps so as to ensure that the problems of the Kashmiri Pandits were acted upon with promptness and understanding. In this connection, it is also worthy of note that the committee constituted on the recommendation of the Commission to look into the grievances and difficulties of the Kashmiri Pandits - which had been dormant for many months - met again, the Special Rapporteur of the Commission participating fully in its proceedings. **(Para 4.26 and 4.27)**

15.18 Taking suo motu cognizance of media reports in respect of the killing of Kashmiri Pandits in Nadimarg, including reports indicating that the victims were murdered despite the presence of a police picket in the vicinity, the Commission expressed its deepest anguish and concern over the incident. It also issued notice on 26 March 2003 to the Chief Secretary and Director General of Police, Jammu & Kashmir, and to the Secretary, Ministry of Home Affairs calling for reports on the tragedy and an indication of the measures taken, or planned to be taken, to enhance the security of the affected community and to ameliorate the sufferings of the families of those who had been killed or traumatized. The Commission further noted that an unspeakable act of violence had taken innocent lives once again, testimony to the depravity of those who engaged in terrorist acts. The Commission unequivocally condemned such acts and their perpetrators as deeply hostile to all human rights, including the right to life itself. The Commission observed that the attack was doubly reprehensible as it had taken place at a time when fresh efforts were underway to bring peace and reconciliation to the State of Jammu and Kashmir, objectives to which the terrorists were fundamentally opposed. **(Para 4.30)**

15.19 Regrettably, the ugly hand of terrorism was in evidence in a wide range of brutal acts spread over the country. Thus, on 25 September 2002, sharing the nation's shock and grief, the Commission strongly condemned the outrageous terrorist attack which occurred against innocent civilians in the Akshardham temple in Gandhinagar on 24 September 2002, continuing into the morning of 25 September 2002. The Commission observed that it had consistently taken the position that such criminal acts are in any circumstances unjustifiable, whatever reason may be invoked to justify them. They were violative of every conceivable human right and the full force of the law must be brought to bear in dealing with such acts of terrorism and in bringing to justice those who perpetrate or abet them. In the same Proceedings, the Commission extended its deepest condolences to the families of those who had lost their lives or been injured in the terrorist attack, including those of the

security forces. The Commission expressed its great appreciation of the prompt statements made by the leaders of political parties, as also leaders of various communities, urging that inter-communal harmony be maintained. It also urged all elements of civil society to cooperate fully with the authorities in their effort to maintain law and order and to preserve and protect the human rights of all of the people of Gujarat and, indeed, of the country as a whole. The Commission stressed that nothing should be done to divert the attention of the authorities, from the fulfillment of their responsibilities in this respect, nor should any encouragement be given to any act or statement that could exacerbate the present situation. **(Para 4.32)**

15.20 According to information provided by the Ministry of Defence, in the course of 2002-2003, it received some 60 complaints, alleging the violation of human rights by army personnel. Of these complaints, investigation in respect of 18 cases had been completed, while 42 cases were under investigation as of 31 March 2003. In two cases, the allegations made were found to be true and punishment was awarded. In one of these cases, relating to Jammu and Kashmir, the accused person was dismissed from service after serving three months of rigorous imprisonment. In contrast to the Ministry of Defence, the Ministry of Home Affairs has sent a 'nil' report to the Commission for the first two quarters of 2002-2003, and no report for the subsequent two quarters of the year, in respect of allegations of violations of human rights by personnel of the para-military forces. The 'nil' reports appear to be indicative of a lack of seriousness on the part of those who are meant to monitor allegations of possible human rights violations by members of para-military forces. If the number of complaints received by the Commission alleging violations of human rights by personnel of the para-military forces is any indication, it seems inconceivable that no such complaints were received directly by any of the para-military forces or by the Ministry of Home Affairs. The Commission therefore urges the Ministry of Home Affairs to look into this matter with greater care and sensitivity than appears to be the case at present. **(Para 4.34)**

15.21 The pursuit of the truth in cases of custodial death is of crucial importance to the protection of the rights of those are in the custody of the State. When a wrong has been done, it is not surprising that an effort is sometimes made to conceal the truth or to underplay the responsibility of those involved. What is surprising, however, is the effort that has sometimes been made to block the jurisdiction of the National Human Rights Commission by invoking the provisions of section 36(1) of the Protection of Human Rights Act, 1993 by asserting that another Commission has taken cognizance of a custodial

death prior to the National Human Rights Commission. As observed in the preceding annual report of this Commission, in order to prevent such stratagems, there is obvious need to amend section 36(1) of the Act along the lines already recommended by the Commission. The delay in proceeding with the amendments to the Act is clearly detrimental to the better protection of human rights in the country. **(Para 4.38)**

15.22 In the year 2002-2003, the figures reported to the Commission were 183 deaths in police custody and 1,157 deaths in judicial custody making a total of 1,340 deaths in custody as against a total of 1,307 such deaths in 2001-2002, of which 165 occurred in police custody and 1,140 in judicial custody and 2 in the custody of para-military forces. The increase in the number of deaths, both in police and in judicial custody in 2002-2003, though not alarming, is certainly disquieting. While the number of deaths in judicial custody has to be viewed in the context of the total number of prison inmates during a given period, the figures once again confirmed the view of the Commission that there is need for better custodial management and a more profound orientation of police personnel in matters relating to human rights. To further this objective, the Commission organized a series of workshops around the country. **(Para 4.40)**

15.23 Since the Commission was established in October 1993, it has until now received a total of 8,596 reports of deaths that occurred in police or judicial custody. An analysis of 6552 such cases indicates that some 80 per cent of deaths that occurred in judicial custody were attributable to causes such as illness and old age. The remaining 20 per cent occurred for a variety of reasons including, in certain cases, illness aggravated by medical negligence, violence between prisoners, or suicide. It is these latter cases that have exercised the Commission over the years, requiring it to issue specific directions in respect of individual cases of such deaths, and also to call for systemic measures to improve prison conditions. The views of the Commission urging better maintenance and running of prisons, better trained and more committed staff, including medical staff, and an improvement in the capacity of prisons to deal with mental illness and morbidity among inmates have been conveyed to the State Governments on a regular basis and there has been persistent follow-up in respect of these matters. It remains essential, in the view of the Commission, that the State Governments give greater attention to the better management of prisons. **(Para 4.44)**

15.24 The guidelines that the Commission issued on 29 March 1997 in respect of encounter deaths arose from hearings that the Commission conducted in

respect of allegations of extra-judicial killings of members of the People's War Group in 'fake' encounters involving the police of Andhra Pradesh. The human rights implications of the situation remain of great concern to the Commission. The murderous acts of violence and terror for which the People's War Group is responsible must be condemned unreservedly. In addition, however, the Commission remains firmly of the view that each case involving an extra-judicial killing by the police should be diligently investigated in accordance with the guidelines of the Commission and that those guilty of 'fake' encounters must be brought to book. In pursuing this matter, the Commission has remained in touch with Shri S.R. Sankaran, Convenor of the Committee of Concerned Citizens and leading NGOs of the State dealing with the defence of civil liberties. Clearly, there is need to break the cycle of violence that has continued for far too long and exacted too high a price in human life. The Commission is only too aware that this will not be easy to achieve, given the disruptive nature of the terrorism and violence that has, repeatedly, barred the road to peace. Yet it is necessary to persevere in spite of the odds. The Commission has, therefore, consistently welcomed all of the efforts made over the years to secure peace. It very much hopes that those endeavours will continue to be made and that they will succeed, despite the grave and often murderous provocations that occur. **(Para 4.48)**

15.25 In the present climate in which the threat of terrorism is pervasive and acts of terror are only too frequent and real, the Commission - in fulfillment of its duties under the Protection of Human Rights Act, 1993 - has had to remain doubly vigilant to ensure that the Constitution and the Rule of Law are upheld, despite the evident dangers and difficulties. For reasons dwelt upon at length earlier in this report, the Commission cannot acquiesce in the view that extra-judicial killings should be taken for granted, or accepted as a norm of behaviour, even when it comes to dealing with those who are alleged to be terrorists. The Commission thus considered it necessary, for instance, to seek information in regard to what came to be known as the "Ansal Plaza shoot-out case" in New Delhi. Even in that instance, the Commission felt it was essential to draw the attention of the Delhi Police to the need to observe its guidelines in respect of the investigation of deaths occurring in police encounters. **(Para 4.49)**

15.26 With every passing year, the evidence before the Commission mounts that there must be major police reforms in the country if the human rights situation is to improve, if the investigation work of the police is to be insulated from 'extraneous influences', and if the police is to regain the public trust that

is essential for the proper discharge of its duties as a key element of the criminal justice system of the country. **(Para 4.50)**

15.27 The Commission welcomes recent developments to modernize the police force. However, the central element in re-gaining public trust and in ensuring that human rights are respected, lies in insulating the investigation work of the police from 'extraneous influences' and removing the 'Damocles sword' of arbitrary transfers of Director-Generals of Police and other key officers that has been used to weaken the capacity of the police to function without fear or favour. **(Para 4.53)**

15.28 Experience of the year 2002-2003 confirms the earlier assessment of the Commission. The failure to investigate with integrity has, too often, resulted in a failure to provide justice. The Commission has, thus, continued to receive numerous complaints of police complicity in wrong-doing. No country can afford to let its criminal justice system slide downward in public trust and esteem. Institutions that function with integrity are the hallmark of a democratic society no less than are free and fair elections. It therefore becomes critically important that the basic reforms that are required for the greater good of the country must be implemented without prevarication or procrastination, setting aside considerations of political or other expediency. **(Para 4.56)**

15.29 The Commission therefore urges, once again, that the police reforms in respect of which it has made specific recommendations - and that are outlined in detail in its earlier annual reports and in its submissions before the Supreme Court in the case *Prakash Singh vs Union of India* - be acted upon without further delay. The Commission earnestly requests that this matter be taken up at the highest political level in the country, in a non-partisan spirit, so that the over-arching need to act in furtherance of the Constitution and the Rule of Law is the sole guide in the consideration and implementation of the needed reforms. **(Para 4.57)**

15.30 The Commission is constrained to observe that the performance of the Human Rights Cells in State Police Headquarters has, for a variety of reasons, been uneven. On occasion, they have lacked in the quality of their infrastructure and personnel. At times, and more seriously, they have not been tenacious enough in pursuing matters, with the human rights perspective being their sole guiding light. **(Para 4.60)**

15.31 It remains essential, therefore, in the view of the Commission, that

greater importance be given to the quality and commitment of those who are appointed to head these Cells, and that those so appointed receive the administrative support that they need both in terms of material and personnel resources. The Cells can and do play an important role in furthering the protection of human rights in the States. The greater the reason, therefore, that their standards should, in all respects, be of the highest. The Commission thus urges all State Governments to ensure that the quality of these Cells is maintained at the highest level. The Commission remains of the opinion that the Cells constitute a vital link in the chain of institutional mechanisms to further the better protection of human rights in the country. **(Para 4.61)**

15.32 In its Memorandum of Action Taken on the Commission's annual report for 2000-2001, the Central Government has stated that, in order to strengthen and improve the system, a number of steps have been taken. It is thus indicated that 900 fast track courts are now functioning and 421 such courts are likely to be functional soon. The expectation is expressed that these courts will dispose of long-standing sessions cases, important criminal cases and other civil cases during the period 2000-2005.

The Commission welcomes these developments. It would, however, like to observe that an increase in the number of fast track courts will not, by itself, result in an improvement in the quality of the criminal justice system. Most conspicuously, as far as human rights are concerned, the Commission has observed, and this report has recorded specific instances elsewhere in this document, that the failure to investigate properly, compounded by the failure to prosecute diligently, and the failure to provide protection to witnesses and victims, can lead to a failure to provide fair trial. It therefore remains essential, in the view of the Commission, that a comprehensive approach be adopted in seeking to reform and revitalize the administration of the criminal justice system in the country. **(Para 4.63 & 4.64)**

15.33 The Commission remains of the view that there is need, in the first instance, to enact a new Prison Act, as recommended by the Mulla Committee on Jail Reforms. That Act could provide the most appropriate and contemporary legal basis for a new Manual. The Commission therefore urges the Union Home Ministry to pursue this matter further. **(Para 4.90)**

15.34 The Commission would like to reiterate that inadequacies in the Forensic Science Services in the country have adversely affected the administration of criminal justice, with serious consequences for the protection

of human rights. The Government of India and the State Governments are, therefore, requested once again to implement swiftly the recommendations of the Commission in this regard. **(Para 4.95)**

15.35 The Commission emphasized that it "retains its responsibility under its own statute to ensure that the Prevention of Terrorism Act is not implemented in a manner violative of human rights, Constitution and the treaty obligations of the country." Further, while noting that, "when compared with TADA," the Prevention of Terrorism Act "does contain some provisions aimed at providing safeguards against its possible misuse," the Commission stated that it was "of the view that these safeguards are insufficient." The Commission therefore asserted that it "remains the duty of the Commission to monitor implementations of the Act with vigilance and to ensure that the provisions of the Act are not abused or human rights violated."

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, the young and old alike.

As of the time of writing this report, it is evident that a wide spectrum of the political leadership of the country is increasingly concerned at the manner in which the Act is being applied. This comes as no surprise to the Commission, which had forewarned of its probable consequences. The Commission has thus noted with interest that as of the time of writing this report, the Government of India has itself established a Review Committee under the Chairmanship of Justice Shri Arun Saharya, former Chief Justice of the Punjab and Haryana High Court.... The impact of the work of the Review Committee will be of interest to the Commission.

The Commission would like to recall, in this connection, the words of the Supreme Court, expressed in 1994, in the case *Hitendra Vishnu Thakur & others vs. State of Maharashtra* when it stated:

"No civilized country could allow terrorism to flourish, but one has to differentiate between a criminal and a terrorist. While all terrorists are criminals, it does not necessarily mean that all criminals are terrorists."

The Apex court went on to observe:

"Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA"

The Court's prudent and cautionary words in respect of the misuse of the Terrorist and Disruptive Activities (Prevention) Act, 1987 deserve to be carefully reflected upon by those now implementing the Prevention of Terrorism Act, 2002. It should not be said that, once again, the distinction between the 'terrorist' and the 'criminal' has been blurred, that the Act has been used in arbitrary and discriminatory ways, or that its stringent provisions have been set in motion when recourse to the ordinary courts and the normal penal law of the land would have sufficed. **(Para 5.2, 5.3, 5.5, 5.7 & 5.8)**

15.36 The provisions of the Draft Bill [The Protection from Domestic Violence Bill 2002] and the report containing the recommendations of the Standing Committee were examined carefully by the Commission and its detailed suggestions were forwarded to the Department of Women and Child Development on 30 January 2003. **(Para 5.14)**

15.37 In its annual report for 2000-2001, the Commission had recommended that the Government of India examine and become party to Optional Protocols 1 and 2 to the Convention on the Rights of the Child, dealing respectively with the sale of children, child prostitution and child pornography, and the involvement of children in armed conflict. The Memorandum of Action Taken on the annual report for 2000-2001 states that the Department of Women and Child Development is presently examining the issues connected with the signing of the Optional Protocol 1 and 2 and that the views of the Ministry of External Affairs have been communicated to the Department of Women and Child Development. The Commission urges the Government of India to complete the examination of these Protocols expeditiously and to take the necessary action along the lines already recommended by it. **(Para 5.15)**

15.38 The Commission had asked the Government of India to 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 a thorough examination of the additional Protocols was underway and that, once that examination had been completed, it would revert to the Commission on this matter. The Commission requests

the Government of India to complete its examination of the 1977 Protocols at the earliest and to provide its comments to the Commission. **(Para 5.16)**

15.39 Pursuant to the Commission's recommendation, the Government of India signed the Convention Against Torture on 14 October 1997. However, some six years later, it has not yet ratified the Convention. This delay has given rise to serious concerns, both within the country and in major external forums, including treaty bodies. It has also affected adversely the capacity of the law enforcement agencies of the country to secure the extradition of those wanted for serious crimes. This has been of detriment to the national interest. **(Para 5.17)**

15.40 The Commission would like to reiterate that, in its view, the ratification of the Convention is long over due. As indicated earlier, Article 21 of the Constitution already covers this area effectively. Further, the right against torture has been judicially recognized by the Supreme Court as a Fundamental Right. The delay, therefore, is deeply embarrassing to the country and inexplicable to those who are interested in the better protection of human rights. It casts an unnecessary shadow on the intent of the Government, where none should exist. **(Para 5.19)**

15.41 The Commission has stressed the need for a comprehensive national legislation to deal with refugee situations facing our country and to distinguish bona fide refugees from economic migrants, illegal immigrants and other foreigners. The Commission expressed the hope that the action initiated by the Central Government in this respect would be completed within a clearly defined time frame and that it would be consonant with the decisions of the Supreme Court, as well as with the principal international instruments on this subject, notably the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. **(Para 5.20)**

15.42 In the Memorandum of Action Taken on the Commission's annual report for 2000-2001, the Government of India has indicated that issues concerning the 1951 Convention and the 1967 Protocol were being examined by the Ministry of External Affairs, along with the drafting of a national legislation on refugees. This adds little to what the Commission had been told a year earlier. It remains the view of the Commission that greater priority should be given to this matter by the Government of India, for the existing laws, regulations and practices in respect of refugees are inadequate to the present times and the possible challenges that are likely to arise in the future. The

absence of appropriate national legislation, of the quality and content recommended by the Commission, also sits ill with the continuing responsibilities devolving on the Government of India as a member of the Executive Committee of the Programme of the United Nations High Commissioner of Refugees (UNHCR). **(Para 5.21)**

15.43 This Commission is firmly of the opinion that a coherent and integrated human rights approach to disability cannot be developed under the present treaty system and that a comprehensive convention is required to give status, authority and visibility to disability issues within a human rights framework. In the view of the Commission, a single comprehensive treaty would enable the State parties to understand their obligations in clear terms and give both States and civil society a clear objective, viz., the furtherance and fulfillment of the rights of the disabled in a holistic manner. In taking this view, the Commission has been mindful of contemporary international law which recognizes that all States have a duty, under Article 56 of the Charter of the United Nations, to ensure respect for and to observe human rights, including the incorporation of human rights standards in their national legislation. More importantly, the Commission has been guided by the provisions of Article 51 (c) of the Constitution which, asserts, as a Directive Principle, that the State shall endeavour to "foster respect for international law and treaty obligations in the dealings of organized peoples with one another." The Commission has, accordingly, worked actively to mobilize support for a comprehensive convention for the promotion and protection of the rights of people with disabilities. It has also strongly encouraged the Government of India to play a constructive and leading role in the process of treaty elaboration. **(Para 5.31)**

15.44 The Commission has consistently taken the view that the right to a life with human dignity, enshrined in the Constitution, must result in the strengthening of measures to ensure that the people of this country, and particularly those belonging to economically disadvantaged sections of society, have access to better and more comprehensive health facilities. **(Para 6.1)**

15.45 Central to the Commission's concerns in respect of the right to health has been its anxiety about the deleterious effects of maternal anaemia both on the mother and on the child. The Commission has, thus, taken-up the issue of the widespread prevalence of iron deficiency among expectant mothers, which has resulted not only in high infant and maternal mortality but also in low birth-weight related developmental disabilities, particularly among economically disadvantaged sections of society. **(Para 6.7)**

15.46 Through the Action Research on trafficking on women and children, the Commission is endeavouring to create an authentic database so as to strengthen the vulnerable groups in the supply zones both economically and socially. In the process, it also proposes to sensitize the public and the law enforcement agencies to the grave dangers inherent in trafficking and the need for its prevention. It is further the endeavour of the Commission to strengthen laws and law enforcement processes, punish traffickers, revamp rescue and rehabilitation programmes, and help NGOs to take advantage of the National Plan of Action of the Government of India for this purpose. **(Para 7.11)**

15.47 The year under review saw the continuation of the Commission's efforts to combat sexual harassment at the work place. In this respect, the Commission was in touch with the Department of Personnel and Training and the Minister for Law, Justice & Company Affairs. Further, the Chairperson of the Commission wrote to the Chief Justice of India in respect of woman engaged in the legal profession. **(Para 7.29, 7.35 & 7.37)**

15.48 The Colloquium on 'Population Policy - Development and Human Rights' concluded by expressing concern that the population policies framed and rigorously implemented by some of the State Governments reflected a coercive approach through use of incentives and disincentives, which was inconsistent with the spirit of the National Population Policy, 2000. Such an approach violated the rights of a large section of the population, especially the marginalized and the vulnerable, including women. The Colloquium therefore recommended that the State Governments / Union Territories should exclude these discriminatory and coercive measures from population policies. **(Para 7.59)**

15.49 The Commission appreciates the views that were expressed by the Union Minister of Health and Family Welfare and others who participated in the Colloquium. It intends to monitor this issue carefully, so as to ensure that population policies and programmes adopted by certain State Governments, do not result in the violation of human rights, especially those of women. In order to pursue this matter, the Commission has written to the Union Minister of Health and Family Welfare as well as to the Chief Ministers/Administrators of all the States/Union Territories to comply with the Recommendations and Declaration that was adopted at the Colloquium. **(Para 7.60)**

15.50 The survey of child labour undertaken in Madhya Pradesh, in accordance with the directions of the Supreme Court in 1996-97 in the case of M.C.Mehta vs State of Tamil Nadu and others, led to identification of 8739 children in

hazardous occupations and 3056 in non-hazardous occupations/processes. The survey also resulted in the identification of six districts, namely, Damoh, Raisen, Sagar, Tikamgarh, Jabalpur and Rewa as child labour-prone districts. All of the 8739 child labourers identified in hazardous occupations/processes were released. Only 6663 of them were, however, admitted to schools. Three thousand and thirty three recovery notices were issued against 3854 employers for recovery of compensation at the rate of Rs 20,000 per child labourer. However, 1537 employers were able to obtain stay orders from the High Court. Out of a total recoverable amount of 16,93,00,000, only a paltry sum of Rs 1,45,000 had therefore actually been recovered in the six districts of Indore, Dhar, Sagar, Seoni and Mandsaur. **(Para 8.4)**

15.51 The review indicated that a total of 3570 children were detected in hazardous and 6375 in non-hazardous occupations/processes as a result of the survey conducted in 1996 under the directions of the Supreme Court in Jharkhand. No information could be furnished by the State Government regarding the educational rehabilitation of children withdrawn from labour and the economic rehabilitation of the affected families in accordance with the directions given by the Supreme Court in Writ Petition No 456/86, M.C. Mehta Vs State of Tamil Nadu and others. No action was taken to recover the fine of Rs. 20,000 per child labourer from the offending employers, nor was any prosecution launched. There had hardly been any drive after 1997 to detect child labour and to enforce the Child Labour Act even though this serious violation of the rights of the child persists in most parts of the State. **(Para 8.9)**

15.52 The review of the child labour situation in Rajasthan indicated that a total of 3026 children were identified as having been engaged in hazardous occupations/processes as a result of the survey ordered by the Supreme Court on 10 December 1996. Only 2504 of them were withdrawn from child labour and only 2070 of them were admitted to schools. No periodical surveys were conducted to detect, release and rehabilitate the child labourers after the survey of 1997. In September 2000, a survey was conducted in Jaipur in order to launch the ILO-IPEC Action Programme. It led to the detection of 9673 working children in the age group 5-7, 8-12 and 13-16 years. The follow-up of the survey was not intimated to the Commission. It was, however, stated that a fresh survey had been started in January 2002 for the detection of child labour. The report required to be sent to the Commission by the end of May 2002 was, however, not received until 31 March 2003. There had been no progress in respect of the recovery of a fine of Rs 20,000 from each of the offending employers. Only an insignificant amount of Rs 60,000 had been

recovered until the date of review, against recovery certificates issued in 2701 cases. Prosecution remained as neglected as before. **(Para 8.11)**

15.53 A total of 23,382 affected families of children withdrawn from hazardous work in Uttar Pradesh were to be rehabilitated in accordance with the directions of the Supreme Court. Only 4594 of them (19.7%) were actually provided some relief under the Poverty Alleviation Programme. The Commission has been informed that 6573 families already had some means of employment. As many as 4250 families reportedly did not come forward to receive any help, and 5202 migrant families left for their native places. The Commission finds it hard to accept this account at its face value. This still leaves a balance of 2583 families, who were required to be rehabilitated. The number of affected families of the carpet belt was 7502, of whom 1775 families were rehabilitated as a result of monitoring by the Commission. **(Para 8.19)**

15.54 It will once again be seen that efforts to end child labour have varied in quality and intensity from State to State. While it can certainly be said that the vigilance of the Commission has created greater awareness and, in certain instances, encouraging results, it is also clear that despite all of the efforts made and the pronouncements of the Supreme Court, child labour persists in the country. In its preceding annual report, the Commission noted with some concern that there were a number of reasons for this including, regrettably, the inherent deficiencies in the existing legislation relating to child labour. As that report spelt out the areas in respect of which the Commission felt there was need to amend the Child Labour (Prohibition and Regulation) Act, 1986, this report will not repeat those recommendations. The deep anguish of the Commission is that no specific steps appear to have been taken in this respect by the competent authorities despite the imperatives of the Constitution, contained in Article 24 read with Articles 21, 39(e), 39(f) and 45, and also the provisions of a number of United Nations human rights treaties, principally the Convention on the Rights of the Child, 1989 to which India is a State party. **(Para 8.21)**

15.55 As the present situation remains unsatisfactory, the Commission reiterates its recommendation that the Government of India act with speed and clarity to re-write the laws relating to child labour, and work diligently and in co-ordination with the State Governments to achieve, within a reasonable time-frame, the free and compulsory education for the children of our country that has been promised by the Constitution. **(Para 8.22)**

15.56 The review meeting was held in Betiah, West Champaran on 20-21 October 2002. Twenty-six out of a total of 38 districts in the State have been identified as bonded labour prone districts. Although the Labour Commissioner stated that Vigilance Committees were in place in all the 38 districts and 115 sub-divisional headquarters of the State, actual confirmation from the districts was available only in respect of 11 districts and 16 sub-divisions. After considering the report of the Special Rapporteur, the Commission directed the State to confirm, by the end of December 2002, that Vigilance Committees had indeed been constituted in all the districts and sub divisional head quarters. It is a matter of regret that the action taken report received from the Commissioner-cum-Secretary, Department of Labour, employment and training vide his letter of 6 January 2003, confirms that Vigilance Committees have been constituted only in 11 districts and 20 sub divisional head quarters. **(Para 8.30)**

15.57 A total of 7995 bonded labourers have been identified in the area now included in Bihar, after the creation of Jharkhand, since the enforcement of the Bonded Labour System (Prohibition) Act 1976. Until 31 March 2002, 7780 of them had been actually rehabilitated. Of the remaining, 115 were reported to be untraceable. There has been no detection of bonded labour in the State after 1986. In the year 2001, 37 bonded labourers including 15 children were detected in States outside Bihar (UP & Gujarat) and returned to their parent districts. All of them had been rehabilitated under the centrally sponsored scheme of the Government of India. In 2001-02, 50 migrant bonded labourers were received back - 38 after detection in Uttar Pradesh and 12 in Delhi. Their rehabilitation was in progress. The Commission had supplied the State Government with a list of 143 migrant labourers of Bihar, released during the period 1994-1999, whose rehabilitation had not been taken up. The Commission noted with satisfaction that 114 bonded labourers out of this group had been located. Six of them were found to have already been rehabilitated. The rehabilitation of the remaining 108 was being processed. The Action Taken Report of 6 January 2003 indicates that the share of the State for the rehabilitation of 42 bonded labourers had already been released to the concerned districts. In the year 2002-2003, (upto 30 September 2002), 272 bonded labourers had been identified and released in district Betiah and 22 migrant labourers had been received back after detection in Uttar Pradesh in 2002-03; their rehabilitation was being processed. **(Para 8.31)**

15.58 The review conducted on 7 July 2001 in Uttar Pradesh, to which reference is made in the Commission's annual report for 2001-02, had indicated the existence of vigilance committees in 57 out of a total of 70 Districts and

in 190 out of a total of 299 sub divisions. The Commission has noted with satisfaction that vigilance committees are now in place in all 70 districts and 287 out of a total of 296 sub divisions (the number of sub divisions had been earlier wrongly given as 299). Proposals for constitution of sub divisional committees at six places are pending approval of the Government. Proposals were awaited from the district magistrates in respect of remaining three sub divisions. However, the Commission is constrained to record that there has been no detection of bonded labour by the vigilance committees anywhere in the State so far. Whenever detections have been made, this has been as the result of initiatives taken by NGOs, or by the Commission itself, in response to petitions received by it.

It has been observed by the Commission that the migrant bonded labourers are often hurriedly dispatched to their native districts without even initiating the mandatory action required under the law for their rehabilitation. In many cases, even the release orders have not been issued and the district magistrates of the native districts were seldom informed. After the frequent intervention of the Commission, matters have improved, but not enough. The Union Labour Ministry is aware of the fact that the rehabilitation of migrant labourers is not being pursued effectively by any agency. The Commission has also brought this matter to the notice of the Supreme Court through its periodical reports....

It would be clear from the facts indicated above that the rehabilitation of identified and released labourers has been extremely slow. Delay in the receipt of funds from the Government of India is often cited as the reason for this. However, it has been observed that the State Government has itself been late in sending the necessary utilization certificates to the Centre; further, the State Government has not confirmed, in a timely way, the budgetary allocations made by it for purposes of the matching share of the rehabilitation grant. It is these factors that explain the delay in the release of Central grant.

The Commission also observed that the immediate grant of Rs 1000 as subsistence allowance, required to be provided to every released bonded labourer under the Centrally sponsored scheme, was not being paid because no provision had been made for this essential relief measure in Uttar Pradesh thus far. Given this situation, Dr. Justice K. Ramaswamy, Member of the Commission wrote to both the Chief Minister and the Chief Secretary of Uttar Pradesh on 13 June 2002 but no action had been taken by the Government of Uttar Pradesh on this matter until 31 March 2003. **(Para 8.34, 8.35, 8.37 & 8.38)**

15.59 The Commission has directed that all of the 13 (now 16) bonded labour prone States identified by the Ministry of Labour, Government of India should send a status report on the detection and rehabilitation of bonded labourers as of 31 December 2001 and, in addition, a quarterly statement in respect of the detection and rehabilitation of bonded labourers as from 1 January 2002 onward. Thus far, only six States, namely, Orissa, Bihar, Uttar Pradesh, Maharashtra, Gujarat and Aruanchal Pradesh are furnishing this information regularly. Haryana and Punjab sent initial status reports but are not sending their quarterly reports regularly. The Commission has noted with some dismay that the States of Andhra Pradesh, Karnataka, Jharkhand, Tamil Nadu, Chattisgarh and Madhya Pradesh have not even replied as yet. It is also worth recording that the Governments of Gujarat, Uttaranchal and Kerala have been asserting regularly that the problem does not exist in their respective States. **(Para 8.39)**

15.60 In the southern States of Andhra Pradesh, Tamil Nadu, Karnataka and Kerala, the Special Rapporteur of the Commission held review meetings on child labour and bonded labour with the Chief Secretaries and nodal secretaries.... The main thrust of the Special Rapporteur's effort has been to influence policy at the highest level so as to create a culture of convergence and effective coordination of the policy efforts of the various Departments of the Government that, in one manner or another, have the responsibility for this work and then to get down to the field to evaluate how the Governments are implementing the policy commitments made by them. The effort is thus multi-pronged and not confined to any one level of governance. As a rule, convergence is sought to be encouraged among the Departments of Education, Women and Child Welfare, Labour, Rural Development, Cooperation, Scheduled Castes and Scheduled Tribes Welfare and Revenue, some of which are, themselves, the nodal Departments for bonded labour and child labour. Poverty strategies, including the importance of credit, and the involvement of NGOs, have been central to the Special Rapporteur's effort. It has been the Special Rapporteur's view that policy answers are necessary for problems of this magnitude and that, therefore, it is essential to remain in touch with policy makers, not least because of the rapid turn-over of senior secretaries to Government in the States, including at the level of Chief Secretary.... As for the involvement of NGOs, the Special Rapporteur has regularly held discussions with them during his visits to the various States of the region and has sought their inputs and cooperation in the work of the Commission. Further to a successful effort in 2001 to get the Government of Karnataka to formulate an Action Plan for the Elimination of Child Labour in that State, Shri Venugopal

urged the Government of Tamil Nadu to prepare a similar Action Plan for the elimination of Child Labour in Tamil Nadu. As part of this effort, in November 2002, he furnished to the Tamil Nadu Government various inputs relevant to the preparation of the Action Plan. The Commission is happy to note that a Plan is now under preparation in Tamil Nadu.

It will be recalled that, with encouragement from the Special Rapporteur, the Government of Tamil Nadu had, in the year 2000, formulated a Manual for the Elimination of Bonded Labour. The Special Rapporteur subsequently persuaded that Government to formulate, in addition, a model Comprehensive Rehabilitation Plan for released Bonded Labourers in Tamil Nadu. The draft was completed in November 2002 and forwarded by the Special Rapporteur to the Secretary General of this Commission on 3 December 2002 for the information of the Commission. This Plan will make for effective and verifiable implementation of the mandate of the Supreme Court. It will also be a valuable instrument for the mobilization of a higher level of resources. **(Para 8.42, 8.43, 8.47, 8.48 & 8.49)**

15.61 In the previous two annual reports, the Commission's views on the rehabilitation of people displaced by mega projects were spelt out in detail. The Commission expressed the opinion that the resettlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act itself, or be the subject of appropriate separate legislation so that the issues concerned become justiciable. During the year under review, the Commission took up this matter with the Union Ministry of Rural Development on several occasions, reminding the latter of its views.

The Commission regrets the long delay that has occurred in respect of these matters. Under the terms of the Protection of Human Rights Act, 1993, the Commission has frequently commented on issues relating to legislation that is under consideration. It therefore finds it difficult to understand why the draft bills are being withheld from it. The Commission has, accordingly, asked its Secretary General to pursue this matter with his counterparts and report back to the Commission **(Para 8.50 & 8.55)**

15.62 Some 50 to 60 million of the people of India experience physical, intellectual or psychological impairment of varying degrees, temporarily or permanently. Their lives are often handicapped by social, cultural, economic, infrastructural and attitudinal barriers which hamper their access to

opportunities and their capacity to enjoy rights on equal terms. The Commission is strongly of the view that people with disabilities have the potential to contribute richly to the life of the nation, including its development, provided their rights are protected, dignity restored and the difference of ability recognized. The Commission has therefore adopted a carefully structured approach to ensure that persons with disabilities increasingly enjoy the range of human rights to which they are entitled. To assist it in this endeavour, the Commission appointed Smt. Anuradha Mohit, former Deputy Chief Commissioner for Persons with Disabilities, Government of India, to be its Special Rapporteur in dealing with issues concerning persons with disabilities. **(Para 8.56)**

15.63 During the period under review, the Commission adopted an in-house disability policy and an agenda for action. The overarching aim of the policy is to incorporate the disability perspective in all aspects of the work of the Commission and, laterally, promote new disability norms and standards based on human right values. The critical areas for intervention by the Central, State and local governments were identified and recommendations were communicated, along with suggested actions for the achievement of targets. The Commission is alive to the fact that disability combined with other factors such as gender, caste, location, economic and cultural status can create complex barriers resulting in discrimination on multiple grounds. The strategy to combat such discrimination must therefore be equally comprehensive, if persons with disabilities are to be enabled to exercise their rights and freedoms fully. **(Para 8.57)**

15.64 In the course of the year under review, the Commission made a series of recommendations to promote and protect the rights of persons with disabilities. These were conveyed to the competent authorities in the States and in the Centre and an outline of those recommendations is given below:

- State Policy: It was indicated that the States should evolve a 'Disability State Policy and Agenda for Action' with the aim of
 - Fulfilling their obligations under the Constitution and disability related laws;
 - Optimally utilizing resources allocated under different schemes for the empowerment of people with disabilities;
 - Enabling equal and even growth of the infrastructure for the delivery of basic goods and services to all people with disabilities.
 - Barrier Free Infrastructure: The Government of India and State Governments were asked to elaborate and adopt National/State policies

on accessible infrastructure for persons with disabilities in order to ensure barrier-free access to the built environment, the transport system, telecommunications, information and broadcasting and public facilities.

- **Vertical Integration:** It was stated that all Ministries/Departments and specialized institutions for women, children, youth, Scheduled Castes, Scheduled Tribes and other special groups must integrate the disability concern in their policies, programmes and schemes.
- **Implementation of Laws:** State Governments, Union Territories Administrations and, Local Authorities were asked to frame and introduce schemes, rules, regulations and pass administrative orders, to bring into force the various provisions of the Disabilities Act, 1995. It was added that amendments must be carried out to remove inconsistent and derogatory provisions.
- **Check Exploitation:** It was stated that the Government must create conditions for preventing begging by the disabled and their exploitation by mafia gangs operating and maintaining beggary. The Centre, States and local authorities must take steps to prohibit NGOs and the media from portraying a negative image of persons with disabilities for the purpose of raising funds.
- **Minimum Standards:** It was proposed that an independent authority needs to be established with the aim of regulating, standardizing, monitoring and supervising the working of institutions imparting education, training and rehabilitation services to people with disabilities.
- **Social Security:** It was urged that governments, at all levels, need to provide realistic social security plan for all people with disabilities living below the poverty line. **(Para 8.58)**

15.65 Diagnostic and therapeutic facilities have been improved considerably at RINPAS and IMHH Agra. However, they are still not upto the mark at the GMA, where psycho-diagnostic facilities and appropriate behavioural techniques could not be developed adequately owing to the acute shortage of clinical psychologists and psychiatric social workers. Despite repeated directions of the Commission, the Government of Madhya Pradesh has not been able to fill the post of Director and provide the sanctioned number of psychiatrists, clinical psychologists and psychiatric social workers. **(Para 8.70)**

15.66 While it appears that steps are being taken in some States to merge the Denotified Tribes and Nomadic Tribes with other categories of disadvantaged sections of 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. There is, evidently, a de-facto situation still prevailing in which persons belonging to these groups are singled out for arbitrary and discriminatory treatment. It is this situation which concerns the Commission, and which requires it to continue to pursue this matter. **(Para 8.86)**

15.67 In respect of manual scavenging, the Commission would like to reiterate that leadership and determination to end this unacceptable practice must come from the highest political echelons failing which, manual scavenging will persist in spite of laws that are enacted. There is therefore need to mobilize political cadres and social activists to ensure that this practice, which constitutes a gross violation of human rights and an assault on the dignity and worth of human persons, is brought to an end. Its persistence flies in the face of the constitutional guarantee of a life with dignity for every human being in the countryCertain States stressed that considerable funds would be required to convert dry latrines into wet latrines and suggested increased funding from the Government of India and international sources. The Commission emphasized that the States and Central Government needed to pool their resources together to ensure that the practice of manual scavenging is eradicated once and for all. **(Para 8.90 & 8.92)**

15.68 It will be recalled that the Commission had, in Durban, expressed its views on discrimination based on 'race', 'caste' and 'descent' and had taken the position that, while "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 was, "above all, a national responsibility and moral imperative" to ensure that discrimination based on 'race', 'caste' and 'descent' are brought to an end in our country and that the constitutional guarantees against discrimination are vigorously implemented and honoured. In pursuance of this Statement and this objective, during the year under review, the Commission requested Shri K.B. Saxena, IAS (Retd.) to carry out a study on atrocities against the Scheduled Castes and suggest appropriate recommendations to address this serious issue. Shri K.B. Saxena, accordingly, undertook the study and submitted his report entitled "Prevention of atrocities against Scheduled Castes: Policy and Performance: Suggested Interventions and Initiatives for NHRC" on 25 November 2002. The Commission

discussed the recommendations made by Shri K.B. Saxena in his report and, thereafter, decided that a special Cell may be constituted in the Commission to monitor their implementation. The Cell has since been constituted and has initiated action on the implementation of these recommendations. **(Para 8.109)**

15.69 The Commission is of the view that the matter of employment of children by government servants should not rest with the amendment of Conduct Rules. The Rules must be monitored with zeal, if the odious practice of employing children as domestic help is to end. Instances have come to the attention of the Commission, notably through reports in the press, that government servants are, on occasion, still violating the amended Rules. In such instances, the Commission has taken-up the matter with the State Government concerned. Given these circumstances, it remains essential for the Commission to remain vigilant in respect of this matter. **(Para 9.5)**

15.70 In respect of Musahar community, Shri Saxena has outlined the specific steps that should be taken by various departments of the Government of India and the Government of Bihar to assist the Musahars. He emphasized, in particular, the need for housing and the assistance that could be provided through the Indira Awas Yojana and Jawahar Rozgar Yojna. He outlined, in addition, the schemes required for drinking water, nutrition, education, health, the welfare of women, food security, poverty alleviation, social security, allotment of land, skill development, panchayats, and ways of dealing with atrocities.

After considering the action plan prepared by Shri Saxena, the Commission recommended that it be sent to the concerned Ministries/Departments in the Government of India and the Government of Bihar. The matter will be pursued by the Commission. **(Para 9.8 & 9.9)**

15.71 The Commission was informed that the Government of India have been taking steps to formulate the National Plan of Action on Human Rights in consultation with all concerned. The Commission was also informed that once the draft plan is available, the Ministry of Home Affairs intends to hold a seminar, to which a representative of the Commission will be invited, to discuss and finalize it for adoption. As the matter has been pending for longer than it should, the Commission urges that action to draft the National Action Plan for Promotion and Protection of Human Rights now be completed expeditiously. **(Para 10.2)**

15.72 In the Memorandum of Action Taken on the Commission's annual report 2000-2001, it has been stated that the "National Action Plan for Human Rights Education has been adopted by academic institutions, bureaucracy and the police. The various authorities, which are involved in the implementation, have already commenced the implementation of the Human Rights Education Awareness Programme.The Commission welcomes these developments and expresses the hope that the implementation of the National Action Plan for Human Rights Education will proceed carefully, methodically and involve ever-widening sections of society. **(Para 10.4)**

15.73 With regard to the mass awareness programme, the National Action Plan for Human Rights Education identified Doordarshan and AIR as nodal media units. The Commission, therefore, pursued the matter with the Ministry of Information and Broadcasting to have follow-up action initiated on the Action Plan. The Secretary General of the Commission met with the Secretary, Ministry of Information and Broadcasting to discuss ways of promoting human rights awareness through the various media units working under the Ministry of Information and Broadcasting. A number of action points emerged for joint co-operation. They included, inter alia, greater coverage to human rights issues in Doordarshan news programmes, preparation of radio and TV spots linking societal issues and problems with human rights; developing hand books of human rights for media persons; posters on human rights issues, etc. A group is to be set up consisting of officers from the Commission and representatives of Doordarshan, All India Radio, Directorate of Audio and Visual Publicity and Press Information Bureau to work out the issues to be considered and the steps to be taken jointly by the Ministry of Information and Broadcasting and the Commission, both on a short term and long term basis, for the spreading of human rights awareness. **(Para 10.5)**

15.74 The Commission has been following the efforts of the State Governments to set up State Human Rights Commissions, an enabling provision for which exists in the Protection of Human Rights Act, 1993... The Commission would like to reiterate the hope that those State Governments which have not yet set up Human Rights Commissions will do so at an early date. The existence of a State Human Rights Commission is a strong indication of the degree of a State Government's commitment to human rights. These Commissions assist the governments concerned in fulfilling their constitutional obligations and responsibilities. **(Para 12.1)**

15.75 In interacting with the National Human Rights Commission, certain of

the State Human Rights Commissions have expressed their unhappiness over the difficulties they are experiencing in terms of lack of support, both financial and otherwise. The Protection of Human Rights Act 1993 envisaged a network of Commissions, at the National and State levels, working in complementarity with each other for the better protection of human rights in the country. Under the Act as it is at present, the National Human Rights Commission is not in a position to make any recommendations regarding issues before the State Human Rights Commissions. It was in light of this that an amendment to the Act was proposed by the National Human Rights Commission with the aim of developing a mechanism that would govern inter-institutional relationships between the National Human Rights Commission and the State Commissions, including the grant of powers of superintendence to the former, similar to those under Article 136 of the Constitution. Strong Commissions reinforce each other, and add substantially to the creation of better governance and a more humane society. It is therefore of great interest to the country as a whole that full support is extended by the Central and State Governments to the Commissions, in order to ensure that the scheme of the Act is respected and its objectives are achieved. The Commissions should be viewed as instruments that contribute to the better protection of human rights, supplementing the work of Governments, it being an obligation of the State to protect the human rights of its people. The Commission urges both the Central and the State Governments to keep this goal constantly in mind. **(Para 12.3)**

15.76 The Commission had observed in its preceding report that among the North-Eastern States, Assam and Manipur had established State Human Rights Commissions and that the other States of the region were, in principle in favour of having Commissions. However, financial and administrative reasons were holding them back and there was need to think further how best the States of the North-Eastern region could have access to one or more Human Rights Commission. Unfortunately little progress appears to have been made in that respect even though, it would clearly be of benefit to the region if such Commissions were established. The Ministry of Home Affairs is therefore once again requested to consult with the State Governments concerned so that appropriate arrangements are made for the North-Eastern States, the well-being of whose people is of the greatest consequence to the country. **(Para 12.4)**

15.77 It remains a matter of regret to the Commission that the promise of section 30 of the Protection of Human Rights Act, 1993 has not been fulfilled even ten years after the adoption of the Act... While a number of States have

notified such Courts, a lack of clarity has persisted as to what offences, precisely, can be classified as human rights offences. For its part, the Commission has proposed a precise amendment to section 30 of the Act, which may be seen in Annexure 1 of the annual report for 2001-2002. Regrettably, in the absence of any definitive action having been taken on that proposal, these Courts have not been able to adequately discharge the purpose for which they were designated. The Commission therefore requests the Central Government to give this matter the attention it deserves. The objectives of the Protection of Human Rights Act, 1993 should not be thwarted by difficulties of the kind that at present persist, despite clear recommendations having been made on how to resolve them. **(Para 12.5, 12.6 & 12.7)**

15.78 The Commission would like to reiterate that it is of utmost importance that both the Central and State Governments respond promptly to requests for reports made by the Commission. Further, they need to act without delay on its varied recommendations in respect of individual cases. The Protection of Human Rights Act 1993 is based on the premise that the fullest cooperation will be extended to the Commission by both the Central and State Governments. It is therefore incumbent on them to assist the Commission in its efforts to dispose of cases promptly and efficiently, in order to ensure the better protection of human rights, as envisaged under the Act, is achieved. **(Para 13.8)**

15.79 Given the nature and workload of the Investigation Division, the Commission had made certain recommendations in its report for 2001-2002 in respect of the numbers and conditions of service of those working in that Division. As those matters are still unresolved, the Commission reiterates the hope that they will be acted upon positively and expeditiously. **(Para 13.13)**

Sd/-
(A.S. Anand)
Chairperson

Sd/-
(Sujata V. Manohar)
Member

Sd/-
(Virendra Dayal)
Member

Sd/-
(Y. Bhaskar Rao)
Member

Sd/-
(R.S. Kalha)
Member

New Delhi
14 November 2003

Letter of the Chairperson of the Commission, Justice Shri J.S. Verma, to the Prime Minister of India, dated 3 January 2003

ANNEXURE 1

Confidential

D.O.No. 3/CP/2003

3 January 2003

Dear Prime Minister,

Over the past few years, my colleagues and I in the National Human Rights Commission have been guided by two over-arching principles in the discharge of our responsibilities. The first, to promote and protect human rights in our country with all of the vigour and integrity that our Constitution, laws and treaty obligations require. The second, to do so in a manner that enhances respect for our country and faith in its institutions of governance, both at home and abroad.

As I prepare to lay down the reins of office shortly, I would be remiss if I did not convey to you my deep and continuing anxiety in respect of a situation that has vast implications for the well-being and reputation of our country, its people and institutions - implications that far transcend political considerations - but which impinge directly on the principles that have guided the work of this Commission.

I refer to the human rights situation in Gujarat resulting from the unconscionable burning of the Sabarmati Express in Godhra on 27 February 2002, causing the death of innocent men, women and children, and the subsequent murder, arson, rape and looting that occurred in that State.

These grievous events, that caused great pain and shock to you, to the nation and to the world, continue to pose disturbing questions from the perspective of human rights - quite apart from many other perspectives: political, economic, social and cultural.

From the point of view of this Commission, we continue to be profoundly concerned as to whether those who perpetrated the outrage in Godhra, and those who were subsequently responsible for the gross violations of human rights that occurred, will be prosecuted and punished to the full extent required by our Constitution, laws and treaty obligations. Likewise, we remain concerned as to whether the victims and those related to them by kinship or community will be allowed to avail in full measure of the legal and other remedies that should be provided to them under these same Statutes and instruments.

As outlined, in particular, in the Proceedings of this Commission dated 1 April and 31 May 2002, of which I took the liberty of sending copies to you earlier, there are a number of steps that can and must be taken if justice is to be done. I will not repeat these measures in this letter, as they are fully listed in those Proceedings.

I would, however, like to observe, with great respect, that if our country should fall short in rendering justice, promptly and effectively, to the victims, their immediate families, dependents and other persons or groups connected with the victims, a serious travesty of the law will occur with potentially grave consequences, not only to those immediately affected, but to the reputation of our country and its institutions of governance, including the judiciary and the National Human Rights Commission.

Regrettably, to date, in spite of the recommendations made by this Commission, not enough has been done to assure the victims, our country and the world at large, that the instruments of the State are proceeding with adequate integrity and diligence to remedy the wrongs that have occurred.

Nor, I am saddened to observe, has the appointment of the Justice Nanavati- Shah Commission by the State Government allayed fears in this respect. In such circumstances, in my view, further delay in taking appropriate action would compound the tragedy that has occurred. It would also affect the prospects of long-term peace and reconciliation and, potentially and equally dangerously, render the country vulnerable to charges of granting impunity to

those who have violated the Constitution and laws of our land, and international human rights instruments that our country is in honour bound to uphold.

From your great experience and knowledge of human rights matters, Mr. Prime Minister, you are, above all, fully aware that there has been vast growth in the scope and range of human rights jurisprudence over the past years. This jurisprudence has, in particular, developed in two directions. Firstly, the State has increasingly been held responsible not only for the acts of its own agents, but also for the acts of non-State players acting within its jurisdiction when large-scale human rights violations have occurred. Secondly, when the institutions of a State have appeared to act inadequately to redress certain grave categories of human rights violations, or appeared to grant impunity to those involved in such violations, the emerging jurisprudence has pressed for accountability before international forums and tribunals.

I need hardly add that it should never be said that the institutions of this country - institutions of which we are justly proud and which have been developed and strengthened over the years with great care - may fail to prove equal to the challenge posed by the large-scale violation of human rights that occurred in Gujarat.

I have been apprehensive in regard to this matter for quite some time, particularly because of some observations made to me by visitors to the Commission, both foreigners and Indians. On all such occasions, I have impressed upon them the strength of our national institutions and the democratic space available to them for their effective and independent functioning. I have also told them that they should not be misled by some intemperate and ill informed attacks on the Commission by a few, including certain sections of the media, as they were not representative of the wider public opinion of the country or the views of your government.

It appears to me, in such circumstances, that the leadership and institutions of our country must not rest until justice is done and those responsible for the large-scale violations are prosecuted and punished; and until the victims and those associated with them are granted the remedies due to them under the law.

Contemporary human rights jurisprudence requires that the victims must have ready access to the legal system; that prompt and effective steps are taken

by the system to ensure that effective disciplinary, administrative, civil and criminal action is taken against those guilty of acts of omission or commission resulting in the violation of human rights; that reparation is provided, individually or collectively, to those who have suffered; that the reparation is proportionate to the gravity of the violations and damage that occurred, and that it include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

I turn to you, Mr. Prime Minister, both as Head of Government and as a person with a deep and abiding understanding of the issues at stake, to express my anguish in respect of this matter as I prepare to relinquish office.

I should be deeply grateful if you could kindly monitor the situation and issue directives to the competent authorities, both at the State and Central levels, to ensure that justice is done along the lines outlined in this letter and set-out in greater detail in the earlier recommendations of this Commission. Your personal involvement in this essential effort would, I am sure, be deeply appreciated by my successor and colleagues in the Commission, no less than by myself. It would also accord, I am sure, with the wishes of all who have the best interests of our country at heart, whether within India or in the wider international community. I have no doubt, the number of such people in our country is overwhelming.

May I conclude, Mr. Prime Minister, with my very best wishes for the New Year and warm personal regards,

Yours sincerely,

(J.S. Verma)

Hon'ble Shri A.B. Vajpayee
Prime Minister of India
7, Race Course Road
New Delhi

State-wise position indicating number of custodial deaths reported to the Commission in 2002-03

ANNEXURE 2

State	Custodial Death Cases registered w.e.f 01.04.2002 to 31.03.2003		
	Judicial Custody	Police Custody	Total
Andhra Pradesh	112	10	122
Arunachal Pradesh	2	2	4
Assam	13	15	28
Bihar	153	4	157
Chhatisgarh	29	3	32
Goa	1	0	1
Gujarat	34	17	51
Haryana	41	6	47
Himachal Pradesh	2	0	2
Jammu & Kashmir	0	0	0
Jharkhand	41	6	47
Karnataka	49	16	65
Kerala	50	4	54
Madhya Pradesh	36	1	37
Maharashtra	117	26	143
Manipur	1	0	1
Meghalaya	3	3	6
Mizoram	2	0	2
Nagaland	0	0	0
Orissa	41	1	42
Punjab	65	9	74
Rajasthan	55	6	61
Sikkim	0	0	0
Tamil Nadu	51	17	68

State	Custodial Death Cases registered w.e.f 01.04.2002 to 31.03.2003		
	Judicial Custody	Police Custody	Total
Tripura	1	1	2
Uttaranchal	7	1	8
Uttar Pradesh	169	16	185
West Bengal	49	16	65
Union Territories			
Andaman & Nicobar Islands	0	0	0
Chandigarh	3	0	3
Dadra & Nagar Haveli	0	0	0
Daman & Diu	0	0	0
Delhi	30	2	32
Lakshadweep	0	0	0
Pondicherry	0	1	1
Total	1157	183	1340

Statement showing number of intimations received from State authorities considered and processed by the Commission, relating to police encounters during 2002-2003

ANNEXURE 3

Sl. No.	Name of the State / Union Territory	No. of intimations processed but pending for consideration as on 1/4/2002	No. of intimations registered	Total (3+4)	No. of intimations considered			No. of intimations processed but pending consideration
					concluded	Pending	Total	
1	2	3	4	5	6	7	8	9
1	ANDHRA PRADESH	0	7	7	0	7	7	0
2	ARUNACHAL PRADESH	0	0	0	0	0	0	0
3	ASSAM	0	2	2	0	2	2	0
4	BIHAR	0	4	4	0	4	4	0
5	GOA	0	0	0	0	0	0	0
6	GUJARAT	0	1	1	0	1	1	0
7	HARYANA	0	1	1	0	1	1	0
8	HIMACHAL PRADESH	0	0	0	0	0	0	0
9	JAMMU & KASHMIR	0	0	0	0	0	0	0
10	KARNATAKA	0	1	1	0	1	1	0
11	KERALA	0	1	1	0	1	1	0
12	MADHYA PRADESH	0	1	1	0	1	1	0
13	MAHARASHTRA	1	10	11	0	9	9	2
14	MANIPUR	0	0	0	0	0	0	0
15	MEGHALAYA	0	1	1	0	1	1	0
16	MIZORAM	0	0	0	0	0	0	0
17	NAGALAND	0	0	0	0	0	0	0
18	ORISSA	0	0	0	0	0	0	0
19	PUNJAB	0	0	0	0	0	0	0
20	RAJASTHAN	0	1	1	0	1	1	0

Sl. No.	Name of the State / Union Territory	No. of intimations processed but pending for consideration as on 1/4/2002	No. of intimations registered	Total (3+4)	No. of intimations considered			No. of intimations processed but pending consideration
					concluded	Pending	Total	
1	2	3	4	5	6	7	8	9
21	SIKKIM	0	0	0	0	0	0	0
22	TAMILNADU	0	2	2	0	2	2	0
23	TRIPURA	0	0	0	0	0	0	0
24	UTTAR PRADESH	1	41	42	2	38	40	2
25	WEST BENGAL	0	2	2	1	1	2	0
26	A & N ISLANDS	0	0	0	0	0	0	0
27	CHANDIGARH	0	0	0	0	0	0	0
28	DADRA & NAGAR HAVELI	0	0	0	0	0	0	0
29	DAMAN & DIU	0	0	0	0	0	0	0
30	DELHI	1	6	7	0	6	6	1
31	LAKSHADWEEP	0	0	0	0	0	0	0
32	PONDICHERRY	0	0	0	0	0	0	0
33	CHHATTISGARH	0	0	0	0	0	0	0
34	JHARKHAND	0	0	0	0	0	0	0
35	UTTARANCHAL	0	2	2	0	2	2	0
	TOTAL	3	83	86	3	78	81	5

State-wise list of matters disposed of/pending disposal by the commission relating to police encounters during the year 2002-2003

ANNEXURE 4

Sl. No.	Name of state	Matters pending for the year 2001-2002	Matters concluded during 2002-2003 relating to the year 2001-2002	Pendency of matters relating to the year 2001-2002	Pendency of matters for the year 2002-2003	Total pendency of matters as on 31/3/03
1	2	3	4	5	6	7
1	ANDHRA PRADESH	2	1	1	7	8
2	ARUNACHAL PRADESH	0	0	0	0	0
3	ASSAM	0	0	0	2	2
4	BIHAR	2	1	1	4	5
5	GOA	0	0	0	0	0
6	GUJARAT	0	0	0	1	1
7	HARYANA	0	0	0	1	1
8	HIMACHAL PRADESH	0	0	0	0	0
9	JAMMU & KASHMIR	1	0	1	0	1
10	KARNATAKA	0	0	0	1	1
11	KERALA	0	0	0	1	1
12	MADHYA PRADESH	1	0	1	1	2
13	MAHARASHTRA	2	0	2	9	11
14	MANIPUR	0	0	0	0	0
15	MEGHALAYA	0	0	0	1	1
16	MIZORAM	0	0	0	0	0
17	NAGALAND	0	0	0	0	0
18	ORISSA	0	0	0	0	0
19	PUNJAB	1	0	1	0	1
20	RAJASTHAN	0	0	0	1	1
21	SIKKIM	0	0	0	0	0
22	TAMILNADU	0	0	0	2	2

Sl. No.	Name of state	Matters pending for the year 2001-2002	Matters concluded during 2002-2003 relating to the year 2001-2002	Pendency of matters relating to the year 2001-2002	Pendency of matters for the year 2002-2003	Total pendency of matters as on 31/3/03
1	2	3	4	5	6	7
23	TRIPURA	0	0	0	0	0
24	UTTAR PRADESH	41	17	24	38	62
25	WEST BENGAL	0	0	0	1	1
26	A & N ISLANDS	0	0	0	0	0
27	CHANDIGARH	0	0	0	0	0
28	DADRA & NAGAR HAVELI	0	0	0	0	0
29	DAMAN & DIU	0	0	0	0	0
30	DELHI	2	2	0	6	6
31	LAKSHADWEEP	0	0	0	0	0
32	PONDICHERRY	0	0	0	0	0
33	CHHATTISGARH	0	0	0	0	0
34	JHARKHAND	3	1	2	0	2
35	UTTARANCHAL	0	0	0	2	2
	TOTAL	55	22	33	78	111

The Protection from Domestic Violence Bill, 2002 -
Amendments suggested by NHRC

ANNEXURE 5

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>Chapter I</p> <p>Preliminary</p> <p>1. Short title, extent and commencement</p> <p>1) This Act may be called the Protection from Domestic Violence Act, 2002.</p> <p>2) It extends to the whole of India except the State of Jammu and Kashmir.</p> <p>3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p> <p>2. Definitions</p> <p>In this Act, unless the context otherwise requires,---</p> <p>a) "aggrieved person" means any woman who is or has been a relative of the respondent and who alleges to have been subjected to act of domestic violence by the respondent;</p>	<p>Chapter I</p> <p>Preliminary</p> <p>1. Short title, extent and commencement</p> <p>1) This Act may be called the Protection from Domestic Violence Act, 2002.</p> <p>2) It extends to the whole of India except the State of Jammu and Kashmir.</p> <p>3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p> <p>2. Definitions</p> <p>In this Act, unless the context otherwise requires,---</p> <p>a) "aggrieved person" means any woman or child who is or has been in a domestic relationship with the respondent and who has been subjected to acts of domestic violence by the respondent.</p> <p>After sub-section 2(a), to insert new sub-section 2(b) which would read as follows :</p> <p>b) "domestic relationship"</p>	<p>(a) Inclusion of child in the definition of aggrieved person is important as many a times, the child is also subject to cruelty along with the woman either directly or indirectly.</p> <p>The term child has been widely defined later in Section 2(m) under the amendments proposed by the Commission.</p>

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	<p>means a relationship between two persons who live or have, at any point of time, lived together in the shared household, in any of the following ways:</p> <ul style="list-style-type: none"> ● they are or were married to each other, including marriage according to any law, custom, religion, or usage, or an invalid marriage; ● they cohabit or have at some stage cohabited together; ● they are related by consanguinity, marriage, adoption or are family members living together as a joint family. 	<ul style="list-style-type: none"> ● This clause is relevant as it has been observed many times that people (specially In the tribal regions) who are married according to the customs prevalent in their community discover later that their marriage does not qualify as a valid marriage under the personal laws. If the section is limited to the term 'relatives', it would leave these women with no recourse in instances of domestic violence committed on them. The Standing Committee of Parliament has also recommended this. ● The inclusion of the term 'consanguinity' would be beneficial, as it would cover within its ambit violence committed on the victim by persons apart from her husband

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<p>(b) "domestic violence" has the same meaning assigned to it as in section 4;</p>	<p>Sub-section 2(b) of Government of India (GOI) Bill would become sub-section 2(c) and would read as follows:</p> <p>(c) "domestic violence" includes any act, omission or conduct which is of such a nature as to harm or injure or has the potential of harming or injuring the health, safety or well-being of the aggrieved person or any child in the domestic relationship and includes physical abuse, sexual abuse, verbal and mental abuse and economic abuse. It further includes conduct falling under Section 4.</p> <p>Explanation</p> <ul style="list-style-type: none">● "Physical abuse" includes any act or conduct which	<p>or In-laws. For example, one cannot exclude situations where act of violence can be committed/ is committed on the females by the male members of the family, like a son on the mother or a brother on his sister. A wider definition would thus help in reducing acts of violence by placing liability on a larger network of people.</p> <ul style="list-style-type: none">● There is a need to elaborate the meaning of domestic violence so as to ensure that the perpetrators of violence do not evade punishment using the limited scope of the section as proposed by the GOI. <p>Violence can be committed on a person not just by acts, but also through omissions. There is a need to include even those cases where though the act or omission does not actually lead to any harm or injury but is otherwise capable of inflicting harm or injury on the woman or the child.</p> <ul style="list-style-type: none">● Abuse has been defined to include not just

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	<p>is of such a nature so as to cause bodily pain, harm or danger to life, limb, or health or impair the health or development of aggrieved person, and includes assault, criminal intimidation and criminal force.</p> <ul style="list-style-type: none"> ● "Sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the aggrieved person. ● "Sexual abuse" of a child includes any act or conduct of a sexual nature that abuses, harms and violates the dignity of a child in a domestic relationship. ● "Verbal and mental abuse" includes insults, ridicule, humiliation, degrading treatment or name calling especially with regard to not having a child or a male child or repeated threats to cause physical pain to any person in whom the aggrieved person is interested. ● "Economic abuse" includes deprivation of any or all economic or financial resources to which the aggrieved person is entitled under law or custom whether payable under an order of Court or otherwise or which the aggrieved person requires out of necessity, including 	<p>physical but also sexual and mental abuse. This would be beneficial, as it would also cover the aspect of marital rape within its ambit, which is otherwise an ignored act of domestic violence on women. Inclusion of verbal abuse would reduce chances of harassment that a women faces on the hands of the perpetrator.</p> <ul style="list-style-type: none"> ● The inclusion of economic abuse is vital for the protection of those women who are financially dependent on the respondents. By withdrawing or threatening to withdraw all economic support from the woman, the perpetrators of violence

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	<p>but not limited to household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, assets whether movable or immovable, valuables, shares, securities, bonds etc. or other property which the aggrieved person is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children as well as maintenance of aggrieved person and her children.</p> <p>Sub-section 2(c) of the proposed GOI Bill would accordingly become sub-section 2(d)</p>	<p>can discourage reporting of instances of domestic violence, thereby making the woman's position more vulnerable. Inclusion of economic abuse would further secure the woman's right to maintenance.</p>
<p>C) "Magistrate" means the Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the aggrieved person resides;</p>	<p>d) "Magistrate" means the Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the aggrieved person resides;</p> <p>Sub-section 2(d) of GOI Bill would accordingly become sub-section 2(e)</p>	
<p>d) "monetary relief" means compensation which a Magistrate may order at any stage during the hearing of application seeking a protection order, to meet the expenses incurred and losses</p>	<p>e) "monetary relief" means compensation by the respondent which a Magistrate may order at any stage during the hearing of application seeking a protection order to meet the expenses</p>	<p>(e) Making the respondents pecuniary liable would put financial pressure on them, and considering the fact that the maximum number of cases reported on domestic violence are</p>

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<p>suffered by the aggrieved person as a result of the domestic violence;</p> <p>e) "notification" means a notification published in the Official Gazette;</p> <p>f) "prescribed" means prescribed by rules made under this Act;</p> <p>g) "Protection Officer" means an officer appointed by the State government under section 5;</p> <p>h) "protection order" means an order made under section 14;</p> <p>i) "relative" includes any person related by blood, marriage or adoption and</p>	<p>incurred and losses suffered by the aggrieved person as a result of domestic violence.</p> <p>Sub-section 2(e) of GOI Bill would become sub-section 2(f)</p> <p>f) "notification" means a notification published in the Official Gazette.</p> <p>Sub-section 2(f) of GOI Bill would become sub-section 2(g)</p> <p>a) "prescribed" means prescribed by or under this Act or rules made hereunder.</p> <p>Sub-section 2(g) of GOI Bill would become sub-section 2(h)</p> <p>h) "Protection Officer" means an officer appointed by the State Government under section 5.</p> <p>Sub-section 2(h) of GOI Bill would become sub-section 2(i)</p> <p>i) "protection order" means an order made under Section 14.</p> <p>Sub-section 2(i) of GOI Bill may be deleted as this sub-section has been taken care</p>	<p>from the middle/ lower strata of the society where pecuniary liability is found to be more burdensome than imprisonment, such a liability would have a more deterrent effect and would thereby reduce the frequency of such instances.</p> <p>● The change has been brought to give more weightage to the provision.</p> <p>(i) The term 'relative' should be deleted as it has already been replaced by the term 'domestic relationship' in section 2(b) under the amendments proposed</p>

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<p>living with the respondent;</p> <p>j) "respondent" means any person who is or has been a relative of the aggrieved person and against whom the aggrieved person has sought monetary relief or has made an application for protection order to the Magistrate or to the Protection Officer, as the case may be; and</p> <p>k) "service provider" means any voluntary association registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interests of women by any means including legal aid, medical, financial or other assistance.</p>	<p>of by sub-section 2(b) i.e. domestic relationship.</p> <p>j) "respondent" means any person who is or has been in a domestic relationship with the aggrieved person or a person who is aiding such a person in committing or threatening to commit domestic violence and against whom the aggrieved person has sought monetary relief or has made an application for protection order to the Magistrate or to the Protection Officer, as the case may be.</p> <p>Sub-section 2(k) of GOI Bill may be reworded as</p> <p>k) "accredited service provider" means governmental, non-governmental, voluntary and charitable organisations or associations or institutions working for the welfare of women and children and are registered under the Societies Registration Act, 1860 (Act XXI of 1860), or any other law and providing medical aid, shelter, counselling services, legal and financial aid or other kind of assistance to victims of domestic violence.</p>	<p>by the Commission.</p> <p>(j) This is to widen the scope of the section so as to prevent any mental torture on the woman due to a threat of violence. By making not just the commission, but also aiding/abetting the commission of domestic violence as punishable, indirect participation of persons in inflicting violence would be discouraged.</p> <p>(k) This definition has been elaborated to include various organisations apart from the ones specified in the Bill so as to ensure that the traumatised women do find some support while they undergo the impact of domestic violence. The emergence of a number of voluntary and charitable organisations, which are quite active in specified fields and their inclusion, would widen the support system available to a victim of domestic violence. These service providers should however be accredited, as they would not only be more helpful in providing effective and specialised services to</p>

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	<p>After sub-section 2(k), to insert sub-sections (l), (m) and (n).</p> <p>l) "court" means any Court established under the provisions of the Family Courts Act, 1984 or where no such Court exists, the principal Civil Court of original jurisdiction or any Court or Lok Adalat or any other authority which the State Government may, by notification in the Official Gazette, specify as a Court competent to deal with all or any of the matters specified hereunder and includes any Court in which a petition may be made for relief.</p> <p>m) "child" includes any adopted, step or foster child or any other minor i.e., below the age of 18 years, in a domestic relationship or shared household.</p> <p>n) "shared household" means a household where the aggrieved person lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes property owned jointly or by either the aggrieved person or the respondent or property including tenements, in respect of which either the aggrieved person or the</p>	<p>the victims but can also be held accountable.</p> <p>(l) There is need to include the definition of 'court' in the 'Act' so that the victim knows whom to approach in situations where their rights have been violated. This in a way would also enable them to seek and get speedier justice.</p> <p>(m) the definition of child is being elaborated so that the interest and rights of children who have been adopted or are step or foster children etc. are taken care of.</p> <p>(n) the term 'shared household' has been used earlier in section 2 (b) that defines 'domestic relationship'. This has been defined here to facilitate the comprehension of those provisions where this term has been put to use.</p>

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<p>3. Act not in derogation of any other law.</p> <p>The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.</p> <p>Chapter II</p> <p>Domestic Violence</p> <p>4. Domestic Violence</p> <p>(1) For the purposes of this Act, any conduct of the respondent shall constitute domestic violence if he,--</p> <p>(a) Habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; or</p> <p>(b) Forces the aggrieved person to lead an immoral life; or</p> <p>(c) Otherwise injures or harms the aggrieved person.</p> <p>(2) Nothing contained in clause (c) of sub-section (1) shall amount to domestic violence if the pursuit of course of conduct by the respondent was reasonable for his own protection or for the protection of his or another's property.</p>	<p>respondent or both jointly have any right, title, interest or equity.</p> <p>3. Act not in derogation of any other law.</p> <p>The provision of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.</p> <p>Chapter II</p> <p>Domestic Violence</p> <p>4. Domestic Violence</p> <p>(1) For the purposes of this Act, any conduct of the respondent shall constitute domestic violence if it falls within the definition of domestic violence under Section 2(c). The conduct of the respondent will also constitute domestic violence if he :</p> <p>(a) Forces the aggrieved person to lead an immoral life; or</p> <p>(b) Otherwise injures or harms the aggrieved person</p> <p>Section 4(2) to be deleted altogether.</p>	<p>4(1) This should include the definition of domestic relationship as defined earlier in section 2(b) under the amendment proposed by the Commission so as to ensure coherence in the Act.</p> <p>4(2) The deletion of this sub section is important so as to avoid giving any excuse to the perpetrator for committing any atrocity on the victim. The sub section as elaborated by the GOI is too wide and can be manipulated by the</p>

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<p>Chapter III</p> <p>Protection Officer</p> <p>5. Appointment of Protection Officer</p> <p>(1) The State Government shall, by notification in the Official Gazette, appoint such number of Protection Officers in each district as it may consider necessary and shall notify the area or areas within which a Protection Officer shall exercise his powers and perform his duties under this Act.</p>	<p>Chapter III</p> <p>Protection Officer</p> <p>Section 5 of the GOI Bill to be reworded as</p> <p>5. Appointment and qualifications of Protection Officer.</p> <p>(1) The State Government shall, by notification in the Official Gazette, appoint such number of Protection Officers in each district as it may consider necessary and shall notify the area or areas within which a Protection Officer shall exercise his / her powers and perform his / her duties under this Act.</p> <p>Existing District Commissioners, District Magistrates or State Government officials senior in rank to them may be appointed as Protection Officers. Appointment of any other person as Protection Officer shall be made in joint consultation with the State Public Service Commission and two reputed voluntary social work organisations in the State who have no direct or indirect link with any political party.</p>	<p>accused to evade punishment. The Standing Committee of Parliament supports this view.</p> <p>5. There is need to spell out the minimum qualifications of a Protection Officer so that only those officers who are capable of handling such crimes are entrusted with the job of providing security to the victim. Moreover, they should also be placed reasonably above in the hierarchy so that they could take independent decisions.</p>
(2) The Protection Officer shall	(2) The State Government	(2) The element of sensitivity

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<p>possess such qualifications as may be prescribed.</p> <p>(3) The terms and conditions of service of the Protection Officer and other officers and employees shall be such as may be prescribed.</p> <p>6. Duties of Protection Officer.</p> <p>(1) Where the Protection Officer, after enquiry, believes either suo motu or on the basis of information received from any person under sub-section (1) of section 8 that action should be taken, it shall be his duty to -</p> <p>(a) inform the aggrieved person of right to apply for protection order under section 9;</p> <p>(b) inform about a service provider in the area where the aggrieved person resides so that she may seek support and help from such service provider;</p> <p>(c) inform the aggrieved person of her entitlement</p>	<p>shall ensure that the Protection Officer to be appointed is sensitive to the issues of women and children and possesses such qualifications as it would enable him / her to discharge his / her duties effectively.</p> <p>(3) The terms and conditions of service of the Protection Officer and other officers and employees shall be such as may be prescribed.</p> <p>Section 6 to be reworded as:</p> <p>6. Duties and Functions of Protection Officer.</p> <p>(1) Where the Protection Officer, after enquiry, believes either suo motu or on the basis of information received from any person under sub-section (1) of section 8 that action should be taken, it shall be his duty to -</p> <p>(a) inform the aggrieved person of right to apply for protection order under the provisions of this Act ;</p> <p>(b) inform about an accredited service provider in the area where the aggrieved person resides so that she may seek support and help from such accredited service provider;</p> <p>(c) inform the aggrieved person of her entitlement</p>	<p>is vital, as only a person who can empathise with the victim would be in a position to offer her the much required support and protection needed when such instances occur.</p> <p>The detailed functions are proposed to be included in the Act, for the purpose of ensuring the accountability of the Protection Officer. It would have a two-fold effect, as listing out their functions, on the one hand would prevent the officers from evading their responsibilities and on the other reduce the chances of any arbitrary use of power by them.</p>

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<p>to legal services under the Legal Services Authority Act, 1987;</p> <p>(d) perform such other duties as may be prescribed or as may be ordered to be performed by the Magistrate.</p> <p>(2) It shall also be the duty of the Protection Officer to entertain any request or application made or presented to him under the provisions of this Act by the aggrieved person or by any other person on behalf of the aggrieved person.</p> <p>(3) The Protection Officer on receipt of an application under sub-section (2) shall, where so desired by the aggrieved person, endeavour to assist the aggrieved person and the respondent in an independent and impartial manner to reach an amicable settlement of the grievance under this Act.</p> <p>(4) If no such settlement as stated in sub-section (3) is arrived at, the Protection Officer shall file an application to the</p>	<p>to legal services under the Legal Services Authority Act, 1987;</p> <p>(d) perform such other duties as may be prescribed or as may be ordered to be performed by the Magistrate.</p> <p>(e) The Protection Officer shall function under the supervision and control of the Court, and shall perform duties imposed on him/ her by the Court and by this Act.</p> <p>(2) It shall also be the duty of the Protection Officer to entertain any request or application made or presented to him under the provisions of this Act by the aggrieved person or any other person on behalf of the aggrieved person.</p> <p>(3) The Protection Officer on receipt of an application under sub-section (2) shall, where so desired by the aggrieved, endeavour to assist the aggrieved person and the respondent in an independent and impartial manner to reach an amicable settlement of the grievance under this Act.</p> <p>(4) If no such settlement as stated in sub-section (3) is arrived at, the Protection Officer shall file an application to the</p>	<p>(e) Inclusion of the provision ensuring court's supervision on the functions of the Protection Officer is essential, as it would ensure his/her accountability during the discharge of his/her functions.</p>

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<p>Magistrate under this Act if so desired by the aggrieved person.</p>	<p>Magistrate under this Act if so desired by the aggrieved person.</p> <p>(5) The Protection Officer shall make best efforts to ensure that the activities of the police and the accredited service providers are so co-ordinated as to ensure that the aggrieved person:</p> <p>(a) Has easy access to information about accredited service providers in the area that may provide her with support and help that she may require and enable access to services of the accredited service providers.</p> <p>(b) Is easily able to access transportation to an alternative residence or a safe place of shelter if the aggrieved person so requires.</p> <p>(c) Is able to avail of transportation to the nearest hospital and medical assistance for the treatment of injuries if such assistance is required.</p> <p>(d) Is able to obtain assistance in the collection of her belongings, including stridhan or any other property ordered to be returned or restored to her by the order of the Court, with the assistance of the police.</p> <p>(e) Is able to access the Court for orders under this Act.</p>	

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<p>7. Powers of Protection Officer</p> <p>(1) A Protection Officer within the local limits for which he is appointed shall exercise such powers as may be conferred on him by or under this Act.</p> <p>(2) A Protection Officer may take assistance of any person while exercising his powers or discharging his duties under this Act.</p> <p>(3) A Protection Officer authorised to discharge functions under this Act shall be deemed to be a Civil Court for the purposes of holding enquiries under this Act.</p> <p>8. Information to Protection Officer and exclusion of liability.</p> <p>(1) Any person, who has reason to believe that an act of domestic violence has been, is being, or is likely to be committed, may give information to the Protection Officer.</p> <p>(2) No liability, civil or criminal, shall be incurred by any person for information given in good faith for the purpose of sub-section (1).</p>	<p>7. Powers of Protection Officer</p> <p>(1) A Protection Officer within the local limits for which he / she is appointed shall exercise such powers as may be conferred on him by or under this Act.</p> <p>(2) A Protection Officer may take assistance of any person while exercising his / her powers or discharging his / her duties under this Act.</p> <p>(3) A Protection Officer authorised to discharge functions under this Act shall be deemed to be a Civil Court for the purposes of holding inquiries under this Act.</p> <p>8. Information to Protection Officer and exclusion of liability.</p> <p>(1) Any person, who has reason to believe that an act of domestic violence has been, is being, or is likely to be committed, may give information to the Protection Officer.</p> <p>(2) No liability, civil or criminal, shall be incurred by any person or accredited service provider for information given in good faith for the purpose of sub-section (1).</p>	

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<p>CHAPTER IV</p> <p>PROCEDURE FOR OBTAINING PROTECTION ORDER</p> <p>9. Application to Magistrate</p> <p>(1) The aggrieved person who is a victim of domestic violence, or any other person on her behalf, or the Protection Officer, may present an application to the Magistrate for seeking relief under section 14.</p> <p>(2) The application under sub-section (1) may contain particulars in such form as may be prescribed or as near thereto as possible.</p> <p>(3) The Magistrate shall fix first date of hearing, which shall not exceed fifteen days from the date of the receipt of the application by the Magistrate for consideration of the application.</p> <p>10. Service of notice</p> <p>(1) Notice of the date fixed under section 9 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate.</p> <p>(2) A declaration in such form as may be prescribed, of the Protection Officer regarding service of notice</p>	<p>CHAPTER IV</p> <p>PROCEDURE FOR OBTAINING PROTECTION ORDER</p> <p>9. Application to Magistrate</p> <p>(1) The aggrieved person who is a victim of domestic violence, or any other person on her behalf, or the Protection Officer, may present an application to the Magistrate for seeking relief under section 14.</p> <p>(2) The application under sub-section (1) may contain particulars in such form as may be prescribed or as near thereto as possible.</p> <p>(3) The Magistrate shall fix first date of hearing, which shall not exceed fifteen days from the date of the receipt of the application by the Magistrate for consideration of the application.</p> <p>10. Service of notice</p> <p>(1) Notice of the date fixed under section 9 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate.</p> <p>(2) A declaration in such form as may be prescribed by the Protection Officer regarding service of notice</p>	<p>Clause 9(1) may be amended as suggested by the Standing Committee of Parliament. The proposed NHRC amendment to section 23 covers the same point.</p>

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<p>shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.</p> <p>11. Counselling</p> <p>(1) The Magistrate at any stage of the proceedings under this Act may direct the respondent or the aggrieved person, either singly or jointly, to undergo mandatory counselling with any service provider.</p> <p>(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.</p> <p>12. Assistance of welfare expert</p> <p>In any proceedings under this Act, the Magistrate may secure the service of such person, preferably a woman where available, whether related to parties or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.</p>	<p>shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.</p> <p>11. Counselling</p> <p>(1) The Magistrate at any stage of the hearing on the petition for a protection order direct the respondent to undergo singly or, at the option of the aggrieved person, jointly with the aggrieved person, counselling with any accredited service provider.</p> <p>(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.</p> <p>12. Assistance of welfare expert</p> <p>In any proceedings under this Act, the Magistrate may secure the service of such person, preferably a woman where available, including a person engaged in promoting family welfare, as he thinks fit, for the purpose of assisting him in discharging his functions.</p>	<p>(1) The entire purpose of counselling would be defeated if it is forced upon an individual. Unless a person undergoes it with an open mind with the willingness to bring about a change, no benefit of counselling can be achieved. Thus, counselling should be left open to the victim as well as the respondent rather than making it mandatory as suggested by the GOI.</p> <p>This view has been supported by the recommendation of the Standing Committee of Parliament.</p>

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<p>13. Proceedings to be held in camera</p> <p>The proceedings may be held in camera, if the Magistrate considers that the circumstances of the case so warrant, and shall be so held if either party so desires.</p>	<p>13. Proceedings to be held in camera</p> <p>The proceedings may be held in camera, if the Magistrate considers that the circumstances of the case so warrant, or if either party so desires.</p>	<p>This change has been suggested by the Standing Committee of Parliament.</p>
<p>14. Passing of protection order</p> <p>(1) The Magistrate, after giving opportunity of being heard to the parties to the application, and after being satisfied that the aggrieved person is being subjected to domestic violence, may pass the protection order by directing the respondent to,-</p> <p>(a) refrain from committing any act of domestic violence; or</p>	<p>14. Passing of protection order</p> <p>(1) The Magistrate, after giving opportunity of being heard to the parties to the application, and after being satisfied that the aggrieved person is being subjected to domestic violence-</p> <p>(a) shall pass the protection order by directing the respondent to:</p> <p>(i) Refrain from committing any act of domestic violence including aiding and abetting in the commission of acts of domestic violence; or</p> <p>(ii) Refrain from entering the residence of the aggrieved person; or entering the place of employment of the aggrieved person or, if aggrieved person is a child, its school; or any other place frequented by the aggrieved person; or</p>	<p>14. As the concept of 'domestic violence', 'respondents' etc. has been widened earlier in the Act, there is a subsequent need to incorporate those changes in this particular section also.</p> <p>The changes proposed to be brought in this section has been endorsed by the Standing Committee of Parliament.</p> <p>(ii) A specific direction regarding safety in matrimonial house is proposed to be added as it is generally seen that in cases of domestic violence the victim is under a threat of losing shelter in the matrimonial home and therefore she gives in to the conduct of the respondent(s). The inclusion of this sub-section would ensure the victim a right not just to residence but safe</p>

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<p>(b) pay such monetary relief as the Magistrate deems just, and specify the period in the protection order within which the amount of such monetary relief is to be paid by the respondent to the aggrieved person; or</p> <p>(c) Pass such other direction as may be considered necessary.</p>	<p>(iii) Abstain from alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both parties, either singly or jointly; including her stridhan or any other property held either jointly or separately by the aggrieved person; or</p> <p>a) Desist from causing violence to the dependants, other relatives and persons who give the aggrieved person assistance from domestic violence; or</p> <p>b) Pay such monetary relief as the Magistrate deems just, and specify the period in the protection order within which the amount of such monetary relief is to be paid by the respondent to the aggrieved person; or</p> <p>c) Pass an appropriate direction regarding the residence of the aggrieved person in the matrimonial home including a direction to the respondent not to enter the matrimonial home or any part thereof or disturb the aggrieved person who may be residing in the matrimonial home; or</p> <p>d) Pass such other directions as may be considered necessary.</p>	<p>residence in her matrimonial house.</p> <p>This inclusion has been supported by the recommendation of the Standing Committee of Parliament.</p>

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>(2) Subject to section 11, every endeavour shall be made by the Magistrate hearing the application under this Act to dispose it of within three months from the date of filing of the application.</p> <p>(3) All evidence in any proceeding under this Act shall be taken in the presence of the respondent, or, when a personal attendance of the respondent is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases in the Code of Criminal Procedure, 1973:</p> <p>Provided that if the Magistrate is satisfied that the respondent is wilfully avoiding service of notice, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte.</p> <p>(4) A copy of the protection order shall be forwarded to the Protection Officer and parties to the application.</p> <p>(5) Where the Magistrate is satisfied that circumstances stated in the application presented under section 9 are such so as to justify the immediate intervention of the Magistrate to restrain the respondent from committing domestic</p>	<p>(2) Subject to section 11, every endeavour shall be made by the Magistrate hearing the application under this Act to dispose it of within three months from the date of filing of the application.</p> <p>(3) All evidence in any proceeding under this Act shall be taken in the presence of the respondent, or, when a personal attendance of the respondent is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases in the Code of Criminal Procedure, 1973:</p> <p>Provided that if the Magistrate is satisfied that the respondent is wilfully avoiding service of notice, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte.</p> <p>(4) A copy of the protection order shall be forwarded to the Protection Officer and parties to the application.</p> <p>(5) Where the Magistrate is satisfied that circumstances stated in the application presented under section 9 are such so as to justify the immediate intervention of the Magistrate to restrain the respondent from committing domestic</p>	<p>NHRC also endorses the recommendations of the Standing Committee of Parliament for emergency relief.</p>

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>violence, the Magistrate may issue an interim protection order directing the respondent to restrain from engaging in any act of domestic violence, and the Magistrate may further require the respondent to show cause as to why he should not be ordered to execute a bond, with or without sureties, for maintaining domestic peace for such period as the Magistrate thinks fit.</p> <p>15. Duration and alteration of protection order.</p> <p>(1) A protection order made under section 14 shall be in force in the first instance for such period as the Magistrate may fix but not exceeding two years.</p> <p>(2) The protection order, for reasons to be recorded in writing, may be altered, modified, varied or revoked, on an application either by the aggrieved person or the respondent provided that the Magistrate is satisfied that there is a change in the circumstances that requires such alteration, modification, variation or revocation, as the case may be.</p> <p>CHAPTER V</p> <p>MISCELLANEOUS</p>	<p>violence, the Magistrate may issue an interim protection order directing the respondent to restrain from engaging in any act of domestic violence, and the Magistrate may further require the respondent to show cause as to why he should not be ordered to execute a bond, with or without sureties, for maintaining domestic peace for such period as the Magistrate thinks fit.</p> <p>15. Duration and alteration of protection order.</p> <p>(1) A protection order made under section 14 shall be in force in the first instance for such period as the Magistrate may fix but not exceeding two years.</p> <p>(2) The protection order, for reasons to be recorded in writing may be altered, modified, varied or revoked, on an application either by the aggrieved person or the respondent provided that the Magistrate is satisfied that there is a change in the circumstances that requires such alteration, modification, variation or revocation, as the case may be.</p> <p>CHAPTER V</p> <p>MISCELLANEOUS</p> <p>To add new Section before Section 16 of the GOI Bill which would be as follows:</p>	

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>16. Appeal</p> <p>There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be.</p>	<p>16. Petition</p> <p>Any aggrieved person may apply to the Court for appropriate relief against domestic violence.</p> <p>Notwithstanding the provisions of any other law, the petition may be brought on behalf of the aggrieved person by any other person, provided that the petition must be brought with the written consent of the aggrieved person.</p> <p>Provided further that such written consent would not be necessary in circumstances where the petitioner is an accredited service provider or a Protection Officer and where the aggrieved person is :</p> <p>(a) a minor ;</p> <p>(b) suffering from a mental disorder of such nature and to such an extent that she cannot reasonably be expected to apply by herself;</p> <p>(c) unconscious or otherwise physically or mentally incapable</p> <p>Provided further that an accredited service provider or a Protection Officer shall be entitled to appear before the Court and address the same if such accredited service provider is a petitioner or where the petitioner authorises the accredited service provider.</p>	<p>As evident from the section, the change is being suggested to facilitate reporting of cases of domestic violence even in those situations where the victim herself has been unable to do the same because of certain hindrances related to factors such as age, mental capacity, geographical area, custom religion, area etc. This has been done keeping in view the social structure of the Indian society where more than half the women are illiterate and are unaware of their rights.</p>

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>17. Protection Officer to be a public servant</p> <p>Every Protection Officer, when acting or purporting to act under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.</p> <p>18. Penalty for breach of protection order by the respondent A breach of protection order, or of the interim protection order, by the respondent shall be an offence and shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both.</p>	<p>Section 16 of the GOI Bill would become section 17 and would read as follows :</p> <p>17. Appeal</p> <p>Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973 or in any other law, an appeal shall lie from every judgement or order of the Court, to the Court of Sessions.</p> <p>Sector 17 of GOI Bill would become section 18.</p> <p>18. Protection Officer to be a public servant</p> <p>Every Protection Officer, when acting or purporting to act under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860.</p> <p>Section 18 of GOI Bill would become section 19.</p> <p>19. Penalty for breach of protection order by the respondent</p> <p>A breach of protection order, or of the interim protection order, by the respondent shall be an offence and shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both.</p>	<p>The time as well as other procedural limits given under the Code of Civil Procedure regarding appeal should be relaxed as these procedures instead of facilitating justice would cause more hindrances.</p>

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>19. Penalty for not discharging duties by Protection Officer</p> <p>If any Protection Officer fails or refuses to Discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both.</p>	<p>Section 19 of GOI Bill would become section 20.</p> <p>20. Penalty for not discharging duty by the Protection Officer</p> <p>If any Protection Officer fails or refuses to discharge his / her duties as directed by the Magistrate in the protection order without any sufficient cause, he / she shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand, or with both.</p>	
<p>20. Cognisance of offence committed by Protection Officer</p> <p>No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.</p>	<p>Section 20 of GOI would become section 21.</p> <p>21. Cognisance of offence committed by the Protection Officer</p> <p>No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.</p>	
<p>21. Protection of action taken in good faith</p> <p>No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything</p>	<p>Section 21 of GOI would become section 22.</p> <p>22. Protection of action taken in good faith</p> <p>No suit, prosecution or other legal proceeding shall lie against the</p>	<p>This modification is supported by the recommendation of the Standing Committee of</p>

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>which is in good faith done or intended to be done under this Act or any rule made thereunder.</p> <p>22. Power to make rules</p> <p>(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.</p>	<p>Protection Officer or the accredited service provider for any damage caused or likely to be caused by anything which is in good faith done or is intended to be done under this Act or any rule made thereunder.</p> <p>To add new section after section 22 which would be as follows :</p> <p>23. Jurisdiction</p> <p>(a) Jurisdiction to grant a protection order and / or try offences under this Act lies with any Court, within whose jurisdiction:</p> <p>(i) the aggrieved person permanently or temporarily resides, carries on business or is employed; or,</p> <p>(ii) the respondent resides, carries on business or is employed; or,</p> <p>(iii) the cause of action arose.</p> <p>(b) Any order made hereunder shall be enforceable throughout India.</p> <p>Section 22 of GOI Bill would become section 24</p> <p>24. Power to make rules</p> <p>(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the</p>	<p>Parliament.</p> <p>23) This addition would facilitate reporting of cases in the right forum as it is generally seen that the victim of domestic violence tends to leave her matrimonial home and come back to her maternal home. The question of jurisdiction usually arises in those situations when at the time of the commission of an offence the victim resides at one place and at the time of reporting some other. This addition would confer jurisdiction for trial on either of these courts and would therefore make the judicial process more convenient for the victim.</p> <p>This inclusion has been approved by the Standing Committee of Parliament in its recommendation for the amendment of section 9 (1).</p>

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-</p> <p>a) qualifications, terms and conditions of service for the appointment of Protection Officers, his subordinate staff and their duties;</p> <p>b) duties of the Protection Officer under section 6;</p> <p>c) prescribing the form in which the application may be presented under sub-section of section 9;</p> <p>d) the form and manner in which notice may be served on the respondent and other persons by the Protection Officer under section 10; and</p> <p>e) any other matter in connection with or in relation to this Act.</p> <p>(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions</p>	<p>purposes of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-</p> <p>(a) qualifications, terms and conditions of service for the appointment of Protection Officers, his subordinate staff and their duties;</p> <p>(b) duties of the Protection Officer under section 6;</p> <p>(c) prescribing the form in which the application may be presented under sub-section 2 of section 9 ;</p> <p>(d) the form and manner in which notice may be served on the respondent and other persons by the Protection Officer under section 10; and</p> <p>(e) any other matter in connection with or in relation to this Act.</p> <p>(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions</p>	

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be: so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p> <p>STATEMENT OF OBJECTS AND REASONS</p> <p>1. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Platform of Action (1995) both have acknowledged this. The United Nations Committee on CEDAW (Convention on Elimination of All Forms of Discrimination Against Women) and in its general recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.</p> <p>2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is visited with cruelty by her husband or his relatives is an</p>	<p>aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be: so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p> <p>STATEMENT OF OBJECTS AND REASONS</p> <p>1. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Platform of Action (1995) both have acknowledged this. The United Nations Committee on CEDAW (Convention on Elimination of All Forms of Discrimination Against Women) and in its general recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.</p> <p>2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is visited with cruelty by her husband or his relatives is</p>	

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>offence under section 498A of the Indian Penal Code, 1860. The civil law does not address this phenomenon in its entirety.</p> <p>3. With a view to providing a remedy under the civil law which is intended to preserve the family and at the same time provide protection to victims of domestic violence, legislation is being proposed. The main features as contained in the Bill are as follows:-</p> <p>(i) it is being provided that any conduct of relative of the victim, which subjects her to habitual assault, or makes her life miserable, or injures or harms, or forces her to lead an immoral life would constitute domestic violence;</p> <p>(ii) the Judicial Magistrate of the first class or the Metropolitan Magistrate may take the cognisance of domestic violence and pass a protection order requiring the relative of the woman to refrain from committing an act of domestic violence, or pay monetary relief which is deemed fit in the circumstances or pass any other direction as the Magistrate may consider just;</p> <p>(iii) the magistrate may even require as an interim and urgent measure from the</p>	<p>an offence under section 498A of the Indian Penal Code, 1860. The civil law does not address this phenomenon in its entirety.</p> <p>3. With a view to providing a remedy under the civil law which is intended to preserve the family and at the same time provide protection to victims of domestic violence, legislation is being proposed. The main features as contained in the Bill are as follows:-</p> <p>(i) it is being provided that any conduct of relative of the victim, which subjects her to habitual assault, or makes her life miserable, or injures or harms, or forces her to lead an immoral life would constitute domestic violence;</p> <p>(ii) the Judicial Magistrate of the first class or the Metropolitan Magistrate may take the cognisance of domestic violence and pass a protection order requiring the relative of the woman to refrain from committing an act of domestic violence, or pay monetary relief which is deemed fit in the circumstances or pass any other direction as the Magistrate may consider just;</p> <p>(iii) the magistrate may even require as an interim and urgent measure from the</p>	

Provisions as Stated in the Bill by GOI	Amendments Proposed by National Human Rights Commission typed in bold	Justifications for the Proposed Amendments
<p>relative of the woman to execute a bond, with or without sureties, for maintaining domestic peace;</p> <p>(iv) the violation by the relative of the order made by the Magistrate would constitute an offence punishable with imprisonment upto one year, or with fine, or with both;</p> <p>(v) it is being proposed to set up an institution of Protection Officer to help the victim of domestic violence in making application to the Magistrate and in availing of her other legal rights;</p> <p>(vi) a provision is being made for the appointment of Protection Officers by State Governments and they shall possess such qualifications as may be prescribed by the Central Government; and</p> <p>(vii) Protection Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860, and if he fails or refuses to discharge the duties as directed by the Magistrate, his act shall amount to an offence punishable with imprisonment up to one year, or with fine, or with both.</p> <p>4. The Bill seeks to achieve the above objects.</p>	<p>relative of the woman to execute a bond, with or without sureties, for maintaining domestic peace;</p> <p>(iv) the violation by the relative of the order made by the Magistrate would constitute an offence punishable with imprisonment upto one year, or with fine, or with both;</p> <p>(v) it is being proposed to set up an institution of Protection Officer to help the victim of domestic violence in making application to the Magistrate and in availing of her other legal rights;</p> <p>(vi) a provision is being made for the appointment of Protection Officers by State Governments and they shall possess such qualifications as may be prescribed by the Central Government; and</p> <p>(vii) Protection Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860, and if he/she fails or refuses to discharge the duties as directed by the Magistrate, his/her act shall amount to an offence punishable with imprisonment up to one year, or with fine, or with both.</p> <p>4. The Bill seeks to achieve the above objects.</p>	

Letter from the Chairperson of the Commission dated 27 December 2002 to the Chief Ministers of States and Administrators of Union Territories concerning Rights of the Disabled

ANNEXURE 6

D.O. No. 11/8/2002-PRP&P

27 December 2002

Dear Chief Minister,

The National Human Rights Commission has been greatly concerned with the problems of persons with disability. Its endeavour in this area has been to bring in a paradigm shift in the approach motivated by charity towards the disabled to one based on rights. With this perspective in view, the Commission has recently reviewed the implementation of various legislations/programmes for the disabled both by the Central and State Governments.

Disability being a State subject, the State Governments are to bring the area of human rights of the disabled to the center stage of the developmental agenda. However, it has been brought to the notice of the Commission that the implementation of the policies and programmes for the disabled, by the States has been tardy. Accordingly, the Commission has identified some of the priority areas which require your immediate attention, as:

- Constitution of a task force to frame the policies and monitor its implementation.
- Formulation of 'State Disability Policy and Plan of Action.'
- Vertical Integration of schemes of all departments relating to the disabled.

- Provide employment opportunities for the disabled in public and private sector.
- Creation of barrier-free infrastructure for the disabled in accordance with the provisions of the Disabilities Act.
- Capacity building/sensitization programmes for administrators and field functionaries.
- Review and Amendment of Rules and Regulations that have discriminatory provisions or lack enabling provisions for the enjoyment of full range of human rights by persons with disabilities.
- Enforcement of the provisions of Mental Health Act, 1987.

I shall be grateful if you could bestow your personal attention to these issues to ensure that the State Disabilities Action Plan is formulated and implemented in a time bound manner with monitoring of the progress of existing schemes for the disabled.

With regards,

Yours sincerely,

(J. S. Verma)

To

All the Chief Ministers of States and Administrators of UTs of India.

Letter from the Chairperson of the Commission dated 31 December 2002 to the Union Ministers concerning Rights of the Disabled

ANNEXURE 7

D.O. No. 11/8/2002-PRP&P

31 December 2002

Dear Minister,

The National Human Rights Commission has been greatly concerned with the problems of persons with disability. Its endeavour in this area has been to bring in a paradigm shift in the approach motivated by charity towards the disabled to one based on rights. With this perspective in view, the Commission has recently reviewed the implementation of various legislations/programmes for the disabled both by the Central and State Governments.

Disability being a rights issue, the Government needs to bring human rights of the disabled to the center stage of the developmental agenda. However, it has been brought to the notice of the Commission that the implementation of the policies and programmes for the disabled, by the ministries and departments of Government of India has been inadequate. The Commission has identified some of the priority areas which require your immediate attention, as:

- Constitution of a task force to frame a National policy and plan for creation of barrier-free infrastructure for the disabled in accordance with the provisions of the Disabilities Act.
- Introduction and rationalization of schemes for persons with disabilities.

- Minimum standards to ensure quality in the services provided by NGOs and government institutions to the disabled.
- Vertical Integration of disability perspective in the developmental schemes of all departments relating to the disabled.
- Rehabilitation of disabled child beggars.
- Social security for women with disabilities.
- Review and Amendment of Laws, Rules and Regulations that have discriminatory provisions or lack enabling provisions for the enjoyment of full range of human rights by persons with disabilities.

I shall be grateful if you could bestow your personal attention to these issues to ensure that the rights of the disabled recognized in the law are earnestly granted to them, without any further avoidable delay.

With regards,

Yours sincerely,

(J.S. Verma)

As per list attached.

LIST

1. Shri Pramod Mahajan,
Minister of Parliamentary Affairs,
Information Technology & Communications
1081, Electronics Niketan,
C.G.O. Complex,
New Delhi- 110 003.
Fax No. 23372021
2. Shri Shanta Kumar,
Minister of Rural Development,
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3. Shri Murli Manohar Joshi,
Minister of Human Resource Development and
Science and Technology & Ocean Development
Room No. 301, 'C' Wing,
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Fax No. 23382365
4. Shri Ananth Kumar,
Minister of Urban Development & Poverty Alleviation
Room No. 104, C-Wing,
Nirman Bhawan,
New Delhi - 110 001.
Fax No. 23019089
5. Shri Satya Narayan Jatiya,
Minister of Social Justice & Empowerment
Room No. 202, C-Wing,
Shastri Bhawan,
New Delhi
Fax No. 23381902
6. Syed Shahnawaz Hussain,
Minister of Civil Aviation
Room No. 232, 'B' Block,
Rajiv Gandhi Bhavan,
New Delhi
Fax No. 24610354

7. Shri Nitish Kumar,
Minister of Railways,
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Fax No. 23382637, 23387333
8. Smt. Sushma Swaraj,
Minister of Information and Broadcasting
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Shastri Bhawan,
New Delhi - 110 001.
Fax No. 23782118
9. Shri Shatrughan Sinha,
Minister of Health and Family Welfare
Room No. 150-A, Nirman Bhavan,
New Delhi
Fax No. 2301 6648
10. Shri K. Jana Krishnamurthy,
Minister of Law and Justice
Room No. 401, 'A' Wing,
Shastri Bhavan,
New Delhi
Fax No. 2338 4241
11. Maj. Gen. (Retd.) B.C. Khanduri,
Minister of State for Road Transport and Highways
(Independent Charge)
1, Transport Bhavan,
New Delhi
Fax No. 2371 9023
12. Shri Vijay Goel
Minister of State in Prime Minister's Office
& MOS for Programme Implementation & Statistics
Prime Minister's Office,
161, South Block,
New Delhi
Fax No. 2301 6857, 2301 9545

Letter of the Chairperson of the Commission dated 15 November 2002 to the Chief Justice of India on sexual harassment of women in the work place

ANNEXURE 8

D.O. No. 3/3/2001-PRP&P

15 November 2002

Dear Chief Justice,

As you are aware, the problem of combating sexual harassment at work places is a matter of concern to the Supreme Court, and this issue was examined in depth by the Supreme Court in the 'Vishaka vs. State of Rajasthan' judgement in which detailed guidelines for protection of women have been laid down. These guidelines, inter alia, make it mandatory for employers and other responsible persons in work places, and other institutions, to implement the law by taking all necessary steps. It also imposes an obligation on employers to set into motion the complaint mechanism, which involves setting up of a 'Complaints committee'.

It has, however, been brought to the notice of the Commission that the guidelines issued by the supreme Court are yet to be implemented by many institutions and organizations / institutions in the public and private sectors. The Commission is naturally concerned about the faithful implementation of the Vishaka judgement at all work places.

In a meeting with Advocates held recently in the Commission to discuss this issue, it was pointed out that if the 'Vishaka guidelines' are to be implemented in letter and spirit, the judiciary at all levels also needs to adopt these since Courts also are work places of women. In addition to raising this

issue at the meeting, one of the Senior Advocates has also written a letter to this effect.

The Commission will therefore be grateful if the Supreme Court under your able leadership considers the issue in detail, and take all the necessary steps in this behalf for implementation of the Vishaka judgement at all levels of the judiciary, as well.

With warm personal regards,

Yours sincerely,

(J.S. Verma)

Justice Shri G.B. Patnaik

Chief Justice of India

5, Krishna Menon Marg

New Delhi - 110 011

(Fax No. - 301 5908)

Recommendations adopted at the Colloquium on Population Policy - Development and Human Rights held in New Delhi on 9-10 January 2003

ANNEXURE 9

- State specific population policies to be formulated keeping in view the conceptual framework of NPP.
- In the light of the constitutional mandate, a right based dialogue needs to inform the population policy processes.
- Policy should enable equal opportunity environment.
- Revisioning population policy with a fundamental shift in the approach where people in general and women in particular are not viewed as mere resources but as human agents with freedom of choice and capability.
- The means adopted for population stabilization should ensure equity implications are not violated.
- Demystifying the understanding of reproductive rights at the level of community, policy makers and programme managers.
- All the population policies should be examined for ensuring protection and promotion of human rights.
- There should be clarity and consistency in the population policy and legislative framework. e.g. legal age of marriage.
- Making registration of marriages and births compulsory.

- Population can be stabilized by creating an enabling environment, supportive development, inter-sectoral coordination.
- Behavioural changes not only for the community but also for those responsible for policy making, implementation and enforcement.
- Women's empowerment is not to be treated as a means to population stabilization but as an end in itself.
- Involvement of civil society and social group in policy formulation within a rights perspective.
- Translating human rights in programme realities is critical, for eg. access to quality health care, improving access to service and availability for information, transparent legal framework will help in this process. An international e.g. in Iran investment in health service has helped in quantum leap in health services and population stabilization.
- Engage in meaningful dialogue with the state governments in an objective assessment of disincentives in a human rights framework. Initiate correctional steps for those coercive policies that are already in place.
- The two-child norm, which disempowers women both directly and indirectly, must be examined critically since it is a violation of human rights.
- Radical changes in resource allocation for ensuring the rights of the under-privileged and marginalized for equity and equal opportunity.
- Policies need to recognize that young people are sexually active and have reproductive health needs as well as rights.
- Policies need to be guided by human rights perspective bringing accountability in mainstream decision making.

Declaration adopted at the Colloquium on Population Policy - Development and Human Rights held in New Delhi on 9-10 January 2003

ANNEXURE 10

The Department of Family Welfare, Ministry of Health and Family Welfare; the National Human Rights Commission and the United Nations Population Fund (UNFPA) jointly organized a two-day Colloquium on Population Policy - Development and Human Rights, on 9th and 10th of January, 2003 at the India Habitat Centre, New Delhi. The participants of the Colloquium appreciated the efforts made by the State Governments / Union Territories and the Union Government to frame and implement population policies, and, after having deliberated on these population policies and the related human rights issues, agreed to:

Recognize the importance of having a population policy framed by the Central and State Governments to achieve population stabilization goals of the country.

Further recognize that the population policies ought to be a part of the overall sustainable development goals, which promote an enabling environment for attainment of human rights of all concerned. Therefore, a rights-based approach is imperative in the framing of the population policies. Further, it is important that framing of such a policy and its implementation require a constant and effective dialogue among diverse stakeholders and forging of partnerships involving all levels of Government and civil society.

Appreciate the efforts of the Government of India in framing the National Population Policy, 2000 of India which affirms the commitment of the Government to its overriding objective of economic and social development,

improving the quality of lives of people through education and economic empowerment, particularly of women, providing quality health care services, thus enhancing their well being, and providing them with opportunities and choices to become productive assets in society, as a necessary concomitant to population stabilization and reduction in fertility rates.

Note with concern that population policies framed by some State Governments reflect in certain respects a coercive approach through use of incentives and disincentives, which in some cases are violative of human rights. This is not consistent with the spirit of the National Population Policy. The violation of human rights affects, in particular the marginalized and vulnerable sections of society, including women.

Note further that the propagation of a two-child norm and coercion or manipulation of individual fertility decisions through the use of incentives and disincentives violate the principle of voluntary informed choice and the human rights of the people, particularly the rights of the child. Similarly, the use of contraceptive targets results in undue pressure being put by service providers on clients.

Call upon the Governments of States / UTs to exclude discriminatory / coercive measures from the population policies that have been framed, or are proposed. States in which such measures do not form part of the policy, but are nonetheless implemented, also need to exclude these discriminatory measures.

Emphasize that in a situation where the status of women is low and son preference is prevalent, coercive measures further undermine the status of women and result in harmful practices such as female foeticide and infanticide.

Affirm that reproductive rights can not be seen in isolation, as they are intrinsic to women's empowerment and empowerment of marginalized sections of society. Therefore, giving priority to health, education and livelihood of women is essential for exercising these rights, as also for reduction in fertility rates and stabilization of population.

Acknowledge that reproductive rights set on the foundation of dignity and integrity of an individual encompass several aspects such as :

- the right to informed decision-making, free from fear of discrimination;

- the right to regular accessible, affordable, good quality and reliable health care;
- the right to medical assistance and counselling for the choice of birth control methods appropriate for the individual couple;
- the right to sexual and reproductive security, free from gender-based violence.

Emphasize that capacity-building initiatives at all levels should mainstream rights-based perspective into various programmes.

Further emphasize that for a successful implementation of any programme for population stabilization, a rights-based approach is far more effective than a coercive approach based on disincentives.

Recognize that monitoring the human rights impact of policies and their implementation by governments is critical for ensuring that the policy processes conform to the rights frame work as enshrined in the Constitution of India, national laws and in international human rights instruments.

Call upon the Central and State Governments to ensure that domestic laws on the subject promote proper exercise of reproductive rights, prevent harmful practices that derogate from a proper exercise of such rights, and protect every individual's right to a life with dignity while aiming at population stabilization and ensure allocation of adequate financial resources for the implementation of a population policy founded in human rights and development.

Action Plan for Musahars proposed by Shri K.B. Saxena

ANNEXURE 11

HOUSING

1. Most Musahars do not own any land. They do not even own the land on which their thatched hut is located. Usually, these huts are located on the land of land owners for whom they work as bonded labourers euphemistically known as attached labourers. Some of them have their thatched huts on land which belongs to the Government.

- a) Under the Bihar Privileged Persons Homestead Tenancy Act, the title to land on which the residential house of a privileged person is located can be conferred on the occupant after a prescribed procedure is followed. This programmes needs to be implemented on top priority basis. Musahars being landless rural poor would qualify for this benefit. State Govt. is likely to claim that such rights have already been conferred long time back. This claim has to be ignored because all over the State there are large number of rural poor including Musahars who have not been conferred such rights because of apathy of revenue functionaries and sometimes collusion between the land owners on whose lands such houses are located and the local Revenue functionaries. Recognizing this fact, State Govt. can launch a massive campaign for this purpose which may not only benefit Musahars but other rural poor also. NHRC may keep up the pressure by asking its Special Rapporteurs to visit districts to monitor its progress.
- b) Those Musahars who have got their huts located on Govt. land may be allotted those lands as in any case Musahars, being Scheduled Castes, are entitled to priority in land allotment.
- c) Where such huts are located on lands which are as per land records meant for common use can not be distributed or allocated even after

relaxation or rules, Government may allocate alternative plots of land to such occupants for this purpose.

- d) There may be some Musahars who neither have a hut of their own nor land. Such Musahars should be allotted the minimum entitled quantum of land so that they can build their houses. Under Bihar Government instructions Rural poor homeless persons are entitled to a minimum of 2 decimals of land for building a residential house.
- e) If in any area sufficient public land is not available for allotment to Musahars for construction of a residential house as per their entitlement, the State Govt. may acquire land for this purpose near their present settlement and provide Musahars security of a habitat.

INDIRA AWAS YOJNA

Ministry of Rural Development may make a special allocation for construction of residential houses for Musahars as they are the most vulnerable among the poor in the State of Bihar. Without such a special allocation, it would be difficult to cover a sizeable number of Musahars under the Scheme as the usual allocation received by the State Government is thinly distributed as per prevailing guidelines of the scheme. Such special allocations have been made in the past by the Rural Development Ministry.

For the Musahars, pig rearing is an important economic activity and virtually the only source of income generation other than working as farm labourers. This is also a source of animal protein. Pig sties are very dirty. Indira Awas Yojna for Musahars should be specially designed so as to dovetail within the campus of the residential hut a clean and hygienic arrangement for maintaining a pig sty.

JAWAHAR ROZGAR YOJNA

Under this Scheme, specific percentage of funds is earmarked to be spent for the benefit of Scheduled Castes (and Scheduled Tribes as the case may be). These funds may be used for taking elementary drainage system in the colony of Musahars and for providing Musahars connectivity with the main village road. The drainage system is essential so that stagnant water and slush do not create health hazards. Where neither drainage nor connectivity is required, funds may be used for some fruit trees to be planted in the frontage and backyard of each Musahar household.

Under the Rural Sanitation Scheme of the Ministry of Rural Development, a percentage of Musahar bustees may be covered with construction of common latrines which the local Musahars, as a community, could use and maintain.

DRINKING WATER

Where Musahar bustees do not have access to safe and assured drinking water source in the vicinity or where the access to an available source is constrained by restrictions imposed by the caste Hindus, under the ARWSP Scheme, drinking water source [hand pump] could be provided which may be used by Musahars as well as other residing near their bustees. State Govt. may identify such bustees and take up the matter with the Department of Rural Water Supply of Govt. of India. NHRC may prevail upon the Department to make a special allocation.

NUTRITION

Each Musahar bustee must be covered by ICDS programme so that the children of Musahars have access to food supplement. Usually there is an Anganvadi Centre for each village, wherever the block in which the village is located, covered under the ICDS programme. However, it usually happens that such centers are located in the upper caste segment of the village and the children of lower castes, particularly Schedule Castes, are afraid to go there. Wherever such a situation exists, a mini Anganvadi Centre may be permitted for the Musahar segment which can be managed by the Musahar women themselves. In many States, including Bihar, ICDS Centres do not run properly because adequate funds for food supplement is not allocated by the State Govt. The State Govt., therefore, has to be persuaded to allocate fund at least for Musahar bustees in view of their vulnerable conditions. The modalities of running ICDS Centre for Musahar bustees can be worked out between the State Govt. and the Department of Woman and Child Development. However, DWCD has to be persuaded to agree to the arrangement of a mini Anganwadi due to problems faced by Musahars.

EDUCATION

The provision of incentive to children getting themselves enrolled in school, whether in cash or kind, should be vigorously enforced so that all Musahar children join school and are enabled to get some food in return. Musahar children (boys) are usually engaged for grazing and girl children help mothers with farm work. Innovative schooling which does not disturb their schedule of economic activity may be taken up for Musahar children Sarva Shiksha Abhiyan. Wherever there are constraints in Musahar children going to school due to physical distance of the school, social restrictions, etc. State Govt. may start EGS type of scheme in the pattern adopted by Government of Madhya Pradesh and some other State Governments. Considering that Musahars have very low literacy level among girls, M.SJ&E may set up Educational Complexes for them under their existing Scheme for pockets of low literacy among SC girls.

State Govt. must ensure that Musahar boys and girls get admission to available residential schools at least in proportion to their numerical strength. In future more residential schools for Musahar boys and girls should be set up under the Special Component Plan for the State Govt. Ministry of Human Resources Development may also be accessed for funds to set up such schools.

Ministry of Social Justice and Empowerment may sanction hostels for Musahar boys and girls in areas where desired school facilities are not available nearby.

HEALTH

From each Musahar colony one male / female may be trained as basic health worker. They may be provided six months training so that they are able to manage elementary public health problems if a Govt. health unit cannot be accessed. The training of female health worker can be sponsored by National Commission for Population as it would significant impact on checking infant mortality and maternal mortality among Musahar women. It could also be taken up under RCH programme of the Deptt. of Family Welfare. The training of Male health worker may be taken up within the ambit of National Disease Control programmes or under skill development programmes sponsored by Ministry of Rural Development, or appropriate central sector/centrally sponsored schemes of the Ministry of Health. These health workers would also help the nearest Public Health Centres (PHC) in programmes in Musahar colonies.

WOMEN

Self Help groups of Musahars women may be organized for thrift, credit and self employment under existing programmes. These groups may be organized by NGO and be linked with Mahila Kosh for credit assistance. These self help groups of physical violence against them and access competent authorities for getting relief. Department of Women and Child Development may sponsor this programme. One NGO is already working with financial assistance from DWCD among 50 Musahar families. Every district with Musahar population should be covered by such projects implemented by different NGOs.

Competent NGOs with good track record and empathy for Musahars may be provided financial assistance by the Central Ministries, such as Ministry of Social Justice and Empowerment, Women and Child Development Health and Family Welfare, Rural Development, Ministry of Science and Technology etc, for working among Musahar women. The areas where Musahar women are being pushed into prostitution due to poverty should be specially targeted by such NGOs. There should be convergence of programmes of Ministry of

Rural Development, Department of Women and Child Development and other concerned agencies in this arrangement.

FOOD SECURITY

Most Musahars are without work during a large part of the year, particularly during the lean season when no work is available on farms of land owners. Ministry of Rural Development may be persuaded to start a Grain Bank Scheme on the pattern of similar scheme operated by Ministry of Tribal Affairs for Scheduled Tribes in all such Musahar villages. This scheme may be managed by Musahars themselves. Appropriate training may be given to them for this purpose. They would be responsible for realization of the grain loan and recirculating it. At least a few villages may be taken upon an experimental basis and necessary funds provided to some NGOs operate this project which may be replicated in other areas later. If Ministry of Rural Development does not agree to take up this scheme, State Government may be persuaded to do so.

It is absolutely imperative that Food for Work programme is initiated under the Employment Assurance Scheme for periods when no work is available on the farm or in the use. This should be an annual feature and the local officers can prepare useful projects which would create productive employment. These projects can be funded by the Ministry of Rural Development under their Employment Assurance Scheme. But at present, Bihar is not covered under this programme and Scheme is applicable only to the drought affected States. Ministry of Rural Development may be persuaded to extend the ambit of the Scheme to extremely vulnerable marginalized groups in Bihar.

POVERTY ALLEVIATION

Under the Prime Minister's Swarna Jayanti Rozgar Yojna and/or under the National Scheduled Caste Development Finance Corporation, group schemes for income generation may be taken up for Musahars. These Schemes can revolve around activities they are familiar with and have confidence in managing. Competent NGO may assist them in training, project preparation and management and marketing.

Self Help groups of women for poverty alleviation can be financed under the Mahila Kosh Scheme of the Department of Women and Child Development. Good NGO may be selected to assist such groups in accessing this help.

REGULATORY

Existing laws relating to Bonded Labour, Child Labour, Minimum Wages, Equal Remuneration Act, Money Lenders Act etc. need to be implemented

rigorously. Enforcement machinery may be activated for this purpose. However. The factor that constrains enforcement of laws is that these exploitative practices are integrally related to lack adequate work opportunities which make them vulnerable. Therefore, more effective way of tackling this problem is to first provide sufficient employment opportunities and simultaneously enforce regulatory provisions. Otherwise the victims themselves may not co-operate.

SOCIAL SECURITY

All eligible persons from the Musahar community must be covered under the Old Age Pension Scheme. At present, the number of people covered under the scheme seems to be frozen and a large number of deserving poor are not covered Central Government may be persuaded to enhance the allocation to the State to facilitate their coverage. Meanwhile, Annapurna Scheme may be implemented for indigent Musahars who have no capacity to earn a living and have no family to look after them.

ALLOTMENT OF LAND

State Government may allot cultivable land to Musahars wherever it is feasible under the Bhoodan land, Government land or Ceiling land, which has become available. Local Musahars themselves would be in a position to identify which land could be allotted. A large area of land is locked in litigation filed by interested parties. If serious efforts are made to get this land released by Courts, it would become available for redistribution.

SKILL DEVELOPMENT

Ministry of Social Justice and Empowerment may select good NGOs which may have the confidence to run skill development and self employment programmes for Musahars. Skill development programmes would focus on increasing employability of Musahars in new occupations enhanced income generation in existing occupations, Upgradation of their status when they migrate in search of work, grooming them as service providers in growth areas of the economy and mobilizing them for making marketable products from indigenous raw materials. One umbrella NGO may also be identified which may coordinate the work being done by NGOs and self-help groups in the State particularly in this sector of activity for providing common services.

PANCHAYATS

All elected members of Village and Block Panchayat from Musahar Community may be trained by a competent local institution. Funds for this training may be provided by the Ministry of Rural Development.

ATROCITIES

Ministry of Social Justice and Empowerment may arrange for a social worker for every large Musahar village under their centrally sponsored scheme for implementation of P.C.R Ac 1955t and SCs/STs (POA) Act, 1989, who would assist victims of atrocities in taking up the cases of atrocities to the competent authority and accessing development benefits. Information about development may also be provided to these workers. The social workers may also take up the task of awareness creation among Musahar households. These social workers may be used by State Development and Law and Order agencies for various purposes. State government should provide an identity card to them for facilitating easy access to officials.

PARTICIPATORY PLANNING

The social workers mentioned above may also be utilized to carry out a quick survey regarding village specific Musahar problems and their inter-se prioritization in consultation with the Musahar households of their colony. This would empower them to seek solutions to their problems. These problems should primarily relate to major areas of concern which affect their day to day lives. The following are some of them:

DEVELOPMENT

A. Income Generation

- i. Access to land
- ii. Land based traditional occupations
- iii. Non-land based traditional occupations
- iv. Self employment in non traditional occupations
- v. Wage employment opportunities
- vi. Enforcement of labour laws

B. Services

- i. Housing
- ii. Drinking Water
- iii. Sanitation
- iv. Nutrition
- v. School facility
- vi. Health facility
- vii. Skill development
- viii. Social assistance
- ix. Welfare facilities

PROTECTION

1. Cases of acute exploitation
2. Cases where legitimate entitlements are being denied
3. Cases of physical violence
4. Cases of social oppression
5. Intra-community social problems.

ADMINISTRATIVE ARRANGEMENT

State government may earmark a young IAS officer exclusively for Musahar Development work.

Ministry of Social Justice and Empowerment may identify a competent NGO with good track record for functioning as an Umbrella organization for Musahar protection and Development and provide financial assistance to it for this purpose. Efforts should be made to promote a Musahar Development agency - a registered society which can co-ordinate various programme for Musahars.

SOCIAL INSTITUTIONS

Musahars have shown a remarkable spirit of survival and capacity to withstand the traumas and stress of exploitation. This indicates tremendous cultural strengths. These social traits need to be harnessed for their social assertion/progress. One NGO in Delhi is already working in this field and can assist in designing an appropriate programme for this purpose.

PROCESS OF OPERATIONALIZATION

NHRC may hold a meeting with the official representatives of concerned Ministries of Central Government and the State Government of Bihar for finalization of a feasible Action Plan and manner in which it should be executed. It would be desirable to call representatives of 3-4 NGOs who have long experience of working with and for Musahars in Bihar to this meeting. Alternatively, after the Action Plan is finalized, Special rapporteur of NHRC can visit Bihar and hold a meeting with NGOs to identify what assistance and inputs can come from them and how much responsibility they can shoulder in this Action Plan.

Concluding statement of the Seventh Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions

ANNEXURE 12

SEVENTH ANNUAL MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

11th - 13th November 2002, New Delhi, India

CONCLUDING STATEMENT

Introduction

1. The Asia Pacific Forum of National Human Rights Institutions, consisting of the National Human Rights Commissions of India, Australia, Fiji, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Sri Lanka and Thailand, held this Seventh Annual Meeting in New Delhi, India from 11th to 13th November 2002.

2. The Forum expressed its gratitude to the National Human Rights Commission of India for hosting the meeting, to the United Nations Office of the High Commissioner for Human Rights for its co-sponsorship and to the governments of India, Australia and New Zealand for their financial support. The Forum paid tribute to Mr Brian Burdekin and thanked him for his exceptional work as Special Advisor to the United Nations High Commissioner for Human Rights. The Forum also expressed its appreciation for the efforts of the Commissioners and staff of the National Human Rights Commission of India and the Secretariat of the Forum for their work in the organization of the meeting.

3. The Forum welcomed the participation of representatives as observers from the governments of Australia, Myanmar, New Zealand, Thailand and Timor-Leste, the institutions from Afghanistan, Iran, New Zealand and Palestine, and international, regional and national non-governmental organizations.

4. The Hon. Shri Atal Bihari Vajpayee, Prime Minister of India, Justice J.S. Verma, Chairman of the National Human Rights Commission of India and the Chairperson of the Asia Pacific Forum of National Human Rights Institutions and Mr Brian Burdekin, Special Advisor to the United Nations High Commissioner for Human Rights, addressed the inaugural session. In the opening statements the distinguished speakers recognized human rights as a vital constituent of the rule of law and an essential element of good governance. In this, the important role of national human rights institutions in protecting and promoting human rights was reiterated. Particular attention was drawn to the challenges posed by terrorism and the human rights issues associated with trafficking and disability.

Conclusions

1. The Forum reaffirmed that the structure and responsibilities of national institutions should be consistent with the Principles Relating to the Status of National Institutions adopted by the United Nations General Assembly (Resolution 48/134) commonly referred to as the 'Paris Principles.' On this basis it admitted the national human rights institutions of Malaysia, Republic of Korea and Thailand as full members of the Forum, thereby increasing its membership to 12 institutions.

2. The Forum considered a discussion paper examining the category of 'Associate Membership.' The Forum agreed on two guiding criteria in considering applications for associate membership: namely the requirement to possess a broad mandate; and the desirability of admitting only one institution per member state of the United Nations.

3. The Forum considered it was important to strengthen strategic partnerships with human rights institutions. Invitations would be issued to relevant institutions / organizations to participate as observers depending on the focus of the meetings.

4. The Forum unanimously elected the National Human Rights Commission

of India (as the current host institution of the annual meeting) to the position of Chairperson of the Forum. The National Human Rights Commission of Sri Lanka (as the host institution for the last annual meeting) and the National Human Rights Commission of Nepal (as the host institution for the next annual meeting) were also elected unanimously to the two positions of Deputy Chairpersons.

5. The Forum elected the national human rights institutions from Australia, Fiji, Nepal and the Philippines to be the four regional representatives to the International Coordinating Committee of National Institutions. The Fiji Human Rights Commission will also serve on the International Coordinating Committee accreditation sub-committee.

6. The Forum welcomed the inaugural meeting of Senior Executive Officers of Forum member institutions. The Forum noted the outcomes of the meeting including the establishment of a working group to examine and implement measures to assist the effective and efficient functioning of national human rights institutions. The Forum also requested that the Secretariat assist the Forum Councilors in the development of new governance and management policies for the Forum.

7. The Special Advisor to the United Nations High Commissioner for Human Rights emphasized the continuing commitment of the United Nations to promote the establishment and strengthening of national institutions. The Deputy Chairperson of the Forum provided a report on the Forum's activities over the last year and the Forum expressed their appreciation for the work of the Secretariat. The representative of non-governmental organizations of the region stressed the importance of national institutions undertaking practical collaborative activities with non-governmental organizations at both the national and regional level for the protection and promotion of human rights.

8. Forum Councilors reported on their implementation of the recommendations of the Advisory Council of Jurists' reports on the death penalty and child pornography on the Internet. A number of Forum Councilors specifically cited the successful implementation of the Advisory Council's recommendations. Forum Councilors decided to formulate a new reference to the Advisory Council of Jurists on the issue of the primacy of the rule of law in countering terrorism worldwide while protecting human rights and requested the secretariat to prepare draft terms of reference for the consideration and approval of the Forum.

9. The Forum discussed a proposal to develop a new international convention on the rights of people with disabilities. Forum institutions agreed to respond positively to the invitation of the United Nations Ad Hoc Committee to participate independently in the development of the possible new convention. The Forum adopted the recommendations contained in the discussion paper presented to the meeting and welcomes the United Nations Office of the High Commissioner's support in their implementation. In proceeding further, the Secretariat will keep in mind the comments made by all participants in the meeting.

10. The Forum considered the issue of trafficking, including the views of international experts and non-governmental organizations, and the report of the Advisory Council of Jurists on this issue. The Forum warmly thanked the jurists of the Advisory Council for their expertise and the comprehensive scope of their report which included items on i) ratification; ii) implementation; iii) enforcement; iv) victim protection; v) research and policy; vi) education; and vii) cooperation. Forum member institutions would closely examine the recommendations of the Advisory Council and report back on their implementation to the next annual meeting. The Forum further requested the Secretariat to assist in strengthening regional cooperation on this issue. The Forum also welcomed the agreement of the National Human Rights Commissions of India and Nepal to work together on this issue. The Forum also requested the Secretariat to be in touch with the United Nations Office of the High Commissioner for Human Rights in respect to the need to keep more clearly in mind the human rights of victims of trafficking in the formulation of views and comments on this subject. The Forum recommends the reinvigoration of the network of focal points on trafficking within Forum member institutions.

11. The Forum gratefully accepted the kind offer of the National Human Rights Commission of Nepal to host the Eighth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions in approximately twelve months time and further noted the kind offer of the Australian Human Rights and Equal Opportunity Commission to act as a potential alternate host if necessary.

12. The Forum likewise noted with thanks the offer of the National Human Rights Commission of Mongolia and the National Human Rights Commission of Korea to host the Ninth Annual Meeting in 2004.

A report on the meeting will soon be available on the Forum website.
www.asiapacificforum.net

Statement showing state-wise number of cases pending as on 1/4/2002

ANNEXURE 13

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
1	ANDHRA PRADESH	182	3	0	185
2	ARUNACHAL PRADESH	21	1	0	22
3	ASSAM	60	0	0	60
4	BIHAR	554	2	0	556
5	GOA	13	0	0	13
6	GUJARAT	123	2	0	125
7	HARYANA	291	2	0	293
8	HIMACHAL PRADESH	31	0	0	31
9	JAMMU & KASHMIR	107	0	0	107
10	KARNATAKA	152	3	0	155
11	KERALA	70	0	0	70
12	MADHYA PRADESH	457	1	0	458
13	MAHARASHTRA	297	7	1	305
14	MANIPUR	18	0	0	18
15	MEGHALAYA	5	0	0	5
16	MIZORAM	9	0	0	9
17	NAGALAND	8	0	0	8
18	ORISSA	186	1	0	187
19	PUNJAB	183	1	0	184
20	RAJASTHAN	346	0	0	346
21	SIKKIM	6	0	0	6
22	TAMILNADU	371	3	0	374
23	TRIPURA	10	0	0	10
24	UTTAR PRADESH	6683	6	1	6690
25	WEST BENGAL	135	1	0	136
26	A & N ISLANDS	1	0	0	1
27	CHANDIGARH	16	0	0	16
28	D & NAGAR HAVELI	1	0	0	1
29	DAMAN & DIU	1	0	0	1
30	DELHI	535	0	1	536
31	LAKSHADWEEP	1	0	0	1
32	PONDICHERRY	21	0	0	21
33	CHHATTISGARH	71	1	0	72
34	JHARKHAND	194	0	0	194
35	UTTARANCHAL	386	0	0	386
36	FOREIGNERS	7	0	0	7
37	Previous pendency (upto 2000-2001)				
	Total	11552	34	3	11589

Cases where reports had either been received or awaited from the State Authorities			
Complaints	Custodial Death Cases	Encounter Death Cases	Total
6	7	8	9
254	146	2	402
10	9	0	19
64	48	0	112
1492	159	2	1653
14	0	0	14
175	92	0	267
424	44	0	468
31	3	0	34
172	14	1	187
127	86	0	213
83	29	0	112
686	51	1	738
565	164	2	731
29	0	0	29
5	0	0	5
0	2	0	2
6	1	0	7
190	31	0	221
159	96	1	256
304	56	0	360
5	0	0	5
201	100	0	301
11	5	0	16
5421	289	41	5751
132	65	0	197
1	0	0	1
20	6	0	26
1	0	0	1
2	0	0	2
520	42	2	564
2	0	0	2
9	0	0	9
27	14	0	41
68	24	3	95
96	12	0	108
1	0	0	1
			31923
11307	1588	55	44873

Grand Total = 11589+44873 = 56462
(Col. 5 + Col. 9)

State/Union Territory-wise statement of category of report cases disposed of during the year 2002-2003

ANNEXURE 15(a)

Sl. No.	Name of the State/ Union Territory	Disappearance	False Implication	Custodial Violence
1	2	3	4	5
1	ANDHRA PRADESH	2	15	23
2	ARUNACHAL PRADESH	1	0	1
3	ASSAM	1	2	0
4	BIHAR	9	97	22
5	GOA	0	0	2
6	GUJARAT	1	12	4
7	HARYANA	3	87	14
8	HIMACHAL PRADESH	0	1	1
9	JAMMU & KASHMIR	6	1	1
10	KARNATAKA	0	15	15
11	KERALA	2	10	19
12	MADHYA PRADESH	5	68	17
13	MAHARASHTRA	143	35	15
14	MANIPUR	0	0	1
15	MEGHALAYA	0	0	0
16	MIZORAM	0	0	0
17	NAGALAND	0	0	0
18	ORISSA	1	9	8
19	PUNJAB	1	16	2
20	RAJASTHAN	1	40	20
21	SIKKIM	0	0	0
22	TAMILNADU	5	57	20
23	TRIPURA	0	0	0
24	UTTAR PRADESH	69	2139	477
25	WEST BENGAL	2	4	4
26	ANDAMAN & NICOBAR ISLANDS	0	1	0
27	CHANDIGARH	0	2	0
28	DADRA & NAGAR HAVELI	0	0	0
29	DAMAN & DIU	0	0	0
30	DELHI	2	38	6
31	LAKSHADWEEP	0	0	0
32	PONDICHERRY	0	0	2
33	CHHATTISGARH	0	20	3
34	JHARKHAND	2	21	13
35	UTTARANCHAL	7	93	16
36	FOREIGNERS	0	0	0
	TOTAL	263	2783	706

Illegal Arrest	Unlawful Detention	Failure in Taking Action	Alleged Fake Encounters	Other Police Excesses
6	7	8	9	
9	26	58	6	103
1		1		1
1	1	2		20
2	29	492	8	336
	1	1		4
3	6	29		38
25	73	322		262
	1	10		5
1	2	10	1	54
4	13	42	1	87
3	25	33		64
7	36	227	5	219
10	13	115	5	142
2	1	1		6
		0		3
		0		2
10		0		0
4	9	72	1	93
16	5	60		113
2	20	218	1	183
		0		0
19	67	129	1	232
		1	1	2
450	2516	7410	78	6828
	6	65	4	41
		1		0
		2		6
		0		0
		0		0
12	13	313		402
		0		0
	1	4		1
1	5	28		31
3	6	89	1	86
27	108	243	5	257
		0		1
612	2983	9978	118	9622

State/Union Territory-wise statement of category of report cases disposed of during the year 2002-2003

ANNEXURE 15(b)

Sl. No.	Name of the State/ Union Territory	Indignity to Women	Sexual Harassment
	10	11	12
1	ANDHRA PRADESH	3	3
2	ARUNACHAL PRADESH	0	0
3	ASSAM	0	1
4	BIHAR	12	11
5	GOA	0	0
6	GUJARAT	1	3
7	HARYANA	1	11
8	HIMACHAL PRADESH	0	1
9	JAMMU & KASHMIR	0	1
10	KARNATAKA	0	1
11	KERALA	2	0
12	MADHYA PRADESH	2	2
13	MAHARASHTRA	2	2
14	MANIPUR	0	0
15	MEGHALAYA	0	0
16	MIZORAM	0	0
17	NAGALAND	0	0
18	ORISSA	3	6
19	PUNJAB	2	2
20	RAJASTHAN	8	7
21	SIKKIM	0	0
22	TAMILNADU	5	25
23	TRIPURA	0	0
24	UTTAR PRADESH	60	66
25	WEST BENGAL	4	3
26	ANDAMAN & NICOBAR ISLANDS	0	0
27	CHANDIGARH	0	0
28	DADRA & NAGAR HAVELI	0	0
29	DAMAN & DIU	0	0
30	DELHI	9	5
31	LAKSHADWEEP	0	0
32	PONDICHERRY	0	0
33	CHHATTISGARH	1	0
34	JHARKHAND	2	4
35	UTTARANCHAL	1	5
36	FOREIGNERS	0	0
	TOTAL	118	159

Abduction, Rape & Murder	Dowry Death or its Attempt	Dowry Demand	Exploitation of Women	Rape of Women
13	14	15	16	17
2	5	3	3	7
1				1
6	96	20	23	42
4	1	1	1	1
21	18	20	8	13
		1	2	
	1			1
6	2	5	1	4
	3	1	1	2
14	31	7	6	19
8	8	5	1	6
2				
5	10	5	5	8
2	3	3		
9	31	6	19	21
5	6	1	1	5
	1			
168	575	331	96	239
3	10	1	7	6
	1			
26	10	11	5	4
	3	3	1	6
1	12	2	8	8
6	18	22	12	6
289	845	448	200	400

State/Union Territory-wise statement of category of report cases disposed of during the year 2002-2003

ANNEXURE 15(c)

Sl. No.	Name of the State/ Union Territory	Child Labour	Child Marriage	Bonded Labour	Harassment of Prisoners
	18	19	20	21	22
1	ANDHRA PRADESH		1	3	3
2	ARUNACHAL PRADESH				
3	ASSAM				
4	BIHAR	4		5	29
5	GOA				
6	GUJARAT			2	6
7	HARYANA		1	17	25
8	HIMACHAL PRADESH				
9	JAMMU & KASHMIR				1
10	KARNATAKA	1		7	17
11	KERALA				4
12	MADHYA PRADESH	2		2	14
13	MAHARASHTRA	3		2	31
14	MANIPUR				
15	MEGHALAYA				
16	MIZORAM				
17	NAGALAND				
18	ORISSA	3			6
19	PUNJAB			42	22
20	RAJASTHAN	1	3	5	15
21	SIKKIM				
22	TAMILNADU	2	1	5	20
23	TRIPURA				
24	UTTAR PRADESH	31	18	63	182
25	WEST BENGAL				4
26	A&N ISLANDS				
27	CHANDIGARH				1
28	DADAR & NAGAR HAVELI				
29	DAMAN & DIU				
30	DELHI	2	2	2	38
31	LAKSHADWEEP				
32	PONDICHERRY				
33	CHHATTISGARH				5
34	JHARKHAND	1			4
35	UTTARANCHAL			6	7
36	FOREIGNERS				
	TOTAL	50	26	161	434

Lack of Medical Facilities in Jails	Jail Conditions	Atrocities on SC/ST	Communal Violence	Others	Grand Total
23	24	25	26	27	
	2	8	2	224	511
	0	0		8	14
	0	0		71	101
9	46	17		497	1812
1	0	1		9	19
	4	2	3	76	198
	13	14		228	1176
	0	1		14	37
	0	0		86	166
	13	5	1	122	362
	1	3		84	257
	13	13		228	937
3	10	10	1	421	991
	0	0		17	30
	0	0		5	8
	0	0		2	4
	0	0		0	10
	5	7		269	529
1	7	3		151	451
1	20	37	1	238	907
	0	0		1	1
2	7	33	6	355	1009
	0	1		6	12
23	67	353	6	3498	25743
1	3	3		119	290
	0	0		4	6
	0	0		3	15
1	0	0		0	1
	0	0		0	0
	8	5		282	1195
	0	0		0	0
	0	0		4	12
2	1	3		38	151
	4	11		140	418
	5	12	1	203	1060
	0	0		4	5
44	229	542	21	7407	38438

Statement showing state-wise number of cases pending as on 1/4/2003

ANNEXURE 16

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
1	ANDHRA PRADESH	101	4	0	105
2	ARUNACHAL PRADESH	8	0	0	8
3	ASSAM	16	2	0	18
4	BIHAR	803	5	0	808
5	GOA	3	0	0	3
6	GUJARAT	168	1	0	169
7	HARYANA	488	0	0	488
8	HIMACHAL PRADESH	36	0	0	36
9	JAMMU & KASHMIR	29	0	0	29
10	KARNATAKA	85	1	0	86
11	KERALA	34	1	0	35
12	MADHYA PRADESH	349	1	0	350
13	MAHARASHTRA	373	5	2	380
14	MANIPUR	3	0	0	3
15	MEGHALAYA	2	0	0	2
16	MIZORAM	1	0	0	1
17	NAGALAND	2	0	0	2
18	ORISSA	133	1	0	134
19	PUNJAB	238	2	0	240
20	RAJASTHAN	483	2	0	485
21	SIKKIM	0	0	0	0
22	TAMILNADU	253	3	0	256
23	TRIPURA	7	0	0	7
24	UTTAR PRADESH	4884	3	2	4889
25	WEST BENGAL	125	3	0	128
26	A & N ISLANDS	2	0	0	2
27	CHANDIGARH	12	0	0	12
28	DADAR & NAGAR HAVELI	2	0	0	2
29	DAMAN & DIU	0	0	0	0
30	DELHI	504	0	1	505
31	LAKSHADWEEP	2	0	0	2
32	PONDICHERRY	11	1	0	12
33	CHHATTISGARH	87	0	0	87
34	JHARKHAND	230	1	0	231
35	UTTARANCHAL	231	0	0	231
36	FOREIGNERS	17	0	0	17
	TOTAL	9722	36	5	9763

Pendency of cases where reports have either been received or awaited from the State Authorities			
Complaints	Custodial Death Cases	Encounter Death Cases	Total
6	7	8	9
541	229	8	778
20	13	0	33
144	66	2	212
3010	275	5	3290
24	0	0	24
351	131	1	483
1205	76	1	1282
73	4	0	77
259	14	1	274
322	139	1	462
156	66	1	223
1157	76	2	1235
1135	262	11	1408
44	0	0	44
16	3	1	20
3	4	0	7
7	1	0	8
457	48	0	505
582	154	1	737
1141	105	1	1247
6	0	0	6
619	160	2	781
24	5	0	29
15437	413	62	15912
404	110	1	515
3	0	0	3
34	8	0	42
3	0	0	3
2	0	0	2
2196	63	6	2265
2	0	0	2
11	0	0	11
125	29	0	154
538	54	2	594
545	20	2	567
12	0	0	12
30608	2528	111	33247

Grand Total = 9763+33247 = 43010
(Column 5 + Column 9)

Statement showing state-wise number of cases/ intimations registered during the year 2002-2003

ANNEXURE 17

S. No.	Name of the State/ Union Territory	Complaints
	1	2
1	ANDHRA PRADESH	613
2	ARUNACHAL PRADESH	24
3	ASSAM	140
4	BIHAR	4028
5	GOA	37
6	GUJARAT	699
7	HARYANA	2487
8	HIMACHAL PRADESH	130
9	JAMMU & KASHMIR	178
10	KARNATAKA	507
11	KERALA	172
12	MADHYA PRADESH	2082
13	MAHARASHTRA	1917
14	MANIPUR	35
15	MEGHALAYA	21
16	MIZORAM	4
17	NAGALAND	14
18	ORISSA	837
19	PUNJAB	921
20	RAJASTHAN	2555
21	SIKKIM	6
22	TAMILNADU	1141
23	TRIPURA	39
24	UTTAR PRADESH	40612
25	WEST BENGAL	681
26	ANDAMAN & NICOBAR ISLANDS	8
27	CHANDIGARH	72
28	DADAR & NAGAR HAVELI	11
29	DAMAN & DIU	3
30	DELHI	3796
31	LAKSHADWEEP	3
32	PONDICHERRY	23
33	CHHATTISGARH	374
34	JHARKHAND	1375
35	UTTARANCHAL	1745
36	FOREIGNERS	64
	TOTAL	67354

Intimation received about Custodial Deaths				Intimation received about Encounter Deaths	Total
Police Custody	Judicial Custody	Defence/Para-military	Custodial Rapes		
3	4	5	6	7	8
10	112	0	0	7	742
2	2	0	0	0	28
15	13	0	0	2	170
4	153	0	0	4	4189
0	1	0	0	0	38
17	34	0	0	1	751
6	41	0	0	1	2535
0	2	0	0	0	132
0	0	0	0	0	178
16	49	0	0	1	573
4	50	0	0	1	227
1	36	0	0	1	2120
26	117	0	0	10	2070
0	1	0	0	0	36
3	3	0	0	1	28
0	2	0	0	0	6
0	0	0	0	0	14
1	41	0	0	0	879
9	65	0	1	0	996
6	55	0	0	1	2617
0	0	0	0	0	6
17	51	0	0	2	1211
1	1	0	0	0	41
16	169	0	1	41	40839
16	49	0	0	2	748
0	0	0	0	0	8
0	3	0	0	0	75
0	0	0	0	0	11
0	0	0	0	0	3
2	30	0	0	6	3834
0	0	0	0	0	3
1	0	0	0	0	24
3	29	0	0	0	406
6	41	0	0	0	1422
1	7	0	0	2	1755
0	0	0	0	0	64
183	1157	0	2	83	68779

Extract from the Proceedings of the Commission held on 17 January 2003 in relation to allegation of starvation deaths in KBK districts of Orissa

ANNEXURE 18

**NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAWAN
NEW DELHI**

.....

**Case No. 37/3/97-LD
Dated : 17 January, 2003**

Name of the Complainant : Shri Chaturanan Mishra

CORAM

Justice Shri J.S. Verma, Chairperson

Justice (Smt.) Sujata V. Manohar, Member

Shri Virendra Dayal, Member

PROCEEDINGS

Right to Food

Throughout the hearing in respect of this case, the petitioner Dr. Amrita Rangasami, Director, Centre for the Study of Administration of Relief (CSAR), has been raising the fundamental issue of the nature of right involved in a situation in which deaths occur as a result of starvation or prolonged malnutrition. She has asserted that there is a dichotomy between the Constitution of India and the Relief Manuals and Codes of India which govern relief administration. She has argued that while the Constitution recognises the Right to Food as an integral part of the Fundamental Right to Life, the Manuals and Codes 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.

The Commission has considered Dr. Rangasami's submission most carefully. Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The expression 'Life' in this Article, has been judicially interpreted to mean a life with human dignity and not mere survival or animal existence. In the light of this, the State is obliged to provide for all those minimum requirements which must be satisfied in order to enable a person to live with human dignity, such as education, health care, just and humane conditions of work, protection against exploitation etc. In the view of the Commission, the Right to Food is inherent to a life with dignity, and Article 21 should be read with Articles 39(a) and 47 to understand the nature of the obligations of the State in order to ensure the effective realisation of this right. Article 39(a) of the Constitution, enunciated as one of the Directive Principles, fundamental in the governance of the country, requires the State to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people as a primary responsibility. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfilment of the obligations of the State set out in Articles 39(a) and 47. The reading of Article 21 together with Articles 39(a) and 47, places the issue of food security in the correct perspective, thus making the Right to Food a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution. The requirements of the Constitution preceded, and are

consonant with, the obligations of the State under the 1966 International Covenant of the Economic, Social and Cultural Rights to which India is a party. That Covenant, in Article 11, expressly recognises the right of everyone to an adequate standard of living, including adequate food.

It follows, therefore, that there is a fundamental right to be free from hunger. Starvation constitutes a gross denial and violation of this right. As starvation deaths reported from some pockets of the country are now invariably the consequence of misgovernance resulting from acts of omission and commission on the part of public servants, they are of direct concern to the Commission under the provisions of the Protection of Human Rights Act, 1993.

Persons living in conditions of poverty and hunger in areas such as the KBK districts have often been found to be suffering from prolonged hunger and mal-nutrition. Even when their deaths cannot, in a strictly clinical terms, be related to starvation, the tragic reality remains that they often die of prolonged mal-nutrition and the continuum of distress which has, inter-alia, rendered them unable to withstand common diseases such as malaria and diarrhoea. The situation is all the more painful in view of the fact that granaries of the Food Corporation of India are overflowing - a matter that is, at present, under consideration of the Supreme Court.

The Commission, therefore, agrees with Dr. Rangasami's view that the present practice of insisting on mortality as a proof of starvation is wrong and needs to be set aside. In the view of the Commission, therefore, there are obvious policy implications as far as the obligations of the State are concerned. The Right to Food implies the right to food at appropriate nutritional levels. It also implies that the quantum of relief to those in distress must meet those levels in order to ensure that the Right to Food is actually secured, and does not remain a theoretical concept.

The Commission also agrees with the petitioner that destitution and the continuum of distress should be viewed as the necessary conditions for the prevalence of starvation. There is thus a concomitant need for a paradigm shift in public policies and the Relief Codes in this respect.

Dr. Rangasami acknowledges that the State of Orissa has revised the objective of relief administration to mean the elimination of destitution. However, it has not made the paradigm shift from the domain of benevolence to that of the right of a citizen. She has argued that the Govt. of India's current

conceptualization of calamity as well as the season of its prevalence, has limited relief to the short term only. In contrast, a human rights approach to food and nutrition, would imply that the beneficiaries of relief measures should be recognised as "claim holders". Viewed from this perspective, the prevalence of distress-conditions threatening starvation constitutes an injury requiring the imposition of a penalty on the State. The penalty would be claimed for the affected groups as a whole rather than on the basis of individual claims. The Commission finds much merit in this view. Indeed, it is of the opinion that the remedy provided under Article 32 of the Constitution applies to groups no less than to individuals.

Dr. Rangasami has accordingly suggested the amendment of paragraphs 163, 164, 168B and 169 of the Orissa Relief Code in order to bring that Code in line with the Constitution of India. She has specifically proposed that it be reformulated to accomplish the following:

- (i) a paradigm shift from the domain of Benevolence to that of Right;
- (ii) a change from the assessment of harvest to the assessment of hunger;
- (iii) a shift in the timing of State-intervention to the hunger season; and
- (iv) a devising of the terms of cognizance for starvation and destitution.

The Commission is informed that the State Government has constituted a Committee headed by the Agricultural Production Commissioner (APC) and other officers as well as non-official members to discuss and deliberate on the suggestions made by Dr. Rangasami on amendment of the Orissa Relief Code.

Given the views of the Commission as explained above, it would like to see rapid progress in the work of the Committee and it would also like to be kept informed of its efforts. The outcome of these efforts could have far-reaching and positive consequences both for Orissa and, based on its example, the rest of the country.

Dr. Rangasami has also suggested the following for the consideration of the Government of India:

- (i) The need to revise the present criteria used to determine the relief that is provided - she has proposed that the 'basket' of relief provided should be prescribed in terms of adequate nutritional requirements and not in

fixed monetary terms. This would ensure automatic revision of the outlays required to keep pace with rising costs.

- (ii) The devising of the criteria for the provision of assistance to small farmers in a manner that it is linked to the elimination of destitution and the halting of distress migration, distress sale of crops, labour and land, and protection against impoverishment.

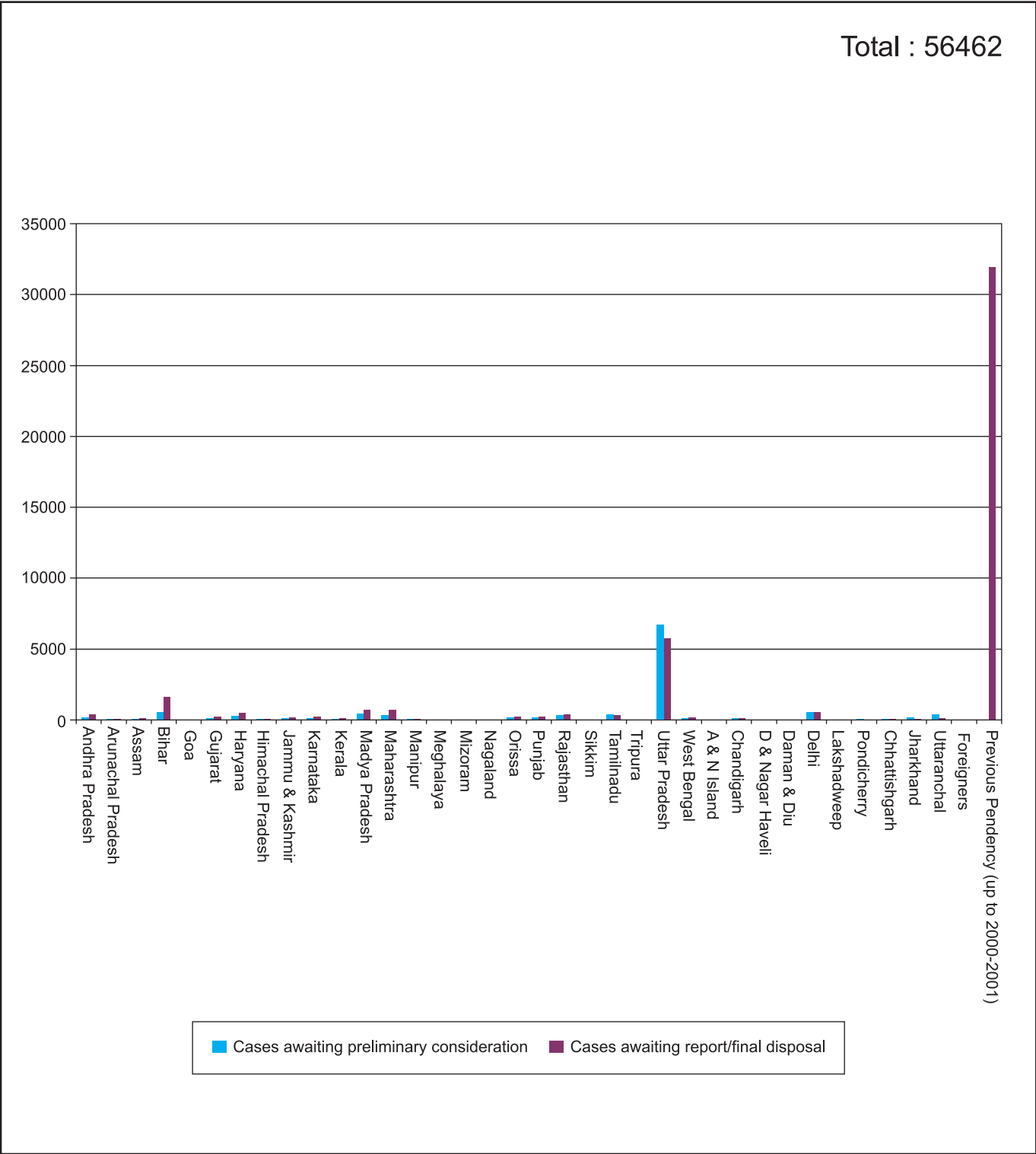
The Commission sees much value in these suggestions which implicitly raise serious questions regarding the quantum of resources realistically required for Calamity Relief and the method of their utilisation. The Commission, therefore, requests Dr. Rangasami to develop these ideas further and to provide the Commission with a paper on this subject so that the views of the Government of India can be obtained on them.

In concluding these Proceedings, the Commission would like to observe that they are being held at a time when, universally, there is a demand that every effort be made by the State and by civil society to eradicate the poverty and hunger that constitute an affront to the dignity and worth of the human person. First and foremost among the United Nations Millenium Development Goals (MDG) is the pledge made by all Heads of State and Government to halve, by the year 2015, the proportion of the world's poor and of people who suffer from hunger. Given the circumstances of our country, India has a special responsibility in this regard. The prevalence of extreme poverty and hunger is unconscionable in this day and age, for not only does it militate against respect for human rights, but it also undermines the prospects of peace and harmony within a State. For all of these reasons, the Commission will continue to be deeply involved with the issues raised in these hearings in the period ahead.

The Commission would like, once again, to place on record its deep appreciation of the most able and constructive contribution that it has received throughout the hearing of this matter from the learned counsels appearing before it: Shri Sanjay Parikh for the petitioner, Shri Jayant Das and Shri Raj Kumar Mehta for the State Government of Orissa, and Shri Ajay Kumar Vali for the Union of India. The Commission also reiterates its gratitude to Dr. Amrita Rangasami, Director, CSAR for the insights and thoughts she has brought to bear to the consideration of this matter by the Commission.

State-wise number of cases pending as on 1/4/2002

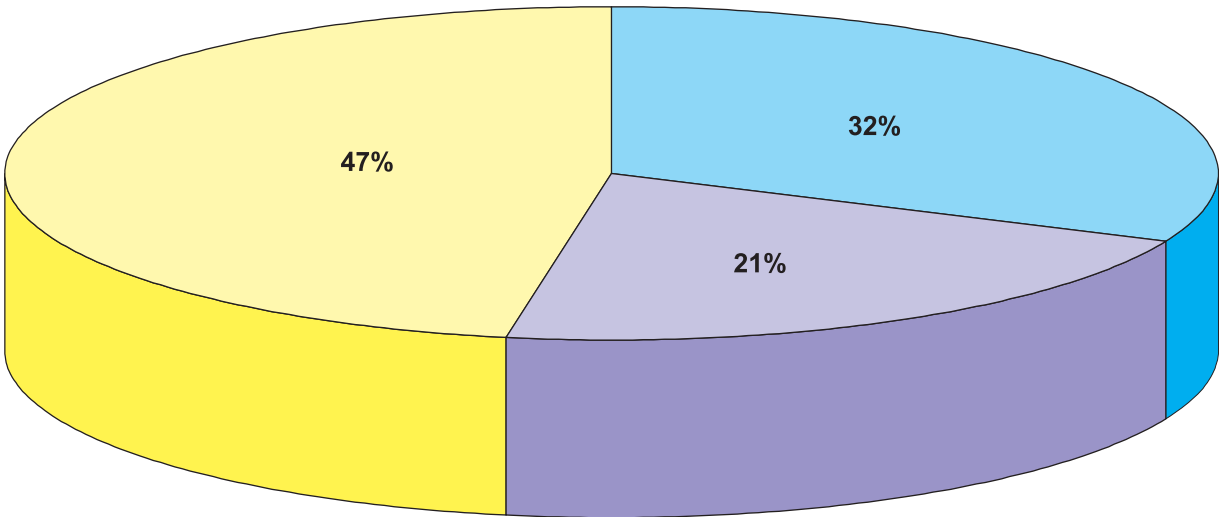
For details see Annexure -13



Cases disposed of by the Commission during the year 2002-2003

For details see Annexure -14

Total Cases : 82231

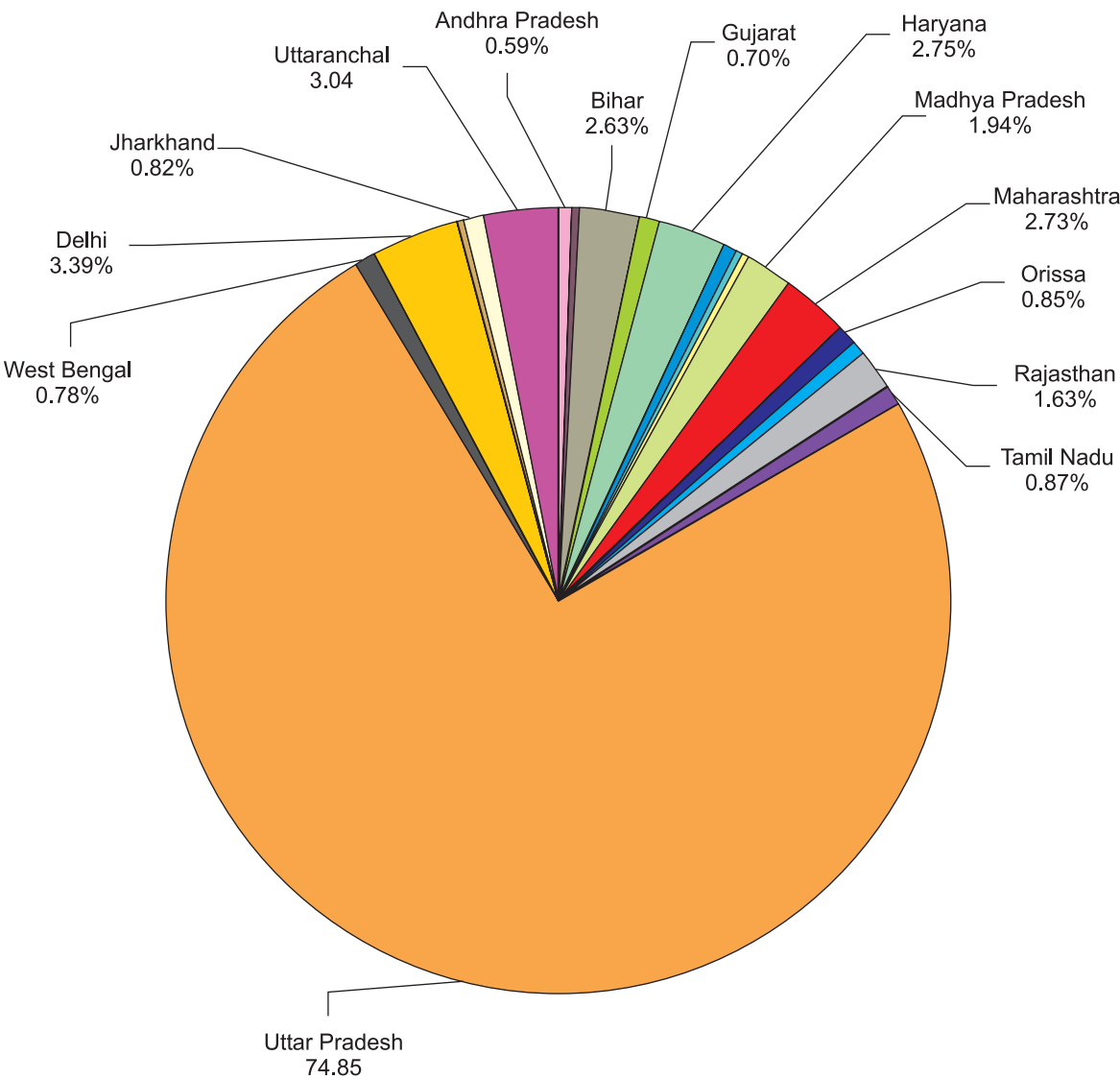


Cases disposed of with directions during the year 2002-2003

Disposed of with directions at a rate of more than 1%

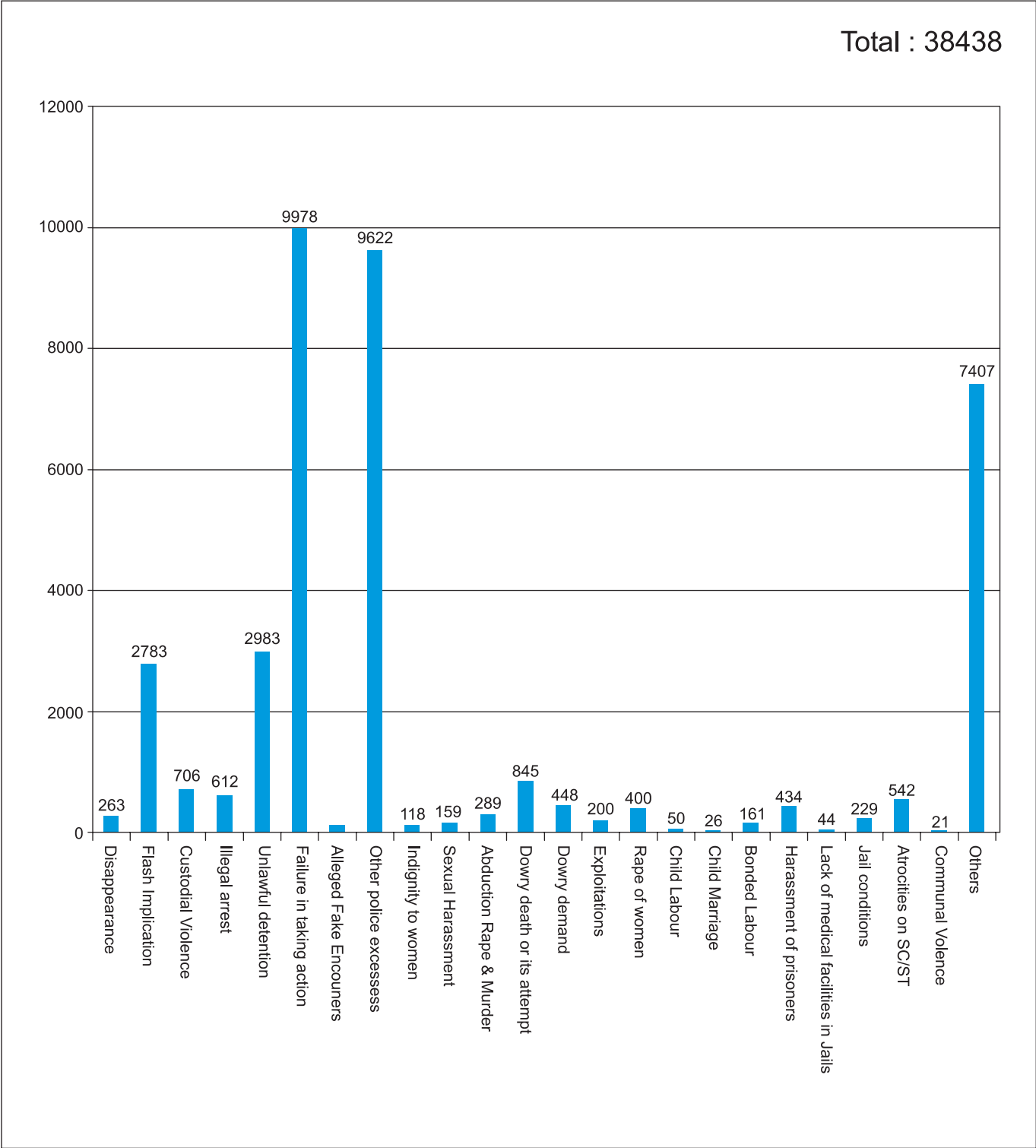
For details see Annexure -14

Total Cases : 17262



Nature of Report Cases Disposed of during the year 2002-2003

For details see Annexures-15(a) to 15(c)

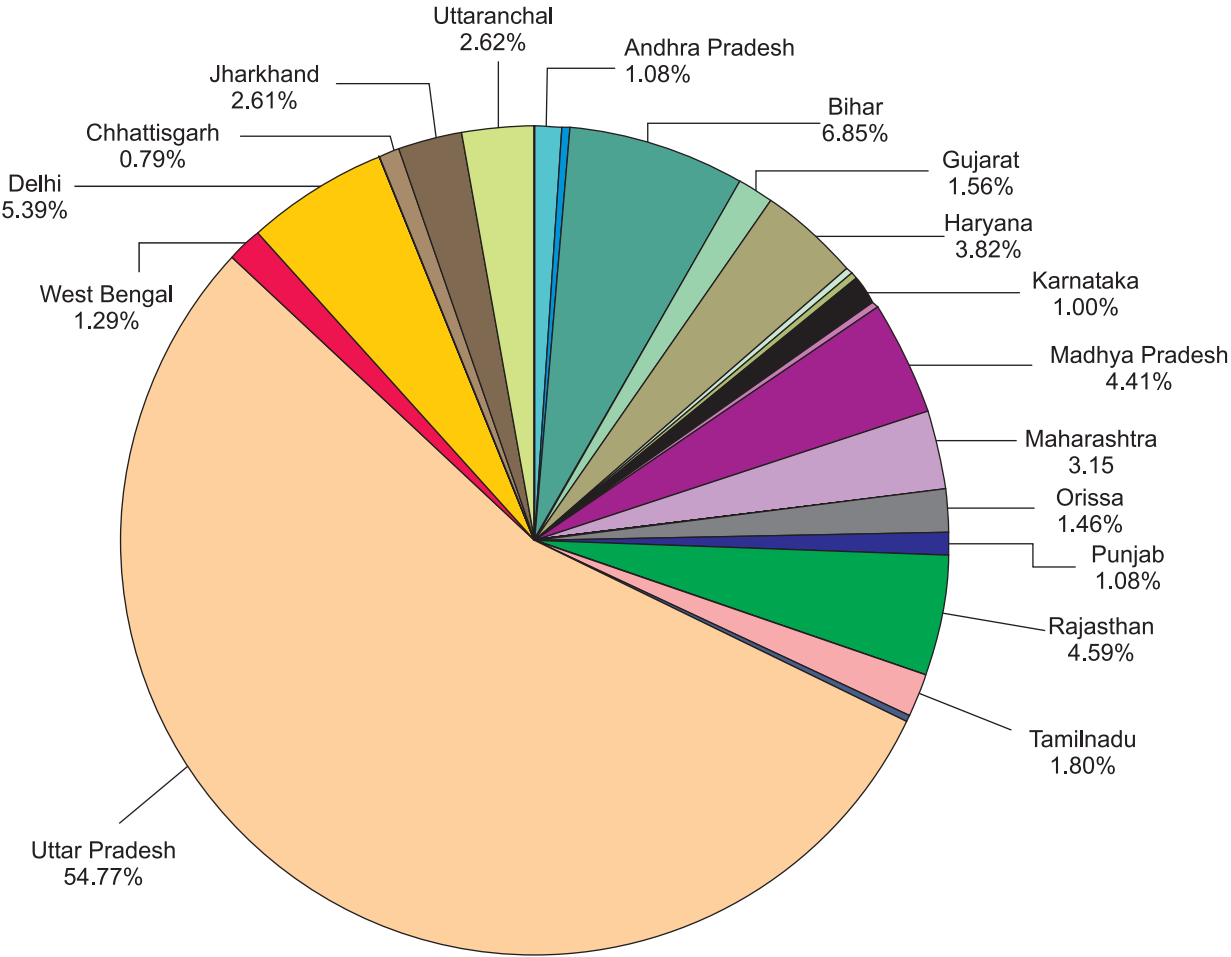


Cases dismissed in limini during the year 2002-2003

Complaints with a dismissal rate of more than 1%

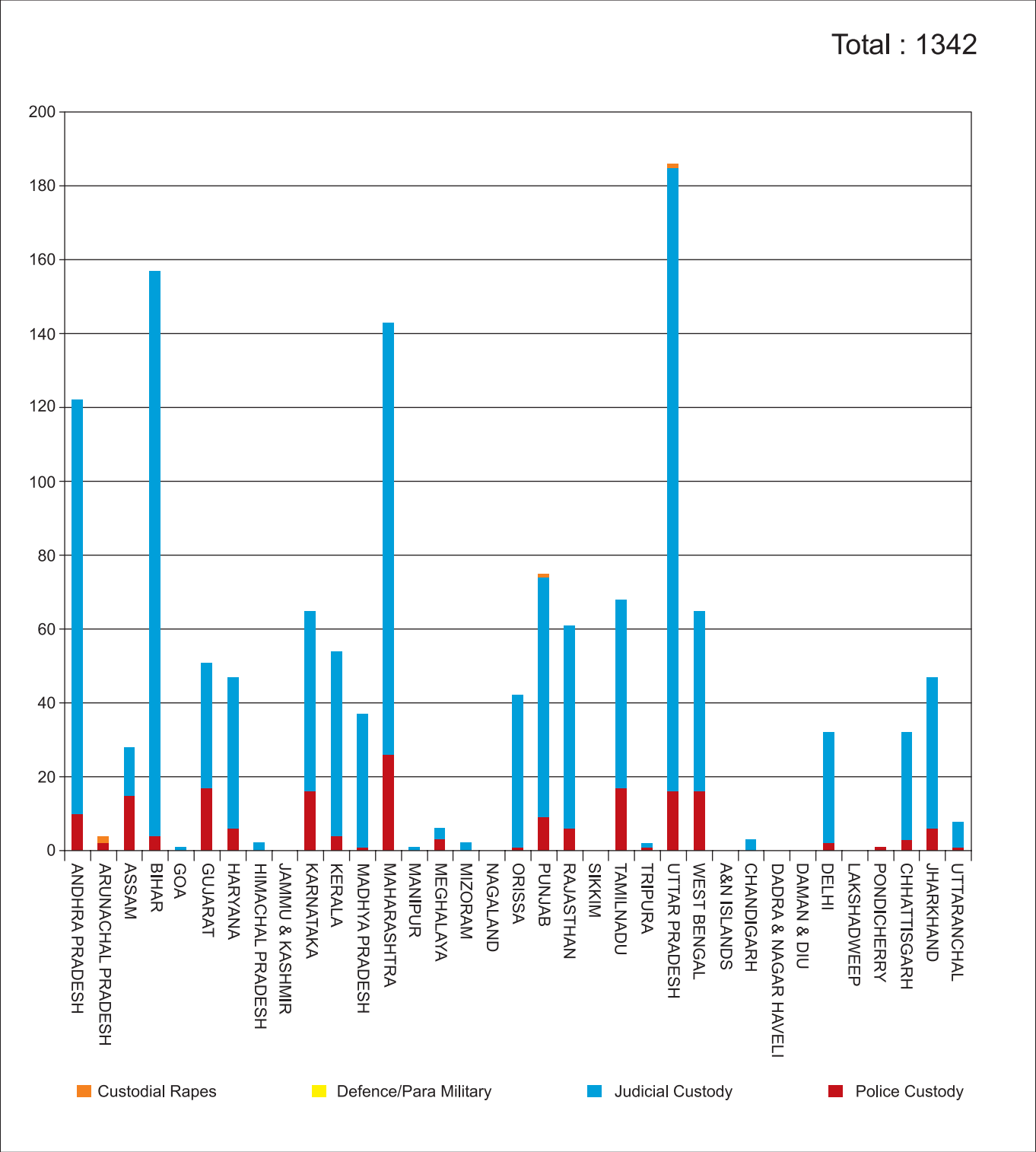
For details see Annexure -14

Total Cases : 26128



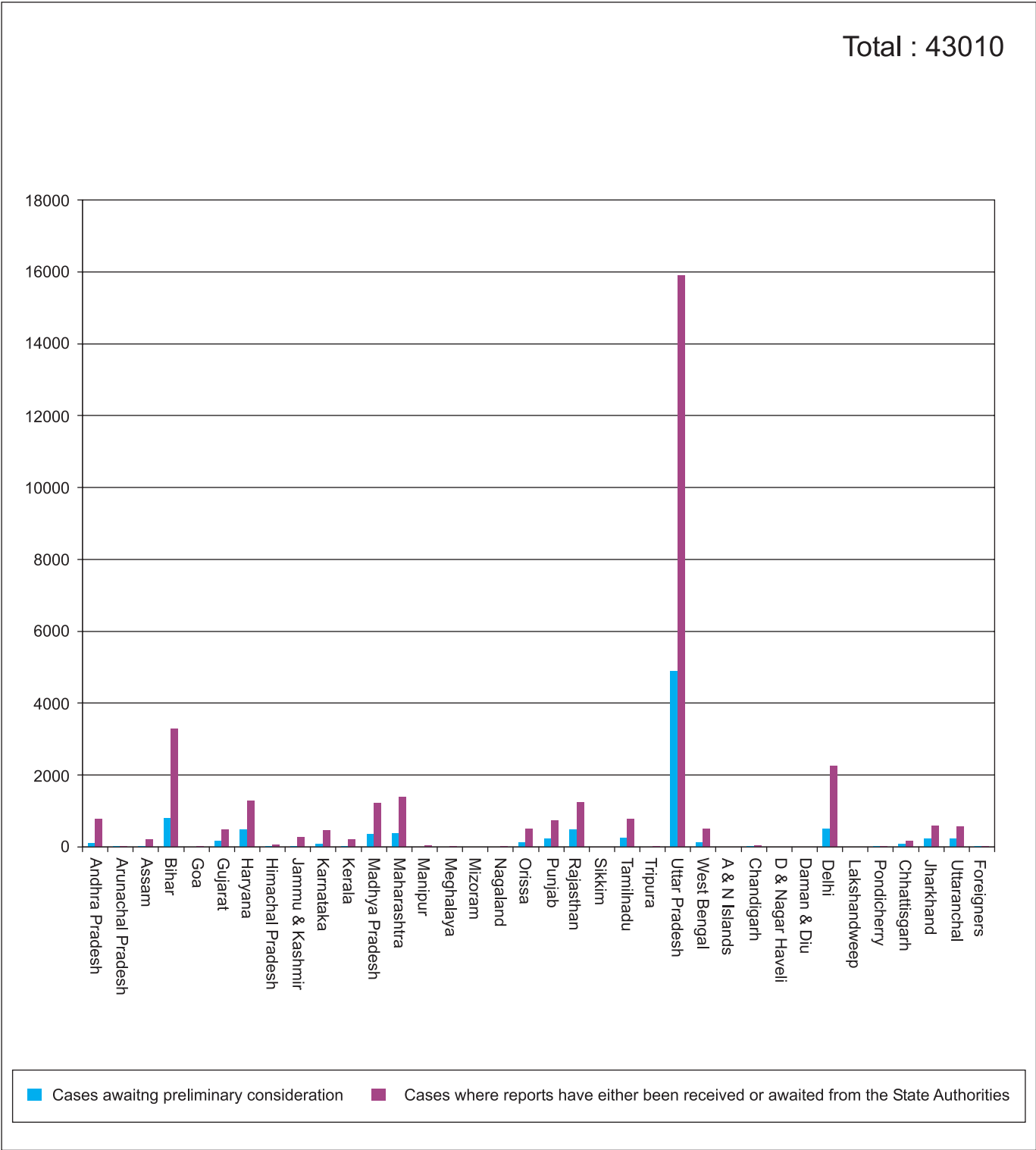
State-wise list of intimations registered relating to Custodial Deaths/Rapes during the year 2002-2003

For details see Annexure-17



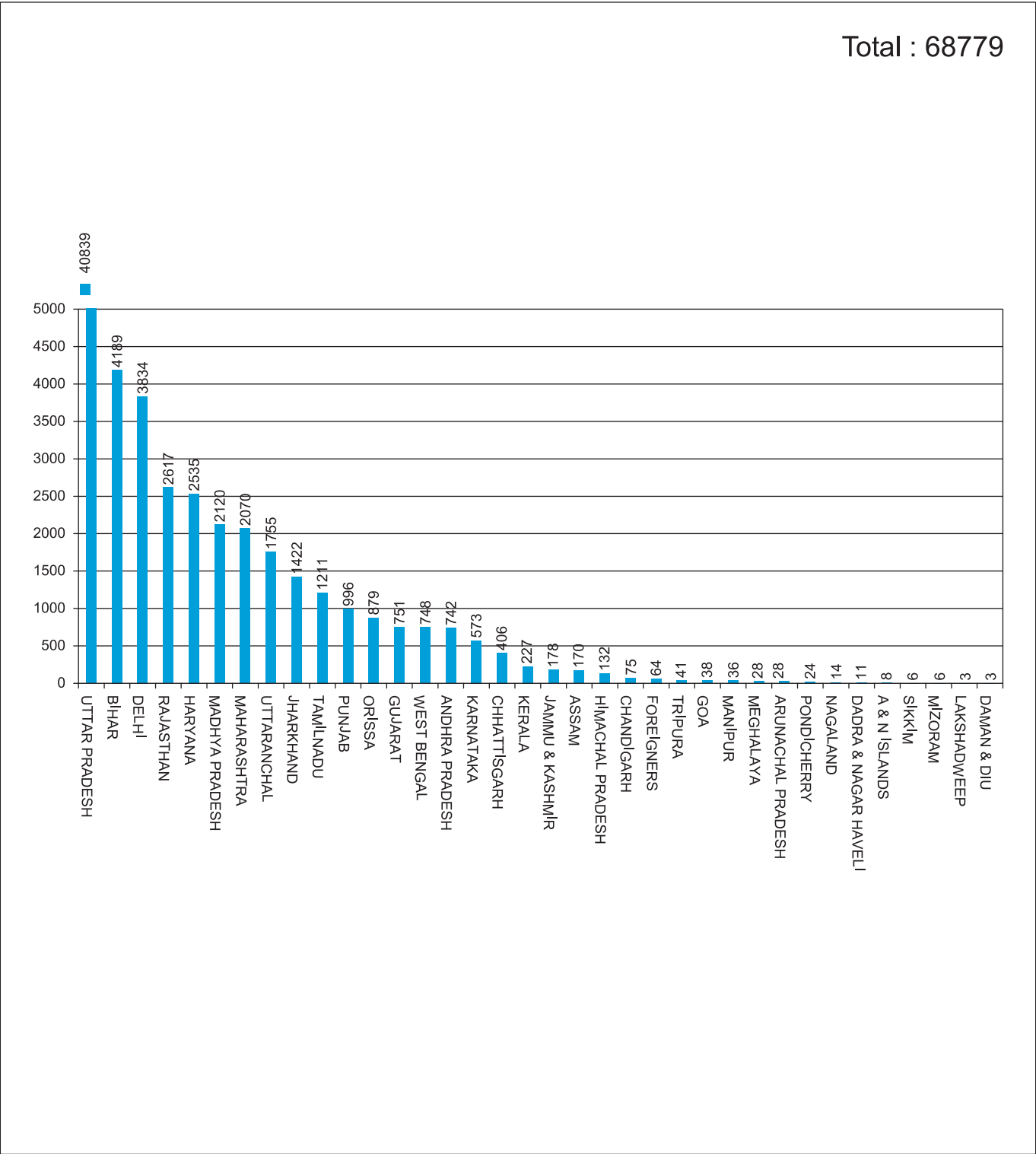
State-wise number of cases pending as on 31/3/2003

For details see Annexure - 16



State-wise list of cases/intimations registered during the year 2002-2003

For details see Annexure -17





National Human Rights Commission

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