



Annual Report

National Human Rights Commission, New Delhi, India

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**NATIONAL HUMAN RIGHTS COMMISSION
ANNUAL REPORT FOR THE YEAR 1995-96**

I. INTRODUCTION

1.1 This report of the National Human Rights Commission (NHRC) covers the period 1 April 1995 to 31 March 1996. It is the third such report of the Commission. The preceding report, dealing with the period 1 April 1994 to 31 March 1995, was submitted to the Central Government on 13 June 1995. It was, thereafter, placed before each House of Parliament in August 1995, in accordance with Section 20 of the Protection of Human Rights Act 1993.

1.2 During the year 1995-96, Shri Justice Ranganath Misra continued to serve as Chairperson of the Commission, while Kumari Justice Fathima Beevi, Shri Justice Sukhdev Singh Kang, Shri Virendra Dayal and Shri Justice V.S. Malimath continued to serve as Members of it. As regards those deemed to be Members of the Commission under Section 3(3) of its Statute, Shri Justice Mohd. Sardar Ali Khan continued to serve in such capacity, being the Chairperson of the National Commission for Minorities. In the course of the year, Shri H. Hanumanthappa was appointed Chairperson of the National Commission for the Scheduled Castes & Scheduled Tribes and Smt. V. Mohini Giri Chairperson of the National Commission for Women. On assuming their respective offices, each was deemed to be a Member of the National Human Rights Commission.

1.3 Shri R.V. Pillai remained Secretary General and Chief Executive Officer of the Commission and Shri Sankar Sen continued as Director General (Investigation). Shri V.P. Sharma, who had been serving as Joint Registrar of the Commission, was appointed to the post of Registrar (Law) in March 1996, upon the retirement of Shri R.R. Kumar.

II. CONSOLIDATING THE COMMISSION'S ROLE

2.1 The adoption of the Protection of Human Rights Act 1993 gave rise to considerable expectations that the nation would act with renewed vigour to promote and protect the rights relating to life, liberty, equality and dignity guaranteed by our Constitution or embodied in the International Covenants to which our country is a party. These expectations were tempered by a concern as to whether the instrument created by the Act, namely the National Human Rights Commission, would indeed have the autonomy, the will and the capacity to meet the expectations that had arisen.

2.2 Mindful of this challenge, the Commission was determined-from its inception- to examine and to exercise the powers conferred upon it by the Act to the fullest extent possible. It was no less determined to discharge the vast varied functions entrusted to it under Section 12 of the Act as methodically as it could. It resolved to confront with independence and transparency the most difficult human rights problems facing the country. And it set about the task of developing the capacity of the organization- and strengthening that of many beyond it with a view to creating, over time, a culture of human rights worthy of this renascent country. Above all, the Commission set as its objective the goal of informing the people of India of their rights and giving them a greater sense of confidence in the apparatus of this country-not least in the Commission itself to protect those rights and to hold accountable and bring to book those who might violate them.

2.3 The third year of the Commission was thus marked by an effort to consolidate its place in the life of the country, so that it could increasingly and instinctively be trusted as an ally of those who might feel their rights to be imperilled, or of those who might feel the need for a reliable and steadfast friend to redeem or enhance their dignity and worth as human beings.

2.4 It is important here to recall that, even as the Commission entered the third year of its existence, it had, in important respects, set the broad terms of its agenda and priorities: it had done so after travelling the length and breadth of the country and listening to the voices of the people of India in all parts of the land, especially in those areas where the most serious human rights issues arose. Thus, even by 31 March 1995, the Commission had, inter alia:

- i. Received 7,843 complaints covering the entire range of human rights problems facing the country and taken action on the majority of them;
- ii. Turned its attention as a matter of priority to custodial violence and given firm instructions regarding the manner in which instances of custodial death and rape were to be reported to the Commission within twenty four hours of occurrence, and action taken to probe such occurrences and bring the guilty to justice;
- iii. Taken a clear position urging the non-renewal of the Terrorist and Disruptive Activities (Prevention) Act;
- iv. Made specific recommendations regarding the manner in which human rights violation could be minimized or ended in areas of insurgency or terrorism and the

manner in which the security forces should interact with the civil administration in such areas;

- v. Stressed that the primary means of dealing with the problems facing such areas must be through appropriate political measures and initiatives, as such measures could best resolve the underlying causes of violence and the violation of human rights in those areas;
- vi. Urged the insulation of the investigative functions of the police from political and other extraneous pressures as essential to restoring confidence in the police and the reducing of complaints of human rights violations by members of that force; and further urged, in this connection, the implementation of the recommendations of the Second Report of the Police Reforms Commission aimed at insulating the investigative work of the police from extraneous pressures;
- vii. Recommended the revision of the Indian Prisons Act of 1894 and suggested specific corrective measures to improve conditions in jails, sub-jails and police 'lock-ups';
- viii. Recommended accession by the Government of India to the 1984 Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment;
- ix. Urged the ending of child labour and, in this context, strongly recommended appropriate legislation to provide for free and compulsory education for all of the children of India until the age of 14 years, as envisaged in Article 45 of the Constitution, and urged, at the same time, that an accompanying effort be made to ensure an appropriate re-deployment of national resources to achieve this purpose;
- x. Urged amendment to the Child Labour (Prohibition & Regulation) Act in order to make it more effective;
- xi. Stressed fulfillment of the country's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- xii. Urged early adoption of legislation in regard to persons suffering disabilities;
- xiii. Instituted efforts with the police, the para-military forces and the army to step-up and improve education and training so as to prevent human rights violations;

- xiv. Commenced a broad-based effort, involving all concerned governmental agencies and a number of non-governmental organizations, to introduce human rights education at all stages of learning, from the primary school to the university;
- xv. Made specific recommendations in its first report, which were repeated in its second, suggesting amendments to the Protection of Human Rights Act 1993, with view to removing ambiguities and impediments concerning the competence of the Commission. These related to Sections 2(1) (d) and 2(1)(f), 11(1)(b) and 11(2) (together with Section 32), Section 13(1)(f), Sections 18, 30 and 36. This matter was pursued by the Chairperson with the Minister of Home Affairs who, after consultations with the Ministries of Law and Finance, stated in reply that "we need to gain more experience in the working of the National Human Rights Commission before we assess the actual need for changes in the already carefully worked out provisions of the Statute". The Commission recommends that this matter may be reconsidered at an early date.

2.5 The purpose of recounting these facts is three-fold; first, to establish with clarity the starting point of the Commission on 1 April, 1995. Second, it is to emphasize that the Commission has no intention of letting its earlier recommendations—whether in respect of individual complaints or matters of policy—wither away or be forgotten, as has too often been the case with the reports and recommendations of other bodies. The Commission remained acutely aware that, when it comes to the protection of human rights, tenacity is indispensable to the achievement of results. In its third year, therefore, the Commission signalled its determination to follow up on its principal ideas and recommendations until such time as it could be convinced that these had been appropriately acted upon, or the better options are available for consideration and implementation. Third, the Commission increasingly realized that there was need for it to widen its knowledge of certain issues and to engage itself more deeply in the search for solutions for them. In particular, the linkages between seemingly separate issues, whether civil and political, or economic, social and cultural became more evident to the Commission, and the need to act comprehensively in regard to such inter-related issues became more compelling.

2.6 For instance, in the area of civil liberties, it was not enough for the Commission to be informed promptly of instances of custodial death or rape and to press thereafter for justice. The protection of human rights required an altogether different perspective and approach, which had to be proactive: custodial violence had to be prevented before it

occurred. The Commission could not simply react to deaths that had already occurred. This had systemic implications; the Commission had to look into the reasons for police violence, the nature of training, conditions of service and the need for reform; it was also necessary to examine procedures and practices, including the manner in which investigations and post-jails and 'lock-ups' had to be corrected and this led to the drafting of an altogether new and revised Indian Prisons Law, to replace that of 1984.

2.7 Likewise, in the area of social, economic and cultural rights, the chain of cause and consequence had to be followed through more fully. The Commission, early on, rejected the facile and readily advanced argument that poverty was the principal cause and therefore the justification of child labour or, for that matter, of child prostitution. The Commission studied the patterns of exploitation, in which money and violence, caste, community and societal weakness each played its part, and concluded that the rights of the child in India could only be ensured through a comprehensive strategy that included, above all, the provision of free and compulsory education for all children until they completed the age of 14 years as envisaged in Article 45 of our Constitution. Without this, or the massive redeployment of resources which any comparable effort required, the children of India could not be liberated from labour or bondage in the foreseeable future.

2.8 There was some criticism of the Commission for spreading itself too thin and seeming to trespass beyond the purposes of its Statute, particularly when it entertained complaints relating to death and disability resulting from causes that, on the surface, appeared to relate primarily to public health or environmental matters. But the Commission had seen for itself the physical and emotional mutilation caused to thousands of Indians by water supplies poisoned by arsenic or fluoride in States as widely separated as West Bengal and Andhra Pradesh. It had also learnt of the death of scores of children in a tribal area of Orissa owing to a lack of minimal health care. In no way could the Commission reconcile the painful facts before it in such cases with the fundamental right to life guaranteed under Article 21 of the Constitution, which the Supreme Court had ruled must be a right to a life with dignity (Bandhua Mukti Morcha vs. Union of India, 1984 3 SCC 161, 183,184). Nor could it reconcile such circumstances with the country's commitments under the two International Covenants to which India is a party, and which are specifically referred to in Section 2 of the protection of Human Rights Act 1993, or to India's own sponsorship of the Right to Development of which the country had been a leading protagonist in international forums.

2.9 Indeed, in the third year of its existence, the Commission increasingly worked on the premise that human rights whether civil and political, economic, social and cultural were, in the words of the 1993 Vienna Declaration and Programme of Action, universal, indivisible, inter-dependant and inter-related and that it was necessary for the Commission to remain keenly aware of this when deciding whether or not to take cognizance of particular complaints or issues. This was all the more necessary in a country where the seeds of unrest or grievance arising from human rights violations often resulted from a complex mix of reasons that were historical, social, economic or cultural and in which particular groups, not least for reasons of caste or community, economic deprivation or gender continued to be especially vulnerable. The Commission was determined to ensure that it functioned in a manner that was sensitive to the concerns of such groups. In this, its capacity was greatly strengthened by the presence of its three deemed Members, the Chairpersons of the National Commission for Minorities, for the Scheduled Castes and Scheduled Tribes, and the National Commission for Women.

2.10 For similar reasons, the Commission reached out to non-governmental organizations, human rights activists and others, receiving and acting upon complaints submitted by them, benefitting from their vast network with the people of India, drawing upon their studies and analysis of particular problems and associating them with the educational and other activities of the Commission. And it also turned its attention to reviewing factors, such as violence in all its manifestations whether in the form of terrorism, the criminalisation of society, communal riots, gender cruelty or in the media that, in the words of Section 12(f) of its Statute "inhibit(ed) the enjoyment of human rights" and that called for "appropriate remedial measures".

2.11 In the sections that follow, a detailed account is provided on the specific ways in which the Commission undertook its responsibilities in the year 1995-96 with a view to furthering human rights in the country and consolidating its place in the daily life of the nation.

III. CIVIL LIBERTIES

(A) *Human Rights in Areas of Terrorism and Insurgency*

3.1 The protection of human rights in areas afflicted by terrorism or armed insurgency poses special problems for those who are determined to uphold and ensure respect for such rights. These are compounded by the necessity of the State, in extremis, to use force against

terrorism, a course of action that can lead, either through error or excess, to the violation of rights, and the jeopardizing of the life and dignity of those who are innocent. The tragedy and irony of such situations is exacerbated by the factthat terrorists, who themselves are the implacable enemies of civil society, and who hold the rights and values of such society-including the right to life-in contempt, are quick to invoke the protection of such rights when under siege.

3.2 The Commission has noted with interest and gratification that, in recent years, there has been increasing thought given both at the national and the international level to ways in which terrorism can be countered and eliminated, without vitiating human rights principles. It has been particularly helpful that, since the World Conference on Human Rights, held in Vienna in June 1993, a greater intellectual clarity has emerged on this vexed issue and that this finds expression, most notably, in recent proceedings andresolution of the United Nations Commission on Human Rights and the General Assembly of the world organization. Of special significance, for instance, have been two resolutions adopted without a vote during the 50th Sesion of the Geneva Assembly, one relating to "Measures to Eliminate International Terrorism" (No. 50/53 of 11 December 1995) and the other to "Human Rights & Terrorism" (No. 50/186 of 22 December 1995). The former asserted, inter alia "that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them", while the latter resolution, after reiterating its "unequivocal condemnation of the act, methods and practices of terrorism as activities aimed at the destruction of human rights, fundamental freedoms and democracy...." called upon States "to take all necessary and effective measures in accordance with international standards of humans rights to prevent, combat and eliminate all acts of terrorism wherever and by whomever committed".

3.3 The Commission, for its part, has consistently taken a view in harmony with these two resolutions. It has argued that human rights can best be served where peace and transparency prevail and that they are worst served where terrorism and secrecy reign Acting on this premise, the Commission has urged the renunciation of terror, the rule of the gun and all forms of violence in the settlement of disputes, particularly since constitutional possibilities provide peaceful ways of resolving disputes in a democratic country such as ours. Futher, the Commission has also repeatedly recommended openness and accountability

as attributes essential to good governance, not least when acts of States are themselves called into question, and urged that the measure of our conduct should be the exacting standards set by our Constitution and our treaty commitment, especially those arising from the two International Covenants to which India is a party.

3.4 As the problems in areas affected by terrorism and armed insurgency are essentially political in character, the Commission had advocated that the approach to resolving such problems must also, essentially, be political. Insofar as economic, social and cultural factors add additional dimensions to grievances in such areas, the Commission has recommended, in its individual reports on visits to affected regions, that such factors should be fully taken into account. In a number of instances, the Commission has made specific suggestions on such matters, including those having a bearing on developments programmes and projects and these have been vigorously pursued by the Chairperson with the Prime Minister.

3.5 Further, as these security forces are generally called upon to assist the civil administration in areas afflicted with terrorism or insurgency, the Commission has repeatedly recommended that these forces must act in close coordination with the civil administration. It has been the Commission's experience, borne out by its visits to Jammu & Kashmir and to some of the North-Eastern States, the most recent of which were visits to Nagaland and Manipur, that violations of human rights are far less likely to occur when the role and the responsibilities of the civil authorities under the law are fully respected not least in respect of cordon and search operation, arrest, interrogation and detention.

3.6 The Commission has noted that, at the policy level, its recommendations in respect of these matters have been generally positively received, both at the level of the Central Government and in the States. The Commission has also noted that instructions have, for instance, been issued in Jammu & Kashmir and in the North-Eastern States that are broadly, consonant with the recommendations made by the Commission. This is a positive trend and part of an on-going process to make the apparatus of State more sensitive so that its reactions - even under the extreme provocation of externally abetted terrorism do not result in arbitrary conduct by its personnel. The Commission intends to continue monitoring the situation in this respect most carefully, knowing as it does that the best instructions can be negated through negligence or design or in the heat of provocation or combat.

3.7 The Commission has thus been at great pains to impress upon the armed forces of India and the police that, even as they must perform their duty to the nation to fight and triumph over terrorism, they must observe international standards of human rights while doing so, and discharge their duty with full respect for the laws of the land and the rights of all of the people who inhabit it. The Commission is profoundly grieved when reports are received both of terrorist excesses, and of the excessive use of force by the instrumentalities of State, of unaccounted disappearances or of deaths in circumstances that are suspicious, such as those where allegations are made of "false encounters".

3.8 While any such instance is unconscionable, the concern of the Commission is heightened when the victim is linked to the cause of civil liberties. Two such instances of extreme gravity came before the Commission recently. In one, Shri Jaswant Singh Khalra reportedly "disappeared" after last being seen, allegedly, in the presence of members of the Punjab police on 6 September 1995. In the other, Shri Jalil Ahmed Andrabi "disappeared" after last being seen, allegedly, in the presence of members of an armed group in Srinagar on 8 March 1996, whose members were reportedly close to elements of the security forces of India, who were also said to have been present on that occasion. In each instance, upon learning of the incident, the Commission took suo motu action to ascertain the facts, sending members of its investigating staff to interview the wife of the missing activist and other key witnesses. In each instance, the Commission was urged by non-governmental organizations and others, to do all that it could to find the missing activist and to bring the violators of his rights to book. In each instance, there was a denial of any responsibility by the instrumentalities of the State that were accused of wrong-doing. On each occasion, the matter was also brought before the superior Courts of the country. In the case of Shri Jaswant Singh Khalra, the Supreme Court entrusted the investigation of the case to the Central Bureau of Investigation on 15 November 1995. In the case of Shri Jalil Ahmed Andrabi, who was subsequently found murdered, the High Court of Jammu & Kashmir entrusted the investigation to a specially appointed team responsible only to it. In the circumstances, the investigating staff of the Commission has remained in close touch with the CBI in regard to the Khalra case. As regards the Andrabi case, the Commission decided to intervene in the proceedings in the High Court, with the permission of that Court, and further ordered that full security be provided to the family of Shri Andrabi and to the key witnesses in the case. The Commission has every intention of following the proceedings in regard to these cases with

great care, as the "disappearance" of these activists has cast a pall on the human rights situation in the country.

3.9 While the outcome of these cases is yet to be known, in numerous other instances, the Commission has been able to ensure that justice is done, though vigilance is constantly required. For instance, the Commission took motu action upon reading a press report that Shri Khazir Mohammad Aktoon had died while in custody of an infantry battalion in Jammu & Kashmir and that his body had subsequently been found in the river Jhelum. The Commission issued notice to the Defence Ministry and a Court of Inquiry was ordered. That Court has since indicted three members of the battalion for torture, custodial death and for throwing the body of the deceased into the river with a view to destroying evidence. In addition, senior officers have been held guilty of failure to provide effective command and control over their men. The Court of Inquiry has recommended punishment for eight persons in all. For its part, the Commission has urged that this punishment be awarded without loss of time.

3.10 The determination to achieve transparency, even in situations of terrorism and armed militancy, has required the Commission to remain in close touch with the Border Security Force and the Army. The Commission has noted the growing readiness of both to accept the implications of greater accountability and, in response to the Commission's recommendations, both the Border Security Force and the Army have been keeping the Commission informed of the facts relating to their personnel who, since 1990, have been charged with violating human rights in Jammu & Kashmir. The lists provided to the Commission, which are periodically updated, indicate the details of each incident, the charges framed, the stage of the proceedings, the decisions reached and the punishments awarded. As of 31 March 1996, two hundred and fifty nine cases had been registered against members of the Border Security Force and 43 against those of the Army, including 10 officers of the former and 15 officers of the latter. In the cases decided thus far, punishments have ranged from ten years in jail to dismissal or reduction in rank. The details provided to the Commission are available for verification.

3.11 Allegations of 'fake encounter' continue to be heard, particularly from areas of armed militancy. The Commission views such charges with utmost seriousness and probes them thoroughly in exercise of the powers conferred on it by the Statute to call for reports, conduct an investigation or hold a regular enquiry. For instance, in the course of 1995, a special Bench of the Commission was constituted to enquire into the allegations of false encounters made against the police in Andhra Pradesh by the Andhra Pradesh Civil Liberties

Committee (APCLC). The Bench held public sittings in Hyderabad and recorded evidence. As important questions of law regarding proper procedure to be followed in the matter of registering the cases and conducting of investigation arose for consideration, the Commission notified the Solicitor General of India and the Advocate General for the State of Andhra Pradesh. On grounds of convenience, arguments were heard at the Headquarters of the Commission and final orders are expected to be pronounced shortly.

3.12 If the Commission has not hesitated to look into allegations of violations of human rights by members of the security forces of the country, it has also been keen to ensure that the rights of the victims of terrorism and armed militancy are not neglected and that they are assisted by all appropriate means. While the most affected States have schemes to provide relief or rehabilitation to such persons, the Commission has, on occasion, found it necessary to recommend additional assistance, or the inclusion of further categories of persons in such schemes since they had been excluded arbitrarily from the provision of appropriate assistance. Comprehensive recommendations to this effect were made by the Commission following visits which it undertook, for instance, to Punjab and Andhra Pradesh and it is gratified that, after consideration, the State Governments concerned amended their instructions in order to be responsive to the Commission's views. Implementation Reports indicating compliance were thereafter received by the Commission from the competent district-level officials.

3.13 The situation of some 350,000 residents of the valley of Kashmir comprising about 300,000 Hindus and some 50,000 Muslims, who have been compelled to leave their homes and live temporarily in other parts of the country, has also required the continuing attention of the Commission. The Commission had occasion to visit the camps and temporary accommodation of those who are, at present, in the Jammu area and interacted throughout the year with their representatives. As a result, interim recommendations were made to the Central and State Governments on a variety of matters with a view to easing the hardships facing members of this group, particularly in regard to monthly relief payments, accommodation, employment opportunities and educational facilities.

(B) Custodial Deaths, Rape and Torture

3.14 The Commission continued to act with determination to end the terrible occurrences of custodial death, rape and torture that have scarred the record of the law and order apparatus of our country and diminished its standing in the eyes of our people. Since 14

December 1993, the Commission has required all District Magistrates/Superintendents of Police to report any instance of custodial death or rape directly to the Commission, within twenty-four hours of occurrence. Failure to send such reports, it has been emphasized, would lead to a presumption by the Commission that an effort was being made to suppress the occurrence.

3.15 During the course of the calendar year 1994, 65 deaths were reported in police custody and 34 in jail custody. In 1995, 105 such deaths were reported in police custody and 207 in jail custody. Between 1 January-31 March 1996, a further 47 deaths were reported in police custody and 112 deaths in jail custody. A chart giving certain details may be seen at Annexure 1.

3.16 The Commission is not surprised that the number of cases reported shows an increase in instances of custodial death. It attributes this to greater honesty in reporting the painful realities as they are. The Commission, however, has been disappointed that certain States have still not been reporting the facts as fully as they should, and it has taken up this matter with them in no uncertain terms. In particular, the Commission has been disturbed at the lack of reports from Jammu and Kashmir and the Chairperson has been constrained to raise this matter formally with the Governor of the State. In addition to sending a circular letter to all State Chief Ministers reminding them of the requirements of the Commission in respect of custodial deaths, the Chairperson has written individual letters to the Chief Minister or Governors of Assam, Bihar, Goa, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal drawing their attention to specific instances of such deaths or to weaknesses in reporting, to inadequacies in investigation or in subsequent follow-up action. By way of illustration, the exchange of letters between the Chairperson and the Chief Minister of West Bengal, dated 18 July 1995 and 22 August 1995 respectively may be seen at Annexures II & III. In a number of instances, these matters have been the subject of discussion in the State capitals by the Commission itself, or by its senior investigating staff. In other instances, the Chief Secretaries and Home Secretaries concerned have been summoned to Delhi to meet with the Commission to explain the facts.

3.17 The Commission continues to believe that the country must act deliberately and decisively to end custodial violence and signify to itself and to the world that it will not countenance brutality in custody. It was to this end that the Chairperson, in his letter to the Prime Minister of 9 December 1994 urged that India become party to the 1984 Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment.

The Commission was heartened by a reply from the Prime Minister on 16 December 1994 indicating that he shared the feelings of the Commission. The Chairperson therefore wrote again to the Prime Minister on 25 January 1995 stressing the urgency of this matter, in the light of the numerous complaints that the Commission had received alleging brutality in custody. The Chairperson made clear that a permissive approach to the use of third-degree methods in investigation led to serious violations of the rights of the citizens of India and that it was wrong to believe that such practices were necessary for the successful investigation of cases and the matter continues to be pursued.

3.18 The Commission must, however, express its disappointment that its recommendation on this matter of great importance has not yet been acted upon. It has been indicated by the Central Government that the issue of accession to the Convention was placed before a Chief Ministers Conference on 5 May 1995 but that the majority of Chief Ministers were either not in favour of India becoming a party to the Convention or had not indicated their views on this matter. In the light of this, the Commission has been following-up this matter with the Chief Ministers directly, advising them that, in this day and age, it would be strange indeed if their States were viewed as continuing to countenance torture. The Commission strongly recommends that this matter be the subject of early and renewed attention, both by the Central and States Governments, some of whom will be newly constituted following the general election. The Commission would like to recall here the views of the Supreme Court which, in the case of Kishore Singh vs. State of Rajasthan AIR 1982 SC625, observed: "Nothing is more cowardly unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional rights". The Commission would like to add that its concern in this matter is heightened by the awareness that most of those who are the victims of custodial deaths and brutality belong to sections of society that are economically poor or disadvantaged though the Commission notes that, in the past year, even a person of immense wealth, Shri Rajan Pillai, died in the nation's capital while in judicial custody and that his death is the subject of an enquiry by a specially appointed Commission.

3.19 As has been observed earlier, it is not enough for the Commission to react to custodial deaths or violence after they have occurred. It is far better to prevent such acts before they occur. The Commission is of the view that a recommendation of the Indian Law Commission (ILC) made in its 113th report of 29 July 1985 on a reference by the Supreme Court of India, should be acted upon. In that recommendation, the ILC suggested the

insertion of a Section 114 (B) in the Indian Evidence Act, 1972, to introduce a rebuttal presumption that injuries sustained by a person in police custody may be presumed to have been caused by a police officer. In the view of this Commission, such a provision could well have a restraining effect on officers engaging in torture. Further, this Commission supports the recommendation of the India Law Commission that Section 197 of the Code of Criminal Procedure be amended to obviate the necessity of governmental sanction for the prosecution of a police officer where a prima facie case has been established, in an enquiry conducted by a Sessions Judge, of the commission of a custodial offence. This Commission also endorses the view of the National Police Commission of a custodial offence. This Commission also endorses the view of the National Police Commission in its First Report of February 1979 (para 10.10) that there should be a mandatory enquiry, by a Sessions Judge, in each case of custodial death, rape or grievous hurt.

3.20 There are a number of other measures being recommended by the Commission, in its day-to-day handling of complaints, that are aimed at reducing and eliminating violence in custody. One such measure, to which the Commission attaches particular importance, relates to the implementation of the decision of the Supreme Court in the case of Joginder Singh vs. the State of Uttar Pradesh & other (JT 1994(3)SC 423) wherein it is laid down that an arrested person being held in custody is entitled, if he so requests, to have a friend, relative or any other person who is known to him, or likely to take an interest in his welfare, to be informed that he has been arrested and told of where he has been detained. This decision of the Supreme Court has been circulated by the Commission to all Directors General of Police in the States, urging them to instruct all police officers in the field to act in consonance with the decision. The Commission believes that there is also need for greater care in the observance of the UN Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment and the UN Standard Minimum Rules for the Treatment of Prisoners. It recommends that appropriate instructions be issued by the Central Government reminding the competent authorities in the country of the provisions of these documents, in the elaboration of which India participated.

3.21 In its continuing efforts to end custodial violence, the Commission has taken the view, in two recent instances of custodial death that occurred in the States of Tamil Nadu and Rajasthan, that the compensation due to the next of kin of those who have died in custody should be the liability not just of the State Government, but of the offending police officials themselves. The Commission is gratified that, after exchange of views, the State

Governments concerned have accepted the recommendations of the Commission in this respect. This should provide a further, powerful deterrent to aberrant behavior by elements of the law enforcement machinery.

3.22 When examining reports on custodial death, the Commission was struck by the often unsatisfactory manner in which post-modern examinations were conducted. The Commission reached the dismaying conclusion that, on occasion, the doctors concerned were bowing to police pressures when writing their reports. The Commission therefore decided to gather detailed information from all the States regarding the manner in which postmortems were being conducted, asking a series of pointed questions in this regard. The picture that emerged was bleak: there was often a substantial time-gap between the postmortem examination and the writing of the report; facilities in many mortuaries were abysmal; there was a lack of trained and qualified personnel. The Chairperson of the Commission accordingly wrote to all Chief Ministers on 10 August 1995, recommendation that the Commission would like all post-mortem examinations in respect of deaths in police or jail custody to be video-filmed and the cassettes sent to the Commission together with the written reports of the post-mortem examinations (Annexure IV). Positive responses to this recommendation have been received from 13 States and one Union Territory viz. Assam, Andhra Pradesh, Goa, Gujarat, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Nagaland, Orissa, Pondicherry, Punjab, Tripura and West Bengal, while replies are awaited from others. The Commission intends to pursue its recommendation on this matter with them. In the meantime, video cassettes have now started to be received from certain States and the procedure is gradually taking root. In developing this idea, the Commission held consultations with professional groups in a number of cities; it also raised its concerns regarding the quality of post-mortems and related questions of training and medical ethics with the Indian Medical Association.

(C) Systemic Reforms: Police

3.23 An efficient, honest police force is the principal bulwark of the nation against violations of human rights. A police force that is often over-worked and ill-equipped, whose conditions of service are inadequate and whose integrity is repeatedly questioned, itself becomes part of the problem. The Commission is strongly in favour of improving the quality of the police and restoring its prestige and lustre in the eyes of the nation.

3.24 The Commission is therefore of the view that there is need to act with conviction and without further delay upon recommendations contained in Chapter XV of the Second Report of the Police Reforms Commission which, as long back as 1979, proposed a number of critically needed remedial measures to prevent "Interference with, and misuse of the police by illegal or improper orders or pressure from political, executive or other extraneous sources". In particular, that Report calls for full respect for the Supreme Court judgements in criminal appeal no. 218 of 1966, in the case of Abhinandan Jha and Others vs. Dinesh Mishra, reported in AIR 1968 Supreme Court 117 (V5 SC32) which directed that the investigative tasks of the police should be placed beyond any kind of intervention by the executive or non-executive. Paragraph 15.43 of that Report also urges a statutory tenure of office for Chiefs of Police in the States, observing that the "Damocles" sword of transfer" should be removed from over their heads. Further, paragraph 15:46 of that Report recommended the constitution of statutory State Security Commission in each State to help the State Government "to discharge its superintending responsibility in an open manner, under the framework of law".

3.25 This Commission finds itself greatly in favour of implementing these three critically important recommendations of the Police Reforms Commission in the interest of improving the human rights situation in the country. The Commission believes that there is a yearning in the nation for an upright police force, whose probity and fairness are beyond reproach, that can be relied upon to protect the rights of the citizens of India.

3.26 The Commission is aware that the recommendations of the Second Report of the Police Reforms Commission were earlier transmitted to the State Governments for consideration and that the matter of reform of the police is an on-going process and one that is, in important respects, for the States to undertake. Nevertheless, given the loss of credibility in the impartiality of the policy, the increasing clamour in the country for a police force insulated in its investigative role from extraneous considerations, and the opportunity created by new governments in the Centre and a number of States, this Commission hopes and recommends that these key proposals of the Police Reforms Commission will be re-opened expeditiously for consideration and positive decision. The Commission further recommends that this matter be considered, if necessary, in a meeting of the Chief Ministers of all States and Union Territories and that, in the meantime, the Central Government endeavour to implement these proposals of the Police Reforms Commission in the Union Territories as an indication of its own commitment to police reform.

3.27 In reiterating its recommendations on these matters, the Commission would like to make clear that it is not unalterably wedded to every detail of the recommendations of the Police Reforms Commission. The essential purpose of the Commission is to ensure that the spirit of those recommendations is fulfilled and that the integrity of the investigative role of the police is restored by insulating it from extraneous pressures.

(D) Systemic Reform: Prisons & Other Centres of Detention

3.28 The Commission has continued to discharge its responsibility "to visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purpose of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon" (Section 12(C) of the Protection of Human Rights Act, 1993).

3.29 During the period under review, Members of the Commission visited prisons in Bangalore, Bellari, Bijapur, Hindalga, Jaipur, Madras, Madurai, Mandsaur, Meerut, Pune, Sabarmati and Trichur, while its investigating staff made special reports on the situation prevailing in Sakchi jail of Jamshedpur, the jail of Chaimbasa in southern Bihar, and on the high incidence of deaths in Tihar Jail of Delhi.

3.30 The visits and reports confirmed the views expressed by the commission in its report for 1994-95 that the State of prisons in India is generally marked by gross over crowding, squalor and mal-administration. It is not necessary to repeat in detail the ills of our jails, sub-jails and lock-ups, as they were listed at some length in the previous report. Suffice it to say that the system cries out for reform.

3.31 While a number of serious efforts have been made since Independence to grapple with the antiquated system of Jail Administration in existence, the fact remains that, in essentials, it requires a major overhaul, starting with the century-old legislation that governs the entire system, namely the Indian Prisons Act, 1894. The Commission therefore embarked upon the drafting of a new Bill, inter alia, taking into account the work of the All-India Jail Manual Committee of 1957-59, the Report of All-India Committee on Jail Reform 198-83 (chaired by Justice A.N. Mulla), the Report of the National Expert Committee on Women Prisoners, 1987 (chaired by Justice V.R. Krishna Iyer), and the Report of Group of Officers on Prison Administration chaired by Shri R.V. Kapur. Further, the Commission kept in mind the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1957.

3.32 In pursuance of the objective which it had set for itself, the Commission addressed a letter to all States and Union Territories on 29 May 1995 asking for comprehensive information on the basis of a detailed questionnaire that it had framed. This included, inter alia, questions relating to over-crowding, diet, wages, whether there were separate arrangements for women and juveniles, medical facilities, the nature of institutional arrangements for under-trial and matters concerning administration, including computerization of data etc.

3.33 An analysis of the data received was presented to a National Conference of Directors General of Police, Inspectors General of Prisons and Home Secretaries that was called by the Commission on 14 November 1995. At that Conference, a core group was set-up to draft a Model Prison Bill to replace the Prisons Act of 1894. The core group held meetings in Delhi in January and February 1996 and was assisted by staff and consultant of the Commission itself. As part of the process, the Commission has held consultative meetings with non-governmental organizations and experts in Delhi, Guwahati and Lucknow with a view to developing a national consensus on the basic issues of prison reform. It is the intention of the Commission to finalize the draft Bill in the course of 1996 and to recommend that legislative action be undertaken, at an early date, on the basis of that draft.

3.34 In the meantime, the Commission has continued to press for specific actions to improve the situation in the jails of the country. In particular, it has been essential to stress the need for special arrangements for women and juveniles. The issue of over-crowding has also been a serious concern, a situation made worse by the large percentage of undertrials in jail. The Commission was, in this connection, heartened by the recent judgement of the Supreme Court which, in the Common Cause vs. the Union of India case (Writ petition (c) No. 1128 of 1986), issued general directions to expedite the disposal of cases pending in criminal courts all over the country. This should substantially reduce the over-crowding caused by the presence of undertrials in the jails.

3.35 The Commission has noted with concern that a number of complaints received by it have alleged inconsistency in the interpretation and implementation of the law and rules governing premature release, especially of those serving life sentences. While Section 433-A Cr. P.C. lays down the minimum period of a sentence that a life convict has to undergo, the complaints have pointed to arbitrary delays or a lack of uniformity in practice in the matter of eligibility for release. In the light of this situation, the Chairperson recommended in a letter to all Chief Ministers that they undertake a review of the system of

premature release, so as to avoid inconsistencies or delays in the interpretation of the law or the rules relating to this issues.

3.36 The inadequacy of the daily diet allowance of prisoners in police lock-ups also engaged the attention of the Commission. From the information obtained from the States, it appears that this varies from a pittance of Rs 2 to Rs 10 per day. The Commission feels that such a situation should not be allowed to persist. It has accordingly asked the National Institute of Food & Nutrition, Hyderabad, to formulate an appropriate diet scale for under-trials and prisoners in different regions of the country. Specific recommendations will thereafter be made to the various State Governments.

3.37 As indicated earlier, the investigating staff of the Commission made a special report to the Commission regarding the unsatisfactory conditions prevailing in the jails of southern Bihar, concerning which numerous complaints had been received by the Commission. A group of senior officers has been assembled in that State to follow-up on the recommendations made by the Commission which, the Commission would urge, be implemented expeditiously. Further, the investigating staff of the Commission made a special report to the Commission regarding the high-incidence of deaths in Tihar jail, Delhi where 46 persons died between April 1994 and June 1995. The recommendations of the Commission were communicated to the Lt. Governor through a letter from the Chairperson and have stipulated swift action. A new building for jail no. 5 has been completed two years ahead of schedule and has become functional as of 6 March 1996 with an additional capacity of 750. Further, some 130 additional staff have been appointed for the new jail, and the medical staff has been augmented. In addition, arrangements have been streamlined to better ensure the treatment of prisoners from Tihar jail in Deen Dayal Upadhyaya Hospital.

3.38 The condition of homes for juveniles in the Delhi area has also attracted the critical attention of the Commission following a complaint that it received of a death by negligence. After examining the information that it gathered, the Commission noted that conditions in these homes were often volatile and brutal. Reacting to repeated reports in the press regarding these homes, the Commission widened its enquiries and decided to ask the Chief Secretary and other concerned officials of the National Capital Territory of Delhi to appear before it for a comprehensive review of conditions in such institutions. In the course of the ensuing discussions, the Commission was informed that the Lt. Governor had appointed a Committee, on 10 December 1995, to oversee and report upon the functioning of 80 such institutions/homes run by the Department of Social Welfare in the National Capital

Territory of Delhi. The Commission, for its part, suggested the participation by a doctor, nominated by it, to assist in the work of the Committee. It also asked that the report of the Committee be provided to it immediately upon completion. That report has now been received. Upon being analyzed, the Commission will make its further recommendations to the Lt. Governor in regard to the management of these institutions. There may well be need for the Commission to widen its interest in such institutions beyond the nation's capital. From reports that it has received, the problems in Delhi may pale before those in other parts of the country.

3.39 A major concern of the Commission at the time of the writing of its report for 1994-95 had been the condition of jail and centres of detention in Jammu & Kashmir. The Commission had been pressing for transparency in this regard. Since then, the international Committee of the Red Cross has been functioning in the State, alleviating many of the concerns of the Commission. The Commission welcomes the development.

(E) Civil Liberties: Other Recent Concerns

3.40 Those who strive to promote and protect human rights soon begin to see society through different eyes. One of the least attractive attributes of the contemporary world is the prevalence of violence often gratuitous, sometimes deeply rooted, sometimes engineered, but always profoundly hostile to a decent respect for human rights. This report has already had occasion to comment on the effects of violence in areas of terrorism and armed insurgency, in jails and centres of detention; it has referred to the violence of those outside and beyond the law and of those who are sworn to uphold it. Yet the problem of violence is pervasive, and needs to be addressed in its widest terms, as it affects and injures human rights in many ways: through incendiary political statements and goals that generate hatred in society between castes, social and religious groups and communities; through communal riots, in which the apparatus of State sometimes finds itself paralyzed or complicit; through the physical and mental violence that is reflected in female infanticide, in dowry deaths and in daily acts of discrimination against women.

3.41 The Commission is of the view that there is need for the leaders of all sections of society to reflect on this nature of violence and try to address it. For its part, the Commission is seeking to engage their attention in this endeavour, which is intrinsic to the Commission's effort to create a culture of human rights in the country that is based on tolerance and sustained respect for the dignity and worth of the human person.

3.42 In the light of this, the Commission believes that when large-scale violence occurs and lives are lost in acts of murder and mayhem, it becomes the duty of the State to bring the guilty to book in order to establish the principle that the law will apply equally to all and that justice shall prevail. The Commission was dismayed, in this connection, to learn of the decision of the Government of Maharashtra of 23 January 1996 whereby the latter terminated the work of the Srikrishna Commission that had been appointed to investigate the riots that had occurred in Bomaby in January 1993. On 25 January 1996, the Commission indicated that it intended to revive its own investigation into certain complaints relating to those events, which had been suspended after the Srikrishna Commission was constituted. The Commission also asked that the records of the Srikrishna Commission be sealed and kept securely. However, in the light of the petitions that have since been moved before the High Court of Bombay and Supreme Court seeking therestoration of the Srikrishna Commission, the Commission has had, once again, to suspend its own investigations. As of the time of writing this report, the Commission has, in fact, been impleaded as one of the respondents in a petition that has been filed before the Supreme Court seeking the revival of the Srikrishna Commission. As that Commission has already done considerable work, the National Human Rights Commission is in favour of it being revived.

3.43 The protection of civil liberties gives rise to diverse collages. In the past year , the Commission has also been concerned with issues relating to the freedom of speech and expression and the freedom of association.These found illustration, for instance, in an incident that occurred when the Commission was conducting hearings in Nalgonda, district of Andhra Pradesh when elements of the police force deliberately intimidated and beat-up members of the press. The incident was the subject of a formal complaint to the Commission by the Andhra Pradesh Union of Working Journalists, who asserted that members of their association were targeted by the police, which frequently disturbed their work in the interior of the State. The Commission took strong exception to the conduct of the policemen involved in the Nalgonda incident and recommended the prosecution of five of them. From another State, Punjab, a complaint was made by the General Manager of the Newspaper, the Daily Ajit, that an employee, Shri Avtar Singh Mander, had been illegally detained and had "disappeared" after having been picked up from his residence. The same incident was also the subject of a complaint from the Writers in Prison Committe of PEN. The Commission has directed the Government of Punjab to undertake a vigorous and time-bound inquiry into the case and to report back to it.

3.44 The Commission also took suo motu action in respect of Salman Rushdie's latest book, "Moor's Last Singh", after reading press reports that its distribution was being withheld on instructions from the Collector of Customs. Upon hearing from the latter, the Commission issued notice to the Ministry of Home Affairs and to the Central Board of Excise & Customs asking for the facts. In the response, an official of the Home Ministry stated that "the Home Ministry is of the view that there is no question of violation of human rights involved in this matter. It is also of the view that the matter does not fall within the purview of the mandate of the NHRC as defined under the Protection of Human Rights Act". The latter added that, in any case, after a careful consideration of the likely impact of the book the Government "have now taken the view that we may permit entry of the book into the country". The Commission's view as to its competence under the Act differs from that of the Ministry of Home Affairs on this matter. The Commission is, however, gratified at the outcome.

IV. REVIEW OF LAWS, IMPLEMENTATION OF TREATIES AND OTHER INTERNATIONAL INSTRUMENTS OF HUMAN RIGHTS

(A) *Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA)*

4.1 The report of the Commission for the year 1994-95 gave a detailed account of the evolution of its views on the Terrorist and Disruptive Activities (Prevention) Act, 1987 and of the grounds on which, in the words of a letter from its Chairperson to all Members of Parliament on 20 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 23 May 1995.

4.2 Yet the problem remained, even after that date, that many thousands of undertrials remained in jail in various States and the Union Territory of Chandigarh under the provision of TADA, and that their situation was in danger of being forgotten. The Commission therefore started gathering data in regard to all such persons, who numbered 6060 on 30 June 1995. The Commission acted thereafter in three ways. First, it urged that the Review Committee set-up in individual States indeed meet regularly, as had been directed by the Supreme Court. Second, it interacted with those States where the periods of detention were the longest and the number of detainees were the largest, urging an increase in the number of trial courts. Third, the Commission rendered a notable decision on this matter on 27 February 1996, laying down detailed directives on how to deal with questions of bail in regard to TADA.

cases, In consequence, the situation of undertrials held under TADA has substantially improved.

(B) Armed Forces (Special Powers) Act, 1958

4.3 The Commission received a representation against the Armed Forces (Special Powers) Act, 1958, when it visited Nagaland in April 1995. The non-governmental organization which submitted the representation asserted that the provisions of the Act gave virtually unlimited powers to personnel of the security forces to conduct searches and to arrest without warrant, to detain and even to shoot to kill, on grounds of committing or on suspicion of committing, certain offences. It was mentioned to the Commission that a petition challenging the constitutional validity of the Act was pending in the Supreme Court, but no copy of that petition was given to the Commission despite the latter's requests for such a copy and the publicly declared readiness of the Commission to intervene in the Supreme Court in respect of that petition. Acting on its own, therefore, the Commission has begun a process of examining the Act and the representation that it has received, on which it has asked for the comments of the Central Government . Furthermore, the Commission has received a detailed analysis of the Act that has been prepared by the South Asian Human Rights Documentation Centre. The Commission intends to study the law most carefully and to make its recommendations known thereafter.

(C) Narcotic Drugs & Psychotropic Substances (NDPS) Act, 1985

4.4 Upon receipt of numerous petitions alleging prolonged and unreasonable detention under the UNPS Act, the Commission undertook an examination of the provisions of that Act . The Commission's interest in this subject was heightened by its visit to jails where, not infrequently, those held under the Act clamoured for the attention and intervention of the Commission. An exchange of views was, accordingly, initiated by the Commission with the Ministry of Finance with the purpose of expediting trials. The Commission is gratified that the Ministry of Finance has framed a set of proposals for amending the Act to achieve this end and to introduce a system of better graded punishment. As the Commission has concluded that there was an inadequacy of courts to deal with NDPS cases, it made specific proposals suggesting that the numbers of such courts be increased in certain States/Union Territories. The Commission noted with satisfaction that its recommendations have contributed to a positive effect. Whereas in April 1995 there were 48 courts dealing with NDPS cases, by 31 March 1996 the number of such courts had increased to 95. The

Commission nevertheless recommends that more courts should be designated to deal exclusively with NDPS cases. Furthermore, in certain States-such as Uttar Pradesh-where there is an absence or serious shortage of special courts dealing with NDPS cases such courts needs to be established, or augmented.

(D) *Representation of Peoples Act,1951*

4.5 After the announcement has made that elections would be held for the eleventh Lok Sabha, the Commission received a petition seeking its intervention to permit undertrial prisoners to exercise their franchise. The Commission gave consideration to this petition. It noted that, under section 62(5) of the Representation of People Act 1951, no person shall vote at any election if he is confined in prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police. The Commission further noted the view of the Supreme Court as expressed in the Mahendra Kumar Shastri vs. Union of India (AIR SC 1983, page 299) that confirmed the reasonableness of this provision. In the light of this, the Commission advised the petitioner to seek his redress either in court, or through appropriate changes in the law.

(E) *Child Marriage Restraint Act,1929*

4.6 The Commission took suo motu action upon reading reports in the newspapers of the large-scale performance of child marriage in Rajasthan despite the existence of the Child Marriage Restraint Act, 1929. Upon obtaining a report from the State Government, and making an analysis of the Act, the Commission has engaged in detailed discussions on the subject, with the participation of the Chairperson of the National Commission for Women and the competent Ministries of the Central Government. It is the initial view of the Commission that the Act needs to be amended in order to make the offence cognizable and non-bailable, with trial being held in a Session Court. It is also the view of the Commission that there is need to decentralize executive powers and other responsibilities under the Act, in order to facilitate reporting on child marriages; there is, in addition, need to devolve powers to NGOs and responsible persons at the panchayat and village levels in order to prevent child marriages from occurring. The importance of free and compulsory education until completion of the age of 14 years, as directed by Article 45 of the Constitution, has also been stressed by the Commission as a way of checking child marriages. Furthermore, the highest importance should be accorded to the introduction of a system requiring the compulsory registration of marriages, as this could impede the practice of child marriage. The Commission

understands that the National Commission for Women and the Department of Women & Child Development have prepared a draft Marriage Bill with a view to consolidating and amending the law relating to marriage in India. That draft Bill, which is at present being examined by the Home Ministry and the Law Ministry, contains provisions for the compulsory registration of marriages. This Commission recommends early action on that draft Bill, as it believes that the provision contained in it can have a substantial impact in reducing the incidence of child marriage.

(F) *Implementation of Treaties & Other International Instruments*

4.7 India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of 1966. The country is also a party to the Conventions on the Elimination of Racial Discrimination of 1965, on the Suppression and Punishment of the Crime Apartheid of 1973, on the Elimination of All Forms of Discrimination against Women of 1979 and the Rights of the Child of 1989. In the course of the year under review, the country submitted the periodic report due from it under the International Covenant on Civil and Political Rights.

4.8 The Commission remained consistently mindful of the commitments of the country under the treaties to which it was a party, as also of the more general principles of conduct relating to human rights which had been elaborated in international forums with the full participation of India. A Member of the Commission was, for instance, present at the Fourth United Nations Conference on Women, 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 Convention on the Elimination of All Forms of Discrimination against Women, a matter to which the Commission attaches the highest importance.

4.9 As a reading of the present report will indicate, on every issue of consequence, ranging from terrorism to the treatment of persons in custody, from civil liberties in all of their variety to the right to development, from the rights of women to the rights of the child, this Commission has, as a matter of instinct and of practice, weighed the implications of the Constitution and of the nation's international undertakings, in formulating its views and making known its recommendations. It considers this to be essential in the discharge of the responsibilities entrusted to under its Statute.

V. RIGHTS OF THE CHILD

5.1 During the year underreview, the Commission made a concerted effort to come to grips with the major social problems affecting adversely the rights of the child. Reference has already been made to the issue of child marriage in Section IV(E) above. In the present section, the report will concentrate on three other issues: female foeticide and infanticide, child prostitution and child labour.

(A) *Female Foeticide & Infanticide*

5.2 Statistical data reveal that the male/female ratio in India has deteriorated from 1000:972 in 1901 to 1000:927 in 1991. They do not begin to reveal the staggering cruelty and the violation of the rights of the girl-child implicit in these facts, the societal pressures and tensions in those parts of the country where the female child is more readily aborted or killed, or the long-term damage that this violence is doing to our society.

5.3 In the course of the past year, two reports in particular seized the attention of the Commission on this painful subject. The first, written by a non-governmental organization, Adithi, related to the situation in Bihar, the second, written by the Madras School of Social Work, covered the situation in parts of Tamil Nadu. Action on these reports, the Commission decided to examine all aspects of this problem in-depth, with a view to formulating recommendations for action. In this task, the Commission is working closely with the National Commission for Women and the Department of Women & Child Development. It is also being assisted by the Madras School of Social Work, which is extending its study of Tamil Nadu to other parts of the country, in order to provide the Commission with the best possible research data upon which to base its views.

5.4 In the meantime, faced with the widely, prevalent misuse of sex-determination tests to commit female foeticide, the Commission approached the Medical Council of India to take a position on the ethical aspects of such tests. After reviewing the matter, the Council has decided to suggest suitable amendments to the regulations governing the code of medical ethics, in order to enable the undertaking of disciplinary proceedings against errant doctors.

(B) *Child Prostitution*

5.5 In recent times there has been a growing awareness in the country of the menacing dimensions and implications of child prostitution. This awareness is not, however, always reflected in the work of official agencies or recorded in their data. Alerted by press reports to the alarming increase in child prostitution in Tamil Nadu and Goa, the Commission issued

notice to the two State Governments and to the Department of Women & Child Development, Government of India, calling for reports on the situation. Astonishingly, in their brief replies, both the Governments of Tamil Nadu and Goa stated that there were no reported cases of child prostitution in their States.

5.6 This chasm, between reality and the application of the law, afflicts many aspects of the life of the nation. The issue of child prostitution-as the replies from Tamil Nadu and Goa indicate-is no exception. The Commission is of the view that the realities should be faced, and that the law and the actions of the State should be made more relevant to the remedying of problems, especially when fundamental issues relating to human rights are at stake.

5.7 This is not the occasion to provide detailed facts and figures on the incidence of child prostitution, the methods employed to sustain and protect this evil practice, the manner in which the underworld conspires to funnel children from tribal areas, certain communities and even neighbouring countries into India for this purpose; nor is this the occasion to name the communities and groups in our society that acquiesce in child prostitution. But it is the occasion to state that the problem is serious and getting worse, and that in an age of AIDS and even of sex-tourism organized from abroad, it can rapidly become grave.

5.8 This is why the Commission has decided to have this issue considered on a regular basis by a Core-Group comprising, inter alia, the National Commission for Women, the Department of Women & Child Development, selected NGOs and UNICEF. The Group is, inter alia, considering the adequacy of existing laws and the ways of improving their enforcement; the necessity of making progress on issues such as child marriage and the registration of marriages; the holding of public hearings, seminars, workshops; the targeting of specific areas and segments of society most involved in child prostitution, the need for free and compulsory education until the age of 14 years and the creating of an impetus for this purpose; and detailed measures for the care and rehabilitation of those weaned away from child prostitution. It is evident to the Commission that the question of child prostitution is going to assume an increasingly central place in the pre-occupations of the Commission.

(C) *Child Labour*

5.9 The Commission perceives that there is a growing recognition, in the senior-most policy-making circles of the country, of the need to end child labour, starting with those employed in hazardous industries. This has led to the approval of a series of constructive

measures by the Central Government, which the Commission commends. These include, amongst others; a major programme to end child labour in respect of 2 million children working in hazardous occupations by the year 2000, for which it is proposed to allocate some Rs. 850 crores by that year; the constitution of a National Authority for the Elimination of Child Labour (NAECL) which has adopted a detailed plan of action requiring the convergence of services andschemes of the Central & State Governments at the implementing level; and a National Child Labour Project (NCLP) which is being undertaken in 1 different areas of the country.

5.10 The question which the Commission asks itself is whether the stated objective of ending child labour in hazardous industries will indeed be achieved by the year 2000 on the basis of the present approach and whether and how the country will be prepared to deal with the much vaster problem of child labour in other occupations as well-the estimate of those so working varying from 50 million to a number much higher.

5.11 To seek an answer, the Commission has, on the one hand, studied the situation in most of the major areas of the country where child labour is prevalent in hazardous industries and, on the other, it has focussed itsattention on one particular area, Ferozabad district in Uttar Pradesh, where upto 50,000 children were reported to be working in the glass-works/bangles industry. In the latter, it has encouraged the State and the Central Governments to apply and to converge all of their relevant schemes, in order to eliminate child labour, in a clearly defined area, within a foreseeable time-frame of five years.

512 The Commission, which has monitored thesituation in Ferozabad carefully, boththrough visits and through regular meetings-involving Central,State and district level officers in addition to UNICEF-is of the view that success is possible in that district. But the Commission is not yet convinced that the goal will beachieved. The elimination of child labour, even in a circumscribed area and in a single hazardous industry, requires far more than a convergence of theoretically available financial resources. It requires, above all, persistence, dedication and sustained leadership, both official and non-governmental, that has to be proven over aperiod of time. And it requires far greater evidence that has been revealed so far of a determination to enforce the laws of the country in respect of child labour, most notably the Child Labour (Prohibititioon & Regulation)Act, 1986, under wich, todate, there have been conspicuously few prosecutionsand lamentably fewer convictions.

5.13 It is foreseen such as this that the Commission has taken a supplementary and in a sense, a different approach to that of Government. In addition to the present governmental, schemes, the implementation of which is most important, the Commission remains of the view that the problem of child labour will persist-including possibly in the hazardous industries until the reality of free and compulsory education for all upto the completion of the age of 14 years is realized.

(5.14 This issue is of such critical significance to the Commission that it has been the subject of a letter dated 11 January 1996 which the Chairperson addressed to the Presidents of all the major political parties in India Annexure V). In it, he observed that despite the promise of Article 45 of the Constitution, forty-five 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 therefore urged that definite steps be taken, in the next Parliament, to give comprehensive legislative backing to the Directive Principle contained in Article 45 of the Constitution. The Commission would like to repeat this recommendation now, realizing full well that this will require an adjustment of national priorities and, indeed, real-deployments of national resources.

5.15 In taking this stand, the Commission is most respectful of the fact that the Department of Education has, in the past, deliberated on this matter carefully and that, instead of all-India legislation on free and compulsory education, it has chosen to adopt a different strategy to achieve the goal of the "universalization of elementary education". The details of that strategy were outlined in the "action-taken" report submitted to Parliament on the report of this Commission for the year 1994-91.

5.16 In the view of the Commission, however, the time has come for a serious debate in the country on this issue, for on it can depend the future of our children and indeed of the country itself. The election of a new Parliament will provide an appropriate opportunity for such a debate. The Commission would urge therefore that its views be taken fully into account, in the interests of protecting the rights of millions of Indian children who may otherwise remain trapped in the cycle of child labour and poverty.

VI. (A) *Promotion of Human Rights Literacy and Awareness*

6.1 One of the most far-reaching responsibilities entrusted to the Commission under its Statute is that contained in Section 12(b) which requires the Commission "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".

6.2 In the course of the year under review, the Commission greatly intensified its activities to give meaning to this responsibility, but even as it did so, it remained deeply conscious of the inherent difficulties involved in creating an "awareness of the safeguards available" for the protection of human rights in a country where some 48% of the population remains trapped in illiteracy (1991 Census) and vast numbers of our compatriots lived below the poverty level. Indeed, in this endeavour as in others, the Commission could not but observe that a clear linkage existed between the creation of a society that was just, in economic, social and cultural terms, and one in which a culture of human rights could take, be sustained and flourish.

6.3 This being said, there was a need not to be intimidated by the task at hand and the Commission thus decided to make efforts on as broad a front as possible. In doing so, it kept in mind the requirement, that when it came to human rights education, the weak had to be informed of their rights in order to learn how to defend them, while the strong had to be informed of these rights in order to learn how to respect them.

6.4 The Commission's efforts to mobilize the education system on behalf of human rights began to bear result in the course of 1994-95 with the active support of the Human Resource Development Ministry. This followed continuing contacts over the past year with the Department of Education, Ministry of Human Resource Development, the National Council for Education, Research & Training (NCERT) and the National Council for Teacher Education (NCTE) in regard to the manner in which human rights values could be introduced into the schooling system of the country.

6.5 As a start, the Commission had asked that the NCERT undertake a review of existing text-books with a view to eliminating from them those passages that were inimical to human rights or that distorted them. Steps have simultaneously been initiated to encourage the inclusion of alternative material, which shows a genuine sensitivity to human rights.

6.6 The next step undertaken by the NCERT was the preparation of a SourceBook on Human Rights as a guide for teachers and other academics, a project in which the Commission fully collaborated, making specific suggestions as to its contents. The Source Book is now published. The NCERT will shortly be issuing the Hindi edition of the Source Book.

6.7 The Commission has recommended that the Source Book be translated into the other languages listed in the Eighth Schedule of the Constitution. Education being a State subject, the Commission has, further, interacted with the State Councils for Education, Research & Training (SCERTs) to sensitize them to their responsibilities in the preparation of text books and other reading materials to be used in the schools of their respective States.

6.8 The NCERT has indicated that it intends making human rights the theme for the next annual awards for authors writing books for children . The Commission welcomes this move, as also the decision of many educational institutions to observe 10 December each year as Human Rights Day.

6.9 A significant development in the past year has been the organizing, for the first time even, of a national-level training programme on "Human Rights and National Values for Teacher Educators". Some 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.

6.10 As regards the university-level, the Chairperson of the Commission wrote to all Vice-Chancellors asking them to see how best they could include human rights in the curriculum at the under-graduate and post-graduate levels and promote research, seminars and publications on human rights. The National Law School in Bangalore is already a pioneer in this field. In the past months, a number of other universities responded with positive answers, including Bombay, Burdwan, Cochin, Dumka, Guwahati, Lucknow, Pune, Punjab, Tirupathi, Utkal and Varanasi, all of which have introduced courses on human rights.

6.11 During the preceding year, 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-panelsof the UGC are also considering this matter. In the meantime, the UGC has identified 10 universities which will be assisted in establishing their facilities for instruction in human rights:These are: Andhra University (Waltair), Pujab University(Chandigarh), Jammu University, Aligarh Muslim University, Cochin University, Banaras Hindu University, Delhi University, Rajasthan University (Jaipur), Karnataka University (Dharwar) and Kurkshetra University. The Chairperson has been in touch with the Vice-Chancellors of these Universities, five of whom have already submitted detailed proposals to the UGC.

6.12 As regards distance education, the Commission has been informed by the Department of Education that the subject of human rights can also form part of the modules for social science courses, run by the National Open School, at the secondary and senior secondary level. The Commission welcomes this possibility as it believes that all possible means available o the country for educational purposes should be utilized for the propagation of human rights literacy. The Commission is thus also 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.

(B) Human Rights Education for Police Personnel

6.13 High priority has been accorded by the Commission to the training and re-training of police personnel, so that they show, in their daily work, an increased sensitivity to human rights considerations. As a result, there is a growing emphasis on human rights education in the programmes of the Sardar Patel National Police Academy in Hyderabad and in other police training institutions around the country.

6.14 The Commission has, however, felt that there is need to furtherimprove the standards of training and to bring about a certain uniformity and consistency in the training curricula. Accordingly, after elaborate discussions with all f the Directors General of Police of the States and Union Territories, a three-tier model syllabus has been prepared for Constables, Sub-Inspectors/Inspectors, Deputy Superintendents of Police and other senior officers. The model syllabus has been circulated to all State Governments with the recommendation that they adopt it for the training of the police personnel in their respective States.

(C) Human Rights Education for Para-Military and Armed Forces Personnel

6.15 The Commission continued to remain in close contact with the leadership of the para-military forces in the country, and with the army, in regard to the training of their personnel in human rights matters. In particular, the Commission interacted with the Director-General of the Border Security Force, and participated in course organized by the BSF at its Headquarters in Tezpur. The Commission had already had occasion to welcome the involvement by the BSF of the International Committee of the Red Cross in its training programmes. The Commission is continuing to encourage other para-military forces to step-up the training of their cadres in human rights.

6.16 Recently, the Commission organized a debate on human rights that involved the participation of teams not only from the BSF but also from the Central Reserve Police Force, the Indo-Tibetan Border-Police, the Central Industrial Security Force. It is the intention of the Commission to organize an annual event involving these participants with a view to engaging their continuing interest in the issue of human rights. The feasibility of holding such exercises on a regional basis and also more frequently is under examination.

6.17 The Commission's contacts with the Chief of Army Staff and other senior officers have borne positive results. There is a greater sensitivity at all levels of the need to respect human rights and this is finding increasing expression not only in the instructions from the senior-most levels of the army but in the daily conduct of the armed forces. The Commission is the first to recognize the dangerous and often ambiguous situations in which the armed forces of India have often to function. It is gratifying though to observe that there is an increasing realization that the defence of the country, its unity and territorial integrity, all require an abiding respect for the rights of its citizens. The Members of the Commission have therefore availed of every opportunity to speak to gatherings of armed forces personnel and they have been gratified to observe that senior officers of the army have readily attended discussions organised by the Commission.

(D) Political Parties: Adherence to Human Rights

6.18 The Commission attaches great importance to the support that it can solicit from the leader of all political parties represented in Parliament and the Legislatures of the States. It has observed that these leaders, by the example they set, can create a most powerful force for the promotion and protection of human rights. If that example, however, is inimical to such rights, the consequences can be tragic to the nation. Accordingly, all political parties

were requested to constitute 'Human Rights Cells' at the Central, State and District levels for promoting and protecting human rights and for overseeing the conduct of their members. Each party was also requested to designate a senior leader to liaise with the Commission in regard to human rights matters. In the course of the year, the Commission arranged a meeting at its Headquarters with leaders of all major political parties. They expressed a high sense of concern for the promotion of such rights and assured the Commission of the fullest cooperation of their respective parties. The Commission made specific recommendations as to the manner in which they could monitor the conduct of their cadres and also remain in touch with the Commission. It is the intention of the Commission to continue to hold periodic consultations with the leadership of all political parties.

(E) Seminars and Workshops

6.19 A most constructive two-day seminar was jointly organized by the Canadian 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". In addition to delegations of the two Commissions, the seminar was attended by the Special Advisor on National Institutions to the UN High Commissioner for Human Rights and a former Member of the Philippines Commission on Human Rights. The quality of the seminar was greatly enhanced by the participation of senior representatives of the competent Ministries and organizations of the Government of India and also of the Armed Force. The Commission was particularly appreciative that three State Commissions were represented and that leading human rights activists, drawn amongst others from the Commonwealth Human Rights Initiative and non-governmental organizations such as the People's Union for Civil Liberties and the South Asian Human Rights Documentation Centre, participated fully in the discussions, as did representatives from the academic community, UNICEF and other organizations. The papers and proceedings of the seminar will be published as a joint production of the two organizing Commissions.

6.20 The Commission supported a number of seminars/workshops organized by research institutions, non-governmental organizations or universities in selected venues around the country, including Bhopal, Bhubaneshwar, Bombay, Burdwan, Calcutta, Cuttack, Delhi, Gulbarga, Indore, Jammu, Kochi, Madras, Maduri, Patna, Rourkela, Tirupathi, Thiruvananthapuram, and Varanasi. In each such case, the Commission participated in the proceedings either through the presence of its Chairperson or Members, or senior officers of the Commission. In additional instances, the Commission cooperated with agencies

sponsoring the visit to India to India of professors and human rights activists from abroad including, for instance, distinguished professors from the universities of Yale and Nottingham.

(F) Publications and the Media

6.21 The Newsletter published by the Commission in English and Hindi, appeared unfailingly each month, providing a continuous flow of information on the work and preoccupations of the Commission to a lengthening list of readers, both at home and abroad. Indeed, the Commission was agreeably surprised-and somewhat overwhelmed -by the demand for this publication, whose print-order and number of pages it intends to increase. Not only was the Newsletter of interest to human rights activists, non-governmental organizations, the academic community and the media but it was also increasingly read in political and administrative circles. The Commission was particularly struck by requests from the armed forces, para-military forces and the police for increased copies of the Newsletter, which it readily supplied.

6.22 The Commission worked with Doordarshan on the possibilities of a documentary on human rights, which is now under production. A feature for All-India Radio has already been broadcast, both in English and Hindi, on the national hook-up. An audio spot and a video spot are being finalized. Several requests from private producers for the production of programmes on human rights are being examined.

6.23 A pamphlet on the composition, functions, powers and major activities of the Commission has been published in thirteen languages of India.

6.24 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. This system is being consulted increasingly by researchers, public servants and others interested in human rights matters.

6.25 The Commission has every reason to be grateful to the media for its alert and sensitive coverage of human rights issues, including the work of this Commission. There has been a perceptible increase in the coverage of such issues and a greater depth and understanding of their range and variety. In some 250 cases this year, the Commission took suo motu action upon reading items appearing in the press: this gives an indication of the

Commission's reliance on, and respect for, the work of the media. The Commission has sought to interact as regularly as it could with senior editors and columnists not only in Delhi but in other parts of the country. It is happy to note that many newspapers and wire services are assigning correspondents expressly to the human rights beat. They can make an inestimable contribution to spreading human rights awareness in the country. The Commission is also gratified that an increasing interest is being taken by television networks to cover human rights stories in-depth. The Commission has, in addition, frequently responded at short notice to requests for comments and views. The Commission is of the opinion that the media is an invaluable associate in its efforts to promote and protect human rights.

(G) Research

6.26 The Statute entrusts the Commission with the responsibility of undertaking and promoting research in the field of human rights. The Commission has identified certain subjects for in-depth research which, in its view, must also be related to practical measures. These subjects, *inter alia*, are child labour, problems of the mentally ill including their rehabilitation, female foeticide and infanticide, the rights of tribal women, the problems of the aged and the devising of ways and means to create a culture of human rights.

6.27 As additional financial resources will be needed to undertake such research, the Commission has been in touch with the Planning Commission on this matter and it hopes that procedural issues raised by the Planning Commission will shortly be resolved.

6.28 In the meantime, the Commission is also drawing on existing resources to commence work in certain of these areas, in anticipation of additional funds being made available to it later. The Commission intends to conduct its research in cooperation with leading institutions/universities of the country.

VII. NON-GOVERNMENTAL ORGANIZATIONS

7.1 Section 12(I) of the Protection of Human Rights Act, 1993 asks the Commission "to encourage the efforts of non-governmental organizations working in the field of human rights". The Commission could do no less, for NGOs are the life and soul of the effort to promote and protect such rights, not only in India but throughout the world. In a sense, National Commission and NGOs are each other's most natural allies and most honest critics. This is as it should be in open societies.

7.2 As far as this Commission is concerned, it has constantly sought ways to engage NGOs in its efforts and to contribute towards theirs. And it is grateful that, in its third year of existence, it was able to work far more closely and constructively with NGOs than earlier, each having gauged the value of the other in the joint endeavour to further human rights and to create in India a society of greater justice and compassion.

7.3 In no area was the involvement of NGOs with the Commission closer than in the submission of complaints, some 375 of which came before the Commission in this manner in 1995-96. They spanned every major concern of the Commission from custodial deaths to fake encounters and disappearances, from child labour to bonded labour and violence against women, from refugees to migrants, from the rights of dalits to those of tribals, from complaints about the way in which a restrictive Act like TADA continued to take its toll to submissions questioning the constitutional validity of other acts such as the Armed Forces(Special Powers)Act. Often the complaints showed high courage on the part of the complainants; frequently they revealed dedicated work in the care of the most vulnerable groups of our society. In every part of the country, the Commission has come to learn that there are persons and NGOs of remarkable fortitude and devotion to the cause of human rights. It is therefore increasingly with their help that the Commission is seeking to form and consolidate a powerful constituency for the protection of these rights in our country. In various sections of his report, including that on complaints (Section-IX), the names are mentioned of certain NGOs with whom the Commission was associated in specific undertakings. But this report cannot adequately begin to list the name of all the NGOs to whom the Commission is indebted for their work.

7.4 In addition to the area of complaints, the Commission looked to NGOs in three other spheres of activity: Studies and reports, human rights education and training, and the creation of human rights awareness. The path-breaking work of NGOs, not least in relation to grave social issues such as female infanticide and child labour, formed the basis of the Commission's appreciation of these subjects, just as their efforts in areas of education and training served to stimulate the ideas and activities of the Commission. On the subject of training, for instance, the Commission was most happy to participate in the effort of an NGO in Madurai, the Society for Community Organization (SOCO), which organized a 15-day training programme in human rights issues for activists drawn from all parts of Tamil Nadu and which, in addition, arranged to have the Commission's Statute and Report for 1994-95 translated into the language of that State. The Commission was, in addition, deeply

appreciative of the interest taken by NGOs in its efforts to draft a new Bill to replace the Indian Prisons Act 1894: some 20 NGOs came to attend the meeting called on this subject in Delhi, while many others attended the meetings on the same subject that were convened in Guwahati and Lucknow.

7.5 In order to establish a ready listing of NGOs actively working for human rights, the Commission appealed in its first Newsletter of October 1994, to such NGOs to provide an indication to the Commission of their main activities, addresses, office bearers etc. The response has been good. Some 317 NGOs have provided such data to the Commission. This should facilitate the strengthening of practical working ties between such NGOs and the Commission, and the preparation of a Register that can readily provide data on this subject to all those who are interested in improving the net-working of those involved in efforts in the field of human rights.

VIII. STATE HUMAN RIGHTS COMMISSIONS,HUMAN RIGHTS COURTS AND DISTRICT COMMITTEES

8.1 In the past three years, the existence of the Commission has created a great surge of interest in human rights, a desire to understand them, and to assert them. Not unexpectedly, there has been a spurt in complaints addressed to the Commission, of which greater details are provided in Section IX of this report. Since the Commission receives complaints in all languages and these can be addressed to the Commission in any format or by the means most readily available to the complainants, many of these complaints require to be translated, and sometimes clarified, before they can be acted upon.

8.2 In a vast, pluralistic country such as India, the redress of grievances must be swift and near to home. Much time, money and energy can thus be saved and better services rendered if State-level Human Rights Commissions are established, as the Protection of Human Rights Act, 1993, envisages. The National Commission, for its part, has therefore continued to encourage this process and it is pleased to record that, by 31 March 1996, State Human Rights Commission had come into existence in West Bengal, Himachal Pradesh, Madhya Pradesh and Assam, in that order. The Commission recommends that other States follow suit. Further, Human Rights cells had come into being in the States of Andhra Pradesh and Kerala and in the Union Territories of Daman & Diu and Dadra & Nagar Haveli. Earlier, in 1994-95, Human Rights Cells had been set-up in the National Capital Territory of Delhi and in the State of Jammu & Kashmir.

8.3 As regards the mechanism for the redressal of human rights grievances in Union Territories, the Ministry of Home Affairs had taken the position, in commenting on the report of this Commission for 1994-95, that the best way of proceeding may be through the extension of the jurisdiction of the State Commission of neighbouring States into the adjoining Union Territories , as has been done in respect of High Courts. However, as many States have, themselves, been slow in setting-up Commissions, the National Commission would recommend that, in the interim, the Home Ministry should advise Union Territories to establish Human Rights Cells, as has been the case in Daman & Diu and Dadra & Nagar Haveli.

8.4 The Commission is pleased to report that there has been progress during 1995-96 in the notification of Human Rights Courts "for the purpose of providing speedy trial of offences arising out of human rights violations" as envisaged in Section 30 of the Protection of Human Rights Act, 1993. Such Courts, have now been notified in theState of Andhra Pradesh, Assam,Sikkim, Tamil Nadu and Uttar Pradesh. More States are expected to follow suit. TheCommission is in touch with the concerned High Courts with a view to making clear the precise nature of the offences to be tried in such courts and other detailsregarding the conduct of their business.

8.5 The Commission welcomed thecreation of District-level Committees, in which Kerala provided the lead, as a further means of decentralizing the redressal of human rights grievances and attending to them expeditiously and sensitively at the local level. It had recommended that other Statestry to follow the Kerala example. In the course of 1995-96,District level Committee have been established in AndhraPradesh and also in Chandigarh and theAndaman and Nicobar Islands. The Commission recommends that other States and Union Territories should proceed in the same way.

8.6 As the Commission is keen to follow the human rights situation in all regions of the country closely, to act preventively, to redress grievances speedily and to promote a culture of human rights throughout India, it has been examining ways in which it can best decentralize its own administrative machinery. It has thus taken adecision in principle to establish regional offices that could serve the above-mentioned purposes, strengthen liaison with the State Governments/ Union Territories and also help the evolution, in time, of circuit benches of the Commission which could result in the speedierdisposal of the cases filed before it. The Commission intends to follow-up on this decision in the period ahead.

IX. COMPLAINTS BEFORE THE COMMISSION

(A) *Number and Nature*

9.1 The expectations of the people of India in the work of the Commission are most vividly expressed in the number and range of complaints addressed to the Commission, which cover the entire gamut of human rights problems facing the country. During the period, 1 April 1995, to 31 March 1996, the Commission registered 10,195 complaints (including 444 reports on custodial deaths transmitted to it by States agencies), as against 6,987 complaints received by the Commission in the preceding reporting year. Taking into consideration that 1,277 complaints were pending with the Commission on 31 March 1995, a total of 11,472 complaints required the consideration of the Commission in 1995-96.

9.2 By any yardstick, this constituted an extremely heavy case-load. In the course of the year under review, the Commission took up 11,153 complaints for consideration, of which 5,894 were dismissed in limine and 1,178 were disposed of with directions by the Commission to the appropriate authorities for action at their end. In respect of 4,081 complaints, directions were issued calling for further inquiries. Of these, 546 complaints were concluded on receipt of reports from the concerned authorities, or reports of investigation by its own team or on the basis of enquiries held by the Commission itself.

9.3 A State-wise list of cases registered, considered by the Commission, and pending consideration by the Commission, may be seen at Annexure VI. A State-wise list of cases dismissed in limine, disposed of with directions and concluded after consideration of reports and inquiries of various agencies may be seen at Annexure VII. An analysis of the 4081 cases in which the Commission asked for further reports and inquiries is given in Annexure VIII. It will be noted that most of these cases related to the protection of civil liberties and to violence against the human person. It will further be noted that the Commission's insistence on the reporting of every instance of custodial death, whether in police or jail custody, resulted in an increase in the number of such deaths so recorded by the Commission. Each of these reports was meticulously scrutinized, further details sought as needed, or investigations conducted among others by the Commission's own investigating staff, in regard to the activities of which further details are given in Section 9(B) below.

9.4 There has been criticism of the Statute of the Commission because it draws a distinction in the procedures to be followed when inquiring into complaints of human rights violations by the armed forces, or by others. In regard to the armed forces, the Commission

is bound by Section 19 of the Protection of Human Rights Act 1993, which requires the Commission "either on its own motion or on receipt of a petition, (to) seek a report from the Central Government" and, "after receipt of the report,...either not to proceed with the complaints or, as the case may be, make its recommendations to Government". While observing this procedure the Commission has, whenever in doubt about the value of a report submitted to it, sought supplementary reports on the facts or conclusions that it considered to be ambiguous or wrong. Further, the Commission has not hesitated to request the presence of senior officers of the armed forces to appear before it, in order to answer questions in regard to the complaints being considered. The Commission has found that the armed forces have readily complied with requests for further information, whether asked for in written or oral form. Further, in each instance of recommendations being made by the Commission, the Central Government has informed it, as required under the Statute, of the action taken on those recommendations. The Commission has also made public its reports, with its recommendations and the action taken as envisaged by the Statute. In particular, the Commission has informed the petitioner or his representative of the outcome, as required by Section 19(4) of the Act.

9.5 As there has been an increasing interest expressed by NGOs, the press and others that they would like to be kept better and more systematically informed of the decisions taken by the Commission, and the recommendations made by it in respect of individual complaints, the Commission has decided to issue supplements to its Newsletter in order to provide such information on the cases disposed of by it.

9.6 It is interesting to note in this connection that, as yet, there has been no instance of a State Government or other authority refusing to accept or comply with recommendations made by the Commission in respect of individual complaints. In a few instances the initial reaction has been to ask for clarifications, or the re-consideration of certain recommendations. However, in each such instance where the Commission has held to its view, acceptance and compliance have followed. The Commission considers the practices and precedents now being established as most important. That is why it is equally keen to ensure that its more general recommendations, on matters of over-all policy, are also given the fullest and most positive possible consideration by those to whom they are addressed.

9.7 While the Commission has, in the majority of instances, been able to receive the replies and reports that it has called for from the Central or State Governments in good time and in good faith, problems have nevertheless continued to arise in respect of certain

States and issues in regard to which there is tendency to cancel facts, to disown any responsibility of knowledge, and to be perfunctory or dilatory in responding. In such instances, the Commission has not hesitated to take-up matters at the level of the Head of the State Government. Where, in addition, the Commission has detected a pattern of evasiveness or vagueness, it has not infrequently summoned the senior-most officers of the offending State or organization to its Headquarters to answer personally to the Commission.

9.8 It is also in such situations that the Commission has, increasingly, turned to its own investigating staff, an account of whose work follows below.

(B) Efforts of the Commission's Investigation Team

9.9 Section 11 of the Protection of Human Rights Act 1993 provides that the Commission will have an investigating staff "under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission". Rule 18 of the Commission's Procedural Regulations lays down that the investigating team will, in addition to a Director-General, consist of the Deputy Inspector General of Police, 2 Superintendents of Police, 6 Deputy Superintendents of Police and 24 Inspectors of Police and such other categories of officers as the Commission from time to time decides. Further under Rule 18, "The Commission may, in any given case, appoint an appropriate number of outsiders to be associated with the investigation either as Investigators or Observers."

9.10 By 31 March 1996, the Investigation Division had a sanctioned strength of 59 (including 1 DG, 1 DIG, 3 SP's - an increase of one having recently been approved, 6 Dy. SPs, 24 Inspectors and 24 Constables), against which 32 posts had been filled. Selection of officers has been a most careful process, the Commission being determined to ensure that only those with impeccable records and reputation would join its Investigation Division.

9.11 Section 17 of the Commission's Statute lays down that the Commission, while enquiring into the complaints of violations of human rights, may call for a report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it. If the information or report is not received within the time stipulated by the Commission, or if it is inadequate or incomplete, the Commission may inquire into the complaint on its own.

9.12 In 1995-96, the Commission decided to investigate 170 cases on its own and to monitor closely a further 706 cases, entrusting the responsibility in both instances to its

Investigation Division. In particular, the Commission asked the Investigation Division to look into allegations of custodial death and rape, torture by the police, excessive use of force in areas of insurgency, mistreatment of inmates in jail or homes for the mentally disabled and police inaction during cases of caste or communal riots.

9.13 The geographic spread of the work of the Investigation Division extended to all parts of the country, from Jammu and Kashmir in the north, to Tamil Nadu in the South, from Nagaland in the east to Gujarat in the west.

9.14 Despite initial misgivings in certain quarters as to whether the police and security apparatus of the country would cooperate with the Commission's investigating staff, such cooperation has by and large been forthcoming. The alternative anxiety, as to whether investigating staff drawn essentially from the existing investigative agencies would be able to establish its own credentials of impartiality has also, in large measure, been overcome by the manifestly fair and fearless way in which the staff of the Commission have been functioning, receiving instructions from no other source but the Commission.

9.15 The results have been positive for the protection of human rights. For instance, during the period under review, on the basis of reports of the Investigation Division, criminal prosecutions have been launched against 22 police officers and recommended against 29 others. Furthermore, departmental proceedings have been initiated in 26 cases and 79 police personnel have been placed under suspension. In addition, also on the basis of such reports, compensation ranging from Rs 25,000 to Rs, 1,00,000 has been awarded to 22 persons in 13 cases. The details may be seen at Annexure-IX.

9.16 As the Investigation Division gains in stature and confidence, the Commission is likely to rely increasingly on it. It will also now make a special effort to associate others as observers, with the work of the Investigation Division, to the extent that this is feasible and appropriate.

(C) Illustrative Cases

9.17 Throughout this report, examples have been given of complaints that have been received by the Commission upon which it has taken action. Examples have also been given of the main thrust of the Commission's concerns, and of its efforts to use to the full the powers available to it under its Statute. Further, as already indicated, in the light of the interest expressed by various groups that the Commission's decisions and recommendations

by made available more systematically to the public, it has been decided that information in this respect will appear regularly in supplements to its Newsletter.

9.18 This being said, the Commission nevertheless considers it essential, as in past years, to include in its Annual Report the gist of illustrative cases which give an idea of the range of the Commission's preoccupations and of the methods that it has employed in seeking to redress the grievances that have come before it.

9.19 The twenty such cases that follow relate, inter alia, to deaths in police and army custody, violence against women including custodial rape and the abuse of a minor tribal girl, instances of torture, the rights of refugees, deaths occurring in hazardous industries including the deaths of children engaged as labour in such industries; discrimination in relation to the remission of life-sentences; instances of "disappearance" and "false encounters", and compensation for the loss of life in a communal riot. In dealing with these cases, the Commission has used a variety of techniques. Apart from calling for reports from the agencies principally concerned and examining these reports meticulously for their contents and credibility, the Commission has not hesitated to summon senior officers to appear before it personally to explain the conduct of their State Governments or organizations. In other instances, the Commission has been constrained to ask that investigations be undertaken by the CBI or States. In yet other instances, it has felt that only investigations undertaken by its own investigation agency would meet the ends of justice and the protection of human rights. In a grave situation, where the Commission felt that a massive violation of human rights was imminent, it did not hesitate to approach the Supreme Court directly, in order to stave off such suffering.

9.20 The gist of selected illustrative cases follows below:

(I) Custodial death of Abdul Gafar Khan in Goa

The Commission received messages from the District Magistrate and the Superintendent of Police of South Goa District in regard to the custodial death of Abdul Gafar Khan, who was arrested by the Margao Town Police at 0005 hours on 17 May 1994 and who subsequently died at around 0200 hours on the same day.

These messages were sent in pursuance of the Commission's direction issued in December 1993 to report cases of custodial deaths to it. Upon perusing these messages, the Commission decided to issue notice to the Chief Secretary, Goa, calling for a detailed report on this incident, along with other relevant documents.

The State Government reported to the Commission in October 1994 stating that Abdul Gafar Khan, who was required in connection with a number of criminal cases, was arrested at 005 hours on 17 May 1994 at Kharebad junction, near the railway crossing. It was further stated that he had allegedly resisted arrest, and that he had to be taken to a hospital at about 0200 hours. He was declared dead in the hospital.

A Magisterial enquiry revealed that Abdul Gafar Khan's death was caused by brutal beating by four police personnel. The post mortem report attributed the death to multiple injuries, which were ante-mortem and which occurred within six hours prior to death. The State Government reported that it had decided the following:

- (a) The Inspector General (IG) of Police would register a case under section 302 of the Indian Penal Code for murder and take all necessary consequential action against the accused police personnel involved in the incident.
- (b) The IG of Police would start an investigation through the Crime Branch and also move the Government of India for a take over of the case by the Central Bureau of Investigation(CBI)
- (c) The IG Police would take concrete steps to prevent recurrence of such incidents, which constituted serious violation of human rights in addition to being criminal offences.

Accordingly, four police officials involved in the incident were suspended from service in June 1994 and necessary cases were registered for murder. In September 1994, the CBI took over the case from the local crime branch for further investigation.

Upon perusing the report of the State Government, the Commission expressed appreciation of the steps taken. The Commission also decided to ensure expeditious investigation by the CBI and to monitor the progress of the case brought under section 302 IPC.

After investigation, the CBI has decided to prosecute a Police Inspector, a Sub-Inspector, an Assistant Sub-Inspector and a Constable involved in the above mentioned incident. The relevant papers have been sent to the State Government by the CBI for according sanction for prosecution under Section 197 of the Criminal Procedure Code. The Chairperson of the Commission addressed a letter to the Chief Minister, Goa in August 1995, requesting him to expedite sanction, which will enable initiation of prosecution in the appropriate court. The sanction has since been received.

(ii) Commission take up cases of custodial deaths in up

The Commission has initiated follow-up action on the basis of Amnesty International's report on 'Deaths in police custody in India in 1994', in respect of a number of cases in Uttar Pradesh (UP). In response to the Commission's notice calling for a report, a senior official of the UP Government sent a report in March 1996 giving details of those cases. The details of one such case are given below.

The Officer-in-charge of Kunwargaon police station and some other policemen reportedly arrested Shyambir Singh, Deshraj and Dharamvir Singh from their village between 3-5 September 1994 and detained them illegally for a number of days in the police station, during which period they were said to have been tortured, Deshraj was subsequently burnt to death on 12 September 1994 by pouring kerosene oil on him. On the basis of the State Government's report, the Commission noted that there was adequate proof to support the conclusion of torture and of the death in custody. The Commission further noted that the police officers tampered with records to show that the arrest was made on 12 September 1994. While a prima facie case of murder was found to have been made out against the State House Officer, the Sub-inspector, Head Constable and a number of Constables attached to the police station, the Commission expressed its surprise that, in spite of this finding, prosecution had not yet been initiated.

The Commission, therefore, recommended that sanction should be accorded for prosecution and that the matter be sent to court. The Commission further recommended that the prosecution should also cover offences in regard to incorrect entries in the station house record. The Commission observed that the brutal murder in police custody of Deshraj by pouring kerosene on him was perhaps without parallel. "It surpassed our imagination as to how, unless there be personal animosity, a police officer should think of putting the accused to death by pouring kerosene oil on him and lighting a match-stick", the Commission's order noted.

While recommending payment of a sum of Rs 300,000 to the next of kin of the deceased, the Commission asked the State Government to recover either the whole or a part of this money from the service dues of the errant police officials. The Commission also asked the State Government not to wait for this recovery while paying compensation.

(iii) Investigation of custodial deaths in Bihar

During a visit of the Chairperson of the Commission to Bihar in August 1994, the State Government had brought to his notice 15 cases involving 17 custodial deaths that had taken place in that state from 1986 to 1991. According to the State Government, police personnel were found guilty in 9 cases while no *prima-facie* case could be established in the remaining six cases. Amnesty International had also included these 15 cases in a report published on this subject.

The list of 15 cases came up for further discussion with State Government officials during the visit of the Commission to Patna on 16 September 1994. Pursuant to the discussion, the State Government submitted, through their letter dated 17 September 1994, up-to-date information on action taken in each of the cases.

The Commission cross-checked this information with the Ministry of Home Affairs. In addition, the Commission sent a senior officer of its Investigation Division to look into some of these cases. He visited Ranchi, Hazaribagh, Jamshedpur and Patna and investigated ten cases. During his investigation, it came to light that, in 4 out of 10 cases, though charge-sheets had been submitted, the cases were dragging-on in courts of law. Some of the officers who had been placed under suspension, had later had their suspension order revoked and been re-posted to where they were. In 4 cases, final reports submitted by the police had been accepted by a Court. Two cases had been handed over to the State CID for investigation and the investigation had been dragging-on for periods of 5 to 8 years.

The Commission accordingly asked the Home Secretary and the Director General of Police, Bihar to appear before it on 6 June 1995 with the full records of the cases. It expressed its displeasure over the fact that certain officers, who were facing criminal charges, had been reinstated and given important charges. The Commission was assured by the Bihar Government that investigation of the cases entrusted to the CID had been expedited. The Commission directed that the officers who were facing criminal charges and released from suspension should be re-suspended. A compliance report has been received from the Bihar Government in this respect. The Commission intends to follow-up on these cases most carefully in order to ensure that justice is done.

(iv) Recovery of compensation amount from errant police personnel responsible for custodial deaths in Tamil Nadu, Orissa and Rajasthan

In a move to bring about the "quick and appropriate" sensitization of police personnel and others, the Commission has taken the view that compensation to be paid in cases of custodial death should be borne by the State but recovered from the delinquent public servants.

In respect of three separate incidents, resulting in the custodial death of Anthonisamy, BabulaDas and Teja Ram Bhil in Tamil Nadu, Orissa and Rajasthan respectively, the Commission suggested to the State Governments concerned that they should consider the recovery of the compensation amounts from the offending police officials. The Commission took the view that if this were done, the exchequer would not be burdened with the liability of paying compensation resulting from the "unauthorized, unlawful and illegal acts of public servants."

The Commission has since received a communication from the Tamil Nadu Government that action had been initiated for the sanction of compensation to the next of kin of Anthonisamy and its subsequent recovery from the guilty police officials. The Chief Minister of Orissa has also written to the Commission stating that compensation, as recommended by the Commission, has been sanctioned to the next of kin of Babula Das who died in Khurda Police Station custody. The Commission awaits compliance of the Orissa Government indicating that recovery will be made. The Rajasthan Government has agreed in principle with the Commission's recommendation on the recovery of compensation from the guilty police officials. The Commission has applied this principle subsequently in a number of similar cases that were brought before it.

(v) Death of Kheshiho Sumi in the custody of the armed forces (Assam Rifles) in Nagaland

Upon the intervention of the Commission, the Ministry of Defence has sanctioned a sum of Rs 100,000/- to the next of kin of Kheshiho Sumi, who died in the custody of the Assam Rifles.

The Commission initiated a proceeding on the basis of a report received by it from the Superintendent of Police, Dimapur, Nagaland indicating the custodial death of Kheshiho Sumi . Upon notice, the Ministry of Defence reported to the Commission that Kheshiho Sumi was arrested on 12 November 1994 from Purana Bazar as he was observed to be moving around in a suspicious manner. Two days later, while he was reportedly being taken

by the Assam Rifles on a mission to uncover the hide out of insurgents, it was stated that Kheshiho jumped from a running vehicle with a view to escaping and was injured in the process. After being found in a ditch, the report added that Kheshiho was taken to the civil hospital, Dimapur but that the doctor on emergency duty declared him dead. According to the defence authorities, the salient fact which emerged from the court of enquiry proceedings was that Kheshiho was actively involved in the activities of the outlawed National Socialist Council of Nagaland (IM) and that he was neither maltreated nor beaten after his apprehension.

Upon perusing the report, the Commission noted that, under the Armed Forces (Special Powers) Act, 1958, admittedly in force in the area, "Any commissioned officer warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area, arrest without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest". Section 5 however requires that any person arrested and taken into custody under the Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

The Commission also noted that the Guwahati High Court in a judgement in the case of Purnima Barua vs. Union of India (1991 CRI.L.J 2675) and others interpreted the term "least possible delay" in the following manner: "Whenever the question "least possible delay" arises for decision in computing the period of time, the Court has to have regard to the particular circumstances of the case-physical impossibility or otherwise-to make over the arrested person to the nearest police station, and how, where and in what circumstances the arrest was effected."

The Commission observed that it was the obligation of the Assam Rifles to hand over Kheshiho to the Dimapur police on 12 November itself after he was arrested, and that they were not entitled to keep him in their custody for carrying out any investigation. The Commission held that the act of keeping Kheshiho in their control after arrest was contrary to the provisions of Section 5 of the Armed Forces (Special Powers) Act 1958 (Act 28 of 1959). The Commission noted that the obligation to make over the arrested person to the civil police without delay itself ruled out the legal authority of the investigation by the Assam Rifles. The Commission, therefore, observed that the attempt to engage the deceased in the search of hideouts of insurgents for two days following his arrest was an unauthorized act. It was also

felt that, as custodians of Kheshihi, who was injured, the Assam Rifles were under legal obligation to provide prompt and adequate medical care. They were found to be negligent in discharging this obligation.

After a detailed analysis of all the facts stated in the report, the Commission observed that:

- i) the "detention of Mr. Kheshiho from 12 to 14 November 1994 was unauthorized and illegal;
- ii) taking him out for recoveries was a part of an attempt to investigate into the alleged offences and was a matter without jurisdiction so far as Assam Rifles are concerned; and
- iii) the explanation about death is not very impressive and at any rate, if due care had been taken, even accepting the fact that he was found unconscious at 5.30 P.M with the injuries said to have been suffered, he might have been saved."

In the absence of positive evidence of assault, the Commission noted that it was not in a position to hold that Kheshiho died on account of physical torture. However, the Commission pointed out that this case involved a violation of law and therefore, recommended compensation of Rs. 100,000/- to the next of kin of Kheshiho Sumi. The Commission has received a report from the Ministry of Defence indicating that its recommendation has been complied with. As indicated in paragraph 4.3 of this report, the Commission has also begun a process of examining the Act and has asked for the comments of the Central Government on it.

(vi) Rape in police custody of T. Uma in Tamil Nadu

On receipt of a report from the Collector, Kamarajar District, Tamil Nadu about the custodial rape of T. Uma by the Head Constable of Alangulam police station, the Commission called for a report. The Government of Tamil Nadu, through their letter dated 2 May 1995 stated that the accused was placed under suspension and that a case under section 354 and 376 IPC was registered against him on 30 September 1994. It was also stated that the enquiry report on the alleged rape was under examination and that action would be taken against the delinquents, if necessary, and that a report would be sent in due course.

The Commission considered this report in May 1995 and commented adversely on the long delay; it also called upon the State Government to complete its scrutiny of the report expeditiously and indicate its final view quickly.

Subsequently, the State Government reported to the Commission that it had accepted the findings of the enquiry officer and had come to the conclusion that Uma was indeed raped by the Head Constable and that there was reasonable ground for launching criminal prosecution and simultaneous departmental action against him and other policemen who were involved in this incident. Further, considering the indigent circumstances of the family of Uma, the State Government also sanctioned Rs. 100,000 as compensation to Uma.

While accepting the State Government's report, the Commission recommended that the prosecution should be launched without further delay and that the investigation be entrusted to a senior police officer.

(vi) a Alleged rape of Jain Sadhvis: Madhya Pradesh Police asked to follow the spirit of law

The Commission has asked the Madhya Pradesh Government to take cognizance of and to start investigating allegations relating to the rape of two Jain Sadhvis, a matter which was the subject of widespread media coverage. Interpreting the relevant provisions of the Indian Penal Code(IPC), the Commission held that it was not necessary for the State Government to wait for a formal report from the victims or anyone on their behalf.

Sakshi, a Delhi-based non-governmental organization, had earlier drawn the attention of the Commission to this incident and requested it to conduct an enquiry into it.

In an initial examination of the complaint on 26 July 1995, the Commission had felt that the act in question did not come within its purview, as it was committed by a private person. The Commission, however, decided to enquire from the Director General of Police, Madhya Pradesh whether prosecution had been launched in this case or not.

The Director General of Police, Madhya Pradesh reported to the Commission concerning the efforts made by his Department to enquire into the matter. He indicated that a criminal case had not been registered, as the Sadhvis in question were not willing to report the matter to the police. He added in clarification that neither the Sadhvis nor anyone else on their behalf had ever lodged any complaint at the Police Station, Morena or with the Superintendent of Police, Morena.

As the offence of rape punishable under Section 376 of the Indian Penal Code is a cognizable one, the Commission took the view that "the police would be free under their own information to take cognizance and to start investigation."

Accordingly, the Commission addressed a letter to the Chief Secretary, Madhya Pradesh to look into the matter from this point of view and to advise the police to put the law into motion. The Commission further held that even though the victims of rape had not left the order to which they belonged and were not prepared to come to court, it was the duty of the police to follow the spirit of the law and to take effective steps to ensure that crimes, particularly cognizable ones, did not go unpunished.

Upon the intervention of Commission, a case has now been registered by the Madhya Pradesh Police in this matter. Investigation is in progress.

(vii) Alleged rape of Smt. Bhanwari Devi in Rajasthan

Smt. Bhanwari Devi, a 'Sathin' working in the rural areas of Rajasthan under the State Government's Women Development Programme, was allegedly raped by certain villagers for her campaign against child marriage. Later, the District and Sessions, Judge, Jaipur, whose court heard this case, acquitted the persons accused of rape. The press reported this judgement prominently and also reported that a sense of hostility persisted amongst some persons against the victim. The Commission took suo motu action on the basis of these reports and called for a report from the Government of Rajasthan.

The Additional Solicitor General of India informed the Commission that a women's organization, "Vishaka" had filed a writ petition in the Supreme Court in the nature of a public interest litigation, inter-alia, praying that the State of Rajasthan be directed to ensure that free and fair investigation/inquiry was conducted in respect of Bhanwari Devi's case and that suitable guidelines be framed to deal with sensitive issues like the present one, where working women, and more particularly women engaged in the work of social upliftment and advancement, could freely carry out their duties without fear of sexual harassment/abuse.

The Commission received a letter from the National Commission for Women (NCW) indicating that it had taken up this case with the State Government as also the Government of India, and that their intervention had resulted in the sanction by the Prime Minister of a token amount of ten thousand rupees as relief to the victim and also entrusting of the investigation to the Central Bureau of Investigation (CBI). The NCW also informed the Commission that it had provided financial support to the women's organization which took up the litigation on behalf of the victim.

Having perused the relevant judgement of the District and Sessions Judge, Jaipur and having noted the efforts of others, the Commission recommended to the Rajasthan

Government to file an appeal before the High Court of Rajasthan, Jaipur against the acquittal of the accused in the case. The Commission was of the view that acquittal was wrong and was against the facts and the settled position of law. This recommendation was contained in a letter addressed by the Chairperson of the Commission to the Chief Minister, Rajasthan. The Government of Rajasthan has indicated that an appeal has been filed before the High Court.

(viii) Torture and sexual assault of a minor tribal girl from Bihar in Maharashtra

The People's Union for Civil Liberties, Singhbhum unit (East and West), Bihar brought to the attention of the Commission six cases of serious violations of human rights which included, among others, an incident of torture and sexual abuse of a minor tribal girl "Baby" by the relatives of an influential officer of the Bihar Police. The girl was working as domestic help in Bombay at the house of the sister and brother-in-law of the police officer, where she was allegedly tortured by the couple and was also sexually assaulted. There were reports in the press on the hushing up of this matter by the Adityapur police (Bihar) in connivance with the said police officer.

The Commission initially issued notice to the Bihar Government calling for a report. Subsequently, it also sent a Superintendent of Police from its Investigation Division to look into the case.

Upon perusing his enquiry report, the Commission termed the whole episode "shocking" and resulting from "depraved human conduct". As a result of steps taken by the Commission, a case of torture and rape was registered in Raigarh, Maharashtra which was the place of the incident.

The Commission noted down that Baby, an orphan, who is now living with her grandmother in Jamshedpur, would not be in a position to go to Raigad, the place of trial. It further noted that Jamshedpur would also be inappropriate to serve as the venue for a trial as the brother-in-law of the accused was a senior police officer in Bihar. Under these circumstances, the Commission felt that the trial should be transferred to a venue such as Delhi and it moved the Supreme Court in this respect. The Supreme Court has entertained the petition and stayed further proceedings of the trial pending disposal of the transfer petition. Having regard to the trauma of the minor Adivasi girl, the Commission has also provided some interim financial assistance through an NGO, in Ranchi that has agreed to look after her interests.

(ix) Stripping ofteenagers in police lock-up in Kerala

Upon the recommendation of the Commission, the Kerala Government has sanctioned payment of compensation of Rs 10,000 to each of seven boys who were strippedand forced to spend two nights in the police lock-up at Tirunelli in WayanadDistrict. Necessary action has also been initiated by the State Government forrecovering, through departmental proceedings, the total compensation amount of Rs. 70,000 from the delinquent police officers, who have been placed under suspension.

The Commission took suo motu cognizance of press reports which stated that some tribal youths, mostly students, were picked up by the police when they were agitating against the opening of liquor shops in Appappa andwho were treated in a very harsh manner. The Commission also subsequently received complaints in this regard from the Kerala Harijan Samajam, Centre for Human Rights, Legal Aid and Reserach, Keralal and Madhya Pradesh Youth Organization, all of them being non-governmental organizations.

In response to the Commission's notice calling for areport, the Kerala Government accepted that certain boys and girls, peacefully demonstrating in front of an arrack shop, were unnecessarily arrested and the the police constables behaved indecently with them.

As the allegations were prima-facie found to be true, theState Governmentsuspended four police personnel responsible for this incident and ordered a detailed enquiry.

The Commission, after considering the State Government's report, termed the whole episode "reprehensible" and as yet another case of the violation of human rights of the less fortunate in society. The Commission recommended that Rs 10,000/- be paid as compensation to each of the victims and that the money be recovered from the errant personnel.In its reply, the Government of Kerala has tated that necessary compensation has been sanctioned and that efforts are on to recover it from the delinquent officers through Departmental or other appropriate proceedings.

(x) Commission investigates complaints of police high-handedness against the villagers of Mannikere, Karnataka

Investigations into allegations of police excessesagainst villagers of Mannikere, near Belgaum, Karnataka, by a team from the Commission, have resulted in restoring a sense of confidence among the affected villagers.

The Commission's attention was drawn to this matter by a letter from Shri H.K. Patil, leader of the Opposition, Karnataka Legislative Council. In that letter it was stated that, because of police action on 31 October 1995 and later on 1 November 1995, the villagers of Mannikere had fled their homes. The primary school in the village was closed and milk vendors had not been allowed to enter the village. There was an atmosphere offear and panic all over thearea, the letter added.

Following this complaint, the Commission instructed its Director General (Investigation) and Superintendent of Police to visit the affected area to investigate the matter. They visited Mannikere and the adjoining villages and listened to the grievances of the villagers. They also scrutinized all connected papers.

The investigation team noted evidence of over-reaction by the police. A large number of villagers, including women, had been detained in police custody for more than 48 hours. Because of police high-handedness, many of the villagers had left their hearths and homes in fear and panic. The team found that a land dispute, which was compounded by political rivalry, was at the core of the problem. This coupled with police high-handedness led to a siege of Mannikere village. No immediate and tangible efforts were made by the administration to restore normalcy, the team noted.

The Director General (Investigation) later met the Chief Minister and the Home Minister of the State and conveyed to them the views of the Commission. He also met the Director General of Police, Karnataka and other senior police officers and urged them to take immediate steps to restore normalcy in the affected area and instil confidence in the minds of the villagers.

The State administration has assured the Commission that the cases started against the villagers will be reviewd, and thatmesures will be taken to create a sense of confidence. The Commission has expressed its appreciation of this and is keeping a close watch over developments.

(xi) *Mistreatment of Shri Robin Paul of Calcutta, West Bengal*

The Commission took cognizance of a complaint dated 26 May 1995 from Robin Paul, Managing Director,New Read Bank Tea Company Private Ltd., Calcutta, alleging that, on 30 April 1995, members of the Jadavpur police station, led by an Inspector came to his house and misbehaved with him and his family members. The complainant also alleged that the police personnel used "filthy" language and threw away some of his belongings. They

dragged him to Jadavpur police station, where the complainant was informed that he had been brought there for interrogation in connection with a case of alleged assault on Dr. Biswajit Biswas.

Though the petitioner stated that he was not even remotely connected with that incident, the police insisted that he must sign a statement admitting his involvement in that case. Shri Paul said that he suspected the hands of a business rival in organizing the police raid, arrest and misbehaviour with his family members. He also stated that he suffered physical and mental strain because he was produced in court in custody and that he lost consciousness and vomited blood. He was later granted bail by the court.

Upon notice, the West Bengal Police Directorate forwarded the report of the Superintendent of Police of 24 Paraganas, which completely denied the allegations. The Commission noted that the name of the Superintendent of Police who had sent the report figured prominently in the complaint of Shri Robin Paul for threatening and humiliating him in the police station on 30 April 1995. The Commission, therefore, asked the State Government to ensure that an expeditious and an independent inquiry was conducted by the State CID into this case. The Chairperson of the Commission also took up this matter with the Chief Minister of West Bengal.

Thereupon, the State Government got the matter inquired into by the State CID and sent its report to the Commission. According to that report, the police had acted illegally and maliciously and the arrest of Robin Paul, a respectable citizen, was not justified as there was no evidence to proceed against. The Commission felt that the whole exercise had been undertaken to humiliate Shri Paul and that the action smacked of a vengeful approach amounting to a violation of his human rights.

Upon perusing the State CID report, the Chairperson of the Commission wrote to the Chief Minister of West Bengal pointing out the involvement of the then Superintendent of Police, 24 Paraganas, the Addl. Superintendent of Police and an Inspector of Jadavpur police station. The Commission expressed its unhappiness over the fact that senior officers, instead of restraining their subordinate staff and grooming them to respect human rights, were actuallyabetting indiscipline. The Commission suggested the initiation of disciplinary action against all the three officers involved in this incident as this would have deterrent effect on errant officers. The compliance report from the State Government is awaited.

(xii) Killing of CPI(ML) activists in police firing in Begusarai, Bihar

Expeditious investigation into the killing of Communist Party of India (Marxist-Leninist) (CPI(M-L)) activists by the Bihar police personnel at Begusarai, and payment of compensation of the next of kin of deceased and injured persons, has been recommended by the Commission to the Bihar Government.

In August 1995, the Commission took suo-motu cognizance of a press report which stated "5 killed in unprovoked police firing:Bihar CIP(ML)". Subsequently, the Commission also received a complaint from Shri Swadesh Bhattacharya, a Politbureau Member,CPI(ML) alleging that five of his party activists were killed by the Bihar police in a firing on 9 August 1995 during an attack on their party office.

Following this complaint, the Commission sent the Senior Superintendent of Police disperse an unruly mob. The case registered at the police station, accordingly, was cancelled on the basis of his report.

After perusing the State Government's report, the Commission observed that the conclusion reached by the police investigation was "prima-facie untenable". The Commission further observed, "the matter should have been sent to the court and there should have been a judicial determination as to whether Constable Joginder Singh was liable to be punished." The Commission, accordingly, recommended to the Punjab Government that the cancellation of the FIR should be recalled and the matter should be charge-sheeted for trial.

The Commission further observed that the Constable should have used his rifle in such a way that no one was physically injured, even while firing in the discharge of his official duty to disperse an unruly mob. The Commission noted that the State Government's report did not indicate a valid order to shoot. Since the firing was intended to be in air, the Commission observed that the killing of Harbans Singh was a clear case of gross negligence. The Commission, therefore, recommended that compensation of Rs. 1,00,000 be paid to Harkeerat Kaur, the widow of the deceased and also a subsistence allowance of Rs. 1500/- per month during her life time.

(xiv) Commission moves the Supreme Court on Chakma Refugees in Arunachal Pradesh

In response to complaints received by the Commission received by the Commission in 1994 from several non-governmental organizations alleging serious threats to the life and property of Chakma and Hajong refugees from the erstwhile East Pakistan who had settled in Arunachal Pradesh, the Commission called upon the concerned State Government and the

Union Government to accord protection to the person and property of the members of the two communities and to ensure that their human rights were not violated. Details of the Commission's efforts in this regard were mentioned in its report for 1994-95.

In October 1995, the Commission received further complaints alleging serious "State-supported" violations of human rights, particularly the serving of quit notices on the refugees and their subsequent enforcement,. Recognizing the gravity of the situation, the Commission issued a direction to the State Government on 29 October 1995, which was followed by a further direction on 30 October 1995.

Because of apprehensions, however, as to whether these efforts would be effective and sufficient to sustain the Chakmas in their own residential habitat, the Commission decided to approach the Supreme Court of India through a writ petition. The Commission's petition sought to enforce the right to life of about 65,000 Chakma/Hajongrefugees, which they have a right to enjoy under Article 21 of the Constitution, whether they be citizens or not.

The Supreme Court allowed the petition by its judgement dated 9 January 1996, and directed the Arunanchal Pradesh State Government to ensure that the life and personal liberty of each and every Chakma residing within that State be protected. The Court further ordered it to repel any attempt to forcibly evict ordrive Chakmasout of the State by organised groups such as the All Arunachal Pradesh Students Union (AAPSU), if necessary by requisitioning the services of the para-military or police force. The State Government was directed to ask the Centre to provide such additional force as was necessary to protect the lives and liberty of the Chakmas. The apex court further held that the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein except in accordance with law.

The Supreme Court further directed the Arunachal Pradesh Government to deal with the quit notices and ultimatums issued by AAPSU and any other group which was tantamount to a threat to the life and liberty of each and every Chakma, in accordance with law. The Supreme Court also gave directions to State Government in regard to issues relating to citizenship.The State of Arunachal Pradesh has moved an application for modification of this judgement and the Commission has filed its objections thereto.

(xv) Non-supply of relief materials to Kuki refugees in Manipur

The Commission took cognizance of the complaint from the President, Health and Medical Research Development Welfare Union ,Manipur alleging that relief materials for Kuki refugees were not reaching them and that they were being subjected to oppression, torture and killing by Naga militants. The complainant also asked that these refugees to provided with homesand supplied foodgrains, clothing, utensils, medicines and other essential commodities.

Upon receiving notice from the Commission, the State Government reported in detail on the steps that it had taken to redress the suffering of the Kuki refugees. These measures included the construction of 2183 houses for the Kukis. Further, substantial allocation of money was also made to meet the requirements of therefugees. As a result of the special efforts made by the State Government, clothes received by way of gifts, had been distributed in the affected areas.

On a consideration of the State Government's report, the Commission observed that it would like to sensitize the Manipur Government on the need to end the continuing dispute between the Nagas and the Kukis, which was not in the interest of the State and the people at large. The Commission, therefore, suggested that serious attention should be devoted to to task of bringing about reconciliation between the two ethnic groups and called upon the State Government to work to this end.

(xvi) Action in the case of Rohtak fire cracker unit blast in Haryana

The Commission took sup-motu cognizanceof press reports of an explosion at a fire cracker factory in Tohtak,, Haryana on 24 May 1995 and issued notice to the State Government calling for a report. The press reports put the death toll at 23, which included 13 women, 6 chulden and 4 men.

The Haryana Government, on the basis of an enquiry conducted into the circumstances leading to explosion, informed the Commission that a Labor Officer and aLabour Inspectorwere placed under suspension for negligence and the action against the Assistant Director, Industrial Safety and Health, Rohtak, was also underway. Further, the prosecution had been initiated against the Management of Krishna Fireworks for violating the provisions of the Factories Act and the Child Labour (Prohibition and Regulation)Act, 1986. Saftety plans, which provide information about hazardous processes and the preventive measures to be adopted, have now been prepared for all factories. The Labour Department

has been conducting safety seminars and training programmes and has also been giving safety awards to educate and motivate the managements of Industry.

After perusing the State Government's report, the Commission observed that the local officials were either negligent on account of their ignorance or were supporting an unlicensed Fire Works Factory to operate in that area. Stating that this was a clear case of non-implementation of the law, the Commission recommended as an interim measure that a sum of Rs 14,15,000 be paid to the next of kin of the deceased persons and that this money be collected either fully or partly from the factory owner and from the delinquent officers.

The Commission also advised the State Government to frame rules for employment in a hazardous industry. In particular, it said that an insurance policy of Rs. 50,000/- per employee at the cost of the employer should be envisaged, in a same way as was done in the case of the Sivakasi factory by the Supreme Court.

The Commission continues to monitor the progress of the above-mentioned case and proceedings.

(xvii) End to discriminatory treatment in the remission of unexpired portion of life sentence in Orissa

Upon the intervention of the Commission, the Orissa Government has remitted the unexpired portion of the sentence passed on a life convict, Gopal Banerjee, and has ordered his release. The wife of Gopal Banerjee complained to the Commission stating that discriminatory treatment was shown by the Orissa Government in regard to her husband's premature release.

In a sessions trial in 1975, four persons, Gopal Banerjee, Ashit Dey, Amulya Rai and one other were convicted and were sentenced to life imprisonment by the Sessions Judge of Cuttack, Gopal Banerjee was lodged in custody at the Dum Dum Central Jail, Calcutta. Ashit Dey and Amulya Rai were released prematurely in 1989 and 1993 respectively, upon the State Government remitting the unexpired portion of their sentence.

In response to a writ petition filed by the wife of Gopal Banerjee in 1992, the Supreme Court had asked the Orissa Government to take a decision on his release. Thereupon, the State Government, which considered the mercy petition of Smt. Gopal Banerjee praying for premature release of her husband, had rejected the same.

The Commission examined the matter following an application of Smt. Gopal Banerjee and felt that the State Government's stand in the case affected the right to equality of treatment.

The Chairperson of the Commission, in a letter to the Chief Minister of Orissa, drew his attention to the fact that Gopal Banerjee, like the other co-accused, was from West Bengal. As he had spent more than 20 years in a jail situated in another State, there was no occasion for the Orissa police to make any assessment of the possible impact of his release prematurely. While considering the claim of Gopal Banerjee for premature release, the fact that two other co-accused had been so released, had perhaps not been kept in view, the letter noted. The State Government responded in December 1995 saying that the unexpired portion of the sentence passed on Gopal Banerjee has been remitted, and orders passed for his release.

(xviii) Alleged Kidnapping of Jhirmal Singh by Police in Punjab

Upon the intervention of the Commission, the Punjab Police has registered a case against an Assistant Sub-Inspector, who was involved in the alleged kidnapping of Jhirmal Singh.

This followed a complaint lodged with the Commission by Bachan Singh, father of Jhirmal Singh, alleging that his son had been kidnapped by an Assistant Sub-Inspector and some Constables on 17 January 1994 and that his subsequent whereabouts were not known. Since the police had not released him, the complainant urged the Commission to look into the case and issue necessary directions. He stated that he and his son alongwith a group of persons, were returning from a court on that day, when his son was picked up.

The Commission issued notice to the State Government asking for a detailed reply in regard to this incident. The State Government, in its response, indicated that Jhirmal Singh had four cases pending against him in the local court. Two of them were cases involving charges under Sections 302 and 307 IPC respectively; while the others were under an Arms Act Sections 382/34 IPC. In the first 3 cases, he had been granted bail, while in the last one, he had not yet been arrested. According to State Government, Jhirmal Singh reportedly jumped bail and had not yet been traced.

Upon considering the State Government's response, the Commission called upon the complainant to produce evidence in support of his case. According to the complainant, he and his witnesses had been examined in the court on 17 January 1994 and while they were returning, the police picked up Jhirmal Singh, put him in a "gypsy" and drove away. The

Commission checked the court records and found that, on that day, Jhirmal Singh had indeed appeared in the Magistrate's court and had not attended subsequent proceedings.

The evidence of the three witnesses, the Commission felt, indicated in clearer terms that Jhirmal Singh was present with them on that date and was forcibly taken by the Asst. Sub-Inspector and his men. In its directions, the Commission expressed the view that a prima-facie case had been made out justifying the registration of a case. Accordingly, the Commission asked the Superintendent of Police, Sangrur, to initiate prosecution by registering a case in the local police station.

As regards the investigation, the Commission has asked the Punjab Government to entrust it to an independent agency unconnected with the police of the State, in view of the allegation of the complicity of the Asst. Sub-Inspector of Police. As almost 2 years have elapsed since the incident occurred, the Commission recommended expeditious investigation and follow-up action on the basis of that investigation.

The Commission also asked the State Government to ensure that Bachan Singh, members of his family and other witnesses are not harassed and pressurized in any manner. The Commission continues to monitor this case.

(xix) Killing of Jogi Thakur in a fake encounter in Bihar

Upon the intervention of the Commission, a case under Section 302 of the Indian Penal Code for murder was registered against guilty police personnel of Bihar involved in the killing of Jogi Thakur in a fake encounter.

Smt. Urmila Kunwar, wife of the deceased, filed a complaint with the Commission demanding a thorough investigation into the death of her husband. She stated that her husband was forcibly taken away by personnel of the Bihar Police in the night of 26 January 1994. Next morning, he was found dead on the National Highway 28 at Jeevandhara. She further stated that the police had maintained that the death resulted from an "encounter". She also complained that the dead body of her husband was not given to the family members after the post-mortem was conducted.

In response to the Commission's notice to the Bihar Government asking for a detailed report, the Deputy Inspector General of Police, Champaran Region, Bettiah investigated the matter and furnished a report. According to it, Jogi Thakur was arrested by the Kalyanpuri Thana police from his house in village Ahiman Chhapra and the police encounter in village Murdachhar was "a farce".

On the basis of the investigation report, the Commission held that this was a clear case of murder and, accordingly, recommended registration of a case under Section 302 IPC against the delinquent police officers. The Commission also recommended payment of interim compensation of Rs 1,00,000 to the wife of the deceased.

The Bihar Government subsequently reported to the Commission that a case was registered under the relevant sections of the IPC against 132 guilty police personnel. Further, the investigation of the case has been handed over to the State CID. In regard to the payment of compensation to Smt. Urmila Kunwar, the response of the Bihar Government is awaited.

(xx) Compensation to the next of kin of riot victims in Gujarat

Upon the intervention of the Commission, a sum of Rs. 2,00,000/- was sanctioned to the heirs of Gulab Nabi Bandey and Zahir Ahmad Bandey, who died in communal riots in Surat, Gujarat, following the demolition of Babri Masjid.

The Commission received a representation from Bashir Ahmed Mir of Jammu & Kashmir stating that the deceased were his relatives and that they were trading in Kashmiri shawls in Surat, Gujarat where they were killed in communal riots which broke out in December 1993.

Giving details of the efforts made by him to find the whereabouts of his uncle and cousin, Bashir Ahmed Mir complained of inaction on the part of the concerned government authorities and prolonged delay in the dispensation of justice.

The Commission issued notices to the Jammu & Kashmir Government and to the Gujarat Government. The Home Department of Gujarat reported to the Commission that the matter pertained to the Revenue Department and that it was transmitting the papers to the latter for necessary action.

As no response came from the State Government for about four months, the Commission issued summons to the Chief Secretary and the Revenue Secretary to appear in person before the Commission, which they did. Following that hearing, the Gujarat Government reported to the Commission that ex-gratia payment of Rs. 2,00,000/- had been sanctioned to each of the heirs of the deceased.

X. INTERACTION WITH EXTERNAL GROUPS AND ORGANIZATIONS

10.1 The Commission has continued to welcome to its Headquarters a steady stream of visitors, interested in human rights in this country and in the efforts of the Commission to promote and protect them. Not only have members of the diplomatic corps in Delhi remained in touch with the Commission, but a variety of groups, governmental, parliamentary, judicial, academic and non-governmental have exchanged views and ideas with the Commission.

10.2 This is as it should be, for the Commission is strongly of the view that human rights are universal in nature and that nations and peoples have much to learn from each other. Indeed, it is precisely because no nation or region can bring to claim that either its past or its present is without blemish, that there is need for international cooperation in addressing human rights issues-and that there is corresponding need to move away from sterile confrontation, which demeans the entire discourse on human rights.

10.3 In the course of the year under review, the Commission had occasion to hold extensive discussions with the United Nations High Commissioner for Human Rights. Mr. Jose Ayala Lasso, when he visited India in May 1995, there were also contacts with him and with Assistant Secretary-General Mr. Ibrahima Fall in Geneva. The Commission was happy to receive a delegation of the United Nations Committee on the Rights of the Child when it visited India under the auspices of UNICEF. There were discussions between the Commission and various groups, particularly parliamentary, judicial and non-governmental, that came to the country from the UK, European Parliament, to name but a few. The Commission was especially happy to receive a delegation from the Human Rights Commission of Pakistan.

10.4 The Commission is keen to see close cooperation developing between National Institutions established to promote and protect human rights. Following high-level visits between the Canadian Human Rights Commission and this Commission, a Memorandum of Understanding was signed between them, providing for staff exchanges, the sharing of information and documentation, training materials, and the development of stronger links between human rights centres in their respective universities which would enhance the quality of research and study in the two countries.

10.5 In addition, the Canadian and Indian Commissions organized a most useful seminar on Human Rights Education in February 1996, to which reference has been made earlier in this report(see Section 6.19 above).

10.6 As part of its continuing contact with other National Institutions, the Commission was pleased to be represented by a Member at the Third International Workshop of National Institutions, which was held in Manila in April 1995. The value of such Workshops has increasingly been recognized both by the UN Commission on Human Rights and by the General Assembly. In the view of the Commission, they can be of critical value in encouraging the establishment of strong, independent and statutory National Institutions that accord with the principles endorsed by the General Assembly in its resolution 48/134.

10.7 On various occasions, individual Members of the Commission attended international meetings or discussions of interest and consequence to the Commission. Thus, the Chairperson visited North America, the United Kingdom and the United Nations office in Geneva in connection with the work of the Commission. The Commission was also represented at a meeting in Hong Kong, organized by an NGO, the Asian Human Rights Commission, which discussed various issues relating to the Statutes of National Commission. On another occasion, the Commission was represented at a UN Workshop held in Kathmandu, Nepal, on "Regional Arrangements for the Promotion and Protection of Human Rights in the Asian and Pacific region". A Member of the Commission was present at the Fourth United Nations Conference on Women held in Beijing. As in past years, the Commission was also represented at the annual session of the UN Commission on Human Rights held in Geneva, where a statement was made on behalf of the Commission. In a meeting of the Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, which was held in Geneva at the same time, this Commission was accorded the honour of being elected to the Chairmanship of the Coordinating Committee, in succession to the Canadian Human Rights Commission.

10.8 In March 1996, a Member of the Commission, Shri Justice V.S. Malimath, was nominated by the Secretary-General of the United Nations to serve as a Member of a Fact Finding Mission to Nigeria to examine and report on two issues of concern to the international community, namely, (I) the validity of the judicial procedure of the trial of Mr. Ken Saro-Wiwa and others in the context of the various international human rights instruments to which Nigeria is a party and of relevant Nigerian law, and (ii) plans of the Government of Nigeria to implement its declared commitment to restore the country to civilian democratic rule. After completion of the assignment and submission of the report to the Secretary-General Shri Justice V.S. Malimath, has resumed his duties in the Commission.

10.9 The Secretary-General of the Commission participated in a seminar on the Role of the Human Rights Community in Conflict Resolution (South Asia), organized by the Freidrich Neumann Foundation in Strasbourg, France, in December 1995. The Secretary-General and the Director-General(Investigation)paid a one-week visit to the United Kingdom to study questions relating to prison administration and reform.

10.10 The Commission continued to have contact both at home and abroad, with a considerable number of non-governmental organizations concerned with human rights, including Amnesty International and Human Rights Watch (Asia). Likewise, it maintained contacts as needed with the delegation of the International Committee of the Red Cross in India.

XI. ADMINISTRATION AND LOGISTIC SUPPORT

11.1 The administration of the Commission is constantly being adapted to the increasing demands on it. By 31 March 1996, the total sanctioned strength of the staff stood at 250 posts, of which 194 had been filled.

11.2 With the considerable increase in work, efforts are under way to fill the already sanctioned posts. Proposals have also been made to augment the staff in certain areas and some of these have been sanctioned. Additional accommodation will also be required in consequence. As hitherto, the Commission has sought to ensure that the Staff that it recruits have an understanding of the purposes of the Commission and serve it in that spirit. Since it will take time to build and develop a cadre of its own, the Commission has been resorting to different methods of selection: through deputation, contract or direct recruitment.

11.3 Given the unique vocation of the Commission, the diverse nature of its statutory responsibilities and its character and style of functioning, the Commission has commenced a training programme for members of its staff, working in various divisions.

11.4 There has been particular need to develop the linguistic capabilities of the Commission, since it receives complaints in all of the languages inculded in the Eighth Schedule of the Constitution. The Commission has created a Hindi Cell, which apart from working towards compliance with the provisions of the Official Language Act, helps with the translation of complaints received in other Indian languages. During the period under review, 6,700 complaints and reports received in Hindi were translated by that Cell. Furthermore, 1240 complaints in other languages were also translated, with the help of a panel of translators of the Department of Official Languages.

11.5 An indication has already been given in Section 9.10 of the strength of the Investigation Division and of its manpower requirements. The details will therefore not be repeated here.

11.6 The library has seen the addition of a number of important titles in the course of the year relating to subjects germane to the work of the Commission. Valuable books and publications have been contributed to the library by the United Nations, and the Governments of Canada and the United Nations, and the Governments of Canada and the United Kingdom. There are now 1725 books in the library, and the Commission also subscribes to 27 journals, including key legal publications and those of various NGOs dealing with human rights. Further, the Commission subscribes to 21 newspapers published in various parts of the country and abroad, whose key articles are fed into the computerized datasystem of the Commission.

11.7 The computerization of all aspects of the work of the Commission proceeds apace. To cater to increased requirements, the hardware installed in the Commission has been upgraded by the National Informatics Centre (NIC). The 486-system has been replaced by a Pentium system, working at 90 MHz with 64 MS RAM. Ten additional terminals and nine additional printers have been attached to the system, giving a total of 29 terminals and 12 printers.

11.8 The software developed by NIC for the monitoring of complaints received by the Commission (COMMONS) has been upgraded to cater to the growing needs of the Law Division.

11.9 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. The facility will be extended to access the worldwide web over Internet.

11.10 The Commission received a budgetary allocation of Rs 2.25 crore for the year under review, with expenditure amounting to nearly Rs 2.16 crore. In accordance with Section 34(4) of the Satute, the accounts and audit reports will be forwarded to the Central Government for being placed before Parliament.

XII. CONCLUDING OBSERVATIONS

12.1 In this report an account has been given of the major human rights issues to which the Commission has given its thought and attention during the year 1995-96. The ways in which the Commission has sought to deal with these issues and the manner in which it has

striven to fulfil varied responsibilities entrusted to it under the Protection of Human Rights Act 1993., have also been recounted. The views of the Commission and the recommendations that it has made in respect of these matters are contained in the preceding sections of this report. For ease of reference, a summary of the principal recommendations may be seen at Annexure X.

12.2 This report is being completed even as the eleventh Lok Sabha is beginning to assume its responsibilities. It is this Parliament that is meant to provide the bridge to the new millennium, the start of which will also coincide with the fiftieth anniversary of our Republic's Constitution. Will the intervening period and the observance of these historical dates be marked by rhetorical and ritualistic pieties? Or will they see a determined effort to fulfil the promise of our Constitution and do we sufficiently remember that promise?

12.3 The answers to these questions are of more than theoretical interest to this Commission, for on them will depend the nature of the society that India will be, as it enters the twenty-first century.

12.4 The promise of the Constitution is contained in the Preamble itself, in which the people of India solemnly resolved to secure to all of its citizens:

"JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation".

And the heart and soul of the Constitution are contained in its Parts III & IV, which guaranteed to the people of India their fundamental rights and directed their Governments on the principles they were to follow as State Policy.

12.5 At the United Nations World Conference on Human Rights, held in Vienna in June 1993, the view was unanimously adopted, with India's notable support, that "all human rights are universal, indivisible and interdependent and interrelated". But the conditions in which human rights flourish, or perish, lie essentially within the domain and responsibility of individual States.

12.6 The question then arises, how will India exercise this responsibility in terms of its Constitution? This Commission, in its work, has had to seek answers to this question, and

to make its recommendations with this in mind, for human rights do not exist in a vacuum. They are hurt, in any society, when inequity and injustice prevail, whether for social, economic or political reasons or when the law makes some more equal than others and when a few are altogether immune to the law; they are grievously injured when discrimination, violence or exploitation are permitted to blight the lives of the weaker sections of society, whether for reasons of caste, community, gender or even of age. And, perhaps most conspicuously, they are negated-as this Commission has observed-if a situation exists in which vast numbers of the people of our country are allowed to remain unlettered. In an age of unparalleled technological growth, which is dividing the world sharply, once again, between those who will lead and those who will follow, and where education and contemporary skills will determine the place of nations on this planet and individuals within their own nations, the Commission would like to see the situation in our country remedied. For a just society of the kind envisioned in our Constitution requires, above all, equality of opportunity, and education provides, the means of exercising that right, no less than it creates an awareness of rights and a determination to defend them.

12.7 This Commission believes, in the spirit of the Constitution, that the promotion and protection of human rights is essential to the future strength and well-being of each man, woman and child who lives in our country. The energies, both of the country and of each of its citizens, can only be fully released, and their potential realized, if this is borne in mind in the framing of policy and in the daily administration of this great and talented nation. For at the end of the twentieth century, the security and integrity of States require far more than weapons-systems, armed forces and even economic strength. These are all essential, But, in the final analysis, the security of States and their unity and integrity rest on the security and well-being of those who dwell in it, and it is therefore the rights of the latter and the dignity of the human person that must be as inviolate as the external borders of a country.

Sd/-

(Ranganath Misra)

Chairperson

Sd/-

(M.Fathima Beevi)

Member

Sd/-

(S.S. Kang)

Member

Sd/-

(Virendra Dayal)

Member

Sd/-

(V.S. Malimath)

Member

New Delhi

6 June 1996

ANNEXURES

Annexure-I

(Para:3:15)

The list of States with high incidence of deaths in police and jail custody are given below:-

STATES	1994			1995			1996*			TOTAL		
	PC	JC	OT	PC	JC	OT	PC	JC	OT	PC	JC	OT
Andhra Pradesh	6	-	-	9	30	-	2	15	-	17	45	-
Assam	10	2	-	8	14	-	1	3	-	19	19	-
Bihar	1	-	-	6	45	-	2	21	-	9	66	-
Delhi	2	21	-	7	38	-	2	4	-	11	63	-
Maharashtra	-	-	-	8	3	-	3	22	-	11	25	-
Punjab	5	1	-	7	7	-	2	1	-	14	9	-
Rajasthan	9	-	-	5	7	-	1	4	-	15	11	-
Uttar Pradesh	3	-	1	10	11	1	3	12	-	16	23	2
West Bengal	7	1	-	17	27	-	3	10	-	27	38	-

PC: Police Custody JC: Judicial Custody OT: Others

**** From January to March***

Annexure-II

(Para:3:16)

D.O. No. 10053/CH/NHRC/95

18 July 1995

My Dear Basu,

The National Human Rights Commission immediately after its formation had issued instruction to the Chief Secretaries of all the States to report cases of death and rape in police custody to the Commission within 24 hours. It was spelt out in the Commission's letter No. 66/SG/NHRC/93, dated 14.12.1993 that failure to do so would give rise to the presumption that the concerned authorities are trying to suppress such incidents. The Commission is receiving reports regarding deaths in police custody from all the State Governments.

2. From the figures of reports of custodial deaths received by the Commission, it is seen that during the period from April 1994 to May 1995, out of the total 108 deaths in police custody throughout the country, 30 deaths in police custody have taken place only in West Bengal. The number of custodial deaths in West Bengal is thus the highest. This, you will agree, is a disturbing phenomenon. Other States with fairly high incidence of custodial deaths are Assam (14) Rajasthan (9), U.P. (7).

3. I request you to look into the matter and ascertain the reason behind such a high number of custodial deaths in your State and initiate appropriate corrective steps. Taking deterrent action against police staff indulging in custodial violence is immediately called for. I would also like to point out that in respect of 4 cases of custodial death in West Bengal the Commission, despite issuance of reminders, has not so far received replies from West Bengal Government. I would request you to issue instruction to the concerned officers for prompt transmission of information and replies to letters issued by the Commission.

With regards,

Yours sincerely,

-Sd-

(Ranganath Misra)

Shri Jyoti Basu,

Chief Minister,

West Bengal,

Calcutta.

D.O.No.135-CM

Calcutta

August 22, 1995

CHIEF MINISTER

West Bengal

Dear Justice Misra,

I am in receipt of your D.O. No. 10053/CH/NHRC/95 dated the 18th July, 1995. In pursuance of the instructions of the National Human Rights Commission, my State Government issued orders to the concerned authorities in December, 1993, to report all cases of death in police custody to the Commission within 24 hours. You have stated in your letter that 30 deaths in police custody were reported to you from West Bengal. We are checking up these figures and we would also request you to kindly send the list available with you in this regard.

Deaths in police custody are naturally a cause for concern and have always been promptly attended to, by my Government. It may be noted that deaths in police custody are at times due to other factors, like public assault, encounters, suicide, natural causes etc. However, sometimes deaths may occur in police custody due to police torture also. All such instances, when reported, are attended to with promptitude and statutory enquiries are conducted to ascertain the facts, to meet the ends of justice.

Where policemen are found responsible, action has been initiated against them. In the last few years, 18 police officers were departmentally proceeded against and punished. Cases were instituted against 9 others, of whom 3 were convicted by the Courts and 5 were acquitted. My Government is determined to take deterrent action against policemen involved in custodial violence. I have also made a detailed statement on the subject in my Budget Speech for the year 1995-96, in the West Bengal Legislative Assembly.

On all references made by the Commission, no efforts are being spared to send reports promptly to the Commission.

Yours sincerely,

Sd/-

(JYOTI BASU)

Justice Ranganath Misra,

Chairperson,

National Human Rights Commission,

Sardal Patel Bhawan,

Sansad Marg, NEW DELHI-110001.

Annexure-IV

(Para:3.22)

August 10,1995

My dear Chief Minister,

The National Human Rights Commission soon after its constitution in October, 1993, called upon the law and order agencies at the district level throughout the country to report matters relating to custodial death and custodial rape within 24 hours of occurrence. Ever since then ordinarily reports of such incidents have been coming to the Commission through the official district agencies. The Commission is deeply disturbed over the rising incidents of death in police lock-up and jails. Scrutiny of the reports in respect of all these custodial deaths by the Commission very often shows that the post-mortem in many cases has not been done properly. Usually the reports are drawn up casually and do not at all help in the forming of an opinion as to the cause of death. The Commission has formed an impression that a systematic attempt is being made to suppress the truth and the report is merely the police version of the incident.

The post-mortem report was intended to be the most valuable record and considerable importance was being placed on this document in drawing conclusions about the death.

The Commission is of a prima-facie view that the local doctor succumbs to police pressure which leads to distortion of the facts. The Commission would like that all postmortem examination done in respect of deaths in police custody and in jails should be video-filmed and cassettes be sent to the Commission along with the post-mortem report. The Commission is alive to the fact that the process of video-filming will involve extra cost but you would agree that human life is more valuable than the cost of video-filming and such occasion should be very limited.

We would be happy if you would be good enough to immediately sensitise the higher officials in your state police to introduce video-filming of post mortem examination with effect from 1st October, 1995.

We look forward for your response within three weeks.

With regards,

Yours sincerely,

-Sd-

(Ranganath Misra)

To

Chief Ministers of all States, Pondicherry & National Capital Territory of Delhi/Governors of those States under the President's rule.

January 11,1996

Dear Mr. President,

I write to seek your personal assistance and that of your Party in regard to a matter of utmost importance to the National Human Rights Commission.

It relates to the fulfillment of the Directive Principle contained in Article 45 of our Constitution which envisaged that "the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Not ten, but forty-five years have passed since that objective was set. In absolute terms, and despite the considerable efforts made since then to spread and improve the quality of education in our country, one incontrovertible fact remains: the number of those who are, today, illiterate in our country exceeds the entire population of our Republic at the time when the Constitution was adopted.

This grim reality enfeebles our nation in every way, whether civil and political, or economic, social and cultural. At a more profound level, it affects the human dignity and self-respect of vast numbers of our population and exposes them to constant violations of their fundamental human rights. In its most aggravated form, the failure to fulfil the promise of Article 45 of our Constitution finds painful illustration in the tens of millions of our youth, below the age of 14 years, working as child labour, or even as bonded labour, in hazardous or utterly demeaning circumstances.

Given the present demographic realities, our nation faces a most disturbing prospect. Either there is a major qualitative change in our effort to fulfil the promise of Article 45 of the Constitution, or our country runs the risk of ever-increasing numbers of illiterate citizens, with all the attendant consequences, including the massive and continuous violation of human rights, especially of our children, who will continue to be exploited.

In the National Human Rights Commission, we have been most heartened to learn of the many new and very constructive programmes being undertaken in our country to reduce illiteracy and to step-up, in particular, the education of children at the primary level. We are deeply appreciative of these efforts.

Yet, we are of the view, that the time has come to redeem the pledge made in Article 45 of the Constitution and to press for "free and compulsory education for all Children until they complete the age of fourteen years", as the Constitution directed and as the Supreme Court required in its judgement in Unnikrishnan J.P vs. Andhra Pradesh (1992). We realize that this will require an adjustment of national priorities and indeed a redeployment of national resources. But we believe this should be done, and have so recommended in our Annual Report to Parliament for the year 1994-95. We should remember that children have not the capacity to demand and it is our obligation to provide.

Given the proximity of general elections to Parliament and to certain of our States Legislatures, the Commission considers this an opportune moment to seek your assistance in ensuring the early fulfillment of the Directive Principle contained in Article 45 of the Constitution. We would much appreciate if this question could be discussed in policy-making circles of your party and if it could find a prominent place in the objectives that your party sets for itself and for the future of the nation. The Commission would like to see definite steps being taken in the next Parliament to give comprehensive legislative backing to the Directive Principle in question, so that our country is no longer weakened by illiteracy and its citizens, particularly the young, handicapped and their rights violated for reasons of their lack of education.

I should be grateful for a line in response, indicating whether it would be possible for you to pursue this matter along the lines laid down in our Constitution and urged by this Commission and, if so, the steps that your party would consider it possible to undertake in this respect.

With warmest regards and season's greetings.

Yours sincerely.

-Sd-

(Ranganath Misra)

To

Presidents of all the major political parties in India

Annexure-VI

(Para: 9.3)

Statement giving number of cases registered, number of cases considered by the Commission, and number of cases processed but pending consideration by the Commission, during the year 1995-96 i.e. 1.4.95 to 31.3.96.

Sl. No.	Name of the State/UT	Cases pending consideration as on 1.4.1995	No of cases registered		Total (3)+(4)+(5)	No of cases considered	No of cases processed but pending consideration
			Complainants	Custodial deaths/Custodial rapes			
1	2	3	4	5	6	7	8
1	Andhra Pradesh	85	271	55	411	411	-
2	Arunachal Pradesh	4	16	-	20	20	-
3	Assam	28	84	22	134	134	-
4	Bihar	151	1016	75	1242	1230	12
5	Goa	1	14	-	15	15	-
6	Gujarat	15	86	19	120	120	-
7	Haryana	27	264	9	300	300	-
8	Himachal Pradesh	3	34	1	38	38	-
9	Jammu & Kashmir	15	132	15	162	147	15
10	Karnataka	4	104	13	121	121	-
11	Kerala	1	197	4	202	202	-
12	Madhya Pradesh	259	709	9	977	973	4
13	Maharashtra	26	416	34	476	451	25
14	Manipur	6	45	4	55	55	-
15	Meghalaya	-	5	3	8	8	-
16	Mizoram	-	3	2	5	5	-
17	Nagaland	1	29	2	32	31	1
18	Orissa	50	487	10	547	505	42
19	Punjab	80	305	16	400	400	-
20	Rajasthan	88	431	17	536	536	-
21	Sikkim	1	5	1	7	6	1
22	Tamil Nadu	55	1105	5	1165	1165	-
23	Tripura	2	23	-	25	25	-
24	Uttar Pradesh	209	2642	37	2888	2769	119
25	West Bengal	44	443	51	538	504	34
26	Andaman & Nicobar	-	3	-	3	3	-
27	Chandigarh	1	7	-	8	7	1
28	Dadra & Nagar Haveli	-	-	-	-	-	-
29	Daman & Diu	-	1	-	1	1	-
30	Delhi	120	860	40	1020	955	65
31	Lakshadweep	-	2	-	2	2	-
32	Pondicherry	1	13	-	14	14	-
Total		1277	9751	444	11472	11153	319

Annexure-VII

(Para: 9.3)

Number of cases considered by the Commission during 1995-96; Position as on 31.3.1996

Sl. No.	Name of the State/UT	Dismissed in limini	Cases taken cognizance of			Total
			Disposed of with directions	Concluded	Pending	
1	Andhra Pradesh	217	19	14	161	411
2	Arunachal Pradesh	10	-	-	10	20
3	Assam	70	-	4	60	134
4	Bihar	640	137	80	373	1230
5	Goa	8	-	-	7	15
6	Gujarat	49	12	2	57	120
7	Haryana	162	31	33	74	300
8	Himachal Pradesh	12	1	-	25	38
9	Jammu & Kashmir	35	9	10	93	147
10	Karnataka	46	11	5	59	121
11	Kerala	117	22	9	54	202
12	Madhya Pradesh	702	92	25	154	973
13	Maharashtra	227	20	8	196	451
14	Manipur	13	1	9	32	55
15	Meghalaya	2	-	1	5	8
16	Mizoram	1	-	-	4	5
17	Nagaland	4	-	-	27	31
18	Orissa	286	56	32	131	505
19	Punjab	141	69	25	165	400
20	Rajasthan	236	88	11	201	536
21	Sikkim	3	-	-	3	6
22	Tamil Nadu	712	165	58	230	1165
23	Tripura	14	1	1	9	25
24	Uttar Pradesh	1409	295	103	962	2769
25	West Bengal	265	56	47	136	504
26	Andaman & Nicobar	3	-	-	-	3
27	Chandigarh	2	-	-	5	7
28	Dadra & Nagar Haveli	-	-	-	-	-
29	Daman & Diu	1	-	-	-	1
30	Delhi	496	93	67	299	955
31	Lakshadweep	2	-	-	-	2
32	Pondicherry	9	-	2	3	14
Total		5894	1178	546	3535	11153

Annexure-VIII

(Para: 9.3)

**STATE-WISE STATEMENT OF CATEGORY OF CASES ADMITTED FOR DISPOSAL
FROM 1/4/1995 TO 31/3/1996**

Sl. No	Name of the State/UT	Custodial death		Disap pe aranc e	Illega l Dete ntion	Fals e Impli catio n	* Other Police exces ses	Indig nity to wom en	Terro rist/ Naxal ites Violat ion	Jail Cond ition	Atroc ities on SC/S T by other s	Othe rs @	Total
		PC	JC										
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	Andhra Pradesh	10	45	0	12	2	17	2	0	2	0	85	175
2	Arunachal Pradesh	0	0	0	0	0	2	0	0	0	0	8	10
3	Assam	7	15	1	1	1	18	4	1	0	0	16	64
4	Bihar	8	67	5	7	7	92	10	1	19	4	233	453
5	Goa	0	0	0	0	0	1	0	0	2	0	4	7
6	Gujarat	15	4	1	0	0	10	0	0	4	0	25	59
7	Haryana	4	5	0	1	0	20	0	0	10	1	66	107
8	Himachal Pradesh	0	1	0	0	0	5	2	5	0	1	16	25
9	Jammu & Kashmir	15	0	3	4	2	7	0	0	3	0	64	103
10	Karnataka	3	10	0	1	0	11	0	0	1	1	37	64
11	Kerala	2	2	0	0	1	16	0	0	6	0	36	63
12	Madhya Pradesh	2	7	1	0	3	49	1	0	27	7	82	179
13	Maharashtra	9	25	2	4	3	38	4	0	13	3	103	204
14	Manipur	4	0	0	0	0	5	1	0	0	0	31	41
15	Meghalaya	0	3	0	0	0	3	0	0	0	0	0	6
16	Mizoram	0	2	0	0	0	0	0	1	0	0	2	4
17	Nagaland	2	0	0	0	0	2	0	0	1	0	21	27
18	Orissa	2	8	1	4	2	35	5	0	3	1	102	163
19	Punjab	8	8	14	12	8	65	5	7	3	0	60	190
20	Rajasthan	6	11	0	6	9	90	2	1	3	3	81	212
21	Sikkim	1	0	0	0	0	0	0	0	0	0	2	3
22	Tamil Nadu	4	1	3	35	0	55	10	0	6	8	166	288
23	Tripura	0	0	0	0	0	2	0	0	0	0	8	10
24	Uttar Pradesh	13	24	5	15	16	443	37	1	36	0	475	1065
25	West Bengal	14	37	2	6	0	21	6	0	5	1	91	183
26	Andaman & Nicobar	0	0	0	0	0	0	0	0	0	0	0	0
27	Chandigarh	0	0	0	0	0	0	1	0	0	0	4	5
28	Dadra & Nagar Haveli	0	0	0	0	0	0	0	0	0	0	0	0
29	Daman & Diu	0	0	0	0	0	0	0	0	0	0	0	0
30	Delhi	7	33	1	4	10	107	3	2	9	4	186	366
31	Lakshadweep	0	0	0	0	0	0	0	0	0	0	0	0
32	Pondicherry	0	0	0	0	0	1	0	0	0	1	3	5
	Total	136	308	39	112	64	1115	93	19	153	35	2007	4081

PC: Police Custody

JC: Judicial Custody

***Includes torture and other abuses.**

@: Includes, among others, Child Labour/Juvenile/Observation Homes/Problems of Handicapped/Child Marriage.

Annexure-IX

(Para:9.15)

DETAILS OF OUTCOME OF NHRC INVESTIGATIONS DURING THE YEAR 1995-96

No. of police personnel suspended	No. of police personnel against whom departmental action initiated	No. of police personnel prosecuted		No. of persons recommended for prosecution	No. of criminal cases registered by police	No. of cases recommended for investigation by police		No. of cases where victims/Next of kin recommended for compensation
		P*	C**			CID	CBI	
79	26	22	02	29	03	10	02	13 cases; 22 victim

P : Police*

*C** : Civilian*

SUMMARY OF RECOMMENDATIONS

1. With a view to removing ambiguities and impediments concerning its competence and autonomy, the Commission had in its report for the period ending 31 March 1994, made certain recommendations for amendments to the Protection of Human Rights Act 1993, which were repeated in its report for the year ending 31 March 1995. This matter was pursued by the Chairperson with the Minister of Home Affairs who, after consultations with the Ministries of Law and Finance, state in reply that "we need to gain more experience in the working of the National Human Rights Commission before reassess the actual need for changes in the already carefully worked out provisions of the Statute". The Commission recommends that this matter may be reconsidered at an early date (Para 2.4; item XV)

2. The Commission is of the view that human rights can best be served where peace and transparency prevail and that they are worst terrorism and secrecy reign. Acting on this premise, the Commission has urged there nunciation of terror, the rule of the gun and all forms of violence in the settlement of disputes, particularly since constitutional possibilities provide peaceful ways of resolving disputes in a democratic country such as ours. Further, the Commission has also repeatedly recommended openness and accountability as attributes essential to good governance, not least when acts of States are themselves called into question, and urged that measure of our conduct should be the exacting standards set by our Constitution and our treaty commitments, especially those arising from the two International Covenants to which India is a party.

3. As the problems in are as affected by terrorism and armed insurgency are essentially political in character, the Commission has advocated that the approach to resolving such problems must also, essentially, be political. In so far as economic, social and cultural factors add additional dimensions to grievances in such areas, the Commission has recommended, in its individual reports on visits to affected regions, that such factors should be fully taken into account,. In a number of instances, the Commission has made specific suggestions on such matters, including those having a bearing on developmental programmes and projects and these have been vigorously pursued by the Chairperson with the Prime Minister.

Further, as the security forces are generally called upon to assist the civil administration in areas afflicted with terrorism or insurgency, the Commission has repeatedly recommended that these forces must act in close coordination with the civil administration. It has been the Commission's experience that violations of human rights are far less likely to occur when the role and the responsibilities of the civil authorities under the law are fully respected not least in respect of cordon and search operation, arrest, interrogation and detention (Paras 3.3,3,4 & 3.5)

3.The Commission has also been keen to ensure that the rights of the victims of terrorism and armed militancy are not neglected and that they are assisted by all appropriate means. While the most affected States have schemes to provide relief or rehabilitation to such persons, the Commission has, on occasion, found it necessary to recommend additional assistance, or the inclusion of further categories of persons in such schemes since they had been excluded arbitrarily from the provision of appropriate assistance.

The situation of some 350,000 residents of the Valley of Kashmir comprising about 300,000 Hindus and some 50,000 Muslims, who have been compelled to leave their homes and live temporarily in other parts of the country, has also required the continuing attention of the Commission. Interim recommendations were made to the Central and State Governments on a variety of matters with a view to easing the hardships facing members of this group, particularly in regard to monthly relief payments, accommodation, employment opportunities and educational facilities. (Paras 3.12,& 3.13)

4.The Commission has been disappointed that certain States have still not been reporting incidents of custodial death as fully as they should, and it has taken up this matter with them in no uncertain terms. The Chairperson has written individual letters to the Governor/Chief Ministers of individual States drawing their attention to specific instances of such deaths or to weaknesses in reporting, to inadequacies in investigation or in subsequent follow-up action.

The Commission has expressed its disappointment that its recommendation suggesting that India accede to the 1984 convention against Torture and Other Forms of cruel, Inhuman and Degrading Treatment or Punishment has not yet been acted upon. It has been indicated by the Central Government that the issue of accession to the Convention was placed before a Chief Ministers Conference on 5 May 1995 but that the majority of Chief Ministers were either not in favour of India becoming a party to the Convention or had not indicated

their views on this matter. In the light of this, the Commission has been following-up this matter with the Chief Ministers directly, advising them that, in this day and age, it would be strange indeed if their States were viewed as continuing to countenance torture. The Commission strongly recommends that this matter be the subject of early and renewed attention, both by the Central and State Governments, some of whom will be newly constituted following the general elections.

It is not enough for Commission to react to custodial deaths or violence after they have occurred. It is far better to prevent such acts before they occur. The Commission is of the view that a recommendation of the Indian Law Commission (ILC) made in its 113th report of 29 July 1985 on a reference by the Supreme Court of India, should be acted upon. In that recommendation, the ILC suggested the insertion of a Section 114(B) in the Indian Evidence Act, 1872, to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by a police officer. In the view of this Commission, such a provision could well have a restraining effect on officers engaging in torture. Further, this Commission supports the recommendation of the Indian Law Commission that Section 197 of the Code of Criminal Procedure be amended to obviate the necessity of governmental sanction for the prosecution of a police officer where a prima facie case has been established, in an enquiry conducted by a Session Judge, of the commission of a custodial offence. This Commission also endorses the view of the National Police Commission in its First Report of February 1979 (para 10.10) that there should be a mandatory enquiry, by a Session Judge, in each case of custodial death, rape or grievous hurt.

There are a number of other measures being recommended by the Commission in its day-to-day handling of complaints, that are aimed at reducing and eliminating violence in custody. One such measure, to which the Commission attaches particular importance, relates to the implementation of the decision of the Supreme Court in the case of Joginder Singh vs. the State of Uttar Pradesh & other (JT 1994 (3) SC 423) wherein it is laid down that an arrested person being held in custody is entitled, if he so requests, to have a friend, relative or any other person who is known to him, or likely to take an interest in his welfare, to be informed that he has been arrested and told of where he has been detained. This decision of the Supreme Court has been circulated by the Commission to all Directors General of Police in the States, urging them to instruct all police officers in the field to act in consonance with the decision. The Commission believes that there is also need for greater care in the observance of the UN Body of Principles for the Protection of All Persons under Any Form

of Detention and Imprisonment and the UN Standard Minimum Rules for the Treatment of Prisoners. It recommends that appropriate instructions be issued by the Central Government reminding the competent authorities in the country of the provisions of these documents, in the elaboration of which India participated.

In its continuing effort to end custodial violence, the Commission has taken the view, in two recent instances of custodial death that occurred in the State of Tamil Nadu and Rajasthan, that the compensation due to the next of kin of those who have died in custody should be the liability not just of the State Government, but of the offending police officials themselves.

When examining reports on custodial death, the Commission reached the dismaying conclusion that, on occasion, the doctors concerned were bowing to police pressures when writing their post-mortem reports. The Chairperson of the Commission accordingly wrote to all Chief Ministers on 10 August 1995, recommending that the Commission would like all post-mortem examinations in respect of deaths in police or jail custody to be video-filmed and the cassettes sent to the Commission together with the written reports of the post-mortem examinations. Positive responses to this recommendation have been received from 13 States and one Union Territory, while replies are awaited from others. The Commission intends to pursue its recommendation on this matter with them)Paras 3.16, 3.17, 3.18, 3.19, 3.20, 3.21 & 3.22)

5.An efficient, honest police force is the principal bulwark of the nation against violations of human rights. The Commission is strongly in favour of improving the quality of the police and restoring its prestige and lustre in the eyes of the nation.

The Commission is therefore of the view that there is need to act with conviction and without further delay upon recommendations contained in Chapter XV of the Second Report of the Police Reforms Commission which, as long back as 1979, proposed a number of critically needed remedial measures to prevent "interference with, and misuse of the police by illegal or improper orders or pressure from political, executive or other extraneous sources". In particular, that Report calls for full respect for the Supreme Court judgement in criminal appeal no 218 of 1966 which directed that the investigative tasks of the police should be placed beyond any kind of intervention by the executive or non-executive. Paragraph 15.43 of that Report also urges a statutory tenure of office for Chiefs of Police in the States, observing that the "Damocles" sword of transfers"should be removed from over their heads.

Further, paragraph 15.46 of that Report recommended the constitution of statutory State Security Commission in each State to help the State Government "to discharge its superintending responsibility in an open manner, under the framework of law".

This Commission hopes and recommends that these key proposals of the Police Reforms Commission will be re-opened expeditiously for consideration and positive decision. The Commission further recommends that this matter be considered, if necessary, in a meeting of the Chief Ministers of all States and Union Territories and that, in the meantime, the Central Government endeavour to implement these proposals of the Police Reforms Commission in the Union Territories as an indication of its own commitment to police reform (Paras 3.23,3.24,&3.26).

6.On the basis of consultations with all concerned and after taking into account the work of several Expert Committees, the Commission is at present finalizing the draft of Prisons Bill to replace the Indian Prisons Act, 1894. It recommends that legislative action be undertaken, at an early date, on the basis of that draft.

The Commission has continued to press for specific actions to improve the situation in the jails of the country. In particular, it has been essential to stress the need for special arrangements for women and juveniles and for reducing over-crowding in Jails (Paras:3.33 & 3.34)

7.The Commission has noted with concern that a number of complaint received by it have alleged inconsistency in the interpretation and implementation of the law and rules governing premature release, especially ofthose serving life sentences. While Section 433-A Cr. P.C lays down the minimum period of a sentence that a life convict has to undergo, the complaints have pointed to arbitrary delays or a lack of uniformity in practice in the matter of eligibility for release. In the light of this situation, the Chairperson recommended in a letter to all Chier Ministers that they undertake a review of the system of premature release, so as to avoid inconsistencies or delays in the interpretation of the law or the rules relating to this issues (Para 3.35)

8. The investigating staff of the Commission made a special report to the Commission regarding the unsatisfactory conditions prevailing in the jails of souther Bihar, concerning which numerous complaints had been recreived by the Commission. A group of senior officers has been assembled in that State to follow-up on the recommendations made by the Commission which, the Commission would urge be implemented expeditiously (Para 3.37)

9. The Commission is of the view that there is need for the leaders of all sections of society to reflect on the various causes of violence in the country. For its part, the Commission is seeking to engage their attention in this endeavour, which is intrinsic to the Commission's effort to create a culture of human rights in the country that is based on tolerance and sustained respect for the dignity and worth of the human person.

In the light of this, the Commission believes that when large-scale violence occurs and lives are lost in act of murder and mayhem, it becomes the duty of the State to bring the guilty to book in order to establish the principle that the law will apply equally to all and that justice shall prevail. The Commission was dismayed, in this connection, to learn of the decision of the Government of Maharashtra of 23 January 1996 whereby the latter terminated the work of the Srikrishna Commission that had been appointed to investigate the riots that had occurred in Bombay in January 1993. As that Commission has already done considerable work, the National Human Rights Commission is in favour of it being revived (Paras 3.41 & 3.42)

10. Even after the lapse of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) on 23 May 1995, many thousands of undertrials remained in jail in various States and the Union Territory of Chandigarh under the provisions of TADA, and their situation was in danger of being forgotten. The Commission therefore started gathering data in regard to all such persons, who numbered 6060 on 30 June 1995. The Commission urged that the Review Committees set-up in individual States meet regularly, as had been directed by the Supreme Court and interacted with those States where the periods of detention were the longest and the numbers of detainees were the largest, urging an increase in the number of trial courts (Para 4.2)

11. Upon receipt of numerous petitions alleging prolonged and unreasonable detention under the Narcotics Drugs & Psychotropic Substances (NDPS) Act, 1985, the Commission undertook an examination of the provisions of that Act. An exchange of views was, accordingly, initiated by the Commission with the Ministry of Finance with the purpose of expediting trials. The Commission is gratified that the Ministry of Finance has framed a set of proposals for amending the Act to achieve this end and to introduce a system of better graded punishment. Further, as the Commission has concluded that there was an inadequacy of courts to deal with NDPS cases, it has made specific proposals suggesting that the numbers of such courts be increased in certain States/Union Territories. (Para 4.4)

12. Upon making an analysis of the Child Marriage Restraint Act, 1929 the Commission engaged in detailed discussions on the subject, with the participation of the Chairperson of the National Commission for Women and the competent Ministries of the Central Government. It is the initial view of the Commission that the Act needs to be amended in a number of respects in order to make it more effective. Furthermore, the highest importance should be accorded to the introduction of a system requiring the compulsory registration of marriages, as this could impede the practice of child marriage. The Commission understands that the National Commission for Women and the Department of Women & Child Development have prepared a draft Marriage Bill with a view to consolidating and amending the law relating to marriage in India. That draft Bill, which is at present being examined by the Home Ministry and the Law Ministry, contains provisions for the compulsory registration of marriages. This Commission recommends early action on that draft in reducing the incidence of child marriage (Para 4.6).

13. The Commission remained consistently mindful of the commitments of the country under the treaties to which it was a party, as also of the more general principles of conduct relating to human rights which had been elaborated in international forums with the full participation of India. The Commission recommends that well-coordinated steps be taken to act upon the Declaration and Programme of Action adopted at the Fourth United Nations Conference on Women, held in Beijing in September 1995 and also to oversee the implementation of the commitments of India under the Convention on the Elimination of All Forms of Discrimination against Women, a matter to which the Commission attaches the highest importance (Para 4.8)

14. In recent times there has been a growing awareness in the country of the menacing dimensions and implications of child prostitution. This awareness is not, however, always reflected in the work of official agencies or recorded in their data. The Commission is of the view that the realities should be faced, and that the law and the actions of the State should be made more relevant to the remedying of problems, especially when fundamental issues relating to human rights are at stake (Para 5.5 & 5.6).

15. The Commission has continued to monitor closely the problem of child labour. While recognizing the value of present governmental schemes, the implementation of which is most important, the Commission remains of the view that the problem of child labour will persist including possibly in the hazardous industries until the reality of free and compulsory education for all up to the completion of the age of 14 years is realized.

In the view of the Commission, the time has come for a serious debate in the country on this issue, for on it can depend the future of our children and indeed of the country itself. The election of a new Parliament will provide an appropriate opportunity for such a debate. The Commission would urge therefore that its views be taken fully into account, in the interests of protecting the rights of millions of Indian children who may otherwise remain trapped in the cycle of child labour and poverty (Paras: 5.12, 5.13 & 5.16).

16. The Commission's efforts to mobilize the education system on behalf of human rights began to bear results in the course of 1994-95 with the active support of the Human Resource Development Ministry. This followed continuing contacts over the past year with the Department of Education, Ministry of Human Resource Development, the National Council for Education, Research & Training (NCERT) and the National Council for Teacher Education (NCTE) in regard to the manner in which human rights values could be introduced into the schooling system of the country.

The Commission has recommended that the Source Book prepared by the NCERT be translated into the other languages listed in the Eighth Schedule of Constitution.

As regards the university-level, the Chairperson of the Commission wrote to all Vice-Chancellors asking them to see how best they could include human rights in the curriculum at the under-graduate and post-graduate levels and promote research, seminars and publications on human rights.

As regards distance education, the Commission welcomes the involvement of the National Open School as it believes that all possible means available to the country for educational purposes should be utilized for the propagation of human rights literacy. (Para 6.4, 6.7, 6.10 & 6.12).

17. High priority has been accorded by the Commission to the training and re-training of police personnel. As a result, there is a growing emphasis on human rights education in the programmes of the Sardar Patel National Police Academy in Hyderabad and in other police training institutions around the country.

The Commission has, however, felt that there is need to further improve the standards of training and to bring about a certain uniformity and consistency in the training curricula. Accordingly, after elaborate discussions with all of the Directors General of Police of the States and Union Territories, a three-tier model syllabus has been prepared for Constables, Sub-Inspectors/Inspectors, Deputy Superintendents of Police and other senior officers. The

model syllabus has been circulated to all State Governments with the recommendation that they adopt it for the training of the police personnel in their respective States.

The Commission continued to remain in close contact with the leadership of the para-military forces in the country, and with army, in regard to the training of their personnel in human rights matters. The Commission is also continuing to encourage other para-military forces to step-up the training of their cadres in human rights (Paras: 6.13, 6.14 & 6.15).

18. The Commission attached great importance to the support that it can solicit from the leaders of all political parties represented in Parliament and the Legislatures of the State. Accordingly, in discussions with the, all political parties were requested once again to constitute ‘Human Rights Cells’ at the central, State and District levels for promoting and protecting human rights and for over seeing the conduct of their members. The request was also reiterated that they designate a senior leader to liaise with the Commission in regard to human rights matters (Para: 6.18).

19. In a vast, pluralistic country such as India, the redress of grievances must be swift and near to home. Much time, money and energy can thus be saved and better services rendered if State-level Humarn Rights Commission are established, as the Protection of Human Rights Act, 1993, envisages. The National Commission, for its part has therefore continued to encourage this process and it is pleased to record that, by 31 March 1996, State Human Rights Commissions had come into existence in West Bengal, Himachal Pradesh and Assam, in that order. The Commission recommends that other States follow suit.

As regards the mechanism for the redressal of human rights grievances in Union Territories, the Ministry of Home Affairs had taken the position, in commenting on the report of this Commission for 1994-95, that the best way of proceeding may be through the extension of the jurisdiction of the State Commission of neighbouring States in to the adjoining Union Territories, as has been done in respect of High Courts. However, as many States have, themselves, been slow in setting-up Commissions, the National Commission would recommend that, in the interim, the Home Ministry should advise Union Territories to establish Human Rights Cells,, as has been the case in Daman & Diu and Dadra & Nagar Haveli.

The Commission welcomed the creation of District-level Committees, in which Kerala provided the lead, as a further means of decentralizing the redressal of human rights grievances and attending to them expeditiously and sensitively atthe local level. The

Commission recommends that other States and Union Territories should proceed in the same way. (Para 8.2,8.3 & 8.5).

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