



National Human Rights Commission, New Delhi, India

Annual Report

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## **INTRODUCTION**

1.1 This report of the National Human Rights Commission (NHRC) covers the period 1 April 1996 to 31 March 1997. It is the fourth such report of the Commission. The preceding report, dealing with the period 1 April 1995 to 31 March 1996, was submitted to the Central Government on 21 June 1996. It was, thereafter, placed before each House of Parliament on 10 September 1996, in accordance with Section 20 of the Protection of Human Rights Act 1993.

1.2 The year under review witnessed change at the helm of the Commission. Its first Chairperson, Shri Justice Ranganath Misra, retired on 25 November 1996 upon attaining the age of seventy years, as envisaged in Section 6(2) of the Statute of the Commission. He was succeeded by Shri Justice Manepalli Narayanarao Venkatachaliah, who assumed the office of Chairperson on 26 November 1996. The Statute of the Commission, under Section 3(2) (a), requires that the Chairperson should have been a Chief Justice of the Supreme Court of India. Shri Justice Venkatachaliah served in that illustrious capacity from February 1993 to October 1994.

1.3 The year also witnessed the departure of two Members of the Commission. On 24 January 1997, Kumari Justice Fathima Beevi and Shri Justice Sukhdev Singh Kang were appointed by the President to serve as Governors of the States of Tamil Nadu and Kerala respectively. As of the time of writing this report, the vacancies resulting from their departure were yet to be filled. Shri Virendra Dayal and Shri Justice V.S.Malimath continued to serve as Members of the Commission. As regards those deemed to be Members of the Commission under Section 3(3) of its Statute, Shri H.Hanumanthappa and Smt. V.Mohini Giri continued to serve in such capacity, being the Chairpersons of the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women respectively. Further, on being appointed Chairperson of the National Commission for Minorities on 26 November 1996, Prof. (Dr.) Tahir Mahmood was deemed to be a Member of the National Human Rights Commission.

1.4 Shri R. V. Pillai remained Secretary General and Chief Executive Officer of the Commission and Shri Sankar Sen continued as Director General (Investigation). Shri R.C.Jain, a member of the higher judicial service of Delhi, was appointed to the post of Registrar (Law) in March 1997. upon the retirement of Shri V .P.Sharma.

## **INDIA AT FIFTY: REDEEMING THE PLEDGE**

2.1 This report is being written as India approaches the fiftieth anniversary of its Independence. In words etched in the historical memory of the nation, its first Prime Minister, speaking in the Constituent Assembly at midnight on 14-15 August 1947 said:

“Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially.”

2.2 For this Commission, charged with the statutory responsibility of promoting and protecting human rights, it becomes necessary to ask:

Have we, fifty years after Independence, done enough to redeem that pledge in terms of the human rights of our compatriots? Has our pledge to the people of India, that their rights to life, liberty, equality and the dignity of the individual, as guaranteed by our Constitution and underwritten by our treaty commitments, been redeemed if “not wholly”; then “very substantially”?

2.3 The answer to these questions is complex and it can scarcely be the purpose of this Annual Report to provide a commentary on fifty years of Independence. Yet the contours of the answer need to be delineated, if only to relate the Commission’s functions and efforts in 1996-97 with the realities of our nation as they are today, half a century after Independence. What do the contours reveal?

2.4 In the first instance, they reveal the awesome attachment of the people of India to the exercise of their civil and political rights and their impatience with any effort to curtail such rights. Witness, for instance, the swift rebuff to the Emergency declared in 1975. In 1996-97, this characteristic was illustrated, once again, in the vigorous exercise of such rights in the General Elections leading to the constitution of the Eleventh Lok Sabha. Over 592.5 million voters were registered, of whom 343.3 million went to the polls, in a period extending over one month. Never before, anywhere in the world, had a free and fair election of such dimension been organized and conducted. Concurrently, elections were held for the State Legislatures of Assam, Haryana, Kerala, Tamil Nadu and West Bengal, and these were followed -also during the year under review -by elections to the Legislatures of Jammu & Kashmir, Uttar Pradesh and Punjab. For those in this country, including this Commission, who had been urging the fuller exercise of civil and political rights in areas of current or recent insurgency, it was particularly important that the people of such States were once again able to assert their democratic rights and that they did so, in certain instances, despite the threats and use of violence by those who were hostile to the Constitution of India and the democratic processes of the country.

2.5 The elections also revealed, more graphically than ever before, that the nation is engaged in a social and political transformation of extraordinary scale and depth, propelled by the logic of adult franchise. In consequence, the country is witnessing the empowerment of social and economic groups that had long been denied the adequate exercise of power, or the fruits of it. For all of the ‘*sturm und drang*’ associated with such a process -the view of some that the process is too slow and of others that it is too fast -there can be no doubt that the ballot is leading to a far-reaching democratization of our polity and that a sea-change has occurred since 1947. In a very real sense,

through this process, the nation is continuing to redeem the pledge that it made to itself, in the years of the National Movement of Independence.

2.6 From the human rights point of view, the past half-century has also illustrated the extraordinary capacity of the people of India and of their Constitution to accommodate the diversity of what is, perhaps, the most pluralistic country in the world. For all of the sporadic violence -inter-communal and inter-caste -the militancy, terrorism and even secessionism that it has had to face, the country has proven adept at finding ways of accommodating the varied aspirations of its diverse people within the framework of its resilient Constitution. A new federalism is ineluctably emerging, more genuinely respectful of diversity and of regional and sub-regional sensibilities and needs. This, too, augurs well for those who are concerned with the proper expression of the economic, social and cultural rights of all of the people of this country. 2.7 Yet even while exulting in the corrective, indeed redeeming power of democracy in India, this Commission must draw attention, as Section 12(e) of the 1993 Protection of Human Rights Act requires, to certain factors that, in its view, “inhibit the enjoyment of human rights” in this country. What are these factors? Many relate to questions of good governance: the maintenance, in good health, of the principal institutions of our Constitution; the integrity of those who have been privileged to lead the country - in politics, in public service, in business and industry, in the press; the nature of the economic and social policies we have adopted and the degree to which they have ensured equity and justice in our country; the manner in which we have sought to accommodate diversity and yet deal with threats to the integrity of our nation; the ways in which we have endeavored to deal with ancient societal wrongs that have, for centuries, fore-closed the horizons of vast numbers of our compatriots -the Scheduled Castes and Scheduled Tribes in particular.

2.8 In a democracy, good governance requires that each of its three pillars, the Legislature, the Executive and the Judiciary function with competence and integrity, watched -over by a free and independent press. When any of the pillars shows weakness, or a loss of integrity, a disproportionate burden falls on the others, leading to excesses that negatively affect the fine balance of the Constitution and the equilibrium of democracy itself, including the manner in which the rights of its citizens are respected.

2.9 In recent years, there has been growing concern in the country that the processes of governance have, on occasion, been corroded by a nexus between criminals, less than scrupulous political elements and members of the executive lacking in integrity. The deleterious effects on human rights resulting from such a nexus can be gauged from the nature of the petitions received by this Commission, many of which complain of violations because the supposed protectors of rights have themselves turned predators. It is because of such complaints that the Commission felt compelled to call for systemic reforms in the police, designed to insulate its investigative work from extraneous influences that would otherwise destroy its integrity.

2.10 Good governance has other attributes too. True democracy is built on restraint, on the exercise of moderation, both by the majority and by minority groups. When such restraint snaps and society yields to ethnic, religious and caste “entrepreneurs” who garner support for opportunistic ends even at the cost of inciting violence against those belonging to other groups, the citizens of this country pay the price in the destruction of their right to life and in assaults on the dignity and worth of the human person. This has occurred too often since Independence, in disparate States at disparate times. But it is time that the leadership of this nation unitedly turned away from the politics of expedience, and established clear Codes of Conduct to govern their behaviour. In this fiftieth year of Independence, the Commission recommends that the holding of a well- structured All-Party discussion on this subject could be a notable contribution to the observances being planned for this commemorative year.

2.11 At a deeper, societal level, the Commission has noted the tenacity of long- standing social attitudes inimical to a proper respect for the rights of all of the people of this country. Whether for reasons supposedly of religion, or of custom, these prejudices have not yielded, despite volumes of legislation. The Commission has worked closely with the National Commissions for Minorities, for Scheduled Castes and Scheduled Tribes, and for Women, all of whose Chairpersons are deemed to be Members of this Commission. But it is evident that much remains to be done to redeem the pledge made at Independence to those covered by the work of these Commissions. This has required, in the past years, that the National Human Rights Commission itself give enhanced attention to such groups in its programmes and efforts, the details of which follow in other sections of this report.

2.12 With each succeeding year, the Commission has grown stronger in its conviction that all human rights, whether civil and political, economic, social or cultural, must be viewed, as the 1993 Vienna Declaration and Programme of Action did, as “universal, indivisible, inter.-dependent and inter-related”. In earlier passages of this report, comments have been made on the nature of our democracy and the vigour with which civil and political rights have been exercised. Can the same be said for the exercise of economic and social rights? The pledge, in this respect, is less than adequately fulfilled.

2.13 Fifty years after Independence, South Asia -with India as its largest country by far -has emerged as the most deprived region of the world. With 22% of humanity located in this region, and despite its vast and talented human potential, South Asia accounts for a mere 6% of global real income. Further, 46% of the world’s total illiterate population -twice as high as its share of the world’s population -reside in this region, which is also home to 50% of the world’s undernourished children. These shocking facts, recounted in the eminent economist ~Aahbub-ul-Haq’s report “Human Development in South Asia 1997” cannot but raise the most serious questions regarding the state of human rights in our region.

2.14 As far as India itself is concerned, the facts are particularly poignant. 'Based on data contained in the 1991 Census Report, 328.9 million Indians were illiterate. Indeed, a report issued by the Ministry of Human Resource Development in January 1997 estimates that 63 million children in the age group of 6-14 years are at present not attending school. As for health, 135 million people had yet to gain access to primary health care, while 226 million were without safe drinking water and 640 million were without basic sanitation facilities; 88% of all pregnant women aged between 15 and 49 suffered from anaemia. As regards food and nutrition, there were 62 million malnourished children under the age of 5 years. In respect of children, nearly one third of those under the age of 16 were engaged in child labour -many in hazardous industries. In terms of poverty and income, nearly one third of the world's poor live in India. The complexities of the situation are compounded by vast disparities between the States. Thus 90% of the population of Kerala above the age of 7 years is literate, while the comparable figures for Bihar, Rajasthan and Uttar Pradesh are 44%, 41% and 47% respectively. Increasingly, it becomes evident that the way to improve the quality of life of people is to invest wisely and substantially in education and health. In India, such investment is \$14 per person per annum; in the Republic of Korea it is \$160. To mention such figures is not to decry the efforts made since Independence, when life expectancy was 27 years, as against 61 years in 1993, when the country was ravaged by food scarcity and frequently wracked by famine and is now, on balance, proudly self-sufficient. But the purpose is, indeed, to remind ourselves that the pledge of Independence is far from being redeemed for many in this country, when it comes to the exercise of their economic and social rights. This shortcoming diminishes us as a nation, and inhibits the capacity of our compatriots to exercise their civil and political rights with the freedom and clarity that is their due.

2.15 It is for reasons such as these that this Commission has considered it to be its duty to repeatedly recommend and press for the right to free and compulsory education for the children of this country upto the age of 14 years as Article 45 of the Constitution directs. It is for similar reasons that the Commission has urged greater gender equality and respect for the rights of women, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It is facts such as these that have compelled the Commission to take cognizance of complaints that drinking water supplies in vast stretches of Andhra Pradesh and West Bengal are poisoned by fluoride or arsenic. And it is, again, for reasons of human dignity, that the Commission has intervened to heighten awareness of the plight of innumerable young mothers in India who, despite readily available and inexpensive forms of preventive action, give birth to children with mental disabilities because of iron and iodine deficiencies in their diet. It was similar compulsions that led the Commission to investigate the circumstances of tribals ousted from the site of Bargi Dam on the river Narmada. And it was complaints of deaths by starvation resulting from the drought that

led the Commission to send its two senior-most officers to look into the situation in the districts of Bolangir and Kalahandi in the course of this year.

2.16 In the sections that follow, a detailed account is provided on the specific ways in which the Commission, in this fiftieth year of Independence, sought to continue to redeem the pledge of the founding fathers of this Republic.

### **III. CIVIL LIBERTIES**

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

3.1 Of all the assaults on human rights that the people of India have had to endure since Independence, none have been as vicious as the calculated acts of violence perpetrated by terrorists. Nor have any been This is not surprising, given the money; the means and the mercenaries used to this end, or indeed the professional capabilities of the command structures that have targeted India in recent years. Those countries, and those people, who have been spared such attacks must count themselves to be exceedingly fortunate, for terrorism -as India knows with a certitude born of experience -is increasingly assuming an international, trans-boundary dimension. And none will long be immune from it, if all will not speedily unite to eliminate it.

3.2 The Commission is therefore gratified that there has been major progress in successive years, both at the national and at the international level, in clarifying matters concerning the manner in which States should react to the scourge of terrorism. The World Conference in Vienna marked a watershed in this connection. The Declaration and Programme of Action then adopted categorically asserted in its paragraph 17:

“The acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights The international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.”

3.3 Armed with this consensus, the global community has since been able to proceed further, in the United Nations General Assembly on the one hand, and in the United Nations Commission on Human Rights and in its Sub-Commission on Prevention of Discrimination and Protection of Minorities, on the other. In consequence, in series of resolutions adopted since 1994, the world organisation has taken an increasingly clear view on two inter-related subjects: “Human Rights and Terrorism” and “Measures to Eliminate International Terrorism.” The former subject is covered, inter alia, by General Assembly resolutions 45/185 and 50/186 and the Commission of Human Rights resolutions 1995/43, 1996/47 & 1997/43, while the latter is dealt with comprehensively in General Assembly resolution 49/60, to which was annexed the 1994 Declaration on Measures to Eliminate International Terrorism and resolution 51/210 to which was annexed a Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism.

3.4 It is worthwhile to summarize briefly some of the salient concepts in these resolutions and Declarations, as they seek to define the parameters within which these vexed subjects should be considered. First, the resolutions express the conviction “that terrorism, in all its forms and manifestations. Wherever and by whomever committed, can never be justified in any instance, including as a means to promote and protect human rights.” Second, they contain an “unequivocal condemnation of all acts, methods and practices of terrorism, regardless of their motivation, in all its forms and manifestations, whenever and by whomever committed, as acts of aggression aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences on the economic and social development of States.” Third, States are called upon “to take all necessary and effective measures, in accordance with international standards of human rights, to prevent, combat and eliminate all acts of terrorism, wherever and by whomever committed.” Fourth, the international community has been urged to “enhance cooperation at regional and international levels in the fight against terrorism in accordance with relevant international instruments, including those relating to human rights, with the aim of its eradication.”

3.5 On the related question of the “Measures to Eliminate International Terrorism”, the 1994 Declaration affirms, in its paragraph 3, 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 circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.” The Declaration further asserts that States must “refrain from organizing, instigating, facilitating, financing, encouraging or tolerating terrorist activities” and calls on them to “ensure that their respective territories are not used for terrorist installations or training camps, or for the preparation or organization of terrorist acts intended to be committed against any other State or their citizens.”

3.6 The import of these resolutions and Declarations is clear. Terrorism can never be justified, regardless of its supposed motivation; terrorism aims at the destruction of human rights and civil society; it must therefore be combated by those who would protect such rights and such society; States have an obligation to eliminate terrorism and a duty to cooperate with each other to this end; in taking all necessary and effective measures to do so, States must act in accordance with international standards of human rights.

3.7 Since its establishment in October 1993, this Commission has consistently taken a position in harmony with this approach. It has stated that the nation, its police and armed forces have a duty to fight and triumph over terrorism. It has added that this must be done in a manner that respects the Constitution of our Republic, the laws of our land and the treaty commitments into which we have entered, which set out the provisions of the international law and standards that we must observe.

3.8 When the State functions within such parameters, there should be no place for the dichotomy that too often pits human rights proponents against the security forces. For the combat should not be between them. The combat is, rather, between civil society, including both human rights proponents and the security forces on the one hand, and terrorists and their backers, on the other. When, however, those parameters are breached, this Commission and all who are concerned with the upholding of human rights -including the security forces -must act to ensure that the Rule of Law prevails and that those who breach it are subjected to the processes of law, for that is what distinguishes a democracy, living under a Constitution freely adopted, from arbitrary and despotic forms of government. This is why the Commission opposed the renewal of the Terrorist and Disruptive Activities (Prevention) Act and why it insists on transparency and accountability in the handling of allegations covering human rights violations regardless of who is responsible for the violations.

3.9 The Commission believes that, in the circumstances facing the country, much would be gained by a full, open and continuing dialogue involving policy makers human rights proponents and members of the security forces on these questions It has been happy to note that both the police and the various components of the armed forces, including the army itself, have increasingly been organizing broad-based seminars and discussions on these subjects, often with the participation or backing of the Commission. In November 1996 for instance, a seminar on the Indian Army and Human Rights was inaugurated by the Prime Minister In a special session, the Chairperson and Members of the Commission held a most useful exchange of views with the Chief of Army Staff and some of the senior-most officers at Army Headquarters and in the Northern and North-Eastern Commands.

3.10 The Commission welcomes such occasions as they further transparency and good governance. The Commission, accordingly, strongly recommends that such a dialogue between policy makers, the security forces and human rights proponents be sustained, for it can also contribute greatly to clarity of thought and action and thus serve the greater interest of strengthening our free and democratic polity of which, fifty years after Independence, we have reason in many respects to be justly proud. In so far as any worthwhile strategy to combat insurgency and terrorism requires strong citizen support, the Commission further recommends that such dialogue be undertaken, in particular, in those parts of the country that have been most afflicted by such developments. The Commission appreciated, in this connection, the seminar organised by the Assam Human Rights Commission in February 1997 where such issues were discussed. Earlier, given the global implications of this subject, the Commission, working with Bangalore University, had itself organized a seminar on Human Rights and Terrorism in August 1996, which was addressed by the Prime Minister and attended, among others, by the Chairman, Vice Chairman and two Members of

the United Nations Committee on Human Rights, set up under the provisions of the International Covenant on Civil and Political Rights.

3.11 In recent months there has been a major intensification of efforts, at the highest levels of Government, to advance political solutions to the problems of areas facing insurgency and terrorism. The Commission greatly welcomes such initiatives. Since insurgencies do not arise over-night, but are often related to the quality of governance over a period of years and are the result of long-standing grievances stemming from historical, economic, social or cultural causes, the Commission is gratified to see the enhanced efforts being made to address such perceived grievances. It recommends that such efforts be sustained, as a matter of the highest priority, for on them depend not only the promotion and protection of human rights -an end that is important in itself -but the well-being and integrity of the nation.

3.12 The Commission has noted that various recommendations made by it in the past, in respect of the manner in which the security forces should function when called upon to assist the civilian administration, have received the consideration of Government and that appropriate instructions have been issued. It has also noted that, in the past year, no instance has been brought to its attention alleging the excessive use of force of the kind and scale that marked the tragic incident in Bijbehara in 1993. This leads the Commission to the view that the security forces are making a conscious and serious effort to exercise restraint and that their constant training and instruction -with an emphasis on the need to protect human rights -is beginning to have a positive effect. Nevertheless, the Commission has continued to receive complaints alleging violations of human rights by the armed forces, particularly from Jammu & Kashmir and the North-Eastern States. The Commission will act with utmost care and as best as it can under the terms of its Statute to ensure that such complaints receive the fullest attention. At the same time, the Commission cannot but note that, in the past year, and not least because of the restraint they have been exercising, the armed forces have themselves been facing a grim toll in lives lost and personnel injured.

3.13 Thus, according to data provided by Army Headquarters, during the period 1 January 1988 to 30 April 1997, the Army suffered 1375 killed, and 2237 injured in the Jammu & Kashmir sector. In the North-Eastern sector, the Army and the Police lost 459 personnel, with 250 injured during the period 1 January 1995 to 30 April 1997.

3.14 In response to the Commission's recommendations, the Border Security Force and the Army have both continued to keep the Commission informed, on a regular basis, of their personnel who, since 1990, have been charged with violating human rights. The lists provided to the Commission are periodically up-dated, indicating the details of each incident, the charges framed, the stage of proceedings, the decisions reached and the punishments awarded. As of 31 March 1997, 259 cases had been registered against members of the Border Security Force, including 12 officers. As regards

the Army, in 31 cases where investigation has been completed and charges of human rights violations proved, 81 personnel have been punished, including 29 officers. As in the past, the details provided to the Commission are available for verification.

3.15 The Commission is concerned that the procedures to be followed in respect of allegations of human rights violations be not only credible, but be seen to be credible. The provisions of Section 19 of the Protection of Human Rights Act 1993 prescribing the manner in which the Commission is to proceed in respect of allegations against the armed forces is restrictive compared to those of Section 17 of the Act which relate to other public servants. In consequence, Section 19 has been the subject of criticism ever since the Act was adopted. The Commission, for its part, and in the light of experience gained over three and half years, is once again examining in detail the provisions of its Statute with a view to proposing amendments. In the meantime, it has had occasion to note and welcome the valuable suggestion made by Army Headquarters, in the course of discussions with the Commission, that the latter be represented to observe the proceedings being conducted by the Army under the provisions of the Army Act, 1950 when it enquires into allegations of human rights violations by its personnel. The Commission has under consideration the question of how best, and when, it should do so.

3.16 It is also appropriate to mention at this stage that the Commission remained seized of matters arising from the use of the Armed Forces (Special Powers) Act, 1958 in certain areas of insurgency. Further comments on the stage of consideration of the Act by the Commission may be seen in paragraphs 4.2 to 4.5 below.

3.17 The Commission has continued to receive complaints alleging “false encounters” involving the police and the security forces. Given the gravity of such complaints, the Commission has treated them with utmost seriousness. In its preceding Annual Report, the Commission mentioned that it had received a complaint from the Andhra Pradesh Civil Liberties Committee (APCLC) alleging the involvement of the Andhra Pradesh police in a number of such incidents. The Commission constituted a Special Bench to go into this matter in detail. The Bench held public hearings in Hyderabad and recorded evidence. Given the importance of the questions of law and procedure involved, it also notified the Solicitor General of India and the Advocate General of the State of Andhra Pradesh. After hearing arguments at its Headquarters in New Delhi, the Commission pronounced its final orders on 5 November 1996 and communicated these to the State Government of Andhra Pradesh immediately thereafter, which accepted the recommendations of the Commission in full. As the views and recommendations of the Commission in that case are of far-reaching consequence, they are set out in detail in Section IX paragraph 9.12(i) of this report. They are also the subject of a letter dated 29 March 1997 from the Chairperson of the Commission to all Chief Ministers, in which the latter are requested to issue directions, through the Directors General of Police to all Police Stations, on the procedures they should follow in regard to cases where death has

been caused in “encounters” with the police. The Commission intends to monitor this matter most carefully, and it will, if necessary, designate specially selected representatives to assist it in this task. The Commission considers the practice of “fake encounters” to be unconscionable. It cannot permit the right to private defence, spelt out in Chapter IV of the Indian Penal Code, to be manipulated to justify “fake encounters”, or the procedures of Section 46(3) of the Code of Criminal Procedure to be subverted to, serve such an end.

3.18 The successive resolutions of the General Assembly on “Human Rights and Terrorism” referred to earlier in this”, report have, as their first operative paragraph, an expression of solidarity with the victims of terrorism. For those who are determined to uphold human rights, it would be a betrayal of their beliefs and responsibilities to ignore, or be complacent about, the plight of those who have suffered at the hands of terrorists or had their lives jeopardized by the violence of armed militancy. The Commission has therefore unhesitatingly intervened on their behalf in the States, which are, or have been, subject to such violence, recommending enhanced compensation, employment, educational, housing and other facilities as the situation has warranted.

3.19 The plight of some 350,000 residents of the valley of Kashmir, comprising some 300,000 Hindus and 50,000 Muslims who had been compelled to leave their homes and live temporarily in other parts of the country, remains most poignant, Throughout the year, groups of them continued to interact with the Commission, seeking its intervention for a variety of purposes, The Commission, for its part, has interceded on a number of occasions both with the Central and with the State Government on their behalf, but longer term solutions to their problems depend on the evolution of the situation in Jammu & Kashmir where, after a lapse of over six years, the presence of a democratically elected government gives fresh hope. Till such time as they can return to their homes, however, the Commission must continue to be available to them, to hear their grievances and to be of assistance to the maximum extent possible,

3.20 India is not alone in the world as an area that has had to endure terrorism and insurgency. While the particulars of each situation are different, in each circumstance, certain issues that are similar must be faced by the State and by those who must uphold human rights. The Government must ensure good governance, for only then can it ensure the understanding and support of the citizenry. It must be clear as to the circumstances in which military aid to civil power will be invoked, and these circumstances should be widely understood and acceptable. The rights and responsibilities of security personnel must be clearly defined and not be subject to policy vacillations or sudden change. But any anti- terrorist measures must be, and be seen to be, directed only against them and not against innocent civilian populations. Finally, the Rule of Law must be upheld, and the parameters within which the State must function, as described earlier in this report, must be strictly respected.

3.21 In the final analysis, political problems, whether in our country or anywhere else, must essentially be resolved by political means, and at the core of any lasting solution lies the need to heal the wounds of the past and to move forward on the basis of mutual trust and understanding.

***(B) Custodial Death, Rape and Torture***

3.22 The Commission remained deeply engaged in efforts to bring to an end the egregious violations of human rights that result in custodial death, rape and torture. Custodial violence is a calculated assault on human dignity. And “whenever human dignity is wounded,” to quote the Supreme Court in its judgment of 18 December 1996 in the case of *D. K. Basu vs the State of West Bengal*, “civilization takes a step backward. The flag of humanity on each occasion must fly half-mast.”

3.23 As indicated in earlier reports, custodial violence has been the focus of attention of the Commission since its earliest days. On 14 December 1993, the Commission issued instructions to the Chief Secretaries of all States asking them to direct all District Magistrates and 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 was made clear, would lead to a presumption by the Commission that an effort was being made to suppress the facts.

3.24 Pursuant to these instructions, the Commission has been receiving reports of such occurrences from all parts of the country. During the year 1995-96, 136 deaths were reported in police custody and 308 in jail custody. In the year 1996-97, however, the figures reported to the Commission were 188 deaths in police custody and 700 deaths in judicial custody. A State-wise list giving details of such deaths in 1995- 96, and 1996-97 may be seen at Annexure I. It will be observed that there has been a doubling in the deaths reported to the Commission in police and jail custody. In addition, the Commission has been informed of three cases of custodial rape during the period under review, one each in Manipur, Punjab and Rajasthan. No case of death while in the custody of the para-military forces, or the army, has been reported to the Commission by their authorities during 1996-97.

3.25 The Commission is of the view that the upswing in reported deaths in custody is the result of its repeated instructions that information regarding such tragic occurrences must not be suppressed, but must be reported promptly, investigated and acted upon. The issue is of such over-riding importance to the Commission that every occasion is seized by it to discuss and to follow up on reports of custodial death, whether this be through visits to individual States, or in discussions at the Commission’s Headquarters in New Delhi, when Chief Secretaries and Directors General of Police are required to be present.

3.26 While the State Governments have undoubtedly grown more sensitive to the Commission’s instructions that custodial deaths must not only be reported but thoroughly investigated, the

Commission has felt it to be necessary, in 23 cases of custodial death in 1996-97, to instruct its own Investigation Division to look into the facts surrounding the deaths. In 14 of these cases, the police and jail staff concerned was held to be responsible for the deaths. In each of these cases, prosecution was recommended. In two cases, in addition, compensation of Rs.1 lakh each was recommended for payment to the next of kin of those who died. The Commission will pursue matters to their logical conclusion in respect of each of these cases. There can be no let-up in such instances as they bring tragedy to human beings and disgrace to the law and order apparatus of our country.

3.27 Nor can the Commission countenance or condone any death, rape or torture occurring when a person is arrested by the armed forces in situations when the latter are called upon to act in aid of civil power. Under the relevant provisions of law, any person, so arrested must 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 Courts of this country have interpreted this to mean that the arrested person must normally be made over to civilian authorities within twenty-four hours of arrest. The Commission is deeply concerned that there have been allegations of needless delay in this regard and that complaints have also been received by the Commission alleging death and rape of persons while in the custody of the armed forces. The Commission has taken up these matters with the competent authorities. It strongly recommends that the para-military forces and the army also make it a point to report directly to the Commission any instance of death or rape occurring while a person is in their custody. Failure to do so in timely manner would, as in the case of deaths and rape in police or judicial custody, lead to an adverse inference being drawn by the Commission that an effort was being made to suppress the truth.

3.28 The Commission has pursued with vigour its recommendation that the country accede to the 1984 Convention against Torture and 'Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment. The matter was first taken up in a letter from the Chairperson of the Commission to the Prime Minister on 9 December 1994. A reply was received dated 16 December 1994 stating that the Prime Minister shared the feelings of the Commission. A further letter was sent by the Chairperson to the Prime Minister on 25 January 1995 stressing the urgency of the matter, in the light of the numerous complaints received by the Commission alleging brutality in custody.

However, it was indicated to the Commission by the Central Government that, at a Conference of Chief Ministers on 5 August 1995, 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 the matter. The Commission, accordingly, got in touch directly with the Chief Ministers advising them that it would be strange indeed, in this day and age, if their States were viewed as continuing to countenance torture. The Commission also drew attention to the Supreme Court's views, notably in the case of *Kishore Singh vs State of Rajasthan* (AIR 1982 SC 625) that "nothing is more cowardly and

unconscionable than a person in police custody being beaten up, and nothing inflicts a deeper wound on our constitutional rights.”

3.29 The Commission next took its campaign to the leadership of political parties. In a discussion with them at the Commission’s Headquarters it urged them to find place for this important matter in their Election Manifestos. The Commission was therefore gratified to note that the Common Minimum Programme of the United Front Government included a statement to the effect that “the United Nations Convention on Torture will be adopted.” In light of this, the then Chairperson of the Commission wrote to the newly elected Prime Minister, Shri H.D.Deve Gowda, on 2 August 1996, urging early accession to the Convention. A reply was, however, received from Shri Deve Gowda, dated 15 September 1996, observing that there were “reservations among some States in regard to allowing an international agency to interfere in the internal affairs of the country” and pointing out that there was need to “carry the States with us” since the main responsibility for implementing the Convention would “be at the State level”.

3.30 In response, the present Chairperson of the Commission addressed a letter to Shri Deve Gowda on 7 January 1997 expressing the conviction of the Commission that such apprehensions could readily be overcome if the terms of the Convention were fully and properly explained to those who might, at present, be unclear as to the implications of accession. The Chairperson also requested that a meeting be called at the highest level to consider this important matter, which was high on the agenda both of the Government and of the Commission.

3.31 Such a meeting has been scheduled for 4 April 1997, at which the Chairperson will make available to participants, who will include the Foreign Minister, the Home Minister, the Law Minister and the Attorney-General, a comprehensive paper which will define the issues involved and urge accession on three accounts. First, the Constitution, the laws and the rulings of the apex court of the country have already set standards of conduct and accountability that are no less demanding than those that might stem from treaty obligations. Second, India is bound to honour its obligations under the International Covenant on Civil and Political Rights, to which she became a party on 10 April 1979. Under Article 7 of that Covenant, torture is categorically forbidden and the provisions of that article are non-derogable. Third, the Right against Torture has been judicially recognized by the Apex Court as a Fundamental Right, making that right and the corresponding obligation it places on the State and its agencies a fundamental entrenched right. The apprehension that acceding to the Convention will open the country to “interference from outside” is refuted in the paper by means of an analysis of the provisions of the Convention, particularly its Articles 21, 22 and 28. The paper concludes “Our country is already required by the Constitution, our laws and the Supreme Court to act in ways consistent with the Convention against Torture. To accede to the latter would thus be to signify to the world that we indeed intend to conduct ourselves in the manner that we have, ourselves, determined to be in keeping with our most cherished values. Such a move would also

signify that, as a nation, we intend to be in the forefront of the world-wide human rights movement and not, timorously, in the rear. India's efforts to promote and protect human rights in a country whose demographic, linguistic and pluralistic complexion present the most acute problems, incomparable anywhere else in the world for its sheer staggering size, has been impressive. This great country does not need to crouch behind the high wall of national sovereignty on the great issues of Human Rights."

3.32 In repeating this exhortation in the present report, the Commission strongly recommends that the Government announce its accession to the Convention against Torture in this fiftieth year of Independence. Such a concrete step, specifically aimed at enhancing the dignity and worth of the human person, would surely be in keeping with the pledge made to the people of India on that incandescent night, five decades ago.

3.33 In the meantime, the Commission also recommends that it is important to follow-up on a series of practical measures that the Fourth Report of the National Police Commission suggested, to check the use of third-degree methods by the police. These include:

- Surprise visits to police stations and similar units by senior officers; this could help in the early detection of persons held in unauthorized custody and subjected to ill-treatment; any malpractices so noticed should be met with swift and deterrent punishment;
- A Magistrate or Judge, before whom an arrested person is produced by the police for remand to custody, should be required to question the arrested person specifically as to whether he has any complaint of ill treatment by the police; if he has such a complaint, the Magistrate or Judge should have him medically examined immediately so that further appropriate action can be taken;
- Supervisory ranks should eschew an essentially "statistical" approach in evaluating police performance. Administrative reviews of a kind, which encourage subordinate ranks to adopt "short-cut" methods to show "results", should be avoided;
- Training institutions must pay special attention to the development of appropriate interrogation techniques and impart effective instruction to trainees in this respect.

3.34 In its last Annual Report the Commission had recommended early action on a suggestion of the Indian Law Commission (ILC), contained in its 113th report, to the effect that a Section 114(8) be inserted 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. The Commission also supported a 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 Sessions Judge, of the commission of a custodial offence. Further, the Commission endorsed the view of the National Police Commission in its First Report of February 1979, that there should be mandatory enquiry, by a Sessions Judge, in each case of custodial death, rape or grievous hurt. The "Action Taken Report" by the Government of India on the last report of the Commission indicated that these recommendations were under various stages of consideration and that action was being contemplated on them, together with action on other related matters. At the end of the current year, however, the position remains substantially unchanged, as far as the law is concerned. The Commission recommends that these matters be pursued so that tangible results are achieved at an early date.

3.35 In this connection, the Commission is gratified to note that all States and Union Territories have been advised by the Ministry of Home Affairs to ensure compliance with the directions of the Supreme Court in the case of *Joginder Singh vs State of Uttar Pradesh and other* (JT 1994(3) SC 423), wherein it was laid down that an arrested person being held in custody is entitled, if he so requests, to have a friend, a 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. The Commission believes that follow-up in this respect is of great importance as, too often, those who have been arrested are denied such consideration. The Commission assumes, as well, that appropriate instructions would have been issued by now by the Central Government on its earlier recommendation stressing the importance of observing 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.

3.36 The Commission greatly welcomes the detailed instructions of the Supreme Court in the case of *D.K. Basu vs State of West Bengal* (Writ Petition CRL No.539 of 1986) setting out the procedures to be followed by the police in cases of arrest or detention. These requirements, inter alia, are:

Police personnel carrying out arrests and handling the interrogation of an arrestee must wear accurate, visible and clear identification and name tags giving their designations. The particulars of all such personnel who handle interrogations must be recorded in a register.

The police officer carrying out the arrest must prepare a memo of arrest at the time of arrest; this memo must be attested by a witness who may be either a member of the family of the arrestee or a responsible person of the locality from where the arrest has been made.

The person arrested or detained shall be entitled to have a friend, a relative or other person known to him, or having an interest in his welfare informed, as soon as practicable.

The arrestee should, when he so requests, be medically examined at the time of arrest and major injuries, if any are present on his or her body, must be recorded in a memo. The inspection memo should be signed both by the arrestee and by the police officer concerned, and a copy should be given to the arrestee. The arrested person should undergo a medical examination by a trained doctor every forty-eight hours of his detention in custody. The arrestee should be permitted to meet his lawyer during interrogation.

The Supreme Court of India imparted a new dimension to the enforceability of these directions by attaching the sanction of commitment of contempt for breach or violation of these requirements.

3.37 In the same spirit, the Commission has been preparing a chart, which will be translated into all the regional languages and be affixed on the walls of police stations/lock-ups, informing those who have been detained or arrested of their rights.

3.38 Struck by the unsatisfactory quality of many of the post-mortem reports that it received, and apprehensive that such reports may have been “doctored” under police or other extraneous pressure, the Chairperson of this Commission wrote to the Chief Ministers of States on 10 December 1995 recommending that all post-mortems in respect of deaths in police or jail custody be video-filmed and the cassettes sent to the Commission together with the written reports of the post-mortem examinations. The Commission is gratified that the Ministry of Home Affairs fully backed this recommendation of the Commission and followed it up with a letter to all State Governments/Union Territories on 29 October 1996. Positive reactions, accepting the Commission’s recommendations, have now been received from twenty States. The Chairperson of the Commission has pursued this matter through letters to the Chief Ministers of those States that still have this matter under consideration, urging their acceptance of the Commission’s recommendation without further delay. The Chief Ministers to whom such letters have been sent include those of Maharashtra, Rajasthan, Uttar Pradesh and the National Capital Territory of Delhi.

3.39 On 27 March 1997, the Chairperson also addressed a letter to all Chief Ministers pointing out the deficiencies in the autopsy forms at present being used. Together with his letter, the Chairperson transmitted to them a Model Autopsy Form that had been devised by the Commission after discussions with concerned officers in the States and experts around the country. In elaborating the form, which is tailored to the special circumstances prevailing in our country, the Commission took fully into account the work of the United Nations on this subject. The Commission recommends that the Model Autopsy Form and the Additional Procedure for Inquests, which it has transmitted to the States, be put to early and positive use.

***(C) Systemic Reform: Police***

3.40 With each succeeding year, the conviction of this Commission has increased, that there can be no substantial improvement in the human rights situation in this country unless those whose duty

it is to protect such rights, cease to be predators themselves. This observation is especially relevant to the police, for the Commission has observed that a majority of the complaints that it has received relate to the conduct of the police, many questioning its integrity. In particular, the complaints suggest that police investigations cannot be trusted, because of the extraneous pressures, political, executive or otherwise, that are brought to bear on the process. The police itself often complains of such strains adding, in good measure, that many of the most valuable suggestions for reform, emanating from the Police Reforms Commission and other thoughtful sources, have more often than not been ignored.

3.41 The Commission believes that the nation deserves a first-class police force, of the highest integrity, quality and dependability. It has therefore pursued the question of police reform with determination. In its last Annual Report the Commission made the specific recommendation that the suggestions contained in Chapter xv of the Second Report of the Police Reforms Commission, as far back as 1979, be acted upon expeditiously. These suggestions related to (i) the insulation of investigation work of the police from illegal or improper orders or pressure; (ii) the removal of the “Oamocles sword” of transfer from over the heads of Chiefs of Police in the States and fixity of tenure for them; and (iii) the constitution of statutory State Security Commissions so as to help the State Government “discharge its superintending responsibility in an open manner, under the framework of law.”

3.42 The urging of the Commission for action along these lines has been the subject of repeated exchanges of views with the Central Government over the past year. During such exchanges, the Commission made clear that it was not wedded to every detail of the suggestions of the Police Reforms Commission but, rather, that it considered it essential to ensure that the spirit of those suggestions be met, so that the integrity of the police force be restored and human rights better protected. The Commission was therefore deeply appreciative of a letter, which the Union Home Minister addressed to all Chief Ministers on 3 April 1997, on the subject of Police Reforms and Restructuring, in which he quoted extensively and favorably the recommendations of the National Police Commission and of this Commission. The Minister ended his communication with the observation “we have not only re-opened the so called closed chapter of police reform at our end, but we are also currently engaged in ensuring implementation of some of the basic recommendations which lie within our jurisdiction, viz., in the Union Territories and other Centrally administered areas.” This decision, too, accorded with the recommendation of this Commission, contained in its Annual Report for 1995-96, that the Central Government start the process of implementation in the Union Territories, as an indication of its own commitment to police reform.

3.43 For its part, the Commission has continued to evolve in its thinking on the details of the reforms that are needed, and the manner in which this goal can most effectively and expeditiously be reached. The Commission, accordingly, is participating in a proceeding in the Supreme Court of

India, before which it has filed a comprehensive counter-affidavit and further submissions in the matter of Prakash Singh vs Union of India and others, Writ Petition No.310 of 1996. In essence, the Commission is now suggesting:

The effective insulation of the investigating wing of the police, in order to ensure its freedom from extraneous pulls and pressures and to free it from law and order and other miscellaneous duties:

The constitution of a five member "Police Security and Integrity Commission" at the State level - comprising the Chief Minister or Home Minister as Chairperson; the Lok Ayukta or a retired Judge of the High Court nominated by the Chief Justice of the High Court of the State or a Member or nominee Of the State Human Rights Commission; a sitting or retired Judge of the High Court of the State; the Chief Secretary of the State; and the Leader of the Opposition of the Lower House of the State Legislature. The Director-General of Police would be ex-officio Secretary and Convenor of the Commission;

More appropriate ways of selecting and ensuring fixity of tenure for Directors General of Police"

The constitution of District Police Complaints Authority -to deal with police excesses and complaints at the district level; it could comprise the Principal District Judge as Chairperson and the Collector and Senior Superintendent of Police as Members" The institution of "lay visitors" for jails and police lock-ups; Improvements in the mode of appointing prosecutorial personnel at all levels.

3.44 The Commission believes that its efforts, together with those of others who consider it essential to strive for police reform, are beginning to have effect. The Commission has, in this spirit, also offered its fullest assistance to the Apex Court in the consideration of this matter, which is of utmost importance to the promotion and protection of human rights in the country.

***(D) Systemic Reform: Prisons and other Centres of Detention***

3.45 Section 12(c) of the Protection of Human Rights Act 1993 entrusts to the Commission the responsibility "to visit, under intimation to the State Government, any jailor any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, to study the living conditions of the inmates and make recommendations thereon." In the course of the years, the Commission has sought to deepen its knowledge of the conditions in all of such institutions and 1996-97 saw the Commission intensify its efforts to improve these conditions through basic reforms.

3.46 As in the past, Members of the Commission continued to visit jails, lock-ups and other centres of detention in different parts of the country. Officers of the Commission were, in addition, especially asked to study the conditions of jails in Bihar (Sarai Kale, Bhagalpur), Punjab (Patiala) and Uttar Pradesh (Agra, Basti, Meerut and Muzaffarnagar). The findings followed a now familiar and depressing pattern: overcrowding, lack of sanitation, mistreatment and mismanagement. The

Commission has, in earlier reports, catalogued such short-comings at length. Sadly, they still prevail. Officers of the Commission learnt of the physical torture of prisoners by the jail staff in Basti, inadequate stocks of medicine for the treatment of prisoners, and demands for money from those who come to visit them. The Inspector General of Prisons, Uttar Pradesh, was summoned by the Commission to New Delhi and instructed to put matters right. In Meerut jail, the investigators of the Commission found rampant corruption. Upon the intervention of the Commission, remedial steps, including disciplinary and other action has been initiated against the offending staff. In Bikaner jail, it transpired that prisoners were compelled to pay bribes to be able to apply for parole; student prisoners, likewise, had to pay bribes in order to be able to appear for examinations.

3.47 The pervasive prevalence of such conditions in the prisons of this country will take many years of determined effort to remedy, related as they are to generations of neglect, the shortage of resources and a frame of mind that itself needs drastic altering through re-education, training and better conditions of work. In the Commission's view, the starting point must be the replacement of the Indian Prison Act of 1894 with its hopelessly antiquated approach to prison management, an approach that is seriously at odds with contemporary penological and criminological thinking.

3.48 In its Annual Report for 1995-96, the Commission gave a full account of the various steps it had taken to draft the outline of a Model Prison Bill for the country in the course of which extensive consultations were held with the principal officers concerned of the Central and State Governments, experts in jail reform and representatives of non-governmental organisations known for their interest in this subject. During the current year, the Commission urged all States to have appropriate resolutions passed in their respective legislatures, whereby they would be authorizing legislation by Parliament on this question. In a letter to Chief Ministers dated 29 August 1996, the Chairperson of the Commission pointed out that the Mulla Committee had also earlier recommended the need for a uniform and consolidated prison law for the entire country. As the subject of 'Prisons' was a matter included in List II of the Seventh Schedule of the Constitution, and Parliament had no authority to legislate for the entire country unless appropriate action was taken by the State Legislatures as required under Article 252 of the Constitution, the Commission appealed to the States to initiate the necessary steps in this direction. This appeal was followed by a letter dated 3 February 1997 from the Chairperson, to the Union Home Minister, requesting the latter also to take up this matter with the Chief Ministers. Replies received from the Chief Ministers indicate that many of them are still examining the issue. Some, however, have already indicated that they will propose the passing of appropriate resolutions by their State Legislatures. In the meantime, in anticipation of the constitutional provisions being satisfied, the Commission has decided to engage the services of a well-known expert to give legal shape to the outline prepared earlier, so that a fully written draft Bill can soon be forwarded to the Home Ministry to complete the action that is required in this matter .

3.49 A number of other serious problems relating to the management of jails in the country received the attention of the Commission during the year under review. The Commission learnt, for instance, that innocent persons with mental disabilities were sometimes being held in prisons; in addition, prisoners with mental disabilities were being treated as were other prisoners, with no effort being made to deal with their distinctive problems. Given such situations, the Chairperson of the Commission addressed a letter to all Chief Ministers on 11 September 1996, pointing out the appropriate provisions of the law in respect of the manner in which persons with mental disabilities should be treated. The letter cautioned that, should the Commission find, in the course of its visits to jails, that mentally disabled persons were still being held in them, it would recommend the payment of compensation to those so detained and to their families. In consequence of that letter, many prisoners and others with mental disabilities, who were being held in prisons, have now been transferred to institutions where they can be given psychiatric help. In this connection, the Commission strongly recommends that Rule 82(1) of the United Nations Standard Minimum Rules for Treatment of Prisoners be followed. This requires that “Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.” Further, Rule 82(4) requires that “the medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.” The Commission endorses the recommendations made earlier by the Mulla Committee which stated that if a convict undergoing imprisonment became mentally ill, he should be accommodated in the psychiatric wing if such wing exists in the prison hospital, or he should be sent to the nearest mental hospital for treatment. Further, if the prisoner fails to recover from mental illness even after completing half of the maximum term of conviction, the State Government for release from prison should consider his case.

3.50 The Commission continued to give special attention to the condition of women who were held in jail, many of whom informed Members of the Commission or its officers of their plight. In the Nari Bandi Niketan of Uttar Pradesh, for instance, a number of women prisoners told the Director General (Investigation) that they feared that their husbands would no longer accept them after their release from prison. Others complained that they rarely heard from their families or children. In the view of the Commission, there is great need for frequent opportunities for women prisoners to meet or unite with their families. The Commission also feels it essential to stress that certain key recommendations of the National Expert Committee on Women Prisoners, which met under the Chairmanship of Shri Justice V.R. Krishna Iyer in 1986-87, should be followed up with greater diligence. These include the following:

- All custodial premises for women prisoners should have a private and secure environment

- Qualified lady doctors and nurses should be attached on a visiting basis to every prison for women and custodial centre for women inmate
- The scale of diet for women prisoners should be in strict accordance with medical norms; special extra diets should be provided if medically prescribed.

3.51 Overcrowding in jails, caused largely because of the vast number of under-trials, continued to create conditions grossly at variance with the demands of human dignity. A visit to Meerut jail by the staff of the Commission revealed the presence of some 3000 persons in that prison, as against a declared capacity of 650. The Commission had expressed the hope, in its last report, that the far-reaching judgment by the Supreme Court in the case *Common Cause vs Union of India* (Writ Petition No.1128 of 1986) would greatly expedite the disposal of cases pending in criminal courts in the country. Yet the situation appears still to be grim. The Commission has, accordingly, requested all Inspectors General of Prisons to send monthly reports to it giving details of the numbers of under-trial prisoners in their jails. The data received over a period of time will be carefully analyzed by the Commission in order to assess the impact of the judgment, and to see what next needs to be done.

3.52 In an interesting recent development, the Mumbai High Court, in Writ Petition No.3899/96 (*Muktaram Sitaram Shinde vs State of Maharashtra*) has asked the State Government to appoint nominees of the National Human Rights Commission as ex-officio or non-official visitors to the jails in that State. The Commission is seized of this matter and will soon make its nominations. It believes that such a step will lead to increased transparency in the administration of jails and also add strength to the Commission's efforts to improve the condition of jails in the country.

3.53 As a practical guide to those whose duty it is to inspect jails, the Commission has prepared a check-list, in consultation with experts, of the issues to be kept in mind. This check-list has been circulated to Inspectors General of Prisons for their comments, after which it will be finalized and made available for general use.

3.54 During its visits to prisons in various States, the Commission observed that Sessions Judges were not visiting jails in the regular manner that is required by Prison Manuals. The Chairperson accordingly wrote to the Chief Justices of the High Courts of all States on 25 September 1996 requesting them to direct the Sessions Judges to fulfill their duties more diligently. A number of Chief Justices have replied saying that they have issued the appropriate instructions.

3.55 The lack of adequate knowledge and of training of prison staff of different ranks is of deep concern to the Commission. As a step in the direction of remedying this situation, the Commission has, in collaboration with the National Institute of Criminology and Forensic Sciences, New Delhi, organized a five-day course for senior prison officers between 28 July 1996- 1 August 1996. As the effort evoked a positive response, the Commission intends to organize more such courses in the future.

3.56 Apart from conditions in prisons, the Commission has increasingly focused its attention on the desperate conditions prevailing in other institutions under the control of State Governments “where persons are detained or lodged for purposes of treatment, reformation or protection.”

3.57 Following reports of the death of a young boy in a juvenile home in Delhi in early 1996, the Commission has held a series of meetings and hearings on the conditions in such homes. These were accompanied by periodic inspections and reports on the juvenile homes in Delhi by the Investigation Division of the Commission. In the course of the exchanges between the Commission and the senior-most levels of the Government of the National Capital Territory of Delhi, the Lt.Governor of Delhi appointed a Committee to look into the conditions in 80 such homes/institutions in the Capital. Consequent upon a study of the report of that Committee, the Commission felt that, if conditions in Delhi itself could be so painful, then circumstances in the rest of the country could scarcely be better.

3.58 The Commission accordingly decided to take up this matter on a nation-wide basis and to serve as a catalyst for reform and improvement. In pursuance of this intent, the Commission dispatched detailed questionnaires to all State Governments seeking information, by 1 July 1997, on conditions in five categories of institutions: Observation/ Juvenile/Special Homes set up under the Juvenile Justice Act, 1986; Probation Homes set up under the Probation of Offenders Act, 1958; Short Stay Homes/Nari Niketans set up under the Immoral Traffic (Prevention) Act, 1956; Reception Centres/ Beggars Homes set up under the Prevention of Beggars/Begging Act, 1959; and Borstal Institutions set up under the Borstal Act, 1926. The data once received and analyzed will enable the Commission to determine the best manner in which it should itself act, or stimulate others to act, to remedy the situation in these often-medieval institutions.

3.59 In the immediate term, and given the reports of violence in such institutions, the Commission has issued directions to all State Governments asking them to report to the Commission, within twenty four hours of occurrence, any instance of death or rape in such institutions. These instructions will thus parallel those that already exist in respect of similar tragic occurrences that take place in police or jail custody.

3.60 The special situation prevailing in Jammu & Kashmir to which the Commission made reference in its report for 1995-96, required the Commission to be vigilant to conditions in jails and centres of detention in that State. The Commission therefore continued to monitor the situation in that State. In view of the fact that the International Committee of the Red Cross is now visiting all such sites on a regular basis, the Commission feels that its concerns for transparency and the humane treatment of those detained will receive enhanced attention.

#### ***(E) Human Rights and Administration of Criminal Justice***

3.61 Human Rights, both in their historical and contemporary understanding, have serious implications for society’s moral, political and economic order. Implicit in that assumption is the

importance of methods of protection and enforcement of the rights. Judicial protection under the municipal laws is a remedy where the right is merely recognised in the municipal laws accordingly becomes justiciable. But when the rights are part of the constitutionally entrenched regime, the rights are not merely enforceable but act as a limitation on the legislative and executive power of the state. They provide an additional dimension to the methods of protection and enhance the content of Rule of Law and the concept of Judicial Review.

3.62 The Commission has bestowed anxious consideration on the deficiencies, both substantive and procedural, of the criminal justice administration in India. Some amongst the more serious manifestations of these deficiencies are reflected in a distorted proportion between the numbers of convicted persons and under-trial prisoners in the break-up of the figures of the prisoner population. Nearly 80 percent or more of the prison inmates are under-trials. The rate of acquittals, in particular in heinous offences, is quite disturbing. It is almost 80 percent. The delays in trials have now become proverbial.

3.63 The situation is somewhat similar to the one that prevailed in the United Kingdom before the comprehensive legislative reforms in the criminal justice system were brought in by the Police and Criminal Evidence Act, 1984. Describing the situation obtaining prior to that enactment, which was a sequel to the Phillips' Committee report, an eminent author said:

“The present law satisfies nobody. It is far too complex, contained in a miscellany of often-archaic statutes and cases. Problems which are difficult enough as examination questions are trickier still for the ‘policeman on the beat’ who will often have to act without prolonged deliberation. If the rules are known their precise meaning may be uncertain. And when their meaning is clear their content is often unsatisfactory. Many powers of the police are unduly wide in scope and yet, at the same time, the police do not possess certain powers which many would regard as necessary to the performance of their tasks. And when the law is reasonably clear and its content reasonably satisfactory there may be difficulties in ensuring compliance with those rules. Police officers perform their duties subject to the possibilities of prosecution, civil claim and internal disciplinary action if they exceed their powers “. The Commission wonders if this may not aptly describe the current Indian predicament.

3.64 The right to a fair trial, which includes the right to a speedy trial, is a part of our international obligations. So is our duty to organize our legal system and courts to comport with the mandate of Article 9(3) and Article 14(1) of ICCPR. This is also the content of Section 309(1) of the Code of Criminal Procedure. Criminal cases require greater urgency in their settlement. A more rigorous time frame is needed where the accused person is in detention pending the outcome of the case. In such a case, a combination of obligations both for speedy trial and special diligence converge.

3.65 Indeed this right to a speedy trial is part of our fundamental laws and Article 21 of the Constitution is so recognized by the Supreme Court of India In the case of A.R. Antulay & Ors. vs R.S. Nayak & Another 1992(1 )SCC 225). The Court observed:

“ In other words, such laws should provide a procedure which is fair, reasonable and just. Then alone, would it be in consonance with the command of Article 21. Indeed, wherever necessary, such fairness must be read into such law. Now, can it be said that a law, which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just. and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable dispatch -reasonable in all the circumstances of the case.”

3.66 Deeply concerned with these problems of administration of criminal justice and their implications for the protection and promotion of human rights, the Commission is seeking to bring about certain institutional changes in an area where the country’s legal system has yet to establish a coherent and sustainable jurisprudential regime. The Commission desires to indicate certain areas which it has identified for ‘immediate action’.

3.67 While assisting the Supreme Court in the case which raises the question whether the recommendations of the Indian Police Commission require to be implemented, the Commission has expressed itself in favour of certain institutional arrangements which, while protecting the police from threats of arbitrary transfers and political interference in their “constabulary independence” and “operational freedom”, would at the same time, enhance their public accountability for the exercise of their powers. These institutional arrangements have been referred to in paragraph 3.43 of this report.

3.68 Further, the Commission is of the view that the enormous burden on the criminal courts should be reduced by adopting a system of Honorary Judicial Magistrates on the lines of the institution of “Recorders” and “Assistant Recorders” in the United Kingdom where trained and experienced lawyers would work part-time, on a specific number of days in a year, to deal with and dispose of a large number of cases involving minor offences. This system of dealing with minor offences and ensuring their speedy disposal can be strengthened by introducing, in a judicious and measured manner, the system of “Plea-Bargaining” (Nolo-obtendere as it is known in some jurisdictions).

3.69 The Commission has also emphasised the need for a massive decriminalization so that many of the wrongs which are now given the undeserved status of ‘crimes’ are dealt with as compoundable civil-wrongs.

3.70 The Commission, in addition, emphasises the need for a system of compensation for vicious crime on the analogy of the “Criminal injuries compensation” regime operating under statutory disciplines in many countries.

3.71 The Commission sees the importance and the necessity of promoting NGOs for “victim assistance and service” and for the protection of witnesses in collaboration with the police-system.

3.72 There is need for appropriate training Programmes for the members of magistracy in Human Rights jurisprudence and the Commission expects to be able to take- up this with the National Judicial Academy of India.

3.73 Some of the matters referred to above, need to be addressed by the National Judicial Academy of India, administered by the Chief Justice of India and the Commission expects, in the future, to interact in a meaningful way to contribute to bring about some of these important and timely reforms in the system of administration of criminal justice of India.

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

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

4.1 The Terrorist and Disruptive Activities (Prevention) Act, 1987, the renewal of which this Commission opposed, was not revived when its life expired on 23 May 1995. Yet the problem continued that many thousands of undertrials remained in jail in various States, as did the danger that they would be forgotten once the Act lapsed. On 30 June 1995, the number of such undertrials stood at 6060. The Commission accordingly submitted the information at its disposal to the Supreme Court, which, on 27 February 1996, gave detailed directions on how to deal with questions of bail in respect of T ADA cases. Pursuant to these directions, the number of TADA undertrials in jail had been reduced to 1502 by 1 January 1997. The Commission has remained in touch with the competent authorities at the Centre and in the States in respect of the T ADA undertrials, with a view to ensuring that the various instructions of the Supreme Court in regard to them are acted upon and that their fate is not forgotten simply because the Act has ceased to exist.

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

4.2 The Commission first received a representation against the Armed Forces (Special Powers) Act, 1958 when it visited Nagaland in April 1995. It subsequently learnt that there were proceedings pending before the Supreme Court questioning the constitutional validity of the Act in Writ Petition Nos. 5328 of 1980, 550 of 1982 and 9229 and 9230 of 1982. Thereafter, the attention of the Commission was drawn to the concerns expressed by a number of other public and civil liberties groups in regard to the provisions of the Act, the South Asian Human Rights Documentation Centre, for instance, even sending to the Commission an analysis that it had made of the Act.

4.3 In essence, the representations received against the Act assert that its powers are too vast and sweeping and pose a grave threat to the fundamental rights and liberties of the citizenry of the areas covered by the Act. It is argued, for instance, that the powers under Section 3 to declare any area to be a “disturbed area” are too wide unguided and unanalyzed. It is further argued that Sections 4 and 5 are so arbitrary and excessive as to empower the armed forces even to take away the life of a citizen by firing upon him on the mere ground, inter alia, that he is “acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons,” or “carrying things capable of being used as weapons.” This power, it is asserted, can even be exercised by a non-commissioned officer if he is of the opinion that it is necessary to do so for the maintenance of public order.” The representations received by the Commission have urged that these powers are susceptible to grave misuse, that they constitute an unreasonable and oppressive procedure and are, in themselves, unconstitutional. The representations refer to a number of instances in which these powers were allegedly abused.

4.4 In the light of these circumstances, the Commission has taken a decision to seek to be impleaded in the proceedings before the Supreme Court and to assist the Court by placing the Commission’s views before it on this issue.

4.5 As it would be helpful to have a free and frank exchange of views with eminent jurists, senior officers of the armed forces, the ministries and State Governments concerned and of others who can shed light on the constitutional and legal matters involved, the Commission scheduled a Session for a discussion on this subject on 13 May, 1997.

***(C) Child Marriage Restraint Act, 1929***

4.6 Following a detailed analysis of the Child Marriage Restraint Act, 1929 and after discussions with the National Commission for Women and the Department of Women and Child Development, it had been recommended that early action be taken on a Draft Marriage Bill proposed jointly by the National Commission for Women and the Department of Women and Child Development.

4.7 The Central Government, however, in its “Action Taken Memorandum” on the last Annual Report of the Commission, stated that “no further legislative measures are contemplated at present in this regard ...Government is of the view that it is only through social and economic uplift” of certain sections of society “that the practice can be better eradicated.” The Central Government further argued that it would be inappropriate to introduce any form of legislation requiring the compulsory registration of marriages since this would impinge on personal laws and that, in any case, the Child Marriage Restraint Act was being administered by the State Governments through their machinery. “No legislative action for giving effect to the recommendation (of the Commission) is contemplated.” In good measure, the “Action Taken Memorandum” concluded “it was, therefore, considered inappropriate to accept the recommendations of the Commission.”

4.8 While the Commission fully accepts the view that major social and economic efforts are required to bring an end to the practice of child marriage amongst those sections of society and communities where such marriages have long been conducted, it cannot but express the view that the response of the Central Government in the “Action Taken Memorandum” amounts, essentially, to a total disinclination to strengthen or alter the law, in any respect, or indeed to see to its better implementation in any manner, in respect of this very important social and cultural problem. The Commission cannot accept the view that the responsibility of the Central Government ceases because the present Act is administered by the State Governments or that the issue of personal laws should be advanced to block any effort whatsoever in this overall matter.

4.9 The Commission accordingly intends to pursue this matter further. The Commission is of the view that the matter of child marriage cannot be allowed to rest with the timeless exhortation that “only through social and economic uplift” can this practice be “better eradicated,” as that would amount to acquiescing in an abdication of responsibility which the Commission, for its part, considers inappropriate.

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

4.10 The principal effort of the Commission in 1996-97 related to the 1984 United Nation Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment or Treatment. In particular, the Commission marshaled its arguments in favour of the country acceding to this Convention in a paper to be presented to the Prime Minister and others for a meeting scheduled to be held on 4 April 1997. (see paragraphs 3.28-3.32 above for the details).

4.11 In a range of other matters, the Commission drew upon India’s obligations under its treaty commitments, or its involvement in the adoption of other international instruments, to press for their proper observance in respect of a variety of human rights. References are made to these treaties and instruments, while discussing individual issues, throughout this report. Suffice it to say that, three and a half years after it was established, the Commission’s daily reliance on these treaties and instruments in the examination of issues before it, has led to an increasing realization, in various sections of Government, and at various levels of it, that India’s commitments are to be honored not in the breach, but in practice.

4.12 India is now a party to sixteen international treaties drawn-up under the auspices of the United Nations. These are the:

- International Covenant on Economic, Social and Cultural Rights,
- International Covenant on Civil and Political Rights
- International Convention on the Elimination of All Forms of Racial Discrimination,
- International Convention on the Suppression and Punishment of the Crime of Apartheid,

- International Convention against Apartheid in Sports,
- Convention on the Prevention and Punishment of the Crime of Genocide.
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,
- Convention on the Rights of the Child,
- Convention on the Elimination of All Forms of Discrimination against Women,
- Convention on the Political Rights of Women
- Convention on the Nationality of Married Women.
- Slavery Convention of 1926
- 1953 Protocol amending the 1926 Convention
- Slavery Convention of 1926 as amended
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and the
- Convention for the Suppression of the Traffic in Person and of the Exploitation of the Prostitution of Others.

4.13 This impressive array of commitments needs to be thoroughly examined by the Central Government with a view to seeing where the country falls short in legislation, and in practice. The Commission, itself, has a statutory responsibility under Section 12(f) of the Protection of Human Rights Act, 1993 to “study treaties and other international instruments on human rights and make recommendations for their effective implementation.” Within the constraints of time and staff, its competing priorities and the daily pressure of the complaints which it is handling, the Commission has constantly been urging specific practical steps for the better fulfilment of treaty commitments. However, the Commission realizes that its work in this regard needs to be given a sharper focus and be pursued as a priority programme. It will seek to do so in the period ahead, drawing upon the best available expertise.

#### ***V. RIGHTS OF THE VULNERABLE***

5.1 There is no State in the world where some are not more equal than others. India is no exception. Viewing the country in all of its complexity, the Commission believes it has a special and inescapable responsibility to protect those who are the most vulnerable: dalits and scheduled tribes; women and children, especially the girl child; the disabled; those victimized for reasons of religion or language; and those weighed down by economic and social tradition or, ironically, marginalized by “growth” and change. In all of such cases and more, whether it acts on the basis of individual

complaints or under its broad mandate to promote and protect human rights, the Commission has viewed its role as that of an “Equalizer”: adding its weight on behalf of the vulnerable, so that the scales of justice and equity may be more evenly balanced for them, so that some may cease to be less equal than others.

2.2 In the section that follows, an outline is provided of some of the major efforts of the Commission, in the year just ended, to heighten awareness of the problems facing vulnerable groups, and to be of assistance to them.

**(A) *Child Labour***

5.3 No economic or social issue has been of such compelling concern to the Commission as the persistence, fifty years after Independence, of widespread child labour in our country. It prevails, despite articles 23, 24, 39(e) & (f), 41' 45 and 47 of the Constitution and despite the passing of 12 Acts on the subject between 1948 and 1986. It has defied the terms of 6 Conventions of the International Labour Organization to which India is a party and the Convention on the Rights of the Child, in addition. Despite the announcement of a National Child Labour Policy in 1987, the subsequent constitution of a National Authority for the Elimination of Child Labour (NAECL) and the undertaking of National Child Labour Projects (NCLP) in an increasing number of areas of our country, the goal of ending child labour remains elusive, even in respect of the estimated 2 million children working in hazardous industries who were to be freed from such tyranny by the year 2000.

5.4 The inability to radically alter the situation, despite the Constitution, the laws and treaty commitments, shows the limitation of such means when it comes to resolving deep-rooted social and economic problems, for these must be followed by comprehensive and practical measures on the ground. Yet fidelity to the provisions of the Constitution and law, the closing of loopholes and rigorous and honest implementation are essential if progress is to be made.

5.5 This is why the Commission greatly welcomes the interventions of the Supreme Court, for they have served not only to remind the nation of its responsibilities, but also stimulated thought and action to deal with this complex problem. Thus, the landmark decision of the Constitutional Bench of the Court in *Unnikrishnan vs State of Andhra Pradesh* (1993-1 SC 645), changed the parameters within which the question of child labour was subsequently to be considered, setting out as it did that Article 45 of the Constitution, directing the providing of free and compulsory education for all of the children of India until completion of the age of 14 years, be treated as an enforceable Fundamental Right. More recently, the judgement of the Supreme Court, delivered on 10 December 1996 in the case *M.C.Mehta vs State of Tamil Nadu* (AIR 1997 SC 699) confirmed the position of the Court in this respect and also provided for a number of practical steps to end child labour, including:

- a nation-wide survey of child labour to be completed within 6 months;

- the payment of Rs.20,000 by an offending employer, for each child employed in contravention of the Child Labour (Prohibition and Regulation) Act, 1986, into a Child Labour Rehabilitation-cum-Development Fund;
- the State to see to it that an adult member of the family, whose child was employed in a hazardous industry, gets a job anywhere, in lieu of the child;
- when alternative employment is not provided, the parent/guardian of the concerned child would be paid every month the income which would be earned on the corpus, which would be a sum of Rs.25,000 for each child, every month;
- on discontinuation of the employment of the child, his/her education must be assured in a suitable institution, it being pointed out that Article 45 of the Constitution mandates free and compulsory education for all children until they complete the age of 14 years.

5.6 This Commission has consistently argued that the most potent way of dealing with the question of child labour would be through the provision of free and compulsory education, as required by Article 45 of the Constitution. The Right to Education, if fulfilled, would itself be the strongest weapon in the battle to end child labour. This is why the Commission urged, in its last Annual Report, that Parliament give comprehensive legislative backing to ensure the implementation of Article 45 and also proceed with a substantial re-deployment of national resources to achieve this goal.

5.7 The Commission has been gratified to learn that the Common Minimum Programme of the United Front Government has resolved to make free and compulsory elementary education a Fundamental Right and to enforce this through suitable statutory measures. The Commission has also taken careful note of the subsequent Report of the Committee of State Education Ministers on the Implications of the Proposal to Make Elementary Education a Fundamental Right. That report observed, inter alia, that a sum of Rs.40,000 crore would be required to achieve the objective in question. The Commission is concerned that the dimensions of the problem may now lead to an infirmity of will and an incapacity to proceed. It would therefore like to stress that the achievement of the objective to ensure free and compulsory elementary education will depend, in large measure, on whether or not the Central and State Governments will also be able to harness the energies, resources and talents of non-governmental organizations and the private sector in the pursuit of this great national objective. The Commission strongly recommends that a major effort be made to this end, failing which the goal could well remain illusory. The Commission would like to observe in this connection that, in the State of Kerala, which has a literacy rate of over 90%, 2633 primary schools are in the public sector, while 4150 such schools are in the private sector. In contrast, in Bihar, where the literacy rate is about 44%, some 52,500 primary schools are reported to be in the public sector, with only 545 such schools being listed in the private sector. The lessons from this should be evident

to all. If child labour is to be eradicated through the spread of free and compulsory elementary education, then all elements of civil society -and not least non-governmental organizations and the private sector -must be made full participants in this task.

5.8 Even as the fight against child labour must be waged on a nation-wide basis, so must attention be given to particular situations and circumstances. In 1996-97, the Commission received disturbing reports of the employment of children below the age of 14 years as domestic servants, not infrequently in the homes of government officials who should have known better. Unacceptable as the practice is in any circumstance, the Commission felt that the employment of such children as domestic help in the homes of government officials was particularly reprehensible. Following a meeting on 10 January 1997, the Commission decided to recommend that an appropriate rule be included in the conduct rules of government servants, both Central and State, which while prohibiting such employment would also make it a misconduct inviting a major penalty.

5.9 The Commission accordingly requested the Minister of State in the Ministry of Personnel, Public Grievances and Pensions to take appropriate steps to introduce the rule into the Government Service (Conduct) Rules, 1964, and proposed the precise wording required for this purpose. At the same time, the Commission also addressed letters to all Chief Ministers/ Administrators of the States/Union Territories to amend the relevant Service Rules of State Government servants along similar lines. Positive responses have thus far been received from the Department of Personnel, Government of India, and from the Chief Ministers of Andhra Pradesh, Assam, Goa, Karnataka, Maharashtra, Meghalaya, Mizoram, Orissa and Tamil Nadu.

5.10 The Commission also continued to monitor the effort being made in Ferozabad district of Uttar Pradesh to end child labour in the hazardous glass industry. While both awareness of the problem and the number of dedicated persons engaged in the effort has increased, particularly on the non-governmental side, the programme has been hampered by frequent transfers of senior officers at the district level. This has undoubtedly affected the continuity of the programme adversely as also responsibility for it. The programme has still, therefore, to acquire the rigour and consistency that it requires if it is to succeed. Furthermore, quite clearly, the inability to date to provide free and compulsory elementary education to the children of Ferozabad has led to an open-ended situation in which the best of efforts to wean away the children from work are proving impossible to sustain. Indeed, Ferozabad illustrates that without persistence, dedication and sustained leadership, and without the over-all effort being conducted against the back-drop of free and compulsory education, the pieces of the puzzle that need to be put together to end child labour, may never quite fit.

5.11 This is why the Commission cannot but strongly reiterate its recommendations that the Right to Education be enforced, if the nation is to prove its seriousness in the effort to end child labour.

## **(8) PREVENTION OF CONGENITAL MENTAL DISABILITIES**

5.12 Following a communication received from a leading medical authority, the Commission has taken serious note of the wide prevalence of iron and iodine deficiency related health problems which result in large numbers of children in our country being born with mental disabilities. The communication asserted that iron and iodine deficiencies not only caused anaemia in expectant mothers, but also frequently lead to loss of life during delivery or the birth of children often condemned to suffer from mental disabilities.

5.13 In the view of the Commission, insensitivity to such a situation, which can prevent vast number of young persons in this country from fulfilling their potential as human beings, would amount to a callous disregard to a right to a life in dignity and reasonable health. This is all the more so when readily available and inexpensive forms of preventive action can remedy the situation. The Commission has, accordingly, begun a review of the steps that have been or are being taken at the Central and State levels to deal with this problem. In the course of its efforts, the Commission will work closely with the concerned Ministries and Departments, with UNICEF and with such other experts as are in a position to advise and to help.

### ***(C) Child Prostitution***

5.14 The menacing implications of child prostitution loomed large in the concerns of the Commission. Apart from the fact that child prostitution has long been prevalent among certain communities, the practice has increasingly become associated with the involvement of organized crime. Indeed, there are distinct “catchment” areas from which children are funneled into child prostitution and there are routes that are followed across the borders of South Asia to trap children in this cruel trade. The problem is compounded in this age of AI OS by the unrelenting search for ever-younger prostitutes, and by sex-tourism, not infrequently organized from abroad.

5.15 A Core Group, constituted by the Commission and comprising, inter alia, the National Commission for Women, the Department of Women and Child Development, selected NGOs and UNICEF, has continued to meet on this subject. It has reviewed existing laws and ways of improving their enforcement; it has discussed the efforts made and difficulties faced in rehabilitating children weaned away from prostitution; it has pressed for greater efforts, at the level of SMRC, to strengthen laws and to devise cooperative measures to deal with trans-border movements; and it has encouraged workshops and hearings by individual members of the group -particularly the National Commission for Women -which is deeply involved in this task.

5.16 At its most recent meeting, the Core Group decided that Members of the Commission would, at an early opportunity, hold a series of meetings of District Magistrates, Superintendents of Police and members of the judiciary in such areas as served, in particular, as a “source” for the induction of children into prostitution.

5.17 Given the global ramifications of this problem, the Commission was also represented by two of its Members, Km. Justice Fathima Beevi and Shri Justice V.S.Malimath, at the first World Congress against Commercial Sexual Exploitation of Children, which was held in Stockholm between 26-31 August 1996.

5.18 It is sadly evident that this painful social problem, destructive of the rights of children, is going to be a major preoccupation of the Commission in the years ahead.

***(D) Persons with Disabilities***

5.19 The Commission pressed for the adoption of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In the course of 1996, however, it grew increasingly concerned that the rules and regulations required to give practical effect to the Act were not in evidence and that, therefore, a sense of despair and neglect was developing among those who had counted on the passing of the Act to improve the circumstances of persons with disabilities and the protection of their rights.

5.20 The Chairperson, accordingly, raised these matters in a public meeting, urging expeditious action. On 31 December 1996, the Ministry of Welfare issued a notification promulgating the rules required under the Act. The Commission recommends that the concomitant steps, including the appointments and other practical measures called for by the Act, will now be taken with all due speed both at the Centre and in the States. Those who are vulnerable must not be allowed to feel that they are children of a lesser God and that the wheels of governance scarcely turn for them.

5.21 The Commission continued to receive complaints from non-governmental organisations and others engaged in assisting persons with disabilities. These related to harassment, intolerance, discrimination at the workplace and elsewhere, and the lack of basic facilities. In particular, the Commission took serious note of a complaint from a person with disabilities working in the Labour Department of Karnataka, who alleged harassment by a Labour Officer. The Commission decided that there was need to gather information on the facilities provided to persons with disabilities in the various States. In response to communications from the Commission, such information relating, inter alia, to scholarships, pensions, job reservations, financial assistance, reservations for admission to academic institutions, medical facilities, self-employment, loans etc has been received from the States/Union Territories. This information will enable the Commission to determine whether the undertakings given by the State Governments are indeed being fulfilled, when it examines the specific complaints that it receives.

***(E) Persons Marginalized by Mega Projects: Bargi Dam Oustees***

5.22 The Commission is concerned at the fate of those who pay the price for “development”, whether through the undertaking of mega projects or as a result of economic policies that, advertently or otherwise, have the effect of marginalizing the most vulnerable sections of society.

5.23 In August 1996, the Commission received a complaint from the National Alliance of People’s Movements, requesting the intervention of the Commission in a “matter relating to the human rights violation of the Bargi Dam outsees of Madhya Pradesh.” It was contended in the complaint that the lives and livelihood of several thousand families, many of whom were tribals, were in “immediate and grave danger” as a result of an official decision to raise the water level in the dam from 418 metres to 422.76 metres. In consequence, a peaceful ‘satyagraha’ had been organized at Bijasen village in Seoni district, but this had been disrupted by official violence directed against the organizers.

5.24 The Commission requested a team comprising Shri Virendra Dayal, Member and Shri R.V.Pillai, Secretary-General, to study the situation on the spot. Their report, which contained a number of specific recommendations to ameliorate the conditions of the affected population, was approved by the Commission and transmitted to the Central and State Government for appropriate action. Many of the recommendations have since been acted upon by the State Government. At the policy level, the Commission recommended, in addition, that the Central and State Governments re-examine and appropriately amend their laws, regulations and practices in order to ensure that, when it comes to acquisition of land for purposes related to national economic development, the provisions of the Constitution, as expounded by the Supreme Court and as contained in international instruments to which India is a party, notably ILO Convention 107, are fully respected. The team considered this to be essential if the ‘national interest’ was to be reconciled, as it can and should be, with true respect for the rights of the weakest sections of society.

***(F) Manual Scavenging***

5.25 The Commission considers it deeply offensive to human dignity that the degrading practice requiring the manual handling of night soil is still allowed to continue in our country I fifty years after independence.

5.26 Despite the launching of a nation-wide scheme in March 1992 to free those engaged in such work, and to rehabilitate them in other occupations, implementation has remained dismal. The Commission therefore felt it should intervene in this matter. A series of meetings were accordingly called, involving the National Commission for Safai Karamcharis, and the Ministries of Urban Affairs & Employment, Human Resources Development and also the Railways and Defence Ministries. Further, on 23 October 1996, the Chairperson wrote to the Central Ministers principally concerned, urging that their Ministries set an example in this regard by replacing dry-latrines with

more contemporary sanitary fixtures. In his letter, the Chairperson drew attention to the provisions of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 and the implications in human rights terms, of the continuation of this humiliating practice. Letters were also addressed by the Chairperson to—the Chief Ministers of all States/Union Territories, from many of whom replies have since been received.

5.27 Though the Act itself had been passed in 1993, the Commission observed that it was, for all practical purposes, lying dormant, little follow-up action having been taken. Following the initiatives of the Commission to give some vitality to the Act, it came into force on 26 January 1997 in all Union Territories and in the States of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal, a notification to this effect being issued by the Ministry of Urban Affairs & Employment on 24 January 1997. The Chairperson has now asked these States/Union Territories to frame the necessary rules, required under the Act, without further delay.

5.28 The Commission is only too well aware that, when it comes to the weakest sections of society, there is a tendency to relapse into inaction. The Commission is therefore keeping in touch with the National Commission for Safai Karamcharis, to strengthen and “equalize” their hands as they endeavour to bring about the implementation of the Act of 1993, starting with programmes in selected districts.

## **VI. PROMOTION OF HUMAN RIGHTS LITERACY AND AWARENESS**

6.1 Section 12(h) of the Statute 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 The fulfilment of this responsibility poses formidable problems in a country such as ours where, according to the 1991 census some 328.9 million were unlettered and according to the latest estimates of the Planning Commission, some 61 million families or 305 million people lived below the poverty line. The numbers of both are now substantially higher. To merely hold seminars for such of our compatriots, would be to mock their circumstances. For them, the way to best protect their rights is, above all, through good and honest governance, responsive to their needs -the provision of food, shelter, clothing, education and reasonable standards of health: from these would flow a life of dignity and a capacity to better understand and assert their other rights. At the other end of the spectrum, to hold seminars for the comparatively privileged is also not enough. More is required, for the relatively powerful must, above all, learn to exercise their powers with restraint and to respect the rights of those who are weaker.

6.3 This being said, the Commission has accordingly sought to follow a strategy of many parts in its effort to meet its responsibilities under this provision of the Act. Given below is an account of some of its endeavours.

### ***(A) Mobilizing the Educational System***

6.4 Despite the shortcomings of the existing educational system in the country -the most obvious of which is the lack of free and compulsory education upto the age of 14 years, a grievous shortcoming that must soon be redressed -any effort to spread human rights literacy must, of necessity, begin with the educational system itself. The Commission has, accordingly worked intensively with the Department of Education, Ministry of Human Resource Development, the National Council of Educational, Research and Training (NCERT) and the National Council for Teacher Education (NCTE) in respect of the manner in which human rights issues could be introduced into the schooling system.

6.5 In consequence of these efforts, textbooks were reviewed for their contents, and a Source Book was prepared for teachers by the NCERT. That Source Book has, in the current year, been translated into Hindi, an Urdu version being due in 1997 -98. Further, the NCERT undertook a study of human rights awareness among school- children in India, as part of a 4-country project sponsored by the International Centre for Inter-Cultural Studies, Institute of Education, University of London in preparation for the Commonwealth Educationists Conference, due to be held in Botswana in July 1997. The study covered eight schools, two each in Karnataka, Madhya Pradesh, Orissa and Rajasthan, keeping in mind the need 'to reflect the ecological, geographical and socio- cultural diversity of the country as well as the student population of both boys and girls from the various socio-economic strata. " The findings of the study can be of great value to the Commission in the period ahead, as they relate to matters covering (i) the Curriculum; (ii) Perceptions of Law and Administration, Justice and Equality of Opportunity; (iii) Colonialism, Independence, Democracy, Civil and Social Rights and Responsibilities; (iv) Consumer Rights and Violence; (v) Perceptions of Identity. Further, the recommendations of the study, which have further developed ideas regarding the curriculum, teaching and learning methodologies, pedagogical practices in the development of print, audio and visual materials, the value of in-service training programmes for teachers that are integrated with pre-service training curricula, could well be of immense help as human rights education increasingly finds its place in the educational system of the country. In this connection, the NCERT is also engaged in devising a National Curriculum Framework, in the elaboration of which, its work on human rights education could prove to be a valuable input.

6.6 For its part, the NCTE, which had prepared a five unit module for teacher training, has now had this module developed in a Hindi version as well. In addition, two video films have been made of the modules. In December 1996, the NCTE held an Orientation Workshop for key resource personnel, structured around the subject of human rights education.

6.7 As regards higher education, at the instance of the Commission, the Ministry of Human Resource Development set up a Working Group to coordinate, oversee and monitor matters relating

to human rights education at the University level and also to consider questions germane to international collaboration in this field. Further, the University Grants Commission (UGC) also constituted a Standing Committee on Human Rights, to start post-graduate courses in the universities and to deal with matters relating to the organizing of seminars, workshops and symposia at the university level. On 13 March 1997, this Standing Committee approved proposals for starting certificate, diploma and degree courses in Human Rights at the Indira Gandhi National Open University, New Delhi, the University of Mumbai; Andhra University, Waltair; Manipur University; Jamia Millia Islamia, New Delhi; Saurashtra University, Rajkot; Jawaharlal Nehru University I New Delhi; and Aligarh Muslim University.

6.8 As part of the growing effort to create an awareness of human rights in the educational system of the Country, the Central Board of Secondary Education, the Kendriya Vidyalaya Sangathan and the National Open School have decided to observe 10 December each year as Human Rights Day. The State Education Secretaries have been asked to encourage this observance each year, while the Department of Youth Affairs and Sports has decided that Nehru Yuvak Kendras will also do so.

6.9 The issue of human rights education is one which requires a long-term strategy and the involvement of all possible players, both governmental and non-governmental. The period 1995-2004 was designated by the United Nations as the UN Decade for Human Rights Education. While the ground work has been laid by the Commission and its partners in the past two years for the observance of this Decade, far more needs to be done to bring its various elements and possibilities together. The Commission has therefore been in touch with the key Ministries concerned, so that a cohesive programme is devised for the country as a whole, drawing upon the talents and enthusiasm of all those who are interested in this subject. Further, with the 50th Anniversary of the adoption of the Universal Declaration of Human Rights due in 1998, an excellent opportunity arises to stimulate nation-wide interest and activity in the furtherance of this great cause.

#### ***(B) Human Rights Education for Police Personnel***

6.10 Together with the taking of determined steps to bring about reforms in the police, the Commission has continued to press for, and contribute towards, the training and re-training of police personnel so as to make them more aware of, and sensitive to, human rights considerations.

6.11 While the Sardar Vallabhbhai Patel National Police Academy in Hyderabad has, for some years, been fully conscious of the need for such training, it has been essential for the Commission to take this message more fully to the State-level training institutions and to those members of the force who are, literally, at the cutting edge. In pursuance of this objective, the Chairperson and Members have frequently had occasion to attend courses run for police personnel and the Director General (Investigation) and his staff have been regular visitors to police training institutions in various parts of the country. The Commission has also, as indicated in its last Annual Report, devised a three-tier

syllabus for various ranks of the police service, ranging from constables to senior officers. This module has been commended for use by the State Governments in the training of their cadres. The Commission is heartened by the fact that, at the State- level, increasing thought and effort are going into the training of police and that training materials are increasingly being prepared in the regional languages. This is essential if ideas of human rights and proper police practice are to reach levels of the police force that are most in contact with the citizenry of this country.

6.12 As the Commission needs to keep itself *au courant* of the best that is there in police practice, it has encouraged the participation of members of its own Investigation Division in courses being conducted both at home and abroad. It believes that such exchanges enhance the capability of the Commission and also serve to provide an idea to others of the circumstances in which the Commission strives to discharge its responsibilities to the nation under its Statute.

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

6.13 The Commission has been gratified at the open and cooperative manner in which the leadership of the paramilitary and armed forces of the country have responded to recommendations by the Commission on a variety of matters, including those relating to the training of the' personnel at all levels. The Chairperson and Members of the Commission have continued to be regular visitors to their various academies and headquarters, addressing their personnel and fielding the many questions that they, with reason, pose. The Commission had been kept informed by the security forces of the various improvements they have made in their training programmes and is pleased to note that these forces are, increasingly, widening the circle of those who are interacting with them in matters of training. It has, in particular, noted that the International Committee of the Red Cross (ICRC) is so involved, especially with the courses conducted by the Border Security Force. The Commission, in addition, welcomes the increasing participation of the armed forces in discussions and sessions on human rights called under the auspices of this Commission.

6.14 In the course of 1996-97, the Commission continued its tradition of organizing debating and essay competitions involving the personnel of paramilitary forces and the police. The subjects chosen for the essay competition were 'the obligation of police leadership in the protection of human rights,' for gazetted officers, and 'custodial violence; causes and remedies', for non-gazetted officers. The essays were of excellent standard and prizes were awarded to winners on Human Rights Day 1996, at a function organized in New Delhi. The annual debate took place on 21 January 1997 with officers competing from the BSF, CISF, CRPF, ITBP, NSG, RPF and the Assam Rifles. Speaker<sup>3</sup> took the floor both in Hindi and in English, the subject of the debate being, "It is no responsibility or duty of the paramilitary forces to observe human rights.'. Once again, the quality of the debate was both thoughtful and provocative and it served its purpose admirably. The running trophy was awarded to the team of the Assam Rifles.

***(D) Political Parties***

6.15 The Commission remains constantly conscious of the critically important role that political parties play in furthering -or frustrating -the cause of human rights. Without their support, understanding, energy and commitment, human rights cannot flourish in the country, for the message of democracy and of rights is, above all, to be carried to the people of India by them. This is why the Commission has greatly welcomed opportunities to exchange ideas with the leadership of the political parties, both in the Centre and in the States, and why it intensified such contracts in the period leading up to the General Elections, urging that measures sympathetic to the cause of human rights, such as the provision of free and compulsory elementary education for the children of India, be included in their party manifestos.

6.16 The political parties have a mighty potential to champion and uphold the fundamental rights guaranteed by our Constitution. There could be few greater gifts to the nation than if, in this fiftieth year of Independence, they could harness that potential to fulfil the promise of Parts III and “IV of the Constitution.

***(E) Seminars and Workshops***

6.17 A number of major seminars were supported by the Commission during the year. They were variously organized by non-governmental organizations, universities, the armed forces or State Human Rights Commissions.

6.18 Amongst these seminars was one on Human Rights and Terrorism and Human Rights Education, held in Bangalore in August 1996, to commemorate the thirtieth anniversary of the International Covenant on Civil and Political Rights. It was addressed by the Prime Minister of the country and attended, among others, by the Chairperson and Members of this Commission, the Chairman, Vice Chairman and two Members of the United Nations Committee on Human Rights, the Chairpersons of the State Human Rights Commissions, distinguished justices, diplomats and members of the police force, both serving and retired, human rights activists and scholars.

6.19 Earlier that month, a National Workshop was held in Madras on Human Rights and Societal Change, with special reference to Scheduled Castes and Scheduled Tribes. Organized by the Dalit Liberation Education Trust, with the help of the People’s Union for Civil Liberties (PUCL) and this Commission, the Workshop brought together leading dalit intellectuals and activists, together with scholars, representatives of interested non-governmental organizations and senior officers of the Centre and States. The Speaker of Lok Sabha addressed the inaugural session. The Workshop constituted a major effort by the Commission to better its understanding of the special problems facing dalits, so that the Commission could press for appropriate ways of resolving or redressing these problems. The Workshop noted that, despite the existence of the Protection of Civil Rights Act, 1976, the violation of human rights of dalits had increased. The implementation of the Act left

much to be desired; investigations into atrocities against dalits were often “inadequate” or biased. The Workshop also noted that the conviction rate of perpetrators of atrocities against dalits was very low and that there was need to plug the loop holes that permitted this. Mention was, very often, made to the frequency of atrocities resulting from disputes over land, and the need to implement land reforms diligently. Above all, the workshop called for greater sensitization of all the agencies of Government, the judiciary and law enforcement machinery in particular, to the special problems posed in protecting the rights of dalits.

6.20 Two seminars, in particular, related to the role of the armed forces and human rights. One, organized in Delhi in November 1996 by Army Headquarters itself, was extremely well attended, non-governmental organizations and others participating fully. It also provided the Chairperson and Members of the Commission to engage in a most useful and thorough in-camera discussion with the Chief of Staff and the senior most officers of the force. The other was a seminar organized by the Assam State Human Rights Commission, which, among other matters, permitted a serious discussion on human rights problems in areas of insurgency, representatives of the Army participating actively in the discussion.

6.21 A number of seminars were attended by the Chairperson and Members of the Commission on various aspects of child labour, including the special problems of children working in the carpet industry. In more than one such seminar, the organizers had invited participants from other countries of the South Asian region as well, signifying their determination to join hands in dealing with this grave problem which afflicts this region as a whole.

6.22 The Commission helped with the partial financing of some of these seminars/ workshops. It has, in the course of recent months, elaborated guidelines for providing financial assistance to non-governmental organizations, should they seek such help from it in organizing discussions on human rights issues.

#### ***(F) Publications and the Media***

6.23 The Newsletter, published by the Commission both in English and Hindi, has appeared without fail every month. It has come to be regarded as a steady source of information on the Commission’s work and concerns and has also provided the gist of important decisions by the Commission in respect of individual complaints addressed to it. As such, demand for the Newsletter has greatly increased, both at home-and abroad, and the Commission has had to step-up its monthly print-order. The Newsletter is now widely read by human rights activists, students and scholars, members of the legal fraternity, administrators, and representatives of non-governmental organizations. It is available on Internet, and Members of the Commission on their travels around the country or further a field are frequently asked by potential readers to add their names to the

Commission's mailing list. As earlier, the Commission is particularly gratified that Members of the security forces and others concerned with governance are increasingly asking for the Newsletter.

6.24 The Clippings Information Service of the Commission is also of keen interest to researchers, students and academics. Daily clippings, gleaned from the nation's diverse press, are computerized, enabling their retrieval newspaper-wise, date-wise and topic-wise.

6.25 The Commission has continued its practice of periodic meetings with editors/ senior correspondents, the most recent of which was held in January 1997, after the new Chairperson had been in office for two months. Press briefings continue to be given on a regular basis to correspondents, many of whom are developing a specialization in human rights matters.

6.26 The Commission has received the fullest cooperation from Doordarshan and AII- India Radio. The Commission has prepared 12 "spots," which are being regularly broadcast by AIR. Further, "Human Rights Watch", a half-hour programme to be broadcast every month, has been started by AIR. In addition, AIR is regularly broadcasting spotlights and commentaries on human rights issues. A Member of the Commission participated in a 'phone-in-programme' on Human Rights Day that was organized by AIR.

6.27 The Commission recommends that both Doordarshan and AIR should increase their involvement in enhancing human rights awareness. In discussions with Doordarshan and the 1&8 Ministry, the Commission has suggested, for instance, that the 10 minutes slot between the two national news bulletins in the evening could effectively be used for telecasting programmes on human rights issues. Likewise, Doordarshan could also consider a half hour programme each month to provide a round-up in the manner of 'Human Rights Watch'.

6.28 Private television networks have also been contacting the Commission regularly for interviews and stories. The Commission would like to thank them, as also Doordarshan and AIR, for the interest they have evinced. This country is fortunate indeed in the freedom and vitality of its media. The lively coverage of issues of concern to this Commission is most helpful to the debate that must accompany the better promotion and protection of human rights in the country. The Commission continues to take suo motu action on reports in the media, which frequently alert it to the most poignant violations of human rights.

#### ***(G) Research***

6.29 The Commission has not yet been able to undertake its research activities in the manner that it desires. After prolonged interaction with the Planning Commission, the Commission had decided that research should be undertaken, 'under its auspices, in respect of six subjects: abolition of child labour; improving conditions in mental hospitals and the rehabilitation of cured patients; prevention of female foeticide; improving the plight of adivasi women; devising ways of creating a culture of

human rights; and the problems of the aged, In addition, agreement in principle had been reached that the Planning Commission would provide an amount of Rs.25 lakhs to this Commission for the carrying out of such research, In March 1996, however, the Planning Commission stated that, as a “grantee institution,” this Commission was not entitled to provide grants to other institutions for undertaking research under its auspices.

6.30 In these circumstances, the Commission decided to use its own budgetary provisions for research and earmarked some Rs.1.00 lakh for this purpose. A first grant of Rs.1.20 lakhs was released to the National Institute of Mental Health and Neuro- Sciences (NIMHANS) in Bangalore, for a study on “Quality Assurance in Mental Health.” The Commission has also approved its own guidelines for the release of funds for projects of research to be undertaken under the Commission’s auspices.

6.31 Faced with a great increase in its work, resulting not least from the vast number of complaints being addressed to it, the Commission has endeavoured in recent months to rationalize its on-going projects and programmes with a view to ensuring that greater coherence and consistency are brought to bear on them and a sense of priorities established and respected. As part of this effort, the Commission has restructured its Research Division, converting it into a Policy, Research, Projects and Programmes Division (PRPP).

## **VII NON-GOVERNMENTAL ORGANIZATIONS**

7.1 To “encourage the efforts of non-governmental organizations working in the field of human rights” is a statutory responsibility of the Commission under Section 12(i) of the Protection of Human Rights Act, 1993. In reality, this is not just a responsibility, but a necessity. The promotion and protection of human rights cannot possibly gather the momentum it requires without the fullest cooperation between the Commission and NGOs. They are, as the Commission has noted earlier, each others’ most natural allies and most honest critics.

7.2 With a view to drawing on the talents and commitments of NGOs, the Commission has been endeavouring to gather data, in systematic form, regarding the activities in which they could best cooperate with the Commission. To this end, a questionnaire was devised, which was published in the Commission’s Newsletter, seeking information from such NGOs as might wish to work with the Commission (Annexure II). A total of some 100 NGOs have responded to the questionnaire. The data so gathered will be invaluable to the Commission as it seeks partners, in different parts of the country, to work with it in one or other area related to the promotion and protection of human rights. The data could also be helpful to NGOs in networking with each other, in strengthening each other’s capacities and in avoiding duplication in their work. The Commission is often asked by potential donors for its views on the capability and location of NGOs in various parts of the country working

in various fields related to human rights. The database being prepared could also assist in providing such advice when sought.

7.3 As in the past, NGOs were closely involved with the Commission through the complaints they submitted to it. These covered the entire gamut of human rights issues before the Commission. Further, NGOs organized, or participated in, numerous seminars/workshops in which the Commission was represented. Frequently, they provided the impetus for the Commission's efforts, for instance, in regard to the special problems of dalits and tribals, child labour, child prostitution, the condition of refugees and other vulnerable groups. Such instances are also recounted in other parts of this report. The issue of jail reforms, too, attracted major NGO participation, as did their concern with issues of human rights in areas of insurgency or terrorism. On occasions, the efforts of NGOs have drawn the Commission into the matters of consequence to the South Asian region more widely, child labour and child prostitution being such subjects. Further, the Commonwealth Human Rights Initiative (CHRI) arranged a seminar in Dhaka, Bangladesh, which dealt, inter alia, with the issue of National Institutions for the Promotion and Protection of Human Rights - a matter of more than passing relevance to the region, since many States in this area are considering whether to establish such institutions and how to define their powers and functions.

7.4 In brief, four years into the life of this Commission, it is -more than ever - convinced of the need and the benefit of working closely with NGOs. The Commission knows full well that many of the most serious challenges facing the country, whether the ending of child labour or the spreading of primary education, will require the dedication, the stamina and the sense of mission that NGOs uniquely possess.

## **VIII STATE HUMAN RIGHTS COMMISSIONS AND HUMAN RIGHTS COURTS**

8.1 A country of the size and diversity of India needs Human Rights Commissions at the State level. The reasons are obvious: the redressal of grievances must be swift and inexpensive, the message of human rights must reach the grass-root level in the languages of the people of the country, the federal character of our Constitution must be respected; the nation-wide challenge needs an army of activists in each State and in each district, if societal and attitudinal changes are to be brought about.

8.2 The Commission has therefore been urging the early establishment of State Human Rights Commissions and it was gratified to see that the Common Minimum Programme of the United Front Government included an item to this effect.

8.3 The position now is as follows: State Human Rights Commissions have been established in West Bengal, Himachal Pradesh, Madhya Pradesh, Assam and Tamil Nadu, in that order. Uttar Pradesh has notified the constitution of a Commission, but appointments to the post of Chairperson and Members have not yet been made. The Government of Jammu & Kashmir has passed legislation

to establish a State Human Rights Commission and this has received the assent of the Governor; appointments are to be announced. The Governments of Kerala and Punjab have informed this Commission that the establishment of State-level Commission is under consideration.

8.4 With the increase in the number of State Commissions it is more important than ever before to ensure that their work is carefully coordinated with that of this Commission, and that confusion and duplication does not occur. Under Section 21 (5) of the Protection of Human Rights Act, 1993 a State Commission “may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution.” Further, Section 36(1) of the Act, states that the National Human Rights Commission “shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time-being in force.”

8.5 Practical arrangements have thus been made to exchange information twice a month between this Commission and the State Commissions so that, depending upon which Commission takes cognizance of a case earlier, the forum is decided as to where the matter should be pursued. Clearly, in the period ahead, such arrangements will have to be kept under review.

8.6 While it is most desirable that State-level Commissions be established rapidly, certain State Governments have informed this Commission of their difficulty in proceeding because of financial constraints or because of the non-availability of retired Chief Justice or Justices of the High Court whose presence is essential to the proper composition of the 5-Member Commissions envisaged under the provisions of Section 21 (2) of the Protection of Human Rights Act, 1993. As these difficulties cannot be willed away, the Commission is reflecting on whether the Act itself needs to be amended to provide some flexibility in regard to the size and composition of State Commissions. In respect of the States in the North-Eastern region, for instance, there is a single High Court, based in Guwahati. A formula may need to be specially devised for these States in respect of Human Rights Commissions. This Commission will, accordingly, be making recommendations to the Central Government on this matter after further consultations and consideration.

8.7 Section 30 of the Protection of Human Rights Act, 1993 envisaged the notification of Human Rights Courts “for the purpose of providing speedy trial of offences arising out of human rights violations.” Such courts were thereafter notified in Andhra Pradesh, Assam, Sikkim, Tamil Nadu and Uttar Pradesh, but ambiguity remained as to the precise nature of the offences that should be tried in such courts and other details regarding the conduct of their business.

8.8 On 3 January 1997, the Secretary General of the Commission received a communication from the Additional Registrar(Law) of the High Court of Madras stating that, on 22 November 1996, the Chief Justice of that High Court had received a memorandum from the People’s Union for Civil Liberties (PUCL) regarding the jurisdiction and the procedures to be followed by Human Rights

Courts constituted under Section 30 of the Act. The letter of the Additional Registrar requested the National Human Rights Commission to place its views before the High Court on the various aspects as to the scope, sweep, amplitude, powers, jurisdiction and functioning of the Human Rights Courts, which matter was to come up for consideration in the Criminal Revision Case No.868/96 before the Division Bench of the High Court.

8.9 The Commission decided to accede to this request and to render all assistance to the High Court by placing its views before it. Further, having regard to the implications and ramifications of the issues raised, the Commission also expressed the view that it would be appropriate to notify the Union of India and the Attorney General of India to assist the Court. The matter is now pending before the Court. The decisions taken by it will be of great assistance to the proper functioning of Human Rights Courts not only in Tamil Nadu but in other States as well.

## **IX COMPLAINTS BEFORE THE COMMISSION**

### ***(A) Number and Nature***

9.1 The rapid rise in the number of complaints received by the Commission signifies spreading of awareness of human rights and is a reflection of the increasing confidence of people in the Commission. There has been an increase of more than hundred per cent in the number of complaints registered by the Commission during the period 1 April, 1996 to 31 March, 1997 over the preceding year. The number of complaints, which includes reports sent by State agencies on custodial deaths and rapes, registered in 1995-96 was 10,195 as against 20,514 registered during the year ending 31 March, 1997. Including the 319 cases, which were pending consideration at the beginning of the year, the Commission had a total of 20,833 cases that required its consideration in 1996-97. Uttar Pradesh continued to account for the largest number of fresh cases (8497) followed by Bihar (2320). These two States together accounted for 54 per cent of the fresh cases received during 1996-97.

9.2 While there has been this phenomenal increase in the number of complaints, the strength of the Members of the Commission stood at three consequent on the appointment in January 1997 of two of its Members as Governors. With a view to expediting the disposal of the complaints, the Regulations were amended empowering a single Member to deal with the complaints instead of a bench of two Members. This did help substantially to redeem the situation. During the current year, 16,823 cases were taken up for consideration. Of them, 8,048 cases were disposed of in limini and 2,272 cases were disposed of with directions to the appropriate authorities. In respect of 6,503 complaints, directions were issued calling for reports. 528 cases were concluded after considering the reports received from the concerned authorities, or the reports submitted after inquiry by the Investigation Division of the Commission. Thus, a total of 10,848 cases were disposed of during the current year as against 7,618 cases that were disposed of during the last year. This was done even though the Commission did not have full complement of Members for about three months in the

year. The disposal of cases was forty two per cent more than in that of the previous year. The disposal of cases could have been better had there been more prompt responses to the Commission's notices by the State authorities. The Commission is concerned that there is a tendency to delay responses and that this often calls for reminders. Should the Commission continue to feel that such delays inhibit its proper functioning, it will not hesitate to propose the strengthening of its powers, under its Statute, to deal with such situations.

9.3 A State-wise list of the number of cases registered, considered by the Commission and pending consideration is at Annexure III. A State-wise list of cases dismissed in limini, disposed of with directions and concluded after consideration of reports and inquiries by various agencies is at Annexure IV. An analysis of the 6503 cases in which the Commission called for reports and inquiries including those which were concluded on the basis of such reports and inquiries, is at Annexure V. It may be noted that the number of reported custodial deaths has almost doubled in the year under review as compared to the previous year. In accordance with the Commission's instructions, various States and Union Territories reported 888 cases of custodial deaths of which 700 were in jail custody. The large number of deaths reported in jail custody emphasises the urgent need for reforms of prison conditions and the Commission is seriously engaged in this task (see also paragraphs 3.24-3.26 above).

9.4 The increase in the number of complaints received by the Commission has necessitated drastic changes in its procedures for dealing with them. Earlier in the report, a reference was made to the constitution of Single-Member Benches in consequence of which a much larger number of cases received the attention of the Commission at any given point of time. Certain other changes were also made in the procedures dealing with the complaints in order to make initial scrutiny more effective. The Commission believes that the process of adjusting itself to the demand of fast increasing number of cases will have to be a continuing one and must, in course of time, take the form of higher management technique. The Commission is presently considering the evolution of new procedures to enable it to process certain categories of complaints under its directions at a level below it. Initiatives have been taken to identify functionaries who could be entrusted with this responsibility. It will enable the Commission to concentrate on the more serious complaints that are addressed to it. It is to be expected that this process of evolution of procedures and organisational changes will continue till the Commission's work gets standardised.

9.5 The Commission has, in pursuance of its Regulations, made arrangements to make public its recommendations, by notifying them as is required under Section 18 and Section 19 of the Act.

9.6 Though there have been instances when the concerned authorities have sought clarifications and, in some cases, expressed a certain degree of reluctance to carry out the recommendations made by the Commission, it is gratifying to note that there has so far been only one case -in Tamil Nadu in

which the State Government has not yet consented to carry out the recommendations made by the Commission: those related to the payment of compensation to a victim of police atrocities. The Commission has sought the intervention of the appropriate Court to have its recommendations implemented by the State Government.

9.7 In respect of cases brought to the attention of the Commission, criminal prosecutions have been launched against 167 persons (144 policemen and 23 civilians). Compensation ranging from Rs. 50,0001- to Rs. 1.50 lakh were recommended for payment in 55 cases.

***(B) Investigation of Cases***

9.8 There has been an increasing emphasis, during the year under report, on the investigation of cases by the Commission's Investigation Division. As against 876 cases investigated or monitored by that Division during the year 1995-96, 1047 complaints were taken up for investigation or monitoring during the year 1996-97. Of these, 296 were investigated by the Commission's own staff and the remaining 751, which were sent to other agencies such as the State Police, were closely monitored. Out of these cases, 256 were closed after processing. In certain instances the investigating officers of the Commission worked in concert with representatives of Non-Governmental Organisations. Such an association with the NGOs in the investigation of cases was not limited to obtaining detailed information on cases, but, on occasions, also the interviewing of victims, particularly in-cases of violence against women.

9.9 The approach of the Commission in investigating cases of human rights violations has been victim-oriented. Cases taken up for investigation by the Commission were of varying nature; ranging from custodial death, illegal detention, implication in false cases, false encounters and complaints of prisoners and under- trials in jails. Though the work of the Investigation Division was spread out over the entire country, it was concentrated more on Uttar Pradesh, Delhi, Bihar, Tamil Nadu and Rajasthan.

9.10 In many cases, which were entrusted by the Commission to the State agencies for investigation, the Commission was not satisfied with the quality of work and directed the State CID to take over investigation and send reports to the Commission. In Uttar Pradesh alone, in as many as 26 cases, the Commission entrusted the Investigation to the State CID, as it felt that in such cases the investigation of the District police was slipshod and cursory.

***ILLUSTRATIVE CASES***

9.11 As in previous years, this report also includes illustrative cases identified by the Commission which reflect the nature and content of grievances of human rights violations brought to its notice. They cover custodial death and rape, violence against women, illegal detention, wrongful

implication, failure of the police to take appropriate action to protect the victim's interest, conditions relating to jails or violence in areas of insurgency and terrorism.

The gist of selected illustrative cases follows below:

***(i) Deaths in Alleged "Fake Encounters" with Police in Andhra Pradesh***

These cases arose out of complaints made by the Andhra Pradesh Civil Liberties Committee (APCLC), a non-governmental organization, which alleged that the Andhra Pradesh police had staged "fake encounters" in order to eliminate members of the People's War Group (PWG), their supporters and sympathizers. The APCLC, in their complaint, gave particulars of such encounters which they described as fake, and stated that, instead of following the due process of law in respect of the PWG, the police was resorting to "executive elimination". In some cases, the deceased were found to be only remotely connected with the People's War Group and in some others the deceased were not involved in any naxalite activity nor had they been arrested or even mentioned in any police record.

The claim of the police in each of the cases was that the persons killed had committed several offences and were accused in criminal cases. Warrants for arrest, it was said, were issued against them and they were evading arrest and that the police had the right to use force for effecting arrest which could extend up to causing of death of the accused if they were involved in offences punishable with death or with imprisonment for life. The police also claimed that the deceased were the aggressors and would have killed the police-personnel had the police not fired at them in exercise of their right of self-defence. They thus sought to justify their killing on the ground that the deceased themselves were guilty of attempts to commit the murder of police personnel.

The Commission noted that the evidence on record did not show in any of the cases that any prior attempt was made by the police to arrest the deceased persons. In none of these "encounters", did police personnel receive any injury while one or more persons from the other side had died. The Commission further observed that the criminal law clearly prescribed that a person who claimed the right of private defence as a cover against prosecution had to establish the same.

Entries were made in the respective police stations to the effect that the deceased made attempts to kill the police and were therefore, guilty of the offence of attempt to murder under Section 307 of Indian Penal Code. On that basis, they were described as "accused" and FIRs were drawn up accordingly. The cases were, however, closed without investigation on the ground that they had abated on account of the death of the accused persons. No attempt whatsoever was made to ascertain as to who were the police officers that fired the bullets that caused the respective deaths and as to whether their killing was justified in law. Attention was confined to the conduct of the deceased and not to that of the police who had caused the deaths. No attempt was made to investigate the circumstances under which the police opened fire causing death of several persons. As this appeared

to be the pattern of the procedure followed by the police, the Commission felt it necessary to conclude that the procedure followed by them was opposed to law. The Commission had to indicate the correct procedure to be followed in such cases.

The police do not possess unchartered right to kill any person with impunity. They can, like any other citizen, exercise the right of private defence. When a policeman causes death in exercise of such a right of private defence it would not be an offence as provided in Sec.96 of the IPC. That apart, Sec.46(3) of the Code of Criminal Procedure empowers the police officer making an arrest of a person who is accused of an offence punishable with death or imprisonment for life to use of such force as may be necessary to effect the arrest which may extend up to the causing of death of such person. The police has to act within these limitations when it has to deal with situations of an encounter. When a person is killed by the bullet of a police officer in an alleged encounter it results in an unnatural death. When information about it is received by the Officer-in-charge of the police station, he has to find out if there is reason to suspect the commission of a cognizable offence. In a situation when death occurs in an encounter by the bullet of a police officer it cannot be said whether the causing of death was justified as an act done in proper exercise of the right of private defence or falling within the limits prescribed in regard to causing of arrest falling *u/s* 46(3) of the Code of Criminal Procedure without ascertainment of facts after due investigation. The police cannot make a presumption without investigation that the causing of the death by the bullet of the police is not an offence. The correct procedure to be followed in situations of such 'encounters' is that the police officer-in-charge of the police station on receipt of information that death was caused by the firing of the police party should record that information and draw the inference that there is reason to suspect the commission of a cognizable offence. After making necessary entries, steps should be taken to investigate the facts and circumstances leading to the death admittedly caused by the bullets of the police to find out whether it was justified either in the exercise of the right of private defence or in the legitimate exercise of the power of arrest under the circumstances specified in Section 46(3) of the Cr.P.C. As the police party of the same police station is involved in the firing resulting in the killing, such cases should invariably be made over to an independent investigating agency.

The Commission recommended to the Government of Andhra Pradesh to take steps to investigate the facts and circumstances leading to the death of members of People's War Group (PWG) in alleged encounters with the Police and to complete the investigations within 4 months. If the investigations resulted in the need for prosecution, steps be taken for speedy trial. In pursuance of the Commission's recommendations, the Andhra Pradesh Government have entrusted the State CID with the responsibility of undertaking detailed investigations into the death of five persons killed in the alleged "fake encounters" and the officers concerned have been instructed to complete the task within three months.

The Chairperson has drawn the attention of all Chief Ministers to the detailed recommendations of the Commission in this case. His letter may be seen at Annexure VI of this report.

***(ii) Complaints from Shri Sanjay Singh Umesh of Daltonganj, Bihar regarding police encounter killings***

The complainant alleged that on 15 April 1996 six naxalites were killed by the police at Murumdag village, Daltonganj, Bihar. The PUCL Palamau which had earlier enquired into the matter stated that an armed group came to the village to settle a dispute. On receipt of information: the police came and encircled the members of the armed group who surrendered to the police. Thereafter, the members of the group were made to stand at different places and fired at by the police. In all six persons were killed as a result of the firing by the police. The PUCL found that the allegation of the police that the naxalite group had attacked the police party with bombs and firearms and that the police returned fire in self-defence resulting in the death of six persons to be untrue. The armed group came in plain clothes but after their post mortem they were dressed in khaki uniforms which had neither any holes nor bullet marks on them. The dead bodies were thrown away but when there was a protest by the people, six bodies were transported in a police van and cremated by the police.

On notice being issued, SP Palamau submitted his report. The report stated that the persons killed belonged to a proscribed organisation, Jan Mukti Morcha, which had been committing atrocities including murder, looting etc. It further stated that the villagers had not invited these people for the settlement of any dispute. Contraband rifles were recovered from the six 'deceased extremists'. There was exchange of fire between the police and the naxalites for about two hours. The police party was attacked by the naxalites with bombs and, therefore, the police had to return the fire, resulting in the killings. All the other allegations in the complaint were denied. It further stated that the complainant was liable to be prosecuted under section 182/211 IPC for making false allegations against the police.

The Commission in its orders noted that it had occasion to examine the correct procedure to be followed by the police in cases where deaths occur in an encounter between the police and others, in a batch of cases from Andhra Pradesh. That order of the Commission had been accepted and given effect to by the Government of Andhra Pradesh. The procedure followed in this case was found to be clearly inconsistent with the correct procedure explained by the Commission in the said order.

As indicated in the order of the Commission in the Andhra Pradesh case, the police officer in charge of the police station on receipt of information about the death of six persons in this case, ought to have registered cases of unnatural deaths of six persons as a result of the firing by the police party and taken immediate steps to investigate the facts and circumstances to find out as to whether the killings were justified either in the exercise of the right of private defence or in the exercise of

the power of arrest under the circumstances specified in Section 46 of the Cr P C. As the police attached to the same police station were involved in the firing resulting in the killing, the Commission recommended that the case should be made over to an independent investigation agency namely the State CID and to complete the investigation within four months. If the investigation called for launching of prosecution, steps for speedy trial be taken. The Commission expressed the hope that compensation would be awarded by the State if the case ended in conviction.

***(iii) Killing of 11 persons by Gaya police in April, 1994 in Bihar***

Suo-motu cognizance was taken by the Commission on perusal of an article regarding the killing of 11 persons by Gaya Police in April, 1994 that appeared in "The Statesman" dated 19 May 1994. The People's Union for Civil Liberties, Bihar also investigated the matter and furnished its report. The findings in the report were that this was a case of 'cold-blooded murder' of 11 persons by the police and that the story of an "encounter" was concocted to cover up their crime and to lend a facade of legal justification to an otherwise cold-blooded murder committed on 12 April 1994. S/Shri Syed Shahabuddin, former Member of Parliament and Arjun Kumar, an advocate also sent separate complaints.

The Commission issued notices to the Chief Secretary and DGP of Bihar. In response, a report was received from the Assistant Inspector General of Police, Bihar. It was stated in the report that Case No. 62/94 was registered on a complaint about this incident from the Sub-divisional Police Officer, Sherghati in PS Mohanpur. The case was registered against the 11 deceased extremists and 100-125 other terrorists u/s 147/148/149/307/323/353 IPC, 17 CLA Act, 25(8) (A), 26/27/35 Arms Act and 3/5 V.P. Act. On investigation, SP Gaya stated that the 11 deceased persons and other unknown persons had gathered in Masaudha forest with a view to committing offences. Two months earlier, 3 innocent persons had been killed in broad daylight and a truck and a motorcycle burnt by the extremists. It was also contended that the extremists, out of enmity, had planned to kill the MLA and also to attack the police party. It was further stated that members of the MCC (Maoist Communist Centre) had planned to commit offences on the date of the encounter. The police having come to know about it, arrived there. The 11 persons who were hiding were asked to surrender to the police. Instead of surrendering they opened fire at the police whereupon the police fired at the hiding miscreants. After several rounds of firing from both sides there was a lull. When the police went inside they found the dead bodies of the 11 persons and some firearms and explosives. A sum of Rs. 8798/- in addition to arms and ammunition and some literature in which a call was given to the farmers to fight against feudalism were recovered. The others had fled away. The villagers were called to get the bodies of the 11 persons identified but nobody recognised them. After a confidential enquiry it was found that 6 out of the 11 persons who were killed were involved in Mohanpur PS Case No. 19/94 for murder of 3 persons and the burning of a truck and motorcycle and for other offences under the IPC.

On examination of the report, the Commission felt that unless the matter was inquired into by a senior judicial officer, the explanation of the police could not be accepted. With the permission of the High Court, the Chief Judicial Magistrate, Gaya has accordingly been entrusted with the inquiry.

***(iv) Custodial death of Shri Bundoo in Uttar Pradesh***

The Senior Superintendent of Police, Moradabad vide his fax message dated 14 October, 1995 reported the death of one Bundoo while in custody. The Commission took cognizance and called for a report from the Government of Uttar Pradesh. In their report, the Government stated that on 12 October 1995 a case under section 302/301 IPC in crime No. 273/95 was registered at Police Station Chandpur, Bijnore District against four named persons. The case came to be investigated by an .SHO. Two of the accused persons were arrested in the morning of 13 October and on interrogation one of them described the place of incident. After being handcuffed, he was taken to the site for identification in course of investigation. He had also indicated that he would lead the police to the discovery of weapons used for the offence.

Two police SHOs along with a host of constables proceeded to the place. Suddenly, Bundoo jumped out of the vehicle and came to fall in front of a moving bus. He received serious injuries which ultimately led to his death at Moradabad District Hospital. The SSP indicated that the two Inspectors concerned had been ordered to be present at the roll call and orders for departmental action would soon be initiated.

The long reports and the connected material were scrutinised by the Commission. Accepting the same to be true version of the incident, the Commission held that the deceased sustained grievous injuries when he jumped from a moving jeep and fell before a speeding bus. There was no dispute that a host of constables were also travelling in the jeep along with the deceased who had already been handcuffed. It was the obligation of the constables to ensure that the handcuffed accused would not run away from the jeep. The fact that so many police officers were present in the jeep when the deceased jumped out of the vehicle showed gross negligence by the police guard.

The Commission recommended that an enquiry be undertaken immediately and the concerned police officers and the constables, if found guilty of negligence, be adequately punished.

The Commission took the view that compensation should be paid to the next of the kin of the deceased and recommended a compensation of Rs. One lakh in this respect. Government would be free to reimburse itself, as it considered appropriate, from the delinquent police officers. It would be open to apportion the amount of recovery.

***v. Custodial death of Shri Atal Bihari Mishra, student of Banaras Hindu University, U.P.***

The Commission initially received a report from the Superintendent of Police, Balia District, Uttar Pradesh, on the custodial death of Atal Bihari Mishra on the basis of which it issued notice to

the Chief Secretary, UP calling for a report. The Commission also received a joint petition from Shri Shreesh Chander Dixit, Member of Parliament and Dr Vina Pande, Member of UP Legislative Council on this case. The matter was raised in Parliament by the former Prime Minister Shri Chandrashekhar, who urged the Government to refer this case to the Commission.

The Commission directed a team from its own investigating staff to conduct a preliminary enquiry. Upon being informed by the State Government that the State CID was entrusted with the enquiry into the case, the Commission asked it to expedite the investigation.

On perusal of the CID report, which was received by the Commission, it observed that this was an instance of police high-handedness at its worst. A young boy, because of political differences between his father and a local politician belonging to the ruling party, was dragged to the police station on “fictitious and frivolous” charges and was mercilessly roughed up. The Commission felt that unless appropriate punishment was meted out to officers responsible for this kind of dastardly crime, it would be difficult to contain and control custodial torture. The Commission, therefore, took up this matter with the then Governor of UP urging him to ensure that charge sheets against the errant personnel are filed expeditiously before the Court. Later, the Commission followed this up with another letter expressing serious concern over the delay and urging immediate submission of charge sheets and departmental action against the delinquent police officers.

As a result, nineteen police officer/officials have been charge-sheeted under various sections of law in the Court of the Chief Judicial Magistrate, Balia for the custodial death of Shri Atal Bihari Mishra, a student of the Banaras Hindu University.

**(vi) *Death in police custody of Shri Udayan in Kerala***

This case was brought to the notice of the Commission by Dr Xavier Paul who alleged that Udayan died in police custody in the lockup in Mannarghat Police Station on 20 January 1994. Amnesty International also reported this incident in a publication brought out by it in March 1994.

On the basis of evidence of Shri Rashid, an inmate of the same lock up, the Commission noted that Udayan was beaten up a couple of hours before his suicide in the Sub Inspector’s room as also when he was being brought back to his cell. The Commission was of the view that the torture to which Udayan was subjected by the police in the lockup contributed to his committing suicide. The Commission recommended that:

1. A case should be registered against the police officials responsible for torturing Udayan and that they should be prosecuted with utmost expedition.
2. Payment of compensation of at least Rs 1,00,000/- to the family of Udayan.

Accordingly compensation of Rs. 1,00,000/- has been paid to the family of Udayan. The Home Department, Government of Kerala has asked the Director General of Police, Kerala to register a case against the police officers responsible for torturing Udayan.

***(vii) Custodial death of Shri Babul Dhaniwal, Alias Bablu Roy in Assam***

On 20 June, 1995 the officer in charge of Bihaguir Outpost under Sonitpur District along with some other police personnel took into custody one Babul Rai alias Dhaniwal along with six others while they had assembled in the house of one Jagannath to attend a dinner. They brought all the seven persons to the outpost. The police personnel reportedly tortured Babul Rai and others to extort a confession regarding a theft of a fan and thereafter put all the persons in a police lock up. The following morning, at about 04.00 AM, Babul Rai was found dead in the police lock up. The magisterial enquiry confirmed the fact that Babul Rai had died in the lock up due to physical torture by the police personnel. The post mortem report showed no external injury and the cause of death was not ascertainable as indicated therein. In the report of Deputy Secretary, Political (A) Department dated 12 September 1995 it was stated that departmental proceedings had been drawn up against police personnel and they had been suspended.

On Commission's intervention, the State furnished the report of the magisterial enquiry where the magistrate has observed that he had come to the conclusion that Babul was arrested along with other boys on 20.06.1995, brought to the Bihaguri police outpost, severely tortured and beaten by two police officers and that he died on 21.6.1995 in the police lock up. The Commission went by the magisterial enquiry report and recommended immediate prosecution of the police personnel involved in murder.

The Commission recommended that a sum of Rs. 50,000 be paid by way of compensation to the parents of Babul or if there be other dependents then to them. This payment be taken as interim in nature and would not preclude a claim for compensation to be laid in the appropriate forum.

Compliance report is awaited.

***(viii) Custodial death of Shri Tirath Singh in Punjab***

This proceeding was initiated on information received from the Senior Superintendent of Police, Ferozpur, Punjab about the death of one Tirath Singh Jija. The District Magistrate also reported the matter vide his Jetter dated 15 January 1996. According to the report, the deceased was produced before the Judicial Magistrate on 1 January, 1996 having been arrested in a case under the Excise Act. The Magistrate remanded him to judicial custody for 15 days and he was taken to the Central Jail, Ferozpur. After he had crossed gate no.1, before he was actually admitted into the jail, it was stated that he slipped due to an epileptic attack and the jail authorities refused to accept him in

judicial custody. The police got him admitted into the Civil Hospital, Ferozpur for treatment and later shifted him to Baghi Hospital, Ferozpur where he died on 8 January. 1996.

The Commission was surprised to find that the Judicial Magistrate was not informed about what had happened, particularly when his direction remanding to judicial custody was not carried out. If that had been done, an immediate enquiry would have been undertaken and a clearer picture of the situation would have been available.

There was no material to support the plea that the deceased was subject to epileptic fits. The post mortem related the cause of death to grievous injuries on the head, spleen and other vital parts of the body. The investigation did not show that these injuries were caused by the fall as a result of the alleged epileptic attack. In the absence of clear material, the Commission was not in a position to accept the plea of the police that death occurred on account of the fall as a result of a sudden epileptic attack. The police had to account for the loss of life as the deceased was in their custody.

As ante-mortem report showed that grievous injuries were found on the body and the police are not able to account for them, the Commission inferred that those injuries were caused by torture when the deceased was in police custody resulting in his death. The Commission directed that an interim compensation of Rs. 50,000/- be paid for the loss of life to the next of kin of the deceased.

Compliance report is awaited.

***(ix) Complaint from Shri P.S. Bhatia regarding alleged death of Shri Mohd Mansoor in police custody at Baliya P.S., Bihar***

The National Minorities Commission forwarded a complaint under a covering letter dated 5 April, 1994 alleging the death of Mohd. Mansoor in police custody at Baliya police station in district Begusarai of Bihar State on 5 February 1994. On issue of notice; the Government of Bihar vide their letter dated 15 September 1994, reported to the Commission that one Saiyyad Mohd Kasim was robbed of Rs. 33, 1051/- which he was carrying while he was travelling on a bicycle. The money was meant for salaries of some school teachers and his own. Three men stopped him at pistol point and threw him on the ground from the bicycle and took away the money. On a written complaint from Shri Kasim, a case under section 392 IPC was registered and investigation undertaken. In the course of investigation the house of Mohd Mansoor was searched by the police but he escaped by the back-door. The villagers gathered there on hearing the noise, and caught hold of Mohd Mansoor. He was taken to the police station. He was later sent to the hospital in an injured condition and given first aid. As the condition of Mohd Mansoor was serious he was advised to be sent to the Begusarai hospital where better facilities were available. The deceased is said to have died as a result of the blows he received at the hands of the public.

The matter was inquired into by the IGP Bhagalpur and Divisional Commissioner, Bhagalpur. From the report submitted by them, there did not appear to be any cogent evidence of assault by the members of the public. On the other hand three witnesses spoke of a police assault. Seven more witnesses stated that they saw the beating administered by the police. The mother and the widow of the deceased also spoke about a police beating.

The Commission felt that if the fatal injuries had really been received from members of the public, the police should have immediately taken Mohd. Mansoor to the hospital instead of keeping him for a long period at the Police Station and only thereafter taking him for treatment. The Commission therefore did not agree with the findings of the investigation that the deceased met his end on account of injuries sustained by him as a result of assault by members of the public. There appeared to be an attempt by the police to shield its own officers at the lower level. The circumstances indicated that he was tortured at the police station and died as a result of the injuries he received.

The Commission called upon the Director General of Police, Bihar to ascertain within one month the names and particulars of the police officers who had taken the deceased into custody and had occasion to handle him at the police station and to prosecute them. It further recommended that an interim compensation of Rs. One lakh be paid to the widow of the deceased. The State Government was asked to consider the propriety of taking steps for recovery of the amount from the concerned delinquent police officers.

The Government of Bihar in its letter dated 28 February 1997 intimated that a sum of Rs. One lakh has been sanctioned to the widow of the deceased. The Commission is following up on other aspects of this matter.

***(x) Attempt at rape by jail official in Uttar Pradesh***

The complainant alleged that a jail official in Agra had occupied her house and prostitution was practised in its premises. On notice being issued, I.G. (Prisons) sent a report of Superintendent, of District Jail, Agra wherein the allegation was accepted and the official was found guilty. It was further stated that the official had attempted to rape the wife of a Constable in premises of the jail in 1993 and, as a result, she had committed suicide. The Commission ordered on 8 August, 1996 that jail official be prosecuted.

A compliance report is awaited.

***(xi) Police torture of Shri Ram Charan Meena, A villager in Rajasthan***

The Superintendent of Police, Angul, acting as complainant, stated that on 14/ 15 October, 1993, two police officials and a few constables led by an Additional

Superintendent of Police forcibly entered into the house of Shri Ram Charan Meena of Hurla village, misbehaved, kicked and abused him and then took him away to the police station and detained him at Mahua PS. He was subsequently shifted to Manpur PS and subjected to further humiliation. A sum of Rs. 6000/- was also snatched by the police from him.

On notice issued by the Commission to Director General of Police, Rajasthan, the SP (Vigilance), Rajasthan, stated that, on 15 January, 1993 the police had gone to village Hurla in search of Shri Bal Ram Meena involved in Manpur police case u/s 302, 392 IPC. The allegations that the police forcibly entered his house and snatched away Rs. 6000/- was denied.

The Commission, on perusal was not satisfied with the report. Accordingly, it made an order on 10 May 1996 directing its Director General (Investigation) to ascertain the facts and report to the Commission. Accordingly, the matter was inquired into by the investigation wing of the Commission and a detailed report in this behalf filed. The findings were as follows:

- (i) Shri Ram Charan Meena was assaulted by police constables
- (ii) He was brought to the Police Station Mahua and produced before SP Dausa on 15 October 1993 to find clues about an absconding person. On the way, he was also taken to Mahua about 5 kms. away from the village towards Manpur.
- (iii) After he was produced before SP Dausa, he was duly questioned thereafter released in the evening.
- (iv) The injuries on his person were simple in nature. There was no independent evidence that they were caused by the beating by a police sub-inspector. However, the injuries were obviously caused by beating by some police constables.

The Commission accepted the findings of its investigation wing and recommended initiation of appropriate action against the offending Inspector. In regard to the role of the S.P. Dausa, the Commission was of the view that he be cautioned. The Commission directed the DGP, Rajasthan that expeditious action as recommended be taken and reported to the Commission.

***(xii) Alleged Misbehaviour and torture of Shri Ram Singh, A member of Cuddalore Bar Association at the hands of the police, Tamil Nadu***

On receipt of a complaint from Cuddalore Bar Association alleging misbehaviour and torture of Shri Ram Singh by certain police officials on 12 March, 1994 at about 10.00 P.M. the Commission issued notice to the State Government of Tamil Nadu and called for a report.

The Chief Secretary, in his report dated 21 April, 1994 stated that police personnel were obstructed on their way to a rural area on the plea that they had gone there without informing the local people and Ram Singh in particular. It was further indicated that the Sub-Inspector and Head

Constable had received injuries on being assaulted by Ram Singh's group. Another report dated 27 October, 1994 was received from the Chief Secretary informing the Commission that an inquiry into the matter was got conducted through the Assistant Collector and pursuant to his report the Government of Tamil Nadu ordered the Director General of Police, Tamil Nadu to initiate severe departmental action against an Inspector of Nellikuppam Police Station. It was also reported that the Director General of Police had been directed to initiate departmental action against the Head Constable and the other Police Constables who participated in the activities at the Police Station and near Ram Singh's house.

On consideration of the matter, the Commission held that Ram Singh had been manhandled. While expressing its hope that the State Government would take serious view of the lapses of the concerned police officials and they would be adequately dealt with, the Commission recommended to the State Government to pay a compensation of Rs. 5,0001- to Shri Ram Singh either out of the consolidated fund of the State Government or to recover the same from the erring police Sub-Inspector.

The State Government having failed to comply with the recommendation of the Commission regarding payment of compensation the Commission has approached the High Court of Madras for appropriate directions to the State Government in terms of its recommendations. The case is pending before the High Court.

***(xiii) Suo-Motu complaint -death of a young girl Ms. Sarika Hora due to Negligence of Railways in Madhya Pradesh***

The Commission took suo-motu cognizance of the matter reported in a Newspaper on 18 November 1995 under the caption "She fell into her grave, courtesy the Railways" about the death of Ms Sarika, a young girl of 20 years, on account of negligence of the Railways. The plate in the vestibule connecting two coaches of the train was missing. Sarika while moving from one coach to another, stepped on that particular area, which should have been covered with a metal plate. The area was covered only with a floor mat and she fell down and was run over. The Commission obtained a report from the Railway authorities. In the report submitted by the Railway authorities it was stated that the staff responsible for the negligence had been placed under suspension and action initiated against them. The Commission held that the accident occurred due to negligence on the part of the Railways and they were therefore liable to pay compensation. Accordingly payment of a sum of Rs. 1 lakh as interim compensation to the parents of the deceased was recommended.

The Ministry of Railways has requested the Commission to reconsider its recommendation and stated that the complainant be asked to file the claim before the Railway Claims Tribunal for payment of compensation. The matter is under further consideration.

***(xiv) Mass cremation of unidentified dead bodies by Punjab police: Referral by Supreme Court***

Writ Petitions (Criminal No.447/95, Committee for information and Initiative on Punjab vs State of Punjab and others and Writ Petition (Criminal) No. 497/95, Paramjit Kaur vs Punjab and others) filed before the Supreme Court of India were referred to NHRC, with the following Orders dated 12 December 1996 :

“Two issues were raised before this Court in Mrs Paramjit Kaur vs State of Punjab and Ors. in Writ Petition (Crl) No. 497/95 and the connected Writ Petition (Crl) No. 447/95. The first issue concern the abduction of Mr J S Khalra, General Secretary, Human Rights Wing of Shiromani Akali Dal. This Court after monitoring has passed final order so far as issue regarding Mr Khalra is concerned. The second issue raised in the Writ Petitions related to the Press Note dated January 16, 1995 issued by the Human Rights Wing of the Shiromani Akali Dal under the signatures of Khalra and J S Dhillon under the caption “DISAPPEARED”. “CREMATION GROUNDS”, The Press Note stated that large number of persons were cremated by labelling them as unidentified. This court dealt with the second issue as under :-

“The second issue highlighted in this petition is equally important. This Court cannot close its eyes to the contents of the Press Note dated January 16, 1995 stated to be investigated by Khalra and Dhillon. In case it is found that the facts stated in the Press Note are correct -even partially -it would be a gory-tale of Human rights violations. It is horrifying to visualise that dead bodies of large number of persons - allegedly thousands could be cremated by the police unceremoniously with a label “unidentified”. Our faith in democracy and rule of law assures us that nothing of the type can ever happen in this country but the allegations in the Press-Note, horrendous as they are, need thorough investigation. We, therefore, direct the Director, Central Bureau of Investigation to appoint a high powered team to investigate into the facts contained in the Press Note dated January 16, 1995. We direct all the concerned authorities of the State of Punjab including the Director General of Police, Punjab to render all assistance to the CBI in the investigation. All the authorities of the Punjab Government shall render all help and assistance to the CBI team as and when asked by any member of the said team. We give liberty to the CBI to seek any further directions from this Court from time to time as may be necessary during the investigation.”

“The CBI has completed its enquiry as directed by us. The 5th and final report was filed in this Court on December 9, 1996. The report is self-explanatory and speaks for itself. The Registry shall send a copy of the report to the National Human Rights Commission (the Commission) under a sealed cover. The report indicates that 585 dead bodies were fully identified, 274 partially identified and 1238 unidentified. Needless to say that the report discloses flagrant violation of human rights on a mass scale. Without going into the matter any further, we leave the whole matter to be dealt with by the Commission.

This Court on December 11' 1996 passed the following order:

“Pursuant to this Court’s order dated November 15, 1995, the CBI has placed on record the 5th and Final report dated December 9, 1996 regarding the cremation by Punjab. Mr. M L Sharma, Joint Director, CBI is personally present in Court. We agree with the suggestion of Mr. Sharma that the contents of the report be kept secret, as at present, because further investigation has to be undertaken by the CBI. Mr. Sharma has suggested that since large number of cases may have to be registered, the CBI may be permitted to undertake investigation of 10-15 cases and the remaining cases be investigated by the Punjab Police. We appreciate the suggestion but since the CBI has done the initial investigation in this matter and has placed five detailed reports before this Court while appreciating the work of the CBI, we are of the view that as at present, the CBI should undertake the investigation of all the cases which are to be registered as a result of the final report. We, therefore, direct the CBI to take further action into the matter and register the case, where necessary hold investigations and proceed in accordance with law on the basis of the material collected during investigation.

We however, give liberty to the CBI to seek further directions, if necessary I from this Court in line with the suggestion made by Mr. Sharma or for any other purpose. The CBI shall, after every three months, place a status report regarding the investigation in this Court.”

While the CBI is investigating the matter, we are of the view that the remaining issues involved in this case be left for the determination of the Commission, which is the appropriate body for this purpose.

Learned counsel in the two writ petitions have vehemently contended that all the 585 bodies, which have been identified, their heirs/dependents are entitled to compensation. Our attention has been invited to various provisions specially Sections 12 and 18 of the Protection of Human Rights Act, 1993.

We request the Commission through its Chairman “to have the matter examined in accordance with law and determine all the issues which are raised before the Commission by the learned counsel for the parties”. Copies of the order dated November 15, 1995 and all subsequent orders passed by this Court along with the copies of all the CBI reports in sealed covers be sent to the Commission by the Registry.

Since the matter is going to be examined by the Commission at the request of this Court, any compensation awarded by the Commission shall be binding and payable. If any approval or further assistance from this Court is necessary, the same may be sought by the Commission. The necessary papers be sent to the Commission within one week in a separate seal cover”.

Having regard to the magnitude and the possible ramifications of the matter and the complexities of issues of fact and law that might arise, the Commission held the view that, in the first instance, it might have to address itself to the question of evolving and formulating a procedure appropriate to the nature of the subject matter. The Commission also found it expedient to have the benefit of the views of all concerned and for that purpose it directed notices to as many as 10 parties and 4 Advocates who were representing the parties in one or the other case. The matter was then further heard by the Commission on the jurisdiction, scope and ambit of the powers of the Commission under the dispensation of the Supreme Court's mandate as well as the specific issues arising for determination.

***(xv) Compensation in the matter of death of Shri Harjit in jail, due to negligence of authorities of Central Jail, Indore, Madhya Pradesh***

The Commission took suo-motu cognizance of the news item appearing in a Newspaper dated 16 March 1995 titled "M.P. Government in the dock over the death in Jail". The report related to the death of one Harjit Singh in Jail Custody. On notice, Madhya Pradesh Government submitted its report, indicating that the Government had ordered a magisterial inquiry. As per the Magisterial inquiry report, it was stated that Harjit Singh was admitted at the Central Jail, Indore, on 9 March 1995 and that he died in custody on 10 March 1995. According to the post mortem report, 57 marks of injuries were found on the body and the chest bones and ribs were found fractured.

The Commission, on perusal of the report was satisfied with the material on record that the prisoner Harjit Singh alias 'Harjit, died in the jail on account of gross negligence on the part of the jail authorities and the doctors in not providing prompt, timely and proper medical treatment. Therefore, it felt that this was a fit case in which the dependents of the deceased should be awarded compensation and appropriate action taken against the guilty persons. Having regard to the circumstances of the case, the Commission recommended to the Government of Madhya Pradesh to grant an interim compensation of Rs. 75,000/- to the dependents of the deceased Harjit Singh within four weeks. It was further recommended that prompt steps should also be taken to hold disciplinary proceedings against the concerned jail authorities and the doctor, and measures initiated to avoid repetition of such incidents in future.

Compliance report from the M.P. State Government is awaited. This matter will be pursued by the Commission.

***(xvi) Legality of aspects of release of life prisoners after serving 14 years of imprisonment in Uttar Pradesh***

The Commission considered 11 cases arising out of complaints by several prisoners undergoing sentence of life imprisonment in different jails in Uttar Pradesh. The common allegations were that each of the prisoners had undergone sentences of more than 14 years and were, therefore, entitled to

be released in exercise of the powers conferred on the State Government u/s 432 read with Sec.433A of the Code of Criminal Procedure (for short the Code). Some of the complainants had alleged that their cases had not been considered for release in accordance with the provisions of the Uttar Pradesh Prisoners Release on Probation Act, 1938, and the rules made there under (for short the Rules).

The Commission issued notice to the Chief Secretary, Secretary Home and the IG (Prisons), Government of Uttar Pradesh. IG (Prisons) in his report stated that the prisoners sentenced to imprisonment for life had no right to be released on completion of 14 years of sentence. He further took the stand that the cases of the complainants had been duly considered in accordance with the Code and the Rules and the complainants were not released because they were not found suitable for release. Prisoners who had completed 30 years of sentence were released on the eve of the Republic Day. All prisoners who attained the age of 70 years were being released if they fulfilled the conditions prescribed by the Government and female prisoners were released on their completing sentence of 10 years. The State Government stated that case for relief under various provisions of the Act and the jail manual were considered regularly and sympathetically.

On consideration of the report of the IG of Prisons of Uttar Pradesh and observing that on the question of remission of sentence of life convicts there was no uniformity in all the States, the Commission felt it necessary to evolve uniform principles of general application for the whole country. Accordingly, the Commission notified all the State Governments and collected the statutes and jail manuals in operation in different States. It examined the recommendations in Chapter 20 of the report of the All India Committee on Jail Reforms (1980-1983) popularly called the Mulla Committee Report. It held extensive discussions with the representatives of the Governments at the Union and the State level and the prison authorities. The Commission after careful consideration of all aspects prepared a draft of the outline of Indian Prison Bill for being enacted by the Parliament in accordance with Article 252 of the Constitution so that law on the subject is uniform in all the States.

As far as these 11 cases are concerned they had to be dealt with in accordance with the law as it obtained in the State of Uttar Pradesh from where these cases had arisen.

After examining the provisions of Articles 72 and 161 of the Constitution, sections 432, 433 and 433 A of the Code of Criminal Procedure, the relevant rules, practice and procedure the Commission made the following recommendations:

1. Prisoners inflicted with sentence of life imprisonment must on their admission in the prison, be explained the provisions and scheme for grant of parole and remission. They must be encouraged to make efforts in the right direction so as to qualify for consideration for remission.

2. On completion of actual imprisonment of 14 years, such prisoner should be apprised of the provisions of the Code and the rules and helped to seek remission if he so desires.
3. Care should be taken to impose reasonable conditions for grant of remission taking into consideration the background and all relevant facts and circumstances.
4. The request for remission should be processed expeditiously with a humane and reformatory approach bearing in mind the observations made in this order.
5. The response on the request should be promptly communicated. If the request for remission is refused, he should be told the reasons for the same. He should be given guidance for improvement so that his request for remission can be considered favourably during the next year.
6. Consideration for remission should be done every year
7. In regard to those convicted prior to 17-12-1978, the condition of 14 years actual imprisonment, does not apply.
8. So far as prisoners in these 11 cases are concerned, their cases for remission should be considered if they have completed 14 years of actual imprisonment (i) within 3 months if their cases have not been considered so far, and (ii) if their cases were considered and request for remission rejected, then immediately on expiry of one year from the date of rejection.”

***(xvii) Alleged abduction and killing of Shri Jalil Andrabi, Advocate, Srinagar by the security forces in J & K.***

The Commission took cognizance of this issue on 12 March 1996 on receipt of a communication from the South Asia Human Right Documentation Centre through its Executive Director who expressed his apprehension for the safety and physical integrity of Shri Jalil Andrabi, Advocate from Srinagar who was reportedly abducted by some personnel of Rashtriya Rifles on the evening of 8 March 1996 while returning home from the Court. The Commission issued notice to the Chief Secretary, Government of Jammu & Kashmir asking for response within four weeks. Simultaneously, the Commission asked its Director General (Investigation) to collect the facts. A Senior Superintendent of Police of the Investigation Division of the Commission visited Srinagar, Badgam and its adjoining areas and after conducting an on the spot enquiry, gave his report stating that Shri Jalil Andrabi, prima-facie, had been abducted and killed.

The said report was considered by the Commission. The Commission took note of the fact that the defence forces denied their involvement in the matter. The Commission also noted that a Writ Petition had been filed in the J & K High Court and that the Court had set up a special investigation team for investigating the matter and reporting to the Court. The Commission felt that it needed an in depth, transparent and honest investigation in view of the serious allegation of violation of human

rights and, therefore, considered it essential to intervene in the pending proceedings before the J & K High court. At the same time, the Commission offered to make the report and record of the investigation carried out by its team available to the Court. The Commission also offered the services of its investigation team to the Court for participation in the investigation. Since the report of the investigation indicated that the family members of the deceased Advocate were apprehensive about their safety and were in need for security, the Commission issued directions to the Chief Secretary and Director General of Police, Jammu & Kashmir to provide an appropriate security cover to Mrs Andrabi and other members of the family and to the witnesses of the case.

The High Court of Jammu & Kashmir permitted the Commission to intervene in the pending proceedings and, since then, the Commission has placed the report of its team before the High Court of Jammu & Kashmir. The case is pending.

***(xviii) Legality in Deportation of Chakmas from Mizoram***

The President, Chakma Jatiya Parishad, Mizoram submitted a complaint to the Commission alleging the deportation of Mizoram Chakmas in spite of the fact that they were not illegal migrants. In addition to the aforesaid petition, petitions were also received from representatives of the Village Councils and Chakma Autonomous District Council alleging the mass deletion of names of Chakmas from the electoral roll published in 1996. Taking cognizance of the complaints, the Commission issued notice to the State of Mizoram returnable in 6 weeks. It also called upon the State of Mizoram not to forcibly deport any Chakma who was resident within the State. Subsequently, a report from Ministry of Home Affairs, Government of India was also obtained. The matter was discussed by the Commission at a meeting attended by the President of Chakma Jatiya Parishad Shri Subhash Chakma, the representative of the Mizoram Government and the Joint Secretary, Ministry of Home Affairs, Union Government. After the discussion, Commission vacated the interim stay granted on 30 November, 1995 about deportation of Chakmas, Mizoram but laid down the following conditions:

- (i) The State of Mizoram while identifying foreigners should act with fairness and shall ensure access to Chakmas who are interested to approach State Government for relief and should have adequate protection while they do so.
- (ii) Such proceedings as the State Government may wish to take to identify foreigners shall be conducted in an atmosphere, which shall be free, and one of reassurance of fairness; and the decisions shall be taken with utmost objectivity.
- (iii) Any adverse decision by the authorities shall be communicated to the Commission and may not be given effect to, except after bringing the matter to the notice of the Commission.

(iv) The complainants or any other aggrieved Chakmas shall be at liberty to approach this Commission, if they have any grievance in regard to the procedure adopted by the Government.

*(xix) Allegations of Starvation deaths in Orissa*

Towards the end of November 1996, Shri Chaturanan Mishra, Union Agriculture Minister wrote to the Commission stating that he had visited some of the drought affected areas in the State of Orissa on 23/24 November 1996 and also held discussions with the Chief Minister of Orissa. He also apprised the Commission that during his visit to Bolangir some of the local MLAs and representatives of other political parties, complained about starvation deaths during the drought. It was also reported to him that about 180 people had died due to diarrhoea in Kalahandi District alone. The Minister made enquiries from the officers of the State Government who denied the starvation deaths and on the other hand stated that the deaths were due to other reasons.

The Minister requested the Commission to go into the details and investigate the matter so that “a true picture was brought out.”

The Commission considered the matter on 4 December 1996 and, in view of the seriousness of the matter, decided to depute a team of officers consisting of the Secretary-General and Director General (Investigation) to visit the drought affected areas for the collection of facts. In the meanwhile, a general memorandum signed by seven Members of the State Legislative Assembly was received in the Commission in which fourteen cases of alleged starvation deaths were listed. Pursuant to the directions of the Commission, the Secretary-General and Director General (Investigation) visited the districts of Naupada, Kalahandi and Bolangir and conducted enquiries on the spot in the presence of the Special Relief Commissioner, Principal Secretary (Revenue), Special Secretary (Home), Joint Secretary and Collectors of the Districts concerned. In addition, they had interaction with public leaders, media persons, villagers and members of the families, which reportedly faced starvation deaths. Some of the Legislative Assembly Members accompanied the team during their visit to the villages. The team of officers submitted its report to the Commission on this subject and also gave an assessment on the efficacy of relief measures undertaken by the State Government. The report also highlighted some of the issues, which needed immediate and sustained attention. The report of the team of the Officers is under the consideration of the Commission, which is also studying the response of the State Government to that report.

## **X. INTERACTION WITH EXTERNAL GROUPS AND ORGANIZATIONS**

10.1 This Commission believes that India should be in the vanguard of the worldwide movement to promote and protect human rights. All countries have problems and India is no exception. Indeed, given the history of our planet, there is no place for self-righteousness, anywhere in the world, when

it comes to human rights. The furtherance of such rights thus requires a certain humility and the development of trust, both between nations and within them.

10.2 In this spirit, the doors of the Commission have been wide open to visitors -first and foremost to the people of this country who have come to express their views and to seek redressal of their grievances; next, to those who are interested in India and have sought to understand the nature of our society and the role and place of the Commission within it

10.3 In the course of the year under review, the Commission has had occasion for frequent discussions with members of the diplomatic corps stationed in Delhi. Ministers and other leading personalities visiting the country have often called on the Commission. Eminent parliamentarians, senators and congressmen, jurists, scholars, journalists and representatives of international non-governmental organizations, including Amnesty International, spent time at the Commission, exchanging views with it. It was a particular pleasure for the Commission to receive visitors from the South region, notably the Chairperson of the Human Rights Commission of Pakistan, and a delegation from Bangladesh, led by its Minister of Law, that held discussions with this Commission on the composition, powers and functions of National Institutions set-up for the promotion and protection of human rights. Likewise, the Commission welcomed visits to its Headquarters by representatives of other National Institutions: the Human Rights Commissioner of the Human Rights and Equal Opportunity Commission of Australia, and the Secretary General and a Director of the Canadian Human Rights Commission. The Commission also received with pleasure the Chairperson of the Equal Opportunities Commission of the United Kingdom. Amongst other visitors to the Commission was the Special Rapporteur on Religious Intolerance of the United Nations Commission on Human Rights, who subsequently presented his report to that Commission.

10.4 The Chairperson of the National Human Rights Commission of India has had the honour of serving as the Chair of the Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights since April 1996. This group, which at present comprises Australia, Cameroon, Canada, France, India, New Zealand, Mexico, Philippines, Sweden and Tunisia, held its annual meeting in Geneva in parallel with the consideration of the item on National Institutions at the 52nd Session of the United Nations Commission on Human Rights. At the latter, a statement was made on behalf of the National Human Rights Commission of India by a Member.

10.5 There were various occasions during 1996-97 for the Commission to interact externally with others interested in the promotion and protection of human rights. At the request of the United Nations, a Member of the Commission or the Secretary- General participated in workshops on National Institutions that were organized in Mongolia, Moldova and Jordan where consideration was given to the possible establishment of such institutions, their powers and functions. A Member participated in a meeting in Paris, of the Inter-Parliamentary Union, on the subject of Democracy and

Human Rights, and two Members attended the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm. The then Chairperson led a delegation to Indonesia to study the manner in which the Rights of the Child and, in particular, the universalization of primary education were being tackled in that country. He also participated in the First Asia-Pacific Regional Workshop on Human Rights, organized in Darwin, under the auspices of the Australian Human Rights and Equal Opportunity Commission, and a Workshop of Judges of the Supreme Court of Mauritius, from which country a delegation subsequently came to study the working of this Commission. The Director General (Investigation) attended a Seminar on Prisons in Copenhagen and a Workshop on Democracy, Human Rights and Development, organized by the Commonwealth in London.

10.6 It is clear that the efforts of the National Human Rights Commission of India are not without interest to other countries. There is a keen desire to observe its working, to assess both its successes and failures, and to associate the Commission with the evolution of National Institutions in other parts of the world. The Commission appreciates this interest. It is convinced of the importance of international cooperation in promoting and protecting human rights: it believes this should be done in a practical manner, stripped of double-standards and double-speak. To the extent that it can contribute to this great objective, it is happy to do so. It remains deeply conscious, however, that its most fundamental responsibility is to the people of India, who have reposed their trust in it and whom it must serve with the integrity and efficiency that is their due.

## **XI. ADMINISTRATION AND LOGISTIC SUPPORT**

11.1 The credibility of the Commission will depend, in the final analysis, on whether it can provide the corrective justice expected of it, and whether it can be relied upon to act with coherence, independence and integrity to promote and protect human rights in the country.

11.2 These expectations can only be met if the Commission is, itself, rightly administered, with systems in-place that make the handling of complaints just, methodical and swift, and the undertaking of projects and programmes well-conceived and vigorous. This requires management arrangements and personnel equal to the task, and administrative and logistic support specifically tailored to this end.

11.3 In recent months, the Commission has initiated a major review of its procedures and of its staffing capabilities and related requirements. With the vast increase in the number of complaints addressed to the Commission (kindly see Section IX), it was evident that there was need to amend the Procedural Regulations covering the manner in which these complaints were handled, in order to make the entire process more systematic, prompt and transparent. This was done with the help of a specially constituted team, which also recommended the creation of additional posts in the Law Division and other Divisions to ensure the proper observance of the amended Procedural

Regulations. A proposal for the creation of 74 additional posts, in various grades, was thereafter sent to the Ministry of Home Affairs in March 1997 to meet this specific purpose.

11.4 It appears to the Commission, however, that further organizational changes will be required. The pressure of the ever-increasing number of complaints calls for better skills and a higher level of competence in the Commission for handling the work-load. It will thus be necessary to augment the capacity of the Commission with a team of senior persons having judicial experience, functioning immediately below the Members of the Commission, to assist the latter in the prompt and efficient consideration of complaints. Likewise, it will be necessary to strengthen appropriately the newly created Policy Research, Projects and Programmes Division, for the functions entrusted to the Commission under its Statute are many, and all need coherent attention and follow-up. As these are matters of urgency, the Commission has sought, and been offered, the pro bono advice of top-ranking management and computerization consultants. It is absolutely essential for the Commission not only to maintain its momentum but to tighten and improve its performance with the best possible management systems in place.

11.5 Major efforts thus continued to be made to improve the computer facilities of the Commission. The amended Procedural Regulations for the handling of complaints, for instance, required the development of new software. The process is being further refined in the light of experience and the best available advice.

11.6 As of 31 March 1997 the total sanctioned posts of the Commission stood at 282, of which 235 were filled. In addition to the post of the Secretary-General, the posts were distributed as follows: 86 in the Administrative Division, 58 in the Law Division, 83 in the Investigation Division, 10 in what was hitherto the Research Division, 8 in the Information and Public Relations Division, and 38 in the Personal Sections of the Chairperson and Members. For the Commission, it remained important to ensure that vacant posts were filled only by those who had the skills and the commitment required to serve in this Commission.

11.7 In regard to other matters, it may be mentioned that Recruitment Rules for Group 'A', '8', 'C' and '0' category posts have been notified by the Ministry of Home Affairs. Those for Groups 'C' and '0' were published in the Gazette of India on 20 April, 1996 and for Groups 'A' and '8' on 23 November, 1996.

11.8 As it will take time for the Commission to build-up its own cadre, the Commission has continued to select its personnel in a variety of ways: deputation, re-employment and direct recruitment. With the notification of the Recruitment Rules, directly recruited ad-hoc staff in the grades of Assistants, Personal Assistants, Lower Division Clerks, Staff Car Drivers, Peons, Farashes and Safai Karamcharis have been regularized in accordance with the Recruitment Rules.

11.9 The Commission has continued to organize training programmes for the staff of its various Divisions. A special programme was arranged for the staff of the Law Division and the Central Receipt and Despatch Section, in March 1997 following the amendment of the Procedural Regulations governing the handling of complaints.

11.10 During 1996-97, the Commission received some 13,000 complaints in Hindi and the various regional languages. Some 2,000 reports/complaints were translated into English in the Hindi Section of the Commission itself. The remaining 11,000 complaints (9,300 in Hindi and 1,700 in regional languages) were translated by empanelled translators, the work running into some 61,51,100 words. Further, the Annual Report of the Commission and the monthly Newsletter were translated into Hindi.

11.11 In 1996-97, the Library saw valuable additions to its list of titles. There are now 2,357 books in the Library and the Commission subscribes to some 30 journals, including key legal publications and those of leading NGOs working in the field of human rights. In addition, the Commission subscribes to 23 newspapers and 11 magazines published in various parts of the country or abroad.

11.12 In the course of the year, the employees of the Commission were made eligible for allotment of General Pool Accommodation. The Commission urges that their interests be fully respected, as many members of the staff of the Commission are greatly in need of such accommodation.

11.13 During 1996-97 the Commission received grants-in-aid of Rs.3.65 crores. The income of the Commission, derived as interest from investment of surplus funds in short-term deposits with banks, has been notified by Government as exempt from tax under Section 10 (23C) (iv) and (v) of the Income Tax Act, 1961.

11.14 The National Human Rights Commission (Annual Statement of Account) Rules, 1996 were notified by Government. The Annual Accounts of the Commission were prepared in the prescribed proforma for the year 1994-95. Audit Certification of these accounts by the Comptroller and Auditor General of India is awaited. The audit of accounts of the Commission for the year 1995-96 has also been completed.

11.15 A Group Savings Linked Insurance Scheme of the Life Insurance Corporation of India having the twin benefit of Savings-cum-Life Insurance has been introduced for employees of the Commission with effect from 20 December 1996. Employees directly recruited in the Commission have been among the beneficiaries.

11.16 Government of India has also approved the NHRC Employees Pension-cum- General Provident Fund Scheme, the modalities of operation of which are now being worked out.

## **XII.CONCLUDING OBSERVATIONS**

12.1 In the preceding pages of this report, the Commission has provided an account of the manner in which it has, in 1996-971 sought to discharge the responsibilities entrusted to it under the Protection of Human Rights Act, 1993. In so doing, it has sketched its efforts against the larger canvas of India in the fiftieth year of its Independence. For ease of reference, a summary of the report and of its principal recommendations may be seen at Annexure VII.

12.2 Certainly, the leaders of the nation, on 14-15 August 1947, had no illusions that the tasks ahead would be easy. Gandhiji himself chose to be in strife-torn Beliaghata in Calcutta that historic night. And Pandit Nehru, speaking of the future, cautioned in his midnight address that it was not going to be:

“... one of ease or resting but incessant striving so that we might fulfill the pledges we have so often taken an-d the one we shall take today. The service of India means the service of millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over”.

12.3 It is still far from over. Indeed, fifty years after Independence, for all of the remarkable achievements of which we can justly be proud, there is perceptible impatience with pledges unfulfilled.

12.4 These pledges relate, in essence, to the rights of the weakest sections of our society and of those who are at the receiving end of capricious authority.

12.5 This is why the Commission has stressed, in this report and on every possible occasion, that there is an intrinsic link between the proper promotion of human rights and the pursuit of economic and social policies that are just and that open the doors of opportunity to all of the people of our country. None of these policies is more fundamental than the right to free and compulsory education upto the age of 14 years, for upon it, and upon the right to adequate standards of health and nutrition, depend the capacity to fulfill human potential, or to stultify it.

12.6 It is for similar reasons that the Commission has stressed the importance of good governance, for the integrity of the civil and political rights of the people of this country depends upon whether the Legislatures, the Executive and the Judiciary function with integrity and fulfill the roles expected of them with discipline and dignity.

12.7 Human rights are not the alien concern of distant lands and distant civilizations that have been thrust upon us. The assertion of such rights and the determination to give constitutional form to them were central to the National Movement for the Independence of our country. That is why the chapter on Fundamental Rights found pride of place in the Constitution and why the first Home

Minister of India, Sardar Vallabhbhai Patel, was asked to chair the advisory committee of the Constituent Assembly that drafted this chapter. The Founding Fathers of our Republic knew, and we should remember, that a strong nation rests on a strong affirmation of Fundamental Rights, and that these must be non-derogable and justiciable.

12.8 As it turns fifty and looks to the future, it is not more pledges that the nation needs, for it has grown weary of them. It yearns for the fulfillment, in practical ways, of the promise of the Constitution. That was not a promise of Utopia, but it was a promise of a life in dignity for all of the people of India. And it is to the fulfillment of that purpose that this Commission is, by its Statute and vocation, committed.

*Sd/-*

*(M.N. Venkatachaliah)*

*Chairperson*

*Sd/-*

*(Virendra Dayal)*

*Member*

*Sd/-*

*(V.S.Malimath)*

*Member*

*New Delhi,*

*19 August 1997*

## *Annexure -VI*

*March 29, 1997*

Dear Chief Minister.

The Commission has been receiving complaints from the members of the general public and from the non-governmental organisations that instances of fake encounters by the police are on the increase and that police kill persons instead of subjecting them to due process of law if offences are alleged against them. No investigation whatsoever is made as to who caused these unnatural deaths and as to whether the deceased had committed any offences.

2. Complaint Nos. 234 (1 to 6)/93-94 brought before the Commission by the Andhra Pradesh Civil Liberties Committee (APCLC), referred to one such instance. It was stated in the complaint that the police had shot and killed some persons alleging that they were members of the outlawed People's War Group who attempted to kill the police party that was attempting to arrest them. The case of the APCLC, on the other hand, was that these are cases of unjustified and unprovoked murders in what they describe as 'fake encounter'

3. The practice obtaining in Andhra Pradesh, as perhaps elsewhere also, is that when an encounter death takes place, the leader of the police party engaged in the encounter furnishes information to the Police Station about the encounter and the persons that died. The stand taken by the police in all these cases brought by the APCLC was that the deceased persons, on sighting the police, opened fire at them with a view to killing them and were, therefore, guilty of the offence of attempt to murder under Section 307 IPC. The police justified their firing and killing as done in exercise of their right of self-defence. This information was recorded in the Police Station describing the persons killed by the bullets fired by the police as accused and FIRs were drawn up accordingly. Without any more investigation, the cases were closed as having abated, in view of the death of accused.

No attempt whatsoever was made to ascertain if the police officers who fired the bullets that resulted in the killings, were justified in law to doing so, and if otherwise whether and if so what offences were committed by them.

4. Under our laws the police have not been conferred any right to take away the life of another person. If, by his act, the policeman kills a person, he commits the offence of culpable homicide whether amounting to the offence of murder or not unless it is proved that such killing was not an offence under the law. Under the scheme of criminal

law prevailing in India, it would not be an offence if death is caused in the exercise of the right of private defence. Another provision under which the police officer can justify the causing of death of another person, is Section 46 of the Criminal Procedure Code. This provision authorises the police to use force, extending upto the causing of death, as may be necessary to arrest the person accused of an offence punishable with death or imprisonment for life. It is, therefore, clear that when death is caused in an encounter, and if it is not justified as having been caused in exercise of the legitimate right of private defence, or in proper exercise of the power of arrest under Section 46 of the Cr.P.C., the police officer causing the death, would be guilty of the offence of culpable homicide. Whether the causing of death in the encounter in a particular case was justified as falling under anyone of the two conditions, can only be ascertained by proper investigation and not otherwise

5. The validity of the above procedure followed by the police in Andhra Pradesh was challenged before the Commission. After hearing all the parties and examining the relevant statutory provisions in the context of the obligation of the State to conform to Article 21 of the Constitution, the Commission, by its order dated 5.11.1996, found that the procedure followed in Andhra Pradesh was wrong and the Commission laid down and indicated the correct procedure to be followed in all such cases. A copy of the order of the Commission furnishing the reasons and the correct procedure to be followed is enclosed. These recommendations have been accepted by the Andhra Pradesh Government.

6. As the decision of the Commission bears on important issues of Human Rights which arise frequently in other parts of the country as well, the Commission decided to recommend the correct procedure to be followed in this behalf to all the States. The procedure, briefly stated, is as follows:

- A. When the police officer in charge of a Police Station receives information about the deaths in an encounter between the Police party and others, he shall I enter that information in the appropriate register.
- B. The information as received shall be regarded as sufficient to suspect the commission of a cognizable offence and immediate steps should be taken to investigate the facts and circumstances leading to the death to ascertain what, if any, offence was committed and by whom.
- C. As the police officers belonging to the same Police Station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as State CID.
- D. Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction, if police officers are prosecuted on the basis of the results of the investigation.

7. May I request you kindly to issue directions, through the Director General of Police, to all the Police Stations in your State of follow the procedure as indicated above in regard to all cases where the death is caused in police encounters and similar situations?

With regards,

*Your sincerely,*

*(M.N. Venkatachaliah)*

**Statement showing details of custodial deaths reported by the State Governments/Union Territories**

S. No.	Name of State\UT	01.04.95 to 31.03.96			01.04.96 to 31.03.97		
		PC	JC	Total	PC	JC	Total
1.	Andhra Pradesh	10	45	55	27	70	97
2.	Arunachal Pradesh	-	-	-	2	-	2
3.	Assam	7	15	22	13	12	25
4.	Bihar	8	67	75	14	79	93
5.	Goa	-	-	-	2	-	2
6.	Gujarat	15	4	19	18	32	50
7.	Haryana	4	5	9	2	7	9
8.	Himachal Pradesh	-	1	1	1	-	1
9.	Jammu & Kashmir	15	-	15	4	-	4
10.	Karnataka	3	10	13	8	28	36
11.	Kerala	2	2	4	6	9	15
12.	Madhya Pradesh	2	7	9	8	7	15
13.	Maharashtra	9	25	34	21	180	201
14.	Manipur	4	-	4	1	-	1
15.	Meghalaya	-	3	3	-	10	10
16.	Mizoram	-	2	2	-	-	-
17.	Nagaland	2	-	2	2	1	3
18.	Orissa	2	8	10	3	10	13
19.	Punjab	8	8	16	5	12	17
20.	Rajashtan	6	11	17	5	25	30
21.	Sikkim	1	-	1	-	-	-
22.	Tamil Nadu	4	1	5	3	18	21
23.	Tripura	-	-	-	-	-	-
24.	Uttar Pradesh	13	24	37	32	139	171
25.	West Bengal	14	37	51	6	42	48
26.	Andaman & Nicobar	-	-	-	-	-	-
27.	Chandigarh	-	-	-	-	-	-
28.	Dadra & Nagar Haveli	-	-	-	-	-	-
29.	Daman & Diu	-	-	-	-	-	-
30.	Delhi	7	33	40	5	19	24
31.	Lakshadweep	-	-	-	-	-	-
32.	Pondicherry	-	-	-	-	-	-
	<b>Total</b>	<b>136</b>	<b>308</b>	<b>444</b>	<b>188</b>	<b>700</b>	<b>888</b>

\* PC: Police Custody

JC:Judicial Custody



9. Has the NGO undertaken -

- a) Investigation in regard to violation of human rights? If so, please furnish particulars.
- b) Research in any field concerning human rights. If so, furnish particulars.
- c) Any other work related to Human Rights. If so, give particulars.

10. Please indicate in precise terms, the field the NGO is particularly interested in, and the areas in which it wishes to cooperate with NHRC in the promotion of human rights.

**NOTE:**

- \* Copy of the Constitution/Memorandum of Association/Bye Laws to be enclosed.
- \*\* As and when there is change in the Office bearers, or other information furnished above, the same may be communicated in detail within two weeks of the change.

*Annuxure-III*

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 1996-97 i.e. 01.04.96 to 31.03.97

Name of State\UT	Cases pending consideration as on 1.4.1996	No. of cases-Complaints	Regd. Custodial death\rapes	Total (2+3+4)	No. of cases considered	No. of cases processed but pending consideration
Andhra Pradesh	-	384	97	481	408	73
Arunachal Pradesh	-	14	2	16	13	3
Assam	-	94	25	119	106	12
Bihar	12	2320	93	2425	1984	441
Goa	-	25	2	27	21	6
Gujarat	-	177	50	227	213	14
Haryana	-	516	9	525	394	91
Himachal Pradesh	-	80	1	81	67	41
Jammu & Kashmir	15	313	4	332	241	89
Karnataka	-	181	36	217	176	139
Kerala	-	368	15	383	294	155
Madhya Pradesh	4	917	15	936	797	23
Maharashtra	25	539	201	765	610	1
Manipur	-	79	2	81	58	3
Meghalaya	-	8	10	18	17	3
Mizoram	-	4	-	4	1	207
Nagaland	1	64	3	68	65	57
Orissa	42	695	13	750	543	283
Punjab	-	366	18	384	327	3
Rajasthan	-	950	31	981	698	359
Sikkim	1	2	-	3	-	6
Tamil Nadu	-	1043	21	1064	705	1421
Tripura	-	19	-	19	13	107
Uttar Pradesh	119	8497	171	8787	7366	1421
West Bengal	34	603	48	685	578	107
Andaman & Nicobar	-	5	-	5	3	2
Chandigarh	1	14	-	15	9	6
Dadra & Nagar Haveli	-	2	-	2	2	-
Daman & Diu	-	3	-	3	1	2
Delhi	65	1316	24	1405	1098	307
Lakshadweep	-	4	-	4	3	1
Pondicherry	-	21	-	21	12	9

## Number of cases considered by the Commission during 1996-97

S. No.	Name of State\UT	Dismissed in limini	Disposed of with direction	Cases taken Cognizance of		Total
				Concluded	Pending	
1.	Andhra Pradesh	158	31	7	212	408
2.	Arunachal Pradesh	3	-	-	10	13
3.	Assam	34	11	19	42	106
4.	Bihar	999	171	68	746	1984
5.	Goa	5	5	2	9	21
6.	Gujarat	98	17	4	94	213
7.	Haryana	176	75	27	116	394
8.	Himachal Pradesh	42	9	2	14	67
9.	Jammu & Kashmir	44	6	6	185	241
10.	Karnataka	60	25	4	87	176
11.	Kerala	123	60	10	101	294
12.	Madhya Pradesh	442	139	-	216	797
13.	Maharashtra	311	34	13	252	610
14.	Manipur	10	1	5	42	58
15.	Meghalaya	5	-	7	5	17
16.	Mizoram	1	-	-	-	1
17.	Nagaland	3	-	-	62	65
18.	Orissa	302	62	9	170	543
19.	Punjab	146	27	16	138	327
20.	Rajashtan	323	63	37	275	698
21.	Sikkim	-	-	-	-	-
22.	Tamil Nadu	469	88	15	133	705
23.	Tripura	8	-	-	5	13
24.	Uttar Pradesh	3445	1295	106	2520	7366
25.	West Bengal	294	57	56	171	578
26.	Andaman & Nicobar	2	-	-	1	3
27.	Chandigarh	6	1	2	-	9
28.	Dadra & Nagar Haveli	1	-	1	-	2
29.	Daman & Diu	1	-	-	-	1
30.	Delhi	528	94	109	367	1098
31.	Lakshadweep	3	-	-	-	3
32.	Pondicherry	6	1	3	2	12
	<b>Total</b>	<b>8048</b>	<b>2272</b>	<b>528</b>	<b>5975</b>	<b>16823</b>

**State-wise statement of category of cases admitted for disposal  
from 1.04.1996 to 31.03.1997**

Sl. No.	Name of State/UT	Custodial deaths		Custodial rape	Disappearance	Illegal detention/Arrest	False implication	Other Police excesses	Failure in taking action	Indignity to women	Terrorist /Naxalites violation	Jail conditions	Atrocities on SC/ST	Others	Total
		PC	JC												
1	Andhra Pradesh	27	70	-	2	13	2	26	1	5	3	5	2	63	219
2	Arunachal Pradesh	2	-	-	3	-	-	1	-	-	-	1	-	3	10
3	Assam	13	12	-	2	-	-	11	-	-	3	-	-	20	61
4	Bihar	14	79	-	27	8	41	175	5	49	1	42	3	370	814
5	Goa	2	-	-	-	1	-	-	-	-	-	6	-	2	11
6	Gujarat	18	32	-	1	1	-	10	-	3	-	4	-	29	98
7	Haryana	2	7	-	7	4	6	34	2	12	-	7	2	60	143
8	Himachal Pradesh	1	-	-	-	1	1	8	-	2	-	-	-	3	16
9	Jammu & Kashmir	4	-	-	10	3	2	11	1	-	40	3	-	117	191
10	Karnataka	8	28	-	2	-	-	20	-	3	-	7	1	22	91
11	Kerala	6	9	-	-	2	2	45	1	1	-	4	1	40	111
12	Madhya Pradesh	8	7	-	4	4	5	61	3	14	-	19	11	80	216
13	Maharashtra	21	180	-	-	6	3	31	-	4	-	14	-	6	265
14	Manipur	1	-	1	6	1	-	1	-	-	5	-	-	32	47
15	Meghalaya	-	10	-	-	-	-	1	-	-	-	1	-	-	12
16	Mizoram	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17	Nagaland	2	1	-	-	3	-	2	-	-	3	-	-	51	62
18	Orissa	3	10	-	3	1	2	36	1	12	-	9	3	99	179
19	Punjab	5	12	1	7	1	6	39	-	1	2	2	-	78	154
20	Rajashtan	5	25	1	5	6	12	67	-	12	-	25	4	150	312
21	Sikkim	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22	Tamil Nadu	3	18	-	8	40	2	51	4	6	-	2	4	10	148
23	Tripura	-	-	-	-	-	-	2	-	-	-	-	-	3	5
24	Uttar Pradesh	32	139	-	74	174	128	876	178	173	-	92	44	716	2626
25	West Bengal	6	42	-	1	2	1	18	1	11	-	17	-	127	227
26	Andaman & Nicobar	-	-	-	-	-	-	-	-	-	-	-	-	1	1
27	Chandigarh	-	-	-	1	-	-	1	-	-	-	-	-	-	2
28	Dadra & Nagar Haveli	-	-	-	-	-	-	-	-	-	-	-	-	1	1
29	Daman & Diu	-	-	-	-	-	-	-	-	-	-	-	-	-	-
30	Delhi	5	19	-	12	10	24	116	4	9	-	12	2	263	476
31	Lakshadweep	-	-	-	-	-	-	-	-	-	-	-	-	-	-
32	Pondicherry	-	-	-	-	-	-	-	-	-	-	-	-	5	5
Total		188	700	3	175	282	237	1643	201	317	57	272	77	2351	6503

**NATIONAL HUMAN RIGHTS COMMISSION  
SARDAR PATEL BHAVAN  
SANSAD MARG, NEW DELHI**

Name of the complainant : A.P.C.L.C  
File Nos. 234 (1)/93-94/NHRC  
234 (2)/93-94/NHRC  
234 (3)/93-94/NHRC  
234 (5)/93-94/NHRC  
234 (6)/93-94/NHRC

From Naxalbari, a place in the Northern region of West Bengal, under the initial leadership of one Kanhu Sanyal, originated the concept of forcible protest against the social order relating to holding of property and sharing of social benefits. In course of time, it developed into what came to be known as the Naxallite movement. In due course it spread into parts of Bihar, Orissa, Andhra Pradesh and bordering districts of Tamil Nadu, Madhya Pradesh and Maharashtra. Naxallite got divided into different groups -sometimes known by their faith and at other times going by the names of their leaders. In Andhra Pradesh, though initially known as Naxallites, they came to have their identity under the nomenclature of "Peoples War Group" (PWG) by 1980.

2. It is unnecessary to deal with various groups of the PWG operating in Andhra Pradesh. The activities were broadly the same though the mode varied from group to group and occasion to occasion. At the inception, so far Andhra Pradesh is concerned, Naxallite activities were confined to the district of Srikakulam and bordering areas of Orissa and spread into some of the Telengana districts like Warangal, Karimnagar and Nalgonda.

3. Concentration of activities has mostly been in rural areas but there have been many eventful incidents in urban areas too. Hundreds of innocent villagers and a considerable number of policemen have been done to death by the PWG men, government property has been targeted and very often set on fire causing substantial loss to government, both State and Central and even owners of buildings where public offices were being held in tenanted premises have suffered on this account. Initially, perhaps, attacks were concentrated on the richer groups but later people from the poor classes also did not escape attack, on both person and property. There have been incidents where the male members have been done to death and the female folk have been subjected to physical violence including rape. There was also a case of a man being killed and his head severed from the body, put into a basket and the widow compelled to go round the village with that head load. Normal life and social order had been destroyed/disturbed by such activities and extra legal operations of Naxallite groups is not disputable. The State Government brought in a legislation

empowering it to declare an association to be or to have become unlawful and in exercise of power under Section 3 of this legislation (Andhra Pradesh Public Security Act, 1992), PWG had been declared to be an unlawful association for a specific period. There was a short gap when the ban was not in operation but the ban has now become operative.

4. Since the law and order situation was disturbed by PWG activities, the police started adopting initially stiff and gradually stiffer measures to contain their illegal operations. As PWG people started moving in groups for carrying out their activities, the police also formed groups for counter attack and keeping the illegal activities, under check and control. This led to frequent encounters in which there used to be loss of life and injuries to persons on both sides. Government re-enforced the police force and provided matching sophisticated weapons to them when it was found that some of the members of the PWG were using sophisticated arms and ammunition. PWG groups soon established access for getting land mines and started setting them on several rural roads which killed police parties and destroyed their vehicles. The relationship between the PWG and the police force, therefore, became bitter and totally inimical.

5. APCLC is a Non-Governmental Organisation operating within the state of Andhra Pradesh with headquarters at Hyderabad and is affiliated to PUCL at the national level. It filed a complaint before the Commission on 30th March, 1993 giving particulars of 285 police encounters which it described as fake ones organised by the police to eliminate members of the Peoples War Group or their supporters and sympathisers instead of subjecting them to the due process of law for punishing the guilty. The complaint was scrutinised in the Registry and it transpired that several of the incidents had happened prior to one year before the making of the complaint and therefore, were beyond the purview of the Commission on account of the special limitation of one year provided under Section 36(2) of the Protection of Human Rights Act, 1993. The complainant, therefore, agreed to confine its complaint to cases within the period of limitation. Ultimately it wanted the Commission to examine the question of fake police encounter in six cases of its choice and gave a list of them being:

1. 234 (1 )/93-94/NHRC (case of Kayita Yakaiah)
2. 234 (2)/93-94/NHRC (case of Chinnarapu Sangaiah)
3. 234 (3)/93-94/NHRC (case of Varikuppala Shankaraiah)
4. 234 (5)/93-94/NHRC (case of Badavath Jaitya)
5. 234 (6)/93-94/NHRC (case of Bat tu Anjaiah & Peddaboyina Saidulu)

6. When notice was issued the State Government denied the plea of fake encounter and sought justification for its action. The response of the State was notified to APCLC and it wanted

opportunity of leading evidence to substantiate/establish its stand. The Commission, therefore, agreed to have a sitting at Hyderabad to receive evidence and the state Government on being notified made arrangements for such a sitting from August 21 to 24, 1995.

7. Evidence in five of the cases was recorded from the side of the complainants. In some of these cases, the State led evidence; some documents were exhibited. No evidence was led in case no.234 (4)/93-94/NHRC on the plea that the complainant and his witnesses had been detained by the police at some unknown place. It was agreed that further hearing would take place at Delhi with opportunity to the complainant to produce his witnesses in the case where no evidence was led at Hyderabad. On the 21 st of September, 1995, the Commission recorded the following proceeding:

“Six cases were picked up by APCLC for evidence to be led and enquiry undertaken by the Commission into what is alleged as police encounter deaths in Andhra Pradesh. These six cases were set down for receiving evidences at Hyderabad from August 21 to August 24, 1995. Evidence in five cases was recorded and witnesses did not turn up in one case. We had given opportunity to the patties to lead evidence if they so liked at Delhi. Today counsel for APCLC has reported that they do not want to lead evidence and press for that case. The enquiry is, therefore, confined to the remaining five cases where evidence has already been recorded “

Pursuant to the aforesaid direction, further hearings were undertaken. Mr Dipankar Gupta, Learned Solicitor General appeared on the request of the Commission to assist it. Advocate General of Andhra Pradesh on one occasion and the Additional Advocate General on the other argued for Andhra Pradesh and Mr Sitapati placed the case of the Andhra Pradesh police. Mr Kannibaran appeared on behalf of the complainant.

8. After we had closed the matter, the judgement of a division bench of the Andhra Pradesh High Court in Writ Petition No.16868195 dated 14.8.1995 was produced before us in support of the stand of the petitioner. Commission’s Registry reported that a Special Leave Petition had been filed against the decision and the Supreme Court ultimately has granted leave and directed the stay of operation of the judgement.

9. Since the judgement of the High Court had close bearing on the point in issue, we waited for the decision of the apex Court but as it appears it may take some more time and, therefore, we proceed to formulate our recommendations without waiting any longer.

10. We would like to indicate in brief the facts of the five cases pressed for consideration before us.

## **I. Case No.234 (1 )/93-94**

The complainant in this case is Kayita Lachchaiah. Deceased Kayita Yakaiah was neither a member of the Naxallite groups nor had he ever participated in Naxallite activities. There was a pending criminal case against him in a case relating to the burning of RTC bus. He was involved along with 26 others in that case. He was regularly appearing in court in this case. The family had one acre of wet land and about the same extent of dry land which the deceased was cultivating and he was also engaged in lorry loading work with 14 labourers employed under him.

On 25.5.1993, after loading four lorries he had come to the village to take bidi leaves and after finishing that job he returned home around 10 PM and retired by 11 PM. By 1 AM, 60 to 70 policemen came to the village and when they reached his house, all the members of the family were asleep. Some 30 policemen entered into the house. They lighted a powerful torch which made PW 3 wake up. When he shouted, the other members of the family were aroused from sleep. They identified Kumaraswamy, Sub Inspector of Police who was then trying to take out Yakaiah. When the members of the family prevented his being taken away, force was applied by the police. On 26.5.1993 and the day following, PWs 1 and 3 accompanied by the Village Surpanch (PWG) and some others went to the neighbouring police stations to ascertain the whereabouts of the deceased. He was alleged to have been killed at 9 AM on 26.5.1993 within Eturnagaram Police Station limits. PWs 1 and 2, who are respectively father and mother of the deceased, were informed about the killing of the deceased in the hands of the police. The police version was that the deceased was an un-identified naxallite notwithstanding the fact that he was arrested by the police in the pending case and had been appearing in the court on the fixed dates. Madhusudan, Sub Inspector of Police of Mangapet Police Station (RW 1 ), who led the raiding party which participated in the alleged encounter accepted in-cross-examination that many of the Naxallites he confronted were wearing olive green uniform but the deceased was not in such uniform. The inquest report shows that the deceased was wearing a lungi and a shirt. PW 4, sister of the deceased, stated to the Commission that police had made serious attempts to keep the witnesses away from the Commission and to given effect to their designs, the widow of the deceased and PW 4 herself had been forcibly taken by the police to the village of the deceased about 140 kms from their own place. The police witnesses accepted the position that there were 24 policemen and 12 naxallites involved in the alleged encounter. The firing went on for half an hour in broad day light, and the distance between the two parties was only 50 yards. Yet no policeman sustained any injury while all the alleged naxallites were killed. The deceased, as would appear from the post-mortem report (Exhibit R 7) had three fractured bones; obviously these could not have been caused by gun fire and could fit into the position that the deceased had sustained injuries on account of torture and was later killed. It has been contended that this position is also suggestive of the fact that the deceased had been taken to the police station, assaulted there and later was shot dead. The bullet injuries are on the upper

part of the body -the chest, shoulder, etc -which is indicative of the fact that the intention was to kill Counsel for the complainant contended that the oral and documentary evidence on record lead to the following conclusions:

- I. The deceased was not a naxallite but a peasant and a lorry loading worker by occupation.
- II. There was only one criminal case of arson against him pending on the date of occurrence.
- III. He had been taken into police custody from his house in the presence of many witnesses and had been killed in the alleged encounter.
- IV. The Magisterial enquiry was delayed for a long period and was completed only when the Commission decided to include this case within the ambit of enquiry.
- V. Serious attempt was made by the police to keep the witnesses away from the Commission.

We have read through the evidence and prima facie the conclusions suggested above, in our opinion, are borne out by the evidence.

## **II. Case No.234 (2)/93-94**

Deceased Sangaiah was a resident of village Variguntham in Medak District of Andhra Pradesh and was an activist of CPI(ML). On 25th May, 1993, he went to his own agricultural lands, took the meal brought there by his wife and he again went to Variguntham, sent word to his wife and they met in the field. According to the complainant, the deceased was taken away by the police from the place of work and was shot dead. The version of the incident by the respondent was that while combing the local forest area they found a group of extremists and an encounter followed at about 5 AM and in the exchange of fire the deceased died.

12. The complainant examined four witnesses to support the version and the State examined one witness. The complainant's witnesses stated that the deceased was shot dead in the alleged encounter. Mr Sitapati cross-examined the complainant's witness at length. The evidence of the witness, which has been stated to be natural, has been asked to be brushed aside. RW-1 is the then Inspector of Police, Medak Circle. From his cross-examination it appears that he was also the Investigating Officer of the case registered on his report. It is the admitted position that while on complainant's side there has been death, on the side of the police there was not even a single abrasion caused by the alleged exchange of fire. The autopsy report indicates three gun shot injuries and an abrasion on the person of the deceased. On a close scrutiny of the evidence, prima facie it appears that the evidence of picking up the deceased from the rural agricultural field has not been shaken. The complainant himself assumed the role of Investigating Officer with a view to hampering an adequate investigation.

### **III. Case No.234 (3)/93-94**

13. Varikuppala Shankaraiah, was not involved in any naxallite activity nor had he been arrested or even mentioned in any police record. Three years before his death, he shifted from his paternal to the maternal village Inolu in Achampet Mandal with a view to helping his Uncle in the construction of a school building. After the work was over, he stayed on as a mason in the village along with his wife. The deceased was constructing the house of one Madavath Madhya by June 1993. In the morning of 5.6.1993, the deceased and his wife, PW 1, left the village to reach the hamlet where they had undertaken work. Around 6 PM, Shantamma came back alone to Inolu and told PW 1 that the deceased had gone to Achampet government hospital to get the treatment of his leg injury. On his return by bus, near the check post outside Achampet, four policemen in plain clothes forced him to get down from the bus. On 6.6.1993 Shantamma and PW 1 made enquiries at Achampet and Amrabad Police Stations, but the police told them that they knew nothing about the arrest of the deceased. The leader of the police party, who participated in the alleged encounter resulting in the death, sent information to the Amrabad Police Station at 7 AM on 6.6.1993 about the occurrence in which the deceased had been killed. There is evidence to show that the wife and the relatives were not informed about the incident and they came to know about it through newspaper and when they went to see the body, they saw several injuries apart from those caused by gun shots. The post-mortem report referred to three contusions, one of which was close to the eye. The post-mortem doctor, stated that these injuries could have been caused by a blunt weapon. A Magisterial enquiry had been held where PWs 5, 6 and 10 before us had given evidence. The Magisterial Enquiry had not been completed for more than 2 years. The Inspector of Police, RW-1, who led the raiding party, himself became the Investigating Officer. He admitted in cross-examination that the deceased was not wanted in any criminal case by the police. The deceased was wearing a white pant and a pink coloured shirt and not the olive green uniform usually worn by the PWG activists. Pressure had been put on some of the witnesses examined by us in the left over Magisterial enquiry. The evidence of PW 1 clearly indicates that there were 17 policemen and 10 to 12 naxallites in the alleged encounter. The exchange of fire is said to have taken place for half an hour. The distance between the police and the naxallites was about 50 yards and yet there was no injury to the policemen.

### **IV. Case No.234 (5)/93-94**

14. One Badavath Jaitya, son of PW-1 is the deceased, Badavath Jagni, wife of the deceased is PW-2. The deceased is claimed not to be a naxallite but he had been implicated in cases connected with naxallite activities because local landlords had given false information to the police. He had surrendered to the police and Government had given him 12 bicycles to run a cycle taxi shop but he sold the bicycles as he could not run it. His family land was sold and he was making arrangements

with the money thus obtained to go to the Gulf countries. From 1989 onwards, the deceased was busy in his efforts for going over to the Gulf countries. He was in Bombay for most of the time and had come to the village only 5 to 6 times in those four years. He was away and did not appear in the pending cases; so non-bailable warrants were taken out. On a joint application of his and his wife, Government had sanctioned a house loan. The deceased had, therefore, come from Bombay to complete the transaction preceding the obtaining of the loan. He was killed within 2 days of his return on 2nd October, 1993. The deceased was taken by four people, who had come on two scooters, to one side of the road and he was directly shot dead. One of these four men went in a vehicle and came back with many policemen in a jeep and a van. When the deceased was forcibly taken, no one mentioned that there was a warrant against him to be executed. The records produced by the police before the Commission show that the deceased had surrendered to the police in response to an appeal made by the State Chief Minister to naxalites on 9th August 1989. While he was in jail, he was shown as involved in three cases in all. The Investigating Officer, RW-2, admitted before the Commission that when he proceeded to enquire into the case, no local man supported the police stand.

#### **V. Case No.234 (6)/93-94**

15. On November 1<sup>st</sup> 1993, Anjaiah belonging to village Kambalapalli of Warrangal District along with Saidulu was going on a motor cycle. By the time they reached the outskirts of Mahabubabad it was around 9 PM. The police party led by the Deputy Superintendent of Police Akula Ramakrishna killed the two persons on the motor cycle in a fake encounter. The police came forward with the story that they received information through VHF set that a police picket at Matpally in Karimnagar district had been blasted by two motorcycle borne extremists and that the Deputy Superintendent of Police, Mahabubabad alerted all the police stations under his jurisdiction and he led a police party to check the vehicular traffic on the outskirts of Mahabubabad and around 9.30 AM they tried to stop a motor cycle coming from Nellikiduru road and the driver and the pillion rider in an attempt to evade the police fell in a ditch, and the pillion rider took position behind the bushes and fired three rounds and in self defence the police party fired 38 rounds and that the motor cycle driver and pillion rider died of gun-shot injuries. PWs 1 and 3 are eyewitnesses to the occurrence. Anjaiah was a sympathiser of the CPI (M L) and he was acting as an elderly person in the area, conducting arbitration of disputes and was bringing public issues to the notice of the authorities concerned for solution. Around 8 PM on November 1<sup>st</sup> 1993, while he was coming on foot from B.T. road he saw a jeep coming from Mahabubabad with head lights on and a motor-cycle coming from opposite direction. He saw the Head-Constable and Sub-Inspector of Police getting down from the jeep. They caught hold of the motor cycle driver as also the pillion rider and within 5 minutes killed them. The gun shot injuries on Saidulu, one of the deceased, clearly indicate that the shot entered from his backside, which fits, into the case of the complainant. The distance between the place where the blast had taken place and the place of the incident would be around 300 kms. It is indeed very difficult to cover the same in two and a half hours by motor cycle

16. In order to appreciate the material placed before the Commission and reach the conclusion as to whether there was a true encounter or a fake one, we shall have to assess the evidence. Broad features have to be looked into and on the analysis of the material before the Commission, it has to be found out whether the stand of the police is correct or not. Mr Sitapati has taken the stand that the allegation of encounter was true and there was no scope to hold that they were fake ones. We have already pointed out the several features relevant to the issue while dealing with the facts of each case. Prima facie the version of the complainant appears to be nearer truth but we would not like to come to any definite conclusion as the cases have got to be investigated and truth has to be ascertained.

17. Reliance has been placed on Section 46 of the Code of Criminal Procedure and in support of the contention that the persons who have been killed were involved in criminal cases, warrants for arrest had been issued and the police had the right to use force, which could extend upto causing of death as the deceased were involved in offences punishable with death or with imprisonment for life. It is also the claim of the police that in each of the encounters, they had the right of private defence as the members of the naxalite groups (PWG) were the aggressors and unless the police had defended themselves, they would have been killed by the members of the unlawful association.

18. As has already been mentioned, one of the deceased persons was not at all connected with any criminal case. The evidence on record does not show, in each of other four cases, an attempt by the police to arrest the deceased persons and their offer of resistance. Sub Section (3) of Section 46 of Cr.P .C. provides that the causing of death could be conditioned upon the involvement of the accused in an offence punishable with death or with imprisonment for life and offer of resistance when attempt is made to arrest him.

19. Article 21 of the Constitution of India provides that no person shall be deprived of his life except according to the procedure established by law. Article 6 of the International Covenant on Civil and Political Rights provides:

1. "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

"Right to life" is the most important one so far as any person is concerned because all other rights would be dependent upon the subsistence of life. The Constitution and the Covenant have, therefore, guaranteed life in emphatic terms and the only limitation is that it could be taken away by the procedure established by law. It is not necessary to support this conclusion by any authority and it appears to us as too elementary. What is next to be examined is, is there is procedure which authorises taking away of life in the facts of these cases.

20. Mr Sitapati has clearly accepted the position that the practice obtaining in Andhra Pradesh is that when an encounter death takes place, an entry is made in the police station of the fact and FIR is drawn up showing the deceased as accused and closing the case as having abated on account of death of the accused person. No investigation is ordinarily undertaken. In many of these cases, the police has claimed the right of private defence and since the investigation is made very often by the officer at the police station who has himself led the alleged encounter, he utilises his own knowledge to close the matter

21. This practice of showing the deceased person as accused and closing the case as abated is seriously challenged by Mr Kannabiran, as being contrary to legal procedure. We had enquired from learned Solicitor General, as also from the Advocate General of Andhra Pradesh as to whether this was a tenable practice in law and whether this could stand the test of criminal jurisprudence. Both of them found it difficult to support this as a legal practice. Even conceding that the police stand is correct -that there had been a real encounter -the dead lot cannot be shown as the accused because in most of these cases they prima facie did not do anything which would justify their being arrayed as accused persons particularly in the process of killing subject, of course, to the acceptance of the plea of resistance to arrest. As we have already pointed out while dealing with the evidence, in none of these encounters did the police receive any injury, while in every case one or more persons from the other side died. The scheme of the criminal law prevailing in India is that a person who claims the right of private defence as a cover against prosecution has to plead and establish the same. Chapter IV of the Indian Penal Code deals with "General Exceptions" and makes no distinction between an ordinary person and a policeman in this regard excepting in the matter of the plea of performance of duty. In case a situation as contemplated in these Sections arises, police is certainly entitled to take to arms and even kill the attackers without suffering any punishment for the killing.

21. This practice of showing the deceased person as accused and closing the case as abated is seriously challenged by Mr Kannabiran, as being contrary to legal procedure. We had enquired from learned Solicitor General, as also from the Advocate General of Andhra Pradesh as to whether this was a tenable practice in law and whether this could stand the test of criminal jurisprudence. Both of them found it difficult to support this as a legal practice. Even conceding that the police stand is correct -that there had been a real encounter -the dead lot cannot be shown as the accused because in most of these cases they prima facie did not do anything which would justify their being arrayed as accused persons particularly in the process of killing subject, of course, to the acceptance of the plea of resistance to arrest. As we have already pointed out while dealing with the evidence, in none of these encounters did the police receive any injury, while in every case one or more persons from the other side died. The scheme of the criminal law prevailing in India is that a person who claims the right of private defence as a cover against prosecution has to plead and

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22. Right of private defence, if raised, has to be established. Criminal law contemplates that entitlement of protection under an exception would be available if the conditions are satisfied. It is difficult to apply the golden scale when the battle for life is on. The punishment prescribed is a lesser one than in normal situation. The right of private defence has to be raised and established at the trial and not during investigation. Section 105 of the Evidence Act clearly prescribes:

“When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.”

23. Mr Sitapati for the police was very emphatic that the procedure which is being followed is just and proper and has the authority of being in vogue for over a century. He also emphasised before us in unequivocal terms that if it be otherwise, it would be difficult for the police to function in the areas where the normal law and order is not operating and groups of unlawful associations have taken the law into their own hands and have been disturbing peace. There may be force in his submission that taking a contrary view would be inconvenient to the police. What is for consideration is not inconvenience but the legality of the action within the frame of Article 21. We do not think there is scope for acceptance of the stand of Mr. Sitapati.

24. We would, however, like to mention about the human rights of the innocent citizens and the policemen who fall pray to the illegal activities of the PWG men. Human rights are universal and everyone is entitled to them. In course of arguments we had suggested and we repeat that the PWG should stop their extra-legal activities and show respect for the lives of others and bring themselves into the fold of law and conform to the conduct prescribed.

25. We are conscious of the position that the State of Andhra Pradesh is undergoing severe strain and turmoil on account of the illegal activities of the PWG. Apart from the attacks which police suffer now and then in the hands of the PWG people, the common man, both in urban and non-urban areas is badly affected. He runs the risk of his life; there is no protection to his property and peace and tranquillity within the society are totally in the hands of groups of PWG. The hardship of the State, in our view, cannot take away or abridge the guarantee under Article 21 of the Constitution or Article 6 of the Covenant and while enforcing the guarantee and working in favour of its sustenance in full form, we cannot invoke the doctrine of necessity and apply it as a cover against the fundamental right.

26. The question for consideration is as to whether the procedure followed as above has the sanction of law. Section 154 Cr.P.C. provides that if information is given orally relating to the commission of a cognizable offence, the officer-in-charge of the Police Station shall reduce it into writing. Section 156 speaks of power of Police officers to investigate cognizable cases. Section 157 provides that if a cognizable offence is suspected from the information received or from other sources, the officer-in-charge of the Police Station shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence and he shall proceed to take up investigation of the case. Section 173 requires the investigation to be completed with expedition and as soon as it is completed to forward the investigation report to the concerned Magistrate. The investigation must be directed to find out if and what offence is committed and as to who are the offenders. If, upon completion of the investigation, it appears to the officer-in-charge of the Police Station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground to place the accused on trial, he has to take necessary steps as provided in Section 170 of the Code. In either case, on completion of the investigation, he had to submit a report to the Magistrate. The report of investigation in such cases should be examined thoroughly by the Magistrate so that complete application of the judicial mind is available to ensure just investigation and upright conclusion. The Magistrate, on consideration of the report, may either accept the same or disagree with the conclusions and call for further investigation as provided in Section 173 (8) of the Code. If the Magistrate accepts the report, he can take cognizance of the offence under Section 190 of the Code.

27. Section 157 (1) requires the officer-in-charge of the police station to apply his mind to the information received and the surrounding circumstances to find out whether there is reason to suspect the commission of a cognizable offence, which he is empowered under Section 156 to investigate. He cannot mechanically accept the information received. When the information received indicates that death was caused in the encounter as a result of the firing by the Police, prima facie the ingredients of Section 299 IPC which defines culpable homicides, are satisfied. This is sufficient to suspect that an offence of culpable homicide has been committed. Thus, Section 157 of the Code is attracted calling for investigation. Any plea like causing of the death in the case does not constitute an offence either because it was done in exercise of the right of private defence or in exercise of the powers of arrest conferred by Section 46 of the Code, can be accepted only after investigating into the facts and circumstances. Section 100 of IPC provides that right of private defence of the body extends to the voluntary causing of death if occasion for exercise of the right falls in any one of the six categories enumerated in that Section. Whether the case falls under any one of the six categories, can only be ascertained by proper investigation. Similarly, when Section 46 (3) of the Code is invoked, it has to be ascertained as to whether the death of the deceased occurred

when he forcibly resisted the endeavour of the Police to arrest him and whether the deceased was accused of an offence punishable with death or imprisonment for life. Without proper investigation, the Police officer cannot say that the causing of the death in the encounter was not an offence either because it was done in exercise of the right of private defence or was done in legitimate exercise of the power conferred by Sec. 46 of the Code. One of the deceased persons in these cases was not at all connected with any criminal case. Hence, Section 46 could not be invoked in that case. Section 174 of the Code says that when the Police officer in charge of the Police station receives information that a person has been killed by another, he shall make an investigation about the apparent cause of death and submit a report to the District or Sub-Divisional Magistrate and also to take steps to arrange for the autopsy of the body. These provisions indicate that unnatural death has to be taken note of seriously by the Police and required them to find out by investigation the real cause of death. The responsibility is greater when it is the Police that are the cause of unnatural death. There is also a general feeling that most of the encounters are fake. It is, therefore, in public interest that the conduct of the Police involved is subjected to proper scrutiny by investigation. To avoid the possibility of bias, the investigation in such cases should be entrusted to an independent agency like the State CID by a general order of the Government. We are, therefore, of the opinion that when information is received in the Police Station about the causing of the death by the Police officer in an encounter, the officer-in-charge of the Police Station, must, after recording that information, draw the inference that there is reason to suspect the commission of an offence and proceed to investigate the same as required by Section 157 of the Code. If such a procedure is not required to be followed, it would give licence to the Police to kill with impunity any citizen in the name of an encounter by just stating that he acted in 'the right of private defence or under Section 46 of the Code. A procedure which brings about such unjust, unfair and unreasonable consequences cannot be countenanced as being within Article 21 of the Constitution.

28. The stand of the Police in these cases is that in the course of the encounters that took place, several persons alleged to belonging to the PWG, died as a result of the firing on the side of the police without even a simple injury being suffered by the police. On the basis of the information furnished by the leader of the Police party that was engaged in the encounter, entries were made in the respective Police Stations stating that the deceased persons made an attempt to kill the Police and were, therefore, guilty of the offence of attempt to murder under Section 307 IPC. On that basis, they were described as accused and FIRs were drawn up by the Police. The cases were closed without investigation on the ground that they have abated on account of the death of the accused persons. No attempt whatsoever was made to ascertain as to the Police Officers responsible for the respective killings and as to whether any offences were committed by any of them punishable in law. The stand of the Police before us is that they have not committed any offence as they acted in exercise of the right of private defence. In some of the cases, the killing is sought to be justified by

invoking Section 46(3) of the Cr.P .C. It is on this assumption that information was recorded in the Police Station. The information recorded in the Police Station in many of these cases is as furnished by the very Police officer who led the alleged encounter. Attention was confined to the conduct of the deceased and not to that of the Police who had caused the deaths when the information was received at the Police Station. Causing of death by the Police firing in the alleged encounter has been assumed to be justified either in exercise of the right of private defence, or in course of exercise of power of arrest under Section 46. No attempt was made to investigate the circumstances under which the police opened fire, causing death to several persons. The procedure followed in this case is not sanctioned by law. It is even opposed to the procedure prescribed by the Code. The procedure is unjust, unfair and unreasonable and, therefore, violative of the fundamental right guaranteed by Article 21 of the Constitution.

29. For the reasons stated above, we make the following recommendations:

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

30. Our recommendation be forwarded to the State Government without delay for acceptance and 30 days' time is given for intimation of response.

31. We are thankful to learned Solicitor General for responding to our request to assist the Commission. We place on record our appreciation for the assistance given by counsel for the parties.

*Sd/-*

*(Ranganath Misra)*

*Chairperson*

*Sd/-*

*(M.Fathima Beevi)*

*Member*

*Sd/-*

*(V.S.Malimath)*

*Member*

*November 5, 1996*

## **SUMMARY OF THE REPORT AND OF THE PRINCIPAL RECOMMENDATIONS**

1. In recent years, there has been growing concern in the country that the processes of governance have, on occasion, been corroded by a nexus between criminals, less than scrupulous political elements and members of the executive lacking in integrity. The deleterious effects on human rights resulting from such a nexus can be gauged from the nature of the petitions received by this Commission True democracy is built on restraint, on the exercise of moderation, both by the majority and by minority groups. When such restraint snaps and society yields to ethnic, religious and caste “entrepreneurs” who garner support for opportunistic ends even at the cost of inciting violence against those belonging to other groups, the citizens of this country pay the price in the destruction of their right to life and in assaults on the dignity and worth of the human person. It is time that the leadership of this nation unitedly turned away from the politics of expedience and established clear Codes of Conduct to govern their behaviour. In this 50th year of Independence, the Commission recommends that the holding of a well-structured all-party discussion on this subject could be a notable contribution to the observances being planned for this commemorative year. (Paras 2.9.2.10)

2. Terrorism can never be justified, regardless of its supposed motivation; terrorism aims at the destruction of human rights and civil society; it must therefore be combated by those who would protect such rights and such society; States have an obligation to eliminate terrorism and a duty to cooperate with each other to this end; in taking all necessary and effective measures to do so, States must act in accordance with international standards of human rights. (Para 3.6)

3. The Commission has stated that the nation, its police and armed forces have a duty to fight and triumph over terrorism. It has added that this must be done in a manner that respects the Constitution of our Republic, the laws of our land and the treaty commitments into which we have entered, which set out the provisions of the international laws and standards that we must observe. (Para 3.7)

4. When the State functions within such parameters, there should be no place for the dichotomy that too often pits human rights proponents against the security forces. For the combat should not be between them. The Combat is, rather, between civil society, including both human rights proponents and the security forces on the one hand, and terrorists and their backers, on the other. When, however, those parameters are breached, this Commission and all who are concerned with the upholding of human rights -including the security forces -must act to ensure that the Rule of Law prevails and that those who breached it are subjected to the processes of law. (Para 3.8).

5. The Commission strongly recommends that dialogue between policy makers, the security forces and human rights proponents be sustained, for it can contribute greatly to clarity of thought and action in dealing with insurgency and terrorism. It further recommends that such dialogue be undertaken, in particular, in those parts of the country that have been most affected by such developments. (Para 3.10)

6. The Commission greatly welcomes initiatives to advance political solutions to the problems of areas facing insurgency and terrorism It recommends that such efforts be sustained, as a matter of highest priority for on them depend not only the promotion and protection of human rights -an end that is important in itself -but the well-being and integrity of the nation. (Para 3.11 )

7. It must be clear as to the circumstances in which military aid to civil power will be invoked, and these circumstances should be widely understood and acceptable. The rights and responsibilities of security personnel must be clearly defined and not be subject to policy vacillations and sudden change. But any anti-terrorist measures must be and be seen to be, directed only against them and not against innocent civilian populations. (Para 3.20)

8. The Commission cannot countenance or condone any death, rape or torture occurring when a person is arrested by the Armed Forces in situations when the latter are called upon to act in aid of civil power. Under the relevant provisions of law, any person so arrested must 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 strongly recommends that the Paramilitary forces and the Army also make it a point to report directly to the Commission any instance of death or rape occurring while a person is in their custody. (Para 3.27)

9. In repeating its earlier exhortation, the Commission strongly recommends that the Government announce its accession to the Convention against Torture in this 50th year of Independence. (Para 3.32)

10. In the meantime, the Commission also recommends that it is important to follow up on a series of practical measures, that the Fourth Report of the National Police Commission suggested, to check the use of third degree methods by the police. (Para 3.33)

11. In its last Annual Report, the Commission had recommended early action on a suggestion of the Indian Law Commission contained in its 113th Report to the effect that a Section 114(8) be inserted in the Indian Evidence Act, 1972 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. The Commission also supported another recommendation for amending Section 197 of the Cr.P.C. to obviate the necessity of governmental sanction for the prosecution of a police officer, against whom a prima-facie case of the commission of custodial offence has been established in an inquiry conducted by a Sessions Judge. The Commission further recommends that these matters be pursued so that tangible results are achieved at an early date. (Para 3.34)

12. The Commission is gratified to note that all States and Union Territories have been advised by the Ministry of Home Affairs to ensure compliance with the directions of the Supreme Court in the case of *Joginder Singh vs State of Uttar Pradesh and Other*. The Commission assumes that appropriate instructions would have been issued by now by the Central Government on its earlier recommendation stressing the importance of observing 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. (Para 3.35)

14. The Commission has continued to evolve in its thinking on the details of police reforms. Participating in a proceeding in the Supreme Court of India in a related case, the Commission has suggested the effective insulation of the Investigating Wing of the police; constitution of a five-member "police security and integrity commission" at the State level; more appropriate ways of selecting and ensuring fixity of tenure for Directors General of Police; constitution of a District Police Complaints Authority; institution of "lay visitors" for jails and police lock-ups and improvement in the mode of appointing prosecutorial personnel at all levels. (Para 3.43)

15. On an examination of reports that innocent persons with mental disabilities were sometimes being held in prisons with no effort being made to deal with their distinctive problems, the Chairperson of the Commission addressed the Chief Ministers in September 1996 pointing out the appropriate provisions of the law in respect of the manner in which persons with mental disabilities

should be treated In consequence of that letter, many prisoners and others with mental disabilities, who were being held in prisons, have now been transferred to institutions where they can be given psychiatric help. In this connection, the Commission strongly recommends that Rule 82 (1) of the United Nations Standard Minimum Rules of Treatment for Prisoners be followed. The Commission further endorses the recommendations made earlier by the Mulla Committee which stated that if a convict undergoing imprisonment became mentally ill, he should be accommodated in the psychiatric wing if such wing exists in the prison hospital or he should be sent to the nearest mental hospital for treatment. Further, if the prisoner fails to recover from mental illness even after completing half of the maximum term of conviction, his case should be considered by the State Government for release from prison. (Para 3.49)

16. The Commission feels it essential to stress that certain key recommendations of the National Expert Committee on Women Prisoners which met under the Chairmanship of Shri Justice V.R.Krishna Iyer in 1986-87, should be followed up with greater diligence. (Para 3.50)

17. The lack of adequate knowledge and training of prison staff of different ranks is of deep concern to the Commission. As a step in the direction of remedying this situation, the Commission has, in collaboration with the National Institute of Criminology and Forensic Sciences, New Delhi, organised a 5-day Course for senior prison officers. In light of a positive response, the Commission intends to organise more such courses in the future. (Para 3.55)

18. The Commission has decided to study the conditions of observation homes/ juvenile homes and special homes, Beggars homes and Borstal institutions, on a nation-wide basis, to serve as a catalyst for reform and improvement of these institutions. In the immediate term and given the reports of violence in such institutions, the Commission has issued directions to all State Governments, asking them to report to the Commission within 24 hours of occurrence, any instance of death or rape in such institutions. (Para 3.58, 3.59)

19. The Commission is of the view that the enormous burden on criminal courts should be reduced by adopting a system of Honorary Judicial Magistrates on the lines of the institution of "Recorders" and "Assistant Recorders" in the United Kingdom, where trained and experienced lawyers would work on a part-time, on a specific number of days in a year, to deal with and dispose of a large number of cases involving minor offences. This system of dealing with minor offences and ensuring their speedy disposal can be strengthened by introducing, in a judicious and measured manner, the system of "Plea-Bargaining". (Para 3.68)

20. The Commission has also emphasised the need for a massive decriminalisation so that many of the wrongs which are now given the undeserved status of 'crimes' are dealt with as compoundable civil wrongs. (Para 3.69)

21. The Commission, in addition, emphasises the need for a system of compensation for vicious crime on the analogy of the "Criminal injuries compensation regime" operating under statutory disciplines in many countries. (Para 3.70)

22. The Commission sees the importance and necessity of promoting NGOs for "victim assistance and service" and for the protection of witnesses in collaboration with the police system. (Para 3.71 )

23. There is need for appropriate training programme for the members of magistracy in Human Rights jurisprudence and the Commission expects to be able to take up this with the National Judicial Academy of India. (Para 3.72)

24. The Commission is of the view that the matter of child marriage cannot be allowed to rest with the timeless exhortation that “only through social and economic uplift” can this practice be “better eradicated”, as that would amount to acquiescing in an abdication of responsibility which the Commission, for its part, considers inappropriate. (Para 4.9)

25. India is now a party to 16 international treaties drawn-up under the auspices of the United Nations. The array of commitments under these treaties needs to be thoroughly examined by the Central Government with a view to seeing where the country falls short in legislation and in practice. (Paras 4.12, 4.13)

26. The Commission has been gratified to learn that the Common Minimum Programme of the United Front Government has resolved to make free and compulsory elementary education a Fundamental Right and to enforce this through suitable statutory measures. The Commission is concerned that the dimensions of the problem may lead to an infirmity of will and an incapacity to proceed. The Commission therefore recommends that the Central and State Governments endeavour to harness the energies, resources and talents of non-governmental organisations and the private sector in the pursuit of this great national objective. The Commission cannot but strongly reiterate its recommendations that the Right to Education be enforced if the nation is to prove its seriousness in the effort to end child labour. (Paras 5.7, 5.11)

27. The Commission has begun a review of the steps that have been or are being taken at the Central and State levels to deal with the problem of iron and iodine deficiency, which result in large number of children in our country being born with mental disabilities. It will work closely with the concerned Ministries and Departments, UNICEF and such other experts as are in a position to advise and to help. (Para 5.13)

28. The menacing implications of child prostitution loomed large in the concerns of the Commission. A core group constituted by the Commission has reviewed the existing laws and ways of improving their enforcement, discussed the efforts made and difficulties faced in rehabilitating children weaned away from prostitution; pressed for greater efforts at the level of SMRC, to strengthen laws and to devise cooperative measures to deal with trans-border movements. This social problem is going to be major pre-occupation of the Commission in the years ahead. (Paras 5.14, 5.15, 5.18)

29. The Commission recommends that steps concomitant to the adoption of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 be taken with due speed both at the Centre and in the States. (Paras 5.19, 5.20)

30. In the context of a study made by the Commission on the conditions of people affected by the construction of Bargi Dam and submergence of lands, the Commission has recommended that the Central and State Governments re-examine and appropriately amend laws, regulations and practices in order to ensure that, when it comes to acquisition of land for purposes related to national economic development, the provisions of the Constitution as expounded by the Supreme Court and as contained in international instruments to which India is a party, notably ILO Convention 107 are fully respected. (Para 5.24)

31. The Commission has observed that through the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act was passed in 1993, for all practical purposes, it was lying dormant, little follow-up action having been taken. The Commission is only too well aware, that, when it comes to the weakest sections of society, there is a tendency to relapse into inaction. It is therefore keeping in touch with the National Commission for Safai Karamcharis to strengthen and “equalize” their hand as they endeavour to bring about the implementation of the Act, starting with programmes in selected districts. (Paras 5.27, 5.28)

32. The issue of human rights education is one which requires a long-term strategy and the involvement of all possible players, both governmental and non-governmental. With the 50th Anniversary of the Adoption of the Universal Declaration of Human Rights due in 1998, an excellent opportunity arises to stimulate nation-wide interest and activity in the furtherance of this great cause. (Para 6.9)

33. The Commission recommends that both Doordarshan and AIR should increase their involvement in enhancing human rights awareness. The Commission has suggested, for instance, that the 10-minute slot between the two national news bulletins in the evening could effectively be used for telecasting programmes on human rights issues. Likewise, Doordarshan could also consider a half-hour programme each month to provide a round-up in the manner of 'Human Rights Watch'. (Para 6.27)

34. While it is most desirable that State-level Commissions be established rapidly, certain State Governments have informed this Commission of their difficulty in proceeding because of financial constraints or because of the non-availability of retired Chief Justice or Justices of the High Court whose presence is essential to the proper composition of the 5-Member Commissions envisaged under the provisions of Section 21 (2) of the Protection of Human Rights Act, 1993. As these difficulties cannot be willed away, the Commission is reflecting on whether the Act itself needs to be amended to provide some flexibility in regard to the size and composition of State Commissions. In respect of the States in the North-Eastern region, for instance, there is a single High Court, based in Guwahati. A formula may need to be specially devised for these States in respect of Human Rights Commissions. This Commission will, accordingly, be making recommendations to the Central Government on this matter after further consultations and consideration. (Para 8.6)

35. The disposal of cases could have been better had there been more prompt responses to the Commission's notices by the State authorities. The Commission is

concerned that there is a tendency to delay responses and that this often calls for reminders. Should the Commission continue to feel that such delays inhibit its proper functioning, it will not hesitate to propose the strengthening of its powers, under its statute, to deal with such situations. (Para 9.2)