Chapter VII

REMEDIES AVAILABLE THROUGH N.H.R.C.

The main purpose of International human rights law is to see to the safety, security and dignity of the people, living all over the world. According to the concept of human right law, the subject is supreme and the state machinery is for the benefit of the citizens and it is bound to protect their rights. So while dealing with the liability of the state arising out of its duty, it is necessary to understand the remedies available to the citizen, through NHRC.

1. The Protection of Human Right Act 1993, in India

India is a party to the International Covenant on Civil and Political Rights and International Covenant of Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on the 16th December 1966. Almost all provisions of these are inducted into our constitution. Issues relating to human rights violation are on the increase in India. So after conducting various seminars with Chief Ministers of different states and after reviewing the existing laws, procedure and administration of justice, the

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359 Economic, Social and Cultural rights are incorporated in the International Covenant on Economic, Social and Cultural Rights which was adopted by the General Assembly on 16th December, 1966 and entered into force on 3rd January, 1976.
government decided to enact laws relating to the protection of Human Rights Act 1993\textsuperscript{360}.

The purpose of this Act is to better the protection of human rights and for matters connected therewith. This Act provides for the constitution of NHRC, with a jurisdiction all over India and a commission for each state. It is an investigative and reporting body with powers of the civil court in certain respects. It can take action on the basis of media report suo moto or direct complaint from victim, against human rights violation which looks into all complaints of violation and fixes accountability and can provide immediate remedy to the victim in the case of continuing human rights violation but it lacks the judicial power of imposing punishment. It is like an Ombudsman to supervise the enforcement of laws and can provide effective protection to the citizen. It can highlight the acts of the functionaries of the state and submit its report by placing it in the Parliament before publishing it. The Commission would probe into the matter thoroughly and provide help to the victim. It helps to safeguard the rights of the people and it


Central government introduced "Human Rights Commission Bill 1992 in the loc Saha on 14th May 1992. Since this bill was referred to the standing committee of Parliament of Home Affairs it could not become law considering the urgency of the matter the President promulgated "The Protection of Human Rights Ordinance 1993 on 28th September 1993 which was subsequently replaced by the Protection of Human Rights Act 1993.
is an instrument of justice. People, rich or poor, literate or illiterate, forward or backward can approach the NHRC without fear. It is not a court and at the same time it acts as a watchdog against the acts of human rights violation.

It is necessary to see whether NHRC succeeded in its supportive role of enforcing liability in suit, writ and criminal proceeding in case of human rights violations committed by the state. This can be ascertained in the light of the annual report presented by it.

2. Brief report about the steps taken by NHRC

Its first annual report was filed during October 1993 to March 1994 and its second annual report was filed during the period of April 1994-March 1995 and during this period 6987 complaints were filed before the NHRC including 152 custodial deaths or rape. Out of which 5710 cases were considered by it and 43% of the complaints were dismissed in *limine*. This was because the complaints were not filed within the limitation period of one year of the events happening and the complaints were subjoined, in case of vague, anonymous and frivolous complaints.

During the period of 1995, the NHRC visited prisons and recommended to replace the century old Indian Prisons Act 1894 and in three cases of custodial death, the guilty police men were
convicted and in two cases prosecution for murder was launched against policemen and in the other a departmental enquiry was initiated. The NHRC has made a number of recommendations to the Union government on the accession to the 1984 Convention against Torture and Other Forms of Cruel, inhuman and Degrading Treatment or Punishment and to make amendments in the Protection of Human Rights Act 1993 to remove ambiguities and impediments in its competence and autonomy.

During the two and a half years of its establishment, the NHRC received nearly 17500 complaints of human rights violations which included excesses by armed forces and police, custodial death and rape, torture affecting the right to life and dignity. In order to understand the merits and defects of the working system of NHRC it is necessary to go through the cases brought before it, with regard to human rights violation committed by the state instrumentalities especially by the police.

During the year 1996-97 -188 deaths in police custody were reported to the Commission. In the year 1997-98 the figure reported were 193 deaths in police custody. The number of deaths in police custody has declined marginally from 180 in 1998-99 to 177 in 1999-
While conducting case study in the area of human rights violation, the main stress was given to the state atrocities by the police. It included custodial death, custodial rape, torture, arrest and illegal detention due to excess or abuse of power, breach of duty and negligence.

3. Excess by the enforcement agencies

a) Custodial death is one of the gross human rights violation committed by the enforcement agencies. It is necessary to understand whether the NHRC could protect the human rights of the citizen in case of custodial death.

The report of NHRC 1993-94 reveals that it interfered in a number of cases of custodial death in providing remedy and gave necessary directions to prevent the violation by the state. But there are instance, where directions were not carried out by the state.

On Nov 1st 1993 on the press report about the death of 60 persons in Bijbehera in Jammu & Kashmir, as a result of firing by the security forces, after examination of the report, the commission

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recommended for payment of interim compensation but no reply was received from the government, regarding the compliance of the recommendation of NHRC\textsuperscript{364}.

In reply to the notice of NHRC for the custodial death of Shri Shanskhem Kharsaioit and the death of two persons in police firing, the government of Meghalaya, stated about the steps taken, like conducting a magisterial inquiry by a retired The high court judge, issuing Rs25000/- to meet the funeral expense, registering case against the alleged police officers, providing ex-gratia payments of Rs50,000/- to the next of kin of the deceased and giving an appointment in the government to the near relative of the deceased on compassionate grounds\textsuperscript{365}. The whole action was taken by the government because of the special attention taken by the NHRC.

Shri R.C.Chopra, a member of the judicial service had been appointed by the commission under section 14 (1) of the Protection of Human Rights Act 1993\textsuperscript{366} to investigate, into the alleged death of Shri Madan Lal in police custody under mysterious circumstances. On perusal of the report, it was found that Madan Lal died as a result of physical assault and an Assistant Sub-Inspector and three constables were responsible for his death. So the

Commission recommended for a CBI enquiry and for departmental action against the alleged officials and an interim compensation of Rs50,0001-to the dependent of the deceased within one month and NCTD accepted the recommendation of the commission367. See also the death of chadrasekahren who died on 29th December 1993 in police custody, the Commission appointed Shree K.R. Gururajan retired Vice -Chairman of Railway Claims Tribunals Madras to investigate the matter under section 14 of the Protection of Human Rights Act 1993368 according to their report, the concerned police officials were suspended and cases were registered against them369.

The state government of Andhra Pradesh readily accepted the recommendations of NHRC in enhancing the compensation to the victim of Naxalite violence370. The next case indicates the difficulty faced by NHRC in taking action against public official. Under section 197 of the Criminal Procedure Code, action could be taken against the official only after getting prior sanction from the authority. In most cases of human rights violation, immediate action is necessary to prevent it or to bring the erring official before the eye of law. In the custodial death of Abdul Gafar khan in Goa the Commission was informed that he was involved in a number of

368 Section 14 of the Protection of Human Rights Act 1993, deals with investigation.
370 Ibid
criminal cases, he had allegedly resisted the arrest and on the way to the hospital he died. When called for a report the government reported that he was taken into custody because he was involved in a number of criminal cases and he had allegedly resisted the arrest and on the way to the hospital he died but the post mortem report and CBI report revealed that death was due to head injuries. Even though the Police Officials were involved in this gross human rights violation, NHRC had to wait for the prior sanction from the authority to take action against the accused.371

In the case where a brutal murder was committed by the U.P. police in 1994, the commission recommended payment of compensation of Rs300000/- to the legal heirs of the victim and to recover it from the errant police officials. The commission also asked the state government not to wait for this recovery while paying compensation372. This attitude of the NHRC would help in preventing the delay in sanctioning the compensation to the legal heirs. The same way the NHRC interfered, when there was a delay in conducting the trial in the court in the case of custodial death in Bihar and directed the government to submit its compliance report as early as possible373. The NHRC enquired into the illegal detention

372 Ibid .pp. 46-68.
373 Ibid.pp.46-68
and death of Kheshiho Sumi while he was being taken by the Assam Rifles to recover the hideout of insurgents, and recommended to pay a compensation of Rs 100, 000/- to the next of kin of the deceased.

In a number of cases of custodial death, NHRC took immediate action and after conducting enquiry into it directed the concerned governments to pay compensation. Glaring examples being, the killing of CPI activists Nand Lal Paswan and Sikander and injuring Sunkl Paswan and Rajgir Paswan, in Police firing in Begusarai, Bihar, the Commission recommended to the government to pay Rs. 50,000/- as compensation for each person killed and Rs. 10,000/-for those with serious injuries and Rs. 5,000/-for the other injured persons.

There are instances where the cancelled FIR was again reconsidered and charge sheeted for trial. In the killing of Harjinder Singh in Punjab by a police constable, in response to the Commission’s notice, the state government reported that an FIR under section 304 of the IPC was registered on 18th January 1993 at Sadar Police station, Falalabad which stated that Harjinder Singh along with 3 persons went to the polling station for voting. When

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375 NHRC95-95pp45-46
they were standing near it, constable Joginder Singh fired in the air to disperse an unruly mob, in the process of which Harjinder Singh was hit on his head and died\textsuperscript{376}. The Commission observed that the matter must be sent to the court, for the judicial determination, as to whether the constable was liable to be punished. In this case, it was only because of the involvement of the NHRC that the cancelled registered case was again reconsidered by the state and brought before the court for the judicial determination. So the full credit goes to the NHRC. If it had not interfered, this incident would have gone unnoticed by the judiciary. So the institution of NHRC can assist the court in finding out the truth.

Direction was issued to the state of Uttar Pradesh and Maharashtra in case of custodial death of Asit Kumar\textsuperscript{377} and Usman Ansari\textsuperscript{378} as compensation of Rs. 100000/- and Rs. 200000/- respectively. In the same way when a prison labourer died in Uttar Pradesh and in the custodial death of Balu Kau Maharashtra, the commission directed to pay Rs 1 lakh and to recover it from those responsible\textsuperscript{379} and Rs 50,000/- to the next of kin of the deceased respectively\textsuperscript{380}.

\textsuperscript{376} Ibid, NHRC 95-96, pp.46-68.
\textsuperscript{377} See NHRC 1997-1998, 11-73.
\textsuperscript{378} Ibid
\textsuperscript{379} Ibid
\textsuperscript{379} See NHRC 1997-1998, pp.46-68.
\textsuperscript{380} Ibid
In a case, where the government of Uttar Pradesh failed to comply with the direction of the NHRC to grant compensation of Rs 500000/- to the legal heirs of the victim on the ground that the trial was not over, the commission replied that even though an accused person was acquitted by a criminal court of a criminal charge, that by itself was no bar to the grant of compensation by a civil court if the offence was also a tort. By this decision NHRC reminds the state about its duty towards the citizen not only in protecting the rights of citizen but also in guarding its rights.

In the case of Mass cremation of unidentified dead bodies by the Punjab Police, the Commission directed that since a large number of alleged cremations were said to have taken place, it was necessary to invite public notice for the claims in appropriate forum from those aggrieved and such cases should be enquired into to ascertain whether the deaths and subsequent cremations or both were the result of acts which constituted violation of human rights or constitutional negligence on the part of the state and its authorities in preventing such violation and the quantification of compensation should be decided on that basis. In its Annual Report for the year 2000-2001, the progress of this case had been included. It

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382 Ibid.
recommended to the government that the Commission should be
made available for the inspection of partially identified and non-
identified bodies. On 29th Sep 2001 the Commission directed that
proceedings regarding the 582 identified cases be started without
delay and the copies of FIR were also called for, and issues framed
for consideration with the respect to the liability of the government,
the concerned officials, and relief including compensation. In this
shocking incident, the role of NHRC was commendable because it
invited the attention of the state, to the need of giving public notice
to identify the dead persons. So the working of NHRC helped to
identify 582 dead bodies and it directed to give immediate relief in
those cases.

The same way in the case of the Custodial death of Bikram
Lame Arunachal Pradesh , the commission recommended that an
interim compensation of Rs. 50,000/- be paid to the dependents of
the deceased within six weeks with liberty to recover the amount
from the police officials. See also death of Hamid in Raisen
district, Madhya Pradesh due to lack of providing timely medicine to
the victim, death of a detained person by jumping into the deep

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384 Ibid pp
385 See NHRC1999-2000 p.85
well due to fear of torture\textsuperscript{386}, death of a fruit vendor Matloob Hussan due to torture by the police for not paying ‘Hafta’ commission, death of Nageshwar Singh due to torture and humiliation in police custody in Bihar and also death in custody due to police negligence in Uttar Pradesh\textsuperscript{387}. In all the above cases the NHRC not only directed to pay compensation but also directed the government to take appropriate action in case of need. In the case of collection of Hafta by the police and other functionaries the NHRC directed the government to constitute a committee to look into the menace of collection. Such an attitude of the NHRC is commendable and it would help the state in promoting the welfare of the citizen.

There were certain instances in which the Commission seriously considered the wrong committed by the police official and directed to recover compensation from them for example suicide in police lock-up at Kolar, Karnataka\textsuperscript{388}. NHRC considered the grievance of the widow of the deceased and directed the District collector to arrange a house for her worth Rs50,000/- and to give her Rs10,000/- for furniture in the case of torture by Tiruchi police resulting in the death of Shri Mohan\textsuperscript{389} in addition to the intermin relief of Rs2lakh.

\textsuperscript{386} See NHRC 1999-2000 p.86.
\textsuperscript{387} See NHRC 1999-2000 p.90.
\textsuperscript{388} Ibid p.90.
\textsuperscript{389} Ibid p.92.
Personal attention is possible if it is handled by NHRC but the defect in it is that there must be some norms for fixing the compensation.

The case reported in the NHRC2000-20001 regarding the Death of Gothandam, who died during interrogation in police custody, when called for report, it was indicated that action was already taken against the alleged officials by suspending and registering a case and a sum of Rs. 60,000/- had been paid as interim relief to the dependents. After conducting magisterial enquiry, about the death of the victim by torture, the Commission directed the government why an additional amount of Rs. 2 lakhs was not granted as immediate interim relief u/s 18(3) of the Protection of Human Rights Act 1993.

In the death of Sanjay Sitaram Mhasker due to custodial violence in Maharashtra, the Commission issued notice to the Government of Maharashtra asking as to why a sum of Rs3lakhs was not awarded to the next of kin of the deceased.

The next case is an example to show that NHRC seriously considers the violation of the guaranteed rights by the state. In this case when the victim's fundamental rights were denied due to illegal detention and the death in police custody in Kazhakkuttam, Kerala

390 See NHRC. 2000-2001p112
on 19th December 1996, on the request of Christian Cultural Forum NHRC took action against the officials and directed the Government of Kerala to pay Rs. 300,000/- to the next kin of the deceased and to conduct an enquiry by the CID. When the jurisdiction of NHRC was challenged by the government of Kerala through a Writ Petition, the high court did not find any reason to interfere with the direction of the Commission as the decision was based on proved records.392

The functioning of NHRC from 1993 to 2003 was very effective in promoting human rights of the people. It could give effective remedy and solace to the victim or dependents of the victim of human rights violation by directing the government to pay interim relief. The Commission considered that if the full responsibility is imposed on the state without considering the personal liability of the offender, it would be a financial burden on the state. So it directed the government to recover the part of the amount from the officials involved in it according to the responsibility for the damage committed by the persons. Then only the officials would be more responsible for the acts. The Commission takes action on the basis of relevant document and its work is commendable and in certain instances it was appreciated by the The high court. There were certain instances where dismissed or non-registered cases had to be

reposted for investigation due to the efficient interference of the NHRC.

It recommended to the government to make modification by shifting the burden on to the officials. If the NHRC continue to function effectively and impartially as it does now, it can easily succeed in its supportive role of promoting human rights to the Courts. The establishment of human rights cell in each district would be more helpful so that the victims of state atrocities by the police can easily approach them without approaching the very same authority who committed the wrong. The difficulty faced by the NHRC is that in most cases of atrocities committed by the enforcement agencies ,it would be difficult to take action against them without getting prior sanction under section 197 of Criminal Procedure Code.

b) Disappearance

Disappearance of a person is another type of gross human rights violation and in most cases this happens only after taking a person into custody by the enforcement agencies. Even though there are specific rules provided to be followed by the officials while taking a person into custody ,there is no method to see whether all formalities are complied or not. Now it is necessary to see the role of NHRC in case of disappearance of persons in custody.
The commission called for reports from the government of Punjab in case of disappearance of Shri Ran Singh Biling and Avtar Singh Mander Journalist in Punjab on 3rd January 1992. See also death of Korra Satya Rao a tribal in Vishakhapatnam District, Andhra Pradesh due to police torture on 5th May 1994. the Commission on 17th Feb 1995 recommended to prosecute the police officials concerned under section 304 of the IPC and to pay a compensation to the next of kin of the deceased and the government also confirmed its compliance.

Due to the interference of NHRC, the Tamil Nadu government took action against the officials concerned in the case of disappearance of Raja a 15 year old, after being taken into custody by Hostar police in Dharmapuri District of Tamil Nadu. When Harjit Singh disappeared after being taken by the police to question regarding hidden arms, the police denied that he was arrested, but they said that they took two persons in custody to recover hidden arms and that while doing so; they were attacked by armed militants in which two men were killed. But he was twice seen alive by his father in police custody after being claimed by the police that his son had been killed. The commission took cognizance of the incident

393 Ibid.pp.12-23.
and called for a report from the government of Punjab which is awaited. When forty three persons disappeared from police custody, the commission called for report from the government. The Secretary of the Home department replied that the copy of the report of alleged disappearance would be sent to the commission after formalities of lying of the report on the table of the Houses was completed. This excuse of placing the report before the houses cannot be encouraged because in the case of gross human rights violation by the enforcement agencies, immediate remedy is one of preventive measure. So NHRC should have easy and immediate access to the documents otherwise it cannot give remedy to the victim as expected.

On Kashmir Singh’s writ petition for the disappearance of his son since April 1992, The high court appointed a sessions judge to inquire into the matter within two years. Since two years has lapsed, the commission under section 12 (b) of The Protection of Human Rights Act 1993 appointed an advocate to move the court for fixing of date for the submission of the report. The follow up action taken by the NHRC is appreciable.

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397 Ibid.
(c) **Encounter deaths**

Encounter death is another category of human rights violation and there will not be any evidence to take action against the officials who committed the offence. There is no doubt that some power is needed by the police for its efficient functioning of maintenance of law and order or to prevent rebellion by criminals. Excesses of power or abuse of power by police resulting in death is a serious violation of human rights.

Even though the complainants repeatedly contacted the police officials from 17th to 25th January 1994 for the release of Balwinder Singh, they were told on 25th that he along with three others had been killed in an encounter with the police and huge quantity of weapon discovered from them. The commission called for the report from the government about the death of Balwinder Singh.\(^{399}\)

In the case of the alleged killings of civilians in Ukhrul town Manipur in cross-firing between 20 Assam Rifles and NSCN, the commission called for the report and in their report of 6th December 1994, the Army headquarters stated that NSCN insurgents had shot two Assam Rifles officers on duty, without any provocation. When

the wounded officers were being rushed to the hospital the insurgents fired at them and as a result two officers succumbed to their injuries. The court of inquiry set up by the General officer expressed that the Assam Rifles unit had not engaged intorture illegal detention or looting.

After pursuing the report, the commission was satisfied. However it recommended that a compensation of Rs. 50,000/- be paid to the next of kin of each of the civilians killed in the cross firing and the Ministry of Defence issued instruction on 31st March 1996 for the payment of compensation as recommended by the commission.

In the case of the encounter death of Jogi Thakur in Bihar the commission wrote to the Bihar government and the Inspector General of Police. According to him he was arrested by the Police. Commission found this as a clear case of murder and recommended to register a case under section 302 of IPC against the delinquent police officers and recommended for the payment of interim compensation of Rs. 100,000/- to the wife of the deceased. The State government replied that the investigation has been started and a case registered against the alleged officials. The Commission is waiting

for an order of compliance, regarding the payment of compensation\textsuperscript{401}.

d) Failure in providing medical aid

In the case of Death of Shri Om Prakash in Delhi due to the gross negligence of the police by not providing timely medical aid, the commission was informed that an inquest had been done by the sub Divisional Magistrate, who concluded that death was due to head injuries which the victim might have sustained due to a fall while driving a two wheeler under the influence of alcohol. The government initiated departmental enquiry against the officials concerned and took action for the delay in medical treatment of the deceased and a case has been registered\textsuperscript{402}. See also death of Muhammad Akbar Sheikh in the custody of armed forces, Baramulla district, Jammu and Kashmir,\textsuperscript{403} death of Allen Kuki of Kholjang village Manipur in custody of the armed forces in which the commission after quoting from \textit{Pandit Paramanand Kattia Vs. Union of India}\textsuperscript{404} it pointed out that the preservation of the human life is of paramount importance and considering the negligence on

\textsuperscript{401} See NHRC Report 1995-1996 pp 46-68.
\textsuperscript{404} AIR 1989 SC 2039. This was a writ petition filed by human rights activists under the Article 32 of the Constitution by referring a report in the Hindustan entitled “Law helps the injured to die” A man who died after in an accident was refused treatment by a hospital which was not permitted to treat medico legal action. Here it was found that Article 21 was violated and was held that the state government was liable to pay compensation.
the part of the officials and directed it to pay to the next of kin of Allen Rs. 50,000/- as compensation for the loss of life. When Laxman Somanath Verma met with custodial death, the commission enquired into the death of a 32 year old under trial prisoner who died due to the negligence of not being provided with timely medical treatment. Then the commission asked the government to pay Rs. 25,000/- to the next of kin.405

Regarding Police torture and death in Rajasthan after taking into consideration the gross human rights violation committed by the employees of the state, the Commission directed the state government to pay compensation of Rs. 50,000/- to the dependents of the deceased Hussain Teli.406 On failure to comply with the recommendation, the commission approached the The high court of Madras then, the The high court by an order dated 19th the February 1996 directed the state government to pay compensation as recommended by the commission.

e) Abuse of power

Human rights violation may occur due to abuse or excesses of power by the enforcement agencies. The question here is can the

406 Ibid p. 73.
NHRC provide remedy to the victims of abuse or excesses of power by the agencies of the state.

The commission took cognizance of the incident in case of amputation of male organ of shri Jugathram while he was in police custody, and called for a report from the government of Rajasthan. Meanwhile the government had already initiated inquiry, took action against the alleged officials and the victim was sent for medical treatment in the plastic surgery ward. The Commission directed the CBI to complete investigation within 3 months and submit its report to the commission\(^{407}\). The commission also took action in the case of an advocate being beaten up by a sub-inspector\(^{408}\), alleged killing of the Adviser of their unit of Tinsukia district and four other persons by the Army personnel, in the death of Shri Asab Ali and Shri Kamal Kumar Aggarwal on 5\(^{th}\) and 7\(^{th}\) January, 1994. in the case of police action against human rights groups who gathered to observe World Human Rights Day in Darrang District of Assam etc. It also expressed its displeasure over the chaining of Shri Pradhan to his hospital bed and following the direction the state government issued appropriate instructions to the concerned officials of the state\(^{409}\).


When Chakma and Hajong refugees settled in Arunachal Pradesh, after being harassed and their life and property been threatened by the government in different ways, they approached the chairperson of NHRC. The Commission then on 29th Sep 1994 communicated to the government to accord to take prompt action to protect their life and property and the government complied with its direction⁴¹⁰.

Another type of human rights violation was committed by the police in Kerala by stripping of teenagers in police lock-up when they agitated against the opening of liquor shops in Appappara, the commission suo moto took up action when they received a complaint from the Kerala Harijan Samajam, Centre of Human Rights, Legal Aid and Research, Kerala and Madhya Pradesh Youth organization. The Kerala government has sanctioned compensation as recommended by the Commission.⁴¹¹. By taking into consideration the tense situation in Karnataka, the Commission urged the government to restore normalcy in affected areas and instill confidence in the minds of the villagers and the state administration.


⁴¹¹ See NHRC19 95-1996, pp46-68.
assured to comply with the direction\textsuperscript{412}. When the West Bengal police arrested Shri Robin Paul of Calcutta and humiliated him, the commission suggested to take disciplinary action against all the three officers involved in this incident\textsuperscript{413}. In the Writ petition in the Supreme Court by the Commission regarding Chakma refugees in Arunachal Pradesh, to enforce the right to life, the apex court held that the chakmas shall not be evicted either from their homes and shall not be denied domestic life\textsuperscript{414}.

The Commission recommended to the state government of Manipur to take measures for the construction of houses for the Kuki refugees in Manipur. The commission also suggested that serious attention should be devoted to the task of bringing about the reconciliation between the two ethnic groups\textsuperscript{415}. When the Rohtak fire cracker unit blast at Haryana, the commission suo motu took action on 2nd May 1995 and issued notice to the government for the negligence of its employees\textsuperscript{416}.

Smt Gopal Banerjee, wife of Gopal Banerjee filed a writ petition for the release of her husband on the ground that in 1975, four persons Gopal Banerjee, Asjot Deu, Amulya Rai were

\textsuperscript{412} \textit{Ibid.}
\textsuperscript{413} See. NHRC. 1995-1996. pp. 46-68.
\textsuperscript{414} \textit{Ibid}
\textsuperscript{415} \textit{Ibid}
\textsuperscript{416} \textit{Ibid.}
convicted and sentenced to life imprisonment by the Sessions Judge of Cuttack. Gopal Banerjee was lodged in custody at the Dum Dum Central Jail, Calcutta, and Ashit Dey and Amulya Rai were lodged in other jails. The other two Ashit Dey and Amulya Rai were released prematurely in 1989 and 1993 respectively upon the state government remitting the unexpired portion of their sentence. But the mercy petition of Smt Gopal Banerjee had been rejected. Then the commission examined the matter and found that state government’s stand affected the right to equality of treatment and sent a letter to the Chief Minister of Orissa and drew his attention to the fact that Gopal Banerjee had spent more than 20 years in a jail situated in another state and there was no occasion for the Orissa police to make assessment of the possible impact of his release prematurely. The State government then responded in December 1995 saying that the unexpected portion of the sentence passed on Gopal Banerjee has been remitted and that orders were passed for his release.\footnote{See NHRC.1995-1996.pp46-68.}

In the case of Kidnapping of Jhirmal Singh by the police in Punjab when issued notice by the commission, the state government indicated that he was involved in a number of cases and in one he had been granted bail but in other he had not yet been arrested and
he absconded from the jail and had not been traced. The commission verified the documents and found that he appeared in the court and had not attended subsequent proceedings. As investigation was not completed within two years, the commission took follow up action and directed the state government to ensure that the members of his family and other witnesses are not harassed and pressurized in any manner.

Illegal detention and torture of an ISRO Scientist, Kerala the Commission On 14th March directed the Government of Kerala to pay a sum of Rs10lakhs as immediate interim relief to Shri S. Nambiarayanan a scientist working in the Indian Space Research Organisation Headquarters in Bangalore as compensation for gross violation of human rights of public servants. A criminal case was charged against him and the case was handed over to the CBI. The case was that he and his family had to suffer pain and suffering, humiliation, trauma due to the illegal detention by the Kerala Police and by the CBI. Later the allegation against him was proved baseless. He was harassed and physically abused by the CBI. The Apex Court awarded Rs 1lakh to each of the appellants as costs to be paid by the Kerala government. After the conclusion of the criminal

case against him he submitted a petition to the Commission on 14th October 1998 complaining about the human rights violation. The Commission directed the state government to pay an interim relief of Rs. 10lakh to Sri Nambinarayanan within two months and to take action against the delinquent officers as directed by the Commission419.

The commission recommended that an appropriate charge be brought against the Head constable for trial of the court in view of the serious head injury suffered by the child due to the merciless beating by a Head constable and the compensation would be kept in Fixed Deposit with his father as the natural guardian till he attained maturity and the interest accruing thereon to be paid to the father to be spent on the welfare and education of the boy. The Commission further suggested to the government that after consulting the All India Medical Sciences if the condition required medical treatment it should be provided at the expense of the state government. The compliance of the report is awaited420.

When the commission found truth in the allegation regarding illegal detention, it recommended disciplinary proceeding as there was constitutional violation of their rights and also recommended the

National Capital Territory of Delhi to pay an interim compensation of Rs 5,000/- The government requested the commission to give an opportunity to explain the position a request to which the commission has agreed\textsuperscript{421}. The commission reminded the state government to recover compensation from the errant Police officials in cases of illegal detention and torture of Shir Baba Khan\textsuperscript{422}, illegal detention of Shir Rambir Yadav\textsuperscript{423}, the death of Mr. Munshi Khan\textsuperscript{424}. Even after registering the case, no action was taken against the accused by the police. In all these cases NHRC directed the government to issue interim compensation to the aggrieved victims.

The commission received a petition from Shri Shesharao Rayasingh\textsuperscript{425} Rathod a resident of Mahuli, Maharashtra stating that during the election campaign on 12\textsuperscript{th} December 1998, the petitioner and his friends were stopped by a police sub inspector and five constables when they were returning from Sawali village and they were allegedly beaten up. As a result, the left leg of the petitioner was fractured and a false complaint was registered against them. The commission confirmed that the police officer misused his power and

\textsuperscript{423} Ibid p.68.  
\textsuperscript{424} Human Rights News letter date Feb 1999 Vol. 6 No.2.p.2.  
\textsuperscript{425} NHRC Report from 2000-2001.ppl12-134
acted without jurisdiction and so it had been recommended that the official’s increments be withheld for two years. The state government complied with the recommendation of the commission of granting interim relief of Rs. 30,000/- to the complainant and recovering the amount, form the concerned officials.

NHRC directed the Uttar Pradesh government to pay a sum of Rs. 50,000/- to one Shri ‘Tejender Rajoura, victim of custodial torture. See also the response of NHRC in case of complaint filed by Dayashankar Vidyalankar, a resident of Haridwar Uttarnchal, about the torture by a constable and as a result his left ear was badly injured, while he was giving speech on swami Dayanand at Haridwar Railway Station on 29th February 2001. When the allegation was found true, the constable was punished by reducing his pay scale for a period of three years and after getting report from the Medical board, he was recommended to pay Rs. 10,000/- to the petitioner and this had been paid and the commission received the compliance report on 1st April 2002.

AS regards the custodial torture of Zamir Ahmed Khan, Uttar Pradesh, the NHRC for Minorities on 25th July 2001 considered the complaint submitted by Shri Khan alleging the illegal detention of

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his brother Zamir by the sub-Inspector and two constables of Uttar Pradesh. He had been beaten up and allegedly kept in custody during the night of 29th March 2001. While releasing from custody on 30th March he was threatened by the police not to complain against them. The Additional District Magistrate in his magisterial report concluded that the police has allegedly taken him into custody, beaten him and illegally detained and that the station house officer was responsible for this. The Commission observed that the standard of proof required for taking action of disciplinary Proceedings and to grant interim relief under Section 18 (3) of the Protection of Human Rights Act 1993. When no response was received the Commission awarded an amount of Rs. 20,000/- as immediate relief to the victim. When the government was asked to report within eight weeks, it responded that as the matter was not so serious as there was no grievous injury to his body financial relief would be inappropriate. Rejecting this, the Commission stated that the custodial torture even without visible injury would justify award of compensation and in taking disciplinary action against the concerned officials. The compliance report in respect of interim relief is awaited.

\[428\] See NHRC2002-2003, pp176,177,178.
f) Atrocities against the women

Number of cases with regard to atrocities against women, were brought before the NHRC during 1993. It includes alleged rape by Punjab police officials, parading Harijan woman naked on the streets of Dauna village Allahabad District in Uttar Pradesh, police excesses in Dehradun District of Uttar Pradesh. On 12 January 1994 the Commission took cognizance of the report about the tattooing of the words 'Jet Katri' on the forehead of four women by Amritsar police personnel. While the petition of the victim was pending before the Punjab and Haryana High Court Chandigarh, praying for directions to the respondent’s government of Punjab superintendent of the police Amritsar and others to arrange for plastic surgery for removal of the objectionable tattoo giving adequate compensation for inhuman torture and humiliation and for punishing the guilty police officials. The Commission decided to intervene under section 12 (b) of the Protection of Human Rights Act and upon intervention being allowed filed an affidavit through a Counsel asking for CBI enquiry, foreheads to be operated by competent plastic surgeons and to allow interim compensation. After hearing the counsel for the parties including Shri Mohiderjit Singh

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Sethi senior advocate for the commission made a direction accepting all the suggestions of the commission\textsuperscript{430}.

In the alleged custodial rape by an Assistant Sub-Inspector of Delhi police, the commission took serious objection to the practice of not complying with the decision in \textit{Nandini Satpathi} v. \textit{State of Orissa}\textsuperscript{431}, and departmental enquiry has been ordered by the commission\textsuperscript{432}. The commission sanctioned Rs 100000/-to the custodial rape victim T.Uma of Tamil Nadu and recommended for the immediate prosecution against the accused and investigation to be entrusted to a senior police officer\textsuperscript{433}.

In the case of alleged rape of Jain Sadhvis Madhya Pradesh, the Commission reminded the Police, to do their duty in the spirit of law and to take effective steps. But in the case of alleged rape of Smt Bhanwari devi, the commission recommended to the Rajasthan government to file an appeal before the The high court against the acquittal of the accused and the state complied with the recommendation. In a case of torture and sexual assault on a minor girl from Bihar in Maharashtra, the Commission's financial assistance was a solace to victim\textsuperscript{434}.

\textsuperscript{431} AIR 1978 SC 1025.
\textsuperscript{432} See NHRC 1994-1995 p.34-45
\textsuperscript{433} Ibid
\textsuperscript{434} Ibid
When the People’s Union for Civil Liberties, Bihar brought to the attention of the commission about six cases of serious violations of human rights, the incidents of torture, sexual abuse of a minor girl, a domestic servant, by the relatives of an influential officer of the Bihar police, the Commission after finding about the gross human rights violation towards this orphan living with her grandmother and considering their inability to contest the case, interfered to transfer this case to Delhi court where the case was entrusted with the NGO by the commission. If the accused persons are police officials or the relative of the police there is a rare chance to take action against them. Interference by NHRC is appreciable here the commission considered their grievance in contesting the case and directed the state to provide legal assistance to the victim.

The Case study with reference to the NHRC report during the period of 1993 reveals that the remedies made available to the victims were not adequate. But subsequent report reveals that it began to give solace to the victims. Without waiting for the courts procedure the aggrieved can easily approach the NHRC. When it gets information it can take immediate action by asking for a report from the secretary and after perusal of the report, it can start

investigation by utilizing the service of any officer or investigating agency of the Central Govt. or the State Govt. In urgent matters the Commission began to give direction to the government to issue interim compensation. In the case of failure to comply with direction in case of handcuffing, the Commission could not provide remedy for non-compliance of direction but took up follow up action. So NHRC act as a supportive role for enforcing the liability arising out of human rights violation. Any way it acts as a watch dog to see whether the government is taking action in case of human rights violation.

The Commission's 10th Annual Report for the year 2002-2003 was tabled in both Houses of the Parliament on 21 and 22 December 2004. Besides a summary of the observations and recommendation this report contains record of the ten years of working of the Commission. It also contains the situation in Gujarat. Review of law, implementation of treaties and other International Instruments on Human Rights, Right to Health, Rights of Women and Children, Rights of vulnerable, the complaints received before the commission and the research programme and projects being undertaken by the Commission.

\[437\] Information received from the Internet, New Delhi, 20 January 2005.
4. Conclusion

After going through the commission's report, I found that most of the cases brought before the NHRC were relating to atrocities committed by the police. The Establishment of NHRC shows willingness on the part of our country to promote human rights. Even though the NHRC was acting as a watch dog for protecting the guaranteed rights of the people from 1993, it began to issue direction, in case of violation of the guaranteed rights of the citizens to the state, from 1995 onwards. These directions include recommendation to compensate the victim by granting interim relief and by insisting on them to conduct proper investigation. Otherwise it would have conducted the departmental enquiry and could have cancelled the case. The main defect in the existing system is that if the state failed to comply with the directions issued by the NHRC it cannot take action on it and there will not be any remedy to the victim except that the NHRC can approach the The high court as a party to the suit. So it is said that NHRC can bark but it cannot bite. But the merit of the system is that the victim can easily approach the NHRC without complying with any complicated procedure as seen in the court.
In the normal course the victim has to approach the writ court for getting immediate remedy. The writ court directs the victim to approach the civil court for claiming compensation. The compensation is determined according to the wrong committed by the accused so that the victim has to depend upon the sessions court. Now NHRC is the authority which can watch and see whether the victim gets a remedy or not. If the victim is not compensated or the human rights violations are continuing, it can call for the report from the secretary of that state and it can direct the state government to give immediate remedy. It can also assist the court in finding out the truth. It can conduct an impartial enquiry. In criminal case the criminal proceeding is instituted by the state if the accused is an influential person or interested party of the state there is a chance of closing the case because in the case of human rights violation by the state it might be done on behalf of the state so there is a rare chance of taking action against the accused. If the NHRC is active and independent, they can act for the benefit of the victim. It can recommend to the state to initiate action against the accused as in the case of killing of Harjinder Singh in Punjab. There are cases where the recommendation is not complied by the government in such

cases the only remedy available to the NHRC is by filing a suit before the high court.

The first annual report 1993-94 shows that it got the cooperation from the central government and the state government, the district authorities, NGO and other research and academic institutions. 1994-95 second annual report, the commission continued its work more effectively and efficiently. So NHRC's directive was substantially complied with by the district authorities. But certain cases were dismissed in limine because the events happened more than one year before the complaint, complaint regarding matters are sub judicie and complaints were vague, anonymous or complaints were outside the purview of the commission. The NHRC also recommended to the Union government the accession to the 1984 convention against Torture and other form of cruel inhuman and degrading treatment or punishment and to amend the Protection of Human Rights Act 1993 regarding its competence and autonomy. During 1999-2000 the number of deaths in police custody had gone down by 50 while that in judicial custody decreased by 6. The total number of deaths in custody in 1999-2000 was 1093. The commission had recorded a marginal fall in the total number of custodial deaths reported to it in the period 2000 to March 2001. In this period 1037 deaths in custody were reported to NHRC.
of which 910 were in judicial custody and 127 in police custody. Two deaths were also reported to have occurred while in custody of army personnel\textsuperscript{439}.

One of the merits of the system is that the ordinary people is very well aware of the action by the NHRC and they are interested in knowing what actions are taken by the government on the basis of its annual report. The Annual Report 2000-2002 indicated the action taken on the cases reported in the annual report of 2000-2001\textsuperscript{440} Annual report 2002-2003 also gives an indication regarding the action taken by the government on Annual report 2001 -2002\textsuperscript{441}.

5. Suggestions

1. It is necessary to see whether its recommendations are complied by the state, if not there must be a chance to implement it’s direction .Though by and large the authorities cooperated with the commissions direction in some cases, commission’s direction have not been complied with. At present without judicial power it cannot execute its direction ,in such cases under the existing provision the commission can approach the judicial authority for further action. It would appear that the commission should be clothed with sufficient

\textsuperscript{439} NHRC of India, News letter June 2001.p.2.  
power to enforce its direction and recommendation such as by invoking contempt proceedings. These steps would appear to create concurrence and parallel jurisdiction established by the court and considering the paramount importance of human rights enforcement such grant of additional power would be quite desirable.

2. The present NHRC with wide powers of investigation and its suo moto action is noteworthy and appreciated. With this power of investigation the NHRC must continue to conduct an impartial investigation so that lack of evidence in such cases can be rectified.

3. The establishment of human rights cells in each district or NGO is also necessary to get information regarding the custodial torture and other brutalities of the agents of the government.

4. Suggestions of the NHRC must be carried out by the government from and this would help in promoting human rights jurisprudence.

5. Human rights activists always show soft justice towards the hardened criminals and this can be seen throughout the administration of the criminal justice system. The main purpose of law is to protect the citizens from the criminals and so the entire system has to be modified by considering the purpose of law and the protection of human rights. There must be a balancing approach
while implementing law otherwise the main aim itself would be defeated.

6. For the effective working of the NHRC, a feedback from the government is essential so that the commission can also satisfy itself that the government has taken action to prevent or minimize the human rights violation.

7. The suggestion made by the NHRC for Video filming of the post mortem report is another requirement and that must be strictly enforced otherwise there is a chance of manipulating the evidence.

8. At present, the financial autonomy of the courts is also essential to grant interim relief. If fund come within the control of NHRC it would be a strengthening process and delay can be avoided.

9. NHRC report must get wide publicity through the media and this would help to create awareness among the citizens about their human rights. The same way when the media publish about the human rights violation it would help the government and the NHRC to take action against it.