



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

-Mahatma Gandhi



Achievements of NHRC 1993-2006



**National Human Rights Commission**  
Faridkot House, Copernicus Marg, New Delhi-110 001 India

Vol.-I



Steps  
towards  
protection  
and promotion  
of human rights

**ACHIEVEMENTS OF NHRC**  
**Vol.-I**

**1993-2006**

**National Human Rights Commission, India**



**Achievements of  
NHRC  
Vol. - I  
1993-2006**

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## FOREWORD

Thirteen years is not a very long time in the life of an institution. It is, however, a time span enough to introspect and, more importantly, chronicle the journey thus far. A journey that has been a myriad of emotions alternating between anguish, anger, frustration, satisfaction and almost always, deeply moving. The Commission has tried its level best to steadfastly remain focused on the fulfillment of its mandate.

Human Rights flow from the very fact of being born a human being. They are essentially distinguished from other rights in as much as their violation in any way, damages almost irreversibly, the subliminal processes that go to make up a total, ideal, human being. They lend dignity to the human form. Human rights are sacred, therefore, any act even construing to violate it in any manner has to necessarily be of concern to every civilized human being.

The pages of this book not only reflect the thirteen years of this Commission's working but also, seen from a broader perspective, the evolution of the paradigm of human rights in the fifty-six years of the Republic. It cannot be seen otherwise. Every issue that the Commission has taken up, every problem that it has taken cognizance of, traces its roots to a distant past. Therefore, the issues written in the publication are in many ways a sum total of the efforts of the Commission in the way of realization of the aspirations of the people.

As I glance through the contents of the book, a thought crosses my mind. What the reader sees in the book are issues tackled by the Commission over the years, condensed for the sake of brevity and readability. But, what it camouflages is the fact that when the Commission considered these issues, there were human beings behind the tragic incidents; gut wrenching stories of poverty, heart rending tales of starvation and malnutrition, horrifying details of custodial violence and deaths, wounds on the psyche of the victims as much as on their physical being, inflicted by callous and insensitive people, both, of the State and society, by their acts of

omission and commission. Try as one might, words will not give out the real picture of the reality of these incidents. The Commission had been tormented and anguished while considering the issues. The views, opinions, guidelines and directions passed, which are reflected, in their essence, in the following pages, are only a mute testimony to the cries of those victims. The Commission stands for those voiceless and faceless millions who look up to the Commission for succour. In a way, this book should be seen as a tribute to all the victims of human rights violations, whose pain and suffering this Commission has resolutely and relentlessly endeavored to alleviate.

The issues dealt with, reflect the varied problems still facing the citizens. There was a time when Civil and Political Rights dominated the agenda of national institutions, both, nationally and globally. With the passage of time, it has now been accepted that the realization of Economic, Social and Cultural Rights, was as important as that of the Civil and Political Rights. In various judgments, the Courts too have emphasized the obligations of the State in giving effect to the Directive Principles of State Policy, which reinforce the importance of ESCR.

The path ahead for the Commission is strewn with thorns and thistles no less difficult. It has to contend with issues that have been rendered more complex with the impact of globalisation. In the quest for prosperity, both, the state and society have to be on their guard that the poor and the vulnerable are not isolated, neglected, and dehumanised. The quest for an egalitarian society should be a continuing one. Both, the society and the State have to be eternally conscious of the inequalities that keep occurring and take appropriate steps to address and resolve them.

While it is accepted that the primary obligation to protect the human rights of the citizens is, undoubtedly, of the State, the NHRC as a watchdog body under the mandate has to fulfill its responsibilities and endeavour relentlessly in facilitating the protection of human rights of the citizens as well.

The saga of the Commission is a result of the tireless efforts of all its Chairpersons, Members, officers and staff, both, past and present, all of whom have striven tirelessly in the task of 'better' protection and promotion of human rights.



Justice K.G. Balakrishnan  
(Former Chief Justice of India)  
Chairperson, NHRC



## PREFACE

The 12 of October 2006, is seen as landmark day, as being the Foundation Day of the National Human Rights Commission. It was on this day in the year 1993 that the Commission was set up under the Protection of Human Rights Act 1993. It is the day of remembrance and introspection. What was the mandate given to all of us in the Commission? To what extent, we have lived upto our obligations? How do we renew our pledge with one voice, one energy and one conscience and now do we redeem it? These and many other questions will continue to haunt us as we proceed further.

This year, the Commission has decided to appropriately celebrate the occasion. One of the ways of celebration was to encapsulate the work of the Commission during the past thirteen years. Thus, the present publication is an effort into a handy form to record the major events and achievements of the commission not in a manner of self-glorification but as a biographical reminiscence.

The topics chosen for the book essentially reveal the concern of the Commission over the years. The human rights issues covered in the publication come within the broad spectrum of Civil and Political Rights and Economic, Social and Cultural Rights. The concerns of the Commission in the area of Criminal Justice system are well documented in the various Annual Reports of the Commission. It is an area crying for reform. The activities of the Commission have broadly focused on the crisis, the NHRC interventions and the long-term initiatives required in the area of Criminal Justice system.

The sequencing of the equally important area of Economic, Social and Cultural Rights (ESCR), immediately after the inclusion of Civil and Political Rights should be seen as a policy concern of the Commission that deems a full realization of ESCR as a necessary pre-condition for the achievement of all the human rights.

The rights of women and children, food security, health related rights, have been especially focused in the book as special category of human rights. In fact, each of the



issues is as serious and closely interlinked as it could be. The problems of the child are linked to the rights of the women and, both, are linked to the issue of food security through the problems of malnutrition. The Commission has, therefore, looked into all these issues, in a holistic manner.

The issues of dalits and tribals have been, are and will always be a prime focus of the Commission. Again, the Commission has sought and received, expert advice from reputed people. The Commission's interventions have been after careful consideration of the reports produced by experts.

Disability is yet another critical area warranting decisive and effective action by the government. However, the Commission is clear that the problems faced by the disabled have to be the responsibility of all sections of society. Only a concerted action will make for a just society. The Commission's efforts have been in this direction.

All the initiatives and directions of the Commission have to be further strengthened and disseminated by an alert civil society. In this matter, the importance of human rights education cannot be more critical.

The role of investigation in the functioning of the Commission is critical to its independence and effectiveness. It enables the Commission to arrive at conclusions in a fair, just, equitable and sensible manner.

In various fora, the Commission has maintained a synergy and reciprocal relationship with the Judiciary. The various remits received by the Commission from the highest Court of the land have been a testimony to the credibility of the Commission.

The Commission has found able support from the non-governmental sector. They form the eyes and ears of the Commission because it is through them that the counter points to an issue are brought to the fore enabling a public debate.

All the issues covered in the publication directly flow from the mandate of the Commission under Section 12 of the Protection of Human Rights Act, 1993. Brevity is the soul of wit, encapsulating all the issues dealt over thirteen years is not an easy task. Any omission in the book, in not mentioning a particular issue or effort, is inadvertent and not wilful. The Commission hopes the publication serves its dual purpose, as a chronicle of a journey and as a publication, which will spread the human rights message.



P. C. Sharma

Former Member, NHRC

## INTRODUCTION

### THE PROTECTION OF HUMAN RIGHTS ACT, 1993

The National Human Rights Commission came into being on 12th October 1993 under the Protection of Human Rights Ordinance of 28 September 1993. The Protection of Human Rights Act, 1993, later replaced the Ordinance.

The Commission has been established in line with the Paris Principles. The National Human Rights Commission (NHRC) of India is an autonomous body constituted by the Central Government to protect human rights in India under the Protection of Human Rights Act (PHRA) of 1993.

Chapter II of the PHRA mandates that "The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act," namely protecting "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and enforceable by Courts in India."

The latest Amendment Bill 2006 to Protection of Human Rights Act widens the scope of the functioning of the Commission. It enlarges the definition of human rights by substituting that "International Covenants" means ICCPR and ICESCR and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification specify. Further, the NHRC could visit jails or other institutions under the control of State Governments without the requirement of prior intimation thus enabling surprise visits and empowering the NHRC to study the living conditions of the inmates and make recommendations thereon to the Government. The Bill also enlarges the scope of the Commission that wherever the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Human Rights Commission who has jurisdiction to entertain the same.

## THE COMMISSION

The Commission is headed by former Chief Justice of India, one Member who has been a Judge of the Supreme Court, one Member who is or has been Chief Justice of a High Court and two Members who are eminent persons having knowledge or practical experience in matters relating to Human Rights.

The Chairperson and Members are assisted by a Secretary General who is in the rank of Secretary to the Government of India. The work of the Commission is dealt by four main Divisions namely Law Division, headed by a Registrar (Law), Investigation Division headed by Director General (Investigation), a Training Division, headed by Chief Coordinator (Training) and Administration, Information and Policy, Research Programmes and Projects Division headed by Joint Secretary.

### **Following are the Ex-Officio Members of the Commission :**

- Chairpersons of the following National Commissions
- The National Commission for Minorities
- The National Commission for the Scheduled Castes
- The National Commission for the Scheduled Tribes
- The National Commission for Women

## THE STRUCTURE

The Chief Executive Officer of the Commission is the Secretary-General, an officer of the rank of Secretary to the Government of India. The Secretariat of the Commission works under the general supervision of the Secretary-General.

There are 5 Divisions in the Commission. Though each of these has been entrusted specific tasks, the Divisions work in close consultation and coordination with each other.

### **i. The Administration Division**

This Division is headed by a Joint Secretary, assisted by a Director, Under Secretaries, Section Officers and other secretarial staff, and functions under the overall guidance of the Secretary-General. This Division looks after the administrative, personnel, establishment and cadre matters of the staff and officers of the Commission.

The Accounts Branch, functioning under the overall guidance of the Joint Secretary, consists of a Senior Accounts Officer, Assistant Accounts Officers, a Drawing and Disbursing Officer and other ministerial staff.

The Information and Public Relations Unit, headed by the Joint Secretary, disseminates information relating to the activities of the Commission, through the print and electronic media, and is supervised by an Information and Public Relations Officer, who also functions as the Editor of the monthly Human Rights Newsletter. This Unit is responsible for the website. An Assistant Information Officer is also supervising the publications of the Commission. A Public Information Officer has also been appointed for the purpose of facilitating information under the Right to Information Act. The Appellate Authority is the Joint Secretary.

The Library, besides serving the Commission, is also a resource centre used by interns, research workers and NGOs. It contains a collection of books and a variety of documents of the United Nations, AIR Manuals, Supreme Court Reports, Government Reports, NGO Bulletins, etc.

The Computer Cell of the Commission functions in close coordination with the National Informatics Centre (NIC). It has developed a user-friendly package for monitoring the status of complaints, from receipt to final disposal.

#### **ii. The Policy Research, Projects and Programmes Division**

Whenever the Commission, on the basis of its hearings, deliberations or otherwise, arrives at a conclusion that a particular subject is of generic importance, it is converted into a project/ programme to be dealt with by the PRP&P Division. The Division also undertakes and promotes research in human rights and organizes seminars, workshops and conferences on pertinent issues. The PRP&P Division is headed by the Joint Secretary and consists of two Directors, a Senior Research Officer and secretarial staff.

#### **iii. The Law Division**

This Division is headed by Registrar (Law). The post has a scale of Additional Secretary to the Government of India. The Division services the Commission in the receipt and disposal of complaints relating to human rights violations. The Registrar (Law) is assisted by a Joint Registrar, Deputy Registrars, Assistant Registrars and others. Besides, there are four Presenting Officers, coming from the subordinate judiciary, who assist the Commission in dealing with the complaint cases.

#### **iv. The Investigation Division**

When the Commission requires an independent inquiry to be conducted, it is effected through the Investigation Division, which is headed by an officer of the rank of Director General of Police. He is assisted by an Inspector General of Police/Deputy Inspector General of Police, Senior Superintendents of Police, Deputy Superintendents of Police, Inspectors of Police and Constables.

The Division also assists the Commission in examining complaints, in scrutinizing reports received from the police and other investigation agencies and in looking into reports of custodial violence or other misdemeanours. In addition, the Investigation division analyzes the intimations and further reports from the State authorities regarding deaths in police and judicial custody, encounter deaths and advising the Commission. The division is also assisting the Training Division in spreading human rights literacy as envisaged in Section 12(h) of the Protection of Human Rights Act, 1993.

#### **v. The Training Division**

This Division has been created to disseminate information and focus attention on sensitizing various agencies and sections of the , civil society such as NGOs, VOs, Voluntary Social Action Groups etc to heighten respect for Human Rights by organizing Human Rights Training Programmes. The Division is headed by a Chief Coordinator, who is a Joint Secretary rank officer. The Chief Coordinator is assisted by a Senior Research Officer and other secretarial staff.

#### **Other Mechanisms**

##### **Special Rapporteurs**

During 1997-98, the Commission greatly concerned about the need to follow-up at the field level on the recommendations and directions that it makes, and also mindful of the need for stronger linkages with governmental and non-governmental authorities and others, instituted a system of Special Rapporteurs to assist it in the discharge of its more demanding and sensitive responsibilities. These Special Rapporteurs, chosen from amongst persons of highest repute, unimpeachable integrity and a pronounced commitment to human rights have been of immense help to the Commission. They constitute a group, outside the formal administrative structures of the Commission, to act as the eyes and ears of the Commission, to follow up on the endeavours of the Commission at the highest levels and with its full authority, and to undertake such special studies and other assignments as may be requested of them from time to time.

Shri Chaman Lai a retired IPS officer joined this Commission on 1st August 1997 served as Special Rapporteur for issues such as Custodial Justice, Prison Reforms, Bonded Labour, Child Labour, monitoring of the functioning of the Agra Protective Home and the three mental hospitals in Agra, Gwalior and Ranchi, monitoring cyclone reconstruction work in Orissa and Starvation Deaths in the KBK Districts, entrusted to NHRC by the Supreme Court of India. His valuable service in discharging the Commission's onerous responsibilities came to an end on 31st August 2006 when he voluntarily decided to demit the post.

In August 2006, Shri L. Mishra a retired IAS officer who was former Union Labour

Secretary and former Senior Advisor, ILO took over the charge as new Special Rapporteur in Place of Shri Chaman Lai.

Shri K.R. Venugopal, a retired IAS officer joined this Commission on 1st December 1998 as Special Rapporteur who looked after Bonded Labour and Maternal Anaemia in the states of Karnataka, Andhra Pradesh, Tamil Nadu, Kerala, Andhra Pradesh and UT of Pondicherry. His valuable service to assist the Commission in its more demanding and sensitive responsibilities on the issues mentioned above came to an end on 14th June 2006.

Shri P.G.J. Nampoothiri a retired IPS officer who joined this Commission on 16th December 1998 as Special Rapporteur continues to look after the matters relating to Civil and Political Rights in the State of Gujarat such as Gujarat Earthquake and events that occurred in Gujarat after the Godhra tragedy. He also assisted the Commission in coordinating with the State Government and reporting on all matters relating to the communal disturbance in Gujarat on the directions of the Commission.

Shri A.B.Tripathy, a retired IPS officer who joined this Commission on 21st April 1999 as Special Rapporteur continues to look after the issues on Custodial Justice, Civil and Political Rights in the States of Orissa and Jharkhand.

Ms. Anuradha Mohit, former Deputy Chief Commissioner in the Office of the Chief Commissioner for Persons and Disabilities, joined this Commission on 1st April 2002 as Special Rapporteur (Disabilities) and continues to look after the issues relating to Disability. She also functioned as a representative of the national human rights institutions in the deliberations on the proposed International Convention on Disability, having been nominated by the International Coordinating Committee of human rights institutions (ICC) and played an active role in ensuring incorporating Article 33 in the proposed Convention.

### **Core Groups and Experts Groups**

In its endeavour to further enhance its functioning and the need that arises on occasions for getting expert advice on complex technical issues, the Commission has been establishing Core Groups of experts on selected subjects. These Core Groups have been rendering selfless service to the cause of human rights, as the members who are renowned persons in their respective fields have been sparing their valuable time and giving their opinion on the issues referred to them. That, these eminent personalities give their advice pro bono, is in the Commission's view a reflection of their commitment and concern to human rights issues.

Some of the important **Expert** and **Core Groups** that have been set up by the Commission are indicated below: -

- A Core Group on rehabilitation of long stay mentally ill patients cured of their illness under the Chairmanship of a Member of the Commission; " A Core Group on the right to food to advise the Commission on issues relating to Right to food in the context of India under the Chairmanship of the member of the Commission;
- A Core Group on Disability related issues with a view to consider the problems faced by the disabled people in the country from a human rights perspective and to enable the Commission to have regular consultation with experts in the field;
- A Core Group of lawyers to enable the Commission to draw upon the expertise and experience of eminent lawyers in matters having legal implications.
- An Expert Group on refugees by the Commission with a view to have an expert opinion on the subject before formulating its views on the model law on refugees.
- An Expert Group to go into the issue of unsafe drugs and medical devices which have not been addressed so far and to examine the effectiveness of licensing and monitoring systems
- An Expert Group on emergency medical care

## **OUR CONCERNS**

Over the past thirteen years the Commission has endeavoured to give a positive meaning and content to the objectives set out in the Protection of Human Rights Act, 1993 for better protection of human rights, it has worked vigorously and effectively used the opportunities provided to it by the Act to create awareness, and sensitize public authorities for promoting and protecting human rights in the country

The Commission, consistent with its mandate, has been taking up issues of human rights violation that are of significance, either suo-motu, or when brought to its notice by the victims, by any agency, section of the civil society, the media, citizen, or expert advisers. Its primary focus has been on strengthening and extending human rights to all sections of society, but in particular, the vulnerable groups and the weaker sections of the society.

The Commission's purview covers the entire range of civil and political, as well as economic, social and cultural rights. The issues emerging from terrorism and insurgency, custodial death, rape and torture, reform of the police, prison conditions, and other institutions such as juvenile homes, mental hospitals and shelters for women, along with the issues of health care and exploitation of children and their education have assumed special focus and attention. The Commission has urged the provision of primary health care facilities to ensure maternal and child welfare essential to a life with dignity, basic needs such as potable drinking water, food and nutrition, and



highlighted fundamental questions of equity and justice to the less privileged, namely the Scheduled Castes and Scheduled Tribes and the prevention of atrocities perpetrated against them. Rights of the disabled, access to public services by disabled, rehabilitation of displaced persons and especially of tribals displaced by mega projects, food scarcity and allegation of death by starvation, rights of the child, rights of women subjected to violence, sexual harassment and discrimination, and rights of minorities, have been the focus of the Commission's action on numerous occasions.

The Commission has taken up the cause of relief and rehabilitation of Kashmiri Migrants, provision of relief to the citizens who became the victim of devastating tsunami (2004), Super cyclone (1999) and earthquake in certain parts of the country during the last two years. The Commission has impressed on the public authorities in the affected states to ensure timely and equitable distribution of emergency relief materials as well as special attention for protection of the interest of the SC/ST, women and children.

Since inception, the Commission has directed that interim relief to the extent of Rs. 10,47,58,643/- be paid in 707 cases. It has also recommended, in a significant number of cases disciplinary action and prosecution against the public servants who were prima facie found responsible for their acts of omission or commission resulting in violations of human rights of the people.

## **2. The Officers and Staff**

The Commission began with a minimal strength of 44 in 1993, which rose to 282 in 1998. The increasing number of complaints and workload however necessitated work-study in the year 1998 based on which the strength was further increased. The sanctioned strength of officers and staff in the Commission in 2006 is 343.

### **Chairpersons**

Justice Shri Ranganath Misra was the first Chairperson of the Commission and served from 12th October 1993 to 24th November 1996. He was followed by Justice Shri M.N. Venkatachaliah from 26th November 1996 to 24th October 1999 and Justice Shri J.S. Verma from 4th November 1999 to 17th January 2003. Dr. Justice A.S. Anand took over as Chairperson on 17th February 2003.

### **Members**

Justice Ms. M. Fathima Beevi (3.11.1993 to 24.1.1997), Justice Shri S.S. Kang (12.10.1993 to 24.1.1997), Justice Shri V.S. Malimath (14.9.1994 to 11.6.1999), Justice Dr. K. Ramaswamy (16.11.1998 to 12.7.2002), Shri Sudarshan Agarwal ( 30.10.1998 to 18.6.2001), Shri Virendra Dayal 12.10.1993 to 11.10.1998 (1st term) (16.11.1998 to 15.11.2003 2nd term) and Justice Smt. Sujata V. Manohar (21.2.2000 to 27.8.2004) served



as Members of the Commission.

Dr. Justice T K Thommen was appointed as a Member, however could not assume charges on account of illness.

Dr. Justice Shivaraj V. Patil, Justice Yarabati Bhaskar Rao, Shri R.S. Kalha and Shri P.C. Sharma are presently serving as Members of the Commission.

### **Modernisation**

Due to rapid growth in the number of complaints, the necessity arose to computerize data to take timely action and meticulous follow-up. The National Informatics Centre (NIC) had extended assistance in this regard. The NIC has developed a user-friendly package for monitoring the status of complaints (COMMONS), it has now been upgraded to CMIS (Computerised Information Management System) which is being adopted by both SHRCs and NHRIs across the globe. In addition, payroll and other functions were computerised. The Commission has been provided with NICNET connectivity by NIC. This facilitates electronic mail to and from State capitals, district headquarters and various offices abroad.

### **Library**

The Library of the Commission, which was set up during 1994, is meant for research and reference purposes, primarily by those working in the Commission. It is however, increasingly being used by Interns, Research scholars, and others working in the field of human rights. At present, the library has 22,300 books, 66 journals and subscribes to 31 magazines and 15 newspapers (including 4 regional newspapers). The library has an extensive collection of books, Journals and Reports covering a wide spectrum of Human Rights related subjects, Supreme Court Judgments and Digests. The library is also equipped with SCC online (Supreme Court Case Finder CD-ROM) and Library Management System (Software package developed by the Computer Cell, NIC).

## CRIMINAL JUSTICE SYSTEM AND RULE OF LAW

Human rights have been recognised as standards of achievement and norms of decent and civilized behaviour of all members of the civil society and in particular those in authority like the governments or other agencies who have the power to shape and influence the behaviour of others. They form the foundations of a society and they are inviolable, as the society itself would disintegrate if they were violated. These rights are claimed by the people as their entitlement to certain irreducible minimum with a view to promoting and protecting their dignity and worth as human beings. The society is formed to ensure through its laws, constitution and institutions that every one enjoys these rights. The States, according to this perspective, derive their authority from the society to protect and safeguard these rights.

(i) The Criminal Justice System represents the cutting edge of governance. Towering over society, it parades an array of institutions, processes, people and penalties to reinforce its image. This array includes policemen in uniform, constables with batons or lathis, the (police) station, courts, prisons and correctional agencies etc. Each of these institutions and processes is an integral part of the Criminal Justice System and yet partly autonomous within it. Together they represent a 'hegemonic' array of the power of the State to exact, respect, support and comply. At one extreme, the Criminal Justice System represents a public necessity to correct private and public wrongs firmly and fairly. While at the other extreme it may be turned into an apparatus of oppression and systematic abuse. In either case, we have been rightly reminded, the Criminal Justice System institutions and processes are expressions of State power, which sustain an ideological image of governance embedded in people's minds.

The Indian criminal justice system is adversarial and accusational in nature and draws inspiration from the common law system. The role of the judge in the common law system as is reflected in the Indian criminal justice system is more reactive than proactive and the parties bear the responsibility of projecting their respective cases. Criminal procedure in India is fundamentally accusational i.e. the State accuses the citizen of a criminal offence and is required to prove guilt beyond reasonable doubt.

The accused is deemed to be innocent and is required to dispose a much lighter burden, particularly in those cases where he raises pleas of exemptions.

Although the procedure of a criminal trial is codified in the Criminal Procedure Code and the Indian Evidence Act, but it is no surprise that at various stages such as investigation of offence, prosecution and trial the norms are violated. All such instances of violation of the norms, which include abuse of power as well as non-exercise of power involves violation of human rights of the criminal or the victims. Thus, all the instances of violation of the norms also constitute acts of deviation from human rights standards. The Commission was appraised such deviation particularly in the following instances:

#### **(a) Fake Encounters**

The stand of the Police in most of these cases is that in the course of the encounters that took place, several persons alleged to belong to a particular group (the People's War Group) died as a result of the firing on the side of the police without even a simple injury being suffered by the police. On the basis of the information furnished by the leader of the Police party that was engaged in the encounter, entries were made in the respective Police Stations stating that the deceased persons made an attempt to kill the Police and were, therefore, guilty of the offence of attempt to murder under Section 307 IPC.

On that basis, they were described as accused and the Police drew up FIRs. The cases were closed without investigation on the ground that they have abated on account of the death of the accused persons. No attempt whatsoever was made to ascertain as to who were the Police Officers responsible for the respective killings and as to whether any offences were committed by any of them punishable in law. The stand of the Police before us is that they have not committed any offence as they acted in exercise of the right of self defence. In some of the cases, the killing is sought to be justified by invoking Section 46(3) of the Cr.PC. It is on this assumption that information was recorded in the Police Station. The information recorded in the Police Station in many of these cases is as furnished by the very Police officer who led the alleged encounter.

Attention was confined to the conduct of the deceased and not to that of the Police who had caused the deaths when the information was received at the Police Station. Causing of death by police firing in the alleged encounter has been assumed to be justified either in exercise of the right of private defense, or in course of exercise of power of arrest under Section 46. No attempt was made to investigate the circumstances under which the police opened fire and caused death to several persons. Law in this case does not sanction the procedure followed. It is even opposed to the procedure prescribed by the Code. The procedure is unjust, unfair and unreasonable and, therefore, violative of the fundamental right guaranteed by Article 21 of the Constitution.

For the reasons stated above, *the Commission made the following recommendations:*

- i. As the information furnished to the Police officers in charge of the respective Police Stations in each of these cases is sufficient to suspect the commission of a cognizable offence, immediate steps are taken to investigate the facts and circumstances leading to the death of the PWGs, in the light of the elucidation made in this order.
- ii. As the Police themselves in the respective cases are involved in perpetrating encounter, it would be appropriate that the cases are made over to some other investigating agency preferably the State CID. As a lot of time has already been lost, we recommend that the investigation be completed within four months from now. If the investigation results in prosecution, steps for speedy trial are to be taken. The Commission hopes that suitable compensation would be awarded in cases ending in conviction and sentence.
- iii. Deceased Shankariah (Case No.234 (3)/93-94/NHRC) admittedly was not involved in any pending criminal case and ending his life through the process of alleged encounter was totally unjustified. So far as he is concerned, the Commission is of the view that the State Government should immediately come forward to compensate his widow by payment of compensation of Rs. 1 lakh as was done in similar cases and the police involved in killing him should be subjected to investigation and trial depending upon the outcome of investigation.
- iv. The Commission commends to the State Police to change their practice and sensitise everyone in the State to keep the legal position in view and modulate action accordingly. In case the practice continues notwithstanding what we have now said, the quantum of compensation has to be increased in future and a stricter view of the situation has to be taken. Being aware of the fact that this practice has been in vogue for years and the people have remained oblivious of the situation, the Commission is not contemplating the award of any interim compensation at this stage.

**(b) Harassment of Undertrials**

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

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

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

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

### **(c) Arbitrary Arrest and Detention**

The Commission has in this connection kept itself alive to the spirit of various United Nations instruments too. *Article 9* of the International Covenant on Civil and Political Rights makes it explicit that everyone has the right to liberty and security of person and nobody shall be subjected to arbitrary arrest or detention. It further mandates that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. *Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1985* makes it an obligation of the State to ensure that in its legal system, the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. *Principle 35 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)*, also prescribes for remedy of compensation, in case of any damage incurred because of acts of omission by public officials contrary to the rights contained in the Body of Principles.

In the case of *Sanabhai Bhulabhai Machhar*, the Commission considered that the death occurred in suspicious circumstances and the police officials on duty did not exercise the due diligence expected of them. This case is a significant illustration of the widened scope of the meaning, which the Commission has given to the concept of immediate interim relief.

The Commission took the position that it is not required in a case to establish that the public servant was negligent in preventing the violation of human rights. It is sufficient to bring the case within the doctrine of *res ipsa loquitur* if the concerned public servant has not exercised due diligence. The Commission has thus enhanced the meaning of Section 18(1) and has broadened the horizons of S.18(3) of the Act.

### **(d) Custodial Violence**

Custodial violence is an unacceptable abuse of power and an abhorrent violation of human rights by the protectors of the law themselves. It not only violates Article 21 of

the Constitution of India which guarantees the fundamental right to life and liberty, but also infringes upon Article 3 of Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights, that every person has the right to life, liberty and security and no one shall be arbitrarily deprived of life.

*The Commission has played an active role in redressing the grievances of the victims of custodial violence.* In accordance with a circular dated 14 December 1993 issued by the Commission to all State authorities, all cases of custodial deaths either in police or in judicial custody are required to be brought to the notice of the Commission within twenty-four hours. The illustrative cases on custodial death reveal that the interventions of the Commission are increasingly securing better investigation of such cases and resulting in the provision of immediate interim relief to the survivors of the deceased victims of custodial violence.

In this connection, the Commission would like to recall the Judgement of the Supreme Court in the case of *D.K. Basu Vs State of West Bengal (AIR 1997 SC 610)*, which dealt with the principle *Ubi jus, ibi remedium* i.e., there is no wrong without a remedy. The law wills that in every case where a man is wronged and damaged, he must have a remedy.

A mere declaration of the invalidity of an action, or the finding of custodial violence or death in a lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done. While there is no express provision in the Constitution of India for grant of compensation for violation of the fundamental right to life, the Supreme Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of person's right to liberty or life.

### **(e) Gujarat Riots**

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.

The NHRC expressed concern about the "widespread lack of faith in the integrity of the investigating process and the ability of those conducting investigations." In particular the NHRC noted that numerous allegations had been made that FIRs were being "distorted or poorly recorded" and that "senior political personalities" sought to "influence" investigations by remaining present in police stations. The Commission, therefore, listed as the first item of its "Recommendations" to the Gujarat government that the Central Bureau of Investigation be entrusted to investigate critical cases so that the "integrity of the process" could be restored. In particular the NHRC



recommended that the incidents at Godhra, Gulmarg Society, Naroda Patia, Sardarpura and Best Bakery in Vadodara be entrusted to the CBI. The commission also recommended that "Special Courts" be created to try these critical cases and that "Special Cells" be constituted with District Magistrates monitoring the progress of the investigation of cases not handled by the CBI.

The NHRC recommended that senior political leaders and officers visit the camps in order to restore the confidence of victims.

The Commission also recommended that displaced person should not be asked to leave camps until appropriate relief and safety measures are in place

Recognizing the dire needs of hundreds of destitute women, orphans and those subjected to rape in distress, the NHRC's recommendations call on government agencies to ensure that they receive proper counseling and psychological care

The commission's recommendations also state that the numerous places of worship that were destroyed be restored immediately

Through its proceedings of 21 May, 2003, the Commission noticed that some cases arising out of Godhra and post-Godhra violence were under trial in various courts and that Justice Nanavati Commission of Enquiry was also recording evidence of witnesses as per the terms of its reference. The Commission observed that the right to fair trial is a Constitutional imperative and fairness of a trial includes, 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 and further that fair trial envisages a fair deal to the victims also. The Commission, therefore, asked the Director General of Police, Gujarat to respond to the following query:

"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 Enquiry and, if so, the nature of that protection to enable them to depose freely and fearlessly."

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 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 judgment 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 DGP, Gandhinagar, Gujarat has submitted his report dated 3 June, 2003 in which it has been stated that a total of 2037 cases have been charge-sheeted in various criminal

courts all over the State. Responding to the query as to what measures have been taken to protect the safety, physical and psychological well being of the victims and witnesses, the DGP has 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 has stated that witnesses are free to approach the police officers seeking protection. He has further submitted that prompt action was taken to provide due protection to the witnesses/victims when so requested in the following two cases:

- (i) "Ahmedabad City Naroda Police Station CR No. 238/02 and Naroda Police Station CR.No. 100/02. In these cases witness Nadeem Mohamad 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 DGP has then assured this Commission:

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

In view of the above assurance by the DGP (Gujarat) we hope that witnesses/ victims will appear before the trial courts or the Commission of Enquiry, as the case may be, and make true and faithful statements in respect of matters within their knowledge without any fear or favour. 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 view of the assurance by the DGP, as noticed above, appropriate steps will be taken by the Superintendent of Police/Commissioner of Police when so approached by the witnesses/victims. In case of police inaction on their request, 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 this Commission.

## **II. National Human Rights Commission's Role in Securing Human Rights within Criminal Justice System**

The National Human Rights Commission was constituted in the year 1993 with the



objective of better protection of human rights. In accordance with the mandate u/s 12 of the Protection of Human Rights Act, the Commission not only receives and examines complaints presented to it by a victim or any person on his behalf alleging violation of human rights or abetment thereof or negligence in prevention of such violation by a public servant. The Commission can also enquire *suo motu* into the incidents of violation of human rights which have received media attention such as coverage in newspapers, television, magazines etc. For the sake of better protection of human rights the Commission is also assigned the task of review of the safeguards provided under the Constitution or any other law for the time being in force and recommend measures for their effective implementation. The Commission takes steps for spread of human rights literacy amongst various sections of the society, promote awareness of the safeguards available under the law and encourages efforts of NGOs working in the field of human rights. As a sequel to such steps the Commission has been receiving a large number of complaints alleging violation of human rights by public servants including police atrocities such as torture in custody, illegal detention, abuse of power, false implication, custodial rape and failure to take lawful action. The Commission has also been receiving a number of intimations in respect of deaths in custody (judicial as well as police) and killings in police encounters. Complaints are also being received in respect of inaction on the part of public authorities in respect of alleged atrocities on SCs/STs, children and women including their exploitation and their engagement as bonded labourers, as well as denial of proper medical care and other health related issues. Concerned with the large number of deaths in custody, the Commission during 1993 issued guidelines advising the State Governments/ UT Administrations to report all custodial deaths or rape to the Commission within 24 hours of such occurrence as well as to send the required reports called for.

The Commission also emphasized for the Videography of the post-mortem examination in respect of deaths in police custody or judicial custody.

The Commission also separately issued guidelines in respect of procedure to be followed in cases of encounter deaths emphasizing upon the States to send intimation of all cases of deaths arising out of police encounters. The Commission also laid down procedure to be followed by State Govts, in all such cases of deaths.

The Commission has also issued guidelines laying down the procedure to be followed for examination of requests/ cases for premature release of prisoners.

For proper monitoring of complaints about violation of human rights, the Commission expressed the need for a separate coordinating agency in every State and in pursuance of its recommendations, State Governments have established Human Rights Cells in the police headquarters of their respective capitals.

As a result of increasing awareness amongst the masses as well as the prevailing violation of human rights by the acts of commission/ omission by public servants in

various parts of the country, the Commission has continued to receive a large number of complaints alleging human rights violation. During the last three years, the Commission has been receiving about 6000 complaints per month i.e. between 70,000 - 75,000 complaints per year. The complaints received cover a broad spectrum of human rights violation including custodial deaths, custodial torture, other police excesses, bonded labour issues, exploitation of women and children, exploitation of SCs/STs etc. Apart from these there are also complaints relating to human rights violations due to natural calamities such as cyclones, earthquakes etc. and starvation deaths due to deprivation, denial of medical care as well as death due to electrocution etc.

In every proven case of violation of human rights, the Commission has recommended relief for the victim/ next of kin of the deceased victim apart from action against the guilty public servant for his acts of commission/omission which resulted in such violations. This is illustrated below:-

- i) In the case of death of Bujhai in police custody in UP. on 30.5.2004, the Commission awarded immediate interim relief of rupees one lac to the next of the kin of the deceased.
- ii) In the case of death of Radhey Sham in police custody in Rajasthan on 6.5.99, the Commission awarded immediate interim relief of rupees one lac to the next of the kin of the deceased.
- iii) In the case of death of Karan Singh in police custody in M.P. on 24.10.2000, after intervention by the Commission, the Govt. of M.P. paid relief of Rs.1.50 lacs to the widow of the deceased in accordance with provisions of Scheduled Castes and Scheduled Tribes (Prevention of atrocities Act.), 1989.
- iv) In the case of death of Sanjay Sharma in district jail Mathura, U.P. on 21.3.2001, the Commission awarded immediate interim relief of rupees fifty thousand to the next of the kin of the deceased.
- v) In the case of death of Zakir in police custody in Delhi on 12.5.01, the Commission awarded immediate interim relief of rupees two lacs to the next of the kin of the deceased.
- vi) In the case of death of undertrial prisoner Tachi Kaki in police custody in Arunachal Pradesh on 28.7.02, the Commission awarded immediate interim relief of rupees fifty thousand to the next of the kin of the deceased.
- vii) In the case of death of Smt. Basanti Devi in judicial custody in Purnia, Bihar on 26.10.01, the Commission awarded immediate interim relief of rupees one lac to the next of the kin of the deceased.

viii) In the case of death of Chander Prakash in judicial custody in Bareilly on 27.5.00, the Commission awarded immediate interim relief of rupees one lac to the next of the kin of the deceased.

The Commission has also recommended interim relief in cases of illegal detention such as case of Ramveer Singh, Surinder Singh of Delhi, illegal detention and torture of Zamir Ahmed in Bullandsehar, U.P., Manoharan in Tamil Nadu and D.M. Hegde, Maharashtra.

For attaining one of the major mandates under section 12 of the Act, the Commission through its Special Rapporteur has been undertaking visits to jails across the country for evaluating the living conditions of the inmates and recommending corrective measures for protection of human rights of prisoners in jails. Apart from the monitoring of improvement in the living conditions, the Commission has also endeavoured to bring about systematic changes in the Criminal Justice System by drawing the attention of the State authorities to the failures and delays in the existing system. Thus dealing with cases from the States of Assam, West Bengal, Delhi and Punjab, the Commission could provide relief to some mentally ill inmates who were languishing in jails for a number of years without trial.

#### **(a) Visit to Police lock-ups**

Section 12(c) of the Protection of Human Rights Act provides that the Commission shall visit, under intimation to the State Government, any jail or institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon.

Disturbed by the increasing **reports of violence in police lock-ups**, the Commission took a decision that its officers would make surprise visits to police lock-ups. Accordingly, the Secretary-General of the Commission in a letter to the Chief Secretaries of the States/UTs on 1 August 1997 requested them to issue necessary directions to the police authorities to enable officers of the Commission to visit police lock-ups. Twenty-six States/Union Territories have since accepted this suggestion. The Commission is pursuing this matter with the Governments of Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur and the Union Territories of Daman & Diu which are yet to respond positively.

The Commission recommends that they accept this recommendation speedily and affirm their interest in the proper management of police lock-ups. Detailed instructions have been issued to the officers of the Investigation Division regarding the manner in which they are to conduct checks during their visits to the police lock-ups. A list of "Dos and Don'ts" has been prepared and circulated to the visiting officers; a copy may be seen at Annexure.

## **(b) Interim Relief/Compensatory Justice**

The other important initiatives by the Commission for the protection of human rights include the following:

The Commission received a complaint from one Rita Dhawan (Case No.144/93-94/NHRC) that the Maruti van of her husband, while returning from Varanasi, was surrounded by six policemen, near the Police Station Civil Lines, Ranchi, who demanded Rs. One Lakh and, on being refused, shot at the petitioner's husband and others in the van from the point blank range and killed him. They also removed the gold chain, rings and wristwatch from the body of the deceased. On notice from the Commission, the Under Secretary, Govt of Bihar submitted a report stating that the SHO of the police station on 5 Dec. 1993, on receiving information that some criminals were absconding in the said van, followed the van along with other police staff and as the persons in the van were firing recklessly, police returned the fire and as a result three of those in the van were killed.

A report was lodged about the incident, the police officers were suspended and a case under Section 302/379/201/31 IPC was registered against the SHO and others. The accused persons were arrested and the case was under trial in the Court of the Sessions Judge, Gaya. The trial ended in a conviction and several persons were sentenced to the extreme penalty of law. But the Commission decided not to close the case and issued notice to the Chief Secretary, Govt. Of Bihar, as to why in the circumstances of the case, Smt. Rita Dhawan should-not be awarded an "immediate-interim relief or Rs: 10 Lakhs" without prejudice to her private law rights for damages. The State Government responded contending that as the accused persons had already been convicted and sentenced to death, the Government found no justification for paying a sum of Rs. 10 Lakhs as compensation and that it would cause unnecessary financial burden on the state.

In the Commission's analysis, the stand taken by the State Government to have proceeded on the assumption that the establishment of culpability of public servants at a criminal trial and their conviction and sentence puts at rest even the claim for compensation or immediate interim relief to the dependents of the victims envisaged in Section 18(3) of the Protection of Human Rights Act, 1993 is not sustainable. In the Commission's view the assumption was not only wrong but the position was diametrically opposite. The case for award of interim-relief really became a fortiori.

The immediate interim relief envisaged under Section 18(3) of the Act has to be granted for the injury/loss which the victims or the members of the family have suffered owing to the violation of human rights by public servants and the establishment of culpability of the involved public servants cannot absolve the state of its liability for compensation. According to the Commission, any State professing to be a welfare state is expected to give a meaning to Section 18(3) of the Act, ensuring liberal construction

to promote the philosophy of the Statute and advance its beneficent and benevolent purposes.

In the Constitutional context, the claim in public law for compensation for unconstitutional deprivation of the fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, *is a claim based on strict liability and is in addition to the claim available-in private law for damages for tortuous acts of public servants.* Public law proceedings serve a purpose different from private law proceedings. Award of compensation for established infringement of the indivisible rights guaranteed under Article 21 is a remedy available in public law, since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. The grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

*The quantum of compensation however, depends upon the particular facts of each case.* The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the court and paid by the state to redress the wrong done may, in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

Seen in this context, the Commission felt that the stand of the Government of Bihar would only expose it to avoidable legal hassles and investigations. The Commission, accordingly, considered the stand of the State Government wholly untenable and recommended that the State Government pay immediate interim relief of Rs.10 Lakhs to Smt. Dhawan without prejudice to her private law rights damages. The State Government complied with the recommendations by making payment to Smt. Dhawan.

### **(c) Police Over-Action Against Striking Medical Students**

Taking note of disturbing news reports appearing in newspapers as well as electronic media about the alleged police action on medical and engineering students indulging in peaceful protests against the proposed increase of reservation quota for certain sections of society in higher education, the Commission has called for factual reports from the Commissioners of police, Delhi and Mumbai in respect of the unprovoked lathi charge on the students in the two places. The Commission noted that the allegations of police action, if true, raise a serious issue of violation of human rights. No civilized State can justify use of brutal force on peaceful demonstrators, the Commission observed. The Commission has also taken note of news reports regarding

strike of work by the resident doctors of government hospitals and also the call for a 'medical bandh', issued by the Indian Medical Association, resulting in paralyzing of medical services in Delhi to a large extent.

The Commission, highlighting that right to proper and timely medical intervention and treatment is an essential feature of right to health care, has issued an appeal to the Indian Medical Association, Delhi Medical Association and the striking doctors to resume their duties in the interest of poor, sick and ailing patients.

### **111. Systemic Reforms**

Convinced that the protectors and enforcers of law had themselves to be prevented from violating human rights, the Commission has, since its establishment, stressed the need for essential changes in the character and method of functioning of the criminal justice agencies and made specific proposals to this end. It had repeatedly emphasized, for instance, that the police needed to be shorn of the image of the hand-maid of the party in power and that, in a pluralistic society such as ours, it had to function, and be seen to function, with impartiality and integrity by all elements of society.

The Commission had, accordingly, urged the Government to act upon certain essential recommendations of the second Police Reforms Commission.

The Commission was, in this connection, deeply gratified that the then Home Minister, in a letter written to the Chief Ministers of all States in April 1997, chose to pursue this matter, reacting positively both to the recommendations of the Police Commission and to the advice of the National Human Rights Commission and stating *inter alia* that "we are also currently engaged in the implementation of some of the basic recommendations which lie within our jurisdiction viz. in the Union Territories and other centrally administered areas."

The Commission is constrained to observe, however, that there has been an apparent lack of follow-up on that letter of the Home Minister, both in respect of the action taken by the State Governments and in respect of the implementation of the recommendations within the Union Territories and other centrally administered areas. The Commission would, therefore, strongly urge that effective steps be taken in the Union Territories to initiate the required reforms identified by the Police Commission and elaborated upon by this Commission.

For its part, the Commission has, in addition, impleaded itself as a party in the case of *Parkash Singh vs. Union of India* and others before the Supreme Court of India, which relates specifically to the implementation of certain recommendations of the National Police Commission. In a comprehensive affidavit and further submissions, the Commission has highlighted the need for the insulation of the police from extraneous



pressures and for bringing about other important structural reforms in the administration and functioning of the police.

*The Commission would like to reiterate its deeply held conviction that many of the ills afflicting the police can only be cured through major structural changes of the kind that it has proposed, through better training and modernization of the force. The punishment of delinquent officers, however important in individual cases, is simply inadequate to the needs of the situation.*

The Commission therefore, looks forward to the verdict of the Supreme Court in this matter, as it will have a most important bearing on the future of the police in this country and the promotion and protection of human rights which have, in recent years, been violated too often by the law enforcement machinery itself.

### **(a) Seminar on Police Reforms and Custodial Justice**

#### **i. Conference on Police Reforms**

The Meeting of Chief Secretaries and the Directors General of Police was held on 17th March 2006 at New Delhi. The purpose of the meeting was to appreciate and understand the difficulties faced by the state machinery and for efforts to be made in the "Better protection of human rights.' The seminar highlighted the importance of Economic, Social and Cultural Rights as well as it focused on police and prison reforms.

The Chairperson, Hon'ble Justice A.S. Anand emphasized in the seminar that good governance would be possible only if human rights are the focus. He said that the vast cultural and linguistic diversity of the country necessitates that Chief Secretaries and Director Generals of Police take the lead by good governance. It was also reminded that the primary responsibility for the protection of human rights rests with the State.

The Chairperson highlighted that FIRs should be registered for all cognizable offenses. There was need for holding sensitization workshops for the police to increase the level of sensitivity.

The views of the participants were solicited on the following agenda items-

#### **Civil and Political Rights**

- Crimes committed by persons in uniform
- Conditions in Jails

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

- Duties of the State to promote economic, social and cultural rights

- Status of the Vulnerable- Commitment to eradicate Manual Scavenging
- Spread of awareness in cases of Child Marriage
- Policy regarding rehabilitation of internally displaced persons
- Implementation of the Bonded Labour Act and Child Labour Prevention Act, that is, identification, rescue and rehabilitation of bonded labour and Child Labour
- Right To Health
- Government Mental Hospitals
- Female foeticide
- Health Care of Senior Citizens
- Human Rights and HIV/AIDS
- Rights of the disabled
- Trafficking in Women and Children
- Right to Food
- Human Rights Education
- Setting up State Human Rights Commissions

The meeting concluded with remarks that if states ignore the justified demands of the people they do so at their peril. The courts have to necessarily step in. Neglect of the difficulties faced by the people only leads to severe unrest and situations that go out of control.

## **ii. Conference on Custodial Justice**

Two days Seminar was conducted by National Human Rights Commission (NHRC) and Penal Reform and Justice Association (PRAJA) on Custodial Justice at Vigyan Bhawan on 30th and 31st March.

### **Police:**

Following are some of the recommendations on the subject:

- i. Under the various laws, policies and judicial decisions, the time frame to complete interrogations and investigations is specified, which is generally



not followed. The guidelines for arrest are also clearly outlined in *the D.K. Basu vs. West Bengal* case. Therefore, there is a need to enforce arrests within the framework of law and following the existing rules and precautions. Also, the interrogations need to be completed within a definite time frame without resorting to third degree methods.

- ii. National Human Rights Commission is monitoring deaths and violence in police custody. During the seminar, the issue was taken up that now the time has come to adopt different methods based on a scientific and humane approach to interrogation and investigation, to prevent violence resulting in deaths in custody.
- iii. Crimes against minorities, children and women need special attention and speedy disposal.
- iv. Much of the time of the police personnel is spent in solving law and order issues. Investigation, therefore, gets delayed and neglected. There is a strong need to bifurcate the police personnel separately for investigation and for law and order duties. Accordingly the personnel should be trained to specialize in investigation procedures. This will definitely help in speedy disposal of the cases.
- v. Training is to be taken as a continuous process of learning and to be used with the purpose of changing the attitude and mindset of the police personnel.
- vi. NHRC has also been monitoring the departmental actions, which have been taken against the police personnel who are violating human rights. Accordingly, it has been found that many a times a major violation of human rights ends up with a minor punishment or no-punishment. Special care should be taken to the effect that there is *zero tolerance* for any violation of human rights in custody.

### **Prisons:**

NHRC has observed that the number of under trials is increasing day by day and the period for which they languish in jails is also a very long one. In few cases NHRC has found under trials in judicial custody for 24-54 yrs, which is much above the period to be in capacitated in jail under any section.

### **Hence NHRC recommends:**

- a. Working out a system of holding of regular special courts in the prisons for early disposal of cases.
- b. The judicial officers to be sensitized towards the various provisions, for giving bail and ensuring speedy trial. The investigating agency should be sensitized to provide legal aid wherever necessary.

- c. The visit to the prison by District Magistrate, SSP and other officers (including judicial officers) should be not mere a routine exercise.
- d. Release of under trial prisoners on bonds, if the prisoners have completed one half or two thirds of their punishment period.
- e. To offload a large number of prisoners by making the availability of bail accessible, undertaking speedy trails and providing legal aid.
  - I. A basic need approach that would take care of both physical and non-physical needs like freedom from restraint, right of access to information and communication.
  - II. For the convicted persons the reformation-correction and rehabilitation should be worked out with innovative ideas to expose them to the skills, which will enhance their employability in the labour market, once they are outside the custody. There have been good examples tried out in different parts of the country and there is a need is to encourage this.
  - III. There is a need to frame common guidelines for the release of the prisoners.
  - IV. An institutional mechanism should be in place to ensure the future of the children of prisoners. The guidelines given in a recent Supreme Court judgment should be adhered to.
  - V. There was need to encourage and allow lay visits to the prisons.
  - VI. To ensure regular monitoring and periodic check-up of prisoners.
  - VII. The prison conditions should be made more people-friendly for women, aged and mentally ill prisoners. The regular check ups and special provision for the mentally ill prisoners have been taking a back seat in the arrangements made in the jails. NHRC would like to draw the attention of the State government to ensure that the mentally ill prisoners are kept separately and necessary medical treatment be given to them.
  - VIII. In specific kind of cases where reformation is the main motive, the state government should be encouraged to have with special provisions to impart skills, which will enable better rehabilitation opportunities.

**(b) Human Rights Education and Training**

**i. For Administrators**

The Commission has, for some time, been engaged in creating a greater awareness

of human rights among young administrators so that they may retain sensitivity towards such rights throughout their careers and strive to promote and protect them. The Chairperson of the Commission visited the Lai Bahadur Shastri National Academy of Administration, Mussoorie, and during his interaction with the Director and senior officers of the Academy emphasised the importance of introducing human rights related issues in the various courses run by the Academy and other National Training Institutions.

The Commission has been informed that a Module on human rights has been introduced by the Academy in the Foundation Course for civil servants at the instance of the Department of Personnel and Training. The Academy has also made it mandatory for all Indian Administrative Service Officer Trainees to complete two field assignments, focused on the subject of the violation of human rights, during the course of their year-long training period in the districts.

The Commission has stressed the importance of introducing inputs on human rights in Phase-I of the IAS training programme (as field assignment) and also in Phase-II of that programme (discussion on completed assignments), as well as in the in-service training for Provincial Civil Service officers promoted to the IAS. The Commission is of the view that the prescribed syllabi for these courses should be suitably modified to ensure that the subject of Human Rights is included on a regular basis, in future, among the courses to be provided by the Academy.

The Commission has urged the Academy to take the lead in the area of Human Rights Training and, after discussion with other National Training Institutions, to send a comprehensive proposal to the Commission. The Commission foresees an important role for the Department of Personnel and Training in this regard.

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

## **ii. Police Training**

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

Arunachal Pradesh, Assam, Tripura, Uttaranchal, Uttar Pradesh, Orissa, Andaman and Nicobar Islands, Bihar and West Bengal for the training.

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

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

### **(c) Human Rights Literacy and Awareness Material**

The Commission has come up with the following publications on the issue of criminal justice system

- A Handbook on Human Rights for Judicial Officers and the publication containing 'the Instructions and Guidelines' were released in the course of a function organized by the Commission on Human Rights Day, 10 December 2000
- The Commission in collaboration with the NALSAR University brought out a series of booklets titled "Human Rights" Some of them on the theme are as follows:
  - (i) Human Rights and the Constitution of India
  - (ii) International Covenants on Human Rights
  - (iii) Sexual harassment of women at the work place
  - (iv) Manual Scavenging
  - (v) Bonded Labour
  - (vi) Child Labour
  - (vii) Rights of the Disabled.

These booklets have been published in English, Tamil, Telugu, Malayalam and Kannada

#### **(d) Strengthening the Forensic Science Services**

To improve the forensic science services in the country, which are at present greatly in need of attention, the Commission had constituted a *Core Group of Experts* to study all aspects of the subject and to report to it. The Group examined the State forensic science laboratories and services available in the country and submitted its report, which was released to the public personally by the then Union Minister for Home Affairs, on 11 January 1998. Copies of the report were thereafter sent to the Ministry of Home Affairs and the Chief Secretaries of all States/UTs.

As there was no reaction from the Ministry of Home Affairs to the report, the Commission considered it essential to remind that Ministry, on 9 August 2000, that a response was due. An interim reply was subsequently received from the Ministry of Home Affairs on 5 September 2000, stating that the matter was under consideration. The Commission wrote to the Ministry again, on 10 October 2000, asking for more specific information on the action, if any that was being taken.

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

*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.*

The Commission has noted that steps have been taken by the Ministry of Home Affairs to implement some 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

As many of the State Governments had not replied by that date, the Commission decided to pursue this matter with them.

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.

## ENHANCING ACCESS TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Universal Declaration of Human Rights adopted by the General Assembly on 10th December, 1948, was followed by two Covenants namely the International Covenant on Civil and Political Rights (ICCPR), 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966. India signed both these International Conventions in 1979.

In democratic societies, fundamental human rights are broadly classified into civil and political rights on the one hand and economic, social and cultural rights on the other. The object of both sets of rights is to make an individual an effective participant in the affairs of the society. Unless both sets of rights are available, neither full development of the human personality can be achieved nor can it be said that true democracy exists. Unfortunately, however, protection of economic, social and cultural rights compared to the protection of civil and political rights, both at the national and international level, has been poor and irregular. The UN Committee on Economic, Social and Cultural Rights (CESCR) is taking a robust attitude towards practical implementation of economic, social and cultural rights. It was recognised by the UN in 1986 when it acknowledged the Right to Development as a human right. The right to development as formulated in the 1986 UN Declaration is a synthesis of the two sets of rights. The distinction, long made, between civil and political rights on the one hand and the economic, social and cultural rights on the other was put to rest by the Vienna Declaration and Programme of Action, which affirms that all human rights are universal, indivisible and inter-independent and inter-related". The Declaration, however, will amount to a little more than an aspiration till the economic, social and cultural rights are in reality made available to the vast sections of the population. The National Human Rights Institutions have a great role to play to correct the fallacy of treating one set of rights as inferior to the other set of rights so that they can implement economic, social and cultural rights in the political and social contexts in which they operate.

The Indian Constitution lays great emphasis on-both categories of rights and two

important chapters, that is, Fundamental Rights and Directive Principles of State Policy are devoted to them. The fundamental rights mainly deal with civil and political rights while the Directive Principles of State Policy elaborately deal with economic, social and cultural rights. Though the Directive Principles said to be non-justiciable and unenforceable as per Article 37 of the Constitution, but, the recent trend of creative judicial interpretation makes them enforceable for all practical purposes. Furthermore the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Article 38 of the Constitution further goes to list the duties of the state in this regard:-

"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations"

Article 39 has elaborately laid down the principles of policy to be followed by the State. That is, "The State shall, in particular, direct its policy towards securing:

- a) that the citizens, men and women equally, have the right to an adequate means to livelihood;
- b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- d) that there is equal pay for equal work for both men and women;
- e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment"

In India, the Courts have been reading Civil and Political Rights into the Economic,



Social and Cultural Rights by construing the two sets of rights harmoniously - by expanding the concept of "right to life and liberty" to mean the right to live with human dignity and all that goes with it. The Courts in India have related health care, food security and elementary education with "Right to Life" and thereby ensured their "enforceability". It is also the firm view of the Indian Commission, that we must accept indivisibility and inter-related-nature of the two sets of rights for full development of human personality. To effectively implement economic, social and cultural rights, we need to adopt a rights based approach.

While Legislative policy, Judicial directions and Executive action are the three main requirements of the conceptualization of social, economic and cultural rights, there is a sacred duty vested with the State in the realization of these rights. There should be no doubt, dispute or ambiguity on this account.



## RIGHTS OF WOMEN

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Directive Principles and Fundamental Duties. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, the development policies, laws, plans and programmes have aimed at women's advancements in different spheres. The 73rd and 74th Amendments to the Constitution of India in the year 1993 provided for reservations of seats in the local bodies of Panchayats and Municipalities for women, thus laying a strong foundation for their participation in decision-making at the local levels. India has also ratified various international conventions and human rights instruments for securing equal rights of women. Key among them is the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993.

Ever since the Commission came into existence on the 12th of October 1993, its efforts to protect and promote the rights of women have evolved in a variety of interconnected ways. India being a signatory to CEDAW and its First Country Report was due to be submitted to the Committee established under the treaty in 1994, the Commission initially recommended vigorous implementation of the country's obligations under this Convention. A Member of the Commission participated in the Fourth United Nations Conference on Women that was held in Beijing in September 1995. The Commission recommended that well-coordinated steps be taken to act upon the Declaration and Programme of Action adopted at that Conference and also to oversee the implementation of the commitments of India under the CEDAW, a matter on which the Commission attaches the highest importance.

### 1. Right to Health

It next considered the violation of the rights of women from the angle of health. The issue of maternal anaemia was first identified as a human rights issue in the year 1996-97. Following a communication received from a leading medical authority, the Commission took serious note of the wide prevalence of iron and iodine deficiency

related health problems in expectant mothers and their newly born children, who either died during delivery or were born with mental disabilities. In the view of the Commission, insensitivity to such a situation amounted to a callous disregard to right to life with dignity and reasonable health. The Commission thus undertook a review of the steps that were being taken at the Central and State levels to deal with this problem. In the course of its efforts, the Commission worked closely with the concerned Ministries and Departments of the Government of India, UNICEF and other experts. This effort of the Commission continued in the ensuing years and in the year 2000, it organised a Workshop on Health and Human Rights in India with Special Reference to Maternal Anaemia in collaboration with the Department of Women and Child Development and UNICEF. This Workshop made some valuable recommendations. Prominent among them are - 'right to health' be declared as a Fundamental Right; education of all children be made a fundamental right and NHRC should continue to interact with government agencies, NGOs and the civil society at large through periodic consultations and reviews to end all types of discrimination against women and girl children. The detailed recommendations of the Workshop were sent to the concerned Ministries/Departments for follow-up action. Due to Commission's persistent efforts, some of these recommendations have been implemented in practice, for example, compulsory education of all children between the ages of 6 and 14 years has now become a Fundamental Right. Similarly, the courts in India have related health care with 'right to life' by expanding Article 21 of the Constitution. The Food and Nutrition Board of the Ministry of Women and Child Development is continuously engaged in nutritional education through its infrastructure and the Ministry of Health and Family-Welfare is taking various steps for eradicating anaemia. In the year 2000 and later in 2001, a Workshop on Human Rights and HIV/AIDS and a Consultation on Public Health and Human Rights were organised, both of which had direct relevance to the rights of women.

## **2. Supervision of Agra Protective Home**

While the Commission was focussing its attention on the health rights of women, the Supreme Court of India, through an order dated 11 November 1997, requested the Commission to involve itself in the supervision of the Agra Protective Home in order to "ensure that the Home functions in the manner as is expected for achieving the object for which it has been set up". With a view to suggesting an appropriate course of action, a Member of the Commission along with the Member Secretary of the National Commission for Women and the Executive Director of the Central Social Welfare Board paid a visit to the Agra Protective Home in the year 1997 itself and submitted a report to the Commission. Ever since Commission's intervention in the matter, there has been substantial improvement in many areas of functioning of this institution.

### **3. Gender Discrimination**

In the Annual Report for the year 1999-2000, the Commission dealt in detail on the topic of 'Discrimination Based on Gender' and 'Discrimination Based on Caste'. While dealing with the former, it made important recommendations to overcome the issue of gender discrimination. In particular, it reiterated for the gender sensitisation of health workers, and a specifically targeted health care campaign to combat discrimination against girls and women. It further recommended the training of other key players in the governance of the country, such as, members of the judiciary, administration and police personnel to sensitive gender-related issues and the requirements of the Constitution, and the laws and treaty commitments of the country. It strongly recommended that early action be taken at the political level for better representation for women in the State Legislatures and in the Parliament. It also reinforced that the National Reproductive and Child Health Programme be strengthened and that concerted efforts be made to bring down the rate of maternal mortality.

### **4. Focal Point on Human Rights of Women including Trafficking**

Thereafter, in follow-up of a recommendation made by the Asia Pacific Forum of National Human Rights Institutions in a meeting held in Manila in September 1999, the United Nations High Commissioner for Human Rights requested each National Institution to nominate an appropriate individual to serve as a Focal Point on Human Rights of Women including Trafficking. Accordingly, the Commission, in 2001, designated one of its Members to serve as a Focal Point on Human Rights of Women including Trafficking. To make the people aware about the problem of trafficking, the Focal Point brought out an Information Kit on Trafficking in Women and Children. Subsequently, in order to create an authentic database to deal with the problem in all its dimensions, it undertook an Action Research on Trafficking in Women and Children in India along with the UNIFEM and the Institute of Social Sciences, a research organisation based at New Delhi. The main objective of the Action Research was to find out the trends and dimensions of trafficking, role of different law enforcement agencies in preventing and combating trafficking, process of rescue/recovery, rehabilitation and reintegration and role of other national institutions and the civil society in preventing and combating trafficking. The study also looked into the relationship between missing persons vs. trafficking, migration and trafficking, tourism and trafficking and culturally sanctioned practices and trafficking. The report of the Action Research was released to the general public on 24th of August 2004. The report has made some useful suggestions and recommendations to prevent and end trafficking. Based on these recommendations a Plan of Action to Prevent and End 'Tafficking in Women and children in India has been evolved by the Commission and disseminated to all concerned across the country. The Commission, ever since the Action Research was undertaken, has been continuously sensitising the judicial officers, police

officers, administrative officers, functionaries of Homes, NGO representatives and the civil society at large. A network of Nodal Officers, two in each State - one from the Police Department and the other from the Social Welfare Department, has also been created to effectively deal with the problem of trafficking.

Since trafficking is linked with sex tourism, the Commission in collaboration with the UNIFEM and a Mumbai based NGO organised a one-day sensitisation programme on Prevention of Sex Tourism and Trafficking in Mumbai in the year 2003. The primary objective of the programme was to sensitise senior representatives of the hotel and tourism industry on various issues relating to sex tourism and trafficking. In the year 2004, the Commission in collaboration with PRAYAS - a field action project of Tata Institute of Social Sciences, Mumbai organised a two-day National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategies. The Commission held preliminary discussions with National Human Rights Commission of Nepal to combat cross-border trafficking. Steps were also taken with the help of an NGO based in Gorakhpur to prevent cross-border trafficking of women and children along the Indo-Nepal border.

## **5. Sexual Harassment**

Sexual harassment of women at the work place and in trains is another area that has engrossed the attention of the Commission ever since the Focal Point on Human Rights of Women was constituted in 2001. Sexual harassment is an insidious form of violence against women's rights that not only harms a woman physically but also finishes her soul. While dealing with complaints of sexual harassment, the Commission observed that the guidelines issued by the Supreme Court in its landmark judgement in the case of *Vishaka v. State of Rajasthan* [1997 (6), SCC 241] were not being implemented adequately in institutions, whether falling under the public sector or the private sector. It also observed that many institutions had not yet set up the complaints mechanism, required under the judgement, to deal with complaints of sexual harassment at the work place. In order to consider and clarify these issues, the Commission convened several meetings with various Departments of the Government of India like the Department of Personnel and Training (DoPT), educational departments/institutions, such as the Department of Secondary and Higher Education, Department of Elementary Education and Literacy of the Ministry of Human Resource Development, University Grants Commission, Central Board of Secondary Education, Directorate of Education of the NCT of Delhi, besides meetings with the legal fraternity. It is with the intervention of the Commission that the role of the Complaints Committee prescribed in *Vishaka Guidelines* has been redefined. Complaints Committees are now deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 and the report of the Complaints Committee shall be deemed to be an inquiry report under those Rules. The Commission has also been continuously monitoring the

implementation of the Vishaka Guidelines in all States and Union Territories. Except for the State of Manipur, all the States have amended the Conduct Rules for their employees. Likewise, except for Sikkim, all the States and Union Territories have also constituted Complaints Committees to deal with complaints of sexual harassment against women. The Commission in 2005, also organised a workshop in New Delhi to sensitise the members of the Complaints Committees that have been constituted in the government departments to enable them to deal with the issue effectively.

With regard to preventing and combating sexual harassment of female passengers in trains, it is working in close collaboration with the Ministry of Railways and a Delhi based non-governmental organisation. Through our collective efforts, FIR forms are now available in Hindi, English, Tamil,-Telugu, Marathi, Kannada and Malayalam languages with the mobile and stationary staff of railways. To enhance gender-sensitivity among the railway officers and staff, a new capsule course of five-days duration has been evolved and training based on this new module has been imparted to different personnel of railways.

## **6. Rehabilitation of Destitute/Marginalised Women**

The Commission has also been focussing on the plight of a large number of destitute/marginalised women, especially widows languishing in peripheries of various temples in Vrindavan. In December 2000, two Members of the Commission visited Vrindavan and made an on the spot assessment of their situation which was found to be horrendous. The Commission then took up the issue with the Union Government (Ministry of Women and Child Development) and the State Government of Uttar Pradesh. It has held several meetings with their representatives so that the basic necessities could be provided to these women for their sustenance in a dignified manner. In July 2003, a delegation led by the Focal Point of the Commission visited Vrindavan to review the situation. Though there was marked improvement in their situation, their overall situation was far from satisfactory. After this, a team led by the Joint Secretary of the Ministry of Women and Child Development visited Vrindavan in 2004 to see the overall progress made with regard to the sustenance of these women. Some of the notable achievements worth reporting are that a shelter home at Chaitanya Vihar Phase II for providing accommodation to about 500 destitute women is on the verge of completion. It is learnt that another NGO will also construct a shelter home in Vrindavan with assistance under the SWADHAR Scheme of Government of India. Regular medical camps are being held in Vrindavan to look after the medical needs of these women. Pension, though meagre, is being provided to most of these women. Ration cards have been provided to most of these women. LPG connections have also been provided for group cooking.



## **7. Population Policy and Women's Rights**

In the light of the National Population Policy 2000 (NPP) and population policies framed by State Governments, the Commission decided to initiate a dialogue on them from the perspective of both development and human rights. Thus, in 2003, in collaboration with the Department of Family Welfare, Ministry of Health and Family Welfare and the United Nations Population Fund, organised a two-day Colloquium on Population Policy - Development and Human Rights. The participants to this Colloquium were administrators, policy-makers from State and Central Governments, human rights experts and representatives of non-governmental organisations working in the field. 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 NPP. Such an approach violated the rights of a large section of the population, especially the marginalised and the vulnerable, including women. The Colloquium therefore recommended that the State Governments/Union Territories exclude these discriminatory and coercive measures from population policies. To delve into the matter further, it has recently constituted a Working Group to examine the issue of incentives and disincentives in the Population Policies of the State Governments vis-a-vis the NPP.

## **8. Domestic Violence**

Domestic violence is another issue which violates the dignity of women. To assess the ground realities, two research projects were undertaken by the Commission in this area. One of them pertained to Studying Complaints made by Women at Police Stations at Bangalore and the other was on Domestic Violence Against Women in India: Nature, Causes and Response of Criminal Justice System. The former was carried out along with an NGO and the latter with the National Police Academy at Hyderabad. Both these studies have confirmed that domestic violence perpetrated on women is a harsh-reality and the police did not pay much attention towards this problem. The Commission also examined the provisions of the Protection from Domestic Violence Bill 2002 along with the report containing the recommendations of the Standing Committee and forwarded its detailed suggestions to the Ministry of Women and Child Development. The Commission was indeed satisfied when it saw its suggestions were incorporated in the Protection of Women from Domestic Violence Act, 2005.

## **9. Other Programmes**

A number of other programmes and issues relating to women were pursued intermittently by the Commission viz. the increase in the maintenance allowance for divorced women as provided for in section 125 Cr.P.C; the protection of the anonymity of victims of rape; the nomenclature to be used in official documents for addressing the wives of persons who have died; and the establishment of a Cell within the Commission to examine complaints received from women.

## RIGHTS OF CHILDREN

The 'rights of children', is another area that has drawn the attention of the Commission ever since it was constituted in October 1993. The Commission observed that despite there being major provisions in the Constitution of India for survival, development and protection of children as well as plethora of laws to safeguard their interests, the fact that the Government of India had ratified the United Nations Convention on the Rights of the Child (CRC), children all over the country, especially those belonging to weaker sections of the society, were found to be vulnerable and their dignity and human rights were often trampled. The initial few months of the Commission were thus spent on making an overall assessment about the range of issues concerning the rights of the child. Once this was accomplished, the Commission over the years focused its attention on child labour, child marriage, child trafficking and prostitution, child sexual violence, female foeticide and infanticide, child rape, HIV/AIDS afflicted children and juvenile justice.

### 1. Child Labour

The Commission, first and foremost, concentrated on issues of child labour, especially those employed in hazardous industries. In order to provide suitable remedies to the problem of child labour, it made a special effort to study the plight of these children employed in the glass work and carpet making industries of Uttar Pradesh, the beedi, match-sticks and fireworks industries in Tamil Nadu and the slate-pencil making industry in Madhya Pradesh. NHRC studied the glasswork industry in the district of Ferozabad, Uttar Pradesh, where some 50,000 children were reported to be working. The rehabilitation of these children was evolved as an integrated programme, involving the coordinated efforts of a number of- Central Ministries and the Government of Uttar Pradesh, and non-governmental organisations. The programme was based on three interrelated concepts: income-support for the families from where children went to work in the glass work industry; schooling for the children, creation of new facilities for children weaned away from employment; and rigorous

implementation of the Child Labour (Prohibition and Regulation) Act 1986. On the issue of child labour, the Commission has consistently laid emphasis on the provision of free and compulsory education for children upto the age of 14 years, and the allocation of an appropriate level of resources to achieve this objective. The Right to Education, if fulfilled, would in itself be a strong weapon in the battle to end child labour.

The issue was of such critical significance to the Commission that the then Chairperson of the Commission addressed a letter on 11 January 1996 to the Presidents of all the major political parties in India. In it, he observed that despite the promise of Article 45 of the Constitution, 45 years after that noble document came into effect, one incontrovertible fact faces the nation: the number of those who are illiterate in the country exceeds the entire population of India at the time of independence. This grim reality enfeebles the country in every way, whether civil and political, or economic, social and cultural. It affects the dignity and self-esteem of countless Indians and exposes them to constant violations of their human rights. In its most aggravated form, this finds painful expression in tens of millions of our youth working as child labour, or even as bonded labour, in hazardous or utterly demeaning circumstances. The Chairperson thus urged that definite steps be taken to give comprehensive legislative backing to the Directive Principle contained in Article 45 of the Constitution.

In response Department of Education deliberated on this matter and instead of all-India legislation on free and compulsory education, it chose to adopt a different strategy to achieve the goal of the "universalization of elementary education". It is due to Commission's continued efforts that education has today become a Fundamental:Right for the children between the age group of 6 and 14 years through 86th Amendment of the Constitution.

To end the scourge of child labour from the country, the Commission's efforts have also been directed towards generating greater awareness and sensitivity in the District Administration and Labour Departments of concerned States. Based on the feedback of the Special Rapporteur entrusted with the task of monitoring the issue of child labour, the Commission has from time to time issued specific directions to the State Government in respect of the detection and withdrawal of children employed in hazardous occupation/processes, the admission of such children into the formal and non-formal system of schooling, particularly the schools established under the National Child Labour Project, the economic rehabilitation of the affected families, and the prosecution of offending employers.

It also undertook a study on the 'Impact Community Response and Acceptance of Non-formal Education under the National Child Labour Project' in the carpet weaving districts and glass bangles region of Ferozabad in Uttar Pradesh.

## **2. Children as Domestic Help**

In 1996-97, the Commission received disturbing reports of the employment of children below the age of 14 years as domestic servants in the homes of government officials. Unacceptable as the practice is in any circumstance, the Commission felt that the employment of such children as domestic help in the homes of government officials was particularly reprehensible. Following a meeting in January 1996, the Commission decided to recommend that an appropriate rule be included in the conduct rules of government servants, both Central and States, which while prohibiting such employment would also make it a misconduct inviting a major penalty. The Commission accordingly requested the Minister of State in the Ministry of Personnel, Public Grievances and Pensions to take appropriate steps to introduce the rule in to the Government Service (Conduct) Rules 1964, and proposed the precise wording required for this purpose. This view of the Commission effected necessary amendments to Conduct Rules of the Central and State Government servants. By virtue of these amendments, employment of children below 14 years by the government servants as domestic help now attracts disciplinary action.

## **3. Child Marriage**

The widespread persistence of child marriage in certain parts of the country coaxed the Commission to examine this problem in its enormity. On examination of the problem, the Commission realised that the Child Marriage Restraint Act, 1929 (CMRA) should be recast so as to provide for higher penalty for the violations of the provisions of this Act and also to make the offence cognizable and non-bailable. In December 1999, it also considered the question of whether it would be preferable to provide for compulsory registration of marriages in the Hindu Marriage Act, 1955 through appropriate amendments, instead of making such a provision in the CMRA. This was also discussed with the Secretary, Legislative Department in September 2000 wherein it was suggested by him to gather information as to how many States had made rules under section 8 of the Hindu Marriage Act. The Chief Secretaries of all the States were accordingly requested to send the requisite information; However, after considering the entire issue, the Commission decided to review the CMRA. It thus reviewed the CMRA and recommended to the Government of India a number of amendments to it. In pursuance of these recommendations, the Government of India introduced "The Prevention of Child Marriage Bill" in the Rajya Sabha on 20th of December 2004, incorporating all the recommendations of the Commission. The Bill was under the examination of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. The proposed Bill on becoming an Act would go a long way in curbing the child marriage in the country. Pending the passage of the Bill into an Act, the Commission has written to concerned Ministries/Departments in the Central Government and the State Governments/Union Territories to organise

mass-scale awareness programmes/campaigns, in association with the Integrated Child Development Services, local self-governments/Panchayats and Legal Service Authorities to educate and sensitise people about the demerits of child marriages.

#### **4. Child Trafficking and Prostitution**

Alerted by press reports to the alarming increase in child trafficking and prostitution in Tamil Nadu and Goa in the year 1995-96, the Commission issued notice to the two State Governments as well as to the Department of Women and Child Development, Government of India, calling for reports on the situation. Simultaneously, it also decided to have this issue considered on a regular basis by a Core Group, consisting of representatives from the National Commission for Women, the Department of Women and Child Development, UNICEF and selected NGOs. The Core Group reviewed the existing laws and ways of improving their enforcement; it discussed the efforts made and difficulties faced in rehabilitating children weaned away from prostitution; it pressed for greater efforts at the level of SAARC, to strengthen laws and to devise cooperative measures to deal with trans-border movements; and encouraged organisation of workshops and hearings by individual members of the Core Group. Given the global ramifications of this problem, the Commission also represented at the First World Congress Against Commercial Sexual Exploitation of Children that was held in Stockholm from 26-31 August 1996. Later in the year 2002, the Commission embarked on an Action Research on Trafficking in Women and Children in India in order to know the magnitude, trends and dimensions of the problem of trafficking. The report of the Action Research has brought forth startling facts, such as children are trafficked not only for commercial sexual exploitation but also for various other purposes. Further, the Commission and the Ministry of Women and Child Development, Government of India in partnership with UNICEF have prepared a Manual for the Judicial Workers on Combating Trafficking of Women and Children for Commercial Sexual Exploitation. The purpose of the manual is to sensitise the judicial officers to the actual situation of the trafficked victims and to provide them with a perspective so that they could proactively safeguard the rights of victimised women and children, through a sensitive interpretation of the law.

#### **5. Sexual Violence Against Children**

Sexual violence against children is another sensitive issue in which the Commission took concrete measures. Pained with the plight of child victims, visa-vis the manner in which the issue was being reported by the media, the Commission decided to intervene in the matter in the year 1998, when a two-month campaign was launched in New Delhi in collaboration with the Department of Women and Child Development, UNICEF and non-governmental organisations. A mid-term appraisal of the campaign revealed that irrespective of the medium, message or location, the campaign effectively raised awareness about sexual violence against children. The respondents were

however of the view that in order to further bring about awareness among the people at large, the electronic media too would have to be involved and mobilised. As a result, the NHRC, in partnership with Prasar Bharati and UNICEF held four workshops for radio and television producers. The participants for these workshops were drawn from 20 States. It was during the course of these workshops that an idea of bringing out a guidebook for the media to address the issue of sexual violence against children emerged. Based on the deliberations of these workshops, the Commission and the Prasar Bharati, with support from UNICEF, jointly prepared A Guidebook for the Media on Sexual Violence Against Children. The main objective of the guidebook is to encourage media professionals to address the issue of sexual violence against children in a consistent, sensitive and effective manner, consonant with the rights and best interest of children. The Commission currently is also in the process of preparing guidelines for speedy disposal of child rape cases.

## **6. Female Foeticide and Infanticide**

Faced with the widely prevalent misuse of sex determination tests to commit female foeticide, the Commission approached the Medical Council of India during the year 1995-96, to take a position on the ethical aspects of such tests. After reviewing the matter, the Council decided to suggest suitable amendments to the regulations governing the code of medical ethics, in order to enable undertaking of disciplinary proceedings against errant doctors. Thereafter, 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. In the light of recommendations made by the CRC Committee in its concluding observations with regard to the report on children submitted by the Government of India, the Commission reiterated that there was an urgent need to ensure that free and compulsory education was provided as a fundamental right to all children until they completed that age of 14 years. It also emphasised the need for undertaking a vigorous and comprehensive national campaign against female foeticide and infanticide. During the course of regional and national consultations on Public Health and Human Rights that were held during 2002-03, the Commission again took up the issue of combating female foeticide and infanticide. The issue featured again when the Commission organised a Colloquium on Population Policy - Development and Human Rights in January 2003. To counter this problem, the Commission has maintained that vigorous and comprehensive measures be taken by all States and Union Territories to put an end to the gruesome problem of female foeticide and infanticide.

## **7. Right to Health of Children**

The violation of the rights of children has also been considered from the angle of health. In 2000 and 2001, the Commission organised a workshop on Human Rights and HIV/AIDS that was followed by a consultation on Public Health and Human Rights. Both



these had direct relevance to the rights of children. Later, in the year 2004, the Chairperson of the Commission addressed letters to the Union Ministers for Human Resource Development, Health and Chief Ministers of All States/Union Territories urging them to take steps to prevent discrimination of children affected by HIV/AIDS with regard to access to education and health care. In particular, the Commission asked them to enact and enforce a legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from school.

## **8. Juvenile Justice**

Deeply concerned with the plight of juveniles in the country, the Commission in 1996 wrote letters to Chief Secretaries/Administrators of all States/Union Territories on the reporting of deaths/rapes in Juvenile/Children's Homes within 24 hours. Since some of the Homes were not found to be functioning properly, the Commission once again directed to the Chief Secretaries/Administrators of all States/Union Territories to ensure prompt communication of incidents of custodial deaths/rapes in Juvenile/Children's Homes. Later, when the Juvenile Justice Act, 1986 was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000, the Commission was deeply concerned over the poor implementation of this Act. As such, it devised a format seeking information regarding implementation of the various provisions of the 2000 Act. It has also entrusted a research study on the subject to a non-governmental organisation. The study on completion will suggest measures for better implementation of the Act.

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

The Commission has vigorously pursued with the Government of India to ratify the two Optional Protocols to the CRC, viz. the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Accordingly, the Government of India ratified the latter Protocol on 16th of August 2005 and the former Optional Protocol on 30th of November 2005.



## HUMAN RIGHTS OF THE DALITS

The Commission has been actively engaged since its inception in the protection and promotion of the human rights of Dalits. The Commission has viewed its role as that of an "Equalizer" adding its weight on behalf of the vulnerable, so that the scales of justice and equity may be more evenly balanced for them, and to ensure that those who violate the rights of the vulnerable are brought to justice, as the Constitution of the country, its laws and treaty obligations all require.

### 1. Redressal of Complaints

The Commission besides on complaints has also acted as suo moto in number of cases to address the human rights violations of Dalits and to ensure that rights of the disadvantaged were protected and respected.

The number of complaints of atrocities against SCs and STs, received and admitted by this Commission was 552 in 1997-98, 436 in 1998-99 and 736 in 1999-2000. In Year 2005 the Commission registered 1597 complaints and the Commission disposed off 1994 complaints, similarly upto 19 June 19, 2006 Commission registered 894 complaints and disposed off 898 complaints. In particular, complaints have been received of violent caste clashes in certain parts of the country namely Bihar, some areas of Uttar Pradesh, Rajasthan, Haryana, Tamil Nadu and Maharashtra. The clashes have, in particular, taken the shape of violence against dalit women and social boycotts.

The Commission has been redressing individual complaints of atrocities and has been recommending the payment of compensation and action against negligent public servants, wherever appropriate. Further, the Commission recommended that Government should sensitize the police force to act impartially and fearlessly to give protection to the SCs and STs and to educate the general public against the malicious practice of 'untouchability' and discrimination directed against the SCs and STs.

### 2. Workshops on Dalit Issues

In 1996 a National Workshop was organized in Chennai by the Dalit Liberation Education Trust with the help of the Peoples Union for Civil Liberties (PUCL) and the

NHRC. The Workshop noted that, despite the existence of the Protection of Civil Rights Act, 1976, the violation of human rights of dalits had increased. The implementation of the Act left much to be desired; investigations into atrocities against dalits were often "inadequate" or biased.

The Workshop also noted that the conviction rate of perpetrators of atrocities against dalits was very low and that there was need to plug the loopholes that permitted this. Mention was, very often, made to the frequency of atrocities resulting from disputes over land, and the need to implement land reforms diligently. Above all, the workshop called for greater sensitization of all the agencies of Government, the judiciary and law enforcement machinery in particular, to the special problems posed in protecting the rights of dalits.

It was the first major dialogue that the Commission had initiated in respect of societal violations of human rights of an important and particularly vulnerable section of the population of this country. One of the important issues taken up by the Commission since then has been the campaign to end manual scavenging. The Commission has pursued this issue with the State Governments and with the Centre seeking to bring this deeply demeaning practice to an early end.

### **3. Training Programmes with NGOs**

The Commission has also conducted following training programmes related with Dalit Rights with different NGOs from time to time:

- Programme to sensitize the police personnel on issues of atrocities against Dalits in partnership with Indian Social Institute, Delhi on 20-21 January 2005
- Role of Criminal Justice System in the Protection of Dalit Rights, organised by Tata Institute of Social Sciences (TISS) Mumbai, 27 June 2004
- 'Police Civil Society Interface for Promotion of Human Rights', 22-23 March 2006, Mumbai
- TOT for NGOs to spread for legal literacy among women, poor and disadvantages/ target groups, Organised by Institute, Multiple Action Research Group (MARG), at Jhabua M.P. 25-29 June 2004
- Training Programme on Human Rights and Weaker Sections, Organised by RCVP Noroha, Academy of Administration, Bhopal M.P., 16-20 August 2005

### **4. Eradication of Manual Scavenging**

#### **i. Intervention of the Commission with Central and State Governments**

The Central Government notified the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 on 24th January 1997.

In 2001, on the eve of Independence Day the Commission wrote to the Prime Minister stating that it was constrained to believe that the requisite sensitivity and commitment to the cause of eradication of manual scavenging was lacking on the part of the Government. The Prime Minister was urged to consider the desirability of making an announcement on Independence Day to the effect that by 2 October 2002, the country will have no dry latrines. This was followed by another letter to the Prime Minister reiterating the NHRC's sensitivity to this issue, in response to the Chairperson's letter dated 12th August, 2002 on the subject, the Hon'ble Prime Minister informed that the need to end the outraging practice of manual scavenging was included as part of the 15-point initiative on 15th August, 2002. In keeping with the Prime Minister's announcement, the Planning Commission formulated a National Action Plan for total Eradication of Manual Scavenging by 2007.

The Commission has been vigorously pursuing the need to end the degrading practice of manual scavenging in the country. The Commission has taken up this matter at the highest echelons of the Central and State Governments through a series of personal interventions by the Chairperson of the Commission.

The Commission, on its part, too 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 can be effectively stopped.

## **ii. Meetings with the State Governments on Manual Scavenging**

The Commission held a number of meetings with the State Governments. The last such meeting was held on 25 February 2006 on Eradication of Manual Scavenging under the Chair of the Hon'ble Chairperson, NHRC with the representatives of Central and the State Governments and other stakeholders.

On the basis of the detailed deliberation in the meeting, the following of **Action Points** emerged:

- i. The process of identification of people engaged in Manual Scavenging is to be carried out by the States/UTs at the earliest and for each individual rehabilitation plan be executed and monitored,
- ii. The survey and identification should cover not just urban areas but also the rural areas,
- iii. The Ministries may also explore the possibility of involving NGOs in the process of identifications and rehabilitation of manual scavengers,
- iv. There is a need to amend the existing regulation in regard to low cost sanitation

scheme particularly with regard to the level of subsidies so that new construction should have wet latrines. States/Union Territories (UTs) should set six-monthly targets for converting the dry latrines into wet latrines and for making efforts to rehabilitate the identified scavengers and should be monitored regularly.

- v. Steps have to be taken by the States/UTs to impart education at the primary level on eradication of Manual Scavenging and advantages of wet latrines.
- vi. The training of Scavengers and their dependent should be in all such vocations, which have market value and will lead sustainable employment.
- vii. There is a need to construct more and more public toilets in low-income housing areas by all States and UTs.
- viii. There is a need to examine the existing subsidy scheme by Ministry of Urban Development (MUD) and Housing And Urban Development Corporation Limited (HUDCO) in regard to financial pattern of the low cost sanitation scheme and the subsidy should be raised to 50% of the cost of super structure uniformly to all the families having bucket privies to make it more feasible.
- ix. Government of India is committed to eradicate Manual Scavenging by 2007. All States/UTs should adhere to the target date for the eradication of manual scavenging.

## **5. Rooting out Untouchability**

In order to root out the untouchability the Commission recommended that the Government of India undertake comprehensive steps to root out 'Untouchability' and, for this purpose, implement the provisions of the Protection of Civil Rights Act, 1976 and the Prevention of Atrocities against SCs and STs Act, 1989 more vigorously than hitherto. The Commission sought 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.

### **i. Durban Conference**

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.

## **ii. Special Report on Atrocities Against Scheduled Castes**

Deeply concerned about the atrocities against persons belonging to Scheduled Castes the Commission therefore requested Shri K B Saxena, senior retired civil servant, to go into this issue. Shri Saxena has completed the study and submitted a comprehensive report with a number of recommendations. Based on Shri Saxena's Report, the Commission has made certain recommendations to the Prime Minister, 11 Union Ministers, Deputy Chairperson, Planning Commission and Chief Ministers of all the States and Union Territories for taking effective steps in that behalf. Some of the recommendation's of Commission to the States are to:

- Identify atrocity and untouchability prone areas and prepare a plan of action;
- Appointment of exclusive special courts where volume of atrocity cases is large and appoint competent and committed special public prosecutors
- A 3-tier Training programme for police and civil functionaries;
- An annual workshop of District Magistrates and Superintendents of Police on implementation of laws in this regard;
- Women officers should be assigned to all atrocity prone areas, with cells established to entertain complaints;
- Self-help groups of Scheduled Caste women should be given elementary legal training along with sessions on confidence building;
- Identify in each district a NGO which can be approached in case of custodial violence or any other atrocity;
- Panchayats may be sensitized about the issues concerning the Scheduled Castes

and various De-Notified Tribes;

- Institute annual awards for the police stations and districts, which emerge as the most responsive to the complaints of the Scheduled Castes.

In order to monitor the implementation of these recommendations, the Commission set up a Dalit Cell in 2003 and placed it under the charge of the Member of the Commission. The Cell is looking into policy issues such as responses of the States on K.B. Saxena Report. The Commission has drawn up a calendar of activities to be taken up by the Dalit Cell in the year 2004-05. These include, among others, the entry of dalits into temples, setting up of an expert group to prepare a manual and to monitor investigations besides holding meetings with NGOs and media persons. The Cell has also coordinated the printing of the Report submitted by Shri K.B. Saxena in English, it is also being printed in Hindi and other Indian languages.

### **iii. Emphasis on Education**

The education gap between persons belonging to the Scheduled Castes and Scheduled Tribes and the general population is a cause for concern to the National Human Rights Commission of India. While the special programmes and attempts made to improve literacy amongst Scheduled Castes resulted in dramatic increase in the literacy levels by over three times in the three decades between 1961 and 1991 in the case of Scheduled Castes. In 2001 it was 54.69 percent. They were still quite low compared to the level of literacy of the population as a whole; similar is the case with their low economic status.

The Commission is of the firm view that there is a need to combat age-old biases and entrenched attitudes through education and through public information campaigns. NHRC in collaboration with Kamataka Women's Information and Resource Centre, KWIRC, Bangalore is working on Project for developing resource materials for Human Rights Education in Indian Universities, which also includes dossier on Dalit rights - migration in search of labour and other experiences of Dalits. The Commission has also been taking up research studies on issues concerning dalits in this direction. The Commission also granted financial assistance to Maharishi Dayanand University, Rohtak, Haryana to carry out a pilot study on the socio economic, political and cultural status of dalit women in Haryana.

In his speech, the Chairperson of the NHRC at the 10th Annual Meeting of The Asia Pacific Forum in Ulaanbaatar, Mongolia on 25th August 2005 pointed out that despite elaborate provisions in the Constitution and other laws, it is an unfortunate reality that social injustice and exploitation of Scheduled Castes and Scheduled Tribes and other weaker sections persist. There are reports in the press about atrocities against persons belonging to these groups and the frequency with which they occur is a cause for disquiet. The humiliation, which persons belonging to the Scheduled Castes in

general and the Dalits In particular suffer even today, more than half a century after India proclaimed itself to be a Republic, is a matter of shame.

#### **iv. Research Programmes and Projects**

Through its research programmes and projects National Human Rights Commission is working to:

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

#### **v. Workshops and Seminars**

The Commission is also holding seminars and organising sensitisation camps and workshops to spread awareness amongst police personnel, other State functionaries, media persons and NGOs in this regard so that the human rights of this vulnerable section of the society are protected and promoted.

A meeting on Dalit issues was held in the Commission on 28th June, 2006 under the Chair of Hon'ble Member of the Commission and it was resolved that for the year 2006-07 the focus would be:

##### **I. Eradication of Manual Scavenging and**

##### **II. Elimination of atrocities against Dalits**

Further more in this connection areas would be identified where maximum atrocities are taking place against SC/ST population. As a pilot project the Commission may pickup one district having largest dalit population from North, South, East, West and Central region of the country and would sensitize on eradication of manual scavenging in these districts.

The Commission is fully aware that the journey to end discrimination, injustice and inequality will be long and often frustrating. But it is convinced that, in this mission, the Constitution of the Republic has shown the way. Legislative and affirmative action programmes are firmly in place, but unquestionably need to be far better implemented

The Commission holds the view that the instruments of governance in our country,



and the energetic and committed non-governmental sector that exists, can unitedly triumph over the historical injustices that have hurt the weakest sections of our country, particularly Dalits and Scheduled Tribes. This is above all a national responsibility and a moral imperative than can and must be honoured.

### **Crime Against Schedules Castes- Analysis Of NCRB Data**

The Crime Against Scheduled Castes has long been a historical fact and continues to be an unfortunate feature of contemporary India. In other words, the violation of the customary rules and practices invite violent crime against the dalits by other castes. This feature of strong exclusion for the enforcement of caste system plays an important role in continuity of the system despite the changes in the legal framework in contemporary India.

The Country has made measurable progress in terms of the protections afforded to Dalits since independence; however, Dalits still suffer discrimination and mistreatment, which is inexcusable under both domestic laws and Country's obligations under international law.

The crimes committed against the Scheduled Castes remain a cause of great concern to the Commission. The Commission has been actively engaged since its inception in the protection and promotion of the human rights of Dalits. The Commission has viewed its role as that of an "Equalizer" adding its weight on behalf of the vulnerable, so that the scales of justice and equity may be more evenly balanced for them, and to ensure that those who violate the rights of the vulnerable are brought to justice, as the Constitution of the country, its laws and treaty obligations all require."

In order to root out untouchability the Commission recommended that the Government of India to undertake comprehensive steps to root out 'Untouchability' and, for this purpose, implement the provisions of the Protection of Civil Rights Act, 1976 and the Prevention of Atrocities Against SCs and STs Act, 1989 more vigorously.

The Commission is convinced that, the Constitution of the Republic has shown the way. Legislative and affirmative action programmes are firmly in place, but unquestionably need to be far better implemented.

The 2001-2005 surveys conducted by NCRB for Crime Against Scheduled Castes which includes the crimes committed under IPC i.e. Murder, Rape, Kidnapping and Abduction, Dacoity, Robbery, Arson, Hurt, Others and under special laws i.e. Protection of Civil Rights Act, 1955 (Annex 1) and Scheduled Caste Prevention of Atrocities Act, 1989 (Annex 2)

According to the National Crime Records Bureau Survey on crime against dalits, in states of Andhra Pradesh, Bihar, Gujarat, Kamataka, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, and U.P., the total number of crime incidents against them in year 2001 was 31,005 as compared to 23,221 in the year 2005.

The Analysis of the NCRB Data on SCs in various states in India shows the following trend:

### **Andhra Pradesh**

In Andhra Pradesh in year 2001 there were 1262 incidents of crime against SCs under special laws, which increased by 3.4 percent in year 2005 amounting total number of such incidents to 1305 in year 2005.

As far as total number of incidents of crime against SCs is concerned which include all crimes under special laws as well as crimes committed under various sections of Indian Penal Code (IPC), the average percentage of the last five years i.e. (2001-2005) shows that District of Karim Nagar, Krishna, Kumool, Mehboob Nagar and Nellore are most insecure districts of the State as per their order.

The total number of rape cases since, 2001-05 recorded by NCRS shows that district Mehboobnagar with 40 cases, followed by West Godavari(29), Guntur (24) Chittoor (21), Kumool (20) and Karim Nagar and Nalgonda with 18 each. In the same period the total number of murder cases were highest in district of Mahboobnagar (33), followed by Karim Nagar (26), Krishna (21) and Guntur (12). Overall there have been 373 rape cases and 202 murder cases of SCs in the state during this time.

### **Bihar**

In Bihar, there has been an increase of 108.08 percent in crime recorded under special laws against SCs. There were 594 incidents in year 2001, which rose to 1236 in year 2005.

As far as total number of incidents of crime against SCs is concerned which include all crimes under special laws as well as crimes committed under various sections of Indian Penal Code(IPC), the average percentage of the last five years i.e. (2001-2005) shows that District of Vaishali is having higher percentage of such incidents, followed by Madhubani, Begusarai and Bettiah District.

The total number of rape cases since 2001-05 recorded by NCRB shows that district Araria with 21 cases, followed by Samastipur (13), In the same period the total number of murder cases were highest in district of Jehanabad with 18 cases, followed by Motihari (16), and Bettiah (13).

Overall there have been 107 rape cases and 96 murder cases of SCs in the state during this time.

### **Gujarat**

In Gujarat, there were 372 incidents of crimes under special laws in year 2001, which increased to 440 in year 2005, hence an increase of 18.27 percent of such incidents. On

the basis of the average percentage of last five years, the crimes recorded under IPC and Special Laws shows that District of Palanpur having higher number of such incidents followed by District of Surendranagar, Mehsana, Junagadh, Ahmedabad Rural, Kutch and Rajkot Rural.

The total number of rape cases since 2001-05 recorded by NCRB shows that district Palanpur and Rajkot Rural with 9 cases each.

In the same period the total number of murder cases were highest in district of Surat Rural with 15 cases, followed by Ahmedabad Commr. with 12 cases. Overall there have been 94 rape cases and 96 murder cases of SCs in the state during this time.

### **Karnataka**

The state of Karnataka shows that there were 1077 incidents of crimes against SCs under Special Laws in year 2001, which increased by 5.4 percent in year 2005 i.e amounting total number of such incidents to 1136 cases. The average percentage of Crime incidents under IPC and Special Laws of last five years shows that District of Gulbaraga as most precarious followed by Districts of Bangal Rural, Kolar, Bangalore Commr., and Bijapur.

The total number of rape cases since 2001-05 recorded by NCRB shows that district Kolar with 16 cases, followed by 10 cases in Dakshin Kannada district. In the same period the total number of murder cases were highest in district of Gulbarga with 15 cases, followed by Kolar with 13 cases.

Overall there have been 112 rape cases and 111 murder cases of SCs in the state during this time.

### **Madhya Pradesh**

in M.P there were 436 crime incidents under special laws in year 2001, which came down by 20.87 percent in year 2004 resulting total number of such incidents to 345 cases.

The average percentage of crime incidents under IPC and Special Laws of last five years shows that District of Ujjain and De-was respectively are having high incidents of crime against SCs.

The total number of rape cases since 2001-05 recorded by NCRB shows that district Vidisha with 108 cases, followed by Rajgarh (99), Shajapur(98), Sagar (91), and Ujjain with 85 cases.

In the same period the total number of murder cases were highest in district of Shivapuri with 29 cases, followed by Gawalior (25), and Chhatarpur (23).Overall there have been 107 rape cases and 96 murder cases of SCs in the state during this time.

Overall there have been 1716 rape cases and 411 murder cases of SCs in the state during this time.

## **Orissa**

In Orissa, there has been a slight decrease in number of cases i.e. 2.73 percent. There were 657 incidents of crime, while as in 2005, there were 639 cases.

The average percentage of crime incidents under IPC and Special Laws of last five years shows that there are about 8 districts having high incidents of crime against SCs, which are Khurda, Cuttack, Ganjam, Mayurbhanj, Nuapada, Puri, Angul and Dhenkanal respectively.

The total number of rape cases since 2001-05 recorded by NCRB shows that district Puri with 15 cases, followed by Rayagada with 15 cases.

In the same period the total number of murder cases were highest in district of Rayagada with 8 cases.

Overall there have been 189 rape cases and 58 murder cases of SCs in the state during this time.

## **Rajasthan**

In Rajasthan there has been a drastic decrease in number of crime incidents ie. 85.96 percent against SCs under special laws. In 2005 there were 416 cases, while it was as high as 2965 cases in year 2001.

However on the basis average percentage of crime under IPC and special laws of year 2001-2005 shows number of incidents under this category are still high in District of Bharatpur, followed by Ganganagar, Jaipur, and Pali.

The total number of rape cases since 2001-05 recorded by NCRB shows that district Ganganagar with 78 cases, followed by Hanumangarh with 59 cases. In the same period the total number of murder cases were highest in district of Hanumangarh with 20 cases, followed by Ganganagar (17), and Nagaur with 14 cases.

Overall there have been 690 rape cases and 226 murder cases of SCs in the state during this time.

## **Tamil Nadu**

The State of Tamil Nadu shows that there has been an increase of 19.46 percent in crime against SCs under special laws from year 2001 to year 2005.

The District of Thruvallur followed by Thirunelveli Urban are the two districts having high number of incidents of violence against SCs under IPC and Special Laws.

The total number of rape cases since 2001-05 recorded by NCRB shows that district Villupuram with 15 cases, followed by Madurai Rural with 13 cases.

In the same period the total number of murder cases were highest in district of Thiruvallur with 23 cases, followed by Thanjavur and Thirunelveli Rural with 10 cases each.

Overall there have been 127 rape cases and 143 murder cases of SCs in the state during this time.

## **Uttar Pradesh**

In Uttar Pradesh in year 2001, there were 10732 cases of violence against SCs under special laws while as in year 2005 the crime graph came down to 66.28 percent resulting total number of cases to 1651. - As far as total number of incidents of crime against SCs is concerned which include all crimes under special laws as well as crimes committed under various sections of Indian Penal Code (IPC), the average percentage of the last five years i.e. (2001-2005) shows that District of Sitapur having higher number of such incidents.

The total number of rape cases since 2001-05 recorded by NCRB shows that district Sitapur with 88 cases, followed by Raibareilly with 63 cases and Unnao with 58 cases.

In the same period the total number of murder cases were highest in district of Sitapur with 79 cases, followed by Khiri with 60 cases , Hardoi 56 cases, Kanpur Nagar (55), Fatehpur (54), Unnao (53), Baeilly (51) Lucknow 48 and so on.

Overall there have been 1393 rape cases and 1726 murder cases of SCs in the state during this time.

## **CONCLUSION**

Besides the Constitutional guarantees against caste based discrimination and Legislative and affirmative action programmes firmly in place, violence against Dalits is still persisting in various parts of the country. The districts identified above need more vigilance and monitoring from the concerned authorities to curb violence against Dalits. There is also strong need to aware and sensitize people to give up social and other disabilities against SCs. In areas where cases are large the appointment of exclusive special courts and appointment of competent and committed special public prosecutors will be helpful in bringing to justice those who are responsible for various criminal activities against dalits.

## HUMAN RIGHTS OF THE TRIBALS

### 1. INTRODUCTION

Since its inception, the Commission has been particularly engaged, suo motu or on the basis of complaints, with instances of various atrocities meted out against the vulnerable sections belonging to the Scheduled Castes and Scheduled Tribes. In this endeavour, the Chairpersons of the National Commission assisted the Commission for Minorities, the National Commission for Scheduled Castes & Scheduled Tribes and the National Commission for Women. The Commission also undertook the responsibility of promoting research in the field of human rights, with rights of the tribal women as one of its major prerogative.

#### **Rights of the Tribals**

In the year 1995 - 96, the Commission received two major complaints with regard to children belonging to tribal communities - one was the torture and sexual assault of a minor tribal girl from Bihar in Maharashtra and the other one related to some tribal youths being stripped and forced to spend two nights in the police lock-up in Kerela. In the former case, the "Commission provided some interim financial assistance to the minor adivasi girl through an NGO in Ranchi. In the latter case, the state government of Kerela, keeping in line with the recommendations of the Commission, sanctioned necessary compensation to each of the victims.

In the year 1996 - 97, the Commission investigated the circumstances that compelled the tribals to leave their place of inhabitation from the site of Bargi Dam on the river Narmada. In August 1996, the Commission received a complaint from the National Alliance of People's Movements, requesting the intervention of the Commission in a "matter relating to the human rights violation of the Bargi Dam outsees of Madhya Pradesh." It was contended in the complaint that the lives and livelihood of several thousand families, many of whom were tribals, were in "immediate and grave danger" as a result of an official decision to raise the water level in the dam from 418 metres to 422.76 metres. At the policy level, the Commission recommended that the Central and

State Governments re-examine and appropriately amend their laws, regulations and practices in order to ensure that, when it comes to acquisition of land for purposes related to national economic development, the provisions of the Constitution, as expounded by the Supreme Court and as contained in international instruments to which India is a party, notably ILO Convention 107, are fully respected. The Commission considered it to be essential if the 'national' Interest was to be reconciled with true respect for the rights of the weakest sections of the society.

The Commission, in the year **1997-98**, mentioned it clearly that where the petitioners belong to the vulnerable sections of the society, scheduled castes and scheduled tribes being one of them, those complaints should be treated on an urgent basis.

It is worth mentioning that the communities designated as Denotified Tribes (DNT) and Nomadic Tribes (NT) of India were identified as 'Criminal Tribes' (which included both castes as well as tribes) in pre-independence India. Though the Criminal Tribes Act, 1871 was annulled soon after independence the police, as well as members of the public, frequently and most regrettably continue to treat persons belonging to these communities as 'born criminals' and 'habitual criminals'. They therefore remain the most disadvantaged and discriminated ones in the country. The eminent activist and author, Smt. Mahasvetadevi, President, Denotified and Nomadic Tribals Rights Action Group, sent a petition to the Commission on the plight of the Denotified and Nomadic Tribal Communities of India referring to their ill treatment by the administration, and by the police in particular. Following the petition received from the Denotified and Nomadic tribal Rights Action Group which highlighted many instances of moblynching, arson and police brutality against members of the Denotified Tribes, the National Human Rights Commission constituted an advisory group on denotified and nomadic tribes in May **1998**, to deal with these issues. In the same year under review, the commission received a complaint alleging about the harassment and torture of van gujjars by forest officials in Uttar Pradesh. The Commission intervened into this matter and accordingly made certain recommendations to protect the interests of the gujjars.

In the same year under review i.e, **1998 - 99**, the Commission has continued to receive complaints from different areas of the country alleging inadequacies or indifference in the rehabilitation of communities, more particularly members of disadvantaged groups, when they have been displaced or otherwise adversely affected by mega projects. Some of the major cases brought before the Commission relate to:

- The rehabilitation and resettlement of tribals affected by the construction of the Kabini reservoir in Karnataka;
- The rehabilitation and resettlement of tribals affected by the Bandipur Project Tiger National Park in Karnataka;



- The rehabilitation of persons affected by the Maheswar Dam in Madhya Pradesh;
- The rehabilitation of persons displaced in consequence of a Defense Ministry project in Karnataka.

These cases were examined individually. While the Commission would be making specific recommendations in respect of each of them, it nevertheless urges that a comprehensive national policy on rehabilitation and resettlement be finalized at the earliest. In this connection, the Central Government has initiated steps to draft a national policy for resettlement and rehabilitation, adopting a more holistic approach, rather than one that was essentially oriented towards cash-compensation. The Commission intends to participate in the formulation of this new policy for resettlement and rehabilitation.

On 15th **February 2000**, the Commission held a high level meeting to discuss the specific problems of denotified tribes and nomadic tribes. It was decided that there is a need to have a proper enumeration of denotified tribes and nomadic tribes throughout the country including even those who have merged into SC/ST/OBC categories. Their mere merging into these categories should not be an obstacle in their access to education, employment and other infra-structural facilities to them. The role of entire state machinery, especially the police officers were also taken into consideration. The commission recommends that the police officers needs to be sensitised about the problems of these tribes. In this direction the commission also took up the measure of providing appropriate training programme in the National Police Academy. An effort to survey the socio-economic conditions of the tribes was also suggested in order to be able to locate their specific problems.

## **2. Complaint Against Non-Conferment of Scheduled Tribe Status**

A complaint from Swami Agnivesh, who stated that tribals residing in the districts of Chitrakoot, Allahabad, Mirzapur and adjoining areas had not been given the status of scheduled tribes by the State Government and that this had deprived them of benefits to which they should have been entitled. The tribals had been living in poor economic conditions, held in bondage and forced to work in slave-like conditions, wages being paid to them being far below the minimum fixed by the Government. On considering the complaint the Commission was of the view that there was need for a radical change in the way in which the State Government dealt with the problems facing the tribals. There was need to recognize their special relationship with the forests and to fulfil the mandatory role of the State to enhance their well-being rather than to drive them out of the forest. The Commission also took the view that the existing system of auction of mining rights was totally unjust and led to the exploitation of the tribals.

In the year **2000-01**, the Commission had urged greater sensitivity at the highest political and administrative level to the problems of the tribes. The central government conveyed all the recommendations of the Commission to the concerned state government. In addition to this, the denotified tribes and nomadic tribes included in the list of SC 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.

In May 2000, the Commission constituted an expert group to suggest long term measures for the upliftment of **Kol tribals in Uttar Pradesh** who have, for long, been the victims of bonded labour and other oppressive social and economic practices.

On the recommendation of the Commission, in the year **2002-03**, the Ministry of Home Affairs 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 in this regard. 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. 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. 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.

## 1. Organization of Conferences/Seminar on Tribal issues

In addition to all the above-mentioned steps taken by the Commission to ensure rights for the persons belonging to the tribal communities, it has also through various **conferences, publications, research studies and recommendations in various cases** tried to spread awareness about the rights of the tribals.

### (a) Conference

A **Seminar** on "Protection of Human Rights: A Critique" was organised on the occasion of the golden jubilee of the Universal Declaration of Human Rights in Collaboration with National Human Rights Commission, National Commission for Women and Indian Social institute on 13-14 November 1998 in New Delhi to mark the 50th Anniversary of the Declaration. The seminar gave special attention to the rights of Scheduled Castes and Scheduled Tribes, in particular the girl child and women belonging to these communities, the problems of marginalized sections of society and minorities.

### (b) Illustrative Cases

In **August 1996**, the Commission received a complaint from the National Alliance of People's Movements, requesting the intervention of the Commission in a "matter relating to the human rights violation of the **Bargi Dam outsees of Madhya Pradesh.**" It was contended in the complaint that the lives and livelihood of several thousand families, many of whom were tribals, were in "immediate and grave danger" as a result of an official decision to raise the water level in the dam from 418 metres to 422.76 metres. The Commission requested a team comprising Shri Virendra Dayal, Member and Shri R.V. Pillai, Secretary-General, to study the situation on the spot, the Commission recommended, in addition, that the Central and State Governments re- examine and appropriately amend their laws, regulations and practices in order to ensure that, when it comes to acquisition of land for purposes related to national economic development, the provisions of the Constitution, as expounded by the Supreme Court and as contained in international instruments to which India is a party, notably ILO Conventiona **107**, are fully respected.

Pursuant to directions of the Commission on a complaint received from Sh.Anand Shekhar Giri, President of Vindhya Kisan Parishad, Mirzapur alleging the **exploitation of tribals and scheduled castes in the district of Mirzapur, UP**, the Director General (1)

paid a visit to the area and presented a detailed report to the Commission. It was stated in the complaint that though lands had been allotted under the law to landless persons, and title had been transferred on paper, actual possession had been denied to the beneficiaries. They had also been denied the benefits and grants meant for them. Further, owing to illegal stone quarrying in the forest areas, irreparable damage had been caused to the ecology of the area, threatening the lives and future of the tribals living in the region. During the course of the visit of the DG(I) to the affected area, a large number of people belonging to the scheduled castes and scheduled tribes asserted that though they had indeed been issued with title deeds as beneficiary-landless labourers, actual possession of the lands allotted to them had been denied. While some claimed that they had never been shown the lands allotted to them, others complained that powerful persons had dispossessed them. It was further stated that while the closure of stone quarries by the State Govt, had resulted in large-scale unemployment and economic hardship to bona fide workers and traders in Mirzapur district, illegal quarrying was persisting under the protection of a mining mafia. The Commission, after considering the report and approving of detailed recommendations proposed by the DG(I), directed the State Government to look into those recommendations with a view to framing appropriate schemes that would empower the tribals and other landless persons of the district without disturbing the ecology of the area.

### **Rape of Four Scheduled Caste and Scheduled Tribe Women in West Godavari District: Andhra Pradesh**

**(Case No. 343/1/98-99)**

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

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

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

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

### **Sale of Female Children of Lambada Tribals in Telengana Region, Andhra Pradesh.**

The Commission took suo motu cognisance of a news item published in the Hindu of 22 January 2000, which highlighted the suffering of women of the Lambada Tribe of Telangana Region in Andhra Pradesh. It was reported that, in a number of instances, they were being compelled by their circumstances either to sell or to kill their infant girls soon after birth. A detailed report, obtained by the Commission from Andhra Pradesh Government confirmed that there were numerous cases where the girl child was being given away, either for adoption, or sold. In many cases, neither the names nor the addresses of the persons supposedly adopting the children were known. The Commission took a serious view of this matter and observed that the Supreme Court of India had laid down clear guidelines in respect of the adoption of Indian children by foreign nationals. Unfortunately, in most of such cases, poverty and illiteracy were the main causes for the giving-up of the child. The Commission considered the issue in a meeting on 26 April 2001 and further directions were given to the State Government. The State Government subsequently sent a detailed report indicating how it would deal with the problem. In the light of that report, the Commission closed the proceedings before it. However, at the request of Smt. Shanti Reddy, a Member of the National Commission for Women, who is working with cases involving the sale of babies by Lambada tribals for adoption, a high-level meeting was convened by the Commission where the Joint Secretary, Ministry of Social Justice and Empowerment and Director, Central Adoption Resource Agency (CARA) were present. The officials present agreed to review cases where foreign parents were not found suitable in adopting such babies.

### **(c) Research Programme and Projects**

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

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

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

## HUMAN RIGHTS OF THE DISABLED

### 1. INTRODUCTION

Equality, dignity, liberty are the founding principles on which International Human Rights law is premised. These values have sufficiently influenced the fundamental law of democratic polity and are reflected in constitutions of most democratic states including India. Under Right to Equality, the Constitution of India guarantees to all citizens equality before law and equal protection of law on grounds of religion, race, sex, caste, place of birth or any of them. The formal recognition of discrimination on grounds of disability is a recent phenomena and laws enacted even 20 years ago generally did not include disability in the list of prohibited discrimination.

The preamble of Persons with Disabilities (Equal opportunities, protection of rights and full participation Act, 1995 clearly delineates its objectives of promoting and ensuring equality and full participation of persons with disabilities. The act aims to protect and promote economic and social rights of people with disabilities.

According to the Census of India 2001, the total number of disabled in India constitutes more than 2 percent of the total population. Persons with disabilities (PWDs) are those who suffer from physical, mental or psychological impairment of varying degrees, either temporarily or permanently. This includes persons with blindness, hearing impairment, locomotor disability, cerebral palsy and multiple disabilities. Their lives are often handicapped due to various social, cultural, economic, infra structural and above all, attitudinal barriers which, acts as a stumbling block in their access to opportunities and their capacity to enjoy rights on an equal basis.

### 2. RIGHTS OF THE DISABLED AND NHRC

The National Human Rights Commission strongly holds the view that the rights of the people with disabilities needs to be protected, their dignity needs to be restored and their difference of ability needs to be recognized if the society is committed to give them an equal platform to contribute potentially to the life of the nation.



In this endeavour, the Commission in the year 1993-94 had included in its agenda the issue of disability in terms of the atrocities committed against them. The first case that the Commission took cognizance of was the forced hysterectomy without obtaining the consent of a mentally challenged woman in Maharashtra. The Commission felt that the issue raised the question of the rights of persons suffering from mental disabilities and decided to obtain the views of the Medical Council of India.

In the year 1994-95, the Commission expressed its concern for the prisoners with mental disabilities by making recommendations for the classification of the prisoners so that the mentally disabled are identified in this process and henceforth, special arrangements/ facilities are made available to them in the prisons. In addition to this, the Commission also recommended for the proper training and re-orientation of the prison staff in order to make them sensitive about the rights of the disabled. It also included visits to homes to check the living conditions of the prisoners.

Being dissatisfied with the ineffective implementation of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the Commission sought information from the State governments regarding the measures that were implemented such as job reservation, reservation in admission to various educational institutions, conveyance allowances, petrol subsidy, assistance for purchasing aids, loans for employment, special reservations in the allotment of government quarters for the benefit of the disabled persons. It also directed that the Chief Commissioner for persons with disabilities at the central level and Commissioners for disabilities at the state level have to be in position, on a full-time basis, to deal with the various issues related to the implementation of the Act. In one of its measures to prevent death by starvation in Orissa, the Commission put forth its recommendation for providing disability pensions. The extent of social security net available to disabled persons was expanded on Commission's recommendations and the disbursement of disability pension under various schemes was streamlined.

Amendment to the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Another task that the Commission took in the year 2000-01 with regard to the disabled is certain amendments regarding the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 for further strengthening of the Act and to pluck the loop holes inherent in it. In order to remove ambiguities in certain aspects of the Act and for its better implementation, the Commission has enlarged the definition of disability by including those persons who experience physical, intellectual or psychological impairment of varying degrees, either temporarily or permanently, and whose lives are handicapped by social, cultural, attitudinal and structural barriers, which hamper their freedom of participation, access to opportunities and enjoyment of rights on equal terms. The other suggestions covered,

inter-alia, the definition of a disability, the composition of Central and State Coordination Committees, reservation in jobs for persons with mental retardation, better access to facilities for persons with sensory disability and provisions relating to non-discrimination, care and protection.

The Commission has successfully championed the need to enumerate the disabled in Census 2001. In order to give a focused attention to the rights of the disabled, a core group on disability was constituted by the Commission in August 2001, with Shri B.L. Sharma, IAS (Retd) former Chief Commissioner of disabilities, as its chairperson. The core group was entrusted to consider the problems faced by the disabled from a human rights perspective and to evolve suitable ways and means of improving the conditions of the disabled.

Working towards an effective implementation of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the Commission in the year 2002-03, made recommendations to both Union Ministers and Chief Ministers of all States and Union Territories to evolve a State Disability Policy and Plan of Action, in order to provide social security, employment opportunities, rehabilitation and barrier-free infrastructure to benefit the disabled.

The Commission also adopted an in-house disability policy and an agenda for action. In this process, the disability perspective was incorporated in all aspects of the work undertaken by the Commission. For example, in all the training materials for public servants, an effort was being made to introduce an outline on the rights of persons with disabilities and the obligations of the various authorities of the State.

### **3. CHRC-NHRC-IGNOU Linkage Project on Disability**

The Candian Human Rights Commission, the National Human Rights Commission and Indira Gandhi National Open University jointly undertook a project to create conditions for effective use of international and domestic human rights instruments for the protection and promotion of the rights of persons with disabilities. The project worked towards effecting change in the programmes of legal and human rights studies. It has also prepared a small cadre of master trainers capable of serving formal and non-formal programmes of human rights education and awareness. To facilitate effective delivery of disability and human rights component in the study programmes, an impressive body of reference and resource materials has been compiled and widely shared.

Apart from this, a curriculum design for a course in Human Rights Disability and Law has also been evolved and the Bar Council, National Law Schools and their leading Universities have been asked to introduce an optional paper in Disability at the graduate level.

On June 23rd, 2005, a National Conference on Human Rights and Disability was hosted. The objective was to crystallize strategies for mainstreaming disability in the development agenda of the country. The conference brought together all the major stakeholders like senior officials of concerned Ministries in the Government of India, NGOs working in the Disability Sector, persons with disabilities, heads of Apex Institutions such as State Commissioners for Persons with Disability, State Welfare Secretaries and Vice Chancellors of university. To keep disability under the spotlight, the participants endorsed establishment of independent Department of Disability and Development (DDD) on the lines of Department of Women and Child

#### **4. Non-availability to Text Books in Braille**

The Commission was deeply concerned about the non-availability of books in Braille for Blind Students studying under the State Education Board.

The Hon'ble Chairperson of the Commission wrote to the all the Chief Minister of the State recommending that there is a need to ensure that the printing of books in Braille simultaneously go with the printing of regular books. The Commission also stated that in order to ensure timely availability of Braille textbooks the services of high speed computerized Braille passages could be utilized. The Commission recommended that the State Education Board may take steps to print books in Braille and work on proper distribution system so that books prescribed by the State Education Board are available to visually challenged persons at the beginning of each academic sessions and such students do not suffer any hardship on that account.

#### **5. UN Convention on Disability**

The United Nation Adhoc Committee has been deliberating the new UN Convention on Disability. Past seven sessions of Adhoc Committee and an extensive discussion has taken place. The meetings were attended- by various stakeholders including leading NGOs and National Human Rights Institutions.

The Special Rapporteur of the Commission was representing all the National Human Rights Institutions in the Adhoc Committee. During the discussion various areas including article 33 of the draft Convention and definition on general obligations, equality and non-discrimination, legal capacity, education, health and environment were discussed.

During the seven session, Director, Asia Pacific Forum requested the Commission to urge the Govt of India to direct its representative to support during the Adhoc Committee discussion for adoption of Article 33 as it is which support the role of National Human Rights Institutions.

In pursuance to this Hon'ble Chairperson of the Commission requested the Prime Minister of India vide letter dated 23rd August, 2006 to advise Indian delegation to UN Adhoc Committee to inform its position accordingly and reflect India as a responsible member of international community capable of assuming an important role in international affairs and governance.

Since then the UN Adhoc Committee has adopted the Convention on Disability, which will be placed in next general assembly's meeting of the United Nation.

## 6. Recommendations of the Commission

The Commission also 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. The agenda for action was prioritized in the following areas:

**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.

Being concerned over the fact that certain family laws and civil and criminal procedures like The Hindu Marriage Act of 1955, The Hindu Adoption and Maintenance Act 1956, which are couched with a certain degree of bias against persons with psychiatric and intellectual disabilities and also those suffering from epilepsy, the Commission in the year 2003-04, encouraged a more systemic review of both substantive and procedural laws with certain amendments in the light of the advances made in the fields of medicine in order to ensure equal protection and recognition of the rights of persons with disabilities. This year also saw a paradigm shift in terms of taking the disability issue from a welfare perspective to human rights perspectives. The Commission also noted with deep concern the conditions of the disabled persons at the grass root level, which requires serious fruitful interventions by the Panchayati Raj Institutions that would not only protect but would also promote the rights of the disabled at the village level. The Commission has also been advocating the need for a Comprehensive and integral international convention on the protection and promotion of the rights of persons with disabilities.

## 7. Rights of Persons with Mental Disabilities

The Commission is mandated under section 12 of the Protection of Human Rights Act. to visit the Government run Mental Hospitals to "study the living conditions of the inmates and make recommendations thereon". Besides discharging this specific responsibility, the Commission has been, right from its inception, giving special attention to the human rights of the mental patients because of their vulnerability and need for special protection.

The most notable intervention of the NHRC in mental health has been a project on '**Quality Assurance in Mental Health**' launched in 1997. The project team headed by Dr. S.M. Channabasavanna, former Director NIMHANS worked under the overall guidance of Justice V.S. Malimath, Member NHRC. The ten member team comprised the Chairperson and 4 members from the Deptt. of Psychiatry and one member each

from the Departments of Clinical Psychology, Nursing, Psychiatric Socio-work, Health Education and Neurological Rehabilitation. The main aim of the project was to analyse the conditions generally prevailing in Government run Mental Hospitals in various parts of the country with reference to infrastructure, patient care, admission, discharge and appeal procedure, rehabilitation facilities, client satisfaction and morale of the staff. The project team surveyed all the 37 Government run Mental Hospitals and actually visited 33 of them. It also considered comprehensive information collected from the Psychiatric Departments of some of the Medical Colleges. It organised Zonal meetings at Bangalore, Agra, Ahmedabad and Kolkata which were attended by NGOs, mental patients and their family members besides the mental health professionals. A series of workshops for selected staff from each hospital were also held to enhance the sensitivity of the key Administrators and impart special skill and orientation to the staff at the functional level. The project report submitted in June 1999 makes comprehensive recommendations in respect of each of the 37 Government run Mental Hospitals along with useful suggestions for action at the State level.

The affairs of the Mental Hospitals at Ranchi, Agra and Gwalior had come under the scrutiny of the Supreme Court of India through a number of PILs filed by public spirited activists in 80s and 90s. The Supreme Court directed the then Health Secretary Shri R. Dayal to study the infrastructure and functioning of the Ranchi Mental Hospital and submit a report for its revamping. Based on the Dayal Committee's report, the Supreme Court ordered in September 1994 that Ranchi Mental Hospital should be run as an autonomous institution by a Management Committee headed by the Divisional Commissioner Ranchi and having Mrs. Kapila Hingorani as one of the non-official members. The following aims and objectives were laid down by the Supreme Court for the Institution:

- i. Developing advance diagnostic and therapeutic facilities.
- ii. Improving social and occupational rehabilitation facilities.
- iii. Starting post-Graduate Training Courses in the field of Psychiatry Clinic Psychology, Psychiatric socio-work and Psychiatric nursing,
- iv. Expanding of Mental Health services at community level,
- v. Conducting short term courses for Medical and Paramedical personnel,
- vi. Undertaking research in the field of Behavioural and Neuro Sciences.

The Mental Hospital in Agra and in Gwalior were also brought under the purview of the orders passed by the Supreme Court in respect of Mental Hospital in Ranchi. The intervention of the NHRC has certainly helped these Institutions in acquiring an autonomous character. Their administration and management is now being run by the Managing Committee without unnecessary red-tapism.



The Directors have been delegated financial and administrative powers for day to day functioning of the Institution with major decisions being taken by the Management Committee without any need to refer to the matters to the State Government. The indoor capacity has been standardised at all the places. Admission and discharge procedure has been streamlined. The OPD facilities have been improved. Diagnostic and therapeutic facilities have also been upgraded by introducing the state-of-art technology. Efforts are being made to reduce the number of closed wards to the bare minimum and increase open ward facilities. The number of family wards has been increased with the result that the average time of recovery of patients staying with their family is as low as 10 to 15 days now. Living arrangements have been improved at all the places. Quality of food has gone up as a result of the enforcement of the norm (Rs. 30 per patient per day) laid down by the Supreme Court.

Based on the seventh meeting of the Core Group on Mental Health with Hon'ble Member, Justice Y Bhaskar Rao, NHRC, was held in the Commission on 8th August 2006. The purpose of the meeting was to understand the Issues involved with the Long Stay Patients (LSPs) in the mental hospitals who are clinically declared to be fit but have no takers and to review the position of the LSPs in Mental Hospitals at Ranchi, Gwalior and Agra.

In addition to the above-mentioned steps taken by the Commission to ensure rights for the disabled persons, it has also through various **conferences, publications, cases** and **research studies** tried to spread awareness of the rights of the disabled.

## **8. Capacity-Building for the Promotion of the Rights of the Disabled**

### **i. Internship Programme**

As a measure to improve in house capacity for the efficient handling of disability issues the Commission deputed three of its officers for an internship Programme with the Human Rights Commission of Canada (CHRC) which possesses vast experience in the protection and promotion of rights of persons with disability. The officers from the Law, Programme and Research Division of the Commission attended the internship that familiarized them with Canadian legal and policy frameworks, the alternative complaints handling system of CHRC and the Canadian Programme initiatives for non-discrimination and reasonable accommodation in public facilities and employment.

### **ii. Training Programme**

- The Commission has promoted training and sensitization of the prison staff regarding prisoners with mental disabilities.



- For providing a forum of self-education for the member of judiciary, the Commission has been facilitating judicial colloquiums. One such colloquium was provided with the technical input in 2003-04 at Bangalore for the judges of Karnataka High Court. The second colloquium was hosted in collaboration with Human Rights Law Network in December 2005 at Delhi. It was attended by 52 judges from 15 High Courts of the Country. It provided a useful opportunity for the members of the judiciary to analyze some provisions of the Disabilities Act, 1995 for clarity and uniform interpretation.

### **iii. Training Resources/Publications**

- In January 2003, the Commission brought out a Handbook entitled "Discrimination based on sex, caste, religion and disability" for sensitizing the teachers about the concept of non-discrimination and to develop respect for diversity. This publication was brought out jointly by National Council for Teacher Education (NCTE).
- The Commission published a 'Disability Manual' comprising international and domestic laws, including examples- of jurisprudence on disability in 2005. The manual can serve as a reference material for the lawyers, NGOs, academicians, human rights activists and the general public.
- For the personnel officers, administrators and labour law practitioners a 'Handbook on employment of persons with disabilities in Government of India' was brought out by the Commission in 2005.
- In the manual for the district magistrate, a chapter on the disabled and the associated duties of the government has been included.
- The Commission has also brought out a series of 'Know Your Rights' to create awareness about human rights. This series has a section on the rights of the disabled. The series was brought out jointly with NALSAR.

### **iv. Research and Development**

In the enjoyment of human rights and fundamental freedom, persons with disabilities have encountered numerous obstacles. In order to explore these facts and to recommend measures to overcome these obstacles, the Commission has supported a number of research projects:

#### **9. Poverty and Disability**

The correlation between disability and poverty has been a cause of serious concern for the Commission. The Commission in partnership with the National Association for

the blind undertook a study to estimate the precise cost of disability. 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.

The expenditure on additional facilities and services as brought out in the study is around Rs 9, 000/- per person with disability per annum. The Commission firmly believes that it the duty of the government to relieve the disabled and their families from this extra cost.

## **10. Employment**

There are numerous obstacles in the enjoyment of right to work for the disabled. The Socio-Legal Information Centre, Delhi assisted the Commission in consolidating the findings in the shape of a Handbook on Employment of Persons with Disability in Government of India.

## **11. Working of a National Policy through a local level**

In partnership with the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, the Commission aims 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 were 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 hitherto unreached areas.

## **12. International Co-operation for the Promotion of the Rights of the Disabled:**

- In co-operation with the Canadian Human Rights Commission (CHRC), NHRC in 2003, decided to develop three manuals on the issue of disability: 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.
- The Commission jointly hosted an international workshop of national institutions from the Asia Pacific Region and Commonwealth Countries at New Delhi between 26th - 29th May 2003 in collaboration with the Asia Pacific Forum of National Human Rights Institutions, the United Nations Office of the High Commissioner for Human Rights and the British Council. The participants of this workshop strongly affirmed the need for the development of a comprehensive and integral Convention. They stressed that the Convention should be a 'rights based' instrument built on international human rights norms and standards and social justice. It should be informed by the overarching principle that all persons with disabilities, without exception are entitled to the full benefit and enjoyment of all fundamental human rights and freedoms on the basis of equality, dignity and without discrimination. Furthermore, it was stressed that the situation of all disability groups and the diverse conditions related to gender, race, colour, age, ethnicity and other considerations must be taken into account when elaborating the Convention. The Commission has been organizing meetings with the National Human Rights Institutions in the country regarding the disability convention and submitted a proposal to the UN Ad Hoc Committee in its second session at New York in June 2003.
- The special rapporteur of the Commission on Disability serviced the Women's Workshop of ESCAP (18th - 22ND August 2003), which outlined a set of recommendations for strengthening the gender dimension in the proposed

disability Convention. She also contributed to another expert group meeting under the aegis of UNESCAP on October 14-17 2003, which evolved a concrete text of the Convention.

- The World Health Organization (WHO) and the NHRC conducted various workshops focusing on the task of monitoring the implementation of UN Standard Rules in the area of Right to Health. The workshops were conducted in Kathmandu (2002-03) and Bangalore (2003-04).
- Apart from contributing to the disability convention, the Commission has also associated with UNESCO in the preparation of a position paper on right to information. Keeping in view the urgent need to protect the freedom of information, expression and communication in the emerging information society by people with disabilities, the Commission advised the Ministry of Urban Affairs and Employment in the Government of India to take lead in guiding the work of an inter-ministerial committee to evolve a national accessibility ICT policy.
- In October 2005, the Commission facilitated a joint training program for disabled rights activists from 19 countries of South Asia hosted by Asia Pacific Center on Disability (APCD, Bangkok). Similarly the training program on 'Poverty and Disability' by the World Bank and the Government of Pakistan received an input from the Commission based on the findings of the research study to estimate precise cost of disability.
- A National Disability Conference was jointly organized on 23rd June 2005 by NHRC, CHRC and IGNOU at FICCI Auditorium, New Delhi. In his inaugural speech, the Chairperson of the Commission, Dr. Justice A.S.Anand expressing his concern about the violations of the rights of the disabled in their everyday life called for a shift in looking the issue of disability from a welfare perspective to a human rights perspective. He observed that keeping in view the benefit of the disabled, it is high time that they be involved in the decision-making process rather than being a subject of mere sympathy.
- A two-day National Seminar entitled "Towards an Enabling Legal Environment: Rights of Persons with Disabilities" was organised by the Indian Law Institute, New Delhi in collaboration with the National Human Rights Commission, the Institute for the Physically Handicapped and the Rehabilitation Council of India from 30 - 31 March 2000 at the Indian Law Institute, New Delhi. The symposium drew attention to the many problems facing persons with disabilities in the country and the apathy of government and society towards them. It also made a number of recommendations that could be of notable help in assisting persons with disabilities to lead normal lives.

- The Commission was also invited by the World Bank to crystallize a project under the title 'Global Partnership for disability and development'. Towards this end, the Commission participated in the meeting held at Rome in 2003-04 and in Washington in 2004-05.

### **13. Specific Cases on the Disabled**

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

The District Women and Child Welfare Officer, Mumbai informed to the Commission that a girl suffering from hearing and speech disabilities who was lodged in the Observation (Remand) Home, Umarkhadi, Mumbai was raped by the cook employed in that Home on 21 September 1997. A police report had been lodged with the Dongri Police Station on the incident. In response to a notice issued by the Commission, the concerned Deputy Director Women and Child Welfare in his report confirmed the incident. The Commission observed that there was no indication that any relief had been provided to the rape victim. The Commission, therefore, made the following recommendations to the Government of Maharashtra through its Chief Secretary:

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

#### **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)**

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.

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 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.

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 in creating a wider and deeper understanding of these rights.

## INTERNALLY DISPLACED PERSONS

The National Human Rights Commission has on number of occasions taken cognizance of the plight of internally displaced persons (IDPs) induced by the natural disasters, mega development projects and other reasons. These types of situations have increased its importance when there is already the lack of effective legal framework to deal with the problem of IDPs. Similarly, role of the NHRC becomes much wider when the state authorities show inadequate response in dispensation of relief and other humanitarian assistance to the IDPs.

### 1. Genesis of IDP Definition

As such there is no legal definition for internally displaced persons as there is for refugees. According to 1951 Convention on Status of Refugees a "Refugee" is a person who, *"owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"*.

Unlike refugees, the IDPs do not have a special status in the international law with rights specific to their concern. Until early 1990s, no definition on "internally displaced persons" existed. A starting point in this direction was the working definition of that had been put forth in 1992 by the United Nations Secretary-General Boutros-Ghali, which defines internally displaced person as: "persons or groups who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster, and who are within the territory of their own country"[UN Doc. E/CN.4/1992/23, 14 February 1992].

The more recent definition, which is widely accepted, is coined by Mr. Francis Deng and other International Legal Experts is mentioned in the 1998 UN Guiding Principles on internal Displacements. The Guiding Principles define the internally



displaced persons as *"persons or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violation of human rights or natural or human made disasters, and who have not crossed an internationally recognised state border.*

## **2. Protection and promotion of the Rights of the IDPs**

The *Asia Pacific Forum on Human Rights* in its 10th Annual Meeting in Ulaanbaatar, Mongolia also recognized that there is need to protect and promote *the rights of the IDPs in line with the UN Guiding Principles on IDPs*. The guidelines developed by the Asia Pacific Forum on IDPs entitled "Guidelines on Internally Displaced Persons in the Context of the Natural Disasters: a Common Methodology for National Human Rights Institutions" in its preamble also mentions that "IDPs are distinguished from other persons by common types of vulnerability that displacement exposes them to as well as by their need for a durable solution to that displacement. Displacement frequently entails consequences such as increased vulnerability to physical violence, in particular sexual and gender-violence; psychological trauma; lack of basic necessities of life (e.g. food, water, shelter, clothing sanitation); disease and impoverishment; and other difficulties".

It was 28th October 2005, that APF in Colombo adopted the guidelines on IDPs in the "Regional Workshop on National Human Rights Institutions and Internally Displaced Persons". The participants of the workshop recognise the three primary causes of internal displacement in the Asian region: conflict, natural disaster and development projects. The Participants also urge Governments to acknowledge the different types of displacement, whether by conflict, communal strife, natural disaster or development projects, and take steps to address the human rights dimension of the problem without discrimination of any kind, including on the basis of ethnic origin, caste, gender, religion, legal status, political or other persuasion or between those displaced by conflict and natural disaster. It is important to recognise such peoples as IDPs entitled to the rights contained in the UN Guiding Principles on Internal Displacement.

## **3. Natural Disaster-induced Displacements**

Natural disaster induced displacements have become a major human rights issue in recent times, such type of displacements precipitate the socio economic problems of IDPs who because of displacement loose shelter, livelihood, livestock like cattle etc. More often these violations are not consciously planned or instigated but result from inappropriate policies. However these violations can be avoided if relevant human rights guarantees were taken into account from the outset.

Following are some of the cases in which NHRC received complaints and also acted suo moto to deliver justice to the disadvantaged:

- i. Super Cyclone that struck the coastal districts of Orissa on 29-30 October 1999
- ii. Gujarat Earth Quake that devastated large areas of Gujarat on 26 January 2001
- iii. Tsunami which hit the coastal India, 2004
- iv. J&K Earth Quake, 2005

#### **4. Mega Development Project induced Displacements**

Mega development projects like construction of big dams, roads, cities have resulted in forced migration of the people to other places, which are very incongruent to the places they used to live. Normally, it is the indigenous people and other tribal people who face the brunt of such displacement, because they lose means of livelihood, habitat and assets. It has been observed that those cases of 'involuntary resettlement' which come into notice of NGOs and media get some measures of state intervention otherwise in most of the cases such displacements has resulted in loss of livelihood and home.

Some of the examples in which NHRC received complaints and expressed its concern over the fate of the displaced people:

- i. Bargi Dam oustees in Madhya Pradesh
- ii. Kabini Reservoir Project, Karnataka
- iii. Bandipur National Park- Project Tiger
- iv. Sea-Bird Project in Karwar, Karnataka

The Commission in all these cases pointed out certain major recommendations, which need to be followed timely and which merit to be considered in national policy as well as giving them legal shape in appropriate legislations, these are:

- i. Full respect to ILO Convention 107, to which India is party and other International Human Rights Instruments
- ii. The need of State and Central government to re-examine and amend laws, regulations and practices
- iii. 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.

- iv. Adequate rehabilitation packages to those who are adversely affected by mega development projects,
- v. Procedure laid down in the Wild Life Protection Act, 1972 in regard to the rights of the affected people and their rehabilitation has to be followed,
- vi. Preparedness of the country, to face such calamities, especially as a considerable part of the country was in an earthquake-prone zone

## **5. NHRC's Comments on the APF-Guidelines**

Some of the comments that NHRC has made on APF Guidelines on IDPs are as follows:

- i) draft guidelines are not to be intended to be binding on NHRIs
- ii) appointing an IDP Focal Point and Special Rapporteur could be considered by the Commission
- iii) the role of Commission should be that of monitoring the implementation of its directions by the Central/State machinery.
- iv) human rights issues arising out of natural disaster situations can be identified and incorporated as a separate module or made part of any training course, taking into account the special circumstances obtaining in each situation.
- v) regarding the guideline "conduct or commission a study of existing laws and policy in light of international human rights and humanitarian standards restated in the Guiding Principles": the Commission's comment is that this can be considered if appropriate proposal is received for the consideration of the Commission.
- vi) dissemination of information through awareness and training programmes could be considered after development of relevant source materials.

## **6. National Policy on Resettlement and Rehabilitation for Project Affected Families-2003**

The Ministry of Rural Development, Government of India also mentions in the Preamble of "National Policy on Resettlement and Rehabilitation for Project Affected Families-2003" that compulsory acquisition of land for public purpose including infrastructure projects displaces people, forcing them to give up their lands, livelihoods and resource base, displacement has other traumatic psychological and socio-cultural consequences..."

Chapter 3rd of this Policy Document defines "Displaced Family" as "any tenure holder, tenant, Government lessee or owner of other property, who on an account of acquisition of his land including plot in abadi or other property in the affected zone for purpose of the project, has been displaced from such land or other property".

The NHRC is of 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, 1894 itself, or be the subject of appropriate separate legislation. The Commission was additionally of the view that the Government should, while adopting a comprehensive policy, provide for that policy to itself be incorporated into appropriate legislation within a specified time frame to make it justiciable.

Lastly, it is worth to mention that UN Guiding Principles do not exclude those who are being displaced by development projects, as Principle 6(c) of these Principles prohibits arbitrary displacement in cases of large-scale developments. However, need is to make a comprehensive definition on IDPs, which will include all those who are being displaced by mega-development projects.

Over the past five years, a number of governments and regional bodies have begun to adopt policies and laws on internal displacement and five other countries are in the process of doing so. It is expected that these policies and laws will enlighten further in drafting guidelines as per the National needs.



## FOOD SECURITY

The National Human Rights Commission has consistently maintained that the Right to Food is inherent in the right to life as enshrined in Article 21 of the Constitution of India. It also believes that Article 21 should be read along with Articles 39(a) and 47 of the Constitution to effectively understand the nature of the obligations of the State and in order to ensure the effective realization of this right. The Commission has expressed that the Right to Food includes nutrition at an appropriate level. It also implies that the quantum of relief to those in distress must meet those levels in order to ensure that the Right to Food is actually secured and does not remain a theoretical concept.

### **1. The Commission's Activities Concerning KBK districts of Orissa devastated by drought hunger and poverty.**

The starvation deaths in the Koraput, Bolangir and Kalahandi (popularly known as KBK district) district were brought to the notice of the Commission by Shri Chaturanan Mishra, the then Union Minister for Agriculture in December, 1996 and the following observation of the Supreme Court of India dated 26th July, 1997 in a Writ Petition filed by Indian Council of Legal Aid and Advice and other, W.P. (Civil) No.42/97:

*"In view of the fact that the NHRC is seized of the matter and is expected to give its report after an enquiry made at the spot, it would be appropriate to await the report.*

Learned Counsel for the petitioner submitted that some interim directions are required to be given in the meantime. If that be so, the petitioner is permitted to approach the National Human Rights Commission with its suggestion. So far as this Court is concerned, the mate would be considered even for this purpose on receiving the report of the National Human Rights Commission.

We also consider it appropriate to require the Union of India to appear before the National Human Rights Commission and to assist the Commission in such manner as

the commission may require for the purpose of completion of the task by the commission. The learned Addl. Solicitor General undertakes to ensue prompt steps being taken for this purpose."

Pursuant to the Orders of the Supreme Court, the Indian Council of Legal Aid and Advice filed a petition before the Commission on 1st September 1997 making a number of suggestions in regard to interim relief to the affected population.

After due consideration of the matter, the Commission in its proceedings dated 17-02-1998, arrived at the view that some interim measures should be undertaken. Commission set out a practical programme agreed upon by all the parties concerned that involved the petitioners, State Government and Central Government working together in a cooperative effort. The programme evolved at that hearing covered the following matters:

- i. Rural Water Supply schemes;
- ii. Public Health Care;
- iii. Social Security Schemes which included Old-age/ Widow/Disability Pension Scheme, Emergency Feeding Programme, Supplementary Nutrition Programme, Public Distribution System and National Family Benefit Scheme;
- iv. Water and Soil Conservation Measures; and
- v. Rural Development Schemes such as Jawahar Rozgar Yojana Employment Assurance Scheme; Indira Avas Yojana etc.

These were to be addressed to by the State and Central Government as interim measures. The State Government was required to submit Performance Appraisal Reports "to the Commission. The Commission also requested the Orissa State Government to constitute a Committee to examine all aspects of the Land Reform question in the KBK Districts. Further the Commission with the assistance of its Special Rapporteur has been regularly monitoring the progress of implementation of its directions. The Commission also requested the State Government to constitute a State Level Monitoring Committee headed by the Chief Secretary to guide and supervise the efforts in that behalf.

The Commission deputed a team of officer comprising the Secretary General and the Director General (Investigation) to visit the affected areas for an on-the-spot inquiry into the reports of deaths by starvation. The team found that out of 21 deaths investigated, 17 were attributed to high level of deprivation existing in the area as a result of extensive crop damage, inadequate income level and insufficient out-reach of relief measures. It also found that prolonged malnutrition and hunger-compounded



disease had played the contributory factors. The commission after considering the report of the team, called for comments from State Government as also from the Union Minister for Agriculture on that report. This was followed by in-depth hearing of the entire matter with participation all the concerned parties.

The details of various hearings and backgrounds of the case have been elaborately dealt with by the Commission in its proceedings on 17th Feb 1998, 17th January 2003, 28th July 2005, and vide final hearing of the case on 18th July - 2006. The proceeding of 17th January, 2003 reflect the status of the short term measures of two year period ending 31st March, 2001 and the ongoing progress of the long term action plan re named as Revised Long Term Action Plan (RLTAP) covering the period from 1998-99 onwards. As per the directions of the Commission Special Rapporteur, visited KBK district on various occasions to see the ground reality and to verify the Performance Appraisal Report related to achievement of targets. The Commission vide its proceedings dated 28th July, 2005 directed the Special Rapporteur, to visit the Districts in the KBK region for verifying on the ground the implementation of the long-term and Short-term Plans as stated by the State in its report. The report was forwarded to the Government of Orissa and others for response. The final hearing was held in the Commission on 18th July 2006. In the light of the submission and presentation made at the hearing the Commission made further recommendations with regards to the factors noticed in its earlier proceedings:

#### **(a) Rural Water Supply and Sanitation (RWSS)**

The Commission has noted with satisfaction the progress of implementation of suggested revised norms of providing tube wells, introduction and efficient execution of Self Employed Machanic (SEM) Scheme in the KBK District. The Commission however expected the State Government to give its serious attention to the following issues:

- Vacancies of SEMs should be filled immediately and imparting them required training.
- The Rural Development Department must ensure early development of a protocol to define the types of repairs to be undertaken by the SEM and RWSS maintenance outfits and procurement and supply of spare parts. The need for strengthening of Quality Monitoring and surveillance programme needs to be addressed urgently.

#### **(b) Primary Health Care**

The Commission is concerned about the generally poor state of health care facilities still prevailing in KBK region as pointed out by Special Rapporteur, NHRC and Dr

Amrita Rangaswami, Director, SCAR. The State Government during the hearing stated that vacancies of Medical Officers and paramedical staff would not be allowed to exceed 20% in the KBK region. The presentation of Special Rapporteur, however, shows that vacancies of Medical Officers in the region are well above this ceiling in at least six out of the total of 8 District.

The Commission, therefore, recommends to the State Government to give its utmost attention to appointment of Medical officers in the KBK region. The shortage of medical specialists in these Districts is also required to be attended to at least by posing additional Specialists from outside and carrying out internal adjustment to ensure even distribution. The implementation of the Immunization Programme requires to be strengthened by effective supervision and evaluation of performance against the prescribed targets and the Commission expect the State Government to act positively and take time-bound action.

### **(c) Social Security Schemes**

The Commission has noted with certain amount of satisfaction the expansion and efficient execution of various Pension Schemes as well as the Supplementary Nutrition Programme. The ICDS programme requires greater attention in view of its crucial significance to the status of health of mother child. There is an urgent need for reviewing the locations of Anganwadi Centres and their proper management, especially in remote areas, to ensure that the benefits of the scheme reach all the targeted beneficiaries.

The Special Rapporteur also points out that the BPL Card holder in Orissa are receiving only 25 kg rice per family per month as against their entitlement of 35 kg under Antyodaya Ana Yojana (AAY) because of a huge difference in the estimation of BPL families identified by the Government of India and the State Government. The Commission requests the Government of India, through its Counsel, to appreciate the request made by the State Government and suitably enhance the allocation of BPL rice @ 35 kg per month to 50.19 lakh BPL households, until the findings of 2002 survey at present under scrutiny of the Supreme Court are finalized.

### **(d) Rural Development programme**

While noting with satisfaction the efficient execution of various Rural Development schemes, such as SGSY, SGRY, IAY, the Commission finds that these have not really helped much in dealing with the problem of rural unemployment.

The commission recommends that allotment the targets to the districts and performance appraisal should be made on quarterly basis, as was evolved by the Commission for the short-term measures. Besides facilitating effective monitoring, this would ensure smooth and progressive utilization of funds and avoid rush of expenditure towards the end of a financial year.

The Commission organized a meeting with leading experts on the subject, in January 2004 to discuss issues relating to Right to Food. The Commission approved the constitution of a Core Group on Right to Food to advise on issues referred to it and also suggest appropriate programs, which could be undertaken by the Commission.

### **(e) Status of Nutrition**

The National Sample Survey Organisation found that in 17 of India's most populous states the average calorie intake declined between 1972 and 1994. The decline was particularly sharp in rural areas.

The Survey data showed that per capita consumption of cereals declined in every state except for Kerala in both urban and rural areas. A shift was noticed from the cereals to other food items of lesser nutrition among the poor. This exacerbates under nourishment.

The nutrition survey done by the National Nutrition Monitoring Board confirmed the inadequacy of food (and cereals) intake by large parts of the population well below the recommended intake of 460 grams. Referring to "hidden hunger" it found an inadequate intake of micronutrients, which plays a critical role in body functioning.

### **(f) Government Schemes and Programs**

In the matter of People's Union for Civil Liberties (PUCL) vs. Union of India & Others, the Hon'ble Supreme Court gave directions to the States and the UTs for proper implementation and transparency of schemes and programmes relating to allotment of food grain. Schemes and Programmes include the Targeted Public Distribution System (TDDS), Antyodaya Anna Yojna, Mid-day Meal Schemes, the National Old Age Pension Scheme, the Integrated Child Development Scheme, National Maternity Benefit Scheme and the National Family Benefit Scheme.

The Hon'ble Supreme Court directed that "in order to ensure transparency in the selection of beneficiaries and their access to these Schemes, the Gram Panchayats will also display a list of all beneficiaries under the various Schemes. Copies of the Scheme and the list of beneficiaries shall be made available by the Gram Panchayats to members of the Public for inspection."

## **2. Core Group on Right to Food**

In order to ensure that every one is free from hunger, the Commission constituted Core Group on Right to Food on 20 January 2006. The Commission also recognized that there was a need for constituting a Small Group, which would crystallize the suggestions made by the Core Group. Accordingly a Small Group was constituted on 16th February 2006 and meeting of the Group was held on 21st February 2006.

Inspite of plethora of schemes from pre-birth to death ranging from ICDS for pregnant women, lactating mothers, supplementary diet to under 5 children in

anganwadis, then for primary school children mid-day meal scheme, public distribution system to ensure cheap availability and access to food grains, grain bank in villages to tide over difficult times. Old age pensions have not given the desired output. We not only have a high percentage of malnutrition but also starvation deaths. The problem therefore does not lie in non-availability of a scheme or programme or non-availability of food grains but it is more of an issue of management i.e. ensuring that the delivery mechanism works effectively.

In order to take the review of the earlier recommendations of the small Core Group and further discussion on the matter, the **Second meeting** of the Core Group on 'Right to Food' was held on Friday, 15th September 2006 in the Commission.

The recommendations, which 'came out of the meeting of this Group, are as follows:

1. There is a need to define concepts like, 'Right to' Nutrition'; 'Malnutrition'; 'Starvation'; so that there is a paradigm shift from 'welfare' approach to 'rights based approach' to the issue of malnutrition and starvation.
2. There is, therefore, the need to identify 200 (government and public sector) organizations with expertise to deal with malnutrition across the country to independently monitor the distribution mechanism. The role of 200 organizations would not be a day-to-day monitoring, but to see at ground level that things are moving properly. 'Independent Evaluators and Facilitators' is the expression, which can be used for 200 organisations. These will be short-listed by NHRC and the NHRC will recommend the State governments to help these organizations in performing their monitoring work.
3. In order to see that things are proceeding according to schemes, the State governments would be requested that panchayats should cooperate with these organizations for providing them information under different schemes.
4. It is mandatory not to just have food as matter of right but also to ensure proper nutrition. Schemes are already available, we have to see what are the discrepancies in existing schemes. Providing food should not be based on quantity, but on calories of energy. Ensuring the nutrition level is maintained; food available locally must be utilized, to clarify instead of insisting on uniform pattern flexibility to use local coarse grains like ragi etc. should be permitted.
5. The system of delivery be firmed up by active involvement of panchayati raj, institutions, with zero tolerance, i.e., ensure that there is no case of malnutrition and starvation in a panchayat. All Gram Panchayats must be held accountable under all the schemes. People should know what are the schemes and benefits available to them. Panchayats should notify it by displaying billboards in their office/prominent places.
6. There is need to dovetail with employment generation schemes and other interventions to ensure sustainable livelihood.

## HEALTH AND HUMAN RIGHTS

The Commission has been deeply concerned with the issue of right to health in the context of the renewed national focus on citizen's right to quality health care, as it is being violated on a significant scale; primarily, because it needs to be redesigned and reformed, owing to numerous shortcomings in the present health delivery system. The Commission holds the view that 'health care is a fundamental right under Article 21 of the Constitution; therefore the obligation of the state to take care of primary health is paramount, total and absolute; hence the State cannot avoid its constitutional obligation on account of financial constraints'.

### 1. Emergency Medical Services (EMS)

The Commission has been deeply concerned about the prevailing unsatisfactory system of emergency medical care in the country, which results in the loss of many lives. The Commission, on receipt of a complaint from Association of Victims of Upahar Tragedy about lack of adequate and appropriate facilities for providing emergency health care to accident victims and the inordinate delay in the establishment of Centralized Accident Trauma Services (CATS), obtained response from the Health Secretary, Director General of Health Services, Government of India as well as from the Health Secretaries of all the State Governments and sent them for opinion of the Core Group. To look into this issue, the Commission constituted an Expert Group headed by Dr. P. K. Dave, Former Director, All India Institute of Medical Sciences in April 2003.

The report of the Group of Experts brought to the light the lacunae that exist in the present EMS and made a series of recommendations for implementation, in the short-term as well as in the long term. These include enunciation of a National Accident Policy, establishment of Centralized Accident and Trauma Services in all Districts of all States/Union Territories etc.

While pointing out a number of deficiencies in the existing Emergency Medical Care System (EMS) of the country, it has suggested the following short-term as well as long-term measures so as to address the lacunae.

<p><b>LONG-TERM MEASURES on Emergency Medical Care</b></p> <p>(To be taken up within <b>One</b> years)</p>	<p><b>LONG-TERM MEASURES on Emergency Medical Care</b></p> <p>(To be taken up within <b>Five</b> years)</p>
<p>I. Enunciation of a National Accident Policy.</p> <p>II. Establishment of a central coordinating, facilitating, monitoring and controlling committee for EMS under the aegis of Ministry of Health and Family Welfare.</p> <p>III. Specification of 3-4 districts for attachment to Medical colleges, which will act as referral centers in each State and Union Territory.</p> <p>IV. Establishment of Centralized Accident and Trauma Services in all districts of all the States and Union territories in the country.</p> <p>V. Development of a computerized information base at all levels of health care to help in perspective policy planning and networking.</p> <p>VI. Setting-up of a National Trauma Registry by the Government for data collection and analysis.</p> <p>VII. Information dissemination to all of the existing facilities for EMS health care utilization.</p> <p>VIII. Formulation of proposals by the States for up-gradation of EMS.</p> <p>IX. Organization of training in EMS in the Medical Colleges and other regional areas.</p>	<p>I. Implementation of the proposed recommendations of the National Accident Policy.</p> <p>II. Setting-up of a well-equipped trauma centre with trained staff at the Regional and National level.</p> <p>III. Specialized multidisciplinary trauma care facilities in all District Hospitals.</p> <p>IV. Establishment of Emergency Medicine as a specialty.</p> <p>V. Dedicated communication toll free number to respond in case of emergency, which should be common for the entire nation.</p> <p>VI. A communication call center as well as an ambulance equipped and staffed to be stationed every 30 Kms on the Golden Quadrangular Road Project. Emergency care centres manned by paramedical staff should be established every 50 kms. All the National Highways should also have the same facilities.</p>



The Commission sent these recommendations to Health Secretary, Director General of Health Services, Government of India and Chief Secretaries of all States/Union Territories on 12th May 2004 for taking necessary action. The Commission is closely monitoring the implementation of these recommendations.

The summary of Responses of States/UTs and Govt. of India on recommendations of Expert Group on Emergency Medical Care is as follows:

- i. There was need for National Accident Policy;
- ii. However, there are rules and regulations on accident policy, the need is to incorporate them in a National Policy Document;
- iii. The Policy Document should define the role of private medical care; provide information on space required on primary, secondary' and tertiary health care, the equipment and manpower required. The document should also define the budget, which include drugs and disposals;
- iv. There is need of communication system through internet and telemedicine;
- v. The monitoring and coordination is the responsibility of the state government and NHRC could have responsibility to carry out random checks on National Accident Policy;
- vi. There was need for National Trauma Registry, the prerequisite for which is to have a information database by all States;

## **2. Public Hearings on Right to Health Care**

In the month of November 2003, the Commission approved a proposal received from the Jan Swasthya Abhiyan (Peoples Health Movement-a network of 1000 NGOs working in the health sector) to hold public hearings on Right to Health care in five regions of the country followed by one at the National level in New Delhi. Subsequently, the Western Region hearing was held at Bhopal on 29th July 2004, followed by the Southern Region at Chennai on 29th August 2004 and the Northern Region in Lucknow on 26th September 2004, Eastern Region in Ranchi on 11th October 2004 and the North Eastern Region public hearing was held in Guwahati on 28th November 2004. In these regional public hearings, senior Government health officials (Health Secretary or Director of Health Services) represented most of the states, while a total of nearly one hundred and fifty cases of health care denial were presented, certain policy level issues were discussed, and after each public hearing, a series of recommendations were issued concerning the State governments participating in each regional hearing. In other words, the National Public Hearing was organised as the culmination of a series of Regional public hearings on the subject.



During the day-long public hearings, selected cases or instances, wherein individuals or groups who have suffered denial of right to health care and have not received mandated health care from a Public and private health facilities were presented. In these public hearings, the Commission brought victims, NGOs and concerned authorities on the same platform, which helped in the resolution of individual problems, identification of systemic problems and forging of partnerships. Over 1000 victims from the marginalized sections presented their testimonies. The Commission and the concerned authorities are redressing their complaints. Systemic improvement in health care has been suggested to all concerned authorities. The active participation of NGOs and State Governments have contributed considerably to the success of this programme.

### **3. Plan of Action to Tackle Fluorosis**

The Commission is deeply concerned about the health dimensions of fluorosis, which affects nearly 66 million persons in 135 districts in 19 States of the country. The Commission had therefore sought information related to fluorosis from 19 endemic States. There is a need for a concrete Policy to deal with it in all its dimensions prevention/detection/diagnosis/treatment.

Prof. A.K. Susheela, Executive Director, Fluorosis Research and Rural Development Foundation, New Delhi, informed the Commission that it was basically a health problem, which is not diagnosed correctly. She added that none of the State Governments instituted facilities for its prevention, detection and treatment and fresh medical graduates were ignorant of this disease. She observed that as a result of inaccurate diagnosis, fluorosis is being treated wrongly. Its early detection is the key solution to the problem. She emphasized the need for educating the doctors and making diagnostic facilities available in all districts.

A meeting to discuss the human rights issues relating to fluorosis was convened by the Commission. The Secretary, Health, Govt, of India, Director General Health Services, Director, National Institute of Communicable Diseases, Deputy Director General, Indian Council of Medical Research and Prof. (Dr.) A.K. Susheela from the Fluorosis Research and Rural Development Foundation, Delhi participated in this meeting. After a detailed discussion, Department of Health, Ministry of Health and Family Welfare, agreed to:

1. Mount a National Programme covering endemic States affected by fluorosis;
2. Prepare a Plan of Action in consultation with the Director General Health Services, ICMR and Dr. Susheela within a month;
3. Take up the issue of fluorosis in its various manifestations and dimensions in the next meeting of the Central Council of Health and Family Welfare scheduled

in December 2004, which will be attended by all Health Ministers and Health Secretaries of all States;

4. Department of Health to give a directive to the Medical Council of India (MCI) to include fluorosis in the training of medical interns, which will enable MCI in turn to send a circular to all medical colleges;
5. Creation of awareness about treatment among the general public;
6. ICMR and NICD to develop a standardized treatment;
7. The Commission proposes to monitor the situation closely in the coming year.

#### **4. Human Rights and HIV/AIDS**

Deeply concerned about violations of human rights of those affected/infected by HIV/AIDS, the Commission made detailed recommendations to all concerned authorities based on the National Conference organized by it in New Delhi on 24th - 25th November 2000, in collaboration with the National AIDS Control Organization, Lawyers Collective, UNICEF and UNAIDS. The recommendations cover areas such as: consent and testing, confidentiality, discrimination in health care, discrimination in employment, women in vulnerable environments, children and young people, people living with or affected by HIV/AIDS and marginalized populations.

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

The Commission has been taking steps to spread awareness about Human Rights and HIV/AIDS. It has published an info kit on HIV/AIDS and Human Rights for wide dissemination amongst the general public. The Commission has also taken up the issue of production of six video spots with NACO and Prasar Bharti Corporation and also offered technical assistance in this regard.

Chairperson of the Commission addressed letters to the Union Minister for Human Resource Development, Health Minister and Chief Ministers of all States/Union

Territories on 6th September 2004 urging them to take steps to prevent discrimination of such children in access to education and healthcare.

**In particular, the Commission recommended the following:**

1. Enact and enforce legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from school;
2. Address school fees and related costs that keep children, especially girls, from going to school;
3. Provide care and protection to children whose parents are unable to care for them due to HIV/AIDS;
4. Provide all children, both in and out of school, with comprehensive, accurate and age-appropriate information about HIV/AIDS.

## **5. The Ongoing Project**

The Commission in its meeting held on 18th February, 2005 discussed this issue and decided that human rights are negated if vast numbers of the people of the country are allowed to remain illiterate and have poor access to health. Deprivation of health facilities denies the vulnerable sections of the society the essential ingredient of human rights. Therefore, Commission has been pursuing a philosophy that human rights are essentially issues of good governance and it is imperative that all institutions involved in Governance discharge their responsibilities sincerely according to the law and there need be a proper accountability in this regard. The Commission while discussing the item observed that considering the past developments in this sector affecting the human rights of vulnerable sections of the society, the time has come that Commission focus on selected areas which deprive vulnerable sections the opportunity to lead a life with dignity. In pursuance of this, the Commission observed that the right to health and clean drinking water are critical to lead a life with dignity and therefore decided to focus on these areas. In pursuance of these, it decided to:

1. Call for information from all States/UTs and the concerned authorities in the Central Government on the steps being taken/proposed to be taken for providing facilities for health which should, inter alia, include ensuring quality services in hospitals, availability of facilities and minimum standards in this regard. The already available standards in the Bureau of Indian Standards could be examined for taking further necessary action.
2. To seek information from all authorities concerned regarding any strategy and plan of action drawn for realizing the right to clean drinking water by everyone and in particular, persons from the poor and vulnerable sections of society.

Thereafter, the relevant form from Ministry of Health and Family Welfare, which it uses for collecting information from various States and Union Territories, was consulted. Annual Reports of the concerned Ministry and relevant 10th Plan documents, website of State Governments and website of Department of Programme and Implementation were also consulted and thereafter parameters on Rights to Health was prepared. These parameters were sent to Director General of Health Services and National Institute of Communicable Disease and their comments were obtained. In the light of their comments, a questionnaire was evolved. The proforma of the questionnaire adopted has the following parameters:

1. Access to health and infrastructure availability in ANM, PHC, CHC and District Hospitals;
2. Funds allocated for drugs;
3. State-wise/ System-wise number of hospitals;
4. Health coverage under tribal Sub Plan and Special Component Plan for Scheduled Castes;
5. Steps taken/proposed to be taken for ensuring quality services in hospitals, availability of facilities and minimum standards in this regard;
6. Right to Health Care of Vulnerable Sections;
7. Pregnant women with anemia (as %).

The duly constructed questionnaire was sent to Ministry of Health and Family Welfare and all States and Union Territories. The responses to the questionnaires from various States/UTs are analysed and the recommendations emanated on Health, Emergency Medical Care and Drug Availability are given below.

There are three main challenges which country is needed to address in the health sector. These are: acceptability, availability and affordability. The need is to upgrade the existing health care facilities at all levels, forge private- public partnership, adopt a right-based approach for protecting and promoting the survival and developmental needs of children and focus on preventive aspects of the health care such as nutritional value of food, first aid, hygiene and sanitation. Thus the Commission on the above issues has listed the following recommendations to ensure right to health.

### **1. Upgrade Existing Health Care Facilities at All Levels:**

1. The health care facilities are provided at PHC, CHC and District Hospitals, Medical Colleges and specialised hospitals. The main hindrance to ensure

acceptability and affordability is lack of manpower and medicines. Even though the statistics may show sufficient number of trained man-power in the country as a whole but the micro analysis clearly reflects lack of trained doctors and even para-medical staff at PHCs and CHCs which for the cutting edge to provide the health services;

2. The time has come to have a fresh thinking to ensure availability of trained manpower. MCI should seriously contemplate to recognise a three-year course for training doctors on basic preventive and curative health services so that the paucity of non-availability of man-power is taken care of. Another alternative is to have 1 year bridge course for doctors of Indian System of Medicine and post them at the CHCs and PHCs;
3. Another issue is non-availability of women doctors. The time has come to give recognition to mid-wife course by selecting local woman. A 2-3 year course will enable her to ensure good pre-natal, ante-natal care and also institutional deliveries thus directly contributing to reduction of MMR;
4. The para-medical staff in terms of ANM and more so a local trained person who can guide; concept of ASHA needs to be strengthened and streamlined.

## **II. Forge Public-Private Partnership**

The spread of private practitioners and 56% treatment still in for tray of non-qualified doctors needs to consciously involve private practitioners in the delivery of services. The attempt made in Gujrat for institutional delivery is the case which needs to be replicated. Another area is to make medicines of all national programmes available with private practitioners and then graduate to developing health insurance sector;

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

## **III. Adopt a Rights Based Approach for Protecting and Promoting the "Survival and Developmental Needs of Children**

1. Universal immunisation is the right of the child and no reluctance on parts of parents or inefficiency of delivery system should stand in way of achieving nothing less than 100% immunisation:
2. The rural health worker and panchayat be actively involved to ensure the same.

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

1. The spread of knowledge of first aid, hygiene and sanitation does not require paraphernalia of health workers. Need is to have one person responsible for 200 population and trained to spread awareness and empower them to exercise their right for health. The need is to ensure availability of such manpower in both rural areas and urban slums. The reorganization of existing staff in health itself will provide sufficient number of these trained personnel;
2. The delivery system of ICDS for pregnant mothers, lactating mothers and children till 5 years of age needs constant monitoring. The monitoring should be of outputs i.e., uplift malnutrition levels (For Dept. of Women and Children).

## **V. Availability of Drugs**

1. It is known facts of lack of availability of drugs in spite of sufficient budget in government hospitals and private sector resorting frequently to prescribe irrational drugs and diagnostic tests. The need is to adopt drug procurement pattern across board as is established in Tamil Nadu and follow the WHO standards for prescription of drugs.

## **VI. Emergency Medical Care**

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

Thus there is need for:

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





# Chapter 12

## THE INVESTIGATION OF CASES

In consonance with the *Paris Principles*, in order to enable the Commission to independently enquire into complaints of violations of human rights across the length and the breadth of the country (as mandated under Section-17 of the PHR Act.), there is a separate Investigation Division in the Commission.

Section-11 of the PHR Act, 1993 provides that the Commission will have an Investigating staff "*under an officer not below the rank of DGP and such other officers and staff as may be necessary for the efficient performance of the functions of Commission*".

Following are some of the prominent cases taken up for investigation by the Investigation Division of the NHRC:

- Investigation into the allegations of police excess against the villagers of Manniker, near Belgaon in Karnataka, by a team from this division resulted in restoring a sense of confidence among the affected villagers.

The Commission received a letter from Shri H.K. Patil, Leader of opposition, Karnataka Legislative Council, alleging that because of police action on 31 October, 1995 and 1st November, 1995 normal life of villagers of Manniker had been badly affected.

The Commission directed Director General (Investigation) to investigate the matter. The investigation team found the allegations of police high handedness and over reaction true. The team, headed by the DG(I) met the State authorities conveying to them the concerns of the Commission and urged them to take immediate steps to restore normalcy and instill confidence in the minds of the villagers. This recommendation was accepted by the Govt, and steps taken to restore normalcy in the village.

- In August, 1995, the Commission took suo-moto cognizance of a press report which read "5 killed in unprovoked police firing in Bihar". A complaint was also received in the Commission in this regard from Shri Swadesh Battacharya, a polit bureau Member of CPI (ML).

The Commission sent an SSP from the Investigation Division to conduct an inquiry, who after a through inquiry reported that the Bihar police had killed 5 people in an over reaction to brick batting, though no alert/warning or use of tear gas was done prior to the firing.

An FIR was consequently registered in this case. The progress of the case was monitored by the Investigation Division of the NHRC. The Commission also recommended payment of Rs.50,000 each to those "who were killed, Rs.10,000/- each to those who were seriously injured, and Rs. 5,000 for other injured persons.

- In another incident, the Commission received an anonymous petition dated 24.5.97 alleging that a young girl has been kept in captivity in a house for about 5 years as a result of which her condition had become serious and she had become mentally ill.

The Commission ordered a spot investigation by the Investigation Division. During the investigation the contents of the complaint were found to be true and the girl was recovered due to the efforts of the Investigation Division. The team reported to the Commission that, after the Commission's intervention, the victim had been given appropriate care and that she had now started to receive proper medical attention. On this report of the investigating team the Commission further directed the Rajasthan Police to vigorously pursue their efforts to apprehend the culprit, the brother of the victim, and to monitor the progress of treatment of the victim. The Commission also directed the SMS hospital to continue to provide medical assistance to the victim and report to the Commission.

- The Commission was in receipt of a complaint from Shri Amit Kumar Chaturvedi alleging that his brother, Asit Kumar Chaturvedi, an under-trial prisoner in District Jail, Agra died as a result of injuries inflicted while in jail custody.
- The Commission has been ever vigilant regarding the human rights scenario in the country wherever it felt that the only way of effective intervention by the Commission for improvement in the situation was a spot visit or investigation, it had always done so unflinchingly and without hesitation. The tragedy that occurred in Godhra on 27th February, 2002 when the Sabarmati Express was attacked and set on fire and the large scale of communal violence that subsequently ensued was viewed with great concern by the Commission. The results of its intervention, be it the Bilkis Bano, Best Bakery Case are two recent in everybody's memory to be recounted as a historic account in the present form.

Finding the report of DIG (Prison), Agra Range in the matter unsatisfactory and inadequate, the Commission asked its Investigation Division to look into the matter. The investigation prima-facie indicated that the prisoner was severely beaten up by the jail staff. There was evidence of witnesses to indicate torture and inhuman physical violence directed against the person of the prisoner.

In view of the above, the Commission felt that this was a case in which there was a strong probability of custodial torture leading to the death of the under-trial, and the jail authorities could not escape their responsibility. Pursuant to the recommendations of the Commission, the Uttar Pradesh Government has informed the Commission that it has sanctioned a sum of Rs.1,00,000/- as interim relief to the next to the kin of the deceased. The Commission also recommended that the Uttar Pradesh Government get the matter fully investigated by the State CID and prosecute all those found responsible for this tragic death and the subsequent attempt to cover up the facts.

- The Commission also took suo-moto cognizance of a news paper report which indicated that 8 child labourers, aged 8 to 11 years, were made to work in an embroidery factory at Garhi, Lajpat Nagar, for 12 hours a day and in return were paid only Rs.5/- per week. In addition, they were forced to work under humiliating circumstances and that they were also terrorized and assaulted.

The Commission directed its Investigation Division to conduct an on-the-spot investigation and submit a report. The report of the investigation Division revealed that eight child labourers were forced to work by their employer in inhuman and miserable conditions and besides being subjected to mental and physical torture, were not paid full wages.

As directed by the Commission, this report was sent to the Government of National Capital Territory of Delhi and the Commissioner of Police, Delhi for taking appropriate action. In response, an Action Taken Report was received from the Deputy Commissioner of Police (Vig.) and the Government of NCT of Delhi stating that two cases were registered against the owner of the factory and the accused was also arrested. A charge sheet was also filed and the case was pending trial.



## COMPLEMENTARY RELATIONS WITH THE JUDICIARY

Since its inception in the year 1993, the Commission has been maintaining complimentary relationship with the Supreme Court and the High Courts in India. Recognizing the credibility and effectiveness of the Commission, the Supreme Court and various High Court in India, have been remitting matters relating to preservice and promotion of human rights to the Commission for inquiry investigation and for submitting reports as well as recommendations.

One of the functions assigned to the Commission u/s 12 (b) of the Protection of Human Rights Act is to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. In keeping with its role for better protection of human rights, the Commission has been intervening, from time to time, in the matters concerning human rights in the proceedings pending in the Supreme Court or the High Courts in India with a view to put forth its point of view before the court and also to assist the court for consideration.

A brief mention may be made of some of the important remittances received from the Supreme Court / High Courts or interventions made by the Commission in some important areas concerning human rights before the aforesaid courts.

### **(a) Orissa Starvation Case**

The Indian Council of Legal Aid and Advice and others had filed a Writ Petition (civil) No. 42/97 before the Supreme Court of India inviting attention to starvation deaths in the KBK Districts of Orissa despite the direction of the Apex court in an earlier case reported as 1989 Supp. (1) SCC 258. On the basis of information furnished by the petitioner before the Supreme Court about an intervention of the Commission on a complaint, the Supreme Court vide its order dated 28/4/97 and 26/7/97 directed the petitioner to submit suggestions before the Commission for further consideration of the matter.

While dealing with the matter the Commission observed that the expression "right to life" contained in Article 21 of the Constitution has been judicially interpreted as not merely life of survival or animal existence but a "life with human dignity". It follows therefore, that the State is obliged to provide at least those minimum requirements which are essential to enable a person to live with human dignity and right to food is inherent to live with dignity.

As a result of the intervention by the Commission, the Government of Orissa proposed short term and long-term measures of development to end the scourge of deprivation, malnutrition and cyclical starvation in the KBK Districts of Orissa. As a part of monitoring of the situation in the three Districts on a continuing basis, the Commission sought and examined quarterly performance appraisal reports relating to the achievement of physical and financial targets. The Commission took assistance of its Special Rapporteur for keeping it fully informed of the various developments in the three districts and also to interact on its behalf with the concerned authorities at the State, District and other levels. The key areas of concern for the Commission included rural water supply and sanitation, primary health care, social security schemes, soil conservation, rural development, afforestation, land reforms, SC/ST development and school education.

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

In order to deal with the scourge of starvation, the Commission considered short term and long term measures in key areas of health, employment, poverty alleviation, drinking water supply etc. in the State of Orissa and their implementation is being monitored by the Commission. [Case No.37/3/97-LD(FC)]

### **(b) Custodial Disappearances Case**

The Hon'ble Supreme Court of India vide its order dated 31/1/2003 referred the subject matter of investigation in Special Leave to Appeal (Civil) No. 7436/99 arising from the judgement and order dated 24/12/98 of the High Court of Guwahati filed by Ms. Romila Hazarika against Union of India and others for tracing out of her missing brother Dambarudhar Hazarika after his alleged release from custody by army personnel. The court directed that the matter may be referred to the Commission for

further investigation. Accordingly, the Commission directed spot investigation by a team of its officers. However, despite best efforts by the team, the whereabouts of Dambarudhar Hazarika could not be traced and he continued to be missing. The Commission informed the Apex Court accordingly. [30/3/2003-2004-AF]

### **(c) Punjab Mass Cremation Case**

The Commission received a remit, from the Supreme Court of India to examine 2007 cremations of dead bodies as un-identified by the Punjab Police in the Police District of Amritsar, Majitha and Tarn Taran, Punjab during the period w.e.f. 1984 to 1994. The Hon'ble Supreme Court of India also separately directed the CBI to take further action into the matter and register the cases where necessary, hold investigations and proceed in accordance with the law on the basis of material collected through investigation.

In furtherance of the remit, the Commission considered the matter from time to time and it has unhesitatingly held till now that human rights of 194 persons, who were admittedly in the custody of the police immediately prior to their death, stood invaded and infringed when they lost their lives, while in custody of the police thereby rendering the state vicariously liable. There was a very great responsibility on the part of the police and other authorities to take reasonable care so that citizens in their custody were 'safe and not deprived of their right to life as in such cases the duty of care on the part of the State is strict and admits of non-exception." The State of Punjab was, therefore, held accountable and vicariously responsible for the infringement of the indefeasible right to life of those 194 deceased persons as it failed to "safeguard their lives and persons against the risk of avoidable harm."

The Commission has awarded a total compensation of Rs.4,85,00,000/- @ Rs. 2.50 lakhs to the next of kin of each of 194 deceased persons who were admittedly in the custody of the Punjab Police at the time of their death. The Commission is in the process of examining the remaining claims. [Ref: 1/1997/NHRC]

### **(d) Commission not to sit as an Appellate Body**

The Hon'ble Supreme Court of India vide its order dated 28/1/2004 referred a matter relating to Special Leave to Appeal (Civil) No. 34/2003 (State of J&K Vs. Kamal Gorla and others). In the said SLP, the order passed by the Hon'ble J&K High Court on 6/9/2002 extending all migrants from militancy affected areas the same benefits as have been given to the migrants from Kashmir Valley was challenged by the State of J&K before the Apex Court. The Commission while considering the matter on 10/8/2004 observed that it could not sit in appeal over the judgement and order of the High Court and it is only the Supreme Court which has jurisdiction to decide the appeal. Accordingly, the reference was returned to the Hon'ble Supreme Court to decide the SLP on the judicial side. [Case No. 41/9/2004-2005]



### **(e) Relief to Mentally ill in Prisons**

The Commission received an intimation from the office of DG (Prisons), Delhi about languishing in jail since 28/10/85 of a mentally ill prisoner Charanjit who was accused in a murder case bearing FIR No. 854/85 registered at P.S. Adarsh Nagar. Deeply concerned about the need to protect the human rights of the under-trial prisoner, the Commission, filed an application before the Delhi High Court under section 482 Cr.P.C. seeking the quashing of the trial in view of the inordinate delay in the case. The High Court allowed the intervention application. As a result of the initiative taken by the Commission, offers were made by the VIMHANS for extending medical facilities and treatment free of cost and by the Help Age India to take over the patient and accommodate him in their half way home or old-age home after the VIMHANS certified that the condition of the patient was stable. Accordingly, orders for shifting of the patient to VIMHANS were pronounced by the High Court on 31st July, 2003.

Subsequently, the Commission moved a Criminal Writ Petition No. 1278/04 before the High Court of Delhi and prayed for quashing of the trial of Charanjeet Singh whose condition had deteriorated despite prolong treatment at various hospitals/ institutions. The High Court vide its order dated 4/3/2005 quashed the trial of the mentally ill prisoner. The High Court commended the initiative and the promise by the Govt, of NCT of Delhi for taking care of medical need of Charanjit Singh after quashing of the trial. Guidelines proposed by the NHRC for considering the cases of such mentally ill under-trial was accepted by the court and suitable direction issued to the Govt, of Delhi in this regard. [Case No. 3628/30/2001-2002]

During his visit to Central Jail, Ambala on 18; October 2003, the case of a mentally ill prisoner Jai Singh came to the notice of the Chairperson, NHRC. It appeared that, after his admission to jail in case FIR No. 28 dated 3.3.76 u/s 302/ 34 IPC, he was transferred to Mental Hospital, Amritsar on 9/5/79 for treatment. He had not been able to stand the trial, presumably because of his mental condition. He was never produced in the trial court for trial in the said case and continued as an under-trial prisoner for over 26 years.

The NHRC, in order to achieve the object of protecting and promoting human rights and to prevent further violation of human rights of life and liberty of the under trial prisoner Jai Singh, approached the Hon'ble High Court of Punjab & Haryana for appropriate orders/directions in the interest of justice. Subsequently, the Commission came to know that the case of under trial prisoner Jai Singh is already being considered along with similar other persons by the Hon'ble High Court in CWP 10791/2002. However, the intervention application filed on behalf of the Commission on 23/8/ 2004 was allowed by the Hon'ble Punjab and Haryana High Court.

While considering the matter on 31.7.2006, the Hon'ble Punjab and Haryana High Court approved and adopted the guidelines framed by the Delhi High Court in the case of Shri Charanjeet Singh and quashed the case against Shri Jai Singh. The Court dealt with the cases of 13 mentally challenged prisoners and passed appropriate orders in each case. The Court expressed a hope that governments of UT Chandigarh and the States of Punjab and Haryana will keep in mind the guidelines while dealing with the cases of mentally challenged prisoners. [Case No. 736/19/2003-2004]

**(f) Monitoring of the functioning of three mental hospitals in Ranchi. Agra and Gwalior**

The Commission commenced to oversee the functioning of the Ranchi Institute of Neuro- Psychiatry and Allied Sciences (RINPAS), Ranchi, the Institute of Mental Health and Hospital (IMHH), Agra and Gwalior Mansik Arogyashala, (GMA), Gwalior, under the Supreme Court order dated 11.11.97. The Commission has been monitoring the performance of these institutions in regard to clearly specified tasks given by the Supreme Court while granting autonomy to these institutions.

RINPAS is making steady strides towards realization of the objectives set by the Supreme Court by improving the diagnostic and therapeutic facilities, developing the social and occupational rehabilitation facilities and expanding the community services and research activities. RINPAS is running regular M.Phil and Ph.D courses in clinical psychology and psychiatric social work with affiliation to Ranchi University. RINPAS has also been selected as a Nodal point for District Mental Health at Dhumka (Jharkhand).

The Commission has been evaluating the performance of these three mental institutes every year in relation to the task assigned by the Hon'ble Supreme Court of India and submitting regular reports before the Supreme Court.



## HUMAN RIGHTS EDUCATION

### 1. INTRODUCTION

The Commission has, since its inception, been deeply involved with the effort to introduce human rights education in the curriculum of school and also at the university level in order to promote a deeper understanding of human rights. It also continuously encourages the endeavours of a large number of NGOs in the area of human rights education.

In the course of thirteen years, the Commission has specifically taken a number of steps to further human rights education. The details of which follow:

### 2. NATIONAL ACTION PLAN ON HUMAN RIGHTS EDUCATION

The Commission played a catalytic role in the drawing up of a National Action Plan for observing the U.N. Decade for Human Rights Education (1995-2004). The Commission drew the attention of the Central Government to a letter addressed to the President of India by the United Nations High Commissioner for Human Rights in this behalf, and offered its support and advice to the Government in guiding and monitoring efforts in this direction.

The Government of India has, finalized its Action Plan for Human Rights Education, 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.

### 3. HUMAN RIGHTS EDUCATION AT SCHOOL LEVEL

In 1993-94 the Commission under took a series of meeting has been initiated with

the Department of Education, Ministry of Human Resource Development and the National Council for Educational Research and Training (NCERT), for evolving appropriately graded curricula for various levels of schooling.

On the request of the NHRC, the Government of India informed that the Ministry of Human Resource Development has taken action on re-orientation of syllabus, so as to introduce elements of human rights in school education.

With a view to assess the level of Human Rights Education at the school level, an in house study was taken in 2005 to prepare a Status Paper on Human Rights Education at school level. The main objective of the Status Paper was to find out whether human rights education constituted an integral part of the existing school curriculum at various levels. The study revealed that Human Rights Education is not taught as a separate subject. However, the National Council of Educational Research and Training (NCERT) and the State Council of Educational Research and Training (SCERT), Delhi have integrated human rights concepts in various subjects from the primary level to the higher secondary level.

Similarly, an exercise has been carried out at State level by sending a questionnaire to all the States so as to find out the existent status of human rights education. Information from almost all the States has been received. Based on the report, illustrates that Human Rights Education has been incorporated in the school level in almost all the States/UTs. Most of the State/UTs underline the lack of teachers training in Human Rights Education that needs to be considered to help in the feasibility of the introduction of Human Rights Education at school level. In this regard a meeting was held on 19 July 2006 in the Commission with the National Council of Educational Research and Training (NCERT), State Council of Educational Research and Training (SCERT), National Council of Teachers Education (NCTE) and Central Board of Secondary Education (CBSE) Delhi. In this meeting it was unanimously agreed that a Module for Teachers Training on Human Rights Education will be brought out in order to fortify the teachers training programme on Human Rights Education. A Task Force of members from NCERT, SCERT, NCTE and CBSE is constituted to bring out the Module, which is being pursued.

#### **4. HUMAN RIGHTS EDUCATION AT THE UNIVERSITY LEVEL**

At the University level, the Commission in 1993-94 has addressed communications to all Vice-Chancellors, proposing four measures:

- I. that the subject of human rights, in all of its dimensions, may find a clear place in the curriculum of the University;
- II. that research, seminars and publications concerning human rights should be furthered;

III. that the Commission would encourage linkages between the academic community and non-governmental organisations so that the best academic minds can bring their talents to bear up on the practical work being done by such groups, and

IV. that the Commission would welcome continuing contact with the Universities in these areas and that it would help, within its means and possibilities.

It came to the attention of the Commission that the University Grants Commission (UGC) had appointed a Committee on human rights education under Justice S.M. Sikri and that this Committee had prepared a most valuable report, titled "Blueprint for the Promotion of Human Rights in India at All Levels" in 1985. As no effective action had been taken on that report, the Commission got in touch with the UGC. As a result, the Law Panel of the UGC has prepared up-dated proposals for including human rights in LL.B and LL.M courses and other subject-panels of the UGC

At present there are 35 Universities, Colleges and Institutions that offers Human Rights Courses.

The Commission has been in touch with the Indira Gandhi National Open University in regard to the launching of a programme in human rights using the Distance Education methodology.

Currently, the Commission is working on a common syllabus on Human Rights Education for imparting postgraduate diploma/postgraduate degree at University and Colleges. In addition it is felt that there is a need to evolve a common syllabus to be implemented by University and colleges towards diploma and certificate courses being offered by them.

Recently, a meeting was held on 19 September 2006 of the Task Force constituting of eminent scholars including the one involved in the UGC curriculum on Human Rights Duties and Education. The Task Force is going to make five regional conferences and will look into various Human Rights syllabus before making a common syllabus leading to undergraduate diploma, undergraduate degree, postgraduate diploma, certificates and PhD programme. The syllabus in , regard to the above is expected to finally come up- by January 2007

## **5. EMPHASIS ON RESEARCH IN HUMAN RIGHTS EDUCATION**

In order to provide a further stimulus to human rights education, the Commission has taken the view that research should also be conducted on human rights issues under the-aegis of" the UGC. The Commission has, therefore, urged the UGC to earmark a certain number of fellowships for research on clearly identified human rights subjects.

## 6. PROJECTS PROPOSALS IN HUMAN RIGHTS EDUCATION

The Commission approved a project "A Review of the Status of Human Rights Education in India at the University Level" submitted by the National Institute of Human Rights (NIHR) in the National Law School of India University, Bangalore. The main objective of this study is to review and prepare a report on the Human Rights Education.

The Commission approved a project proposal from the Kamataka Women's Information and Resource Centre, KWIRC, Bangalore for developing source material for Human Rights Education in Indian Universities. The dossiers concerned are:

- i. Right to Information
- ii. Home Based Workers in India
- iii. Fish Workers Struggle for Human Rights
- iv. Environment and Human Rights
- v. Dalit Rights
- vi. Land and Housing Rights
- vii. Child Rights
- viii. Gandhian struggle for rights such as Bhoodan and Gramdhan,
- ix. Women's Rights for self-determination including Reproductive Rights
- x. Rights of the Disabled.

## 7. NATIONAL HUMAN RIGHTS INSTITUTIONS

A Workshop on "Managing Human Rights Institutions" was held in Calcutta between 28 June and 1 July 1997, in which the Commonwealth countries of Asia participated. The Workshop was organised by the Commonwealth Secretariat in collaboration with this Commission and the West Bengal Human Rights Commission. The Workshop placed particular stress on the role of human rights institutions in highlighting issues such as universal access to primary education and health and social services, emphasizing that these were central to the proper realization of human rights. The Workshop also drew attention to the need for close cooperation between national human rights institutions on the one hand, and the judiciary, the legislature and the executive on the other, in the promotion and protection of human rights.



The Second Asia-Pacific Regional Workshop on National Institutions was organised in New Delhi by the Commission from 10-12 September 1997 and inaugurated by the Prime Minister of India. Some of the major decisions and recommendations of the Workshop were as follows:

- i. The participants reaffirmed their commitment to the universal, indivisible, interdependent and interrelated nature of human rights contained in the Universal Declaration of Human Rights and other international instruments.
- ii. In order to ensure their effectiveness and credibility, the status and responsibilities of National Institutions should be consistent with the Principles relating to the status of National Institutions as adopted by the United Nations General Assembly (Resolution 48/134) commonly referred to as the 'Paris Principles'.
- iii. National Institutions should be established in conformity with the Paris Principles wherever this has not been done so far.
- iv. The Asia-Pacific Forum of National Human Rights Institutions should increase its role as a focus of regional, multilateral and bilateral programmes of practical technical assistance.
- v. The Workshop stressed the importance of collating, disseminating and developing human rights jurisprudence and requested the Secretariat to establish and initiate a mechanism to this end. In addition, the Workshop noted the proposal submitted by the Human Rights and Equal Opportunity Commission of Australia for an International Human Rights Law Advisory Panel to the Forum and agreed in principle to set up such panel. The Workshop decided to establish a sub-committee comprising representatives of the National Institutions of India and Australia to consider all relevant aspects of the matter.
- vi. The Workshop condemned the practice of child sexual exploitation as a gross abuse of human rights. It called upon all Governments in the region to take a range of measures to combat child sexual exploitation, including law enforcement, changes in social policy, public education campaigns and measures , to assist affected individuals and communities.
- vii. The Workshop also requested the Secretariat of the Asia-Pacific Forum of National Human Rights Institutions to give prominence to the Universal Declaration of Human Rights in technical cooperation and information activities, including a website focusing on the work of national human rights institutions.

The Commission continued to Chair the international Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, in response to the unanimous request of the members of that Committee. Shri Virendra Dayal, Member and Shri R.V. Pillai, the then Secretary-General represented the Commission in meetings of the 54th Session of United Nations Human Rights Commission and a meeting of the Co-ordination Committee of National Human Rights Institutions was held in Geneva from 31 March to 7 April 1998.

In a major effort to establish a centre of excellence for human rights education, the Commission has set up the National Institute of Human Rights (NIHR) at the National Law School of India University, Bangalore. A Chair on Human Rights was also created with the assistance of this Commission.

## **8. TRAINING PROGRAMME IN HUMAN RIGHTS EDUCATION**

In the year 1994-95 the Commission gave the highest priority to raising the training and re-orientation of members of the police and armed in human rights

- i. As regards the Army, the Commission has noted the efforts being made to spread the message of human rights from the level of jawans to Commanding Officers. In many of the visits, which the Commission has made to areas of army deployment, its attention has been drawn to the "Ten Commandments" issued by the Chief of Army Staff to all serving personnel.
- ii. In 1995-96 a national-level training programme on "Human Rights and National Values for Teacher Educators" was held. Some 40 participants, drawn from all parts of the country, attended the week-long programme.
- iii. The Chairperson of the Commission visited the Lai Bahadur Shastri National Academy of Administration, Mussoorie in 2000-2001. During his interaction with the Director and senior officers of the Academy, he emphasised the importance of introducing human rights related issues in the various courses run by the Academy and other National Training Institutions. The suggestion was well taken and the Academy has introduced a Module on human rights for civil servants at the instance of the Department of Personnel and Training.
- iv. The year 1997-98 under review witnessed a further deepening of the efforts of the Commission to sensitize police personnel to human rights issues and to heighten their awareness of such rights. The Commission circulated to all States a syllabus evolved by it in respect of human rights training for all ranks of the police force. In response, the Commission has been informed by police authorities of various States that they are undertaking regional training programmes and that concerted efforts are being made to sensitize their men officers.

- v. The Commission constituted a Core Group in November 1998 with the task of preparing training material for the staff of the National and State Human Rights Commissions.
- vi. In 1999-2000 the police authorities of all the States of the country have implemented the training syllabus and made sustained efforts to sensitise their men.
- vii. The Commission collaborated with the Commonwealth Human Rights Initiative (CHRI) a prominent NGO, to run a four-day 'Human Rights Sensitization Course', for police officers of Chhatisgarh working in the police stations and the State Human Rights Commission. The workshop was held in February 2004, at Raipur, Chhatisgarh. The aim was to sensitize the police officers working at the cutting edge level to learn about the core human rights issues being dealt with by them and develop knowledge and skills to promote and protect human rights of citizens in their work sphere
- viii. The Commission took a conscious decision to create a Training Division in September 2004, to achieve the spelt out objectives. Broad based training strategies were evolved to create a discernible impact on different sections of the society for a better today, and a better tomorrow, in terms of human rights promotion and protection. In house Induction and Post Induction courses were conducted to give exposure to the officers and staff to human rights values and ethos of the Commission. Similarly, training programmes/workshops and seminars were organized for civil servants, police officers, prison official, judicial officers, NGOs and CBO.

## 9. PUBLICATIONS

- The Commission brings out a monthly Newsletter in English and Hindi
- The Commission in collaboration with the NCERT brought out a *Source Book* on Human Rights thereafter translated into Hindi and Urdu
- A pamphlet on the composition, function, powers and major activities of the Commission has been published in thirteen languages
- The NCTE prepared a five-unit module for teacher training. This module developed in a Hindi version as well.
- The Commission published three important studies, State of the Art -Forensic Science - For Better Criminal Justice, Large Volume Parenterals - Towards Zero Defect and Quality Assurance in Mental Health.

- A Handbook on Human Rights for Judicial Officers and the publication containing 'the Instructions and Guidelines' were released in the course of a function organized by the Commission on Human Rights Day, 10 December 2000.
- The Commission brought out a calendar for the year 2002 covering the spectrum of the principal concerns. The calendar carried a statement on the Mission of the Commission. It was released at a press conference held in the Commission on 2 January 2002.
- The Commission has also issued a set of four posters on Mahatma Gandhi, which carry some of his sayings most germane to a proper understanding of human rights. His Excellency, the President of India, Shri K.R. Narayanan, released the first of these posters on Human Rights Day, 10 December 2001.
- Report on National Seminar-cum-Public Consultation on Racism, Racial Discrimination, Xenophobia & Related Intolerance organised by NHRC & NLSIU, Bangalore on 3rd & 4th August, 2001 was published.
- 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.
- For the second successive year, the Commission produced a calendar dealing with human rights themes. The calendar for the year 2003 focused on THE FIRST TEN YEARS: A DECADE OF NHRC'S INITIATIVES. It was released by the President of India on 10 December 2002.
- In 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.
- Professional policing-themes, human rights investigation and interviewing skills, human rights and custody management is published.
- Proceedings of the National Human Rights Commission on the situation Gujarat (1 March- July 2002) was published.
- 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.

- The Commission in collaboration with the NALSAR University brought out a series of booklets titled "Human Rights" on the following themes
  - (i) Human Rights and the Constitution of India
  - (ii) International Covenants on Human Rights
  - (iii) Sexual harassment of women at the work place
  - (iv) Manual Scavenging
  - (v) HIV/AIDS
  - (vi) Bonded Labour
  - (vii) Child Labour
  - (viii) Rights of the Disabled.

These booklets have been published in English, Tamil, Telugu, Malayalam and Kannada

- The calendar for the year 2004 focused on 'Disability: discrimination, prejudice and invisibility'. It was released by His Holiness the Dalai Lama on 10 December 2003.

The Commission brought out a few publications on certain issues of human rights. It assisted in the printing and publishing of the Book 'Migrant Labour and Human Rights in India' edited by Shri K. Gopal Iyer, which was released on 10 December 2003. The book is in five parts with chapter headings with Human Rights Perspective.

- A report on 'Prevention of Atrocities against Scheduled Castes' by Shri K.B. Saxena, IAS is published.
- A handbook on "Human Rights Education for Beginners" was published in 10 December 2005.
- The Kamataka Women's Information and Resource Centre (KWIRC) with assistance from the NHRC has prepared a set of ten dossiers on Human Rights Education for university students on issues relating to:
  - i. Right to Information
  - ii. Home Based Workers in India
  - iii. Fish Workers Struggle for Human Rights

- iv. Environment and Human Rights
- v. Dalit Rights
- vi. Land and Housing Rights
- vii. Child Rights
- viii. Gandhian struggle for rights such as Bhoodan and Gramdhan,
- ix. Women's Rights for self-determination including Reproductive Rights
- x. Rights of the Disabled

## 10. OTHER PUBLICATION ON HUMAN RIGHTS

- The Protection of Human Rights Act 1993
- National Human Rights Commission Brochure
- NHRC Pamphlet Contains Frequently Asked Question about NHRC
- National Human Rights Commission's Guidelines for Sponsoring Research
- Report on the Prevention and Atrocities against Scheduled Castes
- Guidelines on Preventive arrest
- Declaration adopted at the National Colloquium on Population Policy, Development and Human Rights
- National Conference on Human Rights and HIV/AIDS (24-25 November 2000, New Delhi)
- Regional Consultation on Public Health & Human Rights. (10-11 April, 2001, New Delhi)
- Bachon ke Adhikar/Rights of the Child
- A Guidebook for the Media on Sexual Violence against Children
- Trafficking in Women and Children- Report on the Action research on trafficking in women and children in India
- Report of the National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy
- Manual on Human Rights, Disability and Law

## 11. MEDIA

Over the years of the Commissions existence, the Commission has shared a special relationship with the media. Based on reciprocity in highlighting issues of human rights, the Commission has found a key ally in the media in generating public awareness. The Commission has frequently taken cognizance of human rights violations on the basis of media reports. It has benefited substantially from the editorials, letters and articles that feature in the media. The media has indeed acted as a watchdog for the Commission on many occasions.

The diverse opinions across the country and the world find a voice through the media and it is this, which promoted the Commission on a daily basis to scan 24 newspapers regional, national and international. All major weeklies and fortnightlies are also scanned regularly for important news items. The press clippings continue to serve as an important source of information to the Commission for taking suo-moto cognizance. Not just the print media is monitored but even the broadcast and internet is scanned for any new article on human rights. There has been constant interaction between the Commission and the media. Interviews and observations provided by the Chairperson and Members, on host of human rights issues have frequently featured in the press. Further, there have been regular briefings for the media, both through press release and on a one-on-one basis.

## 12. WORKSHOPS/SEMINARS

- A most constructive two-day seminar was jointly organized by the Candian Human Rights Commission and this Commission in February 1996. It was inaugurated by the President of India and had as its theme "Human Rights Education".
- A seminar on Human Rights and Terrorism and Human Rights Education, was held in Bangalore in August 1996, to commemorate the thirtieth anniversary of the International Covenant on Civil and Political Rights. It was addressed by the Prime Minister of the country.
- Two seminars, in particular, related to the rote of the armed forces and human rights was held in Delhi in November 1996 by Army Headquarters itself and well attended by non-governmental organizations and others participating fully. It also provided the Chairperson and Members of the Commission to engage in a most useful and thorough in-camera discussion with the Chief of Staff and the senior most officers of the force. The other was a seminar organized by the Assam State Human Rights Commission, which, among other matters, permitted a serious discussion on human rights problems in areas of insurgency.



- In a meeting held on 19 January 1998 with senior officers of the rank of Inspector General of Police in-charge of training, the draft of a common training syllabus was worked out for the training of such personnel. A debate was held on 15 April 1998, with officers and men of BSF, CRPF, CISF, ITBP, NSG, RPF and the Assam Rifles on the subject of, "National security cannot be sacrificed on the altar of human rights". The team trophy was awarded to the CISF
- In 1998 the Commission provided financial assistance in organising a National Seminar on Human Rights by the University of Pune; a seminar on 'Working Environment of Policemen and its impact on Human Rights Violations' organised by the National Institute of Criminology & Forensic Science, Delhi; a seminar on 'Child Labour problems of Bihar' organised by Human Rights Association, Bihar and a seminar on the 'Child and Human Rights' organised by Punjab University. A number of other seminars held in various parts of the country were attended by the Chairperson and Members of the Commission.
- In 24 March 1999, a debate on the title "Is the duty of Paramilitary Forces restricted to the observance of Human Rights or does it extend to the protection of Human Rights of others?" was held.
- A South Asia Workshop on Human Rights Education in Schools in India was jointly organised by the Commission with HURIGHTS, OSAKA an NGO from Japan, in New Delhi, between 15-18 October 1998.
- In the framework of UNESCO's activities relating to the commemoration of the Fiftieth Anniversary of the Universal Declaration of Human Rights, and in accordance with a Plan of Action for the United Nations Decade for Human Rights Education (1995-2004), an Asia-Pacific Regional Conference on "Education for Human Rights in Asia and the Pacific" was held from 3-6 February 1999 at the World Peace Centre, Maharashtra Institute of Technology, Pune. The conference was jointly organised by the National Human Rights Commission, the World Peace Centre of MAEER's MIT, Pune, the Indian National Commission for Co-operation with UNESCO, New Delhi and UNESCO's Division of Human Rights, Democracy and Peace (Paris) with the support of UNESCO Headquarters.
- The seventh Asia-Pacific Workshop on Human Rights was held in New Delhi between 16-18 February 1999. It was organised by the Ministry of External Affairs in consultation and cooperation with the United Nations High Commissioner for Human Rights.
- A National Workshop on Human Rights Education was organised at the Indian Social Institute on 27 August 1999.
- The subject of the debate during the current year was the concept of Human Rights in combating terrorism and militancy'. It was organised by the BSF on

March 31, 2000 in New Delhi and adjudicated by a distinguished panel of judges under the chairmanship of a Member of the Commission, Justice Dr. K. Ramaswamy.

- The Commission was instrumental in a training programme being organized by the National Law School of India University, for the benefit of District Judges of the States of Andhra Pradesh and Kamataka.
- The Chairperson visited Sri Lanka between 3-5 December 2000 to deliver the Millennium Lecture at the University of Colombo and the Fourth Neelan Tiruchelvam Millennial Lecture at the International Centre for Ethnic Studies, Colombo.
- 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.
- A two days Workshop on 'Human Rights', was organized in collaboration with the Indian Institute of Public Administration (IIPA), New Delhi duly supported by the UGC and Delhi University, for the Delhi University College Teachers.
- The 8th Annual Meeting of the Asia Pacific Forum (APF) was held at Kathmandu from 16-18 February 2004, which was attended by representatives of the National Human Rights Institutions of twelve member countries that constitute the Asia Pacific Forum i.e. Nepal Australia, Fiji, India, Indonesia, Malaysia, Mangolia, New Zealand, Philippines, Republic of Korea, Sri Lanka and Thailand.
- A high level meeting was held under the Chairmanship of Dr. Justice A.S Anand Hon'ble Chairman, NHRC on 19-20 February 2006 to discuss the ten dossiers prepared on various subjects on Human Rights by the Karnataka Women's information Resource Centre (KWIRC), Bangalore with the help of authors/ resource persons identified by them.

### **13. INTERNSHIP PROGRAMME**

The Commission has evolved, put in position and institutionalized a system whereby talented students, both from India and abroad, pursuing graduate and post-graduate studies in Law, Political Science, Sociology, Criminology etc. are accepted for internship in the Commission during their vacations.

The Commission has been organizing Summer and Winter Internship Programme since the year 1998 with a view to give them an exposure to human rights issues. The Internship Programme is an annual feature and is usually of one-month duration.



## THE ROLE OF OFFICIAL LANGUAGE IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

Since the establishment of the Commission in 1993, the Commission has been making constant efforts for the protection and promotion of human rights. Since inception the Commission has a firm view that so long as we don't make a resolution to make the people aware of Human Rights, the Commission cannot achieve its goal in true sense of the terms. To achieve this end, it is imperative to spread awareness among the masses in their mother tongue. Therefore the Commission felt an urgent urge to create awareness about Human Rights through Hindi and other Indian languages. Since it is not only mandatory to set up official language Divisions/Wings or Units in all the government Departments, Ministries, Commissions, organizations and other offices, but it is constitutional obligation also. Accordingly the Commission has also set up O.L. Division in the Commission in 1995. The division is carrying out all the instructions issued by the department of O.L. from time to time. Besides it, translation of complaints/cases from Hindi to English and from other regional languages to English received from all over India, is also being done by the Division. The Language Division of all the Commission has been playing an important role by carrying out the following programmes.

### 1. Award Scheme

An Awards Scheme on Creative Writings on Human Rights in Hindi was launched in the year 1998. In the beginning the scheme carried only one prize of Rs. 25, 000/-. In the inaugural year 35 entries were received, which amounts to great achievement. Considering the keen interest shown by the writers/authors and intellectuals, the number of prizes were increased to six- three prizes for original writings category and three prizes for translation category i.e. translation from other Indian languages and English into Hindi. In addition to this, the prize amount of the Award Scheme was also raised.

## **2. Glossary of Human Rights Terms (English-Hindi)**

The Commission viewed that most of the literature related to Human Rights is available in English but it does not cover the masses. We have to spread human rights awareness to the masses. So to facilitate the translation of literature into Hindi and encourage original writings in Human Rights, The Commission decided to bring out a Glossary of Human Rights terms (English-Hindi). Thus, efforts in this direction fructified and a "Glossary of Human Rights terms (English-Hindi)" with about ten thousand words pertaining to Human Rights, Police, Law, Medicine, Psychology, Environment, Disability, etc. was published by the Commission. It contains other important information also.

## **3. Translation of important Literature related to Human Rights**

The Commission observed that international instruments, Covenants, Protocols and Conventions related to Human Rights are of great importance as the thoughts and ideas contained in them are needed to be reached to the masses. So the Commission got the following three international instruments translated into Hindi.

- I. Human Rights: A Compilation of International Instruments, Vol-1 (Part-1)  
Universal Instruments
- II. Human Rights: A Compilation of International Instruments, Vol-1 (Part-2)  
Universal Instruments
- III. Human Rights: A Compilation of International Instruments, Vol-1 (Part-2)  
Regional Instruments

## **4. Annual Hindi Magazine "Manav Adhikar: Nai Dishayain"**

Since long the Commission was of the view that a Hindi Magazine on Human Rights should be published which will fulfill the need of students and research scholars in the field of Human Rights and a common man at large. The Commission had been publishing monthly Newsletter in Hindi and English, but this was not sufficient to fulfill the requirements of the above categories. So the Commission initiated the publication of an Annual Hindi Magazine "Manav Adhikar: Nai Dishayain" in 2004 and its annual edition published every year in the month of December.

## **5. Glossary of Human Rights Terms (Hindi-English)**

Since complaints in Hindi and other regional languages are received from every corner of India, the Commission felt that a Hindi-English Glossary on Human Rights terms needs to be prepared which will cover the words pertaining to Human Rights as well as Police, Administration, Law, Justice and Research etc. This would not only bring

uniformity in the translation of literature related to Human rights, but also acquaint the translators with the regional words used most frequently in the complaints. The words for this glossary have been compiled from the complaints received from Hindi-speaking states and given their English equivalents. It is the first of its own kind effort on the part of the Commission, which will bring the uniformity in translation of the cases. The Glossary is likely to be published by the end of this financial year.

## **6. National Workshop and National Seminar in Hindi**

The main motto of establishing the National Human Rights Commission is to protect the Human Rights of the people and spreading wide awareness of Human rights to the masses to attain the goal, people should be made aware of their rights. That is why the Commission planned to undertake task of organizing National Workshop and National Seminar in Hindi on the current topics related to Human Rights to bring out better ideas and thoughts on the subject.

Accordingly, in March, 2004 a National Workshop was organized in Delhi on the topic "The Role of Indian languages in Protection and Promotion of Human Rights" where experts and scholars having authority on the subject were invited from all over India. It was also observed that's such workshops really have a constructive and positive impact on the people. Media has also appreciated this effort.

In this series, a National Seminar was held in Delhi on the subject " The concept of the Human Rights in Indian Culture and the importance of Human Rights Education in India". The Commission is of the view that organizing such workshops and seminars in other parts of India in future will help in spreading its goal.

## **7. Translation of important Publication/Booklets of the Commission**

Keeping in view its wide ranging responsibility and the expectation of the people of the country, the Language Division in addition to translation of the Complaints/ Cases, has taken up items of work of translation that include the following publications/ booklets:

- Prevention of atrocities against scheduled caste
- National Conference on Human Rights and HIV/AIDS
- National Human Rights Commission
- International Human Rights Convention
- Manual Scavenging

- Bonded Labour
- Child Labour
- Sexual Harassment of Women at the Work Place
- Rights of Persons with Disabilities
- Human Rights and HIV/AIDS

The Division of the Commission would continue to keep the pace of its concerted efforts in assisting the Commission bringing about a change in the society by making available all-important publication into Hindi in Protection and Promotion of Human Rights. Hence, the Language Division is an important part of the Commission, which will always strengthen it in attaining its goal.



## THE REVIEW OF DOMESTIC LEGISLATIONS AND INTERNATIONAL CONVENTIONS

The Commission is empowered under Sub sections (d) and (f) of Section 12 of the Act respectively to review the safeguards provided by or under the Constitution or any law for the time being in force, and study treaties and other international instruments on human rights with a view to making recommendations for their effective implementation.

The Commission examines, reviews and gives its independent opinion and views on important Bills and Acts concerning human rights issues. The Bills and Acts on which the Commission has given its opinion/views are as follows:

### 1. DOMESTIC LEGISLATIONS

#### i. Child Marriage Restraint Act, 1929

Child marriage is an obnoxious practice that has been prevalent all over India among almost all the communities. The practice is prevalent to a greater extent in the States of Rajasthan, Chhattisgarh, Madhya Pradesh, Jharkhand, Bihar and Uttar Pradesh and to a lesser extent in other States. It is on 'Akshya Tritiya', popularly known as Akha Tee, an auspicious occasion according to Hindu religion, when mass child marriages are openly performed in contravention of the prevalent laws. This is a violation of the rights of the child, particularly the girl child, depriving her of opportunities and facilities to develop in a healthy manner, to obtain education and to lead a life of freedom and dignity. The Child Marriage Restraint Act (CMRA) enacted in 1929 and amended in 1978 has failed to curb this sinister practice.

The CMRA 1929 initially prescribed 15 as the minimum age for marriage of girls and 18 for boys. It prohibited solemnization of child marriages, but did not declare these marriages either void or illegal. The punishment prescribed under the Act was also very mild. As a result, the legislation failed to achieve the desired results. When

the Act was amended in 1978, the minimum age of marriage was raised by 3 years for both girls and boys. It is now 18 years for girls and 21 for boys. In spite of increase in the minimum age, the remedies under the Act remain as weak as before. The marriage is still valid. The punishments are nominal. The punishment to a male over the age of 21 years marrying a child is simple imprisonment for 3 months and a fine. The punishment for solemnizing a child marriage and the punishment for a parent or guardian of a child for arranging such a marriage is also the same. Though offences under the Act are now treated as cognizable for the purpose of investigation, they are not so for other purposes. Even the power to issue an injunction prohibiting the marriage in contravention of the Act is circumscribed by the requirement that no injunction shall be issued unless the court has previously given notice to such person and has also given him an opportunity to show cause. Moreover, it does not empower the police to arrest a person without warrant or without the order of a Magistrate to prevent child marriages.

In order to curb this evil practice, the Commission in the year 1995 took the view that the CMRA should be recast to provide for higher penalty for the violators and also to make the offence cognizable and non-bailable. Further, it was of the view that a provision should be made in the amended Act to take action against organizers/associations who organize child marriages on a mass scale.

Accordingly, the Commission, after holding several meetings with concerned authorities, recommended a number of amendments to the CMRA 1929. The proposed amendments were sent to the Government of India for appropriate action.

Government of India introduced a Bill entitled 'the Prevention of Child Marriage Bill, 2004', in the Rajya Sabha on 20 December 2004, incorporating almost all the recommendations made by the Commission. The Bill was under examination of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. The Standing Committee had presented its report on 29th November 2005. The report was also tabled in the Lok Sabha on the same day. It is, however, learnt that the Bill has been returned to the Ministry of Women and Child Development for further consideration.

## **ii. The Protection of Women from Domestic Violence Act, 2005.**

Domestic violence is a universal phenomenon that cuts across culture, religion, class and ethnicity. Despite this widespread prevalence, such violence is not customarily acknowledged and has remained invisible. The social construction of the divide between the public and private domain underlies the hidden nature of domestic violence against women. Legal jurisprudence has historically considered the domain of the house to be within the control and unquestionable authority of the male head of household. Thus, acts of violence against members of the household, whether wife or

child, have generally been perceived as discipline, essential for maintaining the rule of authority within the family.

In the last two decades, apart from the Indian women's movement that has contributed largely to a growing public awareness of violence against women, international conventions also have been equally explicit in acknowledging the State's responsibility for human rights violation by private actors in both the public and private spheres. The Vienna Accord of 1993 and the Beijing Platform of 1995 together crystallized the principle that women's rights are human rights.

Keeping this in view, the Ministry of Women and Child Development in consultation with the Ministry of Law, Justice and Company Affairs drafted a Bill on the Protection from Domestic Violence that was also introduced in the Parliament on 8-03-2002. The said Bill was referred to the Standing Committee of the Parliament for further examination and for suggesting changes, if any, required in the draft Bill. After the Standing Committee submitted its report, the Ministry of Women and Child Development sent a copy of the draft Bill, along with a copy of the report of the Standing committee, to the Commission for its comments. The Commission carefully examined both these documents and suggested modifications. The comments/modifications were later forwarded to the Ministry of Women and Child Development. The said Bill has since become an Act, viz. "The Protection of Women from Domestic Violence Act, 2005".

The recommendations of the Commission that have been incorporated in the Act are as follows:

- I. The definition of 'domestic violence' has been broadened to include actual abuse or threat of abuse and it now encompasses physical, sexual, verbal, emotional and economic abuse. The Act further covers all those women who are or have been in a relationship with the abuser, where both parties have lived together in a shared household and are related by consanguinity, marriage or adoption.
- II. The Act seeks to protect the right of women to secure housing, as also a right to reside in the matrimonial home or household.
- III. It also provides for appointment of Protection officers and registration of non-governmental organisations as service providers for providing various types of assistance to the aggrieved person.
- IV. The Act empowers a Magistrate to pass protection orders in favour of the aggrieved person in order to prevent the respondent from aiding or committing an act of domestic violence or any other act, such as, entering a workplace or any other place frequented by the aggrieved person, attempting communi-

cation, isolating her assets or assets used by her, and causing violence to the aggrieved person, her relatives or others who provide her assistance from the violence. The aggrieved person may also seek monetary relief. The Act further provides that any person on behalf of the aggrieved person may present an application to the Magistrate seeking relief under this Act.

- V. Section 4(2) of the Domestic Violence Bill 2002, stated that any act committed by the respondent for his own protection or for the protection of his or another's property shall not amount to domestic violence. The Commission recommended for the deletion of this section, as the scope of this section was too wide and likely to be easily manipulated by the perpetrator. Accordingly, this section has not been incorporated in the Act.
- VI. The definition of 'child' has been elaborated to include the rights and interests of children who have been adopted or are step or foster children.
- VII. A new section relating to matters of jurisdiction has been incorporated.
- VIII. Government of India recommended that 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. On the contrary, the Commission suggested that counselling should be left open to the victim as well as the respondent. This has been agreed to.

### **iii. The Terrorist and Disruptive Activities (Prevention) Act, 1987**

The Commission since its inception way back in the year 1993 has directed its attention to the Terrorist and Disruptive Activities (Prevention) Act (TADA). This is a matter of the highest importance to the Commission since it touches on three most sensitive areas the Constitution, India's treaty obligations, and the determination of the nation to preserve and protect human rights despite the lethal impact of terrorism.

In 1984, when terrorist activities increased in Punjab, the Terrorist Affected Area (Special Courts) Act, 1984 was legislated. As terrorist activities increased and functioning of the special courts became difficult, Parliament legislated the Terrorist and Disruptive Activities (Prevention) Act, 1987. This law was a temporary legislation mainly intended to deal with the prevailing situation in the Punjab. It made considerable deviations from the normal law to meet the emergent situation. The principal ones are:

- (i) Raising of the presumption of guilt and shifting the burden on the accused to establish his innocence;
- (ii) Drawing the presumption of guilt for possession of certain unauthorized arms in specified areas;

- (iii) Making confession before a police officer admissible in evidence;
- (iv) Providing protection to witnesses such as keeping their identify and address secret and requiring avoidance of the mention of their names and address in order or judgments or in any records of the case accessible to the public;
- (v) Modifying the provisions of the Code of Criminal Procedure particularly in regard to the time set for investigation and grant of bail.

The title of the Act indicates that it was intended to combat terrorist activities and was not, therefore, intended to apply to areas where such activities were not visible. The Act has, however, been extended to the whole country and has been freely applied to situations not contemplated by the Act.

The Indian Evidence Act, 1872 has provided that confession before a police officer would not be taken as evidence. Article 20(3) of the Constitution, which is one of the Fundamental Rights of our citizens, proclaims that no person accused of any offence, shall be compelled to be a witness against himself. Notwithstanding this, the special provision in TADA makes the confession before a police officer admissible; the withholding of particulars of witnesses, takes away the guarantee of fair trial for accused persons. The shift of the presumption makes it difficult for the TADA accused to establish his innocence to get bail and the amendment of the Code of Criminal Procedure keeps the accused in jail for a long period of 6 months as against the maximum limit of 3 months provided in Section 167 (2) of the Code of Criminal Procedure. If investigation in a case of murder can be completed, in 90 days and if not completed bail is admissible to a murderer as an automatic process, there can be no justification for a longer period to be provided in respect of TADA matter.

### **Opinion of the Commission on the Terrorist and Disruptive Activities (Prevention) Act, 1987**

The TADA legislation is, indeed, draconian in effect and character and has been looked down upon as incompatible with our cultural traditions, legal history and treaty obligations. Provisions of the statute as such have yielded to abuse and on account of such a situation, the Act has been misused over the years and thousands of innocent people who could have been otherwise dealt with, have been roped in to languish in jail. Many feel that the police have found it a convenient legal process to silence opposition and that it has been frequently abused for political considerations.

The Act is a temporary legislation and its life is due to expire on 24th May, 1995, unless Parliament in its wisdom decides to extend the same. The Commission has thought it appropriate to appeal to the law makers of the country to take into consideration these features and to bring to an end this very draconian legislation by

not granting any fresh lease of life. The plea that without this special law the integrity of our motherland would be in jeopardy is a stand without merit. The law and order machinery should not be permitted to operate any longer under the cover of such a black law. If considered indispensable, some provision to meet terrorism may be incorporated into the ordinary criminal law of the land by amendment ensuring that the objectionable provisions are not brought in. The Act itself has been condemned both within the country and internationally as violating our international treaty obligations. We set "liberty" of the individual as our goal in the freedom struggle. How can any of our lawmakers be party to a system of legalizing undue curtailment thereof? The Act operates unjustly and has as its very base on a foundation of injustice. It is appropriate to take note of the fact that the rate of conviction even with the several special provisions is grossly low. That clearly indicates indiscriminate use of the Act.

Further, the comments of the Commission were communicated to all the Members of Parliament on 20th February 1995.

The Commission considered that Act to be "incompatible with our cultural traditions, legal history and treaty obligations". It was thus a source of satisfaction to the Commission, and to a vast array of human rights activists in this country, that the Act was not revived when its life expired on 23rd May 1995.

#### **iv. Prevention of Terrorism Bill, 2000**

The functions of the Commission specified in Section 12 of the Protection of Human Rights Act, 1993, particularly those in clauses (d), (f) and (j) are relevant in this context. These functions call upon the Commission, inter-alia, to review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; study treaties and other international instruments on human rights and make recommendations for their effective implementation; and such other functions as it may consider necessary for the promotion of human rights. It is, therefore, an essential function of the Commission to formulate its opinion on the desirability and need of enacting such a stringent law and to give public expression to it for consideration by the Parliament and all those involved in the making of the laws so that due weight is given to the Commission's opinion in the performance of this exercise.

#### **Opinion of the Commission on the Prevention of Terrorism Bill, 2000**

The Commission took a view that there was no need for the enactment of the Prevention of Terrorism Bill, 2000 or a similar law'. This unanimous view was taken at a meeting of the Full Commission held on 11th July 2000 to formulate its opinion on this Bill. It reviewed the draft Bill, 173rd Report of the Law Commission, relevant to Supreme Court judgments and the views of NGOs in this regard.



The Commission noted the fact that on the then existing TADA legislation, the Commission had in 1995 taken a view that the draconian law should be removed from the statute book as it had no place in a democracy. The Commission was of the view that unless there were "compelling reasons to depart", its earlier view should prevail. The Commission felt that it should look at the issue not from the point of view of constitutional validity of the new law and its provisions but that it should deliberate upon the need and wisdom of enacting such a law in light of the previous experience with the earlier TADA legislation, the adequacy of the existing laws, the provisions of the international covenants which the country is signatory to etc. In light of the above, the Commission carefully considered all the pros and cons of the matter. It was fully convinced that the existing laws were sufficient to deal with any eventuality including terrorism, if properly enforced. The real need was to strengthen the machinery for implementation and enforcement of the existing laws and further for this purpose, the working of the entire criminal justice system requires to be strengthened.

Earlier in 1995, the Commission had conducted a full fledged examination of all aspects of the Terrorist and Disruptive Activities (Prevention) Act, on the basis of reports and complaints received by it concerning its arbitrary and abusive uses.

The Commission took the view that this draconian law be removed from the Statute books. The then Chairperson had written a letter to all Parliamentarians in February 1995, recommending that the Act be not renewed when its life expired on 23rd May 1995 on the grounds that it was "incompatible with our cultural traditions, legal history and treaty obligations".

#### **v. Prevention of Terrorism Ordinance, 2001**

The Commission has been making continuous efforts to sustain a respect for human rights in the country despite the grave challenges posed to the country by wanton and provocative acts of terrorism. In the year 2001, it became essential for the Commission to take a position on the Prevention of Terrorism Ordinance, 2001 which was promulgated by the President on 24th October 2001. 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. The Bill, however, could not be introduced and considered by the Lok Sabha during its winter session as the Parliament was adjourned sine die on 19th December, 2001. The Prevention of Terrorism (Second) Ordinance, 2001 was therefore promulgated on 30th December, 2001. Thereafter, on 26th March 2002, the Prevention of Terrorism (Second) Ordinance, 2001 was enacted into a Law following a Joint Session of Parliament. The National Human Rights Commission in its opinion dated 14th July, 2000 dwelt at length on the various provisions of the Prevention of Terrorism Bill, 2000 as proposed by the Law Commission of India in its 173rd Report. This opinion was forwarded to the Government of India, Ministry of Home Affairs. The Commission had also earlier opposed the continuance of TADA. A



letter dated 20th February 1995 to this effect was sent by the then Chairperson to all Members of Parliament. The present opinion in respect of the Prevention of Terrorism Ordinance, 2001 is in continuation of the Commission's earlier opinions, and the Commission's views on such a measure remain unchanged.

### **Opinion of the Commission on the Prevention of Terrorism Ordinance, 2001**

The Opinion of the Commission dated 19th November 2001 on this grave issue reads as follows:

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.

### **vi. Freedom of Information Bill 2000**

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

In fulfillments of Commission's statutory responsibilities to review laws under section 12 (d) of the protection of human rights Act 1993, the Commission took up the Freedom of Information Bill 2000 for in-depth examination. The Commission discussed the matter with NGOs and senior advocates.

Further, the comments of the Commission were communicated to the concerned ministry on 31st December 2001.

### **Opinion of the Commission on the Freedom of Information Bill 2000**

The Commission took the view that the title of the Bill should be changed from "The Freedom of Information Bill" to "The Right to Information Bill" in order to make the proposed Bill conform to articles 19 (1)(a) and 19(2) of the Constitution. The preamble of the Bill, at present, proceeds on the basis that the Bill confers, for the first time, the freedom to access information. Instead, according to Commission, the preamble should convey that the Bill provides a system for access to a right which already exists. The Commission has stated that the Bill should be examined in the

light of Article 19 (1)(a) which guarantees to every citizen the right to freedom of speech and expression as a fundamental right and, in particular, Section 8 of the Bill should be re-examined to ensure that the provisions are within the ambit of permissible restrictions under Article 19 (2).

According to the Commission's opinion, it has been judicially recognized that the right to freedom of speech and expression in Article 19 (1)(a) includes the right to acquire information. The State is not merely under an obligation to respect the fundamental rights guaranteed by Part III of the Constitution but is also under an obligation to operationalise the meaningful exercise of these rights. Thus, the State is under an obligation not only to respect but also to ensure conditions in which the right of acquiring information, which is part of freedom of speech and expression, can be meaningfully and effectively enjoyed. The Supreme Court in the case of *Reliance vs. Indian Express* (1988) 4 SCC 592 said:

*"Right to know is a basic right which citizens of a free country aspire to in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution".*

Since the right to information is an integral part of the fundamental right of freedom of speech and expression under Article 19 (1)(a), any restrictions on this right must fall within the permissible parameters of Article 19 (2).

The Commission has thus stated that the aims and objectives of any law on the subject have to be to regulate and operationalise the right to information and facilitate the enjoyment of this right by citizens. The Commission gave its opinion only on the salient features of the Bill, observing that the consideration of details should be undertaken in the light of the basic premise indicated above.

## **2. REVIEW OF INTERNATIONAL CONVENTIONS**

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

The Commission has been relying on these treaties and other international instruments in examining issues before it and the analysis of illustrative cases that are featured trace the influence of some of these treaties and instruments on the Commission's opinions and decisions.

In this area, as in other areas relating to human rights law, the views of the Supreme Court have been of stellar importance to the country. While Article 51(c) of the Constitution enjoins the State to endeavour to "foster respect for international law and treaty obligations", the Supreme Court of India has endeavoured to interpret Indian

Statutes in consonance with international treaties and other instruments. Thus, in the case of *Visakha vs. State of Rajasthan* (1997 (6) SCC 241) the Supreme Court held:

".....Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit for Article 51(c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List of the Seventh Schedule of the Constitution."

The Court further held that:

"The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for constructing domestic law when there is no inconsistency between them and there is a void in the domestic laws."

Further, in the case *Apparel Export Promotion Council vs. A.K. Chopra* (1999 (1) SCC 759), the Supreme Court held:

"The Courts are under an obligation to give due regard to international conventions and norms for construing domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law;"

and

"In cases involving violation of human rights, the country must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field."

The Commission has observed that the United Nations Treaty Bodies are themselves keen on the fuller association of National Institutions for the Promotion and Protection of Human Rights with their work. Indeed, certain of them have expressed this view either in their hearings or in their written General Comments, for instance the Committee on Economic, Social and Cultural Rights, set-up under the 1966 international Covenant on that subject, has in its General Convention No. 10, expressly recognized the potentially crucial role that National Institutions have in promoting and ensuring the indivisibility and interdependence of all human rights and has urged the fullest involvement of National Institutions in this endeavour.

The various treaties and other international instruments on human rights on which Commission has given its recommendations are as follows:-

## **i. Convention Against Torture**

The Commission has been requesting the Government of India to ratify the convention against Torture and other Cruel, inhuman or degrading treatment of punishment 1984, which was signed by India on 14th October, 1997 on the recommendation of the Commission.

The Commission is of the view that the process of ratification must proceed with far greater speed and clarity of purpose than has hitherto been the case. Since the Government of India signed this treaty has not gone unnoticed either within the country, or in major external forums, including treaty bodies, when the commitment of India to the promotion and protection of human rights is considered. Indeed, failure to ratify the Convention has even affected the capacity of the country to secure the extradition of persons wanted by the law-enforcement agencies of India. The irony is all the greater because Article 21 of the Constitution already covers this area effectively. Further, as has repeatedly been pointed out by the Commission, the Right against Torture has been judicially recognised by the Apex Court as a Fundamental Right, making that right and the corresponding obligation of the State and its agencies a fundamental entrenched right.

A draft Cabinet note along with the draft bill for ratification of Convention against Torture was sent to the Commission for comments by the Ministry of Home Affairs, Government of India. The comments of the Commission were communicated to Ministry of Home Affairs in July 2006.

## **ii. The 1977 Protocol additional to the Geneva Convention of 1949**

India ratified the four Geneva Conventions of 1949 in 1959 and enacted the Indian Geneva Conventions Act in 1960 incorporating them in the Indian legal system. The four Geneva Conventions of 1949 were considerably supplemented by two additional protocols adopted in 1977. Protocol I contains new rules on international armed conflicts while Protocol II develops the rules on international humanitarian law governing non international armed conflicts. These protocols contain elaborate norms and provisions concerning protection of human rights in times of armed conflicts - both international as well as national.

The Ministry of External Affairs has, vide letter dated 29th December, 2003, stated that

“... all matters relating to International Humanitarian Law (IHL) including Geneva Conventions were extensively discussed during the recent Conference of the Parties to the Red Cross Movement and the Geneva Conventions in Geneva. The changing nature of armed conflict in the contemporary period (Afghanistan, Iraq, conflicts in

Africa, etc.), their impact on IHL and the Geneva Conventions and the related issues are under review at the international level. In the light of these developments, it is felt that the concerned Ministries and Agencies of the Government including Ministry of Defence, Ministry of Home Affairs, Ministry of External Affairs and Ministry of Law should take stock of the current realities and of our response."

The Commission perused the reply received from the Ministry of External Affairs and desired to know from the Ministry the specific responses on its part regarding signing of the two additional protocols to the Geneva Convention 1949.

The Ministry of External Affairs has further informed that a thorough examination of substantive aspects of these protocols is needed and their Ministry is consulting the concerned agencies. In this regard Inter-Ministerial Meeting was convened by MEA on 22nd July 2004. The Ministry of Home Affairs and the Ministry of Defence were requested to study the subject.

The issue of accession to the Geneva Convention was discussed in the meeting of the Commission and the Commission has desired that issue is to be addressed after a jointed meeting of MEA, MHA and Ministry of Defence.

In this context, the Commission is being requesting Ministry of External Affairs to send the status note on above-mentioned subject.

### **iii. UN Convention on Disability**

The United Nation Adhoc Committee has been deliberating the new UN Convention on Disability. Past seven sessions of Adhoc Committee and an extensive discussion has taken place. The meetings were attended by various stakeholders including leading NGOs and National Human Rights Institutions.

The Special Rapporteur of the Commission was representing all the National Human Rights Institutions in the Adhoc Committee. During the discussion various areas including article 33 of the draft Convention and definition on general obligations, equality and non-discrimination, legal capacity, education, health and environment were discussed.

During the seven session, Director, Asia Pacific Forum requested the Commission to urge the Govt. of India to direct its representative to support during the Adhoc Committee discussion for adoption of Article 33 as it is which support the role of National Human Rights Institutions.

In pursuance to this Hon'ble Chairperson of the Commission requested the Prime Minister of India vide letter dated 23rd August, 2006 to advice Indian delegation to UN Adhoc Committee to inform its position accordingly and reflect India as a

responsible member of international community capable of assuming an important role in international affairs and governance.

Since then the UN Adhoc Committee has adopted the Convention on Disability, which will be placed in next general assembly's meeting of the United Nation.

#### **iv. Optional Protocols to the Convention of the Rights of the Child**

Protection and promotion of the rights of children has always been a central issue on the agenda of the National Human Rights Commission. India is a home to more than four hundred million children and these children undoubtedly are the supreme asset of the nation. Recognizing the rights of children and our duties towards them, the Constitution of India, first and foremost, has protected their rights. Having ratified the UN Convention on the Rights of the Child, the Government of India has committed itself inter alia towards all round development of children, including reducing inequalities among them; protecting them from violence and exploitation; and creating an overall environment that will nurture them to bloom into robust citizens who will be the pride of the nation.

In the Commission's earlier annual reports, the Commission had recommended that the Government of India examine and become a party to Optional Protocols 1 and 2 to the Convention on the Rights of the Child, dealing with the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. The Memorandum of Action Taken on the Annual Report of the National Human Rights Commission for the year 2002-03 also mentions that the Government has approved the signing and ratification of the aforesaid two Optional Protocols to the Convention on the Rights of the Child. The Ministry of External Affairs has communicated to the Commission that the Government of India had signed the above two Optional Protocols on 15-11-2004. These, however, are yet to be ratified. The Commission trusts that the Government of India would ratify the two Optional Protocols to the Convention on the Rights of the Child in the best interest of our children.





## NHRC AND CIVIL SOCIETY

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

In order to strengthen the relationship with NGOs, the Commission has been holding a series of consultations with NGOs and voluntary organizations engaged with the promotion and protection of human rights, 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. Regional consultations, with NGOs for the northern region was held at Delhi in March, 2001, for the eastern region at Bhubaneswar in January, 2002, for the southern region in Chennai in May, 2002, for the western region at Pune in June, 2003 and for the north-eastern region at Guwahati in March, 2004.

The Commission provides financial assistance to credible institutions for organizing seminars, workshops, etc. associated with spreading human rights awareness amongst the people.

The Commission continues to receive complaints relating to serious violations of human rights from NGOs, which act as the eyes and ears of the Commission in the remotest corners of the country. The involvement of NGOs was especially noticeable in the complaints received by the Commission. They, spanned every major concern of the Commission ranging from Custodial deaths to false encounters and disappearances, from child labour to bonded labour, from refugees to migrants, from the rights of dalits to those of tribals. The complaints revealed enormous courage, dedication to the cause and sincerity on the part of the complainants.

A Core Group of NGOs has been constituted under section 12 (i) of the Protection of Human Rights Act, 1993, to encourage the efforts of the Non-Governmental Organizations (NGOs) and institutions engaged in the field of human rights. The Core

Group provides the Commission with crucial inputs regarding the hopes, aspirations and expectations of the civil society from the Commission.

The Commission has worked 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 and the human rights of un-organised workers in, both, urban and rural areas.

The Commission has also had several significant partnership with the non governmental organizations on various critical areas of human rights concerns. In the area of Human Rights Education, a constructive outcome fructified in the form of a publication on 'Human Rights Education for Beginners' This publication was brought out by the **Karnataka Women's information and Resource Centre (KWIRC)**, an NGO based in Karnataka, for the National Human Rights Commission. The Commission's involvement in the project has been out of a growing realization that human rights cannot be taught only from formal documents. Indigenisation of human rights education thus, can be one of the crucial components of human rights education in India. The publication was released by the Hon'ble Speaker, Lok Sabha, on the 10th December, 2005, on the occasion of Human Rights Day.

The efforts of the Commission to abolish the abominable practice of manual scavenging has been continuing. A meeting was held at the India Habitat Centre on 25.2.2006 on Eradication of Manual Scavenging under the Chairmanship of the Hon'ble Chairperson, NHRC. The Commission's view has been that the eradication of manual scavenging has been painfully slow and that there is a need for total commitment and absolute dedication in order to tackle this degrading practice. While reviewing with the Central and state Government representatives, the Commission, inter-alia, stressed the importance of utilizing the services of the NGOs who could give valuable assistance as they are aware of the ground realities. Keeping in view the efforts of **Sulabh International**, an NGO, which has done considerable work in the area, was also associated in the meeting. The Commission has stressed the need on the involvement of genuine NGOs in the implementation of programme to motivate people and make the efforts to abolish the practice of manual scavenging more efficacious.

In November 2003, the Commission partnered with **Jan Swasthya Abhiyan**, an NGO based in Pune, for holding a series of **regional public hearings on Right to Health Care**, covering all the regions of the country. The regional hearings culminated with the holding of a national level consultation in New Delhi, on 16-17 December, 2004 which resulted in the adoption of a set of recommendations. The recommendations were transmitted to the Central and State Governments on 11.3.2005 for appropriate

action. The progress of the implementation of the recommendations of the Core Group on Health and Public hearing on Health were also reviewed in a meeting held on 4.3.2006, which was attended by representatives of the State Governments as well by the representatives of **Jan Swasthya Abhiyan**.

The Commission organized a "**Health Week**" targeted at the elderly people " (senior citizens), in collaboration with **HelpAge India**, an **NGO**, from 20-24 March, 2006 at New Delhi. Lectures on, prevention of heart attack and Strokes, Diabetes, vision problems, Arthritis and Bone management, Diseases of the Prostate gland, specific health concerns of older women, Mental health and, nutrition for Elderly, were delivered by medical specialists in the field. The Commission believes that generating awareness amongst the elderly on health related issues, is important given the fact that this category of citizens have been neglected, to a great extent by the society at large.

The Core Group on the Right to Food constituted by the Commission has two of its members representing the NGO sector, namely, Dr. **(Mrs) Amrita Rangasami, Centre for the Study of Administration of Relief (CSAR) and Shri Babu Mathew, Country Director. Action Aid India, New Delhi**. The Commission has stressed that the primary aim is to invite suggestions from experts in the field for a Plan of Action smooth distribution of food grains in the country and the involvement of NGOs would enable getting crucial field level realities, thus making the deliberations of the Core Group that much more effective.

The Commission in collaboration with **Penal Reform and Justice Association (PRAJA)**, an **NGO**, organized a two-day seminar on Custodial Justice on 30 & 31 March, 2006 at Vigyan Bhawan, New Delhi. The objective of the Seminar was the safety of the people in custody which called for focusing on two interrelated areas, police and prisons, generating awareness, disseminating information about human rights, with the aim of preventing and avoiding custodial violence.



## INFORMATION AND PUBLIC RELATIONS

National Human Rights Commission is the apex body in the country set up for the protection and promotion of Human Rights of the citizenry.

One of the functions of the Commission as stated in the Section 12 (h) of the Protection of Human Rights Act, 1993 is 'to spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means. The Information and Public Relations Unit of the Commission is the mouthpiece of NHRC. It acts as a communicator regarding the decisions of the Commission to the Media so as to disseminate information regarding human rights and educate the public on the same.

### **Press Release**

All the important decisions/directions/recommendations/observations are disseminated to the general public through media in the form of press releases issued from time to time to a range of newspapers, television channels, All India Radio and news agencies. The news emanating from NHRC is prominently covered by the media. The Commission issues approximately 100 press releases every year, which is also uploaded on our website simultaneously for the benefit of the journalist fraternity, the human rights activists, advocates and the net users.

### **Press Clipping**

Thirty newspapers and a number of widely circulated periodicals are scanned in the Commission and all news items, reports, features, articles views etc. relating to human rights are clipped and circulated among the Chairperson, Members and Senior officers of the Commission.

The daily clippings enable the Commission to take suo-moto cognizance of a number of cases of human rights violation. This gives an indication of the Commission's reliance on, and respect for, the work of the media.

The Commission has organized a 'clipping information system' which is computerized. Each day, information on key human rights issues is fed into the system, after being drawn from press reports and publications, both domestic and foreign, and from items on the work of a considerable range of human rights bodies and organizations.

### **Interaction with the Media**

Encouraged by the range and manner of cases considered by the Commission, and the report of the cases in the media, a number of film makers have taken-up projects on human rights issues and included in their footage cases that have been handled by the Commission. The Commission has been providing material in the form of case studies to various media organizations for use in TV films, serials and documentaries. This material has been incorporated in a number of programmes that have been shown on major TV channels.

All India Radio has been broadcasting 'spots' aimed at creating awareness. Further, "Human Rights Watch", a half-hour programme was broadcast every month by AIR. In addition, AIR broadcasts spotlights and commentaries on human rights issues. The Chairperson, Members and Senior officers of the Commission also feature in these programmes. Private television networks have also been contacting the Commission regularly for interviews and stories.

The lively coverage of issues of concern to this Commission have proved most helpful to the debate that must accompany the better promotion and protection of human rights in the country.

### **Meeting with Senior Editors of Media**

With the objective of interacting with senior journalists writing for newspapers on human rights issues, and to share the Commission's broad perception on the issues it is concerned with, meetings were organized on four occasions. The occasions were used to outline the Commission's key concerns, explain the Commission's efforts to secure the human rights of the vulnerable sections of society and ascertain their views on the Commission's role, functioning etc.

### **News letter**

The newsletter, published by the Commission, both in English and Hindi, appears without fail every month. It has come to be regarded as a steady source of information on the Commission's work and concerns and also provides a gist of important decisions of the Commission in respect of individual complaints addressed to it. The Newsletter is widely read by human rights activists, students and scholars, members of the legal fraternity, administrators and representatives of non-governmental organizations. The

Newsletter has also proved especially useful to media personnel covering human rights issues and the work of the Commission. The Commission also supplies copies of the Newsletter to the armed forces, para-military forces and the police.

Despite the growing demand for copies of the Newsletter and the increasing costs involved in producing it, the Commission has continued its policy of making the Newsletter available to readers free-of-cost. The number of addresses in the mailing list is well over 4,500 with more requests keep coming in. A testimony to its reach and utility is that some of the non-governmental organizations make photocopies of the Newsletter and circulate these to their own constituents.

The Newsletter is also available on the Commission's web-page; 'www.nhrc.nic.in' enhancing Commission's to reach a much wider audience.

### **Annual Report**

The Annual Report gives an account of the Commission's major activities and initiatives during the reporting period, its primary concerns and an overview of the situation of Human Rights in the country. It contains all the important decisions and recommendations of the Commission, pertaining to complaints of human rights violation from an individual or group or on matters having the bearing on human rights of the larger society.

The Annual Report, published in English and Hindi, is made public, once the government tables it before the Parliament alongwith a memoranda of action taken.

### **Publications**

Apart from taking steps that are pragmatic and within the ambit of the constitution for the protection and promotion of the human rights of the people it is indeed, equally important to create awareness about the philosophy of human rights in the context of India as well as its evolution and ramifications, the world over. In order to fulfill these requirements, the Commission has, since its inception, published literatures containing insight information and awareness material for a cross section of people including students, researchers, scholars, human rights activists, academician, trainers, policy makers and the public at large.

The publications of the Commission include books on human rights; reports of various conferences, consultations and projects, informative brochures and booklets; Annual journals; posters; information kits; guidelines; monthly newsletter; Annual Report; handbooks; glossary of human rights terms etc. It has also published important international conventions, declarations and other human rights instruments for the benefit of individuals and organizations working in the field of human rights advocacy,



In its endeavour to publish quality and authentic reading material on human rights issues, the Commission has also taken active support, from time to time, from reputed institutions like the National Law School of Bangalore and Hyderabad and UN bodies like UNIFEM, UNDP and UNICEF and other institutions and organizations including NGOs.

The Know Your Rights series booklet published by the Commission on eighth human rights themes, have been highly popular among the people of all hues. These booklets have been printed in English, Hindi, Tamil, Telgu, Malayalam, Kannada, Marathi and Assamese. The Gujarati, Manipuri, Punjabi, Oriya, Nepali and Urdu versions of the booklets are in the process of publication. These booklets are being distributed among the people in the regions where the language is in vogue through the State Human Rights Commission and other sources.

The Journals brought out annually in English and Hindi are considered as highly prestigious publications of the Commission. These contain though provoking articles from human rights thinkers, activists and others.

The Commission has issued four publications on trafficking in women and children entitled 'Action Research on Trafficking in Women and Children; information kit on Trafficking in Women and Children; From Bondage to Freedom: An Analysis of International Legal Regime on Human Trafficking and a Report of the National Workshop to Review the Implementation of Laws and Policies related to Trafficking. Two of its publications on disabilities namely Disability Manual and A Handbook on Employment of Persons with Disability in Government of India have been found highly useful by those advocating the cause of disabled people in the country.

On the request of NHRC the National Council for Teachers Education prepared A Handbook for Sensitizing Teachers and teacher Educators. Another book titled Human Rights Education for Beginners was published in 2005. Both these books have been widely appreciated by the teachers and students alike.

The Commission's reports on Prevention of Atrocities against Scheduled Castes, National Seminars cum Public Consultations on Racism, Racial Discrimination, Xenophobia and Related intolerance held in New Delhi and Bangalore; the Regional Consultation on Public Health and Human Rights; the National Conference on Human Rights and HIV AIDS were all found to be high in demand from a cross section of people.

A book on the Rights of the Children and a Guide Book for the Media on Sexual Violence against Children are also high in demand. A handbook on Human Right for Judicial Officers and Quality Assurance in Mental Health and the compilation of Important Instructions/Guidelines issued by the Commission from time to time are

widely used by the authorities concerned in all parts of the country. Some of the Hindi publications like English-Hindi glossary on Human Rights terms and a compilation of Universal and Regional Human Rights Instruments in Hindi has been widely appreciated.

The ever-increasing demand of NHRC publications from the Human Rights activists, academicians and general public is indeed a satisfying venture of the Commission in promoting Human Rights advocacy and literacy.

### **Calendar**

The Commission brings out an annual calendar since 2002, covering the spectrum of its principal concerns.

The calendar carries a statement on the 'Mission' of the Commission. It highlights some of the main issues of concern to the Commission: human dignity, the right to equality, bonded and child labour, public health and sustainable development, trafficking in women and children, etc. Each of the subject is illustrated by a photograph and accompanied by the views and directions of the Commission on the subject.

### **Website**

In its quest to spread information and awareness about the activities of the Commission and the overall human rights situation in the country the Commission launched its website in 2000. The website is updated continuously. It contains latest as well as basic information about the Commission for anybody to know it in totality. It also has an archive which contains all the press releases, newsletters and annual reports of the Commission.

The website of the Commission also gives, choice to individual complainants to know about the status of their complaints online.



## INTERNATIONAL ENGAGEMENTS OF THE COMMISSION

The work of the Commission evokes considerable interest both in the diplomatic corps stationed in Delhi and in political and human rights circles abroad. Numerous delegations visit the Commission through out the year. These visits are either coordinated through the Ministry of External Affairs or based on requests received directly by the Commission. Apart from these visits to the Commission plays an active role internationally in two groupings, which are mentioned in more detail below:

### **A. Asia Pacific Forum of National Human Rights Institutions (APF)**

- i. The APF is the Asia- Pacific Region's premier human rights body that is undertaking important work to strengthen the promotion and protection of Human Rights for the region's most vulnerable people, in the absence of a regional human rights arrangement in the Asia Pacific, the Human Rights Commissions of Australia, India, Indonesia and New Zealand founded the APF, in 1996, to provide practical support and technical assistance and cooperation for promoting human rights in the region. Presently, the Forum comprises of seventeen National Human Rights Institutions. Apart from India, the national institutions of Afghanistan, Australia, Fiji, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestinian Territories, Philippines, Qatar, Republic of Korea, Sri Lanka, Thailand and Timor Leste are Members of the Forum.
- ii. Indian Commission held the Chair of the APF from September, 1997- September 1998 and then again from November, 2002- February, 2004
- iii. The APF has three broad Objectives, that is, to improve the effectiveness of existing national human rights institutions; to encourage and provide assistance to regional governments and non-governmental organizations (NGOs) to establish national human rights institutions in accordance with the minimum standards as contained in the 'Paris Principles', and; to develop regional human rights cooperation. The Forum's approach is one of collaboration and partnership. It endeavours to attain its objectives through Annual Meetings of the Forum, Workshops and Conferences,

which are attended by the nominees from the member institutions. The Indian Commission had the privilege of hosting the second as well as the seventh Annual Meetings of the APF.

- iv. The APF has also constituted a Advisory Council of Jurists (ACJ) to advise it on issues of legal complexity. References to be made to the ACJ are finalized during the Annual Meetings of the APF. References made to the ACJ in the past include; Death Penalty, Child pornography on the internet, Trafficking, Rule of Law in combating Terrorism, Torture and Right to Education
- v. Coordination and Cooperation with other APF member institutions. The Commission has always endeavoured to share information and expertise with other APF member institutions. The Commission has developed an Internet based Complaint Management System (CMS), by which it is possible for a complainant to track the progress of his complaint lodged with the Commission through the internet. The Commission has been privileged to share its expertise with the Nepal Human Rights Commission including training of the concerned personnel in handling the software. The Commission has also imparted training on Investigation techniques to the Nepal Commission, through the Nepal Commission.
- vi. A team from the APF Secretariat and the Jordan National Center for Human Rights (JNCHR) had visited the Commission to understand the procedures and functioning of the Commission. Particular interest was evinced in the CMS package during the visit. Subsequently, a team from the Commission visited the JNCHR for conducting a Workshop for the officials in the Jordanian Commission.
- vii. In the 11th annual Meeting of the APF held at Suva, Fiji held from 31 July to 3 August, 2006, NHRC India has been nominated along with the NHRIs of Australia, New Zealand and the Republic of Korea to be the Asia Pacific Forum's representative to the ICC.
- viii. Financial contribution to the APF. Since its inception, the Forum has been receiving substantial funding from the Australian Agency for International Development (AusAID), under the Australian Government to the tune of 500,000 Australian dollars annually and 100,000 dollars from the New Zealand Government for the year 2002-03. Similarly, financial contribution is also received by the APF from the Office of the UN High Commissioner for Human Rights.
- ix. At its fifth annual meeting in Rotorua, New Zealand in the year 2000, the Members agreed to a new structure for the Forum. Accordingly, the Forum's constitution has been drawn up and approved, making it a separate legal entity. The Forum has been seized of the issue of independently generating financial resources to meet its annual expenditure. The Chairperson of the Commission in his capacity as the Chair of the APF during 2003, wrote to the heads of all the APF members institutions, requesting them to explore with their respective Governments, the

possibility of obtaining funding for the APF. The issue of making an annual contribution to the APF, was also considered by the Commission and it was decided that the Government may be moved for obtaining approval for making a financial contribution of US \$ 100,000 annually to the APF. After the proposal for the financial contribution was cleared by the Ministry of Home Affairs, the Commission remitted an amount of US \$ 100,000 to the APF in the year 2003-04, 2004-05 and 2005-06.

## **B. INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL HUMAN RIGHTS INSTITUTIONS FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS (ICC)**

- i. The International Coordinating Committee of National Institutions for the Protection and Promotion 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". It performs this role through encouraging international coordination of joint activities and cooperation among these National Human Rights Institutions, organizing International Workshops, liaison with the United Nations and other international organizations and, where requested, assisting governments to establish a national institution. It works to create and strengthen National Institutions and to ensure they conform to the "Paris Principles". The Chairperson of the National Human Rights Commission has had the honour of serving as the Chair of the International Coordinating Committee from 1996 to 2000. The annual meetings of the ICC are held in conjunction with the annual meeting of the Commission on Human Rights, at Geneva, Switzerland, every year. The meetings are attended by a high-powered delegation from the Commission.
- ii. With the abolition of the Commission on Human Rights through a resolution adopted by the UN General Assembly, major changes are taking place. The erstwhile Commission on Human Rights has been replaced by the Human Rights Council. India has been elected to the newly formed HRC for a term of one year. The role that national institutions will play in the Human Rights Council is also in the process of being defined. Both, the APF and the ICC are keenly debating the various issues involved to ensure that the role that was hitherto being played by the national institutions is not reduced or diluted in any manner whatsoever. In fact, with the increasing focus on human rights concerns the world over, there is an urgent need to expand the presence and the voice of the national human rights institutions. The Chairperson of the Indian Commission has been nominated by the APF to be its spokesperson to articulate the views on the issue of participation in the HRC.
- iii. The Indian Commission held the Position of Chair of ICC from 1996 to 2000. The NHRC-India voluntarily stepped down from the position of the Chair with a view to rotate the Chair of the ICC among ICC members.





## MEETINGS ORGANIZED BY THE COMMISSION

### A. Meeting with Chief Secretaries and Directors General of Police

The Commission has constantly and consistently endeavoured for the 'better protection and promotion of human rights. The resources available with the Commission, both, human and material, have definitely not increased proportionately. Notwithstanding the hurdles, obstacles, limitations and difficulties in its way, the Commission has tried most imaginatively, to chart out path breaking solutions in the myriad complexities in which human rights problems have manifested. India is a large country and coupled with its cultural and linguistic diversity, all supported within a solid democratic framework, essentially translates into a billion plus people forcefully staking their claim in a just society. That claim places an enormous responsibility on every institution, especially, the State.

The Commission's responsibilities, if one were to see from outside the confines of the statute, are two-fold. As more numbers of the population grows literate, the number of complaints received by the Commission increases exponentially. On the other side and, at the same time, the muted voice of the poor and the illiterate cannot be ignored by the Commission. So, the Commission necessarily reaches out to this group whenever and wherever possible.

The meeting with the Chief Secretaries and Directors General of Police that the Commission has been holding annually since 2001, has a greater purpose. That purpose, if may articulate, is that long after the discussions are over, the Commission would like to believe that in respect of the domains of responsibility vested with the officials they will further consolidate the larger cause of human rights. As the top administrators the CSs and DsGP have the necessary wherewithal for doing so. If that happens, then the Commission would have successfully overcome the geographic barrier of distances.

The agenda covered in these meetings include the entire range of Civil and Political Rights as well as the Economic, Social and Cultural Rights. The discussion on the

agenda enables the Commission to emphasize the importance of the need for quick and expeditious action from the State governments on references made by the Commission, to resolve the difficulties, if any, faced by the states in complying with the directions, etc.

## **B. Annual Meeting with the State Human Rights Commissions**

The National Human Rights Commission was set up in the year 1993, in accordance with the Protection of Human Rights Act, 1993. The same Act, also has, in section 21, enabling provisions for setting up Human Rights Commissions in the States as well. The existence and functioning of a Human Rights Commission in the state goes a long way in the better protection of human rights. Further, the State Human Rights Commission is to be set up in accordance with the Principles relating to the status of national institutions known as the 'Paris Principles', adopted by the UN General Assembly in its resolution 48/134 of 20 December 1993. The Principles affirm that national institutions are to be vested with competence to promote and protect human rights and given as broad a mandate as possible, set forth clearly in a constitutional or legislative text.

Till date, fifteen states have set up SHRCs with two more states, that is, Karnataka and Gujarat also issuing notifications for enabling the setting up of SHRCs in the two states. It is the considered view of the Commission that all the other state Governments must take the lead to ensure that a vibrant fully autonomous Human Rights Commission functions in their respective states.

Since the year 2004 the Commission has initiated the process of holding annual meetings with the State Human Rights Commissions. The intent of these meetings is essentially to have a dialogue with Human Rights Commissions at the state level. Such a dialogue, in the opinion of the Commission is vital in the context of the diversity of culture, language and social dimensions that reflect the society. The efforts of the Commission through these meetings is to expand the scope of coordination with the SHRCs, identify possible areas of joint partnerships, to effectively deal with the issues of human rights concerns facing the country.

Keeping in view the importance of setting up of SHRC in all the States and the issue of functional and financial autonomy of the Commissions for ensuring their effectiveness in better protection of human rights, in the meeting held in May, 2005, the members unanimously adopted the following Resolution:

"The National Human Rights Commission and the State Human Rights Commissions present in the meeting unanimously resolve to urge the State Governments to:

Set-up, on priority basis, State Human Rights Commissions where the same have not, as yet, been set up;

Resolved further that, it should be ensured that SHRCs are structurally and financially independent in conformity with the principles relating to the status of national institutions (the "Paris Principles") which were endorsed by the UN General Assembly Resolution 48/134 of 20th December 1993.

### **C. Other Meetings**

Besides the annual meetings, the Commission regularly holds periodic meetings, on issues, with the Government officials, both, at the State level as well as at the centre. In these meetings, the progress or compliance sought on issues referred to the governments, are monitored regularly to ensure that the directions of the Commission are implemented in letter and spirit. In the year 2005-06 itself, the meetings included reviewing the progress of the efforts made by state governments to abolish manual scavenging, on the critical aspect of food security



## ENGAGEMENTS OF THE COMMISSION IN TRAINING

The Commission is deeply concerned about human rights awareness, literacy and sensitization, which is one of the mandates of the Commission under Sec 12 (h) of Human Rights Act, 1993. One of the main endeavours of the Commission is to promote citizens' increasing and persistent demand for dignity, respect, justice and prevent violations of their human rights by public servants. For this, it is essential that the public servants should be sensitized through training, to meet the human rights challenges that they encounter in their work sphere or else violations will continue to escalate and flourish. Simultaneously, the Commission is required to encourage the NGOs and other institutions working in the field of human rights as partners. The training programme involved civil administrators, law enforcement agencies, para-military forces, lawyers, academicians judicial officers, NGOs, prison officers and other stakeholders. This programme proved to be useful in enhancing the professional knowledge, human rights awareness, skills and perception of participants.

As the Frenchman Michel de Montaigne said, "The most universal quality is diversity." Diversity training equips participants & individuals to deal with such a diverse world with greater sensitivity.

### **Aims & Objectives**

- To impart specialized training programs for different grades of officers from cutting edge level to grass root level, so as to enable & enlighten them on Human Rights issues. So that they perform their duties more effectively and shoulder greater responsibilities in the future, by increasing their professional competence on issues of human rights values & culture;
- To assess the training needs at various levels in the Society as well as the related field organizations and to organize training programmes to meet these needs;
- To create and foster among the participants a positive and innovative outlook on Human Rights to work and to create sensitivity & team spirit;

- To provide financial support to National/ State Level Institutes & NGOs and assist them in designing of their training courses and also to provide them various NHRC publications as training materials/ reading materials;
- To inculcate the awareness of Human Rights among the trainees so that there could be no violation of Human Rights and the participants may respect dignity & potential of other persons Human Rights to make this world more lively & better place to live in.

**Training in NHRC shall strive to achieve the following objectives:**

- Keeping up-to-date on development in the Human Rights issues. International conventions and enhancing professional knowledge and skills needed for better performance of National level Training organizations & NGOs in spreading human rights awareness;
- Promoting better sensitization to the organizational requirements as well as the professional, socio-economic, cultural and political environment in which work is done; and bringing about right attitudinal orientation among participants through various collaborative programmes on Human Rights issues through Seminars/Workshops/ training etc.
- To make them responsive to the challenging human rights needs and expectations of the citizens.
- To make them committed to human rights values and concept of partnership with various training institutions in the concerned field.

**1994-95**

- The Commission gave the highest priority to encouraging the training and re-orientation of members of the police and armed forces. As regards the police, all States have now made efforts to include human rights in the instruction of their cadres in their various training institutions, the Commission recommends that the courses need to have a far higher standard and a greater degree of consistency. A meeting was called by the Commission of Directors-General of Police, and entrusted them to prepare model training syllabi for all levels of the police force. Members of the Commission have been visiting, whenever possible, police-training institutes in the various States and interacted closely with the National Police Academy in Hyderabad which trains the IPS officers,
- The Commission encouraged and welcomed the involvement of the International Committee of the Red Cross (ICRC) in courses conducted for officers of the Border Security force on International Humanitarian Law and gave talks to sensitise the trainees at their training centre in Tekanpur.

- As regards the Army, the Commission has noted the efforts being made to spread the message of human rights from the level of jawans to Commanding Officers. In many of the visits which the Commission has made to areas of army deployment, its attention has been drawn to the "Ten Commandments" issued by the Chief of Army Staff to all serving personnel

#### 1995-96

- A national-level training programme on "Human Rights and National Values for Teacher Educators" was held. 40 participants, drawn from all parts of the country, attended the week-long programme which was addressed by Members of the Commission. The participants will, in turn, conduct similar programmes for Teacher Educators in their respective regions, of whom there are some 25,000 in the country.

#### 1996-97

- The Commission has continued to press for, and contribute towards, the training and re-training of police personnel so as to make them more aware of, and sensitive to, human rights considerations.
- While the Sardar Vallabhbhai Patel National Police Academy in Hyderabad has, for some years, been fully conscious of the need for such training, it has been essential for the Commission to take this message more fully to the State-level training institutions and to those members of the force who are, literally, at the cutting edge. In pursuance of this objective, the Chairperson and Members have frequently attended courses run for the police, personnel and the Director General (Investigation) and his staff have been regular visitors to police training institutions in various parts of the country.
- As the Commission needs to keep itself au courant of the best that is there in police practice, it has encouraged the participation of members of its own Investigation Division in courses being conducted both at home and abroad. It believes that such exchanges enhance the capability of the Commission and also serve to provide an idea to others of the circumstances in which the Commission strives to discharge its responsibilities to the nation under its Statute.

#### 1997-98

- The year under review witnessed a further deepening of the efforts of the Commission to sensitize police personnel to human rights issues and to heighten their awareness of such rights. The Commission circulated to all States a syllabus evolved by it in respect of human rights training for all ranks of the police force. In response, the Commission has been informed by police



authorities of various States that they are undertaking regional training programmes and that concerted efforts are being made to sensitize their officers and men. The Chairperson, Members and officers of the Commission led by its Director General (Investigation) visited a number of police training institutions in order to address the officers and men and to discuss with them the practical problems that they faced in the discharge of their responsibilities.

### 1998-99

- During the course of the year 1998-99, the Chairperson, Members of the Commission and officers of the Investigation Division, led by the Director General (Investigation), continued their efforts to sensitize all levels of the police to human rights issues
- The Commission constituted a Core Group in November 1998 with the task of preparing training material for the staff of the National and State Human Rights Commissions

### 1999-2000

- The police authorities of all the States of the country have implemented the training syllabus and made sustained efforts to sensitise their men.

### 2000-2001

- The Chairperson of the Commission visited the Lai Bahadur Shastri National Academy of Administration, Mussoorie, during the year under review. During his interaction with the Director and senior officers of the Academy, he emphasised the importance of introducing human rights related issues in the various courses run by the Academy and other National Training Institutions.
- The Commission has been informed that a Module on human rights has been introduced by the Academy in the Foundation Course for civil servants at the instance of the Department of Personnel and Training. The Academy has also made it mandatory for all Indian Administrative Service Officer Trainees to complete two field assignments, focused on the subject of the violation of human rights, during the course of their year-long training period in their districts of training. The Commission has stressed the importance of introducing inputs on human rights in Phase-I of the IAS training programme (as field assignment) and also In Phase-II of that programme (discussion on completed assignments), as well as in the in-service training for Provincial Civil Service officers promoted to the IAS. The Commission is of the view that the prescribed syllabi for these courses should be suitably modified to ensure that the subject of Human Rights is included on a regular basis, in future, among the courses to be provided by the Academy. The Commission has urged

the Academy to take the lead in the area of Human Rights Training and, after discussion with other National Training Institutions, to send a comprehensive proposal to the Commission. The Commission foresees an important role for the Department of Personnel and Training in this regard.

- During the year under review, the Commission approved two research projects proposed by the National Society for Promotion of Development Administration, Research and Training at the Lai Bahadur Shastri National Academy of Administration, Mussoorie. The details of these projects, designed to create greater awareness of human rights among officer trainees or young officers in the field.
- The Commission has pointed out to the Director of the Academy that it would also be appropriate to acquaint middle-level officers with the provisions of important international instruments on Human Rights, not least those relating to economic, social and cultural rights and with the obligations of India to implement and monitor these instruments appropriately. The Commission has, therefore, urged the Lai Bahadur Shastri National Academy of Administration to conduct a separate training programme for IAS officers of the rank of Deputy Secretary/Director and Joint Secretary. The Commission has offered its assistance to the Academy in deciding the inputs, identifying the resource persons and suggesting relevant materials and books for the course.
- The Commission has further suggested that it would be useful to have officer trainees, after the completion of the assignments undertaken by them during their district training, to present their reports in Phase-II of their Training Programme. The Commission has offered to depute a representative to be present at the time of such presentations.
- A set of the more important Instructions and Guidelines issued by the Commission between the period of its establishment in October 1993 and until November 2000, was compiled and made available to the Academy. The publication was circulated to all IAS probationers undergoing Phase-II of their Training Programme. The Commission has also made the publication available to other concerned agencies.
- The Commission sought and obtained in-puts on human rights for the basic training programme of Indian Police Service (IPS) probationers in the Sardar Vallabhbhai Patel National Police Academy, Hyderabad. It has continued to maintain close contacts with that Academy and other police training institutes.
- During the period under review, two training projects were initiated jointly with the British Council, on 'Human Rights Investigation and Interviewing

Skills' and 'Improving Custodial Management', to train police officers and human rights investigators in the States and successfully concluded in the year 2001-2002.

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

### 2002-2003

- 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:
  - (i) Sensitize District Magistrates / District Collectors / Deputy Commissioners on human rights issues;
  - (ii) Sharpen their professional knowledge and skills and strengthen human rights values;
  - (iii) Foster and promote a culture of human rights at all levels in district Administration;
  - (iv) Provide a legal framework for enhanced respect for and protection of Human Rights at the district level;

- (v) Enable the District Magistrates / District Collectors / Deputy Commissioners to effectively meet the challenges of sociopolitical change and economic development in so far as these relate to the domain of their public duties.

The objectives of the second study are to:

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

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. 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, Head-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.

### **2003-2004**

- The Commission took a conscious decision to create a Training Division in September 2004, to achieve the spelt out objectives. Broad based training strategies were evolved to create a discernible impact on different sections of the society for a better today, and a better tomorrow, in terms of human rights promotion and protection. In-house Induction and Post Induction courses were conducted to give exposure to the officers and staff to human rights values and ethos of the Commission. Similarly, training programmes/workshops and seminars were organized for civil servants, police officers, prison official, judicial officers, NGOs and CBO. The Training Division conducted the following activities:-
  - (i) Two Capsule Training Programmes, were held for Commission's Staff and officials in Nov, 2003 and Feb, 2004. The first programme was aimed at sensitizing and orienting the staff joining the Commission on deputation from different departments to its role functioning and creative activities, also familiarizing them to the concept and philosophy of human rights, so that they are able to handle the issues being dealt with by

them with care, sensitivity and concern. The other programme aimed at promoting a better understanding and enhancing professional skills in human rights investigation and interviewing techniques. The programme included human rights issues in the context of various International Instruments, the Constitution and legal framework. The investigating officers were geared to operate in the field with greater sensitivity and make inquiries which are more victim oriented, (ii) A two day Capacity Building Workshop on Economic, Social and Cultural Rights (ESCR) - for Faculty Members of National and State Administrative Training Institutions, Senior Officers of the Central Govt, and the State Human Rights Commissions was conducted in Nov, 2003 in collaboration with the Indian Institute of Public Administration New Delhi. The workshop imparted knowledge pertaining to ESCR and exposed the participants to the role of Human Rights Institutions, Voluntary Sectors involved in the promotion and protection of these rights. It also established the linkages between good governance and Human Rights.

- The Commission collaborated with the Commonwealth Human Rights Initiative (CHRI) a prominent NGO, to run a four-day 'Human Rights Sensitization Course', for police officers of Chhattisgarh working in the police stations and the staff of State Human Rights Commission. The workshop was held in February 2004, at Raipur, Chhattisgarh. The aim was to sensitize the police officers working at the cutting edge level to learn about the core human rights issues being dealt with by them and develop knowledge and skills to promote and protect human rights of citizens in their work sphere
- The Commission entrusted the following two research projects to the Sardar Vallabhai Patel National Police Academy, Hyderabad:
  - (i) Curriculum Evaluation of Human Rights Education in Police Training Institutions in India; and
  - (ii) Training and Non-Training Organizational Interventions for Inculcating Human Rights Observance by Police in India.
- In regard to the first project, the NPA undertook the study of various police manuals, as well as Handbooks/Instructions on human rights already in use in various State police organizations; analysed in depth at various aspects of day-to-day policing that are closely interwoven with human rights issues. It examined Principal Statutes, Instruments, Protocols, court cases, guidelines, etc. pertaining to human rights. The project has since been completed and the Draft Manual received is being examined in the Commission, for initiating further steps to meaningfully utilize the project outcomes in the interest of the police. In the second project, the questionnaires circulated to the stakeholders helped to cover the

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

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

### **2004-05**

As part of Training, the following workshops were organized focusing on Disability:

- NUJS, Calcutta from 19-21 January, 2005
- NLS, Bhopal from 1-3 February, 2005
- Cochin University of Science and Technology from 10-12 February, 2005
- ILS Law College, Pune from 19-21 February, 2005

This training has not only prepared a small cadre of trainers in Disability and Human Rights but has also contributed a learner's module to facilitate teaching of law from the disability standpoint.

In addition, during the period under review, the Commission provided Disability input in a number of programmes offered by Institute of Secretariat Training and Management. Likewise a series of workshops have been facilitated by the Commission to raise awareness of the disability sector about the procedure of elaborating UN Convention and its importance in the protection and promotion of rights and dignity of persons with disabilities. These workshops at Bangalore, Ahmedabad and Delhi have helped the disability sector articulate their proposals for making the treaty more realistic in their context. A set of recommendations emerging out of these workshops has also been communicated to the M/o Social Justice and Empowerment who was participating actively in the UN Adhoc Committee elaborating the disability convention.

In the year 2004-05, 26 training programmes were conducted in form of workshop/seminar/training courses on a wide range of human rights issues. These programmes were organized in collaboration with State Human Rights Commission, institutes, universities, academics, UNHCR, law schools, UNICEF and NGOs. Further the target groups/participants of these training programmes were civil servants, police officers,



judicial officers, prison officers, lawyers, academicians, teachers and social activists. These training programmes were focused on human rights awareness and sensitization, human rights investigation, legal literacy, dalit rights and related issues. These programmes were conducted in four regions of the country. Besides giving financial support, the Commission has provided resource persons, training materials for these training programmes. Three in-house training programmes were also conducted for officers and staff of the Commission so as to orient them to human rights principles, philosophy, practices, values and culture.

Officials of the investigation and law divisions are being also deputed to undergo training courses and seminars conducted by national institutes and reputed agencies on the subjects of refugees, trafficking, child sexual abuse, child labour, scientific aid to investigation and scientific interrogation which have given them further exposure to sharpen their professional skill and knowledge.

In order to sensitize different stakeholders to the problem of human trafficking, the Commission organized a two-day training programme on 'Combating Trafficking in Women and Children' in January, 2005 at Jaipur in collaboration with the Joint Women's Programme, an NGO working for the protection of rights of women and children.

The Judicial Officers, Police Officers and Government Officers from the States of Gujarat, Madhya Pradesh and Rajasthan and the representatives of the NGOs participated in this programme.

The Commission organized a one-day Workshop on Prevention and Redressal of Sexual Harassment of Women in collaboration with the Human Rights Law Network, an NGO on 03.03.2005 at India Habitat Centre, New Delhi for the Chairpersons/Members of the Sexual Harassment Complaints Committees that have been constituted in the various Ministries/Departments of the Central Government, in pursuance with the guidelines prescribed by the Supreme Court in *Vishaka vs. State of Rajasthan*.

The Workshop focused on -

- To enable the participants to understand the basic concept of gender;
- To enable them to understand the meaning, dimension, intent and impact of sexual harassment of women at the work place;
- To familiarize them to the Supreme Court guidelines on prevention of sexual harassment of women at the work place, constitution of a complaint mechanism and its operation; and
- The need and importance of a policy for prevention and redressal of sexual harassment at the work place.

The Chairpersons/Members of the Complaints Committees from various Ministries/Departments participated in the workshop.



Awareness of, and sensitization to, the issue of trafficking, particularly its adverse impact on the rights of women and children, is an important element on prevention. In order to inform and educate the general public, particularly the vulnerable groups, on the problem of trafficking, the Commission in association with the Joint Women's Programme, a Delhi-based NGO brought out two posters in Hindi on the theme of prevention of trafficking and disseminated the same all over the country.

## **2005-06**

Independent Training Division was established in Sep 2003, since then the activities of the Training Division of NHRC have expanded manifold. It is imparting training to the officials of the Central and the State Governments, field "functionaries and representatives of NGOs etc. Training Division of National Human Rights Commission imparts diverse training on various human rights issues in collaboration with National level Institutes, State level Institutes, Law Universities and NGOs of repute working in the Human Rights. The main objectives remain to sensitize the participants of various levels/ groups on Human Rights and equip them to work with more sensitivity in their respective field. The methodology adopted in the seminars/ workshops/ trainings is lecture method and group discussions etc. The participants are exposed to International & National levels Human Rights Conventions and Law & Culture to create a culture of Human Rights in the country through core groups of people.

In order to accomplish the mandates in training division of NHRC has formulated 25 training programmes on various human rights issues for the year 2005-06. Out of these, 22 training programmes have been completed. These programmes are listed in below:

### **IN THE YEAR 2005-2006, 22 TRAINING PROGRAMMES/WORKSHOPS CONDUCTED AND 880 PARTICIPANTS PARTICIPATED**

<b>SI No</b>	<b>Name of the Institute</b>	<b>Name of the Programme / Workshop/training</b>	<b>Participants /Category of Officers Attended</b>	<b>Period &amp; No. of Participants</b>
1.	RCVP Noronha Academy, MP  Conducted three programmes	1. Training Programme on human rights & Weaker Sections held at Bhopal  2. Human Rights & Child Rights held at Bhopal	Class I & II officials of MP & Chhatisgarh States, representatives of NGOs  Class I & II officials of MP & Chhatisgarh States, representatives of NGOs	5 days 16 Aug- 20 Aug 05 71 participants  5 days 26-31 Dec 2005 57 participants

		3. Rights of persons with disability held at Indore	Class I & II officials of MP & Chhatisgarh States, representatives of NGOs	2 days 28-29 Mar 2006 47 participants
2.	Indian Institute of Public Administration (IIPA), Delhi  Conducted one programme	Capacity building Workshop on ESCR	Civil Administrators, officials of State Govt. SHRC & A Tis	2 days 20-21 Sep 2005  30 participants
3.	National University of Juridical Sciences (NUJS) Kolkata  Conducted one programme	Workshop on Human Rights	Public Prosecutors of West Bengal	2 days 24-25 Sep 2005  34 participants
4.	Tata Institute of Social Sciences, Mumbai  Conducted two programmes	1. Workshop on Human Rights Education for University/College teachers held at Mumbai  2. Workshop on Police Civil Society Interface for promotion of Human Rights held at Mumbai	University/College Teachers of Mumbai region  Police, State govt Officials, NGOs & Community leaders	2 days 26-27 Sep 2005  25 participants  2 days 22-23 Mar 2006  35 participants
5.	Multiple Action Research Group (MARG), New Delhi	1. Workshop to Spread Legal Literacy Amongst the Women from Marginalised Section Held at Bhopal, MP	Social Activists from community including young lawyers, representatives of NGOs	2 days 28-30 sep  35 participants

	Conducted three programmes	2. Seminar for lawyers to Spread Legal Literacy in the Community held at Patna  3. Training to Spread legal literacy held at Jamshedpur	Social Activists from community including young lawyers, representatives of NGOs  Social Activists from community including young lawyers, representatives of NGOs	3 days  1-3 Oct 2005  40 participants  3 days  22-24 Mar 2006  36 Participants
6.	SVP National police Academy Hyderabad  Conducted two programmes	1. Workshop on Human Rights of concern to the police held at Hyderabad  2. Sensitization training of police officers on human rights held at Hyderabad	Two District SSP from each State, officials from CPOs & Correctional services  Two District SsP from each State, officials from CPOs & Correctional services	3 days  5-7 Oct 2005  35 participants  3 days  27-29 Mar 2006  35 participants
7.	Deptt of Law Gulbarga, Karnataka  Conducted one programme	Workshop on Human Rights Awareness & Training held at Gulbarga	Judicial Officials, Lawyers, prosecutors/ police/prison officials, NGOs, Human Rights Activists & Academic community	2 days  8-9 Oct 2005  50 participants
8.	SEVAC Mental Hospital & Rehab Centre Kolkata  Conducted one programme	Training on Mental Health Education held at Guwahati	Supdt. & Asst. Supdt. Jailors, Medicals Officers, Medical Staff working in NE States	2 days  27-28 Oct 2005  27 participants

9.	Joint Women Programme New Delhi  Conducted one programme	Seminar on Combating Trafficking in Women & Children held at Ahmedabad	Judicial officers, police officers, social welfare Dept. officials & social activists	2 days  18-19 Nov 2005  30 participants
10	North Eastern Police Academy, Meghalaya Conducted one programme	Training programme on Professional Policing & HR held at Umiam Meghalaya	OC/Addl. OC and their supervisory officials (Dy SP)	5 days  24-28 Jan 2005  45 participants
11.	Citizenship Development Society, Delhi Conducted one programme	Training programme on Human Rights Awareness held at New Delhi	Kendriya Vidyalaya Teachers	2 days  2-4 Dec 2005  43 participants
12.	LNJP NICFS, Delhi  Conducted one programme	Sensitization programme on Human Rights in Criminal Justice System held at Delhi	Senior Criminal Justice Functionaries	5 days  12-16 Dec 2006  47 participants
13.	Maharashtra State Human Rights Commission, Mumbai  Conducted one programme	Training programme on Awareness Creation on Human Rights Standards & Code of Conduct held at Pune	SHOs & Supervisory officers (Dy SP) & SHRC officers	2 days  6-7 Jan 2006  40 participants
14.	Indian Social Institute, New Delhi  Conducted one programme	Training on Human Rights & Fact Finding & Interviewing Techniques held at Bhubaneshwar	NGOs/CBOs, young lawyers, social activists	3 days  8-10 Feb 2006  35 participants

15.	Indian Institute of Public Administration (IIPA), Bangalore Conducted one programme	Training programme on Human Rights held at ATI Mysore	Civil administrator, Judicial Officials, Lawyers, Prosecutors/ Police/ prison officials NGOs, Human Rights Activists & Academic	3 days 5-7 Jan 2006 50 participants
16.	Indian Social Sciences, New Delhi Conducted one programme	Trafficking in Women & Children held at Kolkata	Judicial Magistrates, Police officers, NGOs, BSF, Prosecutors & Prison Officers	1-1/2 days 6-7 Mar 2006 35 participants
Total Programmes Conducted		22	Total Number of participants	880

#### **NB**

1. RCVP Academy : 03
2. MARG : 03
3. SVP Police Academy : 02
4. TISS : 02
5. Other Institutes : 12 ( one programme each)

Currently the Training Division is strengthened and working with the following staff Structures:

Chief Coordinator (Training)

Sr. Research Officer (Training)

PS to CC (T)

Assistant

Stenographer

Peons