Chapter III

Role of Human Rights Groups in Protecting the Victims of Police Atrocities

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

Article 1 of the Universal Declaration of Human Rights asserts with a spiritual sensitivity and moral maturity about Human Rights.

Right is an interest recognized and protected by moral or legal rules. It is an interest the violation of which would be a legal wrong. Respect for such interest would be a legal duty for which it has to have not merely legal protection but also legal recognition. Man has felt the need of rights in his settled life in agricultural stage of evolution. Security was crucial and the barbaric operations of dominance had to be given up and an order was imposed and accepted for a civilized living. The way of settled life created distinctions of high and low and rich and poor giving birth to discriminations resulting in conflicts over rights. People all over the world sacrificed their lives, liberty and property and rights were snatched by the powerful in many stages. Today it seems like a fait
accompli whereas whole of the 20th century can be termed as century of human rights accomplishments.

Justice Krishna Iyer observed:

“The first half of our century made India free; the second half of our century must make Indians free. Do you feel the weight of iron on your heels when your brothers and sisters are in chains? One of the blessings of the bourgeoisie is that their moral fiber is vaccinated against fellow-feeling. The long research to discover ourselves in the long march to invest human dignity, political dignity, economic dignity and social dignity on those humiliated hundreds and thousands who today are distanced far from a life enlivened by fundamental freedoms. The charge is in grave and demands proof.”¹

National Human Rights institutions are a necessary corollary to the democratic binary of Governments. They are a means of democratic empowerment for those are less powerful and less advantaged. Given that in a democracy, the majority is standard government machinery and institutions are not always sufficient to the protection of human rights. This becomes very much relevant for those of people who are in minority and for those without

significant financial or actual resources, as well as for section of society that are not as legally empowering others (e.g. children). The National Human Rights Institutions can complement democratic bodies within the Government.”

Most suitable definition of Human Rights Commission can be given as under:

Human Rights Commission deal with the protection of citizens against discrimination as well as with the protection of other human rights. They are generally designed to hear and investigate individual charges of human right violations or discriminatory acts committed in violation of existing law. Most Human Rights Commissions are collegial bodies comprised of members who, in most, cases, are selected by the Executive. In many cases the Commissions enjoy statutory independence and are responsible for reporting on a regular basis to the legislative body.”

The National Human Rights institutions may be the creation of National Constitution or a specific statute. There are some advantages in establishing these institutions as a constitutional body. For example, the Constitution is a Supreme law and any

3. Ibid.
change in the fundamental structure, of the institution would require the passing of a **Constitutional Amendment** Act for which special procedure has to be followed. Thus, the integrity of the institutions will be protected and it can work more effectively. There are certain advantages of “**National Human Rights Institutions**” over the “traditional" means of protecting human rights. For example, in courts, there is prohibitive cost of litigation, frequent delays and lengthy hearing of cases. The courts can deal only with the specific issue raised in the case and cannot go beyond that. Sometimes there is difficulty in producing evidence. The complex procedure of the Courts keeps many deserving cases out of it. Thus, the Courts play only a peripheral role and do not provide for a review in depth of the entire administrative field. The control by the administration over its own faults and lapses suffer from "official bias and it starts building up its own defence within the department."4

Way back in 1978, a U.N. Seminar in Geneva had recommended the establishment of National Institution for the protection, promotion and greater realization of human rights. A number of guidelines for the structure and functioning of National Institutions were also recommended.’ No national institution for purpose was

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established in India as a result of that call probably because of the fact that most of the human rights which find place in International Covenants stand recognized by the Constitution—some have been made constitutionally enforceable before the courts and with regard to others there is a constitutional obligation on the state to make them meaningful. The establishment of the National Human Rights Commission (NHRC) in October, 1993, was the result of criticism of India, both at national and international level, regarding human rights situation in Kashmir and Punjab. Several India watchers thought at that time that the creation of NHRC was a tactical move on the part of the government of India to take some of the pressure off so far as the alleged violation of human rights in Kashmir and Punjab were concerned. Doubts were expressed at that time regarding the ability of NHRC to deliver the goods. Due to this background, what the Commission needs is credibility and acceptance.

1. Protection to Victims by Human Right Commission.

The National Human Rights Commission, established under the Protection of Human Rights Act in 1993, has played an important role in monitoring and investigating human rights violations in India, in advising the government on human rights issues and in furthering human rights awareness. The NHRC has
played an important role in stressing the issue of custodial violence. State Human Rights Commissions have now set up in 11 States and have similarly been taking up cases of torture and deaths in custody and a broad range of other human rights issues.

One of the NHRC’s first actions was to request that it be informed of death or rape in police custody within 24 hours of occurrence. The Statistics gathered by the NHRC in this regard have been useful in identifying patterns of abuse and there is no doubt that they have provided an important mechanism for redress for many victims of Human Rights violations. However, there have been many problems in implementation of NHRC recommendations. The Commission’s September 2000 Newsletter carried a report of a steeling at Director Generals and Inspector Generals of Police of all States and “Union Territories with the NHRC at which the Chair of the NHRC expressed concern on several fronts, reports requested from states by NHRC were frequently delayed, and reporting of custodial deaths and rapes within 24 hours, implementation of the direction to video-film post mortems in cases of custodial deaths and, the model autopsy form and observance of the NHRC’s guidelines regarding arrest were described as erratic".
Inquire suo-moto or on a petition presented to it by victim of atrocities or any person on his behalf, into complaints of:

- Violation of human rights, or abetment thereof: or

- Negligence in the prevention of such violation, by a public servant.

A. **Human Rights Courts**

For speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences. However, this shall not apply in two conditions. i.e. (i) If a Court of Session is already specified as a special court, or (ii) if a special court is already constituted. It is not mandatory but discretionary to specify any Court of Session to be a Human Rights Courts for trying the offences denting with human rights violation. In other words, where no Human Rights Court is specified, the Court of Session or any other Special Court already constituted shall continue to try offences relating to violation of human rights.

B. **Investigation Team**:

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5. Section 2(e) read with section 30 of the Act of 1993.
The National Human Rights Commission (Procedure) Regulations, 1994 provides for the investigating team of the Commission. It is provided that the Commission shall have its own team of investigation which is to be headed by a person not below the rank of Director General of Police. The other members of the team of investigation would be one Deputy Inspector General of Police, two Superintendents of Police, 6 deputy Superintendents of Police and 24 Inspectors of Police and any other categories of officers as the Commission may decide from time to time. Appropriate number of outsiders, in a given case, can also be appointed by the Commission, who are to be associated with the investigation either as investigators or observers. It is submitted that while appointing outsiders the role of the Non-Governmental Organizations (NGO's) and community leaders can be of considerable use.  

The NHRC took suo-moto cognizance of a news item published in the 'Rashtriya Sahara' of 18 December 1996 alleging that a minor boy, Sachin, resident of Sagarpur, Delhi was mercilessly beaten by a Head Constable of PS Dabri and was admitted in the Ram Manohar Lohia Hospital in a serious condition. The provocation was that the boy had been playing 'gilli

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danda’ and that his ‘gilli’ fell near a police assistance booth, where the Head Constable had placed his chair and was sitting in the sun.  

The NHRC took **suo-moto** cognizance of an instance of police brutality, published in the Hindustan Times on 3 September 1998, under the heading "Police brutality again in **Kerela**." The report stated that a college lecturer was beaten mercilessly by the police as he had dared to question the fare demanded by the driver of an auto rickshaw, he had taken while visiting Kozhikode. When the lecturer became unconscious, his legs and hands were tied and he was shifted to a mental hospital, and a case was made out that he was a violent mental patient. The mental hospital did not admit him because of his serious condition and he was taken to the Medical College. The reporters and photographers, who tried to obtain a first hand account of the torture inflicted upon the victim, were also assaulted by the police.  

The question whether police resort to torture in police custody was asked to the target group in the survey.

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Only 1.39% of the policemen interviewed confessed having torture a person in custody where as 8.19% of them believed generally that policemen indulge in the wrong practice of torture in custody.

79.06% of the prisoners responded that they were tortured by police in custody.

67.86% of judicial officers contacted during the survey believed that police resort to torturing people in custody.

In a survey conducted by James Vadackumchery, it was stated that in 6.48% cases, police employ third degree methods against all types of people in custody.

The differences in the results of that above mentioned to survey. Perhaps, reflects the change in the attitude of police after the courts started taking the complaints of torture in custody seriously.

According to the Protection of Human Rights Act, 1993, NHRC was constituted for better protection of human rights and matters connected therewith or incidental thereto. Since its inception in 1993 NHRC has been at the forefront of protection and promotion of human rights in our country. It has made significant contribution to bring a human right approach to legislation, policy and programmes in our country. Its contribution in India has gone

9. Supra note 404 at 100.
beyond the expected role of investigating alleged violations, conducting public inquiries, exercising advisory jurisdiction, creating awareness, promoting interaction, exchange and better coordination among other state and international human rights institutions and publishing annual reports. Its contribution in the field of child labour, rights of the disabled, education, food security, right to health, right to development and good governance, making the Indian criminal justice system victim centric and custodial justice, sexual harassment and trafficking of women in India are issues that have been pertinent towards strengthening the human rights jurisprudence in our country. In the past one and half decade, it has set the agenda for a methodology towards a rights based approach at an international level as well.

The success of NHRC can be gauged from the fact that while it received 496 complaints in its first year (1993-94) to an impressive 82,233 complaints in 2007.

Over the years NHRC has highlighted several important human rights issues and taken on many challenging cases. The commission took up the issue of starvation deaths in collaboration with the SC in 1996. Its role in the ‘Punjab mass cremation case’ where it highlighted the concept of deemed custody with the police
and awarded compensation has been appreciated by one and all. Its work on mental health institution has also been laudable.

NHRC has recommended to HRD Ministry for Human Right Education to be incorporated in the syllabus. HRD Ministry agreed and incorporated the human right education from class I to X. For class XI and XII human rights has now become one of the elective subjects. This holistic approach has been adopted so that the young generation of India is human right sensitive. NHRC has plethora of schemes for supplementary nutrition and food guarantee from pre-birth to old age which are being processed. Commission is closely monitoring the specific issues to relief and rehabilitation of persons affected with silicosis and leprosy.

The Commission also focuses on women and children trafficking and child forced labour. NHRC is overseeing the function of three mental health institutions and now these hospitals consistent with the provisions of the principles for the protection of persons with mental illness and improvement of mental health care (1999).

NHRC has made recommendations for an interim relief of Rs. 28 crore to the 89 victims of atrocities committed by the joint special task force set by the two states in Veerappan case. In Punjab mass cremation case, commission recommended compensation of Rs. 2.5 lakhs to of each of 195 next kin of the person identified to be
deemed in custody of police and 1.75 lakhs to each of next kin of other 1,103 identified persons whose dead bodies were cremated by Punjab Police, amounting to Rs. 24,27,25,000 (24 crore) till the end of year 2006-2007.

NHRC has constituted an advisory body and working groups to promote national action plan for human rights. Accordingly focus is on five primary issues, i.e., Right to food security, Right to education, Right to housing, Right to health and Right to custodial justice.

In 2007, the commission also gave detailed guidelines as to how to handle the cases of missing child in reference to Nithari village case. The NHRC along with other 17 other State Human Right Commissions has done wonderful job in favour of human right. The appropriate directions has been given by the Commission to the authorities in causalities of Christians in Orissa, Nandigram Tamil Nadu on HIV + widow issue and UP on Curia Case in 2008.

National Human Rights Commission (NHRC), set up under Protection of Human Rights Act, 1993 enquires into cases of abuse and misuse of authority, as well as violation of human rights by the police. Almost 70% of the complaints received by the Commission pertain to violation of human rights by the police. Similarly, States
Human Rights Commissions set up under the same Act, are also flooded with complaints against the police.

NHRC’s enquiries have exposed many instances of police malfeasance. The Commission has recommended action against the errant officers and compensation to the victims. It has also taken steps to ensure human rights training and sensitization programmes of the police personnel. NHRC has also suggested systemic reforms recommended by the National Police Commission to insulate the police from extraneous pressures and build up institutional mechanisms to depoliticize the police. However, NHRC’s endeavours to “police the police” have only been partially successful. Initial awe and wholesome dread of the NHRC, is now giving way to a more cavalier attitude on the part of the police. Some political leaders have also gone out of their way to encourage and abet violation of human rights by the police. Many of the complainants have also expressed dissatisfaction at the slow pace of the disposal of the cases by the NHRC and the State Human Rights Commissions.

Now, the Soli Sorabjee Committee has drafted the model Police Act of 2006 (the bill is on the anvil of the Parliament). It has recommended creation of State level Accountability Commission, as well as district level accountability authorities to ensure police
accountability. Many senior police leaders as well as state governments have frowned upon the creation of these mechanisms. Their objections do not stand the glare of scrutiny. The police lenders should draw lessons from international experience. The oversight mechanisms, if they function properly, will enhance police credibility, restore public confidence in police and also ensure fair play for the police officers.

The police are frivolous, vexatious and often engineered by the criminal elements for discomfiting the police. Nevertheless, there are also many true cases of serious violation of human rights by the police, which include arbitrary arrest, implication in false cases, misconduct and misbehaviors towards women and custodial violence.

One of the important instructions, issued by the NHRC immediately after its constitution was that the death in police custody should be reported to it within 24 hours. The Commission’s letter mentions that, failure to report such cases within 24 hours will lead to a presumption that the authorities are trying to suppress the facts. During the period from 1.4.95 to 31.3.96, 136 deaths in police custody were reported to the Commission. The figure shot up to 188 during the period from 1.4.96 to 31.3.97. From 1.4.97 to 31.3.98, 193 cases of deaths in police custody were reported. All
cases of death in police custody do not invariably mean torture or violence by the police. But in quite a few cases, deaths in police lockups due to torture and misuse of custody by the police have come to light.

In a number of serious offences of misuse of authority and commission of custodial crimes by the police, the NHRC first asked for reports from the State authorities. Finding that the reports were inadequate or revealed attempts to cover up the lapses of the police officers, it had to order investigation of the cases by its own staff. The Protection of Human Rights Act (HRC), section 11 (1)(B) provides that the Commission will have its own investigative staff under an officer, not below the rank of the Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission. I was its first Director General and remained in charge of the Investigating Wing of the National Human Rights Commission for more than four years.

C. **Videography of post-mortem examination**

The NHRC also felt concerned at the uneven quality of post-mortem report. A number of instances came to the Commission’s notice,
where post-mortem reports appeared to have been doctored due to the influence of the officials, who perpetrated the offence. There was also inordinate delay in writing of the post-mortem reports. In cases of custodial deaths, very often, the fate of cases depends upon the opinions given by the doctors in the post-mortem reports. There can be total miscarriage of justice, if the reports are manipulated and the doctors intimidated. The Commission, therefore, recommended “Videography” of post-mortem examinations and sending of tapes to the Commission for scrutiny, with a view to preventing such malpractices. Twenty two States and Union territories have now accepted the recommendations, while two others have stated that they were examining the matter. The Commission is pressing the remaining States, to accept its recommendations without any further delay. The Commission also circulated for adoption, a model autopsy form, that took into consideration the work done by the United Nations on the subject and special circumstances prevailing in the country. Seventeen States and Union territories have accepted the model autopsy form and the concomitant procedures recommended by the Commission.

D. **Visits to the police lockups**

Disturbed by increasing reports of violence in the police lockups, the Commission decided that its officers will make visits to the
police lockups. Section 12C of the Protection of Human Rights Act provides that the Commission shall visit under intimation to the State government, any jail or institution under the control of the State government, where persons are detained or lodged for purposes of proper treatment, reformation or protection and also to study the living conditions of the inmates and make recommendations thereon. The Secretary-General of the Commission, wrote to the Chief Secretaries of the States, to issue necessary instruction to enable the officers of the NHRC to visit the State to undertake visits to police lockups as well. Twenty six States/Union territories have since accepted the suggestion. The Commission is pursuing this matter with the governments of Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur and the Union territories of Daman and Diu, who are yet to respond positively. The Commission also issued detailed instruction to the officers of its Investigation Division regarding the manner, in which they are to inspect the lockups. A list of “do’s and don’ts” has been prepared and circulated to the NHRC officers.

E. Human Right Cells

The Commission has also now urged the Police administration in the States to set up Human Rights Cells in the Police Headquarters, which will serve as the main link between the
NHRC and the State police agencies. This Police Complaints Authority at State Police Headquarters will function as an oversight body. It will also take steps to ensure human rights training and sensitization of the police officers and men, organize seminars and workshops on human rights in association with the State Human Rights Commissions and the NHRC, to actively promote human rights, literacy and awareness through different seminars and workshops.

The Commission has further strongly felt the need for systemic reforms in the police. It has emphasized the need for implementing speedily some of the important recommendations of the National Police Commission for insulating the police from external pressures and influence and for building up of some institutional mechanisms to depositaries the police. The Commission felt gratified when the then Home Minister, Indrajit Gupta, in a letter to Chief Ministers of States in 1997, chose to pursue the matter and fully endorsed the recommendations of the National Human Rights Commission and the National Police Commission for systemic reforms in police. The Commission also impleaded itself as a party, in the case of Prakash Singh v. Union of India and others before the Supreme Court of India, which relates specifically to the implementation of the recommendations of the National Police Commission. In a comprehensive affidavit, the
Commission highlighted the need for insulation of the police from extraneous pressures and other structural reforms, so that the police is not utilized by the party in power to sub serve its own ends. The Commission looks forward to the verdict of the Supreme Court, which will have an important bearing on systemic police reforms and help the police to uphold law and protect human rights with greater competence.

**F. The Protection of Human Rights Act, 1993 (PHRA):**

The Human Rights Commission Bill, 1993 was introduced in the Parliament on 14 May, 1993. Pending this Bill in the Parliament, the president of India promulgated an Ordinance, i.e. “The Protection of Human Rights Ordinance, 1993”, on 28 September, 1993 under Article 123(1) of the Constitution.\(^\text{10}\) Subsequently, the Ordinance became as “The Protection of Human Rights Act, 1993”.\(^\text{11}\) The Act is deemed to have come into force on 28th September 1993, i.e., the date when The Protection of Human

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10. Article 123 (1) of the Constitution provides. "If at any time except where both Houses of Parliament are in session, the President is satisfied that circumstance exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require".

11. The Act received the assent of the President on January 8, 1994 and published in the *Gazette of India*, Extra, Part II, Section I dated 10 January, 1994, pp. 1-16 St. No. 10.
Right Ordinance was promulgated. It extends to the whole of India. However, it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.

It appears that both the enactment of the National Human Rights Act and the setting up of a National Human Rights Commission in India were a salutary outcome of external pressure that originated outside the sovereign borders of India.

Human rights, means 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. Further under section 2(1) “International Covenants” mean the International Covenant on Civil and Political Rights and International Covenant on Economic, Social & anti Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1996.

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The Supreme Court has now ruled that International Conventions and Protocols that India has signed can be enforced by High Courts, provided there is not specific Fundamental Right against them. These Conventions, without being adopted as law by our Parliament can be enforced.\textsuperscript{15}


The National Human Rights Commission played a catalytic role in the drawing up of a National Action Plan for observing the UN Decade for Human Rights Education (1995-2004). The Commission urged that the following issues receive particular attention.

1. Introduction of free and compulsory primary education until the age of 14 years. \textit{Surveillance over Violation} of Human Rights in Police Custody.

2. Inclusion of human rights as a subject at the under-graduate and post-graduate level, in addition to the inclusion of human rights education at the school level (work that was already underway with the help-of NCERT and NCTE),

3. Identification of academic and governmental jobs which require specialized knowledge in human rights and the

\textsuperscript{15} Human Rights Y.P. Chhibbar, p. 121, 123 & 124.
prescribing of desirable qualifications in this respect for recruitment to different categories of posts.

4. Imparting human rights education to professional groups such as lawyers, doctors, judicial officers, bureaucrats, trade unionists, members of the security forces (including the elements of the military, paramilitary and police), and including political functionaries, NGOs and religious bodies in such efforts,

5. Arranging debates and seminars on human rights.

6. Arranging lectures for school and college students to impart knowledge shout the Universal Declaration of Human Rights (UDHR) and a human rights culture.

7. Introduction of abort-term sensitization and training courses on human rights, in particular for the Panchayati Raj and village level functionaries.16

2. Protection to the victims accorded by other Human Right groups-

A. Non-Governmental Organizations.

16. Id at 34-36
The work of Non-Governmental Organizations is central to the spread of human rights awareness and the articulation and defence of human rights. Efforts to promote and protect human rights cannot possibly gather the momentum they require without the fullest league between NGOs and the Commission. Indeed, the efforts of the two are complementary, in a relationship that is at once both constructive and critical. The Commission has accordingly maintained a list of NGOs with whom it has been in contact and has systematized the available to it in regard to these NGOs with a view to strengthening cooperation with them. A total of 136 NGOs have already furnished details to the Commission on the prescribed Performa, while another 238 NGOs have been given the Performa on their request.17

Section 12(l) of the Protection of Human Rights Act, 1993 expressly charges the Commission to “encourage the efforts of non-governmental organizations and institutions working in the fields of human rights.” This is a responsibility which the Commission readily assumes, for the cause has much to gain both from the practical help and bear in their mutual interaction and growing relationship. NGOs can be of particular assistance to the Commission in more than one ways. Firstly, because of their grass

17. Id at 44.
root contacts, they can most effectively identify human rights violations, articulate them and seek redress. The Commission sees a most positive role for NGOs in bringing complaints to its notice. Secondly, that NGOs have established with public at large, the assistance and cooperation. NGOs can be of great value in the investigation of the more serious cases that come to be looked into by the Commission through its investigative staff, a group that will be put together with great care as to their sensitivity to human rights considerations. Theme are instances when the Commission, in accordance with its Regulation.\textsuperscript{18} No. 18, in addition to using its investigative staff, may choose to associate NGOs actively in investigation work. Thirdly, the high level of expertise of individual NGOs in specific areas of human rights work can be a source of great benefit to the Commission as it studies and makes recommendations on specific issues and problems.\textsuperscript{19}

\textbf{In country}, as large and as diverse as India, there is always the problem of being unaware of the extent of talent and commitment amongst groups and individuals. The NHRC is seeking to prepare an appropriate National Register of NGOs working in the field of human rights, both in order to develop practical links with them and between them, if they so choose. In undertaking this task, the


\textsuperscript{19} Supra note 1296 at 176-77.
Commission is seeking advice from prominent human rights activists and NGOs that have already established repute for probity and commitment.\textsuperscript{20}

Well established cooperation existing between the Commission and NGOs in respect of the receipt and handling of complaints relating to violations of human rights, and the conduct of Seminars and workshops, the year under review saw a strengthening of cooperative efforts in specific areas if programme activity instance in respect of efforts to deal with child prostitution, child labour, bonded labour, iron deficiency among pregnant women, problems of the mentally disabled and prison reforms. The commission also remained in close touch-with those working for the proper rehabilitation of persons placed by the construction of the Bargi Dam. It is pertinent here to recount that the Commission sponsored representatives of three NGOs for a three-week International Human Rights Training Programme conducted by the Canadian Human Rights Foundation during June-July 1997, together with members of its own staff. The commission believes that is important to help strengthen the capacity of NGOs though the training of their staff.\textsuperscript{21}

\textsuperscript{20} Ibid.

\textsuperscript{21} Supra note 1314 at 44.
There are hundreds of voluntary non-governmental agencies doing the work in this filed in this country and are actively safeguarding the enforcement. In case of alleged violation they promptly and effectively take remedial action by way of reports, complaints, agitations and the like. Some of such Human Rights Organizations are People’s Union for Civil Liberties PUCL), Human Rights Trust and South Asia Human Rights Documentation Centre, New Delhi. The list of other such non-governmental organization voluntary bodies is given below: 22

1. District Secretary, Andhra Pradesh Civil Liberties Committee, H. No. 5-96-8, behind Church Compound, Guntur, A.P. Pin 522022.

2. PUCL, 10/3/29/2, Plot No. 128, East Maradpally, Secunderabad. A.P. Pin 500026.

3. North-East Human Rights Council (NEHRC), Sukleswar, Panbazar, Guwahati, Assam, Pin- 781001.

4. Human Rights Action Council, H.Q. AGP Bhawan, Ambari. Guwahati, Assam,

5. The Human Rights Trust 204 Ghalib Apartments, Parwana Marg, Road 42, Pitampura, Delhi, Pin – 110034.

22. Supra note 1305 at 99-100.
6. Human Rights Trust. Chamber No. 10 Civil Wing, Tis Hazari Court, Delhi. Pin-110054.

7. Human Rights Foundation of India, F 4/4, Professor Colony, Bhopal, MP, Pin-462002.


9. PUCL, Mahavir Darshan, Block 6, Juhu Lane, Andheri (West), Bombay. Pin. 400058.

10. PUCL, Uripok Tourangbam Laikai, Imphal, Manipur, Pin-795001.

11. Committee on Human Rights, R.M.C. Road (South) Lalambung Makhong. Imphal, Manipur, Pin 795001.


13. PUCL, Haripur Road, Cuttack, Orissa, Pin 753001.

14. PUCL, 72, Usman Road, T. Nagar, Madras-Tamil Nadu, Pin 600028.

16. PUCL, 11-C Nagar Mahapalika Flats, Hastings Road, Aakashpur, Allahabad (UP) Pin-221001.

17. PUCL, 11-C. Nasiruddin Road, Calcutta (West Bengal) Pin 700017.

18. PUCL, M-l6, Sector-11. Noida, Uttar Pradesh, Pin 201301.


B. The Torture Commission of India 1884
The Torture Commission of India 1884 received a total of 79 complaints against Police and 198 complaints against Revenue were found to be true by the Commission. The methods of torture were thus described by the Commission:

“Among the principal tortures in vogue in police cases, we find the following: Twisting a rope tightly around the entire arm or leg so as to impede circulation; lifting up by the moustache; suspending by arms while tied behind the back; searing with hot iron; placing scratching insects such as the carpenter beetle, on the navel, scrotum and other sensitive parts; dipping into wells and rivers till the party is half suffocated, squeezing the testicles; beating with sticks; prevention of sleep; nipping the flesh with pincers; putting pepper or red chilies in the eyes or introducing them in the private parts of men or women; these cruelties occasionally preserved until death sooner or later ensues.”

Torture involves dehumanizing the victim and this dehumanization is made easier if the victims come from a disadvantaged social political or ethnic group. Methods or torture include: stretching the body on a ladder, suspension from the wrists, electric shocks, pulling out the finger nails, dripping acid on the feet, the ‘insertion

of a broken bottle into the anus, prolonged flogging. We have, or have seen those who have, all experienced such blind methods of torture. Bodies of some took years to recover from the effects of torture, whereas the bodies of others have permanent disabilities.  

The Inter-American Convention to prevent and Punish Torture defines torture more broadly that the UN convention. It includes as torture “the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical-pain or mental anguish”.

C. The National Police Commission (1977)

The National Police Commission (1977) studied the complaints of police torture and custodial deaths in eight states its India. They found out that police were found to be guilty in 11 out of 17 judicial inquiries, 17 out of 82 magisterial inquiries. However, only 23 out of 430 inquiries conducted by other agencies could say that the police were guilty.


25. IInd report of the National Police Commission, headed by Sh. Dharambir, which was submitted on 16.8.1979
In Ramasagar Yadav’s case, the Supreme Court observed:

“Police officials alone and no one else can give evidence as regards to the circumstances in which a person is tortured and as people bound by ties of brotherhood, they often prefer to remain silent in such situations and when they choose to speaks they put gloss upon facts and pervert truth. The result is that persons on whom atrocities are perpetuated by the police in sanctum sanatorium of the police station are left without any evidence to prove who the offenders are...”

Article 6 of the UN Resolution is about taking care of the health of persons in custody and is about securing medical treatment for the detainees. No doubt, there are many number of cases in which people kept in custody die from heart attacks. Post-mortem reports in many such cases also may endorse the view that the attacks are due to-cardiac arrest or failure. Some native physicians may advance the theory that such heart attacks could be owing to torture at certain sensitive points on human body. According to them there are some sensitive or vulnerable points on human body where a hit or heavy pressure, knowingly or unknowingly, if given, it might result in cardiac arrest and such deaths would appear to have been caused in the ordinary course. No post-mortem can bring out the fact that such deaths due to heart attacks were owing
to torture on some sensitive points on human body. This is a theory proposed by native treatment-men who cure people of their ailments by tin indigenous methods seen in 'murma sastra'.

D. Kapoor Commission

Kapoor Commission appointed by the Government of Haryana to conduct an enquiry about the excesses of the police observed:

"There are references in the fiction relating to the medieval Ottoman empire of Bastinado torture being inflicted by the authorities on the helpless victims but it could not be conceived that this form of torture would be indulged in by the Indian Police in the post-independence period.26

It is a pity that still the vast majority of our investigating cadres have never been able to shake off their faith in ‘third degree’ methods of investigation. It is also a pity of pities that inspite of their training in ‘Scientific Aids to the detection of Crime’ which is now given in almost all the Police Training School and Colleges in the country, they fail to adopt these advanced and enlightened techniques of crime detection in practice. Almost with a blind faith in the efficiency of the ‘third degree’ they still cling to these old-

26. Statesman, New Delhi ed. dated 27.10.77"
fashioned, illegal and immoral methods with considerable risks to
themselves and to the embarrassment of the Government.\textsuperscript{27}

\textbf{E. Wickersham Commission}

Wickersham Commission held, “Third degree brutalizes the police,
hardens the prisoner against society, and lowers the esteem in
which the administration of justice is held by the public.\textsuperscript{28}

Torture in police custody, atrocity in police lock-up, illegal
detention in custody, can not be characterized as official duty
assigned to police officers by delegation of sovereign power of the
state.\textsuperscript{29}

\textbf{F. The Terrorist and Disruptive Activities (Prevention) Act,
1987 (TADA)}

The Terrorist and Disruptive Activities (Prevention) Act, 1987
(TADA) which lapsed in 1995 was found to have led to widespread
use of torture by law enforcement officials. As well as withdrawing

\begin{itemize}
  \item \textsuperscript{27} R. Deb – Police and Law Enforcement – SC Sarkar & Sons Pvt. Ltd. Calcutta at 19.
  \item \textsuperscript{28} Wickersham Commission Report of USA (i.e., National Commission on Law Observance and Enforcement, report on Lawlessness in Law Enforcement 5 (1935) as quoted by Mr. Justice V.R. Krishna Iyer J.; in Nandini Sathpathy, Supra.
  \item \textsuperscript{29} R.K. Bag, Perspectives in Victimology in the Context of Criminal Justice System – SVP NPA Journal – Jan 1996.
\end{itemize}
safeguards under Article 22 of the Constitution for those suspected of broadly defined offences of “disruptive -activities” and “terrorist acts it withdrew further safeguards and thereby facilitated the use of torture.

The Section 15(1) of TADA had made confessions to a police officer of the rank of Superintendent of Police and above to be admissible evidence. It is in its majority upholding the constitutional validity of TADA.

The National Police Commission, in First Report, observed:

“One of the fundamental requisites of good government in democracy is an institutionalized arrangement for effectively guarding against excesses or omissions by the executive in the exercise of their powers or discharge of their mandatory duties which cause injury, harm, annoyance or undue hardship to any individual citizen. This arrangement has not only to include internal checks and balances to minimize the scope for such misconduct but also to ensure and effective inquiry into any specific complaint of an alleged excess or omission and expose it promptly for corrective as well as for penal action. This is especially necessary in the police who have vast scope for exercise of powers by a large number of personnel affecting the rights and liberty of individual citizens in daily life”
Thus, the National Police Commission set out the institutional framework and preconditions for an effective redress machinery against police abuses. The laws guarding against police excesses are: Article 21 of the Constitution and other fundamental rights and sections 330 and 331 of Indian Penal Code (IPC) as well as Section 29 of the Police Act. Rape of a Woman in police Custody carries and enhanced punishment of 10 years rigorous imprisonment under Section 376 IPC, which also extends the same punishment to public servants, such as members of the armed forces. In the event of death in custody, an inquiry by a magistrate is mandatory under Section 176 of Criminal Procedure Code.

The right to enforce the human rights provided in the Constitution is itself constitutionally protected. Article 226, empowers the High Courts to issue writs for the enforcement of such rights, including habeas corpus. Article 32 of the constitution grants same powers to the Supreme Court. Although a direct appeal of the Supreme Court is guaranteed, the court has other in practice required victims to approach the High Court first. A victim can also bring a civil suit for damages under the Civil Procedure Code or initiate a criminal prosecution.

G. Inquiries
The first prerequisite for any meaningful redress is to establish the truth about what happened through an effective and prompt inquiry into specific complaints of custodial violence. Often, that does not happen. Investigation can be held by the senior police officers and senior officers belonging to security forces, by local magistrates or by judicial authority. People, by and large, do not have confidence in inquiries conducted by the police because there is a tendency to close ranks and to form a square when they themselves are concerned. For example, a survey by the National Police Commission shows (First Report) that out of some 68,275 complaints investigated by the police, substantiated allegations of police misconduct is only seven percent of the cases. In individual cases in the past, senior officers have been reluctant and slow to investigate because of fear of publicity and an illusion that to do so would tap public confidence in the police generally.

However, in recent years, senior police officers have come to realize that any attempt to cover up will destroy the public’s faith in the police and when the defaulting policeman is unchecked, he can do more harm than good in long run. It is vital for the police themselves that every allegation is cleared up promptly and tire guilt policeman punished resolutely. Torture is not the slightest use; it only makes men tell you what they think you want to hear; subterfuge to get at the truth. If complaints are impartially
investigated, the department and its officers are able to clear themselves of wild and unfounded charges made against them, and a greater degree of confidence and mutual respect is established between the police and the public. The maintenance of police morale depends not on whitewash, but on a satisfying conception of the policeman's place in society. In law enforcement ends never justify even slightly dubious means.

With regard to magisterial inquiries held by executive magistrates, they are not perceived as independent. They have limited powers of investigation and must rely on evidence provided by the police. They are also subject to police pressure. In this context, the public opinion often demands a judicial inquiry, which in majority of cases has effectively established police culpability. Unfortunately, governments hesitate to order a judicial inquiry to shield the guilty policeman. For example, out of 415 cases listed by Amnesty International Judicial inquiries were held only in 18 cases. The National Police Commission in the First Report says:

"Analysis of complaints of police torture dealt with in eight States in 1977 shows that 82 complaints were dealt with by magisterial inquiries; 17 by judicial inquiries and 430 by inquiries by other agencies such as State CID, Vigilance, etc. Number of instances in which police were held to blame were 37 out of 82 magisterial
enquiries, 11 out of 17 judicial inquiries and 23 out of 430 inquiries by other agencies. Percentage of inquiries which disclosed actionable material is highest in the case of judicial inquiries lower in magisterial inquiries and lowest in inquiries conducted by other agencies."

After a detailed study of the situation the National Police Commission recommended that judicial inquiries should be mandatory and held promptly in all cases of "alleged rape of a woman in police custody" and "death or grievous hurt caused while in police custody". Had that recommendation been implemented by the government many would not have been raped or tortured to death by the police.

**H. Compensation**

All State governments have persistently resisted all attempts to establish the right to monetary compensation for wrongful actions. They have argued that the State is not liable for the acts of its officers when discharging "sovereign functions". They have also failed to act on the 1956, Law Commission's recommendation that State liability should be the rule and "sovereign immunity" the exception. Moreover, the government has made an express reservation to Article 9 of the ICCPR by stating that "there is no enforceable right to compensation for persons claiming to be
victims of unlawful arrest or detention against the State”. As a result, courts in India have traditionally been reluctant to award compensation to victims of human rights violations.

In a few cases, however, the Supreme Court of India, Andhra Pradesh, Guwahati and Madras High Courts granted compensation to victims of police torture including rape and death in police custody.

I. Civil suits and private Criminal Complaints

Victims of police excesses have the opportunity to bring civil suit for damages or to initiate a criminal complaint. However, civil claims are rarely used due lengthy and costly procedures. For example, it took 14 years for Rajan’s (who was killed in police custody in 1976 during the Emergency) parents to receive Rs. 3,72,000 compensation in 1990 on the orders of Kerala High Court.

The Amnesty International spelt out a 10 point programme to combat torture in police custody. They are :

(1) Adopt an official policy to protect human rights.

(2) Investigate impartially all allegations of torture.

(3) Bring the perpetrators to justice.

(4) Strengthen safeguards against torture.
(5) Inform detainees of their rights.

(6) Train the police and security forces to uphold human rights, and reform the police.

(7) Compensate the victims.

(8) Provide torture victims with medical treatment and rehabilitation.

(9) Investigate the causes and patterns of torture.

(10) Strengthen India’s international human rights commitment.