



National Human Rights Commission, New Delhi, India

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I. INTRODUCTION

1.1 This report of the National Human Rights Commission (NHRC) covers the period

1 April 1997 to 31 March 1998. It is the fifth such report of the Commission. The preceding report, dealing with the period 1 April 1996 to 31 March 1997 was submitted to the Central Government on 21 August 1997.

1.2 Under the terms of Section 20(2) of the Protection of Human Rights Act 1993, the Central Government “shall cause the annual report of the Commission to be laid before each House of Parliament along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and for the non-acceptance of the recommendations, if any.” While the first three annual reports of the Commission were laid before each House of Parliament, along with the memoranda of action taken, in the course of the Session immediately following the submission of the report to Government, the annual report for 1996-97 was laid before Parliament on 9 June 1998, over nine months after its submission.

1.3 The delay in the tabling of the report for 1996-97 set-back the schedule for the preparation of the present report, as the latter had to take into account the action taken on the preceding report. The situation in respect of the present report was not helped by the persistence of two vacancies in the membership of the Commission, which remained unfilled throughout the period covered by this report and by the temporary absence, for reasons of health, of a third Member at precisely the time when this report needed to be drafted. The cycle of reporting therefore needs to be restored to what it was earlier.

1.4 Delays in the tabling of the annual reports of the Commission are regrettable, as the report is an essential source of information on the human rights situation in the country and of the efforts of the Commission. It is read with great interest, by an increasing number of persons, both at home and abroad. The Commission therefore recommends that its annual reports are placed promptly before Parliament, together with the required action taken memoranda, and that this should normally be done not later than the Session immediately following submission of the report.

1.5 The Commission was privileged to continue to have Justice Shri M.N.Venkatachaliah as its Chairperson, with Shri Virendra Dayal and Justice Shri V.S.Malimath continuing to serve as Members. Two vacancies, as observed above, remained unfilled. In accordance with Section 3(3) of the Statute of the Commission, Prof (Dr) Tahir Mahmood, Shri H.Hanumanthappa and Smt V.Mohini Giri also continued to serve as Members of the Commission in their respective capacities as Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women.

1.6 Shri R.V.Pillai remained Secretary-General and Chief Executive Officer of the Commission, while Shri Sankar Sen continued as Director General (Investigation) and Shri R.C.Jain as Registrar (Law).

II. STRENGTHENING THE COMMISSION'S CAPABILITIES

2.1 In its preceding report, the Commission sought to provide an assessment of the political, economic and social conditions prevailing in India in the fiftieth year of its Independence and of the factors - to use the words of Section 12 (e) of the 1993 Protection of Human Rights Act - that "inhibit the enjoyment" of such rights by the people of India half a century after the commencement of the odyssey that began with Independence.

2.2 This report will not repeat that overview, except to reiterate the conviction of the Commission that there is an integral relationship between the proper promotion and growth of civil and political rights and the furtherance of economic, social and cultural rights. It greatly diminishes the dignity and worth of vast numbers of the people of India - and indeed of the country as a whole - as long as a situation is allowed to persist where the numbers of those afflicted by illiteracy increases each year, to a point where it now exceeds the population of the country at the time of Independence, a situation in which over 60 million children between the age group 6-14 years do not attend school, but in which many lose their youth - and often their lives - in child labour. It does not do credit to a country with the talent and potential that we have, that one-third of the world's poor should be Indian, with numbers that are in themselves numbing in scale of those who lack clean drinking water, basic sanitation and minimal standards of health care, food and nutrition. In the view of the Commission the persistence of such a situation constitutes a failure of governance which must be urgently remedied. For it is on the pillars of good governance - and a firm commitment to policies of equity and justice - that the promotion and protection of human rights, in the final analysis, rests.

2.3 This is why the Commission has missed no opportunity to insist on the need to keep the institutions of governance in our country in better repair, and to press for policies in the economic and social sector that are truly responsive to the rights of those who are most vulnerable in our society. It greatly welcomes, in this connection, the recent tributes paid in the country to Nobel Laureate Amartya Sen - whose work it has often drawn upon in dealing with issues before it - and it trusts that this will stimulate debate, policies and practical measures conducive to the better protection of rights in the country.

2.4 The National Human Rights Commission is itself an institution of governance - and expressly of good governance. It must therefore constantly aspire and seek to function with the highest standards of efficiency and integrity. In 1997-98 the Commission faced exceptional new challenges, requiring it to tighten and strengthen its methods of working in order to be worthy of the trust and expectations reposed in it. Briefly expressed, these challenges arose from:

- (i) A dramatic rise in the number of complaints including reports on custodial deaths received by the Commission which rose from 20,800 in 1996-97 to 36,800 in 1997-98 - an increase of nearly 77%.
- (ii) The remittal by the Supreme Court of India to the Commission of certain complex issues, having serious human rights implications. These included:
- The grave and persistent problem of bonded labour in the country;
 - The recurrent allegations of deaths by starvation in the Koraput-Bolangir-Kalahandi districts of the State of Orissa;
 - The proper running of institutions located in Agra, Gwalior and Ranchi for persons suffering mental disabilities;
 - The proper running of the Protective Home for Women in Agra.
- (iii) The management of a docket of some 20 important cases, of great diversity, in which the Commission was itself involved before the Superior Courts of the country. These included, inter alia, before the Supreme Court:
- Writ Petition (C) No.310/96 on questions relating to Police Reforms;
 - Writ Petition (Crl) No.5328/80, 550/92 on the Armed Forces (Special) Powers Act 1958;
 - Criminal Appeal No.308/86, Civil Appeal No.8443 & 844 of 83 on the subject of wages to prisoners;
 - Writ Petition (C) No. 42/97 concerning deaths by starvation in Orissa;
 - Writ Petition (Crl) No. 13/98 concerning harassment of Chakma refugees in Arunachal Pradesh; and before the High Courts, inter alia;
 - Habeas Corpus Petition No.32/96 concerning the alleged killing of Jalil Andrabi by the Security Forces, before the High Court of Jammu & Kashmir;
 - Criminal Miscellaneous Application No.2558/96 concerning the custodial death of A.B. Mishra, a student of Banares Hindu University, before the High Court of Allahabad;
 - Criminal Revision Case No.868/96 concerning the framing of rules for Human Rights Courts to be set-up under the Protection of Human Rights Act, 1993, before the High Court of Madras;
 - Writ Petition (Crl) No.651/92 concerning the disappearance of Harjit Singh, before the High Court of Punjab and Haryana;
 - Writ Petition Nos. 6829 and 5945/97, concerning activities of the People's War Group in Andhra Pradesh, before the High Court of Andhra Pradesh;

- Writ Petition (Crl) Nos. 1146/97, 1064/97 and 1032/97 concerning 'encounter' deaths involving the Mumbai police, before the High Court of Bombay.
- (iv) The deeper practical involvement of the Commission in matters inhibiting the exercise of economic and social rights - such as child labour (notably in the carpet and glass-ware industries in Uttar Pradesh), child prostitution (notably in Karnataka and Delhi), and the widespread and deleterious effects of maternal anemia - required a considerable intensification of efforts by the Commission and the devising of new administrative and managerial techniques to deal with such concerns.
- (v) The increasing calls on the Commission - both at home and abroad - to organise or participate in Conferences and Seminars on human rights added a further welcome, if additional, burden on the Commission. Examples included the organisation of the Second Workshop of the Asia-Pacific Forum of National Human Rights Institutions in New Delhi in September 1997 and the special responsibilities of the Commission as Chairperson of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

2.5 The Commission is pleased to note that, despite these and other challenges, it consolidated its role and gained ground through strenuous efforts and better management, though it could certainly have accomplished more had it not been handicapped by the absence of two Members. Even so, as against 16,823 cases considered by the Commission in 1996-97, it considered 27,289 cases in 1997-98 - an increase of 62%.

2.6 Better management and productivity were ensured in a number of ways:

- (i) The Chairperson issued ten Practice Directions (Annexure I) during the period under review to tighten, systematize and improve the functioning of the Commission. These Directions concerned:
- A quarterly review by the Commission, State-wise and district-wise, of all cases in which responses were overdue;
 - 'Action taken reports,' to be placed before the Commission on a specified day in each quarter, on the decisions taken by the Commission on administrative matters.
 - A quarterly "review of the progress of on-going projects" by the Commission in respect of programme matters;
 - Detailed instructions on the manner and time-frame within which the Director-General (Investigation) of the Commission was expected to 'collect facts' when so instructed by the Commission;

- Detailed instructions on the steps to be taken to follow-up on cases in which replies had not been filed by governments and their agencies in response to notices issued by the Commission in respect of complaints made to it;
 - The procedures to be observed in following-up on recommendations made by the Commission in respect of cases involving grave violations of human rights by public servants, such as custodial death and rape and custodial violence
 - The procedure to be observed in following-up on those complaints which the Commission forwarded to the competent authorities “for taking necessary action” at their end;
 - The “fast-tracking” of certain categories of complaints, both at the preliminary stage as well as at the reporting stage
 - The procedures to be followed for the processing of cases of custodial death
 - The follow-up steps to be taken by the Commission to ensure compliance of its directions recommendations by the concerned authorities.
- (ii) The Commission sought to multiply its capacity by the appointment of Special Rapporteurs of proven talent and probity to monitor situations of which it had taken cognizance, to follow-up on directions and recommendations it had issued and to help it discharge the responsibilities entrusted to it by the Supreme Court.
- (iii) It set-up “core-groups” of eminent persons, drawn from the concerned disciplines, to help it devise and follow-through on the projects it had undertaken.
- (iv) It sought, and was readily given, the pro-bono assistance of most distinguished members of the legal profession in the country whenever it approached them to advise the Commission or to appear on behalf of it.
- (v) It associated the talents of representatives of non-governmental organizations with its efforts as and when these were needed.
- (vi) It encouraged the younger generation to take an interest in human rights and set-up a system to receive interns, the first batch of whom contributed enthusiastically to the efforts of the Commission.
- (vii) It requested the reputed management firm McKinsey & Co to undertake a study of its complaints - handling procedures, a task which was undertaken pro-bono by that firm, with most useful innovations being set in-train as a result.
- (viii) It encouraged the specialized training of its staff and of non-governmental organisation representatives, many of whom attended courses both at home and abroad under the auspices of the Commission and its partners.

2.5 Greater details of all of these activities are provided in the sections of this report that follow. Suffice it here to say that, in the year under review, the Commission felt the need to bring greater method to its work, and strove to good purpose to handle its increasing responsibilities with a greater eye to detail, whether in respect of civil and political rights, or economic, social and cultural rights, the indivisibility and inter-relatedness of which were once again evident in all of the Commission's undertakings.

III. CIVIL LIBERTIES

(a) Human Rights in Areas of Terrorism and Insurgency:

3.1.1 The views of the Commission on the protection of Human Rights in areas subjected to terrorism and insurgency are a matter of public record, having been dealt with extensively in its earlier reports. As terrorism aims at the destruction of civil society and the unravelling of the State, it is essential that it be firmly resisted by both. The Commission would therefore like to reiterate its conviction that the police and armed forces of the country, backed by all elements of civil society, have a duty to fight and triumph over terrorism. The Commission is additionally of the view, however, that this must be done in a manner that respects the Constitution of the Republic, the laws of the land and the treaty commitments into which the State has solemnly entered.

3.1.2 The Commission remains convinced, in this connection, that transparency and accountability are essential to the handling of allegations concerning human rights violations, regardless of who is charged with such violations. The Commission is therefore gratified to note an increasing acceptance, in practice, of the recommendations that it has made in regard to matters affecting the armed forces, both in respect of individual complaints and in respect of instances of which it has taken cognizance suo motu.

3.1.3 Pursuant to recommendations of the Commission, both the Army and the Border Security Force (BSF) have been keeping the Commission informed of the facts relating to their personnel who have been charged/punished for violating human rights in Jammu & Kashmir and in the North-Eastern States. The Army has investigated 942 allegations of violations of human rights by its personnel in Jammu & Kashmir and the North-Eastern States during the period 1 January 1990 to 31 March 1998. In 37 cases, which the Army authorities found to be true upon investigation, 109 army personnel of various ranks received punishments ranging from reprimand to dismissal. As in previous years, the Commission received statements from Army Headquarters indicating the date and place of each incident, the name of the accused, the allegation made, the gist of the charges framed, the outcome of the inquiry/trial, and the details of the punishment awarded. As regards the BSF, 259 cases were registered against its personnel, with action being initiated against 141 persons of various ranks; punishments imposed ranged from imprisonment (in respect of 45 persons), to dismissal/compulsory retirement, and other departmental penalties in respect of others (29 persons).

3.2 As in the case of allegations of custodial death or rape involving the police, the Commission is convinced that any such charges against members of the armed forces must be enquired into promptly and effectively. The Commission had additionally recommended in its preceding report that the paramilitary forces and the army should also report directly to the Commission any instance of death or rape that might occur when a person is in their custody. The Memorandum of Action Taken presented by Government to Parliament, however, essentially recalls the procedures prescribed by the Protection of Human Rights Act 1993 in respect of complaints brought against the armed forces and does not deal with the specific recommendation of the Commission on this matter. In the light of this, the Commission believes that there is need for it to reiterate its recommendation which, it feels, will add to the credibility and transparency of the armed forces in the conduct of their operations and also discourage unwarranted and propagandist charges against them.

3.3 The Commission is of the view that the security forces, when called upon to act in aid of civil power, must do so in close co-ordination with civil administration. This view is based on the experience of the Commission, borne out of its visits to Jammu & Kashmir and certain of the North-Eastern States, that violations of human rights are far less likely to occur when the role and the responsibilities of the civil authorities under the law are fully respected, not least in respect of cordon and search operations, arrest, interrogation and detention. It is gratifying to note that in Jammu & Kashmir, local magistrates, village elders as well as police officers are increasingly being associated with cordon and search operations and that a Screening-cum-Co-ordination Committee has been set-up in every district under the Deputy Commissioner to address, inter alia, issues relating to the security operations. Similar Committees are also reported to be functioning in the North-Eastern States. The Commission recommends that the proceedings of such Committees be given wider publicity by the State Governments concerned as the dissemination of information relating to such activities can, in itself, have a beneficial impact on the observance of human rights in areas affected by insurgency and terrorism.

3.4 The plight of residents displaced from the valley of Kashmir as a result of terrorism continued to receive the serious attention of the Commission, requiring it to remain in constant touch with the State and Central Governments in regard to their circumstances. The Commission trusts that it will remain the firm endeavour of the Central and State Governments to ensure that these residents of the Valley return to their homes in safety and dignity and regain their social and economic status in the community at the earliest.

3.5 Whether in the valley or elsewhere, the nation needs to do everything that is possible to preserve and protect its treasured plurality and diversity. The message needs to be proclaimed and reiterated, loud and clear, that the rights of each of its citizens must be respected across the length and breadth of the land, regardless of religion, race, caste, sex or place of birth. There should be no place in our country for evils like “pogroms” and “ethnic cleansing.” These are practices which are alien to

the essential ethos of India which, for millennia, has defined its unity in terms of the incomparable beauty and acceptance of its diversity, and the uniqueness of its cultural heritage in terms of the exquisite richness of the weave of the tapestry of its civilization.

3.6 In the course of the year, the Commission has had occasion to welcome the increasingly clear position being taken by the United Nations on the vexed question of “Human Rights and Terrorism”, not least through its resolutions on this subject, and also in its 1994 Declaration on “Measures to Eliminate International Terrorism”. Since terrorism can never be justified, least of all as a supposed means of promoting human rights, the Commission has not hesitated to assert, both at the national and at the international level, that the language of human rights should not be manipulated by terrorists or their apologists, nor the forums for debate of such rights be misused for purposes that are incompatible with their proper promotion and protection. The Commission recommends that efforts should continue to be made at all levels to clarify the issues involved in dealing with terrorism. It welcomes the steps being taken to strengthen the international legal regime in this connection and urges that appropriate steps continue to be taken in this respect.

(b) Custodial Death, Rape and Torture:

3.7 Addressing problems of custodial violence has been a major priority of the Commission ever since it was established. The Commission is therefore gratified to note that there has been a significant decline in the tendency to conceal custodial violence, since the issuance of its instructions on 14 December 1993 to the Chief Secretaries of all States, asking them to direct all District Magistrates and Superintendents of Police to report directly to the Commission any instance of death or rape in police custody within twenty four hours of its 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. Subsequent instructions extended the request for such reports to cover deaths in judicial custody as well.

3.8 Consequent to these instructions, the Commission has been receiving reports of such occurrences from all parts of the country. During the year 1996-97, 188 deaths in police custody and 700 deaths in judicial custody were reported to the Commission. In the year 1997-98, however, the figures reported to the Commission were 193 deaths in police custody and 819 deaths in judicial custody. A State-wise list giving details of such deaths in 1996-97 and 1997-98 may be seen at Annexure-II. It will be observed that there has been an increase in the deaths reported to the Commission in police and jail custody. In addition, the Commission has been informed of one case of custodial rape during the period under review that occurred in Haryana.

3.9 The Commission notes that the increase in the number of custodial deaths reported to it in 1997-98 when compared to the previous year has not been as marked as it was in 1996-97. It further notes that the number of deaths in police custody as reported to it has shown a decline in a number of

States, with Bihar, Kerala, Orissa, Madhya Pradesh, Punjab, Rajasthan, Tamil Nadu, West Bengal and Delhi being exceptions and a marginal increase also being reported in Assam, Karnataka and Pondicherry. The Commission is of the view that the increase in the reports of deaths in custody is the result of a more rigorous and better response to its repeated instructions that information regarding such tragic occurrences must not be suppressed, but must be reported promptly, and investigated and acted upon thereafter. The Commission is undertaking a district-wise analysis to examine if a pattern of violence exists and to see if any State or District deserves its special attention.

3.10 The figures at Annexure II also reflect the increasing efforts of the State Governments to deal with the grave malaise of custodial violence and to reduce and prevent its occurrence. While the Commission has been receiving reports of the investigation of custodial deaths at the level of the State Governments and action taken by them, it has felt it necessary, in certain cases of custodial death, to instruct its own Investigation Division to look into the facts surrounding such deaths. 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.

3.11 In the context of addressing the issue of custodial torture, the Commission would like to recapitulate and reiterate certain of the recommendations made in its earlier reports as they are yet to be implemented:

- Early action needs to be taken on the suggestion of the Indian Law Commission (ILC) to the effect that a Section 114(B) 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.
- Section 197 of the Code of Criminal Procedure needs to be amended, on the basis of ILC's recommendation, to obviate the necessity for governmental sanction for the prosecution of a police officer, where a prima facie case has been established, in an inquiry conducted by a Sessions Judge of the commission of a custodial offence.
- As suggested by the National Police Commission, there should be a mandatory inquiry by a Sessions Judge in each case of custodial death, rape or grievous hurt.
- The Memorandum of Action Taken, submitted by the Central Government, indicates that these recommendations were still being processed. Considering the high incidence of custodial violence and the urgent need to address this issue, the Commission would strongly urge that the recommendations of the Indian Law Commission and the National Police Commission, as endorsed by this Commission, be given priority attention by the Government.

3.12 In its annual report for the year 1996-97, the Commission had referred to the directions of the Supreme Court in the case of Joginder Singh vs. State of Uttar Pradesh and others (JT1994(3) SC 423). Additionally, it had highlighted the detailed instructions of the Supreme Court in a subsequent order (DK Basu vs. State of West Bengal). While the Memorandum of Action Taken refers to the first case, no reference has been made to the implementation of the instructions of the Supreme Court in the second case. It is of utmost importance that serious attention be paid by the Central as well as State Governments to the instructions of the Supreme Court in the second case, not least because it has stipulated that failure to carry out the instructions would attract penalties for commitment of contempt of the orders of the Court.

(c) Accession to Convention Against Torture:

3.13 In the light of allegations of brutality in custody, the Commission felt it necessary to recommend to the Government that the country become a party to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In earlier reports, reference was made to the correspondence between the then Chairperson and the then Prime Minister on this subject.

3.14 Pursuant to a letter from the Chairperson of the Commission, the then Prime Minister convened a meeting on 4 April 1997 to discuss India's accession to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3.15 The high-level meeting, chaired by the Prime Minister was attended, among others, by the then Ministers for External Affairs, Home Affairs, and Law. The Attorney General and the Secretaries of the Ministries of External Affairs, Home Affairs and Law & Justice were also present.

3.16 In a comprehensive paper presented at the meeting, the Chairperson of the Commission, Justice Shri M.N.Venkatachaliah, urged that India accede to the 1984 Convention and signal to the country and to the world its commitment against brutality in custody on three accounts. First, the Constitution, the laws and the rulings of the Supreme Court of India 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 Supreme Court as a Fundamental Right, placing that right and the corresponding obligation it places on the States and its agencies as a fundamental entrenched right.

3.17 The apprehension that acceding to the Convention would open the country to "interference from outside" was strongly refuted by means of an analysis of the provisions of the Convention, particularly its articles 21, 22 and 28. The Chairperson further argued that the Indian Constitution and

its laws already required the country to act in ways consistent with CAT and, given its pluralistic complexion, India's efforts to promote human rights had been impressive. "This great country does not need to crouch behind the high wall of national sovereignty on the great issues of human rights", he observed.

3.18 The Commission is deeply gratified by the decision of the Government of India, announced on 26 June 1997, that it would ratify this Convention.

3.19 The Ministry of External Affairs, in a statement announcing the decision said that India's accession to the Convention against Torture (CAT) "is part of India's determination to uphold the greatest values of Indian civilization and our policy to work with other members of the international community to promote and protect human rights". Of the 185 Member States of the United Nations, as of 31 May 1997, the Convention had been ratified or acceded to by 102 States.

3.20 The Permanent Representative of India to the United Nations signed the Convention against Torture on 14 October 1997, in what can be described as a happy consummation of a process set in motion by the Commission. The Commission now awaits the ratification of the Convention and recommends early action in this regard.

(d) Video Filming of Post-mortem Examination and Revision of Autopsy Forms:

3.21 The Commission has been disturbed by the unsatisfactory quality of post-mortem reports received in respect of custodial death cases. As there is rarely any credible independent evidence in such cases, their fate depends almost entirely on the observations recorded and the opinion given by doctors in post-mortem reports. A manipulated post-mortem report helps those responsible for custodial violence and results in a travesty of justice and serious violation of human rights. With a view to preventing such unethical acts, the Commission had recommended to the State Governments that the latter video-film post-mortem examinations and send the cassettes to the Commission. Twenty one States and Union Territories have so far accepted this recommendation while four others have stated that they are examining the matter. The Commission recommends to the States of Andhra Pradesh, Arunachal Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Kerala, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Tamil Nadu, Tripura, West Bengal, and the Union Territories of Chandigarh and Lakshadweep that they accept this recommendation without any delay in the interest of protecting of human rights and bringing to book, those who are complicit in the brutal practice of custodial violence.

3.22 The Commission has also felt that the autopsy forms used in the various States were deficient and needed considerable improvement. The Commission therefore devised a Model Autopsy Form that was more incisive and purposeful, keeping in mind the circumstances prevailing in our country as also the work done by the United Nations in this area. The Commission recommended to the State Governments the adoption of the Model Autopsy Form. Fourteen States and Union Territories have

accepted this recommendation of the Commission. The Commission recommends to the following States/Union Territories, namely, Andaman & Nicobar Islands, Arunachal Pradesh, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, Manipur, Mizoram, Maharashtra, Uttar Pradesh and NCT of Delhi that they adopt the new form and the concomitant procedures without delay.

3.23 A scrutiny of video films of post-mortem reports revealed that in a number of cases there had been an inadequate application of mind in highlighting, through the video-filming procedure, important aspects of the post-mortem examination. The Commission therefore felt that there was a need for issuing guidelines, in order to ensure that the video films became an effective tool for the study of custodial death reports. Accordingly, it decided to set up a panel of forensic experts to prepare general guidelines for video filming, that would prescribe details of the kinds of shots to be taken of the body (close up, long, etc.) and the specific aspects of the post-mortem examination to be closely filmed. It will also develop an appropriate format of the scrutiny report to be used to analyse the video filming, for the use of Commission's officers who would examine the video films.

3.24 The Commission has further decided to hold a training seminar on Forensic Science matters. As officers of the Commission have to carry out investigations of a large number of serious cases of human rights violations resulting in death, it is essential that these officers should have a sound background in forensic science. In this training seminar, selected media persons and NGOs dealing with human rights violations will also be invited to participate. It is hoped that training of this kind will equip the trainees with a proper understanding of the techniques and methods of forensic examination and enable them to discharge their responsibilities better in their respective fields.

(e) Visits to Police Lock-ups:

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

3.26 Disturbed by the increasing reports of violence in police lock-ups, the Commission took a decision that its officers would make surprise visits to police lock-ups. Accordingly, the Secretary-General of the Commission in a letter to the Chief Secretaries of the States/UTs on 1 August 1997 (Annexure III) requested them to issue necessary directions to the police authorities to enable officers of the Commission to visit police lock-ups. Twenty six States/Union Territories have since accepted this suggestion. The Commission is pursuing this matter with the Governments of Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur and the Union Territories of Daman & Diu which are yet to respond positively. The Commission recommends that they accept this recommendation speedily and affirm their interest in the proper management of police lock-ups. Detailed instructions have been issued to the officers of the Investigation Division regarding the manner in which they are to conduct checks during their visits to the police lock-ups. A list of "Dos and Don'ts" has been prepared and circulated to the visiting officers, a copy may be seen at Annexure IV.

(f) Systemic Reforms: Police:

3.27 The need for systemic reform of the police has been a consistent theme of the Commission for the past five years. Convinced that the enforcers of law had themselves to be prevented from violating human rights, the Commission has, since its establishment, stressed the need for essential changes in the character and method of functioning of the police and made specific proposals to this end. It had repeatedly emphasized, for instance, that the police needed to be shorn of the image of the hand-maid of the party in power and that, in a pluralistic society such as ours, it had to function, and be seen to function, with impartiality and integrity by all elements of society. The Commission had, accordingly, urged the Government to act upon certain essential recommendations of the second Police Reforms Commission. The Commission was, in this connection, deeply gratified that the then Home Minister, in a letter written to the Chief Ministers of all States in April 1997, chose to pursue this matter, reacting positively both to the recommendations of the Police Commission and to the advice of the National Human Rights Commission and stating inter alia that “we are also currently engaged in the implementation of some of the basic recommendations which lie within our jurisdiction viz. in the Union Territories and other centrally administered areas.” The Commission is constrained to observe, however, that there has been an apparent lack of follow-up on that letter of the Home Minister, both in respect of the action taken by the State Governments and in respect of the implementation of the recommendations within the Union Territories and other centrally administered areas. The Commission would therefore strongly urge that effective steps be taken in the Union Territories to initiate the required reforms identified by the Police Commission and elaborated upon by this Commission. For its part, the Commission has, in addition, impleaded itself as a party in the case of Parkash Singh vs. Union of India and others before the Supreme Court of India which relates specifically to the implementation of certain recommendations of the National Police Commission. In a comprehensive affidavit and further submissions, the Commission has highlighted the need for the insulation of the police from extraneous pressures and for bringing about other important structural reforms in the administration and functioning of the police. The details of the views of the Commission may be seen at Annexure V. The Commission would like to reiterate its deeply held conviction that many of the ills afflicting the police can only be cured through major structural changes of the kind that it has proposed, through better training and modernization of the force. The punishment of delinquent officers, however important in individual cases, is simply inadequate to the needs of the situation. The Commission therefore looks forward to the verdict of the Supreme Court in this matter, as it will have a most important bearing on the future of the police in this country and the promotion and protection of human rights which have, in recent years, been violated too often by the law enforcement machinery itself.

(g) Systemic Reforms: Prisons:

3.28 The need to address conditions prevailing in the jails in our country continued to be a priority of the Commission. During the year under report, the Commission

- Pursued its efforts at further refining and framing a draft Prison Bill;
- Organised visits to a number of jails in the context of complaints of mismanagement and custodial violence;
- Recommended to the Government of Maharashtra the names of persons of known integrity and commitment for appointment as jail visitors, in pursuance of orders of the Bombay High Court;
- Undertook an analysis of the causes of death in jail custody, based on reports that had been sought from jail authorities;
- Drafted a set of guidelines with a view to better safe-guarding the human rights of persons under detention;
- Undertook, as an initial step, a review of the cases of Under Trial Prisoners in Delhi, eligible for release in terms of orders of the Supreme Court.

(h) Study of Health Conditions of Prisoners:

3.29 Alarmed by reports of the frequency of deaths occurring in prisons, the Commission issued directions asking for details from each of the States. An analysis of the causes of death revealed that 76% of such deaths in prisons were attributed to tuberculosis. In a significant number of cases, the disease appears to have been noticed and diagnosed after the point of no return had been reached. The situation represented not only a denial of the rights of those in custody to adequate medical care, but also a grave source of infection to other inmates who suffered unsuspecting exposure to the disease.

3.30 Though the prison rules make it mandatory that upon admission of a person into prison, a medical examination should be conducted, the Commission has noted with dismay that, in many prisons, this has remained a mere procedural formality, presumably because of a lack of adequate medical staff, on the one hand, and an equal lack of concern on the part of the prison administration to follow the required procedure, on the other.

3.31 The Commission, therefore, felt it necessary to develop a format in respect of the medical examinations that should be conducted. The format is being so devised as to benefit from modern techniques that are used in the preparation and maintenance of medical data and dossiers. It would place particular emphasis on the metabolic, nutritional and general medical status of the prisoner, particularly in relation to communicable diseases. The format would also include an indication by the examining medical officers as to the nature of the medical and diet regimen that should receive particular attention. Such a format of the initial medical examination results should be accurate and

comprehensive so that, wherever serious ailments are discovered or suspected, the format would, indeed, become the starting point for an effective and humane management of the health condition of the prisoners. The format, wherever necessary, would also indicate the need for confirmatory tests. In its efforts to devise the most appropriate format, the Commission has been assisted by a Committee of seven experts, who have since submitted their draft for the approval of the Commission. In the interim, the Commission recommends to all State Governments that all those who are in jail custody should be tested for tuberculosis, with their informed consent, and that, on the basis of such tests, appropriate remedial steps be initiated promptly.

(i) Formulation of Draft Prison Bill:

3.32 Refining the outline prepared earlier, the Commission drafted a Prison Bill with the help of a former Law Secretary to the Government of India. It was circulated among the State Governments to elicit their views on the draft. After considering their responses, the draft Prison Bill is being further revised. The Commission proposes to send it to the Central Government for enactment of a Central law, under Article 252 of the Constitution.

(j) Draft Guidelines for Improving Prison Conditions from the Viewpoint of Human Rights:

3.33 A set of draft guidelines for improving prison conditions from the viewpoint of human rights, which elaborate on concepts of prison management outlined in the draft Bill, has been evolved by the Commission. In drafting the guidelines, the Commission consulted extensively with those having expert knowledge in such matters, including a number of NGOs involved with practical work in prisons. These guidelines are being circulated to all Inspectors General of Prisons, with a view to ensuring progressive improvement in prison conditions.

(k) Visit to Jails:

3.34 In light of serious complaints of violation of human rights received from prisoners in various jails of the country, officers of the Commission visited jails in Agra, Muzaffarnagar, Basti, Meerut, Kanpur, Varanasi, Jhansi, Indore, Bikaner, Chennai, Delhi, Hyderabad and Jaipur and their reports were sent to the respective Inspectors General of Prisons. The Commission believes that such visits have helped not only to address the problems that were observed by its officials, but have also resulted in sensitizing prison officials.

(l) Implementation of Supreme Court Directions on Release of Undertrials:

(l) (i) Review of Cases of Undertrial Prisoners in Tihar Jail:

3.35 The Commission remains deeply disturbed by the presence of a large number of under trial prisoners in different jails of the country. Many jail authorities have informed the Commission that the recent directions of the Supreme Court of India in the case of Common Cause vs. Union of India could have a substantial effect on reducing the number of undertrial prisoners in jails if proper follow-

up action were taken. The Commission, therefore, felt that it was necessary to pursue this matter. With this end in view, and looking into the situation in Delhi itself, an exercise was undertaken alongwith the Inspector General of Prisons, Delhi, and the Member Secretary, Delhi Legal Aid Authority, to prepare a list of eligible cases which could be processed for bail expeditiously. The Legal Aid lawyers accordingly started visiting Tihar Jail, and the Delhi Legal Aid Authority, in addition, organised Lok Adalats for speedy action on these cases.

(l) (ii) Non-Official Jail Visitors for Maharashtra:

3.36 In dealing with Writ Petition Number 3899/96 (Muktaram Sitaram Shinde vs. The State of Maharashtra), Bombay High Court passed an Order on 24 November 1996 directing that the State shall appoint a nominee of the Commission as an ex-officio or non-official visitor to each of the 33 prisons in the State. In this connection, it needs to be recalled that, under the Maharashtra Visitors of Prison Rules, 1962, there is need for a Board of Visitors consisting of ex-officio and non-official visitors in respect of each of the prisons in that State. The Court requested the Commission to nominate eminent persons from the fields of correctional administration, juvenile welfare, etc. for undertaking regular visits to jails as envisaged under the rules. Responding to the orders of the Court, the Commission nominated persons for each of the 33 prisons in Maharashtra and the State Government subsequently notified them as visitors. Guidelines to enable the visitors to focus on key aspects of the administration of jails are being prepared to assist them in their responsibilities. It is hoped that these non-official visitors, acting on behalf of the Commission, will play a significant role in watching over prison conditions in the State.

(l) (iii) Visits to Remand Homes:

3.37 The Commission has been receiving complaints about pitiable conditions and the frequently inhuman treatment of inmates in different Remand Homes in the country. To get a clearer picture of the prevailing conditions, the Commission directed officers of its Investigation Division to visit and inspect certain of the Remand Homes of Delhi, Uttar Pradesh and Madhya Pradesh. In pursuance of this directive, teams of the Commission visited Remand Homes in Ujjain, Indore, Raigarh and Jabalpur in Madhya Pradesh, Varanasi and Bijnore in Uttar Pradesh and Lajpat Nagar in Delhi, and submitted reports which indicated serious shortcomings in the management and running of these Homes. The Commission took note of these reports and directed the Secretaries of the Welfare Departments of the respective States to address the issues that have come to light and to initiate steps for the better maintenance and upkeep of these Homes.

3.38 Deeply concerned over instances of death occurring in Juvenile Homes and over reports that children frequently chose to run away from such homes, the Commission took up these matters with the senior officials of the Ministry of Welfare and sought a detailed report on the administration of juvenile homes in the various States. Having considered the report so submitted, as well as the report

of a high-level Committee on the management of juvenile homes in Delhi, the Commission felt the need for more information and accordingly decided to send detailed questionnaires to different States/UTs for an in-depth study on the functioning of custodial homes with a view to making recommendations for improvements in them.

3.39 A set of questionnaires on Borstal Institutions, Reception Centres, Probation Homes, Protective Homes and Custodial Homes set-up under different statutes was accordingly sent to the Chief Secretaries/ Administrators of all States/Union Territories to elicit information, by July 1997, on the functioning of these homes/institutions.

3.40 During the period under review, information had been received from Goa, Gujarat, Meghalaya, Tripura and Union Territories of Chandigarh and Pondicherry. The Union Territories of Dadra and Nagar Haveli, Daman and Diu and Lakshadweep have indicated that they do not have such institutions. The States of Andhra Pradesh, Assam, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Tamil Nadu, West Bengal and NCT of Delhi have furnished partial information. The Commission requests the remaining States/UTs to expedite their reports.

(m) Human Rights and Administration of Criminal Justice

3.41 In its annual report for 1996-97, the Commission referred to the consideration it gave to the deficiencies in the criminal justice administration in the country. In the context of the prison population largely consisting of undertrials, the low rate of convictions and proverbial delays in conducting trials and deeply concerned with the implications of these problems for the promotion and protection of human rights, the Commission emphasized the need to bring about “institutional changes in an area where the country’s legal system has yet to establish a coherent and sustainable jurisprudential regime”. These changes covered,

- the insulation of police from extraneous pressures,
- adoption of a system of Honorary Judicial Magistrates,
- adoption of a system of plea bargaining,
- introduction of a system of compensation for crimes on the analogy of criminal injuries compensation,
- a massive decriminalisation (of offences), so that they may be dealt with as compoundable wrongs,
- promoting NGOs for ‘victim assistance and service’ and for the protection of witnesses in collaboration with the police system and evolution and implementation of appropriate training programmes for members of the magistrary in human rights jurisprudence

3.42 The Memorandum of Action Taken on these recommendations indicates that a number of them, which are also contained in the 154th Report of the Law Commission, are being processed by the Government. The Commission would reiterate the recommendations contained in its preceding report and express the hope that the Memorandum of Action Taken on the present report would reflect in positive terms the outcome of the processing being undertaken by the Government. Passivity in this respect and any further delay in implementing reforms in regard to the criminal justice system can lead to a situation that will slip irretrievably out of control.

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

A) Armed Forces (Special Powers) Act, 1958

4.1 In its preceding report, the Commission outlined the nature of the representations that it had received from a number of civil liberties groups in respect of the Armed Forces (Special Powers) Act, 1958 and, in particular, the concerns that they had expressed in respect of Sections 3, 4 and 5 of that Act. It was argued in these representations that the powers conferred by the Act were too vast and sweeping and that they posed a threat to the fundamental rights and liberties of the citizenry of the areas covered by the Act.

4.2 In the light of these representations, the Commission took a decision to seek to be impleaded in the proceedings pending before the Supreme Court in respect of the Act and to assist the Court by placing the Commission's views before it on the issues that had arisen in that connection. Prior to doing so, the Commission considered that it would be useful to arrange a free and frank discussion, with those principally concerned, on the constitutional and legal issues involved and also on the practical problems faced both by the armed forces and by the citizenry in the areas where the Act was being applied. Accordingly, such a discussion was held on 13 May 1997, at which were present the senior-most officers of the Armed Forces, the Secretaries of the Defence and Home Ministries, eminent jurists and others who could throw light on the subject, including leading academics and representatives of non-governmental organizations.

4.3 The views of the Commission were, thereafter, placed before the Supreme Court with the permission of the latter, and the position was taken, inter alia, that the Act lacked temporal and spatial limitations and that it bestowed draconian powers that could be exercised by non-commissioned officers on the basis of their subjective satisfaction.

4.4 By its order of 27 November 1997, the Supreme Court held that a declaration under Section 3 of the Act designating any area as disturbed (thereby giving special powers to non-commissioned officers and other officers above this rank) has to be for a limited duration and that there should be a periodic review of the declaration before the expiry of six months. The Court further ordered that

- While exercising powers under Section 4(a) of the Act, the officer in the armed forces shall use minimal force required for effective action against the person/persons acting in contravention of the prohibitory order.
- A person arrested and taken into custody should be handed over to the officer-in-charge of the nearest police station, with least possible delay, so that he can be produced before the nearest Magistrate within 24 hours of such arrest excluding the time taken for the journey from the place of arrest to the court of the Magistrate.
- The provisions of the Criminal Procedure Code governing search and seizure have to be followed during the course of such operations conducted in exercise of the powers conferred under the Act.
- While exercising the powers conferred under clauses (a) to (d) of Section 4, the officers of the armed forces should strictly follow the instructions contained in the list of 'Do's and Don'ts' issued by the army authorities which are binding and any disregard of these instructions

4.5 The Commission recommends that the concerned Ministries issue carefully formulated guidelines to all concerned personnel of the Armed Forces and Para-military Forces, based on the orders of the Supreme Court.

B) Child Marriage Restraint Act, 1929

4.6 In the light of repeated reports of child marriages taking place in certain parts of the country despite the long-standing existence of the Child Marriage Restraint Act, 1929, the Commission undertook a study of the relevant statute and took the view in 1995, that the following matters needed special attention:

- i) The Child Marriage Restraint Act may need to be so amended as to make the offence cognizable and non-bailable;
- ii) There was need to decentralize executive powers and other responsibilities in order to sensitize the public and to facilitate reporting on incidents of child marriages; there was also need to devolve powers to NGOs and other responsible persons at the Panchayat and Village levels in order to prevent child marriages;
- iii) Compulsory primary education, through the provision of incentives and proper infrastructural facilities for schooling, was an important means of reducing and ultimately eliminating the practice of child marriage;
- iv) There should be greater emphasis on the prevention of child marriages rather than on their annulment;
- v) Compulsory registration of marriages could act as an impediment to child marriage.

4.7 The Commission subsequently held discussions with the National Commission for Women, the Department of Women & Child Development and NGOs in this regard. Upon being informed that the National Commission for Women had prepared a Draft Marriage Bill which, inter alia, provided for compulsory registration of marriages, the Commission recommended that early action be taken on the Draft Marriage Bill proposed jointly by the National Commission for Women and the Department of Women and Child Development.

4.8 The Central Government, however, in its Memorandum of Action Taken on the Annual Report of the Commission for 1995-96, 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.

4.9 It will be recalled that the Commission in its last annual report, observed that while the Commission fully accepted the view that major social and economic efforts were required to bring to an end the practice of child marriage amongst those sections of the society and communities where such marriages have long been conducted, it could not but express the view that the response of the Central Government in the Memorandum of Action Taken amounted, 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 further stated that it could not accept the view that the responsibility of the Central Government ceased because the present Act was administered by the State Governments, or that the issue of personal laws should be advanced to block any effort whatsoever in this overall matter.

4.10 As the Draft Marriage Bill prepared by the National Commission for Women has not made headway, the Commission has decided to revive its original proposal regarding the amendments to the Child Marriage Restraint Act, 1929. The Commission has requested Justice Shri V.S. Malimath, a Member of the Commission, to prepare a fresh draft on the proposed amendments for the consideration of the Commission. The Commission intends to pursue this matter in the period ahead.

C) Implementation of Treaties and other International Instruments

4.11 A reference was made earlier in the report to the initiative taken by the Commission to encourage the Government to become a party to the Convention against Torture. With the signing of the Convention - though early ratification is still awaited and urged - India is now party to seventeen international human rights treaties adopted under the auspices of the United Nations. With a view to ensuring the most systematic follow-up of the provisions of these treaties, the Commission has

considered it appropriate to examine in some detail the question of their proper implementation. It has, accordingly, requested the National Law School of India University to study this entire matter, as one of priority, under an arrangement into which it has entered with the National Law School.

D) Consideration of UN Convention Relating to the Status of Refugees

4.12 On 2 October 1997, the Commission initiated a dialogue with senior officers of the Ministry of External Affairs requesting them to examine afresh the possibility of India becoming party to the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol on this subject.

4.13 The Commission was appreciative of the reaction of the Foreign Secretary, who indicated that he would have all aspects of the matter looked into once again and that he would revert to the Commission on this subject.

4.14 The Ministry of External Affairs subsequently informed the Commission that the matter is being re-examined in consultation with other concerned Ministries/Departments. The Commission has noted this development with appreciation and has recommended that the Ministry of External Affairs constitute a small group of experts to go into the matter expeditiously.

V. Abolition of Bonded Labour

5.1 Article 23 of the Constitution of India in clearest terms prohibits trafficking in human beings and forced labour. The Bonded Labour System (Abolition) Act, 1976 seeks to abolish the system of bonded labour with simultaneous liquidation of their debts. Under this Act, identification and release of bonded labourers and their rehabilitation are the direct responsibilities of the States. The Act also provides for institutional mechanisms at various levels for the identification, release and rehabilitation of bonded labour. In light of reports of a callous disregard of both constitutional and statutory responsibilities in many parts of the country, the then Chairperson of the Commission addressed a letter to all Chief Ministers on 29 August 1995, reminding them of these responsibilities and urging them to give due importance to this grave societal problem.

5.2 It is of utmost importance to recall, in this connection, that the Supreme Court of India has, since 1982, been giving the question of bonded labour its most serious attention. Further, in the course of a hearing on a Writ petition filed by the People's Union for Civil Liberties (PUCL) in April 1985 on the engagement of bonded labour in Tamil Nadu and Madhya Pradesh, the Supreme Court, in May 1994, issued a direction, inter-alia, to all the State Governments to collect information on the prevalence of bonded labour, to identify bonded labourers and to rehabilitate them. The Court further directed the setting-up of District-level Vigilance Committees and the prosecution of employers/agents of bonded labour.

5.3 In a subsequent hearing, on 11 November 1997, the Court, observing that National Human Rights Commission had been established, passed an order requesting the Commission to be involved in supervising programmes for the elimination of bonded labour and directing that the entire records of the case be forwarded to the Commission.

5.4 Upon receiving the orders of the Supreme Court, the Commission desired that a detailed plan of action be formulated to pursue this matter effectively. An Advocate of the Supreme Court was requested to assist in examining the entire record of the case and to help in drawing up the plan of action. A summary of the various orders of the Court and the suggestions made by the State Government and Union Territory Administrations has since been prepared. In addition, the Commission has engaged Shri K.R.Venugopal, I.A.S.(Retd), a former Secretary to the Prime Minister, and a highly committed social activist as the Special Rapporteur of the Commission to assist it in the work relating to the bonded labour system in the Southern States. In pursuance of the Commission's directions, Shri Venugopal has undertaken extensive tours of the States of Andhra Pradesh, Karnataka and Tamil Nadu and has interacted with all concerned at the State, District, Sub-Division and Village levels. The report prepared by Shri Venugopal is under consideration of the Commission.

5.5 A major effort has also commenced in Uttar Pradesh to expand the Commission's programme to end child labour in the carpet belt into a wider programme to deal with problem of bonded labour in that State. Following detailed discussions with the State Government, the Commission has received an action manual prepared by the then Labour Commissioner under the guidance of the Commission, specifically dealing with the issues of bonded and child labour in the carpet weaving belt. The Commission has expressly requested Shri Chaman Lal, a retired Director General of Police, known for his staunch commitment to human rights issues, to serve as its Special Rapporteur for Uttar Pradesh (UP). As of the end of the year under review, the action manual was also under examination.

VI. RIGHTS OF PERSONS WITH DISABILITIES

6.1 The Commission remains dissatisfied that the organisational structure that is to be set up under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and a will to undertake its effective implementation are not visibly manifest. The Chief Commissioner for Disabilities at the Central level and Commissioners for Disabilities at the State level have to be in position, on a full time basis, to deal with the various issues related to the implementation of the Act. There is a sense of disappointment among activists and NGOs working in this area, some of whom are contemplating to move the Courts against the Government. The Commission would strongly urge that the required level of attention be given to the full and proper implementation of the Act by the Central as well as the State Governments.

6.2 For its part, the Commission has also been interacting with the State Governments to take stock of the facilities provided to persons with disabilities. Information made available to it by the State Governments indicates that a variety of measures are being planned or implemented such as job reservations, reservations in admission to various educational institutions, conveyance allowances, petrol subsidy, assistance for purchasing aids, loans for employment, special reservations in the allotment of government quarters, shops, etc. The facilities and procedures for providing and giving effect to such measures, however, need to be standardized and streamlined for the proper implementation of the new Act.

6.3 The Commission continued to receive complaints as well as suggestions regarding assistance to persons with disabilities. One major issue raised during the year related to a request from the Handicapped Welfare Federation, Delhi for the right to postal ballot for the disabled. After examining the request in detail, in relation to the practices prevailing in certain other countries, the Commission referred the matter to the Election Commission.

VII. HUMAN RIGHTS OF THE MENTALLY ILL; QUALITY ASSURANCE IN MENTAL HOSPITALS

7.1 Conditions in many of the mental hospitals in the country are far from satisfactory. They frequently represent out-dated concepts of mental health care and function, essentially, as custodial rather than therapeutic institutions. Overcrowded and often being used as “dumping grounds” by desperate relatives, some of them lack even basic amenities and have poor medical facilities. They offer little in terms of improving the awareness of relatives about the nature of the illness, or of the need for medication and the rehabilitation of recovering patients.

7.2 Human rights of the mentally ill have emerged as a growing concern in recent years, not least in the priorities of the United Nations system. The mentally ill person, even in hospital, has the right to bodily integrity, to privacy, to appropriate treatment, to be protected from cruelty and involuntary servitude and a right to community and family life once improved, rather than a life of incarceration. While the Constitution of India recognises that the mentally ill have a right to equal status, many of these rights are denied to the hospitalized mentally ill. Despite the provisions made in the Mental Health Act of 1987, and the directives of the Supreme Court on the minimum facilities to be available in mental hospitals, the ensuing changes have been far from satisfactory.

7.3.1 In light of its statutory responsibility of promoting research in the field of human rights (section 12(g) of the Act) and with a view to preparing a plan of action for improving conditions in mental hospitals in the country and enhancing awareness of the rights of those with mental disabilities, the Commission has entrusted a research project on “Quality Assurance of Mental Hospitals” to the National Institute of Mental Health & Neuro Sciences (NIMHANS), Bangalore. Dr. S.M.Channabasavanna, formerly Director, NIMHANS is the Project Director. The Commission is of

the view that this research project, which would contain substantive recommendations, could have a positive bearing on the human rights of those suffering mental disabilities, who are among the most readily ignored sections of society.

7.3.2 The objectives of the project are two-fold, viz.,

- To analyze the conditions generally prevailing in Government and private-run mental hospitals in various parts of the country, with respect to structural facilities, minimal standards of patient care, facilities available for patients, admissions, discharge and appeal procedures, rehabilitation facilities, client satisfaction, staff morale and problems and generate possible solutions for improving standards of care; and
- To enhance the sensitivity of key administrators of these mental hospitals concerning the running of these institutions.

7.4 The project has three phases; the first, a comprehensive assessment of prevailing conditions; the second, workshops for selected staff from each of the major hospitals and the third, completion of the report.

7.5 Emphasis in the first phase has been on information-gathering, using a problem-centered approach and in a non-inquisitorial manner. The outcome of this would be a plan of action for improvement of conditions of the mental hospitals, suggestions for rehabilitation of recovered patients and enhancement of awareness of the rights of the mentally ill.

7.6 The project commenced with the formation of a multi-disciplinary group of investigators from the faculties of Psychiatry, Psychology, Psychiatric Social Work, Psychiatric Nursing and Mental Health Education. Subsequently, a detailed proforma was prepared, content validated and mailed to various mental hospitals, State Human Rights Commissions, other National Commissions, and prominent NGOs. The research team then initiated visits to hospitals and has completed one sector in the North India out of the total of eight sectors. Visits to two more sectors in the South were underway at the end of the current reporting period. In order to obtain first hand information, workshops for families having mentally ill members and NGOs involved in the mental health sector have been incorporated in the programme of work. Two such workshops were conducted at Bangalore in which the Commission was represented by a Member. Similar workshops are under way in other regions of the country. A video documentary has also been prepared which highlights various issues in the comprehensive care of the mentally ill in the hospitals. It also emphasises the responsibilities of all levels of carers in the mental hospitals. Currently, the video documentary is available in Hindi and English.

VIII. SUPREME COURT INVOLVES THE COMMISSION IN THE SUPERVISION OF THE WORKING OF AGRA PROTECTIVE HOME AND THREE MENTAL HOSPITALS

8.1 The Supreme Court of India, through an Order dated 11 November 1997, requested the Commission to be involved in the supervision of the Agra Protective Home in order to “ensure that the home functions in the manner as is expected for achieving the object for which it has been set up”.

8.2 Giving its order in Writ Petition (Crl.) No.1900/81 (Dr. Upendra Baxi vs. State of Uttar Pradesh & Others), the Supreme Court observed “now that the benefit of the National Human Rights Commission with statutory powers under Protection of Human Rights Act, 1993 is available and since most of the problems associated with the functioning of the Agra Protective Home are such that they can be better dealt with by NHRC, we consider it expedient to make this order to involve the NHRC in this exercise”.

8.3 It further stated that “the NHRC, acting on the reports of the District Judge or otherwise in the manner it considers fit will ascertain the facts relating to the actual functioning of the Agra Protective Home and would issue the necessary directions to the concerned authorities for prompt compliance by them so as to ensure proper functioning of the Home. It is expected that all the concerned authorities would promptly comply with such directions given by the NHRC”.

8.4 In another Order dated 11 November 1997, in Writ Petition (Civil) in the case of Rakesh Chandra Narayan and Others vs. State of Bihar, the Supreme Court requested the Commission to be involved in the supervision of the functioning of the Agra, Gwalior and Ranchi mental hospitals also, in the manner in which the Commission was requested to undertake similar work in respect of the Agra Protective Home.

8.5 Referring to its order in regard to the latter, the Court observed: “We are of the opinion that the same kind of order needs to be made in this matter also relating to the Agra, Gwalior and Ranchi mental hospitals. Accordingly, we request the NHRC to perform this exercise in the same manner”.

8.6 The management of the mental hospitals in Agra, Gwalior and Ranchi came under the scrutiny of the Supreme Court of India through a series of Writ Petitions. By its Order of 8 September 1994, the Court took note of a report submitted by the then Union Health Secretary, in pursuance of an earlier decision and directed that steps be taken to make these institutions autonomous. In addition, the Court also ordered that a number of steps be taken for improving the infrastructural facilities as well as the professional services, as also their day-to-day management.

8.7 Following the Supreme Court’s orders, the Commission felt that it would be appropriate for it to have up-to-date reports on the actual conditions prevailing in these institutions which need corrective attention.

8.8 With this in view and with a view to suggesting appropriate courses of action, a Member of the Commission paid a visit to the Agra Protective Home on 16 December 1997 and submitted a report to the Commission. He was accompanied on his visit, among others, by the Member Secretary of the National Commission for Women and the Executive Director of the Central Social Welfare Board and a Senior Superintendent of Police of the Commission.

8.9 A similar visit was undertaken by the Secretary-General of the Commission to the Ranchi Institute of Neuro-Psychiatry and Allied Sciences (formerly Ranchi Manasik Arogyashala) on 19-20 December 1997.

8.10 Since the intervention of the Supreme Court, there have been improvements in many areas of functioning of these institutions. The reports prepared by the Member and Secretary-General of the Commission following their visits to Agra Protective Home and Ranchi Mental Hospital respectively, highlight the areas that need attention for further improvement.

8.11 The Commission intends to monitor closely, and on a regular basis, all aspects of the situation in regard to these institutions, working in close cooperation and coordination with all the agencies involved in their functioning.

IX. ABOLITION OF MANUAL SCAVENGING

9.1 It is a matter of grave and unacceptable social injustice that even after 50 years of Independence, the country permits the construction of dry latrines and the practice of manual scavenging. Realising how demeaning the practice of manual scavenging is, the Government of India has legislated twice in regard to this matter: to prohibit the construction of dry latrines and the employment of manual scavengers, and then to set-up a National Commission for Safai Karamcharis. Simultaneously, Government has announced a package of measures for the rehabilitation of the affected families, who have given up their earlier work..

9.2 Noting, however, that very little had been done by the Central as well as the State Governments to enforce the legislation banning construction of dry latrines and to provide meaningful rehabilitation, and dismayed by the continuance of the inhuman and degrading practice of manual handling of night soil, the Chairperson of the Commission addressed a letter to the concerned Central Ministers, particularly those having substantial building programmes under them, and the Chief Ministers of States on this subject. The Chairperson pointed out that the legislation, for all practical purposes, remained idle on the statute book and urged them to take positive steps to achieve this very important social goal. Responses have been forthcoming, the most positive from the then Union Minister for Defence, who in May 1997 informed the Commission about a variety of measures taken by his Ministry to stop the practice of manual scavenging.

9.3 Simultaneously, this Commission and the National Commission for Safai Karamcharis decided to combine their efforts to eliminate the degrading practice entailing the manual handling of human excreta. The two Commissions have decided to jointly interact with the concerned Central Ministries. The National Human Rights Commission has, in addition, sought an update on the programme undertaken by the Ministry of Urban Affairs and Employment which is concerned with the prohibition of construction of dry latrines, and the conversion of dry latrines into the pour-flush type, as also the Ministry of Welfare which is concerned with the rehabilitation of those who have been freed from scavenging. The Commission is determined to pursue its efforts and calls upon the Central and State Governments to display a greater degree of commitment than hitherto to ensure the abolition of manual scavenging in the country.

X. HUMAN RIGHTS AND AIDS

10.1 This grave question, as complex as it is far-reaching, received the attention of the Commission following a complaint that it received from a non-governmental organisation in Guntur District, Andhra Pradesh which reported that nearly 500 sex workers from various localities of Mumbai had been rounded-up by the Police and forcibly subjected to HIV testing without their consent and without providing any counselling to them. The NGO had questioned this practice and urged that immediate steps be taken to stop such incidents in future.

10.2 While considering the complaint, the Commission felt that in the first instance, it was necessary to hold a detailed discussion on the subject with experts in this field in order to gain a better understanding of the issues involved. Accordingly, it held an exchange of views with the Health Promotion and Communication Advisor, UNAIDS and the Operations Manager, Regional Project on HIV and Development, UNDP on 7 October 1997.

10.3 The Commission noted that there were, in particular, two sets of issues that arose from the forcible testing of the suspected AIDS patients. The first related to the 'invasion of privacy', which constituted the primary argument advanced against such forcible testing; the second related to the 'question of general public health', which is advanced as the reason for such testing. Objection to the tests arose mainly from the stigma attached to the disease and the resultant discrimination against those who are suspected or confirmed to have AIDS.

10.4 The Commission proposes to examine all of these issues most carefully with a view to evolving its recommendations.

10.5 The Commission has, in the meantime, also received a proposal from the Office of the United Nations High Commissioner for Human Rights in February 1998 requesting the participation of the Commission in a pilot project on HIV/AIDS issues in collaboration with UNAIDS. It envisages the recruitment of a national expert on AIDS and Human Rights, who will be available to work with the National Institution for a period of two years. The results of the pilot project are proposed to be used to set the standards for future initiatives of this kind.

10.6 Having noted the expertise of UNAIDS, which is the inter-agency body set-up to coordinate the response of the United Nations to the AIDS pandemic, the Commission has accepted this proposal and has decided to become a partner in this important pilot project. Details of the collaboration are to be worked out.

XI. PROMOTION OF HUMAN RIGHTS LITERACY AND AWARENESS

11.1 The Commission is acutely aware of the seriousness of the statutory responsibilities enjoined upon it “to spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means”. The magnitude of this responsibility must be seen against the extraordinary complexity and diversity of the economic and social circumstances of the country: a vibrant democracy functioning in a framework of unparalleled pluralism, at a time of unprecedented change; a nation of nearly a billion citizens, increasingly awakening to their rights and seeking their fulfillment; a nation that, despite the most remarkable growth in key sectors, remains challenged and deeply disturbed by the fact that some 360 million of its people live below the poverty line and that illiteracy continues to afflict nearly 450 million Indians.

(a) Observance of the UN Decade for Human Rights Education and other Awareness Campaigns

11.2 The Commission played a catalytic role in the drawing up of a National Action Plan for observing the U.N. Decade for Human Rights Education (1995-2004). The Commission drew the attention of the Central Government to a letter addressed to the President of India by the United Nations High Commissioner for Human Rights in this behalf, and offered its support and advice to the Government in guiding and monitoring efforts in this direction. A meeting convened by the Commission in the beginning of 1997 with representatives of the Ministry of Human Resource Development, Department of Education, Ministry of Home Affairs and others underscored the need for a clearly defined plan of action, as well as an apparatus to implement a programme of Human Rights Education. Pursuant to that meeting, the Government of India constituted a Coordination Committee under the Chairmanship of the Union Home Secretary and comprising Secretaries from other concerned Ministries and Departments to draw up a National Plan and monitor its implementation. The Commission, for its part, urged that the following issues receive particular attention:

- (i) Introduction of free and compulsory primary education until the age of 14 years;
- (ii) Inclusion of human rights as a subject at the under-graduate and post-graduate level, in addition to the inclusion of human rights education at the school level (work that was already underway with the help of the NCERT and NCTE);

- (iii) Identification of academic and governmental jobs which require specialized knowledge in human rights and the prescribing of desirable qualifications in this respect for recruitment to different categories of posts;
- (iv) Imparting human rights education to professional groups such as lawyers, doctors, judicial officers, bureaucrats, trade unionists, members of the security forces (including the elements of the military, para-military and police), and including political functionaries, NGOs and religious bodies in such efforts;
- (v) Arranging debates and seminars on human rights;
- (vi) Arranging lectures for school and college students to impart knowledge about the Universal Declaration of Human Rights (UDHR) and a human rights culture;
- (vii) Introduction of short-term sensitization and training courses on human rights, in particular for the panchayati raj and village level functionaries.

11.3 As recommended by the United Nations High Commissioner for Human Rights and pursuant to the efforts of the Commission, the Government also constituted a National Committee headed by the Union Home Minister to commemorate the 50th Anniversary of the Universal Declaration of Human Rights from 10 December 1997 to 10 December 1998. In addition to a representative of the Commission, the Committee comprised Heads of various Ministries/Departments, eminent human rights activists, representatives from universities and institutions such as the NCERT, etc. A Plan of Action was drawn up, inter alia, for enhancing human rights awareness and promoting human rights education. The year long programme was launched on the Human Rights Day, December 10 1997, with a function organised by the National Human Rights Commission.

(b) Mobilising the Educational System

11.4 A massive class-room based, campus-oriented and teacher-administered human rights education programme has been conceived and is being implemented in phases by an NGO in Tamil Nadu, Peoples' Watch, for school students in that State. The first leg of a pilot programme, launched in 10 private schools in Chennai (Madras), was successfully completed on 5 December 1997 at a function at which the Commission was represented by its Chairperson. The programme commenced with a series of two training programmes, the first, a general orientation in human rights, and the second, a programme on the methodology of teaching human rights through modules supplied to selected schools. From July to December 1997, these schools had allocated 5 teachers each to handle 60 hours of class room periods for human rights education in addition to other events relevant to the purpose.

11.5 In a further step aimed at increasing awareness of human rights in the country, the Commission has recommended the inclusion of questions relating to such rights in the General

Knowledge paper of the Civil Services Examination for entry into the highest civil services in the country. The Commission has pointed out to the Government that this would lead to a greater sensitization on human rights issues and give impetus to the nation's attempts at fostering a culture of human rights among aspiring civil servants of the country.

11.6 In order to promote an understanding of human rights among students at various levels, the Commission has, since its inception, been interacting with the Ministry of Human Resource Development, the National Council for Education, Research and Training (NCERT), the National Council for Teachers Education (NCTE) and the University Grants Commission (UGC). At the instance of the Commission, the Ministry of Human Resource Development (Department of Education), has set-up a working group to oversee, monitor and coordinate the programme for human rights education at the level of higher education as well as to consider matters relating to international collaboration in this field. In addition, the University Grants Commission has also constituted a Standing Committee on Human Rights to examine proposals for the conduct of post-graduate courses by the Universities and the holding of Seminars/Workshops/Symposia by various Universities, Colleges, etc. During the year, the UGC approved a number of proposals submitted by the universities to introduce courses on human rights at different levels.

11.7 Following a detailed exchange of views, the National Law School of India University, Bangalore has submitted to the Commission a proposal for the setting-up of an Institute of Human Rights Education, Research and Documentation. The proposed institute will be a centre of excellence in human rights education, research and documentation and will set standards for human rights education. It will, further, assist the Commission in the discharge of a number of its statutory responsibilities, such as:

- i) The study of treaties and other international instruments on human rights and the making of recommendations for their effective implementation.
- ii) Undertaking and promoting research in the field of human rights.
- iii) Spreading human rights literacy and promoting awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- iv) Encouraging the efforts of non-governmental organizations and institutions working in the field of human rights.

The Institute will have three wings; an Academy Wing for running regular academic and training courses as well as the development of courses and materials; the Research/Publications Wing which will function as a think-tank on human rights issues; and a Documentation Wing which will serve as a nodal centre for human rights information. The Commission proposes to create an endowment with a fund of Rs. 3 million to meet expenses relating to the establishment of a Chair in the proposed Institute.

(c) Human Rights Education for Police Personnel

11.8 The year under review witnessed a further deepening of the efforts of the Commission to sensitize police personnel to human rights issues and to heighten their awareness of such rights. The Commission circulated to all States a syllabus evolved by it in respect of human rights training for all ranks of the police force. In response, the Commission has been informed by police authorities of various States that they are undertaking regional training programmes and that concerted efforts are being made to sensitize their officers and men. A number of special workshops and seminars have also been organised by the police authorities at the State level to emphasise the human rights imperatives of police work.

11.9 The Commission is convinced that such training programmes, when properly structured and conducted, can have a salutary effect on the police officers and men and better the quality of their response, not least in tense and provocative situations.

11.10 In the course of the year under review, the Chairperson and Members of the Commission and officers of the Investigating Division, led by its Director General (Investigation) visited a number of police training institutions in order to address the officers and men and to discuss with them the practical problems that they faced in the discharge of their responsibilities.

(d) Human Rights Education for Paramilitary and Armed Forces Personnel

11.11 The Commission also continued to give close attention to programmes for the personnel of paramilitary forces of the country. In a meeting held on 19 January 1998 with senior officers of the rank of Inspector General of Police in-charge of training, the draft of a common training syllabus was worked out for the training of such personnel. The draft was subsequently circulated by the Commission for comments of the Directors General in-charge of the paramilitary forces. The Commission proposes to hold a meeting shortly with the Directors General of these forces so that final shape is given to the training syllabus and to ensure that there is broad uniformity in the human rights training programmes of the paramilitary forces all over the country.

11.12 In the course of 1997-98, as in earlier years, the Commission had planned to organize a debate among personnel of the paramilitary forces on a human rights related subject in March 1998. However, it took place on 15 April 1998, with officers and men of BSF, CRPF, CISF, ITBP, NSG, RPF and the Assam Rifles competing for the awards. Speakers took the floor both in Hindi and English, the subject of debate being, "National security cannot be sacrificed on the altar of human rights". The debate was of a high standard, the running trophy being awarded this year to the team of the Central Industrial Security Force. A Member of the Commission addressed senior officers of the Armed Forces in three of their major training institutes, the Defence Services Staff College in Wellington, the National Defence College in New Delhi and the Military Intelligence Training School & Depot in Pune. In addition, he regularly addressed courses for senior officers of the armed forces held under the auspices of the Indian Institute for Mass Communication, New Delhi.

(e) Political Parties

11.13 The Commission has consistently drawn attention to the key role that political parties can play in the protection and promotion of human rights. On the eve of General Elections to the Lok Sabha in February 1998, the Commission urged all political parties to reaffirm their commitment to human rights through the choice of candidates having an “unimpeachable human rights record”. In a letter to leaders of political parties, the Chairperson of the Commission appealed to them to re-affirm their commitment to human rights and their determination to address human rights issues by referring to such matters in their party manifestos. The letter also observed that, in a society as complex as ours, every segment had an important role to play in promoting a culture of human rights. The letter added that the political parties had a special responsibility to ensure the strengthening of a democratic polity, the survival of civil society and the assurance of good governance. Stating that concerns had been expressed and purposeful recommendations made on certain important human rights issues in recent years through the annual reports of the Commission and through a number of landmark judgements of the Supreme Court, the Commission hoped that these would find adequate reflection and expression in the policies and programmes that the parties placed before the electorate. The Commission pointed out that commitment to human rights values was reflected in the degree of commitment to issues such as free and compulsory primary education and maternal and child health care, as the spread of these alone could assure to posterity the blessings which many of our generation had been denied. A number of political parties responded to the communication from the Chairperson, with the assurance that they would include such human rights concerns in their programmes and party manifestos.

11.14 It will be recalled that in a letter of February 1994, addressed by the Commission to leadership of the political parties represented in the Parliament, the Commission had observed that political parties could be a powerful force for respect for human rights by the examples they set and by the ideals they professed and propagated. The Commission therefore requested the political parties to set up Human Rights Cells at the Central, State and District levels of the party organisation, specifically charged with the responsibility of promoting and protecting human rights and for overseeing the conduct of their own members. Subsequently, the Commission convened meetings with the leaders of various political parties at which it explained its concerns and views in greater depth. While the response of the major political parties was, by and large, positive, the Commission is of the view that far more needs to be done by the political parties to instil in their cadres - through education, training and other appropriate methods - a proper understanding of the human rights principles that should govern their conduct.

11.15 In particular, the Commission would like to emphasize that there is need for the exercise of greater restraint and moderation by political parties when dealing with issues having sensitive human rights connotations and that all groups must turn away firmly from incitement to violence in the name of caste, language, religion. The Commission would like to reiterate its recommendation that political

parties establish a clear Code of Conduct to govern the behaviour of their cadres in matters affecting the human rights of the people of this country, and that transgressions of such a Code be dealt with severely. The Commission believes that there is a need for a discussion of this matter at the highest levels of the major political parties of the country. It intends to pursue this matter with them.

(f) Seminars and Workshops

11.16 The Commission continued to organise seminars and workshops to enhance an understanding of human rights and to support the activities of Non-Governmental organizations and academic institutions to this effect. For instance, the Commission was represented by a Member in a seminar organised by the People's Union for Civil Liberties in Jamshedpur, Bihar on 20 April, 1997.

11.17 Further, as indicated earlier in their report, the Commission itself organised a discussion on 13 May 1997 that was attended by the senior-most officers of the Army, the Secretaries of the Defence and Home Ministries, representatives of NGOs, eminent jurists, academics and Members of the Commission in regard to the Armed Forces (Special Powers) Act.

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

11.19 The Second Asia-Pacific Regional Workshop on National Institutions was organised in New Delhi by the Commission from 10-12 September 1997 and inaugurated by the Prime Minister of India. The Workshop was attended by the members of the Asia-Pacific Forum, viz., the National Human Rights Institutions of Australia, India, Indonesia, New Zealand, Philippines and Sri Lanka and also by representatives of fourteen Governments of the region, in addition to representatives of United Nations agencies and programmes and key NGOs. Further, the Chairpersons of the State Human Rights Commissions of Assam, Madhya Pradesh, Jammu & Kashmir, Punjab and Tamil Nadu were present.

11.20 Some of the major decisions and recommendations of the Workshop were as follows:

- i) The participants reaffirmed their commitment to the universal, indivisible, interdependent and interrelated nature of human rights contained in the Universal Declaration of Human Rights and other international instruments.

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

11.21 A Seminar-cum-Workshop on 'Human Rights Promotion of the Mentally Ill Persons' was jointly organised by SEVAC, an NGO based in Calcutta, this Commission and the West Bengal Human Rights Commission on 27-28 September 1997.

11.22 'Human Rights Day' was observed on 10 December 1997 at a function in New Delhi to mark the beginning of the observance of the 50th Anniversary of the Universal Declaration of Human Rights (UDHR). Dr. Shanker Dayal Sharma, former President of India inaugurated the function. A UN Poster to mark the 50th Anniversary of the Declaration was also released by Dr. Shanker Dayal Sharma.

11.23 The Commission provided financial assistance in organising a National Seminar on Human Rights by the University of Pune; a seminar on 'Working Environment of Policemen and its impact on Human Rights Violations' organised by the National Institute of Criminology & Forensic Science,

Delhi; a seminar on 'Child Labour problems of Bihar' organised by Human Rights Association, Bihar and a seminar on the 'Child and Human Rights' organised by Punjab University. A number of other seminars held in various parts of the country were attended by the Chairperson and Members of the Commission.

(g) Publications and the Media

11.24 The Newsletter published by the Commission, both in English and Hindi, appeared without fail every month. It provides a valuable means of disseminating information on the Commission's programmes and priorities and also carries summaries of some of the more interesting decisions of the Commission in respect of individual complaints addressed to it.

11.25 Despite the growing demand for copies of the Newsletter and the increasing costs involved in producing it, the Commission has continued its policy of making the Newsletter available to readers free-of-cost. The Commission has noted with gratification that, in a number of instances, non-governmental organizations have made photocopies of the Newsletter and circulated these to their own constituents. Interaction with the Directors- General of Police of the various States, points to an increased demand for the Newsletter from police personnel. The Newsletter has also proved especially useful to media personnel covering human rights issues and the work of the Commission, frequent stories and in-depth analyses being based on items carried by the Newsletter. The Commission regularly receives comments on the Newsletter - both from India and abroad - from academics, human rights activists, representatives of NGOs and others. The Commission wishes to thank readers for their comments and suggestions in respect of the Newsletter.

11.26 In order to reach a wider audience, the Commission is finalizing the creation of a web-site of its own. The Commission is being assisted in this by the National Informatics Centre (NIC). The web-site will contain, inter alia, information on the provisions of the Protection of Human Rights Act 1993, the key decisions and publications of the Commission, including its annual and other reports.

11.27 The Commission is happy to learn that, pursuant to its recommendation, Doordarshan is considering the possibility of having a programme on human rights, of 30 minutes duration and on a monthly basis, on the national network. The Commission has also been gratified to learn that the Central Government will earmark regular time slots on radio and television for human rights messages to commemorate the 50th Anniversary of the Universal Declaration of Human Rights in 1998. The Commission has welcomed these developments and expects expeditious action on them.

11.28 The Clippings Information Service of the Commission provides a useful source of information to researchers, students and activists. Daily clippings on human rights issues from the national press are computerised, enabling their retrieval newspaper-wise, date-wise and topic-wise. It is proposed to spread the coverage to the regional press also.

11.29 The Commission would here like to thank the media for their increasing coverage of human rights issues. There has been a marked improvement in the range and depth of such coverage since 1993 when the Commission was established and the Commission has welcomed its daily interaction with the Press. The Commission believes that the Media is a key ally in the promotion and protection of human rights and in correcting those social attitudes that have resulted for too long in the violation of human rights in this country, particularly those of the most vulnerable sections of society.

(h) Research

11.30 In pursuance of the statutory responsibility entrusted to the Commission to undertake and promote research in the field of human rights (Section 12(g) of the Act), a variety of programmes and projects have been identified and taken up. At present, the Policy Research Projects and Programmes Division has on its file eleven broad issues, viz., those relating to Custodial Justice, Review of Constitutional Provisions, Laws, Instruments and Treaties, Terrorism and Human Rights, Review of International Instruments and Treaties, Human Rights Literacy and Education, Collaboration with Non-Governmental Organizations (NGOs), Juvenile Justice, Disability and Human Rights, Gender Justice, Environment & Health and Human Rights.

11.31 Issues and projects relating to these programmes are reviewed by the Commission on each Friday, when the Programme Agenda of the Commission is discussed and also in meetings of the Full Commission, which are attended in addition by the Chairpersons of the National Commission for Minorities, the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women. During the year under review, the Commission has concentrated in particular on issues such as the conditions prevailing in juvenile homes, the application of forensic science in the administration of justice, the elimination of bonded and child labour, the prevalence and deleterious consequences of iron deficiency, child prostitution and quality assurance in mental hospitals. In each instance, the Commission has interacted with the concerned governmental agencies and non-governmental organizations involved with the issue and with experts known for their knowledge and competence in respect of these matters.

11.32 The Commission has specifically entrusted a research project on 'Quality Assurance in Mental Hospitals' to the National Institute of Mental Health & Neuro Sciences (NIMHANS), Bangalore, the details of which have been recounted earlier in this report. Reference has also been made earlier in this report to the proposal being finalised to set up a Chair on Human Rights at the National Law School of India University, Bangalore.

XII. NON-GOVERNMENTAL ORGANISATIONS

12.1 The work of Non-Governmental Organizations is central to the spread of human rights awareness and the articulation and defence of human rights. Efforts to promote and protect human rights cannot possibly gather the momentum they require without the fullest cooperation between

NGOs and the Commission. Indeed, the efforts of the two are complementary, in a relationship that is at once both constructive and critical.

12.2 The Commission has accordingly maintained a list of NGOs with whom it has been in contact and has systematized the data available to it in regard to these NGOs with a view to strengthening cooperation with them. The data has been gathered on the basis of a questionnaire which was devised by the Commission and published in the Commission's Newsletter, as well as its annual report for 1996-97.

12.3 The data provides the name, address, details of office-bearers and particulars about the human rights related activities of the concerned NGOs. (Annexure VI) A total of 136 NGOs have already furnished details to the Commission on the prescribed proforma, while another 238 NGOs have been given the proforma on their request. It needs to be added, however, that the Commission has not limited its contacts to NGOs figuring in the list. Through the on-going exercise of collecting data, the Commission proposes to build a reliable and useful base of information on non-governmental activity in the field of human rights, which would not only be useful to it, but also to the NGOs themselves. Indeed, the Commission frequently receives requests from NGOs asking for copies of the list of NGOs working with it. The Commission wishes to expand and strengthen this net-working of NGOs. It appeals through this report to such other NGOs as might be interested in cooperating with the Commission, or each other, to send the relevant information on their activities to the Commission on the proforma prescribed by the Commission. The Commission proposes to publish the names of all cooperating NGOs at an appropriate time, in an appropriate manner.

12.4 In addition to the now well-established cooperation existing between the Commission and NGOs in respect of the receipt and handling of complaints relating to violations of human rights, and the conduct of seminars and workshops, the year under review saw a strengthening of cooperative efforts in specific areas of programme activity, for instance in respect of efforts to deal with child prostitution, child labour, bonded labour, iron deficiency among pregnant women, problems of the mentally disabled and prison reforms. The Commission also remained in close touch with those working for the proper rehabilitation of persons displaced by the construction of the Bargi Dam.

12.5 It is pertinent here to recount that the Commission sponsored representatives of three NGOs for a three-week International Human Rights Training Programme conducted by the Canadian Human Rights Foundation during June-July 1997, together with members of its own staff. The Commission believes that it is important to help strengthen the capacity of NGOs through the training of their staff.

XIII. STATE HUMAN RIGHTS COMMISSIONS AND HUMAN RIGHTS COURTS

13.1 The rapid increase in the number of complaints received by the Commission, as well as their geographical spread, have brought into sharp focus the need for mechanisms at the State level and at levels even below the State, for swift and inexpensive redressal of complaints.

13.2 Section 21 of the Protection of Human Rights Act, 1993 provides for the constitution of State Human Rights Commission. By the end of the preceding year, State Commissions had been set up in West Bengal, Himachal Pradesh, Madhya Pradesh, Assam and Tamil Nadu. During the year under review, Punjab and Jammu & Kashmir also established State Commissions, the Chairpersons and Members of the former being appointed in July 1997 and of the latter in August 1997. Though a notification regarding the constitution of a State Human Rights Commission was issued by the Government of Uttar Pradesh on 4 April 1996, the appointment of its Chairperson and Members is yet to be notified by the State Government. The Commission once again urges State Governments to establish Human Rights Commissions where they do not yet exist and to ensure the fullest support to such institutions once they are established. The Commission intends to pursue this matter with the State Governments, but also recommends that this issue receive the attention of the Central Government and the leadership of political parties at the highest level.

13.3 The Commission is of course aware of the logistical and financial issues which are faced by the State Governments, particularly the smaller ones, when considering this question. Having carefully considered various options in respect of the seven North-Eastern States, the Chairperson of the Commission therefore wrote to the Chief Ministers of those States suggesting the setting up of a separate Human Rights Commission for each State, having a core comprising the Chairperson and the Judicial Member of the Assam Human Rights Commission, who would act as Members of the State Commission in each of the other States, alongwith one human rights activist nominated by that State. Such an arrangement would, in due course, need a statutory amendment in regard to the composition of State Commissions enabling the State, whenever it so decides, to have only a three Member Commission and for the Chairman and a Member to be part of more than one Commission. As an alternative model, the Commission pointed out that there could be a common Commission for the States of the North-East, with individual States contributing to the establishment; this too, however, would entail an appropriate amendment to the Protection of Human Rights Act, 1993.

13.4 In response, the Chief Minister of Meghalaya agreed to the constitution of a Common Commission for all the North-Eastern States. The Chief Ministers of Assam and Nagaland indicated that the suggestions made by the Commission were being examined by their respective Governments. The Chief Minister of Mizoram stated that it was not necessary to set up a State Human Rights Commission as there had not been 'a single case' of a human rights violation in his State. He added, however, that the position could be reviewed as and when the situation so warranted. The Commission recommends that the State Governments of the North East, in consultation as needed with the Central Government, work out an adequate framework for State Commissions in that region, keeping in mind the resource constraints faced by them.

13.5 Section 21(5) of the Protection of Human Rights Act, 1993 provides that a State Commission may inquire into a 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. Section 36(1) of the Act, however, 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 in force. The Commission is of the view that the functional relationship of the National and State Commissions could benefit from a clearer definition. In the mean time, however, in order to ensure proper coordination in the work of the National and State Commissions and also to avoid duplication, exchanges of information on a fortnightly basis have been instituted in respect of the cases of which cognizance has been taken by the National and State Commissions.

13.6 Section 30 of the Protection of Human Rights Act, 1993 envisages the notification of Human Rights Courts for the purpose of providing speedy trial of offences arising out of the violation of human rights. While a number of States have notified the constitution of Human Rights Courts, an ambiguity remains as to the precise nature of the offences that should be tried in such Courts and other details regarding conduct of their business. The Commission had, in its last year's report, mentioned that the Madras High Court had in a Criminal Revision Case (No.868/96) under Article 227 of the Constitution, constituted a Special Bench to formulate the rules and procedure for the functioning of the Human Rights Courts set up under the Protection of Human Rights Act, 1993 in all the Districts of Tamil Nadu, and that the High Court of Madras had requested the Commission to place its views before it on various aspects as to the scope, sweep, amplitude, powers, jurisdiction and functioning of the Human Rights Courts. In addition to placing its views and suggestions before the Court, the Commission also suggested that the Union of India and the Attorney General of India may also be notified to assist the Court, keeping in view the implications of the issues raised.

13.7 The High Court of Madras delivered its judgement on 23 June 1997 giving its views on various aspects of the functioning of Human Rights Courts. The High Court framed as many as 25 questions/issues touching on the interpretation of various provisions of the Protection of Human Rights Act, 1993, the scope of jurisdiction of the Human Rights Courts and the human rights offences. A summary of various points raised and findings recorded by the Court is at Annexure VII. The Commission proposes to pursue the matter after necessary consultations.

XIV. COMPLAINTS BEFORE THE COMMISSION

(a) Number and Nature

14.1 As mentioned earlier in this report, there has been an increase of nearly 80 per cent in the number of complaints including custodial death cases registered by the Commission during the period 1 April, 1997 to 31 March, 1998 over the preceding year. This extraordinary increase reflects both a heightened awareness of human rights in the country as well as a hope and belief that the Commission will act promptly and impartially to secure the redressal of grievances. The number of complaints, which includes reports sent by State agencies on custodial deaths and rapes, registered in 1996-97 was

20,514 as against 36,791 registered during the year ending 31 March 1998. Including the 4,010 cases which were pending consideration at the beginning of the year, the Commission had a total of 40,802 cases that required its consideration in 1997-98. Uttar Pradesh continued to account for the largest number of fresh cases, with 17,638, followed by Bihar with 3,127 such cases. These two States together accounted for 55.5 per cent of the fresh cases received during 1997-98.

14.2 Despite this heavy increase in the number of complaints, the Commission had to work with depleted strength, consequent on the appointment in January 1997 of two of its Members as Governors. To deal with this extraordinary situation, intense efforts were required by the Chairperson and Members to cope with the work. In addition, working methods were tightened, streamlined and improved and even the Regulations governing the complaints disposal procedure of the Commission were amended in order to empower a single Member to deal with complaints instead of a bench of two. Thus, during the year under review, 27,289 cases were taken up for consideration. Of them, 12,870 cases were disposed of in limini and 5,800 cases were disposed of with directions to the appropriate authorities. One hundred and thirty one 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. To sum-up, a total of 18,801 cases were disposed of during 1997-98 as against 10,848 cases that were disposed of during 1996-97. The disposal of cases was thus 56 per cent more than that in the previous year. The Commission believes that the disposal of cases could have been even better had there been prompter and fuller responses to the notices of the Commission by the State authorities. The Commission remains deeply concerned by the tendency in certain States to delay responses and is giving consideration to the evolution of additional mechanisms, both at the level of the States and major Union Territories, and at its own headquarters, to ensure swifter attention to its notices and recommendations.

14.3 A State-wise list of the number of cases registered, considered by the Commission and pending consideration is at Annexure VIII. 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 IX. A statement showing an analysis of the 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 X. In accordance with the standing instructions of the Commission, States and Union Territories reported a total of 1,012 cases of custodial death in the course of 1997-98, of which 819 occurred in jail custody. The large number of deaths reported in jail custody emphasises, once again, the urgent need for prison reform including arrangements for better health care of prisoners, matters of the highest concern to the Commission, on which it has already made a number of specific recommendations.

14.4 The increase in the number of complaints received by the Commission has necessitated radical changes in its procedures for dealing with them. Earlier in the report, reference has been made

to the constitution of Single-Member Benches, as a result of which a much larger number of cases received the attention of the Commission. Important cases, naturally, continued to receive the attention of the Full Commission. The Practice Directions of the Chairperson (see paras 2.6), brought greater meticulousness and method to the handling of complaints and related programme issues. The process being an on-going one, continuous thought and attention will be given to the organisation, methods and manpower required to deal effectively with the growing work-load of the Commission. There is an obvious need to handle certain categories of matters at a level below that of the Members of the Commission, so as to release the capacity of the Members to deal more fully with the totality and variety of functions entrusted to the Commission under Section 12 of the Protection of Human Rights Act, 1993. Ways are being examined to see how best this can be done.

(b) Investigation of Cases

14.5 During the year 1997-98, the Commission directed its Investigation Division to look into 1,755 complaints, of which 1,503 cases called for the 'collection of facts & monitoring' and 252 called for field investigations. Of these complaints, 1,097 proceedings were closed after processing. Whenever necessary and desirable, officers of the Investigation Division associated NGOs and the petitioners in the work of investigation. NGO representatives, in many cases, furnished most useful information and help to the officers of the Investigation Division in examining victims, particularly female victims, leading to the uncovering of lapses and often serious irregularities in the discharge of responsibilities by public servants.

14.6 Despite a shortage of staff and an increase in workload by about 70%, the Commission's investigating officers sought to complete on time the investigations entrusted to them under the directions of the Commission. On the basis of reports given expressly by officers of the Investigation Division during the year 1997-98, criminal prosecutions have been launched against 43 persons. Departmental action has been taken against 60 officers and 51 officers have been placed under suspension. Compensation ranging from Rs.50,000 to Rs.1,00,000 has also been awarded in 20 cases.

14.7 Further, as the Commission was not satisfied with the initial reports of agencies of the State Government in respect of 23 cases referred to them, the Commission asked the State CID or Central Bureau of Investigation (CBI) to take up the investigation of those cases, at the same time asking its Investigation Division to monitor progress.

(c) Illustrative Cases

14.8 The illustrative cases that are narrated below reflect the range of human rights violations brought before the Commission. These cover cases of custodial death, illegal detentions, people being falsely implicated, inhuman treatment in police custody, negligence in taking action to prevent human rights violations, conditions prevailing in jails or killing of innocent people in areas affected by insurgency and terrorism. Certain specific cases have been added to the list of cases in this report, as

they reflect a widening of the issues addressed by the Commission. These relate to two cases referred to the Commission by the Supreme Court of India, one concerning mass cremations in the Punjab and the other concerning starvation deaths in Orissa. A third case relates to the right to form associations, while a fourth case in this section indicates the manner in which the Commission, by moving the judiciary, may secure the enforcement of its recommendations.

(i) Custodial death of Asit Kumar Chaturvedi: Uttar Pradesh

This case was taken up by the Commission on receipt of a complaint from a certain Shri Amit Kumar Chaturvedi alleging that his brother, Asit Kumar Chaturvedi, an undertrial prisoner in District Jail, Agra died as a result of injuries inflicted while in jail custody.

Report of the Deputy Inspector General (Prisons), Agra Range received by the Commission on this incident stated that the death of Shri Asit Kumar Chaturvedi was due to head and body injuries sustained by him as a result of convulsions arising out of high fever, which was followed by his going into a coma. This, the Commission observed, was indicative of the extent to which imagination, pressed to convenience, could stretch itself. While the report stated, that following high fever, Shri Asit Kumar Chaturvedi was admitted to SN Medical College, Agra, that his family members arrived there to take care of him and that he died within two days after being released on bail, the Commission noted that the report was silent as to what was done to Shri Chaturvedi while he was in custody prior to his being sent to the hospital.

Finding the report unsatisfactory and inadequate, the Commission asked its Investigation Wing to look into the matter. The Commission's investigation prima-facie indicated that the prisoner was severely beaten up by the jail staff. There was evidence of witnesses to indicate torture and inhuman physical violence directed against the person of the prisoner. The Additional City Magistrate also, in his report, on the basis of an examination of the post mortem report, panchnama and other records, concluded that Asit Kumar Chaturvedi had died due to head and other injuries that he had suffered in the Central Jail, Agra.

In view of the above, the Commission felt that this was a case in which there was a strong probability of custodial torture leading to the death of the undertrial and the jail authorities could not escape their responsibility.

Pursuant to the recommendations of the Commission, the Uttar Pradesh Government has informed the Commission that it has sanctioned a sum of Rs.1, 00,000/- as compensation to the next to the kin of the deceased.

The Commission also recommended that the Uttar Pradesh Government get the matter fully investigated by the State CID and prosecute all those found responsible for this tragic death and the subsequent attempt to cover up the facts.

The Commission in its proceedings noted that the jail authorities had a moral, legal and constitutional obligation to ensure that prisoners in jail were not harassed or treated with violence. It observed that even convicted prisoners were not divested of their fundamental rights, the curtailment of which could only be in accordance with the sentence imposed on them. The Commission expressed surprise that senior prison officials, who were under a statutory obligation to conduct an investigation fairly, honestly and in a manner which promoted the ascertainment of truth, did so in a manner which gave rise to a serious suspicion of connivance in a cover-up.

(ii) Mass cremation of unidentified dead bodies by Punjab Police : Referral by Supreme Court

A reference to this case was made in the annual report of the Commission for the year 1996-97. Having heard the learned Counsel for all the parties on the preliminary questions noticed and formulated in the course of the Commission's order dated 28 January 1997 as also those arising out of the objections filed by the respondents, the Commission pronounced its interim orders in the case of alleged mass cremation of unidentified dead bodies in Punjab on 12 May, 1997.

The issues considered by the Commission essentially related to the question whether in terms of the remit of the Supreme Court, the Commission did indeed function as a body sui generis or whether it should function strictly within the parameters of the provisions of the Protection of Human Rights Act 1993 bringing into operation the limits of the Commission's jurisdiction imposed under Section 36(2) of the said Act. Other points considered during the preliminary hearings were the following:

- whether in terms of the remit, other issues raised in the writ petitions before the Supreme Court passed orders, should also be decided by the Commission and if so what these other issues and their scope were;
- whether the Commission could itself set up adjudicatory mechanisms for speedier disposal of the various claims subject to the imprimatur of the Commission;
- the concept and the content of the idea of 'compensation' available to the victims or their dependents by way of reparation.

The Commission also considered a point of objection raised by some of the respondents that the order of the Supreme Court, constructed as authorising the Commission to adjudicate the claims, would itself amount to a delegation of the Supreme Court's own judicial power to the Commission, impermissible under the Constitutional dispensation. The Commission felt that these objections might also have to be resolved at the preliminary stage.

Having considered the matter in detail, particularly in regard to the legal provisions as well as the facts and circumstances, the Commission passed an Order on 4 August, 1997, disposing of the preliminary issues.

In regard to the objection relating to the time limitation on its jurisdiction, the Commission took the position that the Supreme Court, by its Order had designated the Commission as a body sui generis to carry out the functions and to determine issues as entrusted to it by the Supreme Court. “The shackles and limitation under the Act are not attracted to this body as, indeed, it does not function under the provisions of the ‘Act’ but under the remit of the Supreme Court”. “As a logical consequence, the powers of the Commission in carrying out this mandate are not limited by Section 36(2) or other limiting provisions, if any, under the ‘Act’,” the Commission ruled.

The Commission also “answered in the negative” the objections relating to the legality of the alleged delegation of authority by the Supreme Court, stating that the Court’s order made it clear that it had “not created any exclusive final adjudicatory jurisdiction in the Commission”, but implied that “the Commission discharged its functions as an instrumentality or agency of the Court”.

The Commission further stated that it would need to augment greatly its logistical capability; it would have to induct officers with judicial experience to record and process the evidence and conduct enquiries under the directions of the Commission and recommend appropriate compensation subject to final endorsement by the Commission.

The Commission directed that since a large number of alleged cremations were said to have taken place, the appropriate procedure might be to invite by public notice, claims in an appropriate proforma, from those who are aggrieved and such cases shall be enquired into to ascertain whether the deaths and subsequent cremations or both were the result of acts which constituted violation of human rights or constituted negligence on the part of the State and its authorities in preventing such violations. If either of these questions were answered in the affirmative, then the basis for the quantification of compensation would have to be decided.

On receipt of the above Order of the Commission, the Ministry of Home Affairs filed a petition seeking clarification of the Supreme Court’s Order of 12 December 1996, in the light of Commission’s orders settling the objections of the Government of India and laying down modalities which it intended to follow in pursuing the inquiry into this case. As on 31 March 1998 the matter was pending before the Court.

(iii) Death of Usman Ansari following alleged police violence: Maharashtra

The Commission received on 7 October 1995 a complaint from Smt. Hamida Begum, a resident of Nagpur alleging murder of her husband, Usman Ansari, who she said was forcibly taken by four police constables from their home to prepare food for a party that was organised to celebrate the promotion of a Head Constable as Sub-Inspector. Next morning, the dead body of her husband was found on the road near the place where the party was held.

In response to the Commission's notice to the Director General of Police, Maharashtra, the Additional Director General of Police, State CID, Pune, informed the Commission that the investigation of the case was closed by State CID (Crime) as "nobody could give definite clues which would lead to detect the culprits". The State CID's investigation also could not prove that any quarrel took place between the deceased and the participants at the party "as no evidence on this point came on record". Though a "detailed search was conducted near the scene of offence" "no weapon" was found.

The Commission found the report of the State CID unsatisfactory and directed its Investigation Division to enquire into the matter on 30 September 1996. The report of the Investigation Division of the Commission pointed out that the investigation by the State CID was not fair and objective and that an attempt had been made to cover-up facts. The doctor who performed the post mortem examination had recorded that there was a fracture of the scalp which caused the death. The injury was caused by a hard and blunt object, which could have been a stick or a rod and it was difficult to believe that death was caused by a road accident. The Commission's investigation further revealed that a scuffle had taken place between the deceased and some policemen who had come for the party.

The Commission felt that this was a serious matter, reflecting adversely on the sense of professional honour of the police set-up. The Commission felt that there was all the more reason that there should be an independent investigation. The Commission, therefore, asked the Government of Maharashtra to get this matter investigated by CBI and also to pay a sum of Rs.2,00,000/- as compensation to the next of kin. The Commission has directed that the amount so paid may subsequently be recovered from such of those police personnel whose guilt will be established through an independent investigation.

(iv) Measures to prevent deaths by starvation in Orissa

Pursuant to the orders of the Supreme Court of 26 July, 1997, the Indian Council for Legal Aid and Advice filed a petition before the Commission seeking interim measures to prevent deaths by starvation that had reportedly occurred in what are popularly known as the 'KBK Districts' of Orissa which now, in fact, comprise the eight districts of Kalahandi, Nuapada, Bolangir, Sonepur, Koraput, Malkanagiri, Nawarangpur and Rayagada. Prior to that, the Commission had received a letter from the then Union Agriculture Minister, Shri. Chaturanan Mishra, requesting the Commission to undertake an investigation into the alleged deaths by starvation. The Commission had, thereupon, sent a team of officers, comprising the Secretary-General and the Director General (Investigation) to visit the affected parts and submit a report to it. The Commission also received a joint memorandum signed by seven members of the Orissa State Legislative Assembly in which they listed 14 cases of deaths occurring allegedly as a result of starvation.

The allegations of deaths by starvation and the seemingly recurrent nature of this tragic occurrence in the 'KBK districts' raised issues that were both grave in implication and contentious in substance. After examining the report of its own team and the response of the State Government, and after reflecting on the petitions submitted by the Indian Council of Legal Aid and Advice and Others, the Commission considered it important to conduct in-depth hearings on this entire matter and to proceed in a non-adversarial manner with the full involvement and cooperation of all parties concerned.

The Commission's recommendation followed upon 11 hearings held by it between 3 September 1997 and 29 January 1998, examining all aspects of the matter, an examination that included, inter alia, economic theories relating to starvation and famine, the economic, social and environmental history of Orissa - and of the 'KBK districts' in particular - over the past decades, the codes and criteria governing the conduct and reaction of State Governments and the Centre to situations such as those obtaining in the 'KBK districts' and, above all, the practical measures that could be taken in the interim, and be dovetailed into long-term plans, to end the scourge of deprivation, malnutrition and cyclical starvation in the districts concerned.

After due consideration, the Commission also arrived at the view that interim measures should be undertaken over a period of two years, subject to such periodic reviews as it may consider appropriate and necessary, and that these interim measures should be as follows:

A. Monitoring Arrangements:

- At the State-level, a Monitoring Committee be established under the authority of the Chief Secretary, to guide and supervise the over-all effort.
- In addition, and without in any way wishing to transgress the normal lines of command and control, the Commission intended to appoint an eminent person to serve as its Special Rapporteur for the 'KBK districts' in order to keep itself fully informed of developments in respect of these districts and to interact, on its behalf, with all concerned authorities, whether at the State, district or other levels, as it may deem to be appropriate and necessary. The name of this Special Rapporteur, in regard to whom the parties have been consulted, would be announced shortly.

B. Specificity of Programmes:

- The Commission - after careful discussion with all concerned - received from the State Government a specific set of commitments district-wise and programme-wise, for the period 1 December 1997 to 31 April 1998, in respect of each of the 8 districts belonging to the 'KBK' group in respect of the programmes relating to Rural Drinking Water Supply, Social Security, Soil Conservation and Primary Health Care. The State Government would provide to the Commission an appraisal in respect of these programmes.

C. Emergency Feeding Programme:

After reviewing the suggestions and views on this programme, the Commission was of the opinion that:

- The Emergency Feeding Programme, as devised, should continue on a once-a-day basis. However, the programme should be available each day of the month.
- If any needy persons had been inadvertently omitted from the programme, they could be added to those being fed, on the advice of the concerned gram sabha/gram panchayat, the competent State authorities or the Special Rapporteur of the Commission.

D. Old Age Pensions, Disability Pensions & Other Social Security measures:

- The Commission was of the view that all those who qualify for old age pensions, disability pensions and other social security measures under the existing criteria governing such schemes, should be included among the beneficiaries.
- Monitoring system should be established by the State Government, which would ensure that there were no delays in the monthly disbursement of pensions and such benefits and to distribute identity cards to the beneficiaries as one means of off-setting such delays.

E. Employment Generation in Agriculture, Ecological Security, Soil Conservation, Irrigation and other schemes:

- The Commission noted the quantitative undertakings in regard to employment generating activities in respect of which, the Commission urged the tightening of monitoring systems.

F. Public Health:

- The Commission observed the deleterious, indeed devastating effects of malnutrition on young women and mothers, that was taking a cruel toll on them and that was leading, in addition, to an unacceptably high incidence of low-birth weight amongst the children being born, a deficiency that in turn prevented the full development of their human potential, and recommended that the Monitoring Committee took maximum steps to ensure that measures were taken in the 'KBK districts' to provide the iron and iodine supplements and the vitamin A that was required by young women to prevent such needless harm from occurring.
- The Commission further recommended that a health-cum-nutritional survey be undertaken for these districts by an independent agency.

G. Land Reform:

- It had been pointed out to the Commission in the hearings that the issue of land reforms was inextricably linked to the future well-being, or decline, of these districts. The Commission saw

value in this suggestion and urged the State Government to constitute such a Committee with the request that it gave its report, within a fixed time-frame, on the measures that should be taken in these districts to remedy the present situation that was marked by a lack of land reforms, the alienation of land, migration and numerous other concomitant ills.

The Commission proposes to revert to longer-term issues raised in respect of the 'KBK districts' separately and at a later stage.

(v) Custodial death of Laxman Somnath Verma : Maharashtra

The Superintendent, District Jail, Kalyan reported to the Commission the death of a 32-year-old undertrial prisoner, Laxman Somnath Verma. The report stated that Shri Verma was admitted in the Prison Hospital as an indoor patient on 30 November 1996 and remained there till 5 December 1996. He was later shifted to Central Hospital, Ulhasnagar where he died on 7 December 1996.

The Commission noted that conditions at the District Jail at that time left much to be desired. The authorised capacity of the jail was 540 prisoners but more than double that number were lodged there. The jail is reported to have a 10-bed hospital. The Medical Officer of the Jail Hospital was reported to have gone on leave from 2 December 1996 as a result of which the Commission noted that the jail with more than 1,300 inmates went without even a single doctor for several days. When the prison doctor was on leave, the prisoner was referred to the Central Hospital at Ulhasnagar. He died on 7 December 1996 as a result of "cardio respiratory failure due to pulmonary koch's (TB)."

The probe conducted by the Commission's own Investigation Team revealed that negligence in according timely medical treatment resulted in or at least precipitated and hastened the death of the undertrial prisoner who was suffering from tuberculosis.

Taking serious note of the negligence and dereliction of duty by the officials of the Kalyan District Prison, the Commission asked the Maharashtra Government to pay an

interim compensation of Rs.25,000/- to the next of kin of the undertrial prisoner, Laxman Somnath Verma, who died due to the lack of "reasonable, prompt and adequate medical facilities."

(vi) Compensation for the death of person who died doing prison labour : Uttar Pradesh

Ruling that an undertrial prisoner cannot be put to hard labour, the Commission asked the Uttar Pradesh Government to pay an interim compensation of Rs.1 lakh to the parents of one Shri Ashok Kumar who died after sustaining injuries while carrying a load at the behest of the Roorkee sub-jail authorities.

The Commission, in its order, stated that the victim, although an undertrial prisoner, was made to carry a heavy bag of wheat to the flour mill in the precincts of the prison. While doing so, he slipped and the wheat bag crashed on his back causing serious injuries, including a fractured vertebral

column. "This, in itself, is sufficient to support the finding that the State is responsible and accountable for the death of Ashok Kumar, who was an undertrial, and who could not have been put to hard labour," the Commission said in its order. The Commission also criticized the lack of prompt medical assistance to the victim, stating that the State was under an obligation to provide adequate medical facilities to every prisoner. Despite his serious condition, Ashok Kumar was discharged from the Meerut Medical College Hospital and sent back to the Civil Hospital, Roorkee, which had no facilities for the treatment of such serious cases.

On notice being issued by the Commission, the authorities sought to justify the fact that the victim had been put to hard labour by saying that even undertrials could be put to work with their consent. The Commission in its order, however, asserted that no evidence was forthcoming to indicate that there was ever any consent on the part of Ashok Kumar to volunteer to do such work. The Commission also asked the State Government to conduct an inquiry to fix responsibility and recover compensation money from those found responsible for the death of Ashok Kumar.

(vii) Custodial death of Balu Kalu Shelke : Maharashtra

Shri B.K. Shelke, aged 35 years, was arrested in connection with Crime No.42/96 u/s 66 (c) Bombay Prohibition Act on 28 July 1996 and admitted in the Yeravada Central Prison, Pune on 29 July 1996. In the prison, his condition became serious and he was sent for treatment to Sasoon General Hospital, Pune on 31 July 1996. He expired in the hospital on 2 August 1996. Perusal of the post mortem report showed that death was due to 'shock following head injuries'. When the Commission sent the post mortem report to the Department of Forensic Medicine, New Delhi for expert opinion, the latter stated as follows:

- (a) Injuries mentioned in the post mortem report dated 3 August 1996 are ante-mortem in nature caused by application of force from blunt objects;
- (b) There were cuttings and over-writing of day, time and examination findings in the medical case sheet.

The Inquest (Panchnama) Report was inconclusive, as it lacked vital information. However, the post mortem report, as well as the opinion of the expert on that report, strengthened the apprehension that this was not a case of natural death. The Commission therefore came to a reasonable presumption that Balu Kalu Shelke died as a result of ante-mortem injuries inflicted with a blunt weapon and that, as the injuries were inflicted during custody, and were inflicted by the jail staff.

In light of the above, the Commission found it difficult to accept the position that the death was due to shock following head injury. The Commission, therefore, recommended as follows:

- (1) The Government of Maharashtra pay a sum of Rs.50,000/- to the next of kin of Balu Kalu Shelke by way of immediate interim relief, without prejudice to their other remedies at law; and
- (2) the jurisdiction police should register a case and thereafter transfer the investigation to be made into the matter to the State CID to identify those responsible for causing the injuries leading to Shelke's death and those who aided and abetted a cover-up of the killing and to set the criminal law in motion against all those found guilty. The investigation to be completed in eight weeks time.

Government of Maharashtra have issued sanction for payment of Rs.50,000/-. Compliance in respect of part 2 of the direction is awaited.

(viii) Custodial death of Atal Bihari Mishra - Uttar Pradesh

A reference to the case was made in the annual report of the Commission for the year 1996-97. It was mentioned that a number of police personnel were charge-sheeted in this case, consequent to intervention by the Commission.

Thereafter, Shri Umesh Chander Mishra, the elder brother of the deceased made a supplementary prayer that as the investigations had established that Atal Bihari Mishra was killed by the police, the Commission should award Rs. 25 lakhs by way of compensation. He also sought protection for the family and employment to one of its members on compassionate grounds.

As there was prima facie material to hold that Atal Bihari Mishra died as a result of police violence, the Commission issued notice to the Chief Secretary, Government of Uttar Pradesh, to show cause why a reasonable interim-compensation should not be awarded to the members of the family of the deceased. As the State Government did not avail itself of the opportunity to show cause, the Commission proceeded on the assumption that the State of Uttar Pradesh had no cause to show against the claim of interim compensation by the members of the deceased family; and recommended that:

- i) the State of Uttar Pradesh do pay to Shri Suresh Mishra, resident of Village Prem Raja, Police Station Bhimpura, District Balia, the father of the deceased, a sum of Rs. 5,00,000/- by way of interim compensation, to be paid within one month from the date of order, subject to the private law rights of the dependents to bring an appropriate legal action for damages in which event the sum awarded by way of interim compensation was adjustable;
- ii) appropriate protection to the family of Shri Suresh Mishra be accorded depending on the security and threat perceptions of the situation having regard to the fact that the family could legitimately apprehend retaliatory attitudes from the police officers and personnel against whom the accusation has been made; and

- iii) the Government of Uttar Pradesh should sympathetically consider the prayer of the family for an appointment at an appropriate level, having regard to the eligibility and qualifications of a suitable member of the family, on compassionate grounds.

The recommendations of the Commission were conveyed to the State of Uttar Pradesh asking for compliance by 5 December 1997. By a communication dated 28 December 1997, the State Government stated that, as a case in connection with the murder of Atal Bihari Mishra was pending in the Court of Chief Judicial Magistrate, Balia against 21 police officials, compliance of the directions/recommendations of the Commission could only be possible after the police officials/accused persons were found guilty of the charges.

The Commission considered the stand taken by the State Government and felt that its tenability or otherwise depended upon, and flowed from, an answer to the question whether the award of "Immediate Interim Relief" envisaged in sub-section (3) of Section 18 of the Protection of Human Rights Act 1993 ('Act' for short) is dependent on the establishment of culpability of the public servant at the criminal trial "or whether the remedy is independent of such pettifoggeries". As this matter has wide connotations, the following is reproduced from the Commission's proceedings of 23 February 1998:

"It is well settled that the standards of proof in civil and criminal cases are not the same. It is equally well settled that a fact may be regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for a conviction in a criminal case. The authorities say that a strong and marked difference exists as to the effect and probative value of evidence in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability, due regard being had to the burden of proof, is a sufficient basis of decision; but in criminal trials, a much higher degree of assurance is required. In criminal cases, the prosecution must prove the charge beyond reasonable doubt. A conviction cannot be sustained even if the prosecution story is considered 'may be true' until it is found that it 'must be true' but between 'may be true' and 'must be true' there is inevitably a long distance which has to be covered by legal, reliable and unimpeachable evidence. Therefore, even if an accused person is acquitted by a criminal court of a criminal charge, that, by itself, is no bar to the grant of compensation by a civil court if the offence is also a tort and there is evidence to establish the wrong on a mere preponderance of probability."

"Apart from the foregoing, it is pertinent to take note of the fact that the 'Immediate Interim Relief' envisaged in Section 18(3) of the Act has to be correlated to the injury/loss which the victim or members of his family have suffered owing to the violation of Human Rights by public servants. By no stretch of imagination can it be argued that award of this 'Immediate Interim Relief' is dependent upon the strict establishment of criminal liability after a full dress court trial. If this view is accepted, the relief will then neither be 'immediate' nor 'interim'. A meaningful and harmonious

construction of this clause would have no doubt that the Commission is entitled to invoke its benevolent sweep on a prima facie view of the matter irrespective of whether there is any litigation - civil or criminal relating to the matter.”

“In the case in hand, the very fact that the result of the investigation carried out by the State CID itself shows that as many as 21 police officials have been charge-sheeted for several grave offences and are facing trial before a Court is, by itself, more than sufficient for invoking the provisions of Section 18 (3) of the Act. Victimology and victim assistance and protection are the current values of humanism permeating the administration of criminal justice. All civilised countries the world over have, in one form or the other, schemes for ‘criminal injuries compensation’ to the victims of crime. Section 18(3) of the Protection of Human Rights Act 1993 incorporates and assimilates, at least in a partial measure, this philosophy and recognised the State’s moral obligation to the victims of violations of Human Rights by public servants. The expression ‘relief’, in the context of the Statute, presupposes the existence of conditions of human distress as justifying benevolent intervention. The ‘relief’ may be monetary-relief, medical-relief, compassionate employment, etc., or all of them.”

“It is necessary to reiterate that when the Protection of Human Rights Act, 1993 was enacted the Parliament was, and, should always be presumed to be, aware of the state of the civil and criminal law in the country. The Preamble of the Act itself makes manifest Parliament’s anxiety to provide an additional forum for ‘better protection’ of Human Rights and, therefore, it is idle to argue that any proceedings in civil or criminal Courts, pending or prospective, can operate as a limiting factor or influence on the scope of the jurisdiction of the Commission to recommend ‘immediate interim relief’ in cases of distress.”

“The idea of ‘immediate interim relief’ does not therefore, presuppose the establishment of criminal liability of the offender in a court of law as a precondition for the administration of the ‘reliefs’ nor does it depend on whether any civil litigation is either pending or prospective. A welfare State recognising its obligation to afford ‘relief’ to its citizens in distress, particularly those who are victims of violations of their human rights by public servants, has made this law under which the Governments seek advice from the National Human Rights Commission as to what, in its view, is reasonable ‘immediate interim relief’ in a given case so that the State can act on the recommendation. The recommendations of the Commission are not, no doubt, binding judicial orders; but they cannot be undone and turned to naught by perverse and palpably untenable legal views of the matter. The limiting of such Statutory relief only to cases in which criminal liability of the offending public servant is established in a Court of law beyond reasonable doubt by standards of criminal evidence, is to thwart an otherwise civilised piece of legislation by importing totally irrelevant limitations. The Commission desires to point out that the ground urged by the Government in this case is wholly irrelevant.”

“The meaning to be given to Section 18(3) by any State professing to be a Welfare State should ensure a liberal construction to promote the philosophy of the Statute and to advance its beneficent and benevolent purposes. The view that implies that administration of such ‘immediate interim relief’ could only be at the end of the day, after the guilt of the offending public servant is established in a criminal trial on the standards of criminal evidence would nullify the great humanism the Statute seeks to enshrine. The Commission only hopes that the Government of Uttar Pradesh is an ally of those values and will respond in a way which accords with the message and philosophy of the law and its obligation as a Welfare State.”

“The Chief Secretary of Uttar Pradesh shall accordingly be written to by the Secretary-General enclosing a copy of these proceedings and informing the Chief Secretary that Government of Uttar Pradesh cannot seek to avoid the Commission’s recommendations in this case on the ground that establishment of culpability of a public-servant is a condition precedent to the arising of the liability under Section 18(3). The State Government be urged that its persistence in such untenable stand would expose it to avoidable legal hassles and litigation.”

The matter has accordingly been taken up with the State Government and a compliance report is awaited.

(ix) Right to form Association: State Government’s orders prohibiting teachers and other faculty members of Universities from associating with Andhra Pradesh Civil Liberties Committee (APCLC) : Andhra Pradesh

The Commission received a number of complaints from NGOs and academic institutions from India and abroad stating that the Government of Andhra Pradesh issued a circular ordering universities to prevent teachers and other faculty members of Universities from associating themselves with the Andhra Pradesh Civil Liberties Committee (APCLC). It was alleged that such a directive was violative of the Freedom of Association and Political Rights. Five academics of Osmania Krishnadevaraya and Nagarjuna Universities were asked to resign from the membership of APCLC, a non-governmental organisation. The State Government had issued such a direction, apparently based on a rule that bars university employees from participating in political activities. It was stated by the NGOs that membership of a human rights organisation could not be construed as political activity.

The Commission took cognizance of the matter and issued notice to the Chief Secretary, Andhra Pradesh. In response to the notice from the Commission, the Secretary, Department of Higher Education, Government of Andhra Pradesh sent a communication to the Commission informing it that the Government had reviewed the whole matter and decided not to take any further action in pursuance of the letter issued by the Education Department, Government of Andhra Pradesh.

(x) Inhuman treatment of arrested people in the absence of lock-ups: Bihar

In the wake of a complaint that persons arrested by the police in Bihar were being treated in an inhuman manner, a surprise visit by a Senior Superintendent of Police of the Commission to Gaurichak Police Station near Patna revealed that one Shri Rajdev Singh, aged 65 years, arrested in connection with an armed clash, was tied to a pillar with a rope. The police post, 15 kms. away from the city, was located in a ramshackle-building belonging to the Irrigation Department; it had no lock-up facilities. The Commission further learnt that, in those police stations in Bihar which did not have proper lock-ups, it was frequently the practice to handcuff the accused and then tie them with a rope to a pillar, a tree or a window sill.

Earlier, on notice being issued by the Commission calling for a report on the condition of lock-ups in the State, the Government of Bihar had stated that 263 police stations did not have any lock-ups. These police stations were located in godowns and make-shift sheds/structures. Further, the Government stated that “detainees in such police stations are kept in the lock-ups of nearby police stations”. The Commission, however, on perusal of the complaint felt that an on-the-spot probe was required.

The Government of Bihar has since informed the Commission that Rs.20 crore has been earmarked for the construction of new police stations with lock-up facilities and that this task had been assigned to the Bihar Police Housing Board. The Commission intends to monitor further developments in this matter.

(xi) Compensation to victim of illegal detention - Punjab

Shri Kuldeep Singh of Golden Park, Delhi, made a complaint to the Commission alleging illegal detention by Punjab police from 9 November 1993 to 2 December 1993. It was further stated that, the complainant was implicated in a false case, maltreated and beaten. The Commission issued notice in this case to the Commissioner of Police, Delhi and the Principal Secretary (Home), Government of Punjab. On consideration of the reports received from them, the Commission by its order dated 22 January 1996 furnished copies of the reports to the complainant for his response. The complainant's response to the reports indicated that he was not satisfied. The Commission, on further consideration, passed an Order on 23 May 1996 calling upon the Investigation Division of the Commission to investigate the matter, to ascertain the actual parameters of the dispute and the genuineness or otherwise of the allegations of harassment. The report of the Investigation Division made it clear that the allegation of the complainant in regard to his illegal detention from 9 November 1993 to 2 December 1993 was substantiated. As a consequence, the SP Jagraon had initiated departmental proceedings against the errant police officials, an Assistant Sub-Inspector and two Constables. As disciplinary action was initiated against the police officials responsible for the illegal detention, the Commission stressed that this should be pursued diligently and the outcome of the proceedings

reported to the Commission. Further, having regard to the fact that the complainant had suffered illegal detention for nearly three weeks, the Commission recommended an amount of Rs.10,000/- by way of interim relief to the complainant to be paid by the State of Punjab. It was open to the Government to recover the said amount from the officials found responsible for the illegal detention. A compliance report is awaited.

(xii) Highhandedness of police official: Delhi

The Commission took suo-moto cognizance of a news item published in the 'Rashtriya Sahara' of 18 December 1996, alleging that a minor boy, Sachin, resident of Sagarpur, Delhi, was mercilessly beaten by a Head Constable of PS Dabri and was admitted in the Ram Manohar Lohia Hospital in a serious condition. The provocation was that the boy had been playing 'gilli danda' and that his 'gilli' fell near a police assistance booth, where the Head Constable had placed his chair and was sitting in the sun.

On the Commission's directions, the matter was enquired into by its Investigation Division which reported as under:-

"Sachin was playing 'gilli danda' with his friends in the street in front of his maternal uncle's house and, during the course of their playing, the 'gilli' inadvertently went beneath the chair of the Head Constable who was sitting in the sun outside his police assistance booth located in the same street. The boy approached the Head Constable and requested him repeatedly to give back his 'gilli' but this enraged the Head Constable who first slapped the boy and then caught him by his neck and pushed him thereby hitting his head on the ground as well as on the slab of the police assistance booth. The boy became unconscious and in the meanwhile many people including the family members of the boy gathered there and shouted slogans against the local police. After some time, SHO and ACP of the area reached the spot and pacified the mob. Thereafter, relatives of the boy took him to Ram Manohar Lohia Hospital where he was admitted and released the next day morning."

The Commission was of the view that this was a case of an utterly irresponsible police officer hitting a playful boy without restraint. and recommended that an appropriate charge be brought against the Head Constable for trial in the Court, in view of the serious head injury suffered by the child.

The Commission further observed that no compensation has been paid to the victim and issued show-cause notice to the Chief Secretary, Government of NCT of Delhi for the payment of an interim compensation of Rs.50,000/- to Sachin. The compensation would be kept in Fixed Deposit with his father as the natural guardian till he attains majority and the interest accruing thereon to be paid to the father for being spent on the welfare and education of the boy.

The Commission further directed that in the meanwhile, Government of NCT of Delhi shall afford to Sachin all such expert medical help and medication at the All India Institute of Medical Sciences at the expense of the State Government as the condition of the boy required such treatment.

Compliance report is awaited.

(xiii) Illegal detention: Delhi

The Commission received a complaint dated 23 June 1995 from one Shri I.R.Singh, Advocate, Delhi High Court alleging that three persons namely, Dhanraj, Amar Singh and Raisuddin, residents of DDA Flats Mata Sundari Road, New Delhi were arrested by the police of police station Preet Vihar, Shahdara on 22 June 1995 at 8.30 P.M. when they were walking on the road and that the police had not produced them in the Court within 24 hours as enjoined by Article 22 of the Constitution of India.

On the directions of the Commission, its Investigation Division undertook an investigation. It was brought out that the above-named persons were actually arrested by the police on 22 June 1995 but the police had shown their arrest on 24 June 1995 and produced them before the Magistrate only on 25 June 1995.

The matter was taken up with the Commissioner of Police, Delhi. In response, the Deputy Commissioner of Police (Vigilance) reported that the accused were arrested on 24 June 1995. The Investigation Division made further enquiries in the matter by summoning the concerned ASI of Police Station Preet Vihar and by recording his statement and the statement of the above named three persons who were arrested. On the basis of this further examination, it was concluded that arrests in the case were made by the police in the evening of 22 June 1995, but were actually shown on 24 June 1995. This finding was also based on the observation that the complaint to the Commission was dated 23 June 1995 and it was actually despatched on that date. Had the arrest been made on 24 June 1995, Shri I.R.Singh could not have approached the Commission with the complaint on 23 June 1995. It would be too much to say that Shri Singh wanted to forestall an anticipated arrest.

The Commission found that the illegal detention of these three persons for more than two days was highly probable. Even so, when the Commission called upon the Commissioner of Police to give a report, no meaningful enquiry was held and the Deputy Commissioner of Police (Vigilance) gave a self serving and incorrect report, that was convenient to the police, about the arrest.

The Commission recommended that disciplinary proceedings be drawn up against those who were concerned with the illegal detention of these persons as well as those who manipulated the police record so as to show their arrest after two days of the actual arrest. The Commissioner of Police was requested to initiate such disciplinary proceedings where the delinquent officials would, of course, have an opportunity of being heard and of defending themselves. However, as a case of wrongful

confinement, violative of the constitutional rights of the three persons was established on a preponderance of probability, the Commission recommended that the Government of the National Capital Territory of Delhi should pay an interim compensation of Rs.5,000/- each to them subject and without prejudice to their private law rights. If no such cause was shown within the aforesaid period, this recommendation in regard to payment of compensation would assume finality.

The Government of NCT of Delhi have requested the Commission to give an opportunity to them to explain the position a request to which the Commission has agreed.

(xiv) Release of foreign nationals in Indian jails

A complaint was received from Shri Sazwara Khan and four other nationals of Pakistan, alleging that they were confined illegally and unconstitutionally by the Government of Rajasthan under Section 100 Cr.P.C. and were confined in different jails of Rajasthan. The Commission took cognizance of the matter and issued notice to the Government of Rajasthan and the Government of India.

The External Affairs Ministry vide its communication dated 24 December 1997 intimated that the Government had decided to repatriate Shri Sazwara Khan in view of his advanced age.

(xv) Killing of 29 bus passengers in Peren Sub-Division: Nagaland

Proceedings in this case were initiated on a communication from the Chairperson of the Assam State Human Rights Commission. This related to an incident in which 29 persons had lost their lives in an attack by certain insurgent elements when the latter intercepted a Dimapur bound passenger-bus and opened indiscriminate fire on the passengers. On notice being issued, the Ministry of Home Affairs, Government of India, submitted a report. The report did not dispute that the deaths occurred as a result of violent activities of insurgents. On examination of the report, the Commission considered it reasonable to infer that the State Government had failed to protect the lives of these innocent citizens. It further observed that the State Government itself had sanctioned ex-gratia relief of Rs.10,000/- to the dependents of the deceased and Rs.5,000/- to those severely injured and Rs.2,500/- to those who had sustained minor injuries.

The Commission felt that ex-gratia payment of Rs.10,000/- sanctioned to each of the families of the deceased was not adequate; and recommended to the State Government that it enhance the quantum of ex-gratia relief from Rs.10,000/- to Rs.50,000/- to the families of the 29 persons killed in the incident and make the payment accordingly.

The State Government of Nagaland intimated that the amounts of ex-gratia payments of Rs.50,000/- each to the next of kin of 28 victims have since been made on 1.4.1998.

(xvi) Failure in taking action by Police : Jammu & Kashmir

A complaint was received from Shri Balraj Puri alleging that personnel of the Border Security Force had misbehaved with and manhandled his teenaged son without any provocation or justification and that subsequently the SHO of the concerned police station refused to register a FIR about the incident. His successive complaints to higher authorities were ignored, he further alleged.

As regards the alleged misbehaviour by the BSF personnel, the authorities in the BSF had taken suitable action against the concerned personnel and had also communicated their regret to Shri Puri over the incident.

The Government of Jammu & Kashmir was asked to send a report on the second aspect of the complaint, viz., the conduct of the SHO in refusing to register a F.I.R. As there was no response to a notice issued to the Government and subsequent reminders, the Commission decided to issue summons to the Chief Secretary. In response, the Additional Chief Secretary appeared on behalf of the Government of Jammu & Kashmir when Shri Puri was also present, and regretted that there had been lapse on the part of the police in not entertaining the complaint of Shri Balraj Puri's son. He stated that the Head of the Police Administration had been advised to correct the lapse and that appropriate action would be taken to rectify the mistakes.

(xvii) Illegal detention/torture by the police - complaint from Shri Baba Khan : Rajasthan

A complaint was received from Shri Baba Khan of Kota alleging illegal detention and torture by the police. It was alleged that he and his two brothers-in-law were forcibly taken away by the police, illegally detained and tortured. The Commission took cognizance of the complaint, directed the Chief Secretary and Director General of Police, Rajasthan to submit a report. The report submitted by the State police said that the allegations made by Baba Khan were false and baseless. On not being satisfied, the Commission directed its Investigation Division to investigate the matter. The findings of the Investigation Division indicated that the allegations of illegal detention and torture were, prima facie, established. The Commission, accordingly, recommended payment of compensation to the victims: Rs.15,000/- to Shri Baba Khan, Rs.20,000/- to Shri Mirza Khan and Rs. 5,000/- to Shri Yousuf Irani. The Commission further recommended that the State Government may consider the report of the investigation team of the Commission with a view to taking action against the errant police officials. The Government of Rajasthan has since complied with the recommendations of the Commission and has intimated that payment of compensation has been made to the victims. It has also reported that a criminal case has been registered against the concerned SHO and disciplinary action initiated against him and two other officers.

(xviii) Compensation for illegal detention - complaint from Shri Ranbir Yadav: Uttar Pradesh

The Commission took cognizance of a telegraphic complaint received from Shri Inderjit Yadav alleging that his brother Shri Rambir Yadav was forcibly taken away by the police on 23 April 1996 from their milk dairy located at Lal Kuan, District Ghaziabad and illegally detained until 27 April 1996, purportedly for questioning him in regard to the murder of a certain Rajpal.

In pursuance of the Commission's directions, the Investigation Division called for a report from SSP Ghaziabad. The report stated that Rambir Yadav was called to the Police Station on 27 April 1996, in connection with a case and allowed to go the same day. When the police version was communicated to the complainant, he contradicted it and reiterated the allegation, saying that his brother was picked upon 23 April and released on 27 April 1996 after obtaining his signature on a blank paper. Under these circumstances, the Commission directed its Investigation Division to undertake a spot inquiry. On the basis of the report of its Investigation Division the Commission was convinced that this was a case of illegal detention and was a compensatable case. As such, the Commission recommended payment of compensation of Rs.10,000/- to the victim and also directed Inspector General of Police, Meerut to inquire into the matter for fixing the responsibility of officers for the illegal detention. IGP, Meerut inquired into the matter and departmental action has been taken against the two guilty police officials; liberty was sought from the Commission to recover the amount of the compensation from the guilty police officials.

(xix) Compensation to the victims of highhandedness of PAC Personnel at Asi Ghat, Varanasi: Uttar Pradesh

The Commission took 'suo motu' cognizance of a newspaper report which appeared in The Pioneer of 5 August, 1997 under the caption "Students Face PAC Jawans Wrath". The Commission directed issue of notice to the SSP (Senior Superintendent of Police), Varanasi and further directed its Investigation Division to get an on-the-spot enquiry conducted. The report of the Investigation Division, corroborated by an independent investigation conducted by the State CID, established highhandedness on the part of PAC personnel in wrongfully confining and assaulting a group of people who had gathered to felicitate a friend on his academic achievement. Indeed, the State CID, upon completing their investigation, submitted a charge sheet against 28 PAC personnel for various offences under the Indian Penal Code, in the Court of Chief Judicial Magistrate, Varanasi.

After taking into account the unprovoked nature of the attack and wrongful confinement, the gravity of injuries caused to the person of the victims, the nature, extent and likely costs of the medical treatment that may be involved, as also the prospects of physical incapacitation, residual impairment of faculties, and, indeed, the violation of the dignity and integrity of the person, the Commission recommended interim compensation by way of "immediate interim relief" as per the Sub-Section (3) of Section 18 of the Protection of Human Rights Acts 1993 to the victims, the

compensation amount to each of them ranging between Rupees ten thousand and twenty five thousand. The Government of Uttar Pradesh has since confirmed that a sanction has been accorded by the Governor of Uttar Pradesh for the payment of interim relief to the victims, as directed by the Commission.

(xx) Custodial death of Bikram Lama: Arunachal Pradesh

The Custodial death of Bikram Lama was reported to the Commission on 18 June 1996 by the Deputy Inspector General of Police, Arunachal Pradesh in pursuance of the Commission's standing instructions of December 1993 calling for a report, within 24 hours, on any case of custodial death. On notice being issued by the Commission, a further report was submitted in this case, enclosing copies of the magisterial inquiry report, the inquest report and post mortem report. On perusal of these records, the Commission observed that Bikram Lama was brought to the police station on 18 June 1996, having been suspected of committing a theft. The Constable, who was on sentry duty, was subsequently reported to have found Bikram Lama hanging from a leather belt, which had been attached to the handle of the door of toilet. He was found dead. When the inquest was held, the body was found to be in a highly decomposed condition. No external injury was noticed and the post mortem report said that death had resulted from suicide by hanging, Bikram Lama having used his leather belt to attach himself to the handle of the door. However, as the door handle was just a little over a meter (3 feet 6 inches) above the floor, the Commission found it difficult to believe that the deceased could hang himself on it. The Commission further observed that the reason for the decomposition of the body, and the delay involved in the inquest, were not explained at all.

The inquiry report of the State Government stated that the concerned police officials in the police station were negligent in allowing the deceased to remain in the cell with the belt. It added that the conduct of the police officers required to be made the subject matter of disciplinary proceedings for according punishment in accordance with law. The finding of the inquiry officer concluded that the death was not caused on account of any torture by the police, but that this was a case of suicide resulting from negligence on the part of the concerned police officials.

Though the inquiry officer, on the basis of the post mortem report, held that this was a case of suicide, the Commission found it difficult to accept that finding, having regard to the fact that the handle of the door on which the deceased alleged to have hanged himself was only a little over a meter from the ground level. The Commission was instead inclined to hold that this was a case of custodial death to which the concerned police officials were responsible. The Commission accordingly recommended that an interim compensation of Rs.50,000/- be paid to the dependents of the deceased within six weeks, with liberty to the Government to recover the same from the concerned police officials.

(xxi) Torture by police and false implications in a criminal case : Haryana

The complainant Shri Sher Mohammad Khan alleged that on 8 March, 1996, SHO, Police Station Sadar, Gurgaon along with 4-5 police constables and a few others forcibly entered his house and mercilessly beat him with sticks, as a result of which he sustained injuries on his hand and back. He was then removed to Police Station Sadar where again, allegedly, he was beaten-up after wrapping him up in a blanket which resulted in the fracturing of his leg. Sher Mohammad Khan got himself medically examined at the Government Hospital, Gurgaon. He further alleged that he was falsely implicated in a case under Section 448/506 IPC. According to the complainant, the SHO resorted to unlawful acts to pressurise him to withdraw a complaint against some members of a Group Housing Society and to resolve a dispute relating to a plot of land in favour of his opponent. The complainant further alleged that the Supdt. of Police, Gurgaon was also involved in the case.

On notice being issued, the Director General of Police, Haryana submitted a report which substantiated the allegation that the SHO had beaten the complainant. The report further suggested that no action could be taken against the SHO as the complainant had filed a complaint against the Inspector in the Court of the Addl. Chief Judicial Magistrate.

The Commission considered the report and was of the view that there was no legal bar either for the prosecution or initiation of departmental action against the SHO and others found to be in the wrong. Indeed the police authorities had themselves found that his acts were unlawful and constituted a blatant abuse of his authority in pressurising the complainant to come to terms with his opponent, in relation to a civil dispute. The Commission observed that a complaint against the SHO in the Court of the Addl. Chief Judicial Magistrate did not bind the police authorities and did not compel them into inaction in a case where the police found that there was unlawful conduct on the part of the SHO and others, amounting to offences under the penal laws and otherwise also amounting to grave misconduct on their part. It stressed that, in the absence of any judicial interdiction against the police from taking action, it would, indeed, be a dereliction of duty if such acts of misconduct, which the

authorities have themselves found, were not taken note of and appropriate investigation undertaken.

Accordingly, the Commission recommended that a case against the then SHO, Police Station Sadar, Gurgaon, the then S.P. and others involved in the offence be registered and, after registration of the case, the investigation be made-over to the State-CID. The Commission further recommended that the Court seized of the private complaint for the purposes of Section 210 Cr.P.C., be informed by the police that the investigation of the case had been taken-up by it. The Director General of Police, Haryana was asked to consider the necessity, desirability or advisability of placing the concerned police officer/s under suspension to prevent tampering with the investigation to ensure that no harassment is caused to the complainant and the witness. The Commission recommended that a sum of Rupees Twenty-five thousand (Rs.25,000/-) by way of immediate interim relief be paid by the Government of Haryana to the complainant Shri Sher Mohammad Khan.

In conclusion, the Chief Secretary and the Director General of Police, Haryana State were asked to send a compliance report.

(xxii) Rape of minors and death: Rajasthan

“SAKSHI” a Delhi-based NGO, submitted a communication to the Commission in April 1997 alleging the exploitation of school girls by a teacher in a Government Secondary School in Chittorgarh District, Rajasthan. It was alleged that the teacher had raped 9 minor girls between the ages of 14 to 16 years. The accused committed the crime in secrecy and none of the girls lodged any complaint against him. Three girls became pregnant and two of them had to undergo abortion. The third girl tried to hide her pregnancy, but when her parents came to know of it, the father of the girl went to the police station and filed a FIR. When the accused came to know about lodging of the FIR, he absconded. “SAKSHI” requested the Commission to undertake a detailed investigation to ensure that the accused was arrested and action taken in accordance with law. The NGO also offered its assistance in investigation by the Commission.

The Commission took cognizance and issued notice to the Chief Secretary and Director General of Police, Rajasthan. In addition, it also directed its Investigation Division to collect the facts.

The report submitted on behalf of the Government of Rajasthan revealed that a case had been registered against the accused for the offence of rape under 376 of IPC and he was arrested on 22 May 1997. The investigation team of the Commission also conducted a thorough investigation in the matter and submitted its report to the Commission.

Taking note of all the facts and circumstances, the Commission recommended that the prosecution of the accused be pursued diligently and expeditiously and that an interim compensation of Rs.1 lakh be paid to the victim who had made the complaint to the police. The Commission further recorded its appreciation of the work done by the office bearers of the Non-Governmental organizations, “SAKSHI”, “Prayas” and Karni Nagar Vikas Samiti Home, and also its appreciation of the work by Shri Sanjay Malhotra, Collector and Shri Srinivas Rao Janga, Superintendent of Police, for their timely and effective intervention in assisting the victim and booking the culprit.

(xxiii) Police torture and death: Rajasthan

The Commission took cognizance of a news item which reported the death of one Hussain Teli, who was brought to the police station at Bonli in Rajasthan for interrogation in connection with the case of the murder of one Prahlad Yadav. It was alleged that Hussain Teli was tortured to death.

The Commission directed its Investigation Division to investigate the matter. Accordingly, an investigation was undertaken and a report was submitted indicating that this was, indeed, a case of death by torture as a result of police interrogation and that the body of Hussain Teli was buried in unusual circumstances by the police with a view to covering-up their misdeeds.

On an examination of the information before it, the Commission noted that Hussain Teli was called to the police station for interrogation and detained illegally. As Hussain Teli died the very next morning after he was released from police custody and as it was found that blood was oozing from his mouth and nose, there was a nexus between the death and conduct of the police during investigation. Even though no external injuries had been noticed in the inquest and the post-mortem report, the circumstances indicated that Hussain was illegally detained and tortured during the police investigation.

The Commission observed that while steps were being taken to prosecute the concerned officials, a case having already been registered against them, this was a fit case for award of compensation to the dependents. Having regard to the circumstances, the Commission directed payment of interim compensation of Rs.50,000/- to the dependents of the deceased Hussain Teli. The State Government has since complied with the recommendations of the Commission.

(xxiv) Compliance with the Commission's recommendations in the case of torture of Shri A.Ram Singh, a member of the Cuddalore Bar Association: Tamil Nadu

A detailed account of this case was given in the annual report of the Commission for the year 1996-97. It was mentioned that the Commission had approached the High Court of Madras for appropriate directions to the State Government, as the State had failed to comply with the recommendation of the Commission for the payment of compensation to the torture victim. It was further indicated that the case was pending before the High Court.

By a decision of 19 February 1998, the High Court ordered the State Government to pay Shri Ram Singh the amount of compensation recommended by the Commission, with 18% interest per annum from the date of the Commission's recommendation till the date of payment. Condemning the attitude of the State Government in this case, the Court further ordered payment of an exemplary cost to the Commission as well, with the direction that the State Government was entitled to recover the amounts "from all the officials responsible for the episode".

There has been wide media coverage of the orders of the Court. For its part, Commission also brought the orders of the High Court to the notice of the other State Governments as an indication of the options available to it for enforcing its recommendations.

XV. INTERACTION WITH EXTERNAL GROUPS AND ORGANISATIONS

15.1 The Commission continued to interact extensively not only with members of the diplomatic corps stationed at Delhi but also with numerous delegations from abroad. The Commission is of the view that such interaction contributes to a better understanding of human rights issues both within the country and internationally. Among those whom the Commission welcomed to its headquarters was a delegation of German Parliamentarians, a Danish delegation from the Ministry of Foreign Affairs, the

Head of Mission of EU-Troika (Ireland, Netherlands, UK) stationed in Delhi, a two member delegation comprising the Deputy Chairperson and Executive Secretary of the South African Human Rights Commission, the Chief Commissioner of the Canadian Human Rights Commission, the Chairperson of the Human Rights Commission of Pakistan, the Director General of UNESCO, an Associate Administrator of UNDP, the Executive Director of UNICEF, and a number of visiting Professors from the U.K. and other areas having specialized knowledge in human rights matters.

15.2 The National Human Rights Commission of India continued to Chair the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, in response to the unanimous request of the members of that Committee. Shri Virendra Dayal, Member of the Commission and the Secretary-General represented the Commission in the 53rd Session of the United Nations Human Rights Commission and the meeting of the Coordinating Committee of National Institutions held in Geneva from 30 March 1997 to 5 April 1997. Shri Virendra Dayal and Justice Shri V.S.Malimath, Members of the Commission, participated in the Fourth International Workshop of National Institutions held in Merida, Mexico in November 1997. The Secretary-General of the Commission attended a seminar on “Commonwealth National Human Rights Institutions: Promoting Good Practice,” held in London. The Secretary-General presented a paper on Child Labour with special reference to the initiatives taken by the Commission to deal with this grave problem in the country.

15.3 The Director General (Investigation) participated in a meeting on a Multi-Sectoral Approach to Violence against Women, organised by Royal Danish Embassy in Dhaka. He visited the Netherlands on an invitation of the Department of Human Rights, Good Governance and Democratisation of the Netherlands, Ministry of Foreign Affairs. He also took part in a Workshop to draft a programme on Access to Justice, organised by the Commonwealth Secretariat, London. Further, the Director General (Investigation) participated in a meeting with Ford Foundation Staff organized by the Vera Institute of Justice, New York.

15.4 The Registrar of the Commission attended a meeting in Auckland of the Privacy Forum, organised by the Privacy Commission, New Zealand.

15.5 The Joint Secretary of the Commission attended a Regional Meeting on Human Rights Education organised by the Asia Pacific Human Rights Information Centre, HURIGHTS, OSAKA, in Bangkok, Thailand.

15.6 Shri Ashok Chakravarty, Superintendent of Police in the Investigation Division of the Commission participated in the 3rd International UNDP Workshop on Ombudsmen and National Human Rights Protection Institutions, organised by the Regional Bureau for Europe and the CIS (RBEC), USA held in Riga, Latvia.

15.7 Shri Shivaji Singh, Superintendent of Police in the Investigation Division of the Commission participated in a Multi-Sectoral Child Protection Course organised by the British High Commission, New Delhi which was held in Colombo, Sri Lanka.

15.8 Shri Y.S.R.Murthy, who headed the personal office of the Chairperson and who also held additional charge of media relations, participated in a Workshop on “Media and Public Affairs Education and Promotion-Principles and Practices” organised by the Asia-Pacific Forum of National Human Rights Institutions and held in Indonesia. The Special Assistant to the Chairperson, Shri S.K. Madan, participated in a human rights course at the Danish Centre for Human Rights, Copenhagen, Denmark.

XVI ADMINISTRATION AND LOGISTIC SUPPORT

i) Changes in Work Procedures

16.1 The pressure of the drastically increasing number of complaints addressed to the Commission and the rising expectation for prompt and effective redressal of grievances necessitated far-reaching and innovative changes in the work procedures and administrative structures of the Commission. To assist in the analysis of the situation facing the Commission, the services were secured of a well-known management consultancy firm, which undertook an intensive study, pro bono, of the procedure for dealing with complaints. A number of recommendations were made which included, inter alia, reorganisation of the staff and office lay-out of the Commission, changes in the procedures to deal with complaints, as well as the upgrading of the Commission’s computer system. The firm also identified critical areas in which additional skilled staff were required. The recommendations were most helpful to the efforts of the Commission, which set in motion a number of measures to better manage its work-load.

16.2 A new set of procedural regulations was introduced by the Commission on 1 April 1997. This envisaged a more detailed categorisation of complaints for the purpose of analysis and documentation as well as a fast track for those complaints which require immediate attention.

ii) Staff

16.3 As on 31 March, 1998, 223 persons were in position against the total sanctioned strength of 282.

16.4 During the year 1997-98, 158 posts in various grades in the Commission had been converted into permanent posts. Following the notification of the recruitment rules for Group A, B, C and D posts in the Commission, the process for permanent absorption of staff has been initiated. As it will take more time to build-up and develop a proper cadre for the Commission, the Commission proposes for the time-being to continue to select its personnel through deputation and re-employment. The

Commission also proposes to have its recruitment rules so amended as to enable the expeditious utilization of the services of persons with specialized knowledge in matters related to human rights.

16.5 The Commission has concluded that, with the vast expansion of its work, it would need to reorganize its staffing table. The Commission has thus often been having to avail of the services of persons under the broad category 'Consultants'. It will need to engage more such consultants, as it does not at present envisage any addition to the regular staff to deal with its work.

iii) SPECIAL RAPORTEURS

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

iv) Staff Training

16.7 The Commission attaches considerable importance to the training and sensitization of its personnel. It organised a one-week orientation course expressly for the personnel of the Law Division dealing with complaints. As noted earlier, in pursuance of the interaction between this Commission and the Canadian Human Rights Commission, two of its officers and representatives of three NGOs underwent a three-week training programme, organised by the Canadian Human Rights Foundation, in June-July 1997 in Montreal, Canada. Subsequent to that training programme, the officers of the Commission, together with representatives of the Canadian Human Rights Commission, the Ontario Human Rights Commission and the Canadian Human Rights Foundation evolved a draft training curriculum.

16.8 The training programme based on this curriculum is a unique initiative which can be used, in particular, to enhance the knowledge and skills of senior and middle level officials of National and State Human Rights Institutions in India. The draft curriculum was discussed at a meeting attended by officials of these Commissions, heads of certain important training institutions in Delhi and representatives of NGOs. After detailed discussion, a core group comprising representatives of the National Commission for Women, the Punjab and Himachal Pradesh State Human Rights Commissions, the Indian Institute of Public Administration, the National Institute of Criminology and Forensic Science, as well as academics and NGOs was constituted to finalize the programme. The

Core Group will fine-tune the training curriculum in light of the suggestions received from other appropriate quarters, identify resources persons, prepare a training manual, identify an appropriate institution for conducting the training programme and also draw up a training schedule. The training programme is being given final shape on the basis of inputs from the participants of the meeting and a training programme, based on this curriculum so devised, will be held at an appropriate time thereafter.

16.9 The Commission also wishes to set up its own Training Cell and efforts are on in that direction.

v) Use of Official Languages

16.10 From its inception, the Commission has been receiving complaints and reports in Hindi as well as in the various regional languages. During the year 1997-98, the Commission received nearly 20,000 complaints in Hindi and the regional languages. The Hindi Section of the Commission is responsible for the translation of lengthy reports into Hindi, as well as complaints received in regional languages and foreign languages. It also translates the monthly Newsletter and the Annual Report into Hindi. In order to encourage the use of the national language in developing human rights literature, the Commission has approved a scheme for giving human rights awards to authors and writers for original writing in Hindi as well as for undertaking translations of books and literature relating to human rights into Hindi.

vi) Library

16.11 The Commission has been steadily building up its Library, adding new publications to its stock. During the year 1997-98, 364 new titles relating to human rights were added. As of 31 March 1997, there were 3058 titles in the Library. The Commission subscribes to 19 periodicals, having relevance to its functions, including a number of key legal publications dealing with human rights. The Commission has also been receiving books from abroad, as well as from various Ministries/Departments of the Government of India.

vii) Funds

16.12 During 1997-98, the Commission received Rs.4.50 crores (Rs. 45 million) as grants-in-aid from the Government of India. In terms of Section 34 of the Protection of Human Rights Act, 1993, annual accounts of the Commission for 1994-95 and 1995-96 have been certified by the Comptroller and Auditor General of India. Steps have been taken for having these accounts placed before each House of Parliament.

XVII. CONCLUDING OBSERVATIONS

17.1 A Commission for Human Rights in a country such as ours, which is itself going through a process of accelerated and sometimes volatile change, must function at many levels of thought and endeavour.

17.2 In the immediate sense, it must seek to redress with utmost care, method and alacrity the daily representations that are addressed to it by individuals or groups, complaining often with searing intensity of the violation of their rights by public servants, as a consequence of acts of negligence, arbitrariness or even of cruelty. At another level, the Commission must itself be pro-active: it must, suo motu, take cognizance of occurrences that disturb its conscience, that prima facie or more egregiously point to assaults on the dignity and worth of the people of this country and that fly in the face of our Constitution, our laws and treaty obligations, occurrences that have sometimes even resulted from incitement to violence in the name of caste, language, ethnicity or religion. At a third level, the Commission must focus its attention on, and bring to the forefront of the nation's consideration, those factors which, in its view, militate against a proper respect of the rights of the people of India. These factors can, for instance, be ancient and deeply rooted - such as the historical wrongs committed against dalits, scheduled tribes and other vulnerable sections of our country. They can be administrative or structural - as seen in the glaring inadequacies of our criminal justice system, which has long been overdue for systemic reform. They can result from acts of terrorism and the violence that it begets. They can relate to the economic and social policies that have been pursued, or failed to be pursued, in the fifty years since Independence and which, for all of the efforts made, have nevertheless left us with an illiteracy level higher in number than the entire population of the country at the time of Independence and countless of our children losing their youth - and sometimes their lives - working in hazardous industries, rather than receiving the free and compulsory education that the Courts have determined to be their fundamental right and upon which this Commission has been insisting.

17.3 On each of these matters, this Commission has sought to direct its effort, as it should, to bring to book those who have violated rights, or to throw its moral weight behind efforts at change and reform which it considers essential to the well-being of the country and the fulfilment of the rights of its people. It is with these perspectives in mind, that, in the preceding sections of this report, an account has been provided of the Commission's endeavours, over the past year, to deal with its multi-faceted responsibilities. For ease of reference, a summary of the report and of its principal recommendations may be seen at Annexure XII.

17.4 The Commission has, in some measure, reason to be gratified that, five years after it was established, it has come to assume a place of relevance in the life of the nation. It recalls only too well that, at the time of its establishment, few in the country had a clear idea of what a Human Rights Commission could or should do, and of those who were familiar with the Statute of the Commission, many were openly sceptical as to whether it provided a sound-enough basis on which an effective national institution could be built.

17.5 The Commission was not however deterred by this, even as it readily shared the view that weaknesses and ambiguities in its Statute would need to be remedied at the earliest, in the light of experience gained. The Commission therefore intends to revert to the matter of its Statute comprehensively, in the near future.

17.6 Institutions of governance, to have lasting value, need to prove their worth each day. A single major failure can be more calamitous than numerous small successes. And trust in an institution can dissipate as rapidly as it is conferred, should an institution fail to maintain the standards of integrity, efficiency and probity expected of it. The maintenance and sustenance of institutions of governance - and especially of those which are themselves corrective in character - thus becomes of the highest importance, and far more onerous a responsibility than the mere establishing of such institutions.

17.7 This is why the Commission has, even while discharging the varied responsibilities entrusted to it by its Statute, sought to set in place systems and practices that would bring to its efforts an overall sense of order, coherence and form and ensure accountability and transparency in its functioning.

However the efforts of the Commission - which are but part of the wider effort of the nation to promote and protect human rights - must also have the continuous and unequivocal backing of the highest echelons of Government, both at the Centre and in the States, if the express commitment of the country to further such rights and to fulfil the guarantees of the Constitution is to be realized and if the entire range of possibilities and options envisaged in the 1993 Protection of Human Rights are to be fully utilized.

17.8 There are practical consequences that flow from these observations. First, in a country as vast, as richly pluralistic and diverse as our own, the federal character of our Constitution requires - as far as human rights are concerned - the early establishment of State-level Commissions where they have not yet been formed and stronger support to those which have been formed. It is not enough for the Central and State Governments to leave the promotion and protection of human rights in the country to the National Commission and the seven State Commissions that, at present, exist. Indeed, it is ironical - though sadly not paradoxical - that the States from which the National Human Rights Commission has received the largest number of complaints, have been the least forthcoming in plans to establish Commissions at the State-level. This is a matter which requires attention at the highest levels of Government, both at the Centre and in the States, and of the political parties of the country. This is also a matter fit for debate both in Parliament and in the Legislative Assemblies of the States. The Commission would warmly recommend such discussion, for the absence of debate on matters concerning human rights is normally indicative of an indifference to them, or worse, a fear of them.

17.9 Second, the possibility envisaged in the Protection of Human Rights Act 1993, whereby a State Government could, with the concurrence of the Chief Justice of the High Court, notify for each district a Court of Session to be a Human Rights Court, has not as yet led to any substantial result. Despite such notifications having been issued in various States, ambiguities as to the offences to be tried and the procedures to be followed remain, rendering the concept infructuous in practical terms. This too needs to be remedied at the earliest and the Commission would like to repeat its view that clarity should be brought to this matter expeditiously, if necessary by appropriate Legislative or Judicial action. For its part, the Commission has already given its detailed views on this subject, when the matter came before the High Court of Madras, and is continuing to give thoughts to this issue.

17.10 Third, as far as its own work is concerned, the Commission can say, after five years of existence, that its independence and integrity have been respected, as it was determined that it should be. It would add, however, that the implications of this independence are not always acted upon as clearly or swiftly as they should have been in matters that are generally of an administrative nature. This can be extremely tiresome and time-consuming, especially in respect of matters for which overall budgetary provision already exists. It is also violative of the Principles relating to the Status of National Institutions - the so-called "Paris Principles" - that were annexed to the unanimously adopted Resolution 48/134 of the United Nations General Assembly and subsequent resolutions both of that Assembly and of the UN Commission on Human Rights. The National Human Rights Commission of India has, for the past three years, been serving as the Chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Its conduct, and its relationship with Government, must set an example of how the Paris Principles are to be upheld and implemented in practice. Our country should give the lead in such matters and not, itself, show infirmities in understanding their implications. Indeed, India must be in the vanguard of the global movement for human rights, if it is to be true to its own deepest traditions and aspirations. It has much to offer to the global debate on this subject, both in the area of concepts and in the area of practice, and it must deal with the problems that it faces openly, fearlessly and with integrity, for no country is blameless when it comes to its record on matters relating to human rights and all must so function if they wish to serve the cause of human rights with fidelity.

17.11 In concluding this report, the Commission believes it would be valuable to recall a thought of Mahatma Gandhi: "The human voice can never reach the distance that is covered by the still voice of conscience." In the cacophony and intolerance that now too often marks the political and social scene in our country, and indeed the rest of the world, the voice of conscience is today the voice of human rights. It will be heard above the din. In that lies the essential strength of those who serve the cause of human rights including, in all humility, institutions such as this.

sd/-
(Justice Shri M.N.Venkatachaliah)
Chairperson

sd/-
(Virendra Dayal)
Member

sd/-
(Justice Shri V.S.Malimath)
Member

New Delhi
19 February 1999

National Human Rights Commission

PRACTICE DIRECTION No.1

18th March, 1997

It is seen that in a large number of complaints received from aggrieved persons, referred to the authorities of the State & Central Governments as the case may be for their report within specified time frame, there have been failures of compliance. No requests for extensions of time are made either and, far worse, even the receipt by them of the complaints are not acknowledged.

It has, therefore, become necessary to take up such instance of inaction at higher levels of the administration of the Governments. For this purpose, the Law Division will have to prepare a consolidated Government-wise list and wherever possible even district-wise also, of all the cases in which responses are so overdue.

Accordingly, the Law Division will prepare consolidated lists of such cases as on the first-day of each quarter, namely 1st January, 1st April, 1st July and 1st October respectively of each year.

The statement shall be in the tabular form on the lines of the one appended to this practice-direction indicating the name of the complaints, the date of the complaint, the date of the order of the Commission calling for report, the date on which the order was despatched, the date on which the report was due and the extent of delay case-wise. This statement shall be brought up and placed before the Commission on the 2nd Friday of the month, following the quarter to which it relates.

For systematic follow-up, an appropriate procedure would be evolved by the Commission.

sd/-

(Justice Shri M.N.Venkatachaliah)

Chairperson

Statement Showing Cases Where Reports are overdue

(Position as at the end of the quarter dated.....)

Name of the State.....

Sl. No. Case No. Name of the complainant the the initial despatch on which the the delay as
Date of Date of Date of * Latest date Extent of
complaint Order of the of Order report was due on.....

Commission by NHRC

calling for a

report

** Includes extension of time given, if any.*

National Human Rights Commission

PRACTICE DIRECTION No.2

1st April, 1997

“Action taken report” on the decisions taken during the Commission’s meetings to discuss Administrative Agenda may be placed before the Commission on the 2nd Friday of the month following each quarter.

sd/-

(Justice Shri M.N.Venkatachaliah)

Chairperson

National Human Rights Commission

PRACTICE DIRECTION No.3

1st April, 1997

“Review of the progress of ongoing projects” may be included as a subject in the Administrative Agenda on the 2nd Wednesday of the month following each quarter. A note on each of these projects may also be put up before the Commission on that occasion to enable a discussion and review.

sd/-

(Justice Shri M.N.Venkatachaliah)

Chairperson

National Human Rights Commission

PRACTICE DIRECTION No.4

15th July, 1997

Whenever in preliminary hearing cases an order is made to the effect “DG(I) to collect facts” or to similar effect, without there also being an order for issue of Notice, the purpose is to find out whether in the light of the Investigation Wing’s preliminary enquiries, there is prima facie substance in the complaint and whether any hardship or miscarriage of criminal justice would require immediate amelioration.

Therefore, whenever such orders are made, the Investigation Wing should make very expeditious enquiries, collect facts and place their views about the genuineness, of the complaint and of the identity of the complainant and the urgency of action, if any, to be initiated. This should, as far as possible, be inquired into by means of telephone, fax, etc. and preferably within ten days. The case-file must thereafter be listed for preliminary hearing again immediately. It has been noticed that in such cases the files are not listed for an indefinite period. This should be avoided and a separate list of such cases be maintained by the Joint Registrar (Law) for close monitoring. There is no need for the Investigation Wing to issue notices itself, except in rare cases where the DG(I) considers it necessary so to do after obtaining requisite orders from the Bench.

Where notices are also ordered, along with an order to collect facts, however, the Law Division will issue the notices and the Investigation Wing will side by side conduct the requisite enquiries to collect facts, also within a similar time-frame and place its views on record as part of the file.

The procedure indicated above shall be implemented with immediate effect.

sd/-

(Justice Shri M.N.Venkatachaliah)

Chairperson

National Human Rights Commission

PRACTICE DIRECTION No.5

12th August, 1997

The Commission discussed the administrative steps required to be taken in follow-up cases in which the responses have not been filed by the Governments and their agencies in response to the notice from the Commission on the complaint.

The present proposal for consideration is whether the head of the Law Division should be authorised to issue the reminders to the authorities wherever responses have not been sent in time and to fix a further date for filing of such responses not exceeding 4 weeks from the date of expiry of the period originally fixed. This would imply that the head of the Law Division could himself extend the time initially granted.

The Commission authorises the Registrar (Law Division) to issue such reminders and also extend time for filing of response at his discretion by such time, not exceeding four weeks from the date when responses were originally due.

sd/-

(Justice Shri M.N.Venkatachaliah)

Chairperson

National Human Rights Commission

PRACTICE DIRECTION No.6

In several cases involving flagrant violation of human rights by public servants, such as custodial deaths, serious custodial violence, rape, etc., recommendations have been made by the Commission for the prosecution of/disciplinary action against the offending persons and also for grant of interim compensation by way of "Immediate Interim Relief" to the victims or to the members of the family as the case may be.

However, there is no systematic or orderly procedure in the Registry for follow-up on these recommendations to find out whether these recommendations have been accepted, acted upon and complied with by the concerned Governments and if not, to consider what further action the Commission should initiate in respect thereof. There is, accordingly, a need for introducing a systematic mandatory review of the progress of such cases.

The Commission, accordingly, issues the following Practice Direction:

A. In all cases in which recommendations have been made, (other than cases falling under category 'B' hereinbelow), the registry shall prepare in a tabular form, a consolidated list of all cases and with a note as to the action taken thereon and place it before the Registrar, Law Division every quarter, for his review. The Registrar, Law Division after such review, will himself initiate the requisite further follow-up action or he may bring up before the Commission any such specific cases as he may consider appropriate.

All cases falling under this category in which recommendations have been made upto 31 December, 1997 shall be tabulated and placed before the Registrar before the last week of February, 1998. Thereafter, the recommendations for every quarter i.e. 1st January 1998 to 31st March 1998 shall be so brought-up before the Registrar in the first week of May, 1998; and thereafter for successive subsequent quarter within 6 weeks after the end of the relevant quarter. For example, the recommendations made between 1.4.98 and 30.6.98 shall be placed before the Registrar in the 2nd week of August 1998 and so on.

B. In all cases where serious violation of Human Rights are involved such as custodial death/serious custodial violence/custodial rape and rape and dishonour of women by public servants and where prosecutions and/or award of compensation in excess of Rs.25,000 have been recommended by the Commission, such cases shall be brought up periodically before the Commission directly for review of the follow-up action.

All cases in which recommendations have been made upto 31 December, 1997 shall be tabulated and placed before the Commission in the last week of February, 1998, and all recommendations for every quarter i.e. 1st January '98 to 31st March '98 in the first week of May, 1998. Thereafter for each successive subsequent quarter, the list shall be placed before the Commission within 6 weeks of the end of the relevant quarter (for example, recommendations made between 1.4.98 and 30.6.98 be placed before the Commission in the 2nd week of August 1998 and so on).

sd/-

(Justice Shri M.N.Venkatachaliah)

Chairperson

National Human Rights Commission

PRACTICE DIRECTION No.7

24th FEBRUARY 1998

The Commission issues notices to the Government and various other authorities calling for their reports/responses within specified time frame. In some other cases, the Commission forwards the complaints to the concerned authority for taking necessary action in the matter/disposal of complaint at their end, either by calling an action taken report or without that. It is noticed that in large number of cases reports/responses/action taken reports are not received in the Commission within the stipulated time or much thereafter despite reminders issued at the appropriate level. In such a situation, the Commission is left with no other course except to securing the presence of the concerned authority/officer responsible for not sending the response/report/action taken report, by issuing summons to him for his personal appearance before the Commission.

The Commission, therefore, directs that in all such cases where the responses/reports/action taken reports from the concerned authority(s)/officer(s) are not forthcoming despite reminders, the Head of Law Division may with the approval of the Chairperson issues summons to the defaulting authority(s)/officer(s) for his/her personal appearance before the Commission. The summons shall, however, contain a stipulation that in case the summoned authority/officer sends the complete report/response by the stipulated date, his/her personal appearance before the Commission shall stand dispensed with.

In other cases in which complaints have been simply transmitted for taking appropriate action, however, without calling for action taken reports, the Law Division select and make a list of such cases at the end of each quarter and 2% of all such cases, selected by a systematic sample alongwith the particulars of the orders made by the Commission, will be sent to the Investigation Division. On receipt of these cases, the DG(I) shall cause enquiries be made in respect of cases to find out whether the authorities to whom the petitions are transmitted have indeed taken any action or not. A report of the results of the monitoring will be placed before the Commission every quarter.

sd/-

(Justice Shri M.N.Venkatachaliah)

Chairperson

NATIONAL HUMAN RIGHTS COMMISSION

(LAW DIVISION)

Case No..... SARDAR PATEL BHAVAN

SANSAD MARG

NEW DELHI-110001

The complaint filed by - (Name of the complainant)

To

(Name, designation and address of the person summoned)

WHEREAS in the matter afore-mentioned, the Commission issued a notice dated to you calling for your report/response in the matter by

AND WHEREAS the report/response has not been received from you within the stipulated period or much thereafter despite reminders dated , , , .

*NOW THEREFORE you are hereby summoned to appear before the Commission in person on (day & date) at 10.30 a.m. or soon thereafter as may be convenient to the Commission for further consideration of the matter .

If you fail to comply with this order without lawful excuse, you will be subjected to the consequences of non-attendance as provided in rule 10 and rule 12 of Order XVI of the Code of Civil Procedure 1908.

Given under my hand and the seal of the Commission this the day of 19

(BY ORDER)

(Signature)

Seal Registrar

****Note: our personal appearance before the Commission shall stand dispensed with in case the complete report/response due from your end is received in the Commission on or before***

National Human Rights Commission

PRACTICE DIRECTION No.8

23rd FEBRUARY 1998

The number of complaints received by the Commission is on the up-swing for quite some time. It has, therefore, become necessary to devise effective measures for faster redressal, particularly of those complaints which are urgent in nature, where a serious human rights violation has occurred and which in view of the large number of filings get stuck-up in the queue. Commission must endeavour to avert the danger of not processing a serious complaint in time and avoid important and urgent matters having to be considered in their due time in the chronological order in which complaints are received. Many of the complaints though earlier in point of time may, as experience has shown, be wholly bereft of merits. In order to avoid this risk and in order to distinguish a needle from the haystack, it is necessary to outline a procedure for identification of urgent complaints.

At present, certain complaints are being placed before Single Member Benches regularly in the urgent cause list. But the experience has been that many of the complaints so placed do not deserve to be classified under such a category. On the other hand, some urgent complaints are noticed to have been sent through normal routine. Both these mistakes have to be avoided. A possible solution seems to lie in formulating criteria for determining 'urgent' complaints.

(I) PRELIMINARY STAGE

At the preliminary stage, the following types of complaints may be treated urgent:

- (1) In cases where the petitioner's near relatives - son, husband, father, etc. are alleged to have been taken away by the police and the petitioners express serious apprehensions as to the safety of their lives and where serious allegations of custodial violence or torture are made.
- (2) Complaints of bonded child labour/child trafficking/child prostitution.
- (3) Where urgent intervention may result in the saving of a life, etc.
- (4) Where the numbers involved are so high as to justify immediate action; say, for example, a large group of men and women in a village express high handedness by police (e.g. Mannikere Village case in Karnataka).

(5)Where the petitioners belong to one of the vulnerable sections of society like children, women, disabled, scheduled castes/scheduled tribes, refugees, minorities, etc.

(Note: Just because a complaint has been sent through a telegram/fax, it does not by itself qualify necessarily to be treated as an urgent one. On the other hand, a petition sent through ordinary post may point to a very serious violation. Further, all complaints sent by the Amnesty International and other such international organisations do not automatically qualify to be treated as urgent complaints. Some of them, it has been noticed, were even time barred.)

(II) REPORT CASES:

In cases where Commission has issued notices and wherever reports confirming serious violation of Human Rights have been received, it has become necessary to fast track such cases. At present there is no system in place for fast tracking of such complaints. Quite often the State authorities themselves, upon investigation, admitted serious violation of human rights. The spot investigation conducted by the Commission's own Investigation Team might reveal a serious human right's violation.

Besides these, the report cases to be put on the fast track may include:

- (i) Cases which have received wide coverage in the media and whose resolution is eagerly looked forward to by the general public and others.
- (ii) Cases where the number of affected persons is quite large, say, refugees, members of a particular caste, tribe, community, etc. which is involved in a conflict.
- (iii) Cases which have been treated as urgent ones at the preliminary stage.

It shall be the responsibility of Registrar (Law) and Director General (Investigation) to identify such cases and bring it to the attention of the concerned Bench. It may be worthwhile to use file covers/folders of a particular colour (Red colour) to distinguish them from others. These directions may be put into immediate effect.

sd/-

(Justice Shri M.N.Venkatachaliah)

Chairperson

National Human Rights Commission
SUPPLEMENT TO PRACTICE DIRECTION No.8
2rd JULY 1998
FAST TRACK MOVEMENT OF URGENT CASES

Vide Practice Direction No.8, Commission laid down a broad criteria for treating certain type of complaints as urgent at preliminary stage and subsequent stages. In order that such urgent cases get priority and receive urgent attention of all concerned in the Commission, the following procedure shall be followed:

- (i) Immediately on receipt of all the telegrams, Fax messages, wireless messages which are in the nature of complaints of violation of human rights, the Central Receipt Counter shall immediately forward the same to the concerned section of the Law Division.
- (ii) On receipt of the telegrams, Fax messages, wireless messages and other complaints/petitions, the concerned Assistant Registrar shall peruse the same and having regard to the guidelines laid down in Practice Direction No.8 shall decide if in his opinion any matter is required to be treated as urgent. Complaints identified as urgent shall be scrutinised on the relevant scrutiny form, placed in a red colour file meant for the purpose and placed before the concerned Member with a cause list under the title "Cause List of urgent cases". Urgent matters shall be sent to such Member as may be indicated by general or special order of the Registrar. Besides all such complaints, which have been directed by the Chairperson or Members to be treated as urgent or dealt with urgently shall also be scrutinised, processed and placed before the Commission immediately in accordance with these directions.
- (iii) On receipt of the files of urgent cases alongwith cause list, the Private Secretary of the Chairperson or the concerned Member shall place the same before the Chairperson or the concerned Member for consideration and for obtaining orders/directions urgently and as far as practicable, return the file(s) to the concerned section on the same day. However, if there are any special directions of the Chairperson/concerned Member in any case requiring the attention of the Registrar or any other officer of the Commission, the said file shall be sent to the Registrar or the officer concerned for taking immediate steps/follow up action in accordance with the direction. A remark would be made against the entry of the said case in the cause list

to the effect that the file has been sent to the Registrar or other officer for necessary action.

- (iv) On receipt of the files of urgent cases with directions of the Commission from the office of the Chairperson or the concerned Member, the concerned Section Officer shall enter or cause to be entered all such cases in the 'Register of urgent cases' to be maintained in each section and will ensure immediate follow up action on the direction of the Commission on the same day and in any case not beyond the following day. Unless a date has been fixed by the Commission, the Assistant Registrar/Section Officer shall fix a date for placing the case again before the Chairman/concerned Member which shall ordinarily be a date not later than three days from the due date for receipt of the report/response from the concerned authority.
- (v) In all urgent cases, notices/communication shall be sent to the concerned authority by Fax or Speed Post, wherever available or by hand/through special messenger if it pertains to the authorities stationed in Delhi. However, if the above modes of communication are not available at the place where the concerned authority is stationed, the mode of communication shall be such as may be indicated by general or special order of the Registrar. In very urgent matters the Registrar may direct sending notice/communication through special messenger. However, if the direction is only to transmit the complaint with or without calling for an action taken report/compliance, such communication unless otherwise directed shall be sent by ordinary post under certificate of posting and such matters from that stage shall not be treated as urgent cases. A blue cross shall be marked on the file covers of such cases.
- (vi) Irrespective of the fact whether response of the authority has been received or not within the stipulated period, the urgent case shall be placed before the Chairperson/concerned Member who had considered the matter earlier and made the initial order on the appointed day for further directions in the matter. However, if the concerned Member is not available on the appointed day, the case may be placed before any other Member as may be directed by the Registrar by general or special order. The Private Secretary of the Chairperson/concerned Member shall ensure that the matter is considered by the concerned Member and further directions obtained in the matter and the file alongwith such further directions is returned to the concerned

section so far as practicable on the same day on which further direction is made by the Commission or latest by the following day.

(vii) On receipt of the file with further directions, the section shall take further follow up action. If on a perusal of the response of the authority concerned the Commission directs preparation of synopsis, the synopsis shall be prepared expeditiously and not later than one week from the date of the direction. After preparation of the synopsis the case shall be placed before the concerned Members again without any delay.

(viii) After the case has been finally disposed by making certain positive directions, the same shall be pursued as a compliance case in terms of Practice Direction No.10.

The above procedure has the approval of the Hon'ble Chairperson.

sd/-
(R.C.Jain)
Registrar

National Human Rights Commission

PRACTICE DIRECTION No.9

18th MARCH 1998

PROCESSING OF CASES OF CUSTODIAL DEATHS

It is seen that a large number of custodial death cases are pending at various stages of processing. It is of utmost importance that these cases be processed not only expeditiously but also in a more systematic manner. Accordingly, the Commission directs that a Cell be set-up exclusively to deal and process custodial death cases and the officers of the Record Section and the Board Branch shall keep these files separately so as to facilitate the work of the Special Cell. The task of the Special Cell, amongst other things necessary and immediate, shall generally be following:

1. To monitor all the receipt of reports and custodial deaths from the various state authorities: both police and prisons; to register the particulars in a computer format; notices to the appropriate Government/ authority calling for full report shall be issued the same day in an appropriate format.
2. To verify from the State Commissions (wherever they are in position) whether the State Commissions have taken cognizance of the matter and are inquiring into it. If the State Commissions are so seized of the matter earlier, then the custodial death report in the case may be filed.

[Note 1: However there should be periodic collection of statistics from the State Commissions as to the cases registered by them so that a country-wide comprehensive statistical database of custodial deaths, to be prepared annually by the Commission, should have the input of and include all the cases dealt with by the State Commission also.]

[Note 2: In order to facilitate such statistical compilations, the State Commissions may be requested to develop similar uniform softwares/formats for recording and monitoring cases of custodial deaths. This could be taken-up with the State Commissions at the administrative level.]

3. The Special Cell shall immediately requisition from the concerned State Government/authorities a comprehensive report along with the Inquest Report and Post Mortem Report (in the Autopsy form prescribed by the Commission), the records

of medical treatment, if any, administered to the prisoner during his stay in the jail and video-filming wherever post mortem examinations are video-taped.

4. After examining all these records, if there is any need or justification for cross-checking the authenticity, credibility or acceptability of the Post Mortem Report, the Cell shall requisition the services of one of the forensic experts on the panel of the Commission to review the video-film in juxtaposition with the post mortem report and other medical reports to eliminate any doubt or suspicion of the death of being the result of any custodial violence, negligence in affording timely medical treatment etc. If, upon advice from the forensic expert, the cause of death is attributable either to any custodial violence or negligence in medical treatment, the Special Cell shall formulate an appropriate show-cause notice to be issued to the appropriate Government/authority calling upon them to show-cause why the Commission should not make appropriate recommendation for criminal prosecution/departmental disciplinary proceedings against the officer responsible and as to why, in addition, an appropriate immediate interim relief should not be recommended to be paid to the dependents of the victim.
5. To follow-up promptly the requisition for a report; to issue reminders to the appropriate Government/authority for the prompt securing of the reports.
6. After receipt of the responses to the show-cause notice, analyse the grounds raised or cause shown by the government/authorities or if no response is furnished within the time prescribed, proceed on the premise that the government/authorities have no cause to show and draft an appropriate recommendation to be placed before the Commission.
7. The Special Cell shall ensure that from the date of receipt of the report and the final recommendation, duration shall not, generally, exceed the period of four months general. Shri K.L.Gandhi, Assistant Registrar shall be in-charge of the Cell and shall process the cases.
8. The Special Cell will develop an appropriate computer software for monitoring the progress of custodial death cases in the Commission to ensure prompt periodic attention at the appropriate stage of handling of the cases. This software shall contain, amongst other particulars, the place of occurrence, (Jail, judicial lock-up etc.) and its location (State, District, Tehsil, Thana, etc.); the date of admission of the prisoner to the jail, the date of arrest or detention (and in the case of deaths in police custody, any

medical check-up had been done in accordance with the directions of the Supreme Court in Basu's case); whether, in the case of prison, any initial medical check-up had been conducted at the time of admission, the age of the prisoner at the time of admission or, arrest; the particulars of and the address of the dependents; the cause of death as reported by the authorities; whether post-mortem and inquest have been conducted and if so, whether the copies thereof were received in the Commission; whether video-filming of the post-mortem had been done and whether video tape has also been received in the Commission and other relevant particulars.

9. On the basis of the analysis of the material relating to the custodial death cases, as recorded in the computer and disclosed in the files, the Special Cell shall prepare charts as per samples annexed.
10. Quarterly statements about the year-wise breakdown of the number of custodial death cases (separately for police custody death cases and prison custodial death cases) indicating the various stages at which they are pending in the Commission. Whether they are pending at a stage where full reports are yet to be received; whether at a stage after receipt of the full reports; whether they are pending at the stage where show cause-notice have been issued but not replied; whether they are pending after receipt of the responses for the show-cause notice and before final recommendations are made. The last mentioned type of cases shall be shown as cases ripe for final disposal.

sd/-

(Justice Shri M.N.Venkatachaliah)

Chairperson

National Human Rights Commission

PRACTICE DIRECTION No.10

After a case is finally disposed of by the Commission by making directions/recommendations to concerned authority which involves certain acts to be done by the authorities and a compliance is sought from the concerned in that behalf, such cases shall be dealt with as “Compliance cases” and shall be pursued by the Registrar with the concerned authorities for ensuring compliance. The cases in which full compliance has been reported by the concerned authorities shall be placed before the Commission for its information and further directions, if any.

In cases where the compliance is not forthcoming despite pursuing the matter with the concerned authority/authorities, or where there is undue delay in compliance or the concerned authority has expressed its intention/ inability to make compliance of the orders/directions of the Commission, such cases shall be put up before the Commission for further directions in the matter. The Registrar may also put up any case before the Commission for further directions necessary in order to secure the compliance of the original directions/recommendations of the Commission.

A register shall be maintained by the Board Branch of all the compliance cases and all such cases shall be put up before the Registrar periodically for directions on a weekly basis till such time the compliance is received. In appropriate cases, the Registrar may issue conditional summons for appearance of the concerned authority before the Commission with a stipulation that the personal appearance of the authority shall be dispensed with if full compliance is reported to the Commission by a particular date which shall ordinarily be about 10 days prior to the date fixed for appearance of authority before the Commission.

sd/-

(Justice Shri M.N.Venkatachaliah)

Chairperson

ANNEXURE-II

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

Sl.No.	Name of the State/Union Territories	PC	JC	Total	PC	JC	Total
		1.4.96 to 31.3.97			1.4.97 to 31.3.98		
1	Andhra Pradesh	27	70	97	21	52	73
2	Arunachal Pradesh	2	-	2	2	2	4
3	Assam	13	12	25	14	20	34
4	Bihar	14	79	93	9	110	119
5	Goa	2	-	2	-	3	3
6	Gujarat	18	32	50	9	28	37
7	Haryana	2	7	9	3	8	11
8	Himachal Pradesh	1	-	1	-	-	-
9	Jammu & Kashmir	4	-	4	2	-	-
10	Karnataka	8	28	36	6	35	41
11	Kerala	6	9	15	6	29	35
12	Madhya Pradesh	8	7	15	18	43	61
13	Maharashtra	21	180	201	19	115	134
14	Manipur	1	-	1	1	-	1
15	Meghalaya	-	10	10	2	-	2
16	Mizoram	-	-	-	-	1	1
17	Nagaland	2	1	3	1	-	1
18	Orissa	3	10	13	4	19	23
19	Punjab	5	12	17	11	26	37
20	Rajasthan	5	25	30	12	32	44
21	Sikkim	-	-	-	-	-	-
22	Tamil Nadu	3	18	21	11	55	66
23	Tripura	-	-	-	3	-	3
24	Uttar Pradesh	32	139	171	16	169	185
25	West Bengal	6	42	48	10	43	53
26	Andaman & Nicobar	-	-	-	-	-	-
27	Chandigarh	-	-	-	-	-	-
28	Dadra & Nagar Haveli	-	-	-	-	-	-
29	Daman & Diu	-	-	-	-	-	-
30	Delhi	5	19	24	12	29	41
31	Lakshadweep	-	-	-	-	-	-
32	Pondichery	-	-	-	1	-	1
	Total	188	700	888	193	819	1012

PC Police Custody

JC Judicial Custody

R.V.Pillai National Human Rights Commission

Secretary General Sardar Patel Bhavan, Sansad Marg,

Tele:011-3346245 New Delhi-110001.

DO No. 15(13)/97-Coord

1 August, 1997

Dear Shri

Officers of the National Human Rights Commission visit various States in pursuance of the directions issued by the Commission on a variety of items of work which come within its statutory responsibilities.

2. In the context of reports received by the Commission on the condition of police lock-ups in various States, the Commission has decided that the State Governments may be requested to permit officers of the NHRC to visit the police lock-ups also during their visits to States.
3. Accordingly, I am to request you to issue necessary instructions to enable officers of the NHRC visiting your State to undertake visits to police lock-ups as well.
4. A line in confirmation of the instructions issued will be greatly appreciated.

With regards,

Yours sincerely,

sd/-

(R.V.Pillai)

To

All Chief Secretaries/Administrators of States & UTs.

CHECK-LIST FOR NHRC OFFICERS VISITING

LOCK-UPS AT POLICE STATIONS

1. Names of persons found detained in police lock-ups at the time of surprise visits should be noted along with their addresses and other particulars like time, date, place and reasons for arrest.

2. It is to be seen if an entry has been made in the Station Diary of the police station regarding the arrest of the person and also name of the friend or relative of the person who has been informed of the arrest, and particulars of the police officials in whose custody the arrestee is.

3. It is to be ascertained if the examination of the arrested person was done by a medical practitioner. If the person remains in police custody, his examination by a trained doctor should be done after every 48 hours.

4. A memo of arrest duly attested by one witness and countersigned by the arrestee must be issued at the time of arrest.

5. The visiting officer will examine the conditions of the lock-up and find out whether blankets and mattresses of reasonable standard and in a clean and sanitary condition have been supplied, and if access to toilets has been provided.

6. It has to be seen that the directions of the Supreme Court regarding requirements to be followed in all cases of arrests or detention as laid down in the case of D.K.Basu v/s State of West Bengal have been clearly notified at a conspicuous place in the police stations.

7. The visiting officers will further check the following:-

- (a) Find out if persons have been detained in the police stations without showing them as arrestees as this practice has become quite common in many police stations. Complaints of police if any should also be noted.
- (b) Physical and mental conditions of the police officers and men present at the police station during the visit.

Do's and Don'ts for NHRC officers inspecting police lock-ups.

1. Visits to police lock-ups should be done without any prior intimation. There should be an element of surprise in these visits.

2. NHRC officers will carry with them Commission's orders authorising them to visit and make surprise checks.

3. NHRC officers must behave with the police officers present and performing duties in the police stations with proper courtesy and decorum. They should not throw about their weight and behave with becoming dignity.

4. No entry should be made in the Station Diary or any other record of the police station. If a serious deficiency requiring immediate attention of a senior police officer comes to notice, they may only then ring up the concerned SP or Dy.S.P. and bring to his notice the omission noted by them. In no circumstances, any statement will be made by them to the press or electronic media regarding their visits to the police station.

5. They should submit a note to D.G. (I) after the visit. D.G. (I) in turn will place it before the Commission.

ANNEXURE-V

IN THE SUPREME COURT OF INDIA WRIT PETITION NO. 310 OF 1996

IN THE MATTER OF:

Prakash Singh & others

Petitioners

Versus

Union of India & others

Respondents

**SUBMISSIONS OF THE NATIONAL HUMAN RIGHTS COMMISSION ON THE
REMEDIAL MEASURES**

1. The National Human Rights Commission in its counter-affidavit has urged for implementation of some of the important recommendations of the National Police Commission for improving the quality of policing in the country. The Commission is of the view that:

- (1) It is necessary to insulate the investigation wing of the police from external political pressures to ensure freedom in the operational area of police investigation.
- (2) To remove the Damocles' sword of transfer constantly dangling on the head of the chiefs of police in the States and assure them of statutory tenure after proper and careful selection.
- (3) Constitution of a State Security and Police Integrity Commission to help the State Government effectively discharge its superintending responsibility under the framework of law.

2. The Commission feels that today the country is witnessing the disturbing spectacle of politicisation of crime and criminalisation of politics. The report of the Vohra Committee (which the Commission annexed to its counter-affidavit) recognises this ominous trend of criminal, political and bureaucratic nexus assuming alarming proportions, combined with politicisation of the police, they pose real threats to the very survival of democratic society.

3. The Commission in its counter-affidavit referred to the doctrine of 'constabulary independence' in U.K. and endorsed the observations of the Royal Commission of Police 1962 and also of Lord Denning regarding the constable's responsibility and answerability to law alone. The Commission would like to further draw attention also to practices prevailing in some other countries.

4. In Canada police forces at all levels are independent operationally and respond to operational directives only from within the force. In terms of Federal policing functions the Royal Canadian Mounted Police (RCMP) reports to the Federal Solicitor General (broadly equivalent to the Union Home Minister of India). At the provincial level the police forces report to the Provincial Solicitor General or his equivalents who are like the Home Ministers of the Indian States. There is, however, no interference in the operational activities of the police. Further, there are suitable mechanisms for enforcing police accountability. In the case of RCMP there is "RCMP Public Complaints Commission".

5. In New Zealand the Police Act of 1988, ensures that the police is not subject to the direction even from the Minister-in-charge in matters of law-enforcement. The constitutional relationship between the Police Commissioner and Minister of Police differs from the Chief Executives of all other government agencies and their Ministers. While responsible to the Minister of Police for general administration of the police, the Commissioner is not subject to the direction of the Minister in matters of operational law-enforcement in particular cases. The Commissioner remains independent of the government in terms of his or her duties to direct law-enforcement strategies. Subject to the above mentioned operational independence, members of the police are part of the government and implement policies of the government.

6. The Commission, however, strongly feels that police autonomy should be balanced by and go hand in hand with police accountability. For this reason, while endorsing the principle of 'Constabulary Independence' followed in Great Britain, the Commission has referred to the observation of Sir Robert Mark, an erstwhile well-known Commissioner of London Metropolitan Police, that the police in Great Britain is answerable to law and this makes them the "least powerful, the most accountable and the most acceptable police in the world". Police in a democratic society should be low in authority and high in accountability.

7. The Commission is of the view that the constitution of the States Security Commission as recommended by NPC, though with a different composition, will go a long way in ensuring political neutrality and professional integrity of the police. However, NHRC feels that the composition of this State Security Commission has to be such that it will be seen by the public as a politically balanced and judicially oriented body. Police performance under the statutory control of such a body will immediately gain credibility in public view and help in refurbishing police image which is now dangerously low.

8. The Commission feels disturbed at the disquieting increase in the number of complaints received against the police for violation of human rights and feels that "policing the police (quis Custodiet ipsos Custodes) is an urgent issue to be addressed seriously. The police should be accountable to law and must function under the four corners of law. To ensure that police autonomy does not result in the creation of a Frankenstein, appropriate checks and control are needed. In this connection, the Commission has already submitted extracts from the report of the President's Commission of Law Enforcement and Administration of Justice. Keeping in mind, the Indian conditions and ground realities, NHRC feels that in addition to exclusive set-up of crime investigation and other

recommendations of the Police Commission referred to above, the following further measures are necessary to ensure police accountability and making it responsive to the rights of the citizens.

(i) *Mandatory judicial inquiry into custodial deaths*: The Commission feels deeply disturbed at the rising incidence of custodial deaths and fully endorses the observations of the Supreme Court in the case of Kishore Singh v/s State of Rajasthan, (AIR, 1982, S.C. 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 culture than a State official running berserk regardless of human rights”. The concern of the Commission is further heightened by the awareness that victims of custodial death and brutality belong to poor and disadvantaged sections of the society. The Commission endorses the recommendation of National Police Commission that in all the cases of custodial deaths or rapes, there should be mandatory judicial enquiry. The Police Commission’s proposal regarding the setting up of District Inquiry Authority (DIA) headed by the District Judge is also approved by NHRC. This recommendation can be immediately implemented with the concurrence of the Chief Justices of the High Courts. The Supreme Court can perhaps issue a suitable direction to the Chief Justices of High Courts in this regard.

(ii) *Guidelines for making arrests*: The power of arrest now available to the police is often misused to harass and humiliate persons in several situations prompted by mala-fide considerations. Some mala-fide arrests get exposed on habeas-corporus petitions filed in High Courts, but such exposures are very small compared to the large number of unjustified arrests that take place all the time. The NPC in its report suggested that, “by and large 60 per cent of these arrests were unnecessary or unjustified and such unjustified police action accounted for 43.2 per cent of the expenditure of the jails”. NPC prescribed some guidelines in this matter which had been also endorsed by the Apex Court. There should be unambiguous departmental instruction that a police officer making an arrest should also record in the case diary the reasons for making the arrest thereby clarifying his conformity to the prescribed guidelines. Regarding making arrests by the Police the Supreme Court in the case of Joginder Kumar v/s State of Uttar Pradesh JT 1994 (3) SC 423 has laid down specific guidelines which must find place in all police manuals and regulations.

9. In a democratic society, police play a vital role in maintenance of order and tranquility, and as a society cannot, to quote Lord Denning, “do without police, steps are necessary to make the police more efficient, accountable and humane.” For a variety of reasons, some historical and some political, the police in India have remained tied to the apron-strings of the politicians. There has been no systemic change in the police in the country. The Police Act, 1861, still rules the roost. In the words of a perceptive American writer Prof. David Bayley (Police and Political Development in India):

“altogether the rule of law in modern India, the frame upon which justice hangs, has been undermined by the rule of politics. Supervision in the name of democracy has eroded the foundations upon which impartiality depends in criminal justice system.” the Amnesty International observed:

“The main reason why torture continues to be practiced on such a wide scale throughout India is that the police feel themselves to be immune - they are fully aware that they will not be held accountable, even if they kill the victim and even if the truth is revealed. Institutional factors which contribute to the persistence of torture include: the negative public image and bad working conditions of the police, the inadequate training and facilities available to them, the high degree of political involvement in directing their activities and the failure of the government to accept responsibility for ensuring that the police operate within the limits of the law.

Recommendations for police reforms, such as those proposed by the National Police Commission since 1979, have been consistently ignored by the successive central and state governments..... The police are poorly paid, suffer difficult working conditions, lack adequate housing and have little job security....”

10. Having considered all the circumstances and the immediate requirements of an effective control in the police system, the National Human Rights Commission makes the following recommendations for remedial measures:

I. SEPARATION OF THE INVESTIGATION WING OF THE POLICE WITH EXECUTIVE CRIME DETECTION DUTIES

Effective insulation of the Investigation Wing of the police from extraneous pulls and pressures to be achieved by making Investigation Wing a distinct entity not burdened with law and order and other miscellaneous duties.

II. CONSTITUTION OF THE “POLICE SECURITY AND INTEGRITY COMMISSION” NATURE OF THE COMMISSION:

For the present it shall be a non-statutory, advisory and recommendatory body. It will have no independent secretariat of its own and shall function as a recommendatory and advisory authority. (With the experience gained from its functioning, a statutory status for the Commission may be extended).

The Director General of Police of the State shall be its ex-officio Secretary and Convenor and shall provide such secretarial assistance as it may from time to time require from his own establishment.

COMPOSITION:

The Commission shall consist of five Members:

1. The Chief Minister or the Home Minister of the State : CHAIRMAN
2. The Lok Ayukta of the State, if one is in position. In his absence, a retired Judge of the High Court to be nominated by the Chief Justice of the High Court of the State OR A Member of the State Human Rights Commission or a nominee of the State Human Rights Commission : MEMBER
3. A sitting or retired Judge of the High Court of the State nominated by the Chief Justice of the High Court : MEMBER
4. The Chief Secretary of the Government of the State concerned : MEMBER
5. Leader of Opposition in the Lower House of the State Legislature : MEMBER

The office shall not carry any salary or emoluments. In respect of non-official Members, only a sitting fee could be paid.

FUNCTIONS:

1. Laying down broad policy guidelines and directions for the performance of preventive tasks and service-oriented functions by the police;
2. Present an Annual Report of its functioning to the Legislature;
3. Function as an advisory forum for disposal of representations from any police officer of the rank of Superintendent of Police and above regarding his being subjected to illegal or irregular orders in the performance of his duties;

4. Function as a recommending forum for disposing of representations from police officers regarding promotion to the rank, of Superintendent of Police and above;
5. To ensure that no pre-mature transfers of officers from the rank of Superintendent of Police and above are not made without a prior clearance from the Commission; and
6. To ensure that orders of transfers of the police officers are made only by the authority competent under the rules, for the time being in force, to make or effect such transfers.

III. DISTRICT POLICE COMPLAINTS AUTHORITY

NATURE:

This shall also be a non-statutory body to examine complaints from the public of police excesses, arbitrary arrests and detentions; false implications in criminal cases; custodial violence, etc. and make appropriate recommendations to Government and the State or National Human Rights Commission.

COMPOSITION:

1. The Principal District Judge of the District concerned : CHAIRMAN
2. The Collector of the District : MEMBER
3. The Senior Superintendent of Police incharge of the District : MEMBER

FUNCTIONS:

To examine grievances of the public in the matter of rude and uncivil behaviour towards the public, abuse of authority, misuse of power, wrongful arrests and detentions, custodial violence and to make appropriate recommendations to Government or the State or National Human Rights Commission.

IV. THE INSTITUTION OF "LAY VISITORS" TO JAILS AND POLICE LOCK-UPS

The Supreme Court case of Sheela Barse vs. State of Maharashtra has issued certain directions for visitors to jail. "Lay Visiting Scheme" similar to the one introduced in UK in the early 1980s on the recommendations of Scarman Report may be considered. For a group of police stations in every district, the Government may, in consultation with the State Human Rights Commission or the National Human Rights Commission, as the case may be, nominate on an honorary basis, independent and respectable members of the public (which may include serving or retired senior members of the judicial and the administrative

services) to visit the police stations and police lock-ups to examine the conditions and report to the District Police Complaints Authority (or the State Human Rights Commission). The Lay Visitors shall, however, not be entitled to interfere, in any manner, in the functioning of the police other than to report the results of their findings to the State District Police Complaints Authority or the State Human Rights Commission.

V. IMPROVEMENT IN THE MODE OF APPOINTMENT OF PROSECUTIONAL PERSONNEL

One of the key roles in the criminal justice system is that of the public prosecutor and other prosecutors. The appointment of public prosecutor was, for a long time, being done on the recommendation of the judiciary. It has now changed and changed for the worse.

The Commission is of the opinion that in the selection of the public prosecutors by the State authorities, a nominee of the Chief Justice of the State High Court shall function as an observer on the Selection Committee.

11. The National Human Rights Commission would, indeed, offer all such assistance that the Apex Courts might require in the implementation of these schemes, should they receive the imprimatur of the Court.

New Delhi Advocate for the NHRC

Dated: (Intervenor)

IN THE SUPREME COURT OF INDIA

WRIT PETITION NO. 310 OF 1996

IN THE MATTER OF:

Prakash Singh & others

Petitioners

Versus

Union of India & others

Respondents

FURTHER SUBMISSIONS OF THE NATIONAL HUMAN RIGHTS COMMISSION

ON THE REMEDIAL MEASURES

1. The National Human Rights Commission has filed its affidavit. It has also filed its written submissions before this Hon'ble Court on the Commission's views on certain aspects of the case. One of the suggestions is that every district should have a set-up called the "District Police Complaints Authority". The constitution, composition and the functions of this proposed "District Police Complaints Authority" are set out in paragraph 11 (II) of the Commission's earlier written submissions.
2. The Commission considers it relevant to place on record that an analogous system though under a different caption is set up in the State of Kerala. The body called the 'District Level Review Committee' has broadly the same features as to the composition and functions suggested by the Commission.
3. The preamble of the executive order dated 11.8.94, the order G.O. Ms. No.136/94/Home, says:

"There has been growing concern within the country and abroad about issues relating to Human Rights. Human Rights related publicity is also being used by vested interests for selfish motives. Government consider it necessary that every allegation of violation of Human Rights by law-enforcement agencies, particularly custodial crimes, must be attended to speedily and with transparency, and stringent punishment awarded wherever an official is found guilty."
4. There are, however, certain differences in the matter of its composition. For instance while the Commission has recommended the setting up of a "District Police

Complaints Authority” consisting of District and Sessions Judge as Chairman and the Collector and the Senior Superintendent of Police as Members, the set-up in Kerala, however, envisages a four-member “review committee” with the District and Sessions Judge of the District as Chairman and the Chief Judicial Magistrate, the Superintendent of Police, the Revenue Divisional Officer as its Members.

The Commission reiterates the advisability of the composition earlier suggested by the Commission in its written submissions as it would advance the purposes of its constitution and make for greater authority and efficiency if the Collector of the district is a member of the body in place of, or in addition to, the Revenue Divisional Officer.

5. The “District Police Complaints Authority” in so far as its functions are concerned, apart from dealing with such matters that come before it within the ambit of its functions, could also be deemed to be an “authority” or “agency” of the State Government within the meaning of Section 14 (1) of the Protection of Human Rights Act. (‘Act’)

Section 14 (1) provides:

“The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.”

It is submitted that whenever the National Human Rights Commission or the State Human Rights Commission desires to utilise the assistance of the proposed “District Police Complaints Authority” it could be done within the purview of Section 14 (1) of the Act.

ANNEXURE-VI

For Office use only

Code:

FORM FOR ENLISTING WITH NHRC

Part-A

1. Name of the NGO :

Address :

District :

State :

Pin :

2. Whether registered or not : Yes/No

If yes, No. & date Regd. with Law under which regd.*

3. Name and address of office bearers**:

President/Patron	Secy./JS	Treasurer
Ph. (O)	Ph. (O)	Ph. (O)
(R)	(R)	(R)

4. Name and address of person authorised to represent/correspond:

Name :

Designation :

Address :

Ph. (O) (R)

5. Objective of NGO

Area/activity presently engaged in :

6. Extent of Annual income and expenditure:

Income	Expenditure
Rs.	Rs.

Part-B

Particulars about activities in Human Rights related field

7. Specific activity the NGO is engaged in or proposes to engage in, to further the cause of human rights:

8. If any outstanding contribution is made by the NGO in the field of Human Rights, give brief particulars:

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.*

Summary of points raised and findings recorded by the Madras High Court on the setting up of Human Rights Courts

Sl No.	Points	Findings of the Court
1.	Whether it can on the face of the statutory provisions under Section 2(1) (d) defining 'Human Rights' and Section 30 of PHRA dealing with constitution of HRCs for trial of offences, arising out of violation of 'Human Rights' - be stated that there is no clear guidance in PHRA as to what can be regarded as 'offences arising out of violation of Human Rights'?	There is a clear guidance in PHRA as to what can be regarded as as 'offences arising out of violation of 'Human Rights'.
2.	Whether there is any need or desirability to amend PHRA and specify the offences, arising out of violation of Human Rights, which can be tried by HRCs?	There is no need or desirability to amend PHRA and specify the 'offences' arising out of violation of 'Human Rights', which can be tried by HRCs.
3.(a)	Whether all refractions or violations of 'Human Rights' embodied either in International Covenants or in the Constitution are enforceable by Courts? and	It is only such violation of 'Human Rights' as embodied in International Covenants, treaties, etc., either incorporated in the Constitution, as justifiable right or incorporated or transformed in the municipal law, at the instance of the instrumentalities of the State that got attracted the jurisdiction of the High Court under Article 226 or the Supreme Court under article 32 of the Constitution. The violation of such rights, if occurred at the instance of private individuals, there is no other go for the affected individual, except to seek his remedies under the ordinary law of the land.

3.(b)	Whether all such violations or refractions amount to `offences', giving rise to a cause of action for initiation of prosecution proceedings before a HRC?	In the light of the definition of `offence', as contained in Section 2(n) of the Code, `offence' arising out of violation of `Human Rights', as mentioned in Section 30 of PHRA, in the context of the definition of `human Rights' in section 2(1) (d) of PHRC, means such act or omission on the part of the instrumentality of the State, that is say , public servants, punicable by law or the time being in force, as reliable to life, liberty, and dignity of the individual and nothing else.
4.	whether violation of Human Rights, as recognised by International Treaty, Covenant or agreement, to which India is a party in the absence of any law, made by the Parliament therefore under the statutory provisions adumbrated in Article 253 read with Article 51 (c) and Entry Nos. 12 to 14 and 95 of List I and Entry No.65 of List II of the VIIth Schedule of the Constitution can be reckoned with and given effect to, either by HRC or superior Courts of jurisdiction High Courts Supreme Court creatures of the Constitution?	Violation of `Human Rights', as recognised by International treaty, Covenant or agreement, to which India is a party, in the absence of any law made by the Parliament therefore under the statutory provisions adumbrated under Article 253 read with Article 51(c) and entry Nos12 to 14 and 95 of List I and Entry Nos65 of List II of the VIIth Schedule of the Constitution can not be reckoned and given effect to either by HRCs or superior Courts of jurisdiction High Courts and the apex Courts creatures of the Constitution. However, there can be no prohibition for the courts in India to apply the principles underlying such covenants, treaties etc. in the process of interpretation, if they are not in conflict with municipal law or not opposed to fundamental rights of Chapter III of the Constitution.
5.	Whether HRC is not a Court or Tribunal constituted under Article 323-A or 323-B of the C Constitution of India?	HRC is not a Court or Tribunal of a Court constituted under Article 323-A or 323-B of the Constitution. But it is a Court constituted under Section 30 of PHRA, as a Special Court in the cadre of a Court of Session with powers of a Court of original jurisdiction.
6.	Whether the constitution and designation of a Court of Sessions, in each and every District, as HRC a special Court with powers of a Court of original jurisdiction for trial of all offences, arising out of violation of Human Rights, irrespective of their classification into various categories of offences - First Class, Second Class or exclusively triable by a Court of Session - is permissible in Law?	The Constitution and designation of a `Court of Session' in each and every District as HRC a `Special Court' - with powers of a Court of original jurisdiction for trial of all offences arising out of violation of `Human Rights', irrespective of their classification into various categories of offences - First Class, Second Class or exclusively triable by Court of Session is permissible under Law.

7.	Is it legally permissible for the relevant provisions of the Code to be swung into operation for the trial of offences out of violation of Human Rights, excepting matters in respect of which specific provisions had been made in PHRA, by virtue of the sanguine provisions, in the shape of Section 4, 5 and 26 of the Code?	It is legally permissible for the relevant provisions of the Code to be swung into operation for the trial of offences arising out of violation of `Human Rights', excepting matters in respect of which specific provisions had been made in PHRa, by virtue of sanguine provisions, in the shape of Section 4, 5 and 26 of the Code.
8.	Whether it is desirable to expressly provide for an appeal/revision in PHRA to the High Court against a decision of HRC?	There is no need at all to expressly provide for an appeal/revision in PHRa to the High Court against the decision of HRCs.
9.	Whether it is necessary for this Court to make and issue General rules prescribe Forms etc., for regulating the practice and proceedings of HRCs under Article 227 of the Constitution	There is no necessity or need for this Court of make and issue General Rules and Prescribe Forms, etc., for regulating the practice and proceedings of HRC under Article 227 of the Constitution.
10.	Whether it is desirable to incorporate a specific provision in PHRA as to the inapplicability of anticipatory bail provision, as contained in the Code?	It is not at all desirable to incorporate a specific provision in PHRA as to the inapplicability of anticipatory bail provision in the Code.
11.	Whether it is desirable to frame a rule fixing a time-limit for trial and disposal of cases, arising under PHRA?	It is not desirable to frame a rule fixing a time limit for trial and disposal of cases arising under PHRA, except to make an emphasis that every earnest effort shall be taken to try and dispose of those cases as expeditiously as possible.
12.	Is it not incorrect to state that HRC, being a Criminal Court, has no power to grant compensation, except under Section 357 of the Code?	It is correct to state that HRC, being a Criminal Court has no power to grant compensation, except under Section 357 of the Code.

13.	<p>Whether it is desirable or necessary that HRCs are empowered to grant compensation subject to a prescribed limit to the victims excluding the jurisdiction of the Civil Courts, with a discretion for such Courts to permit the Government - Central or State, as the case may be to recover the whole or part of the compensation so awarded from the officer(s), who are found guilty and to award interim compensation to the victims, befitting such reliefs?</p>	<p>It is desirable and necessary that HRC, by way of amendment to be brought in, must have to be invested with the exclusive jurisdiction, in the matter of award of compensation to the victims of Human Rights offences, without prescribing any limit therefore, ousting the jurisdiction of civil court and vesting public law jurisdiction inhering in Writ Courts - High Courts and Supreme Courts reliable only to the award of compensation for violation of fundamental rights of citizens - with a discretion for such courts to permit the Government - Central or State- to recover whole or part of compensation from the officer(s) who are found guilty and to award interim compensation to the victims, befitting such a relief. Until necessary amendments of PHRA on such lines are made, the existing jurisdiction of various forums in the matter of award of compensation to the victims of Human Rights offences will not get affected and continue to operate.</p>
14.	<p>Is it not incorrect to state that the scheme of PHRA in constituting NHRC, SHRC and HRC indicates, in no uncertain terms, that NHRC and SHRC are akin to Commissions of Inquiry set up under CIA and have no powers to give a definite judgement in respect of offences, arising out of violation of Human Rights and are constituted with the object of creating awareness of Human Rights at the Governmental level and public at large, except the fact that they are permanent Standing Commission, while in sharp contrast, the only institution, which could inquire into, adjudicate upon and punish for violation of human rights is the HRC - first of its type anywhere in the world?</p>	<p>It is correct to state that the scheme of PHRA in constituting NHRC, SHRC and HRC indicates, in no uncertain terms, the NHRC and SHRC are akin to the Commission of Inquiry set up under CIA and have no powers to give a definitive judgement in respect of offences arising out of violation of Human Rights and are constituted with the object of creating awareness of Human Rights at the Governmental level and the public at large excepting the fact they are permanent Standing Commissions, while in sharp contrast, the only institution which can inquire into, adjudicate upon and punish for violation of Human Rights is HRC - first of its kind, anywhere in the world.</p>
15.	<p>Whether Human Rights Commission - NHRC and SHRC - have powers to pass interim orders, pending inquiry by them?</p>	<p>The Human Rights Commission - NHRC and SHRC have only powers to recommend to the concerned Government for interim relief to the victims of Human Rights violation and definitely have no powers to pass orders interim or final, pending inquiry.</p>

16.	Is it correct to state that PHRA recognizes the principle that locus stand must stand expanded, in the sense of allowing or permitting, apart from the aggrieved party, anyone on his/her behalf to move HRC for redress of his/her grievances?	It is crystal clear that this Act - PHRA to a certain extent relaxes the Rule relating to locus stand, in the matter of lodging or preference of a complaint before Human Rights Commission, in sub-clause (a) of section 12 thereof, as we have indicated earlier. However, the locus stand principle is kept in tact in the matter of approaching HRCs for redress of grievances of affected parties.
17.	Is it correct to state that the rigidity of IEA does not bind HRC, because human justice is not to be fettered by Sir James Pitt Stephen's prescription of yore?	On the fact of Section 2(1) of the Code defining `judicial proceeding', it cannot at all be stated that the proceeding before HRCs is not a judicial proceeding. Once a conclusion is reached that the proceeding before HRC is a judicial proceeding, it cannot at all be stated that IEA is not at all applicable to the proceedings, the rules of evidence contained therein will have a full sway in the matter of determination of questions arising for consideration in such proceedings. Law of evidence as a now available is rather inadequate to meet the situation and therefore it is, certain amendment is called for to IEA in order to contain recurrence of occurrence in police lock-ups and jails that emanated at the hands of the instrumentality of the State. until the amendment, as suggested by the Law Commission, in its 113th report, is brought about, the victims of Human Rights offences have to face concomitant obstacles in proof of such offences before HRCs.
18.	Whether HRCs are required to have a change in the outlook, particularly in involving custodial crimes and exhibit more sensitivity and adopt a realistic - rather	No case involving major crimes, such as custodial deaths has been disposed of by any of HRCs in this State attracting the attention of this Court. Such being the case, the outlook of such courts in the than a narrow and technical approach? Disposal of such cases, is beyond one's comprehension and therefore, the question of issuing guidelines for change of outlook will never arise for consideration. HRCs in the State will have to exhibit more sensitivity and adopt realistic rather than narrow and technical approach in the disposal of such cases in the future ahead.

19.	Whether the usage of expression, 'specify a Public Prosecutor', in Section 31 of PHRA can be read to mean a Public Prosecutor, appointed under Section 24 of the Code?	Without a Special Public Prosecutor, as contemplated under Section 32 of PHRA, HRCs cannot at all function. Such being the case, it behoves upon the State Government to take immediate steps for the appointment of a Special Public Prosecutor for conducting cases of HRCs.
20.	Whether a direction can be issued to the Government for the appoint of a Special Prosecutor, in accordance with the salutary provisions adumbrated under Section 31 of PHRA, within a time frame, if no such attempts have been made till now?	Court can definitely issue a direction for the appointment of a Special Public Prosecutor for conducting cases in HRCs within a time frame. However, Court is not issuing any such direction, in the fond trust and hope that the State Govt., even without issuance of any such direction in this regard, would hasten and complete the appointment of Special Public Prosecutors to all HRCs in this State in accordance with law, within a period of two months from the date of receipt of a copy of this Order.
21.	Whether by taking into consideration the sordid fact of signal importance that the victims of Human Rights Violation are on the face of application of the relevant provisions of the Code liable to lodging of a complaint or information, in respect of a cognizable offences to approach the very same agency for investigating their complaint, which in the first instance got involved in the Commission of Human Rights offences against them a facet going against the very essence of natural justice and fairplay - it is permissible to find a solution in the existing state of affairs for the constitution of a SIT for investigation of Human Rights offences of cognizable nature by purposeful and meaningful interpretation of Section 37 of PHRA for the purpose of advancement and in aid of implementing the objectivity sought to be achieved thereby?	In order to get over the difficulties Court have pointed out, it would be better in the interests of all concerned, for the Govt., to constitute SITs in such numbers as would be necessary to meet the situation. Court trusts and hopes that the Govt., would initiate necessary steps for the constitution of SITs as expeditiously as possible. This point is answered accordingly.

22.	<p>Since the very enactment of PHRA is mainly for curbing Human Rights violations and for punishing the perpetrators of Human Rights offences, who are none-else than public servants, is it correct to state that the provisions of Section 197 of the Code cannot be made applicable, inasmuch as the same must have to be construed to have been dispense with?</p>	<p>It is not correct to state that Section 197 of the Code cannot be made applicable, inasmuch as the same must be construed to have been dispensed with in prosecution of cases, arising out of Human Rights offences</p>
23.	<p>Is it necessary for a label or a report to be affixed to the complaint of offences arising out of violation of Human Rights that it is a fit case for launching prosecution, before HRCs a condition precedent for the wheels of criminal law to be set in motion?</p>	<p>It is not necessary for a label of a report to be affixed to the complaint of offences, arising out of violation of Human Rights that this is a fit case for prosecution before HRCs a condition precedent for the wheels of criminal law to be set in motion.</p>
24.	<p>Is it legally permissible for this Court in case, it comes to the conclusion that PHRA is materially defective in such a way, as is not possible to implement its provisions in `as is where is state' for achieving the object, for which the same had been enacted to issue a Mandamus to the Union Government to formulate and frame adequate statutory provisions for giving succour and relief to the citizens of this country, whose rights, it is said, it is said, are being violated day in and day out?</p>	<p>Court however, found that certain deficiencies, numbering three or thereabouts were attributed in this PHRA and if those deficiencies stand rectified by way of amendments by adding or creating a new offence of `torture' which affects the dignity of the individual in IPC and introducing a new provision, in the shape of Section 114-B in IEA revising the burden of proof regarding Human Rights Offences, as indicated by the Law Commission in its 113th report, besides investing power of exclusive jurisdiction with HRCs to make award of compensation to the victims of Human Rights offences, prescribing no limits, ousting the jurisdiction of Civil Court and vesting Public Law jurisdiction, inhering in the Writ Courts - High Court and Supreme Court relatable only to the award of compensation for violation of fundamental rights of a citizen with a discretion for such courts to permit the Government, Central and State to recover the whole or part of it from the officer(s) who are found guilty and to award interim compensation befitting such relief, by making suitable provision in PHRA by way of amendment, the implementation of PHRA will stand on a better pedestal. Court trusts and hopes that the Union Government will very soon bring necessary amendments of IPC, IEA</p>

		and PHRA, as Court had indicated for giving succour and relief, in a better way, to the citizens of this country whose Human Rights, it is said, are being violated day in and day out/. Court may, however, point out that it is not legally permissible for this Court to issue a Mandamus to the Union Government to bring in amendments to the enactment's.
25.	Whether the Court of CJM, Periyar District at Erode a designated HRC has the necessary and requisite power under PHRA to entertain the petition of the Tamil Nadu Phazhangudi Makkal Sangam represented by Mr. V.P.Gunasekaran, B.E. General Secretary?	The Court of CJM, Erode HRC a Criminal Court, not having any powers of writ jurisdiction under Article 226 of the Constitution, cannot at all entertain the petition presented before it by the Tamil Nadu Pazhangudi Makkal Sangam represented by Gunasekaran, General Secretary for the relief of a nature grantable in writ jurisdiction.

Annexure - VIII

Statement giving number of case registered, number of cases considered by the Commission, and number of cases processed but pending consideration by the Commission during the year 1997-98, i.e., 10.04.97 to 31.03.98

Sl.No	Name of the state/UI	Case pending consideration on 1.4.97	No. of Cases registered		Total (3+4+5)	No. of cases considered	No. of cases processed but pending consideration
			Complaints	Custodial deaths/rapes			
1	2	3	4	5	6	7	8
1	Andhra Pradesh	73	738	73	884	684	200
2	Arunachal Pradesh	3	25	4	32	21	11
3	Assam	13	164	34	211	130	81
4	Bihar	441	3008	119	3568	2317	1251
5	Goa	6	38	3	47	37	10
6	Gujarat	14	385	37	436	323	113
7	Haryana	131	1070	11	1212	769	443
8	Himachal Pradesh	14	166	-	180	139	41
9	Jammu & Kashmir	91	398	2	491	228	263
10	Karnataka	41	357	41	439	291	148
11	Kerala	89	455	35	579	367	212
12	Madhya Pradesh	139	2494	61	2694	2066	628
13	Maharashtra	155	1596	134	1885	1208	677
14	Manipur	23	47	1	71	35	36
15	Meghalaya	1	12	2	15	12	1
16	Mizoram	3	17	1	21	14	7
17	Nagaland	3	26	1	30	17	13
18	Orissa	207	702	23	932	592	340
19	Punjab	57	555	37	649	422	227
20	Rajasthan	283	1854	44	2181	1302	879
21	Sikkim	3	5	-	8	4	4
22	Tamil Nadu	359	1245	66	1670	909	76
23	Tripura	6	30	3	39	26	13
24	Uttar Pradesh	1421	17453	185	19059	13197	5862
25	West Bengal	107	679	53	839	592	247
26	Union Territories	327	2260	42	2629	1587	1047
	Total	4010	35779	1012	40801	27289	13512

State-wise list of cases disposed of/pending disposal by the Commission during 1997-98

Sl. No.	Name of the State/UT	Dismissed in limini	Disposed of with directions	Cases taken cognizance		Total
				Concluded	Pending	
1	Andhra Pradesh	483	64	3	134	684
2	Arunachal Pradesh	8	3	-	10	21
3	Assam	62	12	10	46	130
4	Bihar	1423	482	3	409	2317
5	Goa	14	8	1	14	37
6	Gujarat	199	53	3	68	323
7	Haryana	406	172	15	176	769
8	Himachal Pradesh	93	30	-	16	139
9	Jammu & Kashmir	99	23	-	106	228
10	Karnataka	155	57	-	79	291
11	Kerala	204	90	1	72	367
12	Madhya Pradesh	1357	439	6	264	2066
13	Maharashtra	720	142	12	334	1208
14	Manipur	9	5	1	20	35
15	Meghalaya	7	-	-	5	12
16	Mizoram	2	1	-	11	14
17	Nagaland	3	2	-	12	17
18	Orissa	380	119	3	90	592
19	Punjab	196	90	3	133	422
20	Rajasthan	813	280	8	201	1302
21	Sikkim	1	-	-	3	4
22	Tamil Nadu	510	184	-	215	909
23	Tripura	16	3	-	7	26
24	Uttar Pradesh	4448	3114	33	5602	13197
25	West Bengal	438	81	20	53	592
26	Union Territories	824	346	9	408	1587
	Total	12870	5800	131	8488	27289

State-wise statement of category of cases admitted for disposal from 1.4.97 to 31.3.98

Sl. No.	Name of the State/UT	Custodial deaths		Custodial rapes	Disappearance	Illegal detention/arrest	False implication	Other police excesses	Failure in taking action	Indignity to women	Terrorist/Naxalites violation	Jail condition	Atrocities on SC/ST	Others	Total
		PC	JC												
1	Andhra Pradesh	21	52	-	-	5	3	19	5	1	-	1	-	30	137
2	Arunachal Pradesh	2	2	-	-	1	-	1	-	-	-	-	-	4	10
3	Assam	14	29	-	-	5	1	12	-	-	-	-	-	4	56
4	Bihar	9	110	-	1	8	12	97	35	2	-	41	2	95	412
5	Goa	-	3	-	-	-	-	2	1	-	-	2	-	7	15
6	Gujarat	9	28	-	-	-	-	16	1	-	-	2	-	15	71
7	Haryana	3	8	1	1	12	18	44	14	1	-	10	5	74	191
8	Himachal Pradesh	-	-	-	-	-	-	2	4	-	-	-	-	10	16
9	Jammu & Kashmir	2	-	-	-	5	1	29	3	-	-	-	-	66	106
10	Karnataka	6	35	-	-	1	1	20	1	-	-	5	-	10	79
11	Kerala	6	29	-	-	2	1	23	4	-	-	8	-	-	73
12	Madhya Pradesh	18	43	-	-	3	13	85	15	-	-	11	3	79	270
13	Maharashtra	19	115	-	-	5	5	40	1	-	-	90	1	70	346
14	Manipur	1	-	-	-	1	-	4	-	-	-	-	-	15	21
15	Meghalaya	2	-	-	-	-	-	2	-	-	-	-	1	-	5
16	Mizoram	-	1	-	-	-	-	-	-	-	-	-	1	9	11
17	Nagaland	1	-	-	-	-	-	3	1	-	-	-	-	7	12
18	Orissa	4	19	-	-	1	-	23	1	-	-	-	-	7	12
19	Punjab	11	26	-	-	3	4	43	12	1	-	5	-	31	136
20	Rajasthan	12	32	-	-	8	13	74	28	1	-	11	3	27	209
21	Sikkim	-	-	-	-	-	-	3	-	-	-	-	-	-	3
22	Tamil Nadu	11	55	-	1	13	10	44	4	-	-	6	4	67	215
23	Tripura	3	-	-	-	-	-	4	-	-	-	-	-	-	7
24	Uttar Pradesh	16	169	-	8	244	137	705	314	6	-	61	10	3965	5635
25	West Bengal	10	43	-	-	-	1	16	1	-	-	1	1	-	73
26	Union Territories	13	29	-	1	13	17	102	32	2	-	41	5	162	417
	Total	193	819	1	12	330	237	1413	478	17	-	295	36	4788	8619

Details of outcome of investigation by the Investigation Division during the year 1997-98

No of Police Pers. suspended	No. of Pers. against whom Departmental action was	No of Pers. Prosecuted	No. of cases handed over		Compen- sation paid	FIR registered against
			CID	CBI		
51	60	43	20	03	Rs. 5,000 1 lakh (in twenty cases)	47

Details of cases dealt by Investigation Division during 1997-98

Collection of facts/monitoring of cases	Investigation of cases	Cases sent to Law Division of Commission
1503	252	1097

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

1. Delays in the tabling of the annual reports of the Commission are regrettable, as the report is an essential source of information on the human rights situation in the country and of the efforts of the Commission. It is read with great interest, by an increasing number of persons, both at home and abroad. The Commission therefore recommends that its annual reports are placed promptly before Parliament, together with the required action taken memoranda, and that this should normally be done not later than the Session immediately following submission of the report. (Para 1.4)

2. It greatly diminishes the dignity and worth of vast numbers of the people of India - and indeed of the country as a whole - as long as a situation is allowed to persist where the numbers of those afflicted by illiteracy increases each year, to a point where it now exceeds the population of the country at the time of Independence, a situation in which over 60 million children between the age group 6-14 years do not attend school, but in which many lose their youth - and often their lives - in child labour. It does not do credit to a country with the talent and potential that we have, that one-third of the world's poor should be Indian. In the view of the Commission the persistence of such a situation constitutes a failure of governance which must be urgently remedied. This is why the Commission has missed no opportunity to insist on the need to keep the institutions of governance in our country in better repair, and to press for policies in the economic and social sector that are truly responsive to the rights of those who are most vulnerable in our society. It greatly welcomes, in this connection, the recent tributes paid in the country to Nobel Laureate Amartya Sen - whose work it has often drawn upon in dealing with issues before it - and it trusts that this will stimulate debate, policies and practical measures conducive to the better protection of rights in the country. (Paras 2.2, 2.3)

3. As in the case of allegations of custodial death or rape involving the police, the Commission is convinced that any such charges against members of the armed forces must be enquired into promptly and effectively. The Commission had additionally recommended in its preceding report that the para-military forces and the army should also report directly to the Commission any instance of death or rape that might occur when a person is in their custody. The Memorandum of Action Taken presented by Government to Parliament,

however, essentially recalls the procedures prescribed by the Protection of Human Rights Act 1993 in respect of complaints brought against the armed forces and does not deal with the specific recommendation of the Commission on this matter. In the light of this, the Commission believes that there is need for it to reiterate its recommendation which, it feels, will add to the credibility and transparency of the armed forces in the conduct of their operations and also discourage unwarranted and propagandist charges against them. (Para 3.2)

4. It is gratifying to note that in Jammu & Kashmir, local magistrates, village elders as well as police officers are increasingly being associated with cordon and search operations and that a Screening-cum-Co-ordination Committee has been set-up in every district under the Deputy Commissioner to address, inter alia, issues relating to the security operations. Similar Committees are also reported to be functioning in the North-Eastern States. The Commission recommends that the proceedings of such Committees be given wider publicity by the State Governments concerned as the dissemination of information relating to such activities can, in itself, have a beneficial impact on the observance of human rights in areas affected by insurgency and terrorism. (Para 3.3)

5. The Commission trusts that it will remain the firm endeavour of the Central and State Governments to ensure that the residents of the (Kashmir) Valley return to their homes in safety and dignity and regain their social and economic status in the community at the earliest. (Para 3.4)

6. In the course of the year, the Commission has had occasion to welcome the increasingly clear position being taken by the United Nations on the vexed question of "Human Rights and Terrorism", not least through its resolutions on this subject, and also in its 1994 Declaration on "Measures to Eliminate International Terrorism". Since terrorism can never be justified, least of all as a supposed means of promoting human rights, the Commission has not hesitated to assert, both at the national and at the international level, that the language of human rights should not be manipulated by terrorists or their apologists, nor the forums for debate of such rights be misused for purposes that are incompatible with their proper promotion and protection. The Commission recommends that efforts should continue to be made at all levels to clarify the issues involved in dealing with terrorism. It welcomes the steps being taken to strengthen the international legal regime in this connection and urges that appropriate steps continue to be taken in this respect. (Para 3.6)

7. In the context of addressing the issue of custodial torture, the Commission would like to recapitulate and reiterate certain of the recommendations made in its earlier reports as they are yet to be implemented:

- Early action needs to be taken on the suggestion of the Indian Law Commission (ILC) to the effect that a Section 114(B) 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.
- Section 197 of the Code of Criminal Procedure needs to be amended, on the basis of ILC's recommendation, to obviate the necessity for governmental sanction for the prosecution of a police officer, where a prima facie case has been established, in an inquiry conducted by a Sessions Judge of the commission of a custodial offence.
- As suggested by the National Police Commission, there should be a mandatory inquiry by a Sessions Judge in each case of custodial death, rape or grievous hurt.

The Memorandum of Action Taken, submitted by the Central Government, indicates that these recommendations were still being processed. Considering the high incidence of custodial violence and the urgent need to address this issue, the Commission would strongly urge that the recommendations of the Indian Law Commission and the National Police Commission, as endorsed by this Commission, be given priority attention by the Government. (Para 3.11)

8. In its annual report for the year 1996-97, the Commission had referred to the directions of the Supreme Court in the case of *Joginder Singh vs. State of Uttar Pradesh and others* (JT1994(3) SC 423). Additionally, it had highlighted the detailed instructions of the Supreme Court in a subsequent order (*DK Basu vs. State of West Bengal*). While the Memorandum of Action Taken refers to the first case, no reference has been made to the implementation of the instructions of the Supreme Court in the second case. It is of utmost importance that serious attention be paid by the Central as well as State Governments to the instructions of the Supreme Court in the second case, not least because it has stipulated that failure to carry out the instructions would attract penalties for commitment of contempt of the orders of the Court. (Para 3.12)

9. The Permanent Representative of India to the United Nations signed the Convention against Torture on 14 October 1997, in what can be described as a happy consummation of a

process set in motion by the Commission. The Commission now awaits the ratification of the Convention and recommends early action in this regard. (Para 3.20)

10. The Commission has been disturbed by the unsatisfactory quality of post-mortem reports received in respect of custodial death cases. As there is rarely any credible independent evidence in such cases, their fate depends almost entirely on the observations recorded and the opinion given by doctors in post-mortem reports. A manipulated post-mortem report helps those responsible for custodial violence and results in a travesty of justice and serious violation of human rights. With a view to preventing such unethical acts, the Commission had recommended to the State Governments that the latter video-film post-mortem examinations and send the cassettes to the Commission. Twenty one States and Union Territories have so far accepted this recommendation while four others have stated that they are examining the matter. The Commission recommends to the States of Andhra Pradesh, Arunachal Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Kerala, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Tamil Nadu, Tripura, West Bengal, and the Union Territories of Chandigarh and Lakshadweep that they accept this recommendation without any delay in the interest of protecting of human rights and bringing to book, those who are complicit in the brutal practice of custodial violence. (Para 3.21)

11. The Commission has also felt that the autopsy forms used in the various States were deficient and needed considerable improvement. The Commission therefore devised a Model Autopsy Form that was more incisive and purposeful, keeping in mind the circumstances prevailing in our country as also the work done by the United Nations in this area. The Commission recommended to the State Governments the adoption of the Model Autopsy Form. Fourteen States and Union Territories have accepted this recommendation of the Commission. The Commission recommends to the following States/Union Territories, namely, Andaman & Nicobar Islands, Arunachal Pradesh, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, Manipur, Mizoram, Maharashtra, Uttar Pradesh and NCT of Delhi that they adopt the new form and the concomitant procedures without delay. (Para 3.22)

12. Disturbed by the increasing reports of violence in police lock-ups, the Commission took a decision that its officers would make surprise visits to police lock-ups. Accordingly, the Secretary-General of the Commission in a letter to the Chief Secretaries of the States/UTs on 1 August 1997 requested them to issue necessary directions to the police

authorities to enable officers of the Commission to visit police lock-ups. Twenty six States/Union Territories have since accepted this suggestion. The Commission is pursuing this matter with the Governments of Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur and the Union Territories of Daman & Diu which are yet to respond positively. The Commission recommends that they accept this recommendation speedily and affirm their interest in the proper management of police lock-ups. (Para 3.26)

13. The need for systemic reform of the police has been a consistent theme of the Commission for the past five years. The Commission was, in this connection, deeply gratified that the then Home Minister, in a letter written to the Chief Ministers of all States in April 1997, chose to pursue this matter, reacting positively both to the recommendations of the Police Commission and to the advice of the National Human Rights Commission and stating inter alia that “we are also currently engaged in the implementation of some of the basic recommendations which lie within our jurisdiction viz. in the Union Territories and other centrally administered areas.” The Commission is constrained to observe, however, that there has been an apparent lack of follow-up on that letter of the Home Minister, both in respect of the action taken by the State Governments and in respect of the implementation of the recommendations within the Union Territories and other centrally administered areas. The Commission would therefore strongly urge that effective steps be taken in the Union Territories to initiate the required reforms identified by the Police Commission and elaborated upon by this Commission. (Para 3.27)

14. Alarmed by reports of the frequency of deaths occurring in prisons, the Commission issued directions asking for details from each of the States. An analysis of the causes of death revealed that 76% of such deaths in prisons were attributed to tuberculosis. In a significant number of cases, the disease appears to have been noticed and diagnosed after the point of no return had been reached. The situation represented not only a denial of the rights of those in custody to adequate medical care, but also a grave source of infection to other inmates who suffered unsuspecting exposure to the disease. The Commission, therefore, felt it necessary to develop a format in respect of the medical examinations that should be conducted. In the interim, the Commission recommends to all State Governments that all those who are in jail custody should be tested for tuberculosis, with their informed consent, and that, on the basis of such tests, appropriate remedial steps be initiated promptly. (Paras 3.29, 3.31)

15. Deeply concerned over instances of death occurring in Juvenile Homes and over reports that children frequently chose to run away from such homes, the Commission took up these matters with the senior officials of the Ministry of Welfare and sought a detailed report on the administration of juvenile homes in the various States. Having considered the report so submitted, as well as the report of a high-level Committee on the management of juvenile homes in Delhi, the Commission felt the need for more information. A set of questionnaires on Borstal Institutions, Reception Centres, Probation Homes, Protective Homes and Custodial Homes set-up under different statutes was accordingly sent to the Chief Secretaries/ Administrators of all States/Union Territories to elicit information, by July 1997, on the functioning of these homes/institutions. During the period under review, information had been received from Goa, Gujarat, Meghalaya, Tripura and Union Territories of Chandigarh and Pondicherry. The Union Territories of Dadra and Nagar Haveli, Daman and Diu and Lakshadweep have indicated that they do not have such institutions. The States of Andhra Pradesh, Assam, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Tamil Nadu, West Bengal and NCT of Delhi have furnished partial information. The Commission requests the remaining States/UTs to expedite their reports. (Paras 3.38, 3.39, 3.40)

16. In its annual report for 1996-97, the Commission referred to the consideration it gave to the deficiencies in the criminal justice administration in the country. In the context of the prison population largely consisting of under trials, the low rate of convictions and proverbial delays in conducting trials and deeply concerned with the implications of these problems for the promotion and protection of human rights, the Commission emphasized the need to bring about “institutional changes in an area where the country’s legal system has yet to establish a coherent and sustainable jurisprudential regime”. The Memorandum of Action Taken on these recommendations indicates that a number of them, which are also contained in the 154th Report of the Law Commission, are being processed by the Government. The Commission would reiterate the recommendations contained in its preceding report and express the hope that the Memorandum of Action Taken on the present report would reflect in positive terms the outcome of the processing being undertaken by the Government. (Paras 3.41, 3.42)

17. In its preceding report, the Commission outlined the nature of the representations that it had received from a number of civil liberties groups in respect of the Armed Forces (Special Powers) Act, 1958 and, in particular, the concerns that they had expressed in

respect of Sections 3, 4 and 5 of that Act. In the light of these representations, the Commission took a decision to seek to be impleaded in the proceedings pending before the Supreme Court in respect of the Act and to assist the Court by placing the Commission's views before it on the issues that had arisen in that connection. The views of the Commission were accordingly placed before the Supreme Court, which subsequently pronounced its Orders. The Commission recommends that the concerned Ministries issue carefully formulated guidelines to all concerned personnel of the Armed Forces and Paramilitary Forces, based on the orders of the Supreme Court. (Paras 4.1, 4.2, 4.3, 4.5)

18. It will be recalled that the Commission in its last annual report, observed that while the Commission fully accepted the view that major social and economic efforts were required to bring to an end the practice of child marriage amongst those sections of the society and communities where such marriages have long been conducted, it could not but express the view that the response of the Central Government in the Memorandum of Action Taken amounted, 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 further stated that it could not accept the view that the responsibility of the Central Government ceased because the present Act was administered by the State Governments, or that the issue of personal laws could be advanced to block any effort whatsoever in this overall matter. As the Draft Marriage Bill prepared by the National Commission for Women has not made headway, the Commission has decided to revive its original proposal regarding the amendments to the Child Marriage Restraint Act, 1929. The Commission has requested Justice Shri V.S. Malimath, a Member of the Commission, to prepare a fresh draft on the proposed amendments for the consideration of the Commission. The Commission intends to pursue this matter in the period ahead. (Paras 4.9, 4.10)

19. On 2 October 1997, the Commission initiated a dialogue with senior officers of the Ministry of External Affairs requesting them to examine afresh the possibility of India becoming party to the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol on this subject. The Commission was appreciative of the reaction of the Foreign Secretary, who indicated that he would have all aspects of the matter looked into once again and that he would revert to the Commission on this subject. The Ministry of External Affairs subsequently informed the Commission that the matter is being re-examined in consultation with other concerned Ministries/Departments. The Commission

has noted this development with appreciation and has recommended that the Ministry of External Affairs constitute a small group of experts to go into the matter expeditiously. (Paras 4.12, 4.13, 4.14)

20. In the light of reports of a callous disregard of both constitutional and statutory responsibilities in many parts of the country for the abolition of bonded labour, the then Chairperson of the Commission addressed a letter to all Chief Ministers on 29 August 1995, reminding them of these responsibilities and urging them to give due importance to this grave societal problem. In the course of a hearing on a Writ petition filed by the People's Union for Civil Liberties (PUCL) in April 1985 on the engagement of bonded labour in Tamil Nadu and Madhya Pradesh, the Supreme Court, in May 1994, issued a direction, inter-alia, to all the State Governments to collect information on the prevalence of bonded labour, to identify bonded labourers and to rehabilitate them. The Court further directed the setting-up of District-level Vigilance Committees and the prosecution of employers/agents of bonded labour. In a subsequent hearing, the Court, observing that National Human Rights Commission had been established, passed an order requesting the Commission to be involved in supervising programmes for the elimination of bonded labour and directing that the entire records of the case be forwarded to the Commission. Upon receiving the orders of the Supreme Court, the Commission desired that a detailed plan of action be formulated to pursue this matter effectively. The Commission has engaged Shri K.R.Venugopal, as the Special Rapporteur of the Commission to assist it in the work relating to the bonded labour system in the Southern States. The report prepared by Shri Venugopal is under consideration of the Commission. A major effort has also commenced in Uttar Pradesh to expand the Commission's programme to end child labour in the carpet belt into a wider programme to deal with problem of bonded labour in that State. The Commission has received an action manual prepared by the then Labour Commissioner under the guidance of the Commission, specifically dealing with the issues of bonded and child labour in the carpet weaving belt. As of the end of the year under review, the action manual was also under examination. (Paras 5.1 to 5.5)

21. The Commission remains dissatisfied that the organisational structure that is to be set up under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and a will to undertake its effective implementation are not visibly manifest. The Chief Commissioner for Disabilities at the Central level and Commissioners for Disabilities at the State level have to be in position, on a full time basis, to deal with the

various issues related to the implementation of the Act. There is a sense of disappointment among activists and NGOs working in this area, some of whom are contemplating to move the Courts against the Government. The Commission would strongly urge that the required level of attention be given to the full and proper implementation of the Act by the Central as well as the State Governments. (Para 6.1)

22. In light of its statutory responsibility of promoting research in the field of human rights (section 12(g) of the Act) and with a view to preparing a plan of action for improving conditions in mental hospitals in the country and enhancing awareness of the rights of those with mental disabilities, the Commission has entrusted a research project on “Quality Assurance of Mental Hospitals” to the National Institute of Mental Health & Neuro Sciences (NIMHANS), Bangalore. The project commenced with the formation of a multi-disciplinary group of investigators from the faculties of Psychiatry, Psychology, Psychiatric Social Work, Psychiatric Nursing and Mental Health Education. Subsequently, a detailed proforma was prepared, content validated and mailed to various mental hospitals, State Human Rights Commissions, other National Commissions, and prominent NGOs. The research team then initiated visits to hospitals and has completed one sector in the North India out of the total of eight sectors. Visits to two more sectors in the South were underway at the end of the current reporting period. In order to obtain first hand information, workshops for families having mentally ill members and NGOs involved in the mental health sector have been incorporated in the programme of work. Two such workshops were conducted at Bangalore in which the Commission was represented by a Member. Similar workshops are under way in other regions of the country. A video documentary has also been prepared which highlights various issues in the comprehensive care of the mentally ill in the hospitals. (Paras 7.3.1, 7.6)

23. Giving its order in Writ Petition (Crl.) No.1900/81 (Dr. Upendra Baxi vs. State of Uttar Pradesh & Others), the Supreme Court observed “now that the benefit of the National Human Rights Commission with statutory powers under Protection of Human Rights Act, 1993 is available and since most of the problems associated with the functioning of the Agra Protective Home are such that they can be better dealt with by NHRC, we consider it expedient to make this order to involve the NHRC in this exercise”. In an Order dated 11 November 1997, the Supreme Court requested the Commission to be involved in the supervision of the functioning of the Agra, Gwalior and Ranchi mental hospitals also, in the manner in which the Commission was requested to undertake similar work in respect of the

Agra Protective Home. The Commission intends to monitor closely, and on a regular basis, all aspects of the situation in regard to these institutions, working in close cooperation and coordination with all the agencies involved in their functioning. (Paras 8.2, 8.4, 8.11)

24. The National Human Rights Commission has sought an update on the programme undertaken by the Ministry of Urban Affairs and Employment which is concerned with the prohibition of construction of dry latrines, and the conversion of dry latrines into the pour-flush type, as also the Ministry of Welfare which is concerned with the rehabilitation of those who have been freed from scavenging. The Commission is determined to pursue its efforts and calls upon the Central and State Governments to display a greater degree of commitment than hitherto to ensure the abolition of manual scavenging in the country. (Para 9.3)

25. The Commission proposes to examine issues arising out of forcible testing of suspected AIDS patients with a view to evolving its recommendations. The Commission has, in the meantime, also received a proposal from the Office of the United Nations High Commissioner for Human Rights in February 1998 requesting the participation of the Commission in a pilot project on HIV/AIDS issues in collaboration with UNAIDS. Having noted the expertise of UNAIDS, which is the inter-agency body set-up to coordinate the response of the United Nations to the AIDS pandemic, the Commission has accepted this proposal and has decided to become a partner in this important pilot project. Details of the collaboration are to be worked out. (Paras 10.4, 10.5, 10.6)

26. In a further step aimed at increasing awareness of human rights in the country, the Commission has recommended the inclusion of questions relating to such rights in the General Knowledge paper of the Civil Services Examination for entry into the highest civil services in the country. The Commission has pointed out to the Government that this would lead to a greater sensitization on human rights issues and give impetus to the nation's attempts at fostering a culture of human rights among aspiring civil servants of the country. (Para 11.5)

27. Following a detailed exchange of views, the National Law School of India University, Bangalore has submitted to the Commission a proposal for the setting-up of an Institute of Human Rights Education, Research and Documentation. The proposed institute will be a centre of excellence in human rights education, research and documentation and will set standards for human rights education. It will, further, assist the Commission in the

discharge of a number of its statutory responsibilities. The Institute will have three wings; an Academy Wing for running regular academic and training courses as well as the development of courses and materials; the Research/Publications Wing which will function as a think-tank on human rights issues; and a Documentation Wing which will serve as a nodal centre for human rights information. The Commission proposes to create an endowment with a fund of Rs. 3 million to meet expenses relating to the establishment of a Chair in the proposed Institute. (Para 11.7)

28. The Commission also continued to give close attention to programmes for the personnel of paramilitary forces of the country. In a meeting held on 19 January 1998 with senior officers of the rank of Inspectors General of Police in-charge of training, the draft of a common training syllabus was worked out for the training of such personnel. The draft was subsequently circulated by the Commission for comments of the Directors General in-charge of the paramilitary forces. The Commission proposes to hold a meeting shortly with the Directors General of these forces so that final shape is given to the training syllabus and to ensure that there is broad uniformity in the human rights training programmes of the paramilitary forces all over the country. (Para 11.11)

29. In particular, the Commission would like to emphasize that there is need for the exercise of greater restraint and moderation by political parties when dealing with issues having sensitive human rights connotations and that all groups must turn away firmly from incitement to violence in the name of caste, language, religion. The Commission would like to reiterate its recommendation that political parties establish a clear Code of Conduct to govern the behaviour of their cadres in matters affecting the human rights of the people of this country, and that transgressions of such a Code be dealt with severely. The Commission believes that there is a need for a discussion of this matter at the highest levels of the major political parties of the country. It intends to pursue this matter with them. (Para 11.15)

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

- i) In order to ensure their effectiveness and credibility, the status and responsibilities of National Institutions should be consistent with the Principles relating to the status of National Institutions as adopted by the United Nations General Assembly (Resolution 48/134) commonly referred to as the 'Paris Principles'.

- ii) The Asia-Pacific Forum of National Human Rights Institutions should increase its role as a focus of regional, multilateral and bilateral programmes of practical technical assistance.
- iii) Collating, disseminating and developing human rights jurisprudence through an International Human Rights Law Advisory Panel to the Forum. The Workshop decided to establish a sub-committee comprising representatives of the National Institutions of India and Australia to consider all relevant aspects of the Workshop condemned the practice of child sexual exploitation as a gross abuse of human rights. It called upon all Governments in the region to take a range of measures to combat child sexual exploitation, including law enforcement, changes in social policy, public education campaigns and measures to assist affected individuals and communities. (Paras 11.19, 11.20)

31. In order to reach a wider audience, the Commission is finalizing the creation of a web-site of its own. The Commission is being assisted in this by the National Informatics Centre (NIC). The web-site will contain, inter alia, information on the provisions of the Protection of Human Rights Act 1993, the key decisions and publications of the Commission, including its annual and other reports. (Para 11.26)

32. The Commission is happy to learn that, pursuant to its recommendation, Doordarshan is considering the possibility of having a programme on human rights, of 30 minutes duration and on a monthly basis, on the national network. (Para 11.27)

33. Through the on-going exercise of collecting data, the Commission proposes to build a reliable and useful base of information on non-governmental activity in the field of human rights, which would not only be useful to it, but also to the NGOs themselves. Indeed, the Commission frequently receives requests from NGOs asking for copies of the list of NGOs working with it. The Commission wishes to expand and strengthen this net-working of NGOs. It appeals through this report to such other NGOs as might be interested in cooperating with the Commission, or each other, to send the relevant information on their activities to the Commission on the proforma prescribed by the Commission. The Commission proposes to publish the names of all cooperating NGOs at an appropriate time, in an appropriate manner. (Para 12.3)

34. Section 21 of the Protection of Human Rights Act, 1993 provides for the constitution of State Human Rights Commission. The Commission once again urges State Governments

to establish Human Rights Commissions where they do not yet exist and to ensure the fullest support to such institutions once they are established. The Commission intends to pursue this matter with the State Governments, but also recommends that this issue receive the attention of the Central Government and the leadership of political parties at the highest level. (Para 13.2)

35. The Commission recommends that the State Governments of the North East, in consultation as needed with the Central Government, work out an adequate framework for State Commissions in that region, keeping in mind the resource constraints faced by them. (Para 13.4)

36. Despite notifications having been issued in various States setting-up Human Rights Courts, ambiguities as to the offences to be tried and the procedures by them remain, rendering the concept infructuous in practical terms. This too needs to be remedied at the earliest and the Commission would like to repeat its view that clarity should be brought to this matter expeditiously, if necessary by appropriate Legislative or Judicial action. For its part, the Commission has already given its detailed views on this subject, when the matter came before the High Court of Madras, and is continuing to give thoughts to this issue. (Para 17.9)

37. The Commission remains deeply concerned by the tendency in certain States to delay responses and is giving consideration to the evolution of additional mechanisms, both at the level of the States and major Union Territories, and at its own headquarters, to ensure swifter attention to its notices and recommendations. (Para 14.2)

38. As it will take more time to build-up and develop a proper cadre for the Commission, the Commission proposes for the time-being to continue to select its personnel through deputation and re-employment. The Commission also proposes to have its recruitment rules so amended as to enable the expeditious utilization of the services of persons with specialized knowledge in matters related to human rights. (Para 16.4)

39. In order to encourage the use of the national language in developing human rights literature, the Commission has approved a scheme for giving human rights awards to authors and writers for original writing in Hindi as well as for undertaking translations of books and literature relating to human rights into Hindi. (Para 16.10)

40. The Commission has shared the view that weaknesses and ambiguities in its Statute would need to be remedied at the earliest, in the light of experience gained. The

Commission therefore intends to revert to the matter of its Statute comprehensively, in the near future. (Para 17.5)

41. It is ironical - though sadly not paradoxical - that the States from which the National Human Rights Commission has received the largest number of complaints, have been the least forthcoming in plans to establish Commissions at the State-level. This is a matter which requires attention at the highest levels of Government, both at the Centre and in the States, and of the political parties of the country. This is also a matter fit for debate both in Parliament and in the Legislative Assemblies of the States. The Commission would warmly recommend such discussion, for the absence of debate on matters concerning human rights is normally indicative of an indifference to them, or worse, a fear of them. (Para 17.8)

42. Implications of the Commission's independence are not always acted upon as clearly or swiftly as they should have been in matters that are generally of an administrative nature. This can be extremely tiresome and time-consuming, especially in respect of matters for which overall budgetary provision already exists. It is also violative of the Principles relating to the Status of National Institutions - the so-called "Paris Principles". The Commission's conduct, and its relationship with Government, must set an example of how the Paris Principles are to be upheld and implemented in practice. Our country should give the lead in such matters and not, itself, show infirmities in understanding their implications. (Para 17.10)