



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

First Annual Report
2001-02

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

FIRST ANNUAL REPORT 2001-02

(April 2001-March 2002)

INDEX

	E
Preface	
Chapter 1 Introduction—	
· The Protection of Human Rights Act, 1993	1.1
· Establishment of State Human Rights Commission	1.2
· Constitution of the State Commission	1.2
· Maharashtra State Human Rights Commission Rules, 2000	1.3
Chapter 2 Statutory Mandate of the State Commission—	
· Functions of the Commission	2.1
· Focus of the Commission's working	2.1
· Scope and Legal status of the Commission's work	2.2
· Jurisdiction of the Commission	2.3
Chapter 3 Working Procedure of the Commission—	
· Procedural Regulations of the Commission	3.1
· Structure of the Commission	3.1
· Legal wing	3.1
· Investigation wing	3.1
· Administration wing	3.1
Chapter 4 Complaints Procedure and Follow up Actions—	
· Complaints not ordinarily entertainable	4.1
· Processing of Complaints	4.1
· Constitution of Benches	4.1
· Inquiry into Complaints	4.2
· Steps after Inquiry	4.2
Chapter 5 Cases Handled by the Commission—	
· Complaints Received	5.1
· Cases Decided	5.2
Chapter 6 Implementation of Supreme Court Directives Regarding Arrests—	
· Sub-committee within MSHRC to monitor compliance	6.1
Chapter 7 Custodial Deaths and Intervention by the Commission.—	
· Un-dertrial Prisoners- The Supreme Court Directives	7.1
· Procedural Guidelines regarding Reporting and Investigation of Custodial case/ rapes etc.	7.2
· Prison Conditions	7.3
Chapter 8 Promotion of Human Rights Education and Awareness.—	
· Conferences on Human Rights	8.1
· Lectures delivered by the Commission to Promote Human Rights Awareness	8.3
· Interaction with External Groups	8.4
Chapter 9 Administrative Matters and Logistic Support—	
· Staff	9.1
· Premises	9.2
· Resources	9.2
Annexures 1 - 10	A.1-A.23

PREFACE

The Commission is happy to present the First Annual Report relating to year 2001-02 of the Maharashtra State Human Rights Commission.

Since this is the first report we have described briefly the background of the setting up of the State Commission. It would not be out of place to mention that although the Protection of Human Rights Act was enacted as far as 1993 the State Human Rights Commission could be set up as late as 2000 and it took almost one more year to become somewhat functional.

One may say that the Writ Petition (No. 1146 of 1997) filed by Peoples Union for Civil Liberties (PUCL) in the High Court at Mumbai acted as a catalyst in the setting up of the State Human Rights Commission. Vide its order dated 19 February 1999, the High Court directed the State Government to constitute the State Human Rights Commission. It is a matter of conjecture how long it would have taken for the State Government to set up the State Human Rights Commission had the writ petition not been filed.

We understand that any institution in its formative years would have its quota of teething troubles. We wonder whether this State Commission had more than its quota of such troubles. The real problem came in not having a proper place from where the Commission could function. In fact there is no exaggeration in stating that the Chairperson and Members of the State Commission started functioning from their private chambers or residence. Perhaps this state of affairs led to the filing of a public interest litigation in 2001 which was disposed of in October 2001 on the assurance of the State Government of allotting space in the Old Customs House. Meanwhile, the Commission could find some space in the New Administrative Building, opposite Mantralaya, Mumbai. Here too right from day one Commission was constrained by the limited space at its disposal. Therefore the first task before the Commission was to locate a suitable place from which it could function. Ultimately sometime in June 2002 the Commission shifted to its present premises that was earlier known as the Administrative Staff College, Hajarimal Somani Marg, near the heritage building of C.S.T. (earlier Mumbai V.T.). The Commission is still constrained due to lack of adequate place where visitors and parties to complaints can wait. Of course the Commission is optimistic that over time this problem would be solved.

Similarly in order to make the Commission more effective it becomes necessary to increase its present staffing strength. The proposal regarding this is already pending with Government and it is felt before long a solution would be found.

The Commission is happy if this annual report and subsequent annual reports are found useful by all concerned.

We are aware that the publication of this report is very much delayed. This has been due mainly because it took the Commission quite some time to settle down.

Justice A.D. Mane (Retd)
Acting Chairperson

Dr. V. S. Chitnis
Member

M. R. Patil
Member

C. L. Thool
Member

Mumbai :
Dated 15th August 2004.

CHAPTER 1

INTRODUCTION

The history of human rights is the history of human struggle through centuries. Various philosophies that evolved through revolutions and wars led to the development of universal principles of human rights and duly formulated by the United Nations in 1948 as the Universal Declaration of Human Rights (UDHR). This laid down a common standard of achievement for all peoples and all nations. The declaration was followed by two Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights in 1966.

1.2. The United Nations through its instruments and international and regional institutions seeks to promote, protect and implement human rights in a uniform manner throughout the world. The human rights 'instruments' embody political commitment by member states to bring their domestic policies in line with the international code of ethics. With this in view the 'Paris Principles' developed (1991) at a United Nations sponsored meeting of representatives of national institutions held in Paris and endorsed by the United Nations Commission on Human Rights (3rd March 1992) and by the United Nations General Assembly on 20th December 1993 became the foundation and a reference point for the establishment and operation of national human rights institutions world over.

1.3. According to the Paris Principles, the national human rights institutions should fulfill the following requirements:

- Independence guaranteed by statute / Constitution
- Autonomy from Government
- Pluralism of representation including in appointment of members
- A broad mandate based on universal human rights standards
- Sufficient resources and adequate infrastructure support
- A transparent reporting mechanism
- Adequate powers of investigation and inquiry into complaints of human rights violations and reporting to the Government on individual or general issues of importance in the field of human rights
- Responsibility of assisting and encouraging the spread of human rights education, awareness, research, literacy and to promote NGO participation.

The Protection of Human Rights Act, 1993

1.4 India is a signatory to UDHR; it also ratified both the Covenants in 1979. A comparative study of the international human rights law and the Indian Constitution indicates that most of the human rights are enumerated in Part - III of the Constitution under the "Fundamental Rights", which are enforceable by the Courts of law. With a view to bringing about greater accountability and transparency in the administration of justice and to uphold the protection of human rights it was felt necessary to establish an independent forum. To achieve this objective, the Protection of Human Rights Ordinance, 1993 was promulgated by the President of India on 28th September 1993 and the National Human Rights Commission was established on 12th October 1993. A Bill was subsequently passed by the Parliament and the Act came into force with effect from 8th January 1994.

Establishment of State Human Rights Commission

1.5 Though the human rights principles occupy exalted place, what matters to the people is the effectiveness of the executive and the judiciary to render social justice to them. With a view to supplementing the efforts of the judiciary and the executive to protect human rights and providing an easy access to the victims of violation of such rights the Government of Maharashtra vide its Resolution of the Home Department (no. HRC-1099/378/Pol-14) dated 15th January 2000 decided to set up a State Human Rights Commission. This was later followed up by a Gazette Notification on 24th February 2001 vide Home Department No. HRC.22001/66/Pol-14 (Annexure 1) under Section 21(1) of the Protection of Human Rights Act, 1993 leading to the constitution of the Maharashtra State Human Rights Commission. It would not be out of place to mention that the High Court of Judicature at Mumbai in various writ petitions filed by the People's Union for Civil Liberties (PUCL), Committee for the Protection of Democratic Rights (CPDR), Citizen's Organization for Public Opinion, etc. during 1997 and 1998, had issued directions to the State Government in February, 1999 to constitute a State Commission to perform its pronounced duties in the Protection of Human Rights Act. The need for establishing a State Human Rights Commission was also stressed through other judicial decisions, media reports and various intellectual fora.

1.6 The Government of Maharashtra vide its Notification dated 30th May 2001 (of Law and Judiciary Department No. CRC 102K/(117)IX) also specified that in the exercise of the power conferred by Section 30 of the Protection of Human Rights Act, 1993 and with the concurrence of the Chief Justice and Judges of the High Court of Judicature at Bombay, a Court of Session in each district of the State would be a Human Rights Court to try the offences under the Act. (Annexure 2)

Constitution of the State Commission

1.7 Section 21 of the Act provides for the Constitution of the State Human Rights Commission consisting of—

- (a) A Chairperson who has been a Chief Justice of a High Court;
- (b) One Member who is, or has been, a judge of a High Court;
- (c) One Member who is, or has been, a District Judge in that State;
- (d) Two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

1.8 In accordance with Section 22 of the Act the Chairperson and three Members of the Maharashtra State Human Rights Commission were appointed by the Governor on the basis of the recommendations of a Committee comprising of the Chief Minister as the Chairperson, Speaker of the Legislative Assembly, Chairman of the Legislative Council, Minister in-charge of the Home Department and the Leaders of the Opposition in the Legislative Assembly and the Legislative Council as members. (Annexure 3).

1.9 The first State Human Rights Commission became operational when the Governor of Maharashtra issued warrants of appointments on 6 March 2001. Accordingly the Chairperson and Members assumed their respective office in the Commission on the dates indicated below :—

- (1) Justice (Retd.) Shri Arvind V. Savant as Chairperson on 12th March 2001
- (2) Justice (Retd.) Shri A.D. Mane as Member on 22nd March 2001
- (3) Dr. V. S. Chitnis as Member on 27th March 2001
- (4) Shri M. R. Patil as Member on 1st April 2001.

One position of a Member remained vacant during the period under report.

1.10 In accordance with Section 21 (3) and 27(1)(a) of the Act, the State Government appointed Shri Satish Tripathi, Principal Secretary, Home Department to hold the additional charge of Secretary of the State Commission and he worked as an O.S.D. till April 2001. Thereafter Shri Gorekh Megh, Secretary, General Administration Department, Mantralaya held the additional charge of the Secretary of the SHRC from April 2001 till the end of the reporting year.

Maharashtra State Human Rights Commission Rules, 2000

1.11 The Government promulgated the Maharashtra State Human Rights Commission Rules, 2000 and published them in the gazette of the State Government vide Home Department Notification No. HRC.1099/378/CR-49/Pol -14 dated 18th August 2000 (Annexure 4). Among other things, the Rules describe the service conditions of the Chairperson and Members of the Commission.

CHAPTER 2

STATUTORY MANDATE OF THE STATE COMMISSION

Functions of the Commission

As provided in Section 12 of the Act, the State Commission shall perform all or any of the following functions:—

(a) Inquire, on its own initiative or on a petition presented to it by a victim or any person on his behalf, into complaint of—

(1) Violation of human rights or abetment thereof or,

(2) Negligence in the prevention of such violation by a public servant;

(b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) Visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;

(d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(g) Undertake and promote research in the field of human rights;

(h) 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;

(i) Encourage the efforts of non-governmental organisations and institutions working in the field of human rights; and

(j) Such other functions as it may consider necessary for the protection of human rights.

2.2 Thus the Commission has been assigned a variety of responsibilities from inquiries into individual complaints of human rights violations by Public Servants to societal issues impinging on human rights in the State. A variety of programmes relating to social issues, which are inter-related in more than one way, is being under taken by the Commission. Such programmes are very wide in their scope, ranging from many aspects of right to life, liberty – the police, the prisons, life with dignity, spreading primary education, abolition of child labour, problems of health, environmental issues and nutritional problems which adversely affect the physical and mental growth, neglected orphans and other unfortunate children in the State.

2.3 Keeping in view its wide ranging responsibilities and the expectations of the people of the State, the Commission may take up the following activities:—

- Steps to check custodial deaths, rape and torture
- Systemic reforms police, prisons and other centres of detention
- Elimination of bonded labour and child labour
- Human rights of persons affected by HIV/AIDS
- Public health as a human rights issue

- Rights of the vulnerable groups such as women and children, minorities, Scheduled Castes and Scheduled Tribes; people displaced by mega projects; and those affected by major disasters such as cyclones, earthquakes, landslides and also by disasters like gas leaks, epidemics and riots.
- Promotion of human rights literacy and awareness in the society including human rights education for the executive and the police.

2.4 While pursuing the above responsibilities the Commission must act and be seen to act at all times with autonomy and transparency. It is on these two basic principles that the work of the Commission must rest if the Commission is to sustain the faith reposed in it by the people of the State. It has been the Commission's endeavour since its inception to observe these principles in every aspect of its working.

2.5 Transparency and autonomy are the two pillars on which the Commission's work rests. The Statute and the Regulations framed by the Commission for conducting its business clearly portray the manner in which the Commission receives petitions, provides copies of its reports and decisions to the petitioner and place its reports before the Legislature and the people. The Commission's openness also depends on its relationship with non-governmental organisations, human rights activists, researchers, educational institutions, the media and the public; this would also be helpful in developing a human rights culture in the society.

2.6 Poverty, inequality, discrimination, exploitation, torture, etc undermine the human rights in our society thereby fuelling social unrest and violence and increasing the precariousness of social, economic and political rights. The Commission undertakes inquiries and investigations into such violations of human rights with a view to ensuring equal opportunities and to empower people to gain equitable access to productive resources. While doing so the Commission's endeavor has been to ensure realization of social justice by observing principles of equity. The MSHRC advocates the realization of human rights as a part of sustainable human development, an approach that places people at the centre of all developmental activities and promotes human dignity as a prime requirement.

Scope and Legal Status of the Commission's work

2.7 Section 2(1) (d) of the Act defines human rights as "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India". Human rights are uniform, universal, indivisible, integral inalienable, interdependent, natural and basic in nature.

2.8 As laid down in Section 39 of the Protection of Human Rights Act, 1993, every member of the Commission and every officer appointed or authorized by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860). In order to enable the Commission to enquire into human rights violation in an effective manner, the Commission has been given certain legal powers, as mentioned in Section 13 of the Act, in respect of following matters:—

- (a) Summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) Discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses or documents;
- (f) Any other matter, which may be prescribed.

(ii) Prisoner - Francis John from Arthur Road Prison, Mumbai against Superintendent of the Prison.

(iii) Sue motu case relating to setting fire to the homes of Paradhis at Kalamb, Dist. Osmanabad and other atrocities by villagers.

Administration Wing

3.9 Besides, being the Chief Executive Officer of the State Commission the Secretary also heads the Administration wing of the Commission. The function of this wing may be broadly classified under two heads, namely, Housekeeping & personnel matters, and Accounts headed respectively by a Desk Officer and Superintendent. During the year 2001-02 Shri Jogdand and Shri Shirke worked as Superintendent looking after both accounts and administrative matters, later on Shri Hirde was appointed as the desk officer to look after the personnel and administrative matters.

CHAPTER 4

COMPLAINTS HANDLING PROCEDURE

The Commission can inquire, on its own initiative or on a complaint presented to it by a victim of human rights violation or by any person on his behalf, into a complaint of violation of human rights or abetment thereof or into negligence in the prevention of such violation by a public servant. Such complaints may be in Marathi, Hindi, English or in Gujarathi. The complaints are expected to be self-contained. No fee is charged for filing a complaint. On the receipt of a complaint the Commission may ask for further information, and affidavits in support of allegations whenever considered necessary. The Commission may in its discretion, accept telegraphic complaints and complaints conveyed by FAX.

Complaints not ordinarily entertainable

4.2 The Commission does not entertain complaints of the following nature and such complaints may be dismissed in limini;

- (a) Vague, anonymous, pseudonymous, illegible, trivial or frivolous complaints;
- (b) Complaints in regard to events which happened more than one year before the making of the complaint;
- (c) Complaints relating to civil disputes, such as property rights and contractual obligations;
- (d) Complaints relating to service matters and labour or industrial disputes;
- (e) Allegations that are not against any public servant;
- (f) Allegations that do not make out any specific violation of human rights;
- (g) Any matter which is subjudice before a court or a tribunal;
- (h) Any matter that is covered by a judicial verdict or a decision of the Commission;
- (i) Where a copy of the complaint addressed to some other authority is received by the Commission; and
- (j) Any matter which is outside the purview of the Commission.

Processing of complaints

4.3 Every complaint received by the Commission is first registered and a case number given. It is then scrutinized in order to decide its entertainability. On the completion of scrutiny Form A (entertainable) or Form B (not entertainable), as the case may be, is filled in. This form has other details like name of the complainant and respondent, place, date and time of occurrence of incident and nature of violation. All petitions or complaints, irrespective of whether they are entertainable or not are distributed amongst the Members by following a sequential method. A final decision on the complaint is taken by a Member, deciding singly or jointly with another (or more) Member(s).

Constitution of benches

4.4 The cases are normally heard by single benches. However, a division bench or a full bench is constituted according to the importance of the case as provided in Regulation 12. The headquarter of the Commission is at Mumbai. However, the Commission can hold its sittings outside its headquarters as provided in Regulation 35.

Inquiry into complaints

4.5 The Commission while inquiring under Section 17 into complaints of violations of human rights may call for information or report from the State Government or any other authority or organisation subordinate thereto within such time as may be specified by it. In case the information or report called for is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own. On the other hand, if on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the Government or concerned authority, it may not proceed with the complaint, and inform the complainant accordingly. Alternately the Commission may, having regard to the nature of the Complaint, directly initiate an inquiry.

4.6 The Commission may be required to ascertain the factual position on the basis of field inquiries and investigation pertaining to the inquiry. Section 14 of the Act provides that the Commission may, with the concurrence of the Government, utilize the service of any officer or investigation agency of State Government. The Commission may also refer a matter to its own investigation wing. The officer or agency investigating into such matters has powers as mentioned in Section 14 (2), including that of summoning and informing the attendance of any person and examining him, subject to the direction and control of the Commission.

Steps after inquiry

4.7 As provided under Section 18 of the Act, the Commission may take any of the following steps upon the completion of an inquiry held under this Act:

(1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

(2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family, as the Commission may consider necessary;

(4) subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;

(5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

CHAPTER 5

CASES HANDLED BY THE COMMISSION

As mentioned earlier the State Human Rights Commission came into existence on 12.3.2001. The first complaint received during the year 2001-02 the first year of the Commission, was on 30.3.2001. In all 1458 complaints were received during the year by the Commission. It is interesting to note that this includes 4 complaints received from outside the State of Maharashtra. This being the first year obviously there was no carry forward of complaints from the preceding year. The substantial number of complaints received from first year perhaps indicated not only the awareness regarding inception of the Commission but more than that the pent up grievances of the victims.

Complaints Received

5.2 The table below shows the revenue-division-wise break up of the complaints received :—

Division	No. of complaints received
Kokan	782
Pune	222
Nashik	143
Amravati	100
Nagpur	91
Aurangabad	116
Total . . .	1454

The above table shows that the largest number of complaints were received from the Kokan division (782) followed by Pune division (222). The least number of complaints (91) were received from the Nagpur division. (Details are at Annexure 5)

5.3 Looking to the spread of the complaints received from the various districts of the State it was seen that complaints were received from all the 35 districts. The largest number of complaints were received from Greater Mumbai (Mumbai and Mumbai suburban districts) and Navi Mumbai. This was followed by Thane and Pune districts, in that order. Only 2 complaints were received from Gadchiroli district and 3 from Sindhudurg district.

5.4 As it to be expected larger number of complaints were received from the urban areas and also from places located nearer to the Commission's headquarter at Mumbai.

5.5 The largest number of complaints were received against the police department. Out of the 1458 complaints received 474 complaints were against the Police Department and 108 complaints against the Jail Department. These were followed by the Revenue Department and the Municipal Corporation / Council. It is interesting to note that 25 complaints were also received against the judiciary and 51 against the Government of India.

5.6 The unfortunate aspect of the complaints received is that many of the complaints are against such departments which are actually charged with the responsibility of protecting and promoting the human rights of the citizens of the society.

6.7 The circular issued by the Commission, is applicable to all authorities – both Central and State – operating within the State of Maharashtra and vested with the power of arrest including the police, forest, customs, enforcement, etc.

6.8 The Commission made a request to the Government to make additional provision for administrative and financial assistance to enable the Sub-Committee to carry out the task assigned it by the Supreme Court. The Sub-Committee decided to make surprise visits to police stations and other centres of detention. Accordingly the Members inspected and made surprise checks of some police stations. The Sub-Committee observed the following :—

(1) The Supreme Court directives were actually made known to police personnel and were being followed to a large extent even in rural areas.

(2) District Control Room register was maintained but several columns were kept blank.

(3) Notice Boards were displayed prominently outside police station, clearly setting out rights of arrestees.

(4) Constant monitoring of the requirements was necessary.

6.9 The Sub-Committee acting on a press item under the caption “Charge and Retreat is the Newest Police Beat”, (The Times of India dated 31st March 2002) directed investigation by the Spl. IGP of the Commission about the allegation that Mumbai police continued to disregard the Supreme Court directives and accused were being arrested merely on suspicion and subsequently released for want of evidence. The investigation by Spl. IGP revealed that the news item was based on vague information and not on specific instances. The purpose of the press reporters was to make a story in view of arrest of Mohammad Afroz under the POTO on suspicion of being a member of Al-Qaida terrorist outfit and subsequent withdrawal of charge under POTO. These findings were brought to the notice of the Supreme Court through an affidavit.

6.10 The Sub-Committee also prepared a format (Annexure 7) for surprise checks of police stations covering relevant Supreme Court guidelines so as to standardize the inspection format. The periodic responses received from various authorities in the State by way of compliance of the guidelines were scrutinized by the Sub-Committee.

CHAPTER 7

CUSTODIAL DEATHS AND INTERVENTION BY THE COMMISSION

Right to human dignity has been recognised in the constitution as a component of fundamental rights. The most remarkable feature of the right to human dignity is that the Supreme Court has upheld the dignity of even a person behind the bars. But custodial violence, including torture and death in lockups, strikes a blow at the rule of law. A criminal does not cease to be a human being merely because he is convicted of a criminal offence.

7.2 In *Sunil Batra vs. Delhi Administration*, the Apex court has observed "In our constitutional order, it is axiomatic that the laws do not swallow up the fundamental rights of the unfree" Again in *Charles Shobraj vs. Superintendent, Central Jail, Tihar, New Delhi*, the Apex Court observed "Imprisonment does not spell farewell to fundamental rights". In *State of Andhra Pradesh vs. Challa Ram Krishna Reddy*, it was rightly observed by the Supreme Court that: "Right to life is a basic human right. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. A prisoner, be he a convict or an undertrial or a detainee does not cease to be a human being. Even when lodged in a jail, he continues to enjoy all his fundamental rights including the Right to life guaranteed to him under the Constitution."

7.3 A death in custody is a public matter requiring impartial investigation for the protection of individual interests of family of the deceased as well as of society in general. The vulnerability of prisoner in custody is due to his total dependence on his custodians for proper care and medical attention. According to various United Nations principles of medical ethics, the health personnel, particularly the physicians, have a duty to provide the prisoners with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned.

Under-trial Prisoners—The Supreme Court Directives

7.4 The problem of under-trial prisoners has now assumed an alarming dimension. Almost 80% of prisoners in Indian jails are under-trials. The majority of under-trial prisoners are people from poor and underprivileged sections of the society with rural and agricultural background. (Source: Annual Reports of NHRC) The Supreme Court in its landmark judgment in *Common Cause (a registered society) Vs. Union of India* (1996) has given the following directions regarding the release of under-trials on bail :—

(a) Under-trials accused of an offence punishable with imprisonment up to three years and who have been in jail for a period of 6 months or more and where the trial has been pending for at least a year, shall be released on bail.

(b) Under-trials accused of an offence punishable with imprisonment up to 5 years and who have been in jail for a period of 6 months or more, and where the trial has been pending for at least two years, shall be released on bail.

(c) Under-trials accused of offences punishable with imprisonment for 7 years or less and who have been in jail for a period of one year and where the trial has been pending for two years shall be released on bail.

(d) The accused shall be discharged where the criminal proceedings relating to traffic offence have been pending against them for more than 2 years.

(e) Where an offence compoundable with the permission of the court has been pending for more than 2 years, the court shall after hearing public prosecutor discharge or acquit the accused.

(f) Where non-cognizable and bailable offence has been pending for more than 2 years without trial being commenced the court shall discharge the accused.

(g) Where the accused is charged of an offence punishable with fine only and not of recurring nature and the trial has not commenced within a year, the accused shall be discharged.

(h) Where the offence is punishable with imprisonment up to one year and the trial has not commenced within a year, the accused shall be discharged.

(i) Where the offence is punishable with imprisonment up to 3 years and has been pending for more than 2 years the criminal courts shall discharge or acquit the accused as the case may be and close the case.

7.4 However, the directions of the court shall not apply to cases of offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act, 1947 or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, (c) Essential Commodities Act, 1955, Food Adulteration Act, Acts dealing with environment or any other economic offences. (d) Offences under the Arms Act, 1959, Explosive Substances Act, 1908, Terrorist and Disruptive Activities Act, 1987, (e) Offences relating to the Army, Navy and Air Force, (f) offences against public tranquility and (g) offences relating to public servants, (h) offences relating to elections, (i) offences relating to giving false evidence and offences against public justice, (j) any other type of offences against the State, (k) offences under the taxing enactments and (l) offences of defamation as defined in Section 499 IPC. The Supreme Court has given further directions that the criminal courts shall try these offences on priority basis. The High Courts are requested to issue necessary directions in this behalf to all the criminal courts under their control and supervision.

7.5 These directions of the Supreme Court aim at streamlining the process of grant of bail to the under-trials and make it time efficient. The judgment, however, does not provide for suo motu grant of bail to the petitioners by the trial court. This implies that an application would have to be made to move the Court for grant of bail. There is also no mechanism in the courts to automatically dispose of suitable cases. They are dependent upon filing of bail petitions and more important on the production of prisoner in time.

7.6 It appears that some exercise was made on these guidelines once only. It may be necessary to undertake periodical survey. This needs a high degree of co-ordination between the judiciary, the police and the prison administration. At least cases of under-trial prisoners languishing in various jails for long periods need to be reviewed urgently.

Procedural Guidelines regarding Reporting and Investigation of Custodial Deaths / Rapes Etc.

7.7 Prior to the establishment of the NHRC, all cases of deaths in police custody were dealt with according to the instructions given by the State Government and the Director General of Police from time to time. According to Section 176(1) Cr.P.C. inquest reports in such cases are prepared by an Executive Magistrate and Magisterial inquiry held in all cases. All such cases in Mumbai City were handled by the Coroner under the Coroners Act 1871 and the police investigation was done by the Crime Branch. In other places in Maharashtra the investigation was done by the State C.I.D. After establishment of the NHRC in 1993, the Government of Maharashtra (Home Dept) vide circular No. MUR 0790/CR-158/POL-11 dated 22-11-1990 issued detailed instructions in the matter and the District Magistrates were directed to report to the Home Department about such deaths within 24 hours.

7.8 In 1997 a Proforma was prescribed for sending information about the custodial death cases to the NHRC. Again the State Government issued instructions vide Govt. Resolution No. HRC 0995/34/POL-14 dated 18-1-99 regarding video-filming of the post mortem examination in all cases of deaths in police custody and prisons. In order to streamline the procedure the NHRC issued instructions vide its letter dated 5-1-2001 to the State Govt. reiterating that the initial report about the occurrence of a custodial death must be followed by the post mortem report, Magisterial Inquest Report/video-graphy report of the post mortem, etc. These instructions were also circulated to all the field officers in the State.

7.9 Consequent upon the setting up of the Maharashtra State Human Rights Commission in March 2001, the State Government issued instructions vide Circular No. HRC 132001/Misc. 45/Pol. 14 dated 17.4.2001 to all concerned officers that henceforth reports regarding custodial deaths in police custody, prisons, juvenile homes and similar institutions should also be submitted to the Maharashtra State Human Rights Commission (Annexure 8). Accordingly, the concerned officers are now required to give intimation of custodial deaths to the MSHRC through wireless message or telegrams or fax; besides they are also required to send report of inquest panchnama, post mortem report and information in proforma prescribed by the Commission (Annexure 9).

7.10 In the year 2001-02 the Commission received 119 custodial death cases.

Prison Conditions

7.11 Visiting prisons is one of the important statutory functions of the Commission. Section 12(c) of the Protection of Human Rights Act, 1993, authorises the Commission to visit, under intimation to the State government, any jail or any other institution under the control of State Government where persons are detained or lodged for purposes of treatment, reformation or protection, in order to study the living conditions of the inmates and make recommendations thereon.

7.12 There are serious problems of overcrowding, lack of sanitation, poor medical facilities, inadequate lights and diet. The problem of crowding in prisons is getting more acute day by day. The statistical information regarding accommodation and actual population in various prisons in Maharashtra State as on 1/1/2002 is given at Annexure 10.

7.13 Dr. Vijay Chitnis, Member, visited Nasik Road Central Prison on 21-22 January 2002, and Registrar of the Commission Shri M.P.Kukday visited District Prisons at Alibaug (Raigad) on 21.12.2001, Ratnagiri on 21 and 26 December 2001 and Sawantwadi (Sindhudurg) on 28-29 December 2001 and Sub-jails at Vengrula on 27 December and Chiplun on 30 December 2001, and discussed with the concerned officials about the prison conditions and the problems experienced by them to meet the human rights requirements.

7.14 The study of prison administration in Maharashtra and the facts collected from the Prison officials revealed the following:—

(i) The Prisons Department is headed by an Inspector General of Prisons with Head Quarters at Pune. There are four Regions – Western Region, Pune; Eastern Region, Nagpur; Southern Region, Mumbai and Central Region, Aurangabad each headed by a Deputy Inspector-General of Prisons.

(ii) The 35 prisons in Maharashtra are categorised as—

- | | |
|--------------------------------|----|
| (1) Central Prisons | 08 |
| (2) District Prisons Class I | 11 |
| (3) District Prisons Class II | 14 |
| (4) District Prisons Class III | 02 |

(iii) Out of the 11 Class I prisons two prisons are open prisons - at Yervada and Paithan - for well-behaved prisoners, whereas the prison at Ratnagiri is a Special Prison for hardened and habitual convicts. Among the Class II Prisons, there is an open colony at Atpadi for well-behaved convicts who are allowed to stay with their families; their sentence is suspended by the State Government under section 432 G.P.C. on recommendations of I.G. Prisons.

(iv) The prison officials feel that overcrowding in jails is perhaps the most serious problem. There are about 35% more inmates in the prisons in the State than the authorised accommodation. The crowding exceeds by more than 100% in at least 9 jails; this is the root cause of various problems and restricts the human rights of prisoners as well as prison staff and affects the prison discipline and segregation rules. (v) Maharashtra is one of the States which provides the least for the maintenance, development and welfare of prisoners. The design of most of the prisons is very old and is not meant for reformation and rehabilitation of prisoners through scientific correctional methodology. A lot of structural changes are required so as to have adequate place for sleeping, recreation, dining, work, sanitation, medical care for inmates and office space for the staff.

7.15 The significant observation by various investigation agencies and by human rights commissions is that the police and prison officials receive inadequate or no training, to enable them to identify prisoners who are at risk either through physical or mental illness, injury or self-harming tendencies. Failure to identify such prisoners amounts to a serious breach of duty by the police and prison authorities. It is essential to develop skills to make preliminary assessments based on known history and observation followed by expert medical attention and treatment. In a certain case reported to the Commission, the prisoner died of tuberculosis within a few weeks after admission to a jail. Such incidents can probably be prevented if the medical history of the prisoner is known and proper treatment is given in time.

7.16 The prisoners can also be at risk due to alcohol or drugs withdrawal. In fact in such cases there are a number of recognizable symptoms displayed by the prisoner. The tendency of self-harm due to depressed state of mind or some other physical or mental condition such as alcoholic intoxication, previous threats or attempts to inflict self-injury and the extent of anger, aggression and emotional disturbance are important areas in which training needs to be imparted to the prison officials. There is perhaps a need to have separate padded cells for such prisoners requiring special monitoring under strict medical supervision.

CHAPTER 8

PROMOTION OF HUMAN RIGHTS EDUCATION AND AWARENESS

One of the most important functions laid down by the Protection of Human Rights Act, 1993 under Sec. 12 (h) is to "spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means". The main thrust of this function is to create a human rights culture among the masses through human rights education and awareness. Towards this responsibility, the Chairperson and Members participated in a number of national and state level seminars and addressed various issues.

Conferences on Human Rights

8.2.1 The National Human Rights Commission New Delhi organised a seminar on "Health as a Basic Human Right" in New Delhi, on 11 - 12 April 2001. The Chairperson of the Commission attended this Seminar and contributed significantly to the discussion.

8.2.2 A conference was organized at the instance of the State Commission on 16 May 2001 at Nagpur. The Inspector General of Police, Nagpur, all District Magistrates, all District Superintendents of Police, Commissioner of Police and other officers attended the Conference. On this occasion on behalf of the Commission (Shri. M.R. Patil, Member) it was declared that the officers in the Police department are duty bound to maintain law and order and also to protect the human rights of the public; it was, therefore, essential to make them function effectively by sensitizing them with the concept of human rights and their role in upholding the rights in a civil society. It was also impressed upon the participants that they have to perform in a democratic society and they are accountable in upholding the right to life of the people.

8.2.3 A Conference was arranged by the Commission on 'Human Rights of Women' on 24 June 2001 at Nagpur. Shri M R Patil, Member stated that though human rights for women are protected under the international law as well as in the national laws, still the women themselves are not fully aware of this. It was necessary to impart adequate training to the Government officers of law enforcement and other functionaries which will enable them to protect human rights of women.

8.2.4 Yashwantrao Chavan Academy of Development Administration (YASHADA), Pune organized a training programme for all functionaries of the Government on 6 and 7 July 2001 at Pune. This programme was attended by Head of the Department and Officers of the Police, Education, Jail and Welfare Departments. In his address, Shri M R Patil, Member of the Commission expressed the paramount need for the sensitization of the various departments in to the protection of human rights and also to make them aware how some of their actions which could amount to violation of human rights.

8.2.5 In a Refresher Course on Human Rights organized by University Grants Commission (UGC) on 23 & 24 July 2001 at Aurangabad, Shri M R Patil, Member insisted on inculcation of human rights as an important subject at all levels from primary to higher education.

8.2.6 Maharashtra State Women's Council organised a South-Asia regional workshop on "Rehabilitation of Women and Children Rescued from Sex Trafficking" on 22 - 23 September 2001, at Aurangabad. Justice Arvind Sawant, Chairperson of the Commission pleaded for an intensive preventive programme and observed, "...the fact that only a small percentage of the rescued girls want to return to respectable life is not a very heartening situation. We feel skeptical about the possibilities of rehabilitation of sex-workers on a large scale and this all the more impresses upon us the need, desirability and feasibility of an intensive preventive programme."

8.2.7 The "Save India Society" organised a South-Asian Conference on "Controlling Trafficking and Sexual Exploitation of Children- Review and Planning " on 14 - 15 October 2001 at Goa. The Chairperson Shri Justice Arvind Sawant presented a paper on 'Human Rights and Child Abuse' and reviewed the various socio-legal aspects of the problem. He noted that in the Action Plan of the Government of Maharashtra the following steps were being taken:

(1) Since the girls cannot be sent out of the Protective institution for training and skill impartation, ITI institutions should come into the protective institution to provide them with crash courses.

(2) In Maharashtra, there is a separate branch of police to help and protect the tourists but their role at present is very limited. There is a need to increase their mandate. The Tourist Police should be trained to be alert to incidents of abuse and exploitation.

(3) A proper mapping and data research base should be prepared to formulate specific plans of action.

(4) It is proposed to put up a building at Deonar to accommodate the rescued girls/women and to provide facilities to them like counseling, recreation, training, playground etc.

(5) The State Government plans to curb trafficking through :—

(a) Awareness

(b) Prevention of illegal migration from neighboring countries/states;

(c) Rescue of women/girls from brothels;

(d) Counseling, training and rehabilitation and

(e) Provide training and sensitization workshops for the staff of the Protective Homes on a regular basis. .

8.2.8 Dr. Vijay Chitnis, Member of the State Commission was invited to chair a session in the seminar on "Terrorism, Internal Security and Human Rights" under the Leslie Sawny Programme at D.Y. Patil College, Nerul, Navi Mumbai on 20 January 2002 where he presented a paper on "Terrorism: Some Socio-legal Aspects". The paper visualized three types of terrorism: Establishment, Anti-establishment and Professional /Criminal Type. The objective of establishment terrorism is social solidarity through compliance with coercive power in order to support the values and norms of the establishment. Anti-establishment terrorism is use of force and coercion to promote or support anti-establishment values or norms. The third type of terrorism namely the professional criminal terrorism is a species of organised crime. Organised criminality is characterized by (i) Planning, (ii) Leadership, (iii) Association of persons, (iv) Network of activities and (v) Secrecy. The paper also analysed the sub-culture of violence and legal control of terrorism.

8.2.9 Dr. Vijay Chitnis was invited to a seminar on "Custodial Violence and Custodial Deaths" organised by YASHADA (Yashwantrao Chavan Academy of Development Administration), Pune for evolving guidelines and norms to be followed in resolving issues connected with violation of Human Rights of the persons in custody or prison. The following were the consensus observations and recommendations :—

(i) The steep rise in violation of human rights in custodial detention and imprisonment is serious and various forms of custodial violence are seen mindlessly practiced by custodians. The spectrum of repulsive violation ranges from infliction of torture, cruel, degrading and inhuman treatment for both extra-legal and perceived legal purposes to committing rape and summarily executing those in custody.

(ii) It is indeed disconcerting that even some public spirited NGO's are not above board and they are found to be not free from the stigma of violating human rights in custodial homes or abetting them. Such broad banding of violation of human rights in custody only suggests an endless breach of rights by those in authority.

(iii) It is pertinent to note that through such violation, those guilty at once abnegate the sanguine and forward-looking priorities of the Constitution and the laws of the land with respect to human rights.

8.2.10 Dr. Vijay Chitnis also attended a National Seminar on "Human Rights and Terrorism" conducted by the Institute of Human Rights and Post-Graduate Department of Law of Nagpur University in March 2002. He presented a paper on "Terrorism and Organised Crime" in which he took a review of international terrorist incidents and observed that beginning with 1966, the number of international terrorist incidents increased sharply. There were more than 6,700 incidents between 1968 and 1970, with slightly more than half of them occurring in Western Europe. Although about 10% of the incidents took place in North America, citizens of the United States and Canada accounted for almost 40% of the victims in such attacks. Terrorist attacks have also been growing more speedily, and the political complexion of terrorist groups has become more varied. International terrorist incidents, which caused casualties, increased between 1968 and 1980 at a rate that was substantially greater than that of overall incidence of attacks. During this period 3,668 persons were killed and 2474 wounded.

Lectures Delivered by the Commission to Promote Human Rights Awareness

8.3.1 The Chairperson while delivering the inaugural address at the Centre for International Strategic and Development Studies of the University of Mumbai on 7 May 2001 said that Human Rights implied that human dignity is to be recognized and respected not only at the national but also at the international level. He further clarified that the United Nations Charter ushered in a new international law of human rights in the sense that for the first time in the history of mankind human rights were being universalized and every individual irrespective of his caste, creed or nationality could claim them as a member of human society. He also clarified the role of the judiciary and the Human Rights Commissions in protecting and promoting human rights.

8.3.2 The Chairperson was invited by Rotary Club of Mumbai to speak on the 'Role and Functions of Human Rights Commission' on 22 May 2001. He explained the basic concept of human rights which signify rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India. He referred to the two international covenants viz. (i) Covenant on Civil and Political Rights and (ii) Covenant on Economic, Social and Cultural Rights. He also explained the role and functions of the Commission in protecting Human Rights, by providing an accessible forum to the common man who suffers violation of Human Rights day in and day out.

8.3.3 The Chairperson delivered a talk on the same subject at the Y.B. Chavan Legal Aid and Advice Forum on 31 May 2001. On this occasion he observed: "this is a new experiment in our State, though the law was enacted in 1993. With the active participation of a vigilant Bar that we have in Mumbai and dedicated NGO's...., let us try to make it a success."

8.3.4 The Chairperson also delivered a talk on the same topic on 2 June 2001 at the Divisional Commissioner's office, Aurangabad, when he explained the procedure being adopted by the Commission in redressal of the grievances of the people approaching the Commission.

8.3.5 The Chairperson was invited to deliver a talk on "Implementation of Human Rights under Indian Constitution" which was organised by the Bar at Cochin. On this occasion he observed : " the Constitutional format in respect of human rights, is a remarkably significant and unique attempt, designed with a hope that, one day, the tree of liberty would bloom in memory of the race which fought for well-nigh three hundred years for securing freedom from British rule and they found expression in the form of fundamental rights when the Constitution was enacted".

8.3.6 The Flag Officer, Western Naval Command, Mumbai invited the Chairperson to deliver a talk on the same subject in December 2001. He dwelt on significance of the humanitarian laws and observed, "as the world gets smaller, individual tolerance and respect for differences among people becomes more urgent. Artificial barriers cannot long stand in a shrinking world that seeks security, stability, expanded freedoms and prosperity".

8.3.7 In order to sensitized the Police and Revenue Officers at the District level and lower levels, a meeting of Revenue, Police and Z.P. Officers was conducted on 28 February 2002 at Nagpur, in which Shri M R Patil, Member introduced the subject of human rights and discussed their duties to protect the human rights of people.

Interaction with External Groups

8.4.1 The formation of State Commission was long awaited by social groups, activists and NGOs. Therefore after the establishment of the Commission, there was a flow of visitors, interviewers, media persons, social activists and jurists making anxious queries about the working of the Commission, its procedures and its future plans for spreading human rights literacy and awareness.

8.4.2 An NGO named Vidhayak Sansad published a special issue of its Marathi newsletter "Samarthan" detailing the Maharashtra State Human Rights Commission and the provisions of the Protection of Human Rights Act, 1993.

8.4.3 India Institute of Workers Education, Kurla (West), Mumbai sought assistance from the MSHRC in sensitising the Central Labour Officer - trainees on the subject of human rights of victims of industrial disasters. Shri Subhash Avate, Spl. IGP (Investigations) MSHRC addressed the trainees on 12 January 2002 and advised them to utilise the training for protecting human rights of workers who suffer due to accidents and other disasters in industries.

8.4.4 The Rotary club of Bombay North organised a programme in Arthur Road Prison, Mumbai for health check-up and diagnosis of under-trial prisoners. Spl. IGP (Investigations) of MSHRC attended the programme and emphasised the need for proper health care and treatment of inmates; he appreciated the efforts of the jail authorities and "Prayas" an NGO for looking after the welfare of the prisoners.

8.4.5 The Commission liaised with various NGOs with a view to preparing a list of NGOs who were active in the field of human rights.

(ii) Investigation wing.—9 posts including the post of Inspector- General of Police and Superintendent of Police and 2 Police Inspectors. However 3 posts (Special Inspector-General of Police, Superintendent of Police and Police Inspector) were filled in during the year 2001-02.

(iii) Administration wing.—12 posts including the Secretary, Desk Officer and the Superintendent.

Premises

9.8 In the beginning, the Government of Maharashtra could not provide any accommodation. The Chairperson heard cases in his personal office; the Secretary of the Commission, who was also a Secretary of G.A.D. (Border Dispute) was handling the Commission's work in his office chamber provided him by the G.A.D. in the New Administrative Building, Opp. Mantralaya, Mumbai. The office staff used to sit in a portion of the office of the Home Department of Government of Maharashtra in the same Administrative Building.

9.9 Initially the Government of Maharashtra vide its circular No G.A./11.01/ C.N.15/2001/22 dated 21st April 2001 allotted 4000 sq ft area in the New Administrative Building for the Commission's office. This area was occupied by the Directorate of Economies & Statistics and the Directorate of Industries. Subsequently this allotment order was cancelled and in its place the Government allotted about 4000 sq ft area in Worli (Government Transport Services) by its circular No. G.A./1101/ C.N.15 /2001/22 dated 16/5/2001. However the place at Worli was unsuitable. Thereafter the Government offered premises at Arun Chambers, Tardeo Mumbai or New Administrative Building Bandra (East) Mumbai; these were also not suitable to Commission.

9.10 The Government by its circular No. G.A./11.01/ C.No.15/ 2001/22 dated 18th October 2001 allotted 6257 sq ft office premises in the Old Customs House Mumbai and the Commission took possession. Thereafter the Government by its Resolution No. HRC /132001/ Mis 148/ Pol.14 dated 12th February 2002 gave administrative sanction of Rs. 66.34 lakh for the renovation and the reconstruction work to be carried out in Old Customs House. Till March 2002 the work of renovation and reconstruction work was yet to be completed and the Commission continued to function in the New Administrative Building, Opp. Mantralaya, Mumbai.

Resources

9.11 In order to maintain the some degree of financial autonomy the State Government agreed to release funds to the State Human Rights Commission on the same line as the Government of India released funds to the National Human Rights Commission. Accordingly the State Government vide its G.R. No. HRC-132001/Misc-39/Pol 14 dated 1st October 2001 decided to released funds to the State Commission as provided under section 33 of the Protection of Human Rights Act 1993. Accordingly the first of the four instalments of grant-in-aid was released to the Commission towards the beginning of the financial year; the second instalment was released around July, the third instalment in October and the fourth in January.

9.12 Funds received from the Government were kept in the bank account of the Commission maintained with a nationalised bank. Such a procedure obviated the need to go through the Pay and Accounts Office and consequently made the procedure of withdrawal of money and making disbursements much simpler.

9.13 During the preceding year i.e 2000-01 the State Government sanctioned grants amounting to Rs. 23 lakh to be spent on non-planned. This amount was mainly spent on purchase of 4 vehicles, 8 computer systems. So far as pay and allowances of staff was concerned these were made through the State Government budget as the staff were all on pay roll of the Government.

9.14 For the year 2001-02, the revised budgetted amount was Rs. 31.46 lakh. However, the total expenditure for that year came to Rs. 58.52 lakh; of this Rs. 34.30 lakh was spent on Pay & Allowances on staff (including Members), Rs. 13.47 lakh on Professional & Special Services and Rs. 7.29 lakh on office expenses.

LIST OF ANNEXURES

No.	List of Annexure	Page No.
1	Gazette Notification of Home Department No. HRC.22001/66/Pol-14, dated 24th February 2001	A.1
2	Notification of Law and Judiciary Department No. CRC. 102K/(117)IX, dated 30th May 2001	A.2
3	The Committee for the Appointment of Chairperson and three Members	A.3
4	Home Department Notification No. HRC.1099/378/CR-49/Pol-14 dated 18th August 2000	A.4
5	Complaints received from various Districts	A.8
6	Circular dated 11th March 2002 issued by the Sub-Committee regarding arrests (Including 11 Requirements specified by the Supreme Court)	A.9
7	Format prepared by the Sub-Committee for surprise checks of police station	A.14
8	Circular issued by the State Government No. HRC. 132001/Misc. 45/ Pol.14 dated 17th April 2001	A.18
9	Proforma for Custodial Death Report	A.19
10	Prescribed and Actual population in various prisons in Maharashtra	A.23

Annexure 1

HOME DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 24th February 2001

NOTIFICATION

PROTECTION OF HUMAN RIGHTS ACT, 1993.

No. HRC.22001/66/Pol-14.—In exercise of the powers conferred by sub-section (1) of section 21 of the Protection of Human Rights Act, 1993 (Central Act 10 of 1994), the Government of Maharashtra is pleased to constitute a body to be known as the Maharashtra State Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to a State Commission under Chapter V of the said Act, with headquarters at Mumbai.

By order and in the name of the Governor of Maharashtra,

H. B. TAYDE,
Deputy Secretary to Government.

Annexure 2

LAW AND JUDICIARY DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 30th May 2001

NOTIFICATION

PROTECTION OF HUMAN RIGHTS ACT, 1993.

No. CRC. 102K/(117)-IX.—In exercise of the powers conferred by section 30 of the Protection of Human Rights Act, 1993 (10 of 1994), and with the concurrence of the Honourable Chief Justice and Judges of the High Court, Judicature at Bombay, the Government of Maharashtra, hereby specifies that a Court of Session in each district of the State, to be a Human Rights Court to try the offences under the said Act.

By order and in the name of the Governor of Maharashtra.

M. M. REGE,
Deputy Secretary to Government.

Annexure 3

Section 22 of The Protection of Human Rights Act, 1993

Appointment of Chairperson and other Members of State Commission.—

(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—

- (a) The Chief Minister – Chairperson;
- (b) Speaker of the Legislative Assembly – Member;
- (c) Minister in-charge of the department of Home in that state – Member;
- (d) Leader of the Opposition in the Legislative Assembly – Member:

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee:

Provided also that no sitting Judge of a High Court or a sitting district judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee.

HOME DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 18th August 2000

NOTIFICATION

PROTECTION OF HUMAN RIGHTS ACT, 1993.

No.HRC.1099/378/CR 49/Pol-14.—In exercise of the powers conferred by sub-section (1) and clause (a) of sub-section (2) of section 41 of the Protection of Human Rights Act, 1993 (10 of 1994), the Government of Maharashtra hereby makes the following rules namely :—

1. *Short title and commencement.*—(1) These rules may be called the Maharashtra State Human Rights Commission Rules, 2000.

(2) They shall come into force at once.

2. *Definitions.*— In these rules, unless the context otherwise requires,—

(a) "Act" means the Protection of Human Rights Act, 1993 (10 of 1994);

(b) "Chairperson" means the Chairperson of the State Commission;

(c) "Member" means a Member of the State Commission and includes the Chairperson;

(d) "State Commission" means the Maharashtra State Human Rights Commission constituted under sub-section (1) of section 21 of the Act;

(e) Words and expressions used in these rules and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.

3. *Headquarter.*— The Headquarter of the State Commission shall be at Mumbai.

4. *Salary.*—(1) There shall be paid to,—

(a) the Chairperson, a salary which is equal to the salary of the Chief Justice of a High Court;

(b) a Member, a salary which is equal to the salary of a Judge of a High Court :

Provided that, if the Chairperson or a Member at the time of his appointment is in receipt of or eligible to receive any pension and has elected to draw or receive the pension (other than disability or wound pension), in respect of any previous service under the Government of the Union or of a State, his salary in respect of service as a Chairperson or, as the case may be, a Member, shall be reduced.

(i) by the amount of that pension;

(ii) if he had, before assuming office, received in lieu of a portion of pension due to him in respect of such previous service, the commuted value thereof by the amount of that portion of the pension; and

(iii) by any other form of retirement benefits, being drawn or availed of or to be drawn or availed of by him.

5. *Leave.*—(1) A person, on appointment as Chairperson or as a Member shall be entitled to leave as follows,—

(i) earned leave @ fifteen days for every completed calendar year of service or a part thereof;

(ii) half pay leave on medical certificate or on private affairs @ twenty days in respect of each completed year of service and the leave salary for half pay leave shall be equivalent to half of the leave salary admissible during the earned leave ;

(iii) leave on half pay can be commuted to full pay leave at the discretion of the Chairperson or a Member if it is taken on medical ground and is supported by a medical certificate from the competent medical authority ;

(iv) extraordinary leave without pay and allowances upto a maximum of one hundred eight days in one term of office.

(2) On the expiry of his term of office in the State Commission, the Chairperson and Members shall be entitled to receive cash equivalent of leave salary in respect of earned leave standing to his credit subject to the condition that the maximum leave encashed under this sub-rule or at the time of retirement from previous service, as the case may be, or taken together shall not in any case exceed 240 days.

(3) The Chairperson and Members shall be entitled to receive dearness allowance as admissible on the leave salary under sub-rule (2) at the rates in force on the date of relinquishment of their office in the State Commission.

Provided that, he shall not be entitled to city compensatory allowance or any other allowance on such leave.

(4) If a sitting Judge of High Court is appointed as a Member, then notwithstanding anything contained in sub-rules (1), (2) or (3), the provisions of Chapter II of the High Court Judges (Conditions of Service) Act, 1954, shall apply to him upto the date of his superannuation as a sitting judge of High Court and thereafter he shall be entitled to leave in accordance with the provisions of sub-rules (1) to (3) of this rule.

6. *Leave travel concession.*—The Chairperson and Members shall be entitled to leave travel concession at the same rates and at the same scales and on the same conditions as are applicable to the Chief Secretary to the Government of Maharashtra :

Provided that, if a sitting Judge of the High Court or a sitting Judge of a District Court is appointed as a Member, then notwithstanding anything contained in this rule, rules applicable to a Judge of the High Court shall be applicable to him, till the date of his superannuation.

7. *Authority competent to grant leave.*—The power to grant or refuse leave to the Chairperson or a Member and to revoke or curtail leave granted to him shall vest in the Governor.

8. *Travelling allowances.*—The Chairperson and Members, while on Tour (including the journey undertaken to join the State Commission or on the expiry of his term with the State Commission to proceed to his home town) shall be entitled to—

(a) Travel allowances, allowances for transportation of personal effects and other similar matters at the same scales and at the same rates as are admissible to a Judge of High Court.

(b) Daily allowances at the same rates as are admissible to a Judge of a High Court :

Provided that, if a sitting Judge of the High Court or a sitting Judge of District Court is appointed as a Member, then notwithstanding anything contained in this rule, the rules applicable to a Judge of the High Court shall be applicable to him till the date of his superannuation and thereafter the provisions of this rule shall apply.

9. *Right to subscribe to General Provident fund.*—Every Person Holding office as the Chairperson or a Member shall be entitled to subscribed to the General Provident Fund.

10. *Other conditions of service.*—The conditions of service relating to provision of rent free accommodation, conveyance facilities, medical facilities and such other conditions of service as are, for the time being, applicable to a Judge of High Court under the High Court Judges (Conditions of Service) Act, 1954, and the rules made thereunder, shall so far as may apply to the Chairperson and the Members.

11. *Residuary provisions.*—The condition of service of this Chairperson and Members for which no express provision is made in these rules shall be determined by the rules and orders for the time being applicable to the Chief Secretary to the Government of Maharashtra belonging to Indian Administrative Service.

12. *Resignation.*—The Chairperson or a member may, by writing under his hand addressed to the Governor, resign his office and the resignation shall take effect on the day the same is accepted by the Governor.

13. *Officers and other employees of State Commission.*—(1) All officers and employees of the State Commission shall constitute the Maharashtra State Human Rights Commission Service.

(2) The number of employees of the state Commission, their qualifications, method of appointment and scale of pay shall be as specified in the Schedule I appended to these rules and as may be decided by the State Government from time to time.

(3) Selection of candidates for appointment to select categories or grades in the service shall be made by departmental promotion committee constituted by the State Commission.

(4) The officers and other employees of the State Commission shall be entitled to all allowances and benefits admissible to State Government employees with corresponding scales of pay.

(5) In matters relating to age for appointment, probation, pay and allowances, disciplinary actions, benefits and entitlements and age of retirement, the officers and other employees of the State Commission shall be governed by the rules as are applicable to persons holding equivalent posts in the services of State Government.

14. *Administration and disciplinary control over officers and employees.*—In the discharge of their functions under the Act, the officers and employees referred to in section 27 of the Act shall, while they are in the service of the State Commission, be subject to the exclusive administrative and disciplinary control of the State Commission.

15. *Proceedings of State Commission.*—Vacancy of any Member of the State Commission shall not be invalidate the proceedings of the State Commission.

16. *Power to relax rules.*—The State Government shall have the power to relax the provisions of any of these rules in respect of the Chairperson or other Members.

Schedule 1

[See Rule 13 (2)]

Sr. No.	Category	Scale of Pay	No. of Post	Qualification	Method of appointment
(1)	(2)	(3)	(4)	(5)	(6)
1	Superintendent	6,500-200-10,500	1	As per existing Government Recruitment Rules.	By Deputation/ Contract.
2	Assistants	5,500-175-9,000	1	— do —	— do —
3	Higher Grade Stenographer	6,500-200-10,500	2	— do —	— do —
4	Lower Grade Stenographer	5,500-175-9,000	1	— do —	— do —
5	Clerk	3,050-75-3,950-80-4,590	2	— do —	— do —
6	Peon	2,550-55-2,660-60-3,200	2	— do —	— do —
7	Driver	3,050-75-3,950-80-4,590	2	— do —	— do —

By order and in the name of the Governor of Maharashtra,

R. S. NEGI,

Principal Secretary to Government.

Annexure 5

Complaints Received from Various Districts

Division	District	No. of Complaints
Kokan	Greater Mumbai+Navi Mumbai	520
	Raigad	13
	Ratnagiri	07
	Sindhudurg	03
	Thane	239
Pune	Kolhapur	21
	Pune	142
	Sangli	15
	Satara	19
	Solapur	25
	Nashik	51
Nashik	Ahmednager	13
	Dhule	15
	Jalgaon	04
	Nandurbar	60
	Nashik	46
Aurangabad	Aurangabad	16
	Beed	05
	Hingoli	05
	Jalna	07
	Latur	14
	Osmanabad	11
	Parbhani	12
	Nanded	23
	Amravati	17
	Akola	23
Amravati	Buldhana	09
	Washim	28
	Yavatmal	37
	Nagpur	06
	Bhandara	26
Nagpur	Chandrapur	02
	Gadchiroli	10
	Gondiya	10
	Wardha	10
		10

Annexure 6

**MAHARASHTRA STATE HUMAN RIGHTS COMMISSION
(SUB-COMMITTEE)**

No.SHRC 03/2002/

1st Floor, New Administrative Building,
Opp. Mantralaya, Mumbai 400 32;
Dated 11th March 2002.

CIRCULAR

Subject.—Constitution of Sub-Committee in Maharashtra State Human Rights Commission, in pursuance of the Supreme Court in Cri. M.P. No. 12704/2001, arising out of D. K. Basu's case cited supra by its order dated 29 October 2001.

..... Calling for reports regarding implementation & guidelines issued by the Supreme Court of India in case of D.K. Basu V/s State of Bengal (AIR 1997 SC 416) regarding preventive measures to be taken at the time of arrest and detention both by police and other Governmental agencies in the State of Maharashtra and sending the reports to the Commission in that behalf.

In exercise of plenitude of its jurisdiction under Article 32 of the Constitution of India, the Supreme Court, in case of *Permjit Kaur v/s. State of Punjab* reported in (1999) 2 SCC131, said that: "the Fundamental Rights contained in Part-III of the Constitution of India represent the basic human rights possess of every human being in this world inhabited by people of different continents, countries, castes, colours, religions. The country, colour and religion may have divided them into different groups but as human beings they are all one and possesses the same rights".

It may be stated that in the reported case, the Supreme Court in exercise of the jurisdiction under Article 32 of the Constitution entrusted the National Human Rights Commission (established under the Protection of Human Rights Act, 1993) to deal with certain matters in the manner indicated in course of its order dated 12-12-1996. When the matter was taken by the Commission, preliminary objections were raised as to the jurisdiction with reference to its statutory functions / powers and limitations. In dealing with those objections, the Supreme Court, has stated as under:

"The Commission is truly an expert body to which a reference has been made by this Court in the instant case. The power and jurisdiction of this Court under Article 32 of the Constitution cannot be curtailed by any statutory limitations, including those contained in Section 36 (2) of the Protection of Human Rights Act..... All authorities in the country are bound by the directions of the Court and have to act in aid of the Court. The National Human Rights Commission is no exception. The Commission would function pursuant to the directions issued by this Court and not under the Act under which it is Constituted.....".

It was further observed that,

"The National Human Rights Commission is also a body sui generis created under an Act made by Parliament for examining and investigating the questions and complaints relating to the violation of human rights, as also the negligence on the part of any public servant in preventing such negligence". The ratio of the said decision would with equal force apply to the State Human Rights Commission, constituted under the same Act i.e. The Protection of Human Rights Act, 1993.

Now, in Cri. M.P. No.12704/2001, arising out of D.K. Basu's case cited supra, by its order and directions, passed on 29th October 2001, the Supreme Court stated that:

"With a view to ensure proper compliance, we consider it now proper that for further monitoring of the case to see that the 11 'requirements' spelt out in D.K. Basu's case, besides other statutory safeguards are implemented in letter and in spirit, that task be assigned to the Human Rights Commission, constituted in various States/Union Territories."

The Supreme Court has requested the Chairperson of the State Human Rights Commission to constitute a "Sub-Committee" in respective Commissions in the country with a view to oversee whether those requirements are being carried out or not and to take all such further necessary steps as are required to ensure that those requirements are carried out. It was also observed that it shall be open to the Committee to make surprise checks with a view to see actual implementation of those requirements.

Accordingly, the Maharashtra State Human Rights Commission has now constituted a Sub-Committee, comprising:

1. Hon. Justice Shri Anant Mane . . Chairperson ;
2. Hon. Dr. V.S. Chitnis . . Member ;
3. Hon. Shri M.R. Patil (IAS)(Retd.) . . Member ;

Shri J.R. Sangam, IPS, is the Secretary of the Sub-Committee. Therefore, with a view to oversee whether those 11 'requirements' spelt out in D.K. Basu's cases are being carried out or not and to take further necessary steps as required to ensure that those requirements are carried out in letter and in spirit, the Sub-Committee in Maharashtra State Human Rights Commission directs that the above order / directions of the Hon'ble Supreme Court be brought to the notice of all the concerned Heads of Departments, and request for their reports in matter of—

(1) actual implementation of 11 'requirements' concerning the arrestees/detenues ;

(2) violation of the 11 'requirements' by any particular unit of police or Govt. agency (both State & Central Govt.), or infringement of other statutory safeguards provided in that behalf, having come to their notice, within the jurisdiction of the State of Maharashtra.

It is, accordingly, requested that reports be sent to the Sub-Committee in Maharashtra State Human Rights Commission in respect of following points :—

(i) Whether 11 'requirements' are actually carried out. Such report be submitted within four weeks.

(ii) In case of violation / infringement of safeguards as has been noticed by the Head of the concerned Departments, such reports be submitted to the Sub-Committee quarterly with remedial measures taken if any, to prevent such violation.

The attention of all concerned is invited to appendix 'A' which is the extract of directions and guidelines issued by the Supreme Court in respect of 11 "requirements" and the consequences, of failure to comply with them.

J. R. SANGAM,
Secretary, Sub-Committee in
Maharashtra State Human Rights Commission.

To

The Chief Secretary
Government of Maharashtra
Mantralaya, Mumbai.

The Director General of Police,
Maharashtra State, Mumbai.

All Commissioners of Police,

All Range, Is. G.P.,

All Superintendents of Police,

The Director General, Anti Corruption Bureau, M.S., Mumbai,

The Addl. D.G., CID (Crime), Pune,

The Addl. D.G.(Training), Mumbai,

The Addl. D.G.(Traffic), Mumbai,

The Addl. D.G. (RLYS), Mumbai,

The Addl. D.G.(Planning & Co-ordination),

The Spl. I.G. (SRPF), Mumbai,

The Spl. I.G. (PCR), Mumbai,

All Commandants, SRPF (No. I to XII)

Copy forwarded with compliments to—

All Divisional Commissioners,

All District Magistrates,

The Registrar, High Court (A.S.), Mumbai,

All District & Sessions Judges,

All Chief Judicial Magistrates,

Principal Judge, City Civil & Sessions Court, Gr. Bombay, Mumbai.

The Chief Metropolitan Magistrate/Addl. Chief Metropolitan Magistrates, in
Gr. Bombay,

All Commissioners of Customs in State of Maharashtra,

All Commissioners of Income Tax in State of Maharashtra,

All Commissioners of Sales Tax in State of Maharashtra,

All Commissioners of Prohibition & Excise,

The Deputy Inspector General, Central Bureau of Investigation,

Security Scam for Non Mumbai,

The Inspector General, Railway Police Force / Chief Security Commissioner, Central
Railway, Mumbai,

The Inspector General, Railway Police Force / Chief Security Commissioner, Western
Railway, Mumbai,

The Director of Civil Defence, Maharashtra State, Mumbai,

The Dy. Inspector General of Central Bureau of Investigation,

The I.G.P., C.I.S.F., Mumbai, Economic Offence Wing, Mumbai,

The Commandant General, Home Guards & Director of Civil Defence, M.S., Mumbai,

The Joint Director, Subsidiary, Home Guards Intelligence Bureau, Mumbai,

The Joint Director (West Zone), Mumbai, C.B.I.,

The Dy. Inspector General, Central Bureau of Investigation, Special Task,

The Dy. Inspector General, Force Mumbai, Central Bureau of Investigation, B.S.
& F.C., Mumbai,

The Director of Narcotic Cell, Mumbai,

The Director of Enforcement, Mumbai,

The Chief Secretary, Vigilance Officer, M.S.R.T.C., Mumbai,

The Chief Vigilance & Security Officer, MAHADA, Mumbai,

The Director (Enforcement & Vigilance), State Excise, Mumbai,

The Jt. Commissioner, Food & Drugs Administration, Mumbai,

The I.G. Security Dept., of Atomic Energy, Mumbai,

The I.G.P. CRPF., Navi Mumbai,

The Director of Public Prosecution, Mumbai,

The I.G. & Managing Director, M.S.P.H. & W. Corporation,

**And all other Agencies of State Govt./Central Govt. empowered to arrest
or detain the person for alleged offence within the power and jurisdiction, in
State of Maharashtra.**

Appendix "A"

The Hon'ble Supreme Court in case of *D. K. Basu Vs. West Bengal* (AIR) 1997 SC 416= (1997) (1) SCC 611 has laid down 11 requirements and has further held that failure to comply with them make the concerned officer not only liable to departmental action but also liable to be punished for contempt of Court which can be instituted in any Court. The Court held these requirement flow from Article 21 and 22 (1) of the Constitution and apply with equal force to the other governmental agencies. These requirements are issued to supplement and not to supplant the Constitutional and statutory action safeguards and various other directions given by the Court from time to time in action with safeguarding of the rights and dignity of the arrestee.

Therefore, the requirements to be followed by the police/other govt. agencies in all cases of arrestee and detainees are—

(1) Maintenance of the identity of the police who arrest through carrying nametags and designation and recording them in a register before handling interrogation of the arrestee.

(2) Preparation of memo at the time of arrest attested by at least two witnesses and countersigned by the arrestee mentioning the time and date of arrest.

(3) The arrestee is entitled to have one friend or relative or a known person to be informed about it.

(4) If they are outside the district they should be informed of the arrest telegraphically through the District Legal Aid Committee and the police station there.

(5) The arrestee should be informed of their rights.

(6) Entry must be made of all these matter in the dairy at the place of detention.

(7) At the request of the arrestee the injuries if any at the time of arrest on his body may be recorded in the "Inspection Memo" signed by both the arrestee and the concerned police officer.

(8) Every 48 hours the arrestee shall subjected to medical examination by a trained doctor of Health Service of the State.

(9) Copies of all the documents should be sent to the magistrate for his record.

(10) "The arrestee may be permitted to meet his lawyer during interrogation though not throughout interrogation.

(11) A police control room should be provided at all district and State Head Quarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and at the police control room it should be displaced on a conspicuous police board".

Annexure 7

SUB-COMMITTEE IN MAHARASHTRA STATE HUMAN RIGHTS
COMMISSION

POLICE STATION SURPRISE CHECK

(Monitoring the 11 Requirements for Action)

R E P O R T

Read Order dated 19.10.2001 In Cri.M.P. No. 12704/01,

arising from

the case of *D. K. Basu V/S West Bengal*

(AIR 1997 SC 416 = (1997) 1 SSC 611 and further orders of Hon. Supreme Court in Cri.M.P. 4201-97 4105/99,2800-2601/2000,480 & 12704/01. dated 21.2.02 and Circular No. SHRC 03/2002, dated 11-3-02 communicating the Constitution of Sub-Committee in SHRC to monitor and report the compliance of the orders of Hon'ble Supreme Court within time limit.

I GENERAL INFORMATION

1. Date of Visit
2. Name of Police Station
3. Name of designation of officer in charge of Police Station
4. Name of Police Inspector

(In case of Mumbai, and Cities having the office of Police Commissionerate)

5. Whether the Police Station is located in a building where there is office of ACP/DCP: Yes/No
6. Whether ACP/DCP present during the surprise check? Yes/No
7. Name of CP/DCP/ACP:

II SUMMARY OF 11 REQUIREMENTS

(a) IDENTITY OF THE PERSON WHO CAUSES ARREST

1. Whether identity of the police who caused arrest is maintained?
If not, what alternative is followed? Yes/No
2. Whether arrest was made through carrying nametags
and designation of police officer?
If not, what alternative is adopted? Yes/No
3. Name and designation of the Police Officer causing the arrest.
4. Whether above particulars are recorded in a register
before handling interrogation of the arrestee?
5. Whether arrest memo/panchanam is prepared? Yes/No
6. Whether the same is attested by atleast two witnesses? Yes/No
7. Whether the same is also countersigned by the arrestee? Yes/No
8. Whether the time and date of arrest is mentioned in the
Memo? Yes/No

III (b) INFORMATION OF ARREST OF ARRESTEES FRIEND, ETC.

1. Whether the arrestees friend/relative or a known person is informed about his arrest? Yes/No
2. Whether arrestee is of outside Mumbai District? Yes/No
3. If yes, whether the friend/relative or his known person is informed of the arrest telegraphically through the District Legal Aid Committee and Police Station? Yes/No
4. Name of Police Officer informing as such

(c) ENTRIES IN DIARY/INSPECTION MEMO, ETC.

5. Whether diary entry of the above particulars is maintained? Yes/No
6. Whether all above [particulars] are made at the place of detention? Yes/No
7. Whether at the request of the arrestee the injuries if any at the time of arrest on his body is recorded in the "Inspection Memo" signed by both the arrestee and the concerned Police Officer? Yes/No

(d) MEDICAL EXAMINATION

8. Whether the arrestee is subjected to Medical Examination by a trained Doctor of Health Services of the STATE? Yes/No
9. Whether such Medical Examination is done in every 48 hours? Yes/No
If yes, state the date and time of Medical Examination.
If not what are the reasons?
10. Name & Designation of the Medical Officer:
11. Place where the arrestee is examined
12. Whether the copies of all relevant documents are forwarded to a Magistrate for his record? Yes/No

(e) INTERVIEW OF THE ARRESTEE WITH LAWYER/RELATIVE, ETC.

13. Whether the arrestee is permitted to meet his lawyer during interrogation at any time and If not what is the reason? Yes/No
14. Whether arrestee is permitted to have interview with his family Members and friends? Yes/No

(f) MAINTENANCE OF REGISTER AT POLICE STATION/CONTROL ROOM

15. Whether a register is maintained both at Police Station, District Control Room regarding the place of arrestee? Yes/No
16. Whether information regarding the arrest and the place of custody of the arrestee is communicated by the officer causing the arrest within 12 hours effecting the arrest and at the police control room, District control room, and State head quarters? Yes/No

(g) DISPLAY OF POLICE BOARD

17. Whether above information is displayed on a conspicuous Police Board? Yes/No

(h) NUMBER OF ARRESTEES SHOWN IN THE REGISTER FOR A QUARTER OF YEAR

18. What is the total number of arrestees shown in a quarter of the year?
(Which includes Males/Females and Children).

19. How many arrestees were there in police lock up at the time of visit?

20. How many women/children were arrestees in Police lock up at the time of visit?

21. Whether separate Cells are maintained for women/children in Police Lock-up?

Yes/No

IV. OTHER SAFEGUARDS (SOME OF THEM RELATING TO OTHER GOVT. AGENCIES)

1. Whether poor accused persons are informed of their right to free legal aid for their defence in criminal cases?

Yes/No

2. Whether a person accused of an offence is kept in custody without being brought to trial on account of delay in completing investigation for a long period?

Yes/No

3. Whether a person accused of an offence of nonbailable nature is informed of his right to be released on bail when Police did not file chargesheet within period of 60/90 days from the date of their arrest, as the case may be? (excluding one day)

Yes/No

4. Whether any accused person arrested in bailable offence is found to be in Police custody?

Yes/No

If yes, for what reasons?

5. Whether a person who is arrested/detained in custody without being informed of the grounds of his arrest?

Yes/No

6. Whether he is denied the right to consult and be defended by a legal Practitioner of his choice?

Yes/No

7. Whether he is produced before the nearest "Magistrate" within 24 hours of his arrest (excluding the time taken by the journey)?

Yes/No

8. Whether he is detained beyond the period of 24 hours without the authority of the Magistrate?

Yes/No

9. Whether the enforcement authorities had summoned the person detained previously in the same case?

If so, on how many occasions before his arrest/detention?

V. ADDITIONAL INFORMATION

1. Whether any of the arrestees in the Police Lock-up is interviewed?

Yes/No

2. Whether the persons in police lock up have been properly accounted for?

Yes/No

3. Whether they are treated humanly?

Yes/No

4. Whether they are provided basic amenities?

Yes/No

5. Whether proper and timely remands have been taken?

Yes/No

6. Whether any person in police custody or lock up made any complaint, involving Police torture/violence or violation of his rights/human rights? Yes/No
7. If yes, what action is proposed? Yes/No
8. Whether any cases are verified/inspected at the Police Station?
If so, give particulars? Yes/No
9. Whether the copies of register/case dairy is obtained? Yes/No
10. Whether the extract of relevant pages of the register is also obtained? Yes/No
11. Whether full co-operation and assistance by concerned Police Personnel are extended to the Hon. Members/Officers of the Sub-Committee in Maharashtra State Human Rights Commission? Yes/No

VI.

1. General Comments on actual implementation of 11 "Requirements" in letter and spirit of the directions of the Hon. Supreme Court
2. Any other remarks.

Signature

Date

Place

Designation.

Annexure 8

(Translated from Marathi original)
State Human Rights Commission
Information to be sent regarding death and
rape in Police Custody, Judicial Custody
and various Government Institutions

GOVERNMENT OF MAHARASHTRA
HOME DEPARTMENT

Government Circular, No. HRC. 132001/Misc. 45/Pol-14
Mantralaya, Mumbai 400 032 dated 17 April 2001

Read.—Government Circular, Home Department,
No. HRC. 1096/298/Pol-14, dated 14th October 1996.

Government Circular.—As per the Government Circular, Home Department No. HRC. 1194/GI 273/CR3/ SPL-1B dated 15th March 1995 and the Government Circular, Home Department, No HRC 1095/41/Pol 14, dated 17th January 1996, instructions were issued to all District Magistrates / Superintendents of Police / Commissioners of Police and Jail Departments regarding reporting of deaths in police / judicial custody in their jurisdiction within 24 hours. Thereafter, *vide* Government Circular, Home Department No. HRC 1096/294/Pol 14, dated 14th October, 1996, instructions were also issued that death / rape cases occurring in the Juvenile Homes or such other institutions should also be reported to the National Human Rights Commission.

2. As Maharashtra State Human Rights Commission has been established under Section 21 of the Protection of Human Rights Act, 1993 and it has started functioning, the Government now orders that reports stated in paragraph 1 above should also be submitted to the Maharashtra State Human Rights Commission; further, in order to make the working of the Maharashtra State Human Rights Commission more effective, all concerned are hereby directed to extend full cooperation to the State Commission.

3. Abovementioned reports should be sent for the present to Shri Gorekh Megh, Officer on Special Duty, State Human Rights Commission, First Floor, New Administrative Building, Opposite Mantralaya.

By order and in the name of the Governor of Maharashtra,

H. B. TAYADE,
Deputy Secretary,
Maharashtra Government, Home Department.

To

Officer on Special Duty, Maharashtra State Human Rights Commission, Maharashtra State, Mumbai
Director General and Inspector General, Maharashtra State, Mumbai
Inspector General of Police (Prison), Maharashtra State, Pune
All Commissioner of Police
Inspector General of Police (Human Rights), Maharashtra State, Pune
Secretary, Social Welfare Department, Mantralaya, Mumbai
Secretary, Women and Child Welfare Department, Mantralaya, Mumbai
All Inspector General of Police
All Collector
All Superintendent of Police
All Commandant, State Reserve Police Force

**MAHARASHTRA STATE HUMAN RIGHTS COMMISSION
MUMBAI**

**Proforma for
CUSTODIAL DEATH/REPORT**

1. IDENTITY OF DECEASED—

Name of deceased

Place of residence

Sex

Nationality

Age

2. DATE OF CUSTODY (arrest).....

Time of Custody a.m. p.m.

3. DATE OF DEATH

Time of Death a.m. p.m.

4. APPARENT MANNER OF DEATH—

1. _____ Suicide 2. _____ Homicide 3. _____ Accident

4. _____ Natural 5. _____ AIDS Related 6. _____ Cocaine Intoxication

7. _____ Other.

5. MEDICAL CAUSE OF DEATH _____

6. TYPE OF CUSTODY—

1. _____ Police _____

2. _____ Jail/Magisterial

Nature of Cell:

(a) _____ Single cell (b) _____ double cell (c) _____ multiple occupancy cell

(d) _____ holding cell (e) _____ day room/recreation area.

3. _____ Correctional /Rehabilitation Facility

4. _____ Medical/Health service

5. _____ Custody of Police/Jail Officer.

(a) _____ during arrest

(b) _____ after the arrest

7. CHARGES AGAINST DECEASED _____

Type of Charges

1. _____ Violent Crime against Persons
2. _____ Child Abuse
3. _____ Serious Crime against Property
4. _____ Alcohol/Drug Offence
5. _____ Other _____

8. SUMMARY OF HOW THE DEATH OCCURRED—

1. WHEN WAS DECEASED FOUND DEAD?

Date _____ a.m. _____ p.m. _____

2. WHEN CELL WAS LAST CHECKED PRIOR TO HIS DEATH

Date _____ a.m. _____ p.m. _____

3. AT WHAT INTERVALS WAS CELL CHECKED?

4. WHAT ARE THE APPROXIMATE DEMENSIONS OF THE CELL?

_____ ft. x _____ ft.

5. TYPE OF CONSTRUCTION (CHECK ALL THAT APPLY)

1. _____ Solid Wall 2. _____ Bars, gate, mesh 3. _____ Glazing

6. WHAT COLOUR(S) IS CELL ? _____

9. MONITORING DEVICES IN USE—

1. _____ Audio Only 2. _____ Video Only 3. _____ Audio and Video

4. _____ None.

10. IS FACILITY ATTENDED 24 HOURS/DAY ?

1. _____ Yes 2. _____ No

11. IS SUICIDE SCREENING UTILIZED?

1. _____ Yes 2. _____ No

12. INFORMATION REGARDING THE DECEASED—

1. NEXT OF KIN -

Name _____ Relationship _____

Address _____

2. MARITAL STATUS—

- | | |
|-------------------|------------------|
| 1. _____ Single | 2. _____ Married |
| 3. _____ Divorced | 4. _____ Widowed |
| 5. _____ Unknown | |

3. OCCUPATION OF DECEASED _____

4. EDUCATION—

1. —Elementary
2. —High School
3. —Some College
4. —College Graduation
5. —Technical Training
6. —Advance Degree
7. —Unknown

5. INTOXICATION AT TIME OF CUSTODY—

1. —Not Intoxicated
2. —Alcohol only
3. —Drugs Only
4. —Drugs and Alcohol
5. —Unknown

6. ATTITUDE AND BEHAVIOUR OR DECEASED UPON CUSTODY—

1. _____ Cooperative 2. _____ Combative
3. _____ Belligerent 4. _____ Laughing
5. _____ Crying 6. _____ Withdrawn
7. _____ Mood Swings 8. _____ Other (describe)

7. HAD DECEASED EVER PREVIOUSLY ATTEMPTED SUICIDE ?

1. _____ Yes 2. _____ No 3. _____ Unknown

If yes, when? _____

8. DID DECEASED EXHIBIT MEDICAL PROBLEMS PRIOR TO DEATH ?

1. _____ Yes 2. _____ No 3. _____ Unknown

9. WAS DECEASED ALONE IN A CELL ?

1. _____ Yes 2. _____ No

(Include all investigative reports and all statements from witnesses, including other inmates where appropriate).

SUPPLEMENTARY INFORMATION—

- (1) Offence/incident Reports
- (2) Witness statements.
- (3) *Autopsy Report
- (4) Inquest Records
- (5) Medical Records of Deceased/ for 72 hours prior to death or precipitating injury.
- (6) Inquiry report u/s. 176 Cr.P.C.
- (7) Police report u/s. 173 Cr.P.C.(If any)
- (8) Psychological Evaluation
- (9) Visitor Records for 72 hrs. prior to death
- (10) Inmate Disciplinary Records
- (11) Criminal History of deceased
- (12) Photographs of scene and deceased (If any)
- (13) Video Cassette/Scene Diagram
- (14) Other documents _____

*IF AN AUTOPSY WAS NOT PERFORMED,PLEASE, EXPLAIN _____

Place

Date

Signature

Designation.

Annexure 10

Prescribed and Actual Population in Various Prisons in Maharashtra

Sr. No.	Name of Prisons	Authorised Accommodation			Convicts		Under Trials		Detenues		Total
		M	F	T	M	F	M	F	M	F	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Central Prisons											
1	Yeravada	2113	126	2239	2174	184	1366	96	7	1	3828
2	Mumbai	780	23	803	59	2	2304	108	60	-	2533
3	Thane	1105	-	1105	193	-	2064	-	7	-	2265
4	Aurangabad	1049	31	1080	325	1	251	17	-	-	594
5	Nashik Road	1920	57	1977	739	5	1375	4	215	-	2338
6	Nagpur	2601	49	2650	819	40	1021	40	2	-	1922
7	Amravati	604	34	638	589	33	705	29	24	-	1380
8	Kolhapur [kalamba]	367	-	367	477	-	144	-	5	-	626
Dist. Prisons, Class-I											
9	Kalyan	505	35	540	45	4	1001	32	-	-	1082
10	Nashik [Brostal School]	105	-	105	34	-	-	-	-	-	34
11	Paithan[Open prison]	300	-	300	234	-	-	-	-	-	234
12	Dhule	285	9	294	71	-	215	20	-	-	306
13	Akola	650	22	672	118	4	416	49	5	-	592
14	Bhandara	248	5	253	280	11	22	-	-	-	313
15	Byculla	300	-	300	130	-	430	-	-	-	560
16	Ratnagiri	243	3	246	28	1	162	2	-	-	193
17	Yavatmal	104	5	109	27	-	195	18	-	-	240
18	Wardha	153	9	162	17	1	261	11	-	-	290
19	Yeravada [Open prison]	150	-	150	123	-	-	-	-	-	123
20	Chandrapur	136	17	153	31	-	400	17	-	-	448
Dist. Prisons, Class-II											
21	Visapur	512	-	512	59	-	3	-	-	-	62
22	Sangli	205	30	235	8	-	221	3	-	-	242
23	Satara	159	9	168	21	-	177	11	-	-	209
24	Osmanabad	103	12	115	12	-	244	31	-	-	287
25	Parbhani	98	12	110	10	-	170	6	-	-	186
26	Solapur	120	7	127	16	-	204	10	-	-	230
27	Buldhana	97	4	101	16	1	141	2	-	-	160
28	Ahmedangar	42	6	48	3	1	151	9	-	-	164
29	Alibag	80	2	82	3	-	132	3	-	-	138
30	Beed	94	17	111	8	-	141	10	-	-	159
31	Sawantwadi	56	22	78	5	-	37	-	-	-	42
32	Nanded	45	15	60	9	-	257	7	-	-	273
33	Jalgaon	186	14	200	19	-	283	18	-	-	320
34	Atpadi [Open Colony]	21	-	21	21	2	-	-	-	-	23
35	Kolhapur [city]	104	21	125	3	-	126	11	-	-	140
36	J. J. Hospital Prison	20	-	20	-	-	3	-	-	-	3
Total . .		15660	596	16256	6726	290	14623	574	325	1	22539



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

9, Hajarimal Somani Marg, Opp. Chhatrapati Shivaji Terminus (VT), Mumbai 400 001.
Tel. 2203 42 33 • Fax : 2209 18 04 • Website : <http://mshrc.maharashtra.gov.in>