

Report from Forum Members
National Human Rights Commission of India
A Report on some important activities in the year 2003

Introduction

During 2003, the National Human Rights Commission of India addressed a number of sensitive issues which had bearing on the protection and promotion of human rights in the country.

The Commission saw a change of guard with Dr. Justice A.S. Anand taking over as Chairperson on 17 February 2003. Mr Virendra Dayal demitted office having completed his second term as Member, while Mr Justice Y. Bhaskar Rao and Mr R.S. Kalha joined the Commission as Members.

Gujarat:

The Commission has played an active role in regard to the events in the State of Gujarat, beginning with the tragedy that occurred in Godhra on 27 February 2002 and continuing with the violence that ensued, and the process of establishment of justice and due rehabilitation to the victims. The details of successive proceedings of the Commission can be seen on its website www.nhrc.nic.in. During the year under review, it issued notice to the Government of Gujarat on the matter of the protection of victims and witnesses. Deeply concerned about the damage to the credibility of the criminal justice delivery system and negation of human rights of victims, the Commission, on consideration of the report of its team which was sent to Vadodara, filed a Special Leave Petition (SLP) under Article 136 of the Constitution of India in the Supreme Court on 31 July 2003 with a prayer to set aside the impugned judgement of the Trial Court in the Best Bakery case and sought directions for further investigation by an independent agency and retrial of the case in a competent court located outside the State of Gujarat. In this case, the Trial Court had acquitted those who were accused of burning alive 14 persons.

The NHRC has, inter-alia, contended in the SLP that

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

The Commission has also filed a separate application before the Supreme Court of India for transfer of four other serious cases which had been identified in its proceedings of 1 April 2002 and for their trial outside the State of Gujarat. The proceedings are continuing before the Supreme Court.

The Commission has also extended legal assistance to a victim of alleged mass rape at Limkheida in Dahod District, Gujarat during the post Godhra communal disturbances. Ms. Bilkis Yakub Rasul, aged about 25 years, was allegedly raped by a group of persons. Some of her family members were also raped and killed. In her petition to the Commission, she stated that the police informed the court that real accused persons could not be traced and therefore sought the closure of the case. Without any notice to her, the trial court closed the case. She expressed her helplessness to pursue further legal remedies. She requested the Commission to take up her case so that justice may be done, and she be also provided with adequate security as she feared a threat to her life. The Special Rapporteur of the Commission in Gujarat also informed the Commission that Ms. Bilkis wished to pursue her legal remedies in her case and wanted to file a case in the Supreme Court of India but she did not have the means to pursue legal remedies further. The Commission then decided to assist the applicant Ms. Bilkis Yakub Rasul to pursue legal remedies in her case, including grant of financial assistance for the purpose, and the Commission also arranged for legal assistance to the victim through eminent Senior Advocates. With their help, a Writ Petition (Criminal) No. 118 of 2003 was filed by Bilkis Yakub Rasul in the Supreme Court. By its Order of 8 September 2003, the Supreme Court admitted the petition and issued notice to the Gujarat Government and the Dahod Police administration. Ms. Bilkis subsequently informed the Supreme Court that State police under the pretext of further investigation after intervention by the Supreme Court were threatening her. Her counsel, therefore, sought directions from the apex court. The Supreme Court of India ordered the local police to stay their hands “off” the victim. Subsequently, the Supreme Court directed the Central Bureau of Investigation (CBI) to investigate the matter and submit a report to it.

An interim report has been submitted to the Supreme Court by the CBI. The CBI has succeeded in arresting a number of accused persons in this case. The proceedings are continuing.

Right to Food:

The Commission has always maintained that the Right to Food is inherent to a life with dignity and Article 21, which should be read with Articles 39(a) and 47 of the Constitution to understand the nature of the obligations of the State in order to ensure the effective realization of this Right. Article 39(a) of the Constitution, enunciated as one of the Directive Principles fundamental in the governance of the country, required the State to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people as a primary responsibility. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfillment of the obligations of the State set out in Articles 39(a) and 47. The reading of Article 21 together with the obligations of the State under Articles 39(a) and 47, places the issue of food security in the correct perspective. The Right to Food is thus a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution. The requirements of the Constitution preceded, and are consonant with, the obligations of the State under the 1966 International Covenant on Economic, Social and Cultural Rights to which India is a party. The Covenant, in Article 11, expressly recognizes the right of everyone to an adequate standard of living, including adequate food.

The Commission has expressed its opinion that the Right to Food implies the right to food at appropriate nutritional levels. It also implies that the quantum of relief to those in distress must meet those levels in order to ensure that the Right to Food is actually secured and does not remain a theoretical concept. The Commission is of the view that mortality alone should not be considered as the effect of starvation but destitution and the continuum of distress should be viewed

as indicators demonstrating the prevalence of starvation. There was thus a concomitant need for a paradigm shift in public policies and relief codes in this respect.

As a matter of fact, since 1996, the Commission has been dealing with allegations of deaths by starvation in the 'KBK' districts of Orissa on the remit of the Supreme Court to the Commission to pursue and monitor this matter. Pursuant to the Commission's recommendations on interim measures, a number of achievements have been registered in regard to programmes relating to Food Supply and Public Distribution System, Rural Water Supply & Sanitation (RWSS), Primary Health Care, Social Security Schemes, the Soil Conservation Programme, the Rural Development Programmes for employment generation and Afforestation. In the course of the year 2003, hearings were held on the issues raised by this case.

Right to Health:

Recognizing the importance of access to health care, and in particular, access to emergency medical care, the Commission constituted an expert group of eminent medical practitioners to prepare a blueprint for the restructuring of the emergency medical care encompassing public hospitals, private hospitals and district hospitals and also evolve guidelines regarding ambulances and trauma care. The group is expected to submit its report to the Commission shortly.

The Commission organized a two-day Colloquium on Population Policy – Development and Human Rights in January 2003 at New Delhi at which a number of important recommendations were made.

The Commission also proposes to convene a National Consultation on primary health care in April 2004. It is also proposed to hold five regional public hearings on access to health care followed by a National Public Hearing during the course of the current year.

Based on the outcome of National Consultation on Human Rights and HIV/AIDS held in November 2000, detailed recommendations were made to various authorities. Besides, in various individual complaints alleging discrimination in access to education and in access to health care, the Commission intervened to set right the wrong and thereby secure relief for the affected persons. The Core Group on Public Health has recommended certain measures to prevent mother-to-child transmission of HIV/AIDS and follow-up action has been taken by the Commission. The Commission has taken up multi-media campaign to spread awareness about human rights and HIV/AIDS.

Recognizing the implications of sub standard drugs and medical devices on the human rights, the Commission held consultations with authorities in the Union Government, concerned States and NGOs. An expert group has been constituted to go into this issue and evolve concrete recommendations to address this malady.

The illegal trade in human organs is unethical and is a serious violation of human rights. Deeply concerned about this illegal trade in human organs especially in kidneys, the Core Group on Public Health was requested to examine the issue and advise the Commission. Certain recommendations for plugging the loopholes were made by the Core Group. The Chairperson of the Commission, Dr. Justice A.S. Anand has written to the Prime Minister, Shri Atal Bihari Vajpayee and Chief Ministers of all States and Union Territories suggesting a number of remedial measures as advised by the Core Group be adopted to check this pernicious practice. The illegal trade in human organs often involves exploitation of poor people and violation of their human rights. There have been reports of organ trafficking involving clinicians, managers of clinical centers, middlemen and others. The practice of 'organ purchase' has acquired the dubious dimensions of 'organ trade' with touts operating as middlemen, and creation of allegedly false records of a compassionate donation.

Rights of the Disabled

The Commission has been monitoring the implementation of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and has noted that there exists a gap between intentions of the Act and the ground realities. Apart from dealing with individual complaints of discrimination and denial of equal opportunities to differently abled persons, the Commission has insisted upon focus being shifted merely from welfare measures to rights of the disabled. The Commission addressed letters to the Chief Ministers of all States and to the Central Ministers of the concerned departments of the Government of India giving a list of specific steps to ensure the better protection of the rights of persons with disabilities.

Twenty-one National Institutions from the Commonwealth and the Asia Pacific Region met in New Delhi from 26 - 29 May 2003 to discuss a proposal to develop a Comprehensive and Integral United Nations Convention to Promote and Protect the Rights of Persons with Disabilities. The Workshop was organized by the Commission in partnership with the Asia Pacific Forum of National Human Rights Institutions, the British Council and the United Nations Office of the High Commissioner for Human Rights. The Workshop strongly affirmed the need for the development of a comprehensive and integral Convention and made a number of other useful recommendations.

The National Human Rights Commission, the Canadian Human Rights Commission and the Indira Gandhi National Open University have taken up jointly a project on the rights of the disabled. The project seeks to build the capacity of legal practioners, disability rights and human rights activists to address problems of discrimination, marginalization and exclusion of persons with disability.

Rights of Mentally Challenged Persons

Under the directions of the Supreme Court, the Commission is monitoring the functioning of three Mental Hospitals at Agra, Ranchi and Gwalior and programmes for the rehabilitation of mentally challenged persons.

Action Research on Trafficking in Women and Children:

Trafficking in women and children has been a source of major concern of the Commission and it has set up a Focal Point headed by a Member of the Commission to deal with trafficking related matters. In the preceding year, the Commission and UNIFEM jointly began an Action Research Programme on Trafficking in Women and Children in India. Work continued on that project during the year 2002-03. The Institute of Social Sciences, New Delhi is the nodal NGO coordinating the research programme. In consonance with the objectives of the Action Research, eleven research partners have been identified to collect information from the affected districts of Andhra Pradesh, Bihar, Goa, Karnataka, Maharashtra, the North-Eastern States, Rajasthan, Tamil Nadu, Pondicherry, Uttar Pradesh, West Bengal and the NCT of Delhi. The Action Research, in particular, would also cover the metropolitan cities of Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad, which are the demand areas.

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

HIV/AIDS, and the resultant lowering of the age at which children are being trafficked.

To begin with, a one-day Technical Consultation for the National Level Action Research on Trafficking in Women and Children was held at the Institute of Social Sciences, New Delhi on 9 October 2001. This Consultation focused on the methodology of the Action Research. Thereafter, 11 Consultation Meetings/Workshops have been organized in different parts of the country, involving all stakeholders, viz, the local NGOs, the police, government officials and others, with a view to identifying local issues and sensitizing them about the problem of trafficking as well as to facilitate the research initiated by the Commission. The response has been excellent.

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

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

one which will deal with all aspects of trafficking, facilitate detection, arrest and prosecution of traffickers and help rehabilitation programmes.

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

The final report of the Action Research is expected to be completed shortly.

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

A Manual for the Judiciary for Gender Sensitization is also being evolved in cooperation with the Department of Women and Child Development, Government of India. A Sensitization Programme on Prevention of Sex Tourism and Trafficking has also been organized. A joint Project for Combating Cross-Border Trafficking has been taken up with the National Human Rights Commission of Nepal. A Memorandum of Understanding is to be signed shortly.

Abolition of Child and Bonded Labour:

The problems of child labour and bonded labour remained central concerns of the Commission. The situation in the affected States was reviewed by a Member of the Commission and the Special Rapporteurs. Based on such reviews, detailed recommendations were made for addressing this issue. Relevant details regarding number of bonded labourers released, rehabilitated and amount of compensation recommended by the Commission between 1997-98 to 2003-2004 are annexed

Human Rights in Prisons

The plight of under-trial prisoners in the country has for long been of concern to the National Human Rights commission. In a recent letter to the Chief Justices of all High Courts, the Chairperson of the Commission, Dr. Justice A.S. Anand accordingly suggested the regular holding of special courts in jails and monitoring by the Chief Justice/senior Judge of the High Court, monthly review of the cases of under-trials, release of under-trials on personal bonds and visits by District and Session Judges to Jails.

The Supreme Court, in its judgment in Common Cause Vs. Union of India, has issued clear directions for release on bail and for discharge of certain categories of under-trials specified in that judgment. The Commission emphasized the need for a monthly review of the cases of undertrials in the light of this judgment. A number of under-trials are found to be languishing in jails even after being granted bail simply because they are unable to raise sureties. The Commission suggested that cases of such under-trials could be reviewed after 6-8 weeks to consider their suitability for release on personal bonds, especially in cases when they are first offenders and punishment is also less than 2/3 years. The Jail Manuals of all the States contain provisions for the periodic visit of the

District and Sessions Judge, as an ex-officio visitor, to jails falling within their jurisdiction. Besides ensuring an overall improvement in the management and administration of the prison, such visits can help in identifying the cases of long-staying under-trials, which need urgent and special attention. The Commission has observed a marked improvement in the situation in the States where this obligation is being discharged seriously and sincerely by the subordinate judiciary. The Commission, therefore, stressed the need to issue directions for such visits by all the ex-officio visitors to jails falling in their jurisdictions.

The Commission also requested the Chief Justices of all High Courts to keep it informed of the action taken on the above suggestions in order to enable the Commission to circulate such information to other States with a view to bringing about “uniformity” as well as “intensity”. Additionally, the Commission sought their suggestions on ways to deal with the problems of under-trial prisoners.

Among other important interventions by the Commission in this regard were

- Detailed guidelines were issued to various States on the issue of pre-mature release of prisoners
- Encouraged the preparation of a Manual for Jail Visitors by the Commonwealth Human Rights Initiative.

Complaints

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

This number has increased exponentially. By way of illustration, in the first six months of the Commission’s existence, October 1993-31 March 1994, the

Commission registered 496 cases. This number grew to 6,987 in 1994-95; 10,195 in 1995-96; 20,514 in 1996-97; 36,791 in 1997-98; 40,724 in 1998-99; 50,634 in 1999-2000; 71,555 in 2000-01; and 69,083 in 2001-2002. In the year 2002-2003, the number of such cases was 68,779, indicating that a 'plateau' has been reached and that the State Commissions, of whom there are now 14 in the country, are also increasingly receiving, and attending to, complaints.

The procedure of the Commission ensures that every complaint is dealt with according to its merits, by Commission Members individually or sitting in Benches. In respect of many cases, the Commission makes detailed recommendations including recommendations for payment of "interim relief" under Section 18(3) of the Act to the victims of human rights violations or to their family members and/ or directions for initiation of departmental proceedings or prosecution of public servants responsible for violation of human rights.

Review of laws

Protection from Domestic Violence Bill, 2002

The draft Bill on the Protection from Domestic Violence Bill, 2002 was sent to the Commission by the Department of Women and Child Development, Government of India for its views and the Commission gave its detailed comments for modifications in the draft Bill.

Juvenile Justice Act

Deeply concerned over reports of poor implementation of Juvenile Justice (Care and Protection of Children) Act, 2000 and the non-constitution of Children's Homes under this Act in some States, the Commission issued notice to the Chief Secretaries/Administrators of all the States and Union Territories asking them to furnish information in this regard. The Commission continues to monitor.

Model Prison Manual:

The Commission reviewed the draft Model Prison Manual prepared by a National Prison Manual Committee and gave its comments on a number of issues contained in the Draft Manual including, inter-alia, the institutional framework, custodial management, maintenance of prisoners, medical care, contacts with the outside world, leave and special leave of prisoners, premature release of prisoners, undertrial prisoners, women prisoners and staff development. The Commission also recommended that a Prisons Bill, in tune with modern criminological and penological thinking, be enacted to replace the Prisons Act of 1894.

Manual on Bonded Labour:

The Commission reviewed the Draft Manual on the Identification, Relief and Rehabilitation of Bonded Labourers and made a number of suggestions for amendments in the Draft Manual.

Spreading human Rights education and awareness:

In pursuit of its commitment to create Human Rights awareness, the Commission also launched a Journal, which was released by the President of India on 10 December 2002. The Commission continues to publish its newsletter and proposes to launch an e-newsletter also. It also proposes to bring out a series of publications on various Human Rights issues to spread awareness of Human Rights. The Commission organized a number of sensitization training workshops on bonded labour, child labour and human rights in prisons.

Establishment of a Training Division:

In 2003, the Commission established a Training Division to give a fillip to the training efforts. It has undertaken a number of programmes to sensitize civil servants, police personnel and the Commission's own employees on various aspects of human rights.

Dalits

Despite the enactment of the Untouchability (Abolition) Act, Prevention of Atrocities Act, 1989 etc., the plight of dalits has been a matter of concern to the Commission. It has taken a number of initiatives to protect the rights of persons belonging to Scheduled Castes including dalits. Some of those initiatives are given below:

- Redressing individual complaints of rights violations faced by dalits.
- Monitoring the elimination of manual scavenging, bonded labour and child labour.
- Set up a Dalit Cell in 2003 and placed it under the charge of a Member of the Commission.
- Entrusted a research study on the socio-economic conditions of Musahars, a dalit community in Bihar. Based on that study, an action plan has been drawn up for alleviating the conditions of Musahars. The Commission has been monitoring the implementation of the action plan.
- Entrusted a study on atrocities against Scheduled Castes to a senior retired civil servant Mr. K.B.Saxena, who completed it in November 2002. The Commission has taken up the implementation of various recommendations contained in that report.
- Entrusted a pilot study on the socio-economic, political and cultural status of dalit women in Haryana to Maharshi Dayanand University, Rohtak, which is underway.
- With the assistance received from OHCHR, the Commission prepared a handbook entitled 'Discrimination based on sex, caste, religion and disability in order to sensitize teachers. This has been circulated among teacher education institutions in India.
- In 2002, the Commission extended financial support to a Hyderabad based NGO for a pilot project on 'Building awareness on human rights for elected representatives from the dalit communities in rural areas'.

Other important initiatives:

- Appropriate directions were issued on enforced or involuntary disappearances in Jammu & Kashmir; conditions of migrant camps for Kashmiri Pandits reviewed; intervened in a number of cases of terrorist attacks in Jammu & Kashmir on Army officials and civilians to ensure payment of compensation to victims.

- Reviewed the elimination of manual scavenging with concerned authorities.
- Held a number of consultations with NGOs from various regions.
- Issued modified guidelines on the procedure to be followed in cases of encounter deaths to all States.

Conclusion:

Rule of law, justice and protection of human rights are the heart and soul of every democratic set up. The concern that justice and respect for human rights must march hand-in-hand has illumined the path of the Commission over the past decade.
