

The Human Rights Commission Bill:
Amnesty International's observations

After more than a year's discussion, the Government of India has introduced a Bill for the establishment of a Human Rights Commission in the Lok Sabha (parliament). The "Bill to provide for the constitution of a National Human Rights Commission and a State Human Rights Commission in any State..." was introduced on the last day of parliament's last session, 14 May 1983.

Amnesty International hopes that the government will allow the provisions of the Bill to be thoroughly discussed by members of the Lok Sabha, by civil liberties groups, lawyers and others during the current session of parliament and that the government will take into account their views in order to ensure that the Human Rights Commission becomes a strong additional tool to strengthen important human rights protection mechanisms already in place in India. Amnesty International identified basic standards for the effective functioning of such commissions in a document: National Human Rights Commission: Basic Standards Recommended by Amnesty International, which was given to the government and other interested parties in November 1982, when an Amnesty International delegation met government officials for the first time for many years to discuss its human rights concerns and the need to strengthen the existing machinery for human rights protection. The text of that document is attached. Against the background, Amnesty International makes observations about several provisions of the present Bill which it believes should be strengthened.

Amnesty International welcomes the proposed Human Rights Commission in principle but wishes to reiterate that the creation of a National Human Rights Commission, although important, can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial and adequately resourced and accessible judiciary. In India, the creation of such a human rights commission should go hand in hand with a thorough review of existing mechanisms in order to make these more effective instruments of human rights protection.

Amnesty International also welcomes the government's resolve to introduce reforms to the criminal justice system, notably measures to strengthen legal safeguards for detainees and others, which have been discussed by Chief Ministers since September 1982. This was reiterated in the Statement of Objects and Reasons attached to the present Bill, in which the government acknowledges that:

"there has been growing concern in the country and abroad about issues relating to human rights. Having regard to this...[the] Government has been reviewing the existing laws, procedures and system of administration of justice; with a view to bringing about greater accountability and transparency in them, and devising efficient and effective methods of dealing with the situation".

However, no concrete proposals have so far been put to Parliament. Amnesty International urges that effective reform to protect the lives and safety of detainees now be brought into force.

When introducing such legal reforms Amnesty International hopes that the government will take the opportunity to act also upon the observations made by the United Nations Human Rights Committee. That Committee examined the report India had submitted about its observance of the rights laid down in the International Covenant on Civil and Political Rights (ICCPR), to which India is a party. Despite the government's assertion in the Statement of Object and Reasons attached to the Human Rights Commission Bill that "the human rights embodied in the aforesaid Covenants (including the ICCPR) stand substantially protected by the Constitution", the Committee found that many of the ICCPR's provisions did not seem to be applied in India and that a number of provisions in special laws currently in force contravened important rights provided in the Covenant¹. The Committee was especially concerned about the arbitrary powers granted to the security forces under the Armed Forces (Special Powers) Act, the Terrorist and Disruptive Activities (Prevention) Act and the National Security Act (in Jammu and Kashmir, the Public Safety Act).

¹ Committee members found a number of special legal provisions in India to be incompatible with some of the most important rights laid down in the ICCPR (to which India is a party since 1979), notably the right to life, the right to liberty and security of the person, the right not to be arbitrarily arrested and detained and the right to a fair trial (See: India: Examination of the Second Periodic Report by the Human Rights Committee, Amnesty International, March 1993 (ASA 20/05/93))

Amnesty International also hopes that the government will now proceed to implement the recommendations the organization made last year in a Ten Point Program for the Prevention of Torture in India². It is encouraged to see that some of the recommendations Amnesty International made therein appear already to be reflected in the proposals for legal reform now being considered by the government.

Amnesty International's main concerns about specific provisions in the Bill

Amnesty International welcomes provisions in the Bill which reinforce India's commitment to protect human rights, notably those laid down in the ICCPR, for the Commission to have powers of a civil court to compel the attendance of witnesses, give public account of its findings and for the government to inform parliament of the subsequent action taken. However that provision should be strengthened by a duty to do that within a strict time limit.

Provisions permitting the Commission to recommend measures for the effective implementation of legal safeguards and international human rights instruments and for the promotion of research into human rights as well as of awareness of safeguards to protect these rights are equally encouraging. However, other provisions of the Bill greatly reduce the Commission's potential effectiveness. Amnesty International's main concerns about the proposed Bill are:

Limitations to the Commission: Mandate

◆ The Commission's mandate effectively excludes the potentially gravest human rights violations currently being perpetrated in India by the army and paramilitary forces, such as the Border Security Force and the Central Reserve Police Force operating in Jammu and Kashmir, Punjab and some other states including in north-east India. Under Clause 19 of the Bill all the Commission can do when faced with allegations of human rights violations committed by these agencies is to ask for a report from the Central Government. The Commission has no powers to proceed with the complaint or recommend to the government that an inquiry be carried out or officials involved be brought to justice. There are no powers of investigation, nor even an obligation on the part of the government to publish the Commission's recommendations. Moreover, special restrictions apply in Jammu and Kashmir where all issues relating to public order and the conduct of police are specifically excluded from the Commission's terms of reference (Clause 1 (2)).

In effect, the Commission's role in these cases is reduced to that of a "post box" to receive the government's views. Without effective powers to investigate allegations of the presently most grave and widespread human rights violations in India, reportedly committed in Jammu and Kashmir by the army and the paramilitary forces, the Commission will lack credibility, both within India and internationally.

◆ The Commission lacks any powers to visit jails and other places of detention at a time chosen by it in order to investigate specific allegations of human rights violations. According to Clause 12 (d) the Commission's powers are restricted to visiting jails, and then only with the "prior approval of the State Government". The majority of human rights violations are likely to occur in police stations and interrogation or detention centres established by the army and paramilitary forces. For purposes of investigation and prevention the Commission should have immediate and unhindered access to all places where detained persons are being or are suspected of being held, and officials should be obliged to cooperate with any such visits.

◆ The mandate of the Commission is limited to only those internationally guaranteed human rights - such as provided in the ICCPR - which are "enforceable by courts in India". A number of important legal safeguards provided in the ICCPR are in fact more narrowly defined in the Indian Constitution and certain rights are not even contained in it. Amnesty International believes that the Commission's mandate should not only incorporate the fundamental rights and legal safeguards guaranteed in the Indian Constitution, but also those laid down in the Universal Declaration of Human Rights, the ICCPR and other international legal instruments specified in the attached document on Basic Standards for Human Rights Commissions.

² The recommendations were made in the report *India, Torture, Rape and Deaths in Custody*, Amnesty International, March 1992, ASA 20/06/92 (available in English and Hindi).

◆ The limitation to a period of one year from the date of the occurrence of the alleged human rights violation for the Commission to be able to act upon it. A number of human rights violations, including grave violations involving "disappearances", may remain hidden for a considerable period of time. In some cases, reports of human rights violations may not reach the Commission for a long time because the complainant is detained. The Commission should have a mandate to consider complaints even in cases where the one-year time limit has been exceeded.

The Composition of the Commission

◆ A majority of the proposed Commission's members (three out of five) would be appointed from amongst serving Secretaries to the Government of India. The procedure to select the Commission's members would be in the hands of the government and the Opposition (Clause 4). Such a composition and selection procedure would not meet the criteria for independence and impartiality which are essential if the Commission is to become and to be perceived as a credible and effective body providing additional human rights protection in India. The procedure to select the Commission's members should be fair and transparent, affording all necessary guarantees of independence and broad representation. This could be achieved by, for example, involving senior members of the judiciary and civil liberties groups in the selection process.

In Amnesty International's view all commission members should be independent from government and should consist of men and women known for their integrity and impartiality.

According to clause 3 (2)(b) of the Bill, the four Commission members who are not the Chairperson are only requested to have "knowledge of, or practical experience in, matters relating to human rights". Amnesty International believes that it is crucially important that they have a *proven expertise and competence* in the field of protecting and promoting human rights.

The Commission's methodology

◆ The Commission does not have its own independent investigative machinery to probe allegations of human rights violations effectively throughout the country and has no authority to establish offices outside Delhi as it deems necessary (Clause 3 (4)).

Clause 11 specifies that it is the government which will determine which investigative staff shall be available to the Commission; that they shall operate under the supervision of a Director General of Police or higher police official apparently not accountable to the Commission; and that the Commission may appoint other professional staff "subject to such rules as may be made by the Central Government". Clause 14 specifies in effect that investigations will be conducted by investigative agencies of the Central or State Governments concerned.

State security forces themselves often stand accused of being implicated in human rights violations. Government agencies who may have a vested interest in covering-up the human rights violations they have committed may, under the Bill's provisions, interfere in investigations carried out by the Commission. In the absence of provisions for the independent investigation of complaints of human rights violations by the Commission, the Bill will not ensure that the Commission's investigations are independent and fair. It is crucially important for the credibility of the Commission that it has its own adequately staffed investigative machinery permitting it to probe human rights violations throughout the country speedily and effectively. This machinery should have adequate powers and resources to carry out effective and independent investigations. It should be financed by the Commission and be answerable only to it. The Commission should have all human and material resources to effectively carry out the wide ranging activities envisaged in the Bill.