CHAPTER–VI

ROLE OF NGOs AND NHRC IN INDIA AS A SAVIOUR OF HUMAN RIGHTS OF AN ACCUSED

6.1 Historical Sketch of NGOs

In civil society, Non-Governmental Organizations (NGOs) have been playing a significant role in generating awareness about various issues of human rights and undertaking development activities for the amelioration and betterment of deprived sections of the society at both national and International level.

NGO’s are independent or autonomous bodies free from governmental control. Such organizations are led by the human rights activists or human rights defenders – that is, individuals who make a major commitment to, and openly take up, the defence and protection of human rights of others. Human rights defenders need not, however, be formally associated with an organization, they may be lawyers, journalists, writers, religious leaders, health workers, teachers or trade unionists; very frequently they are associated with broad based peoples organization of indigenous people. They are the individuals who champion the human rights of others, often at great personal risk to their own lives and safety.¹

Human rights NGO’s play an important role in upholding human rights, as envisaged under the United Nations Declarations of Human Rights and other human rights instruments. They put pressure on Government and compel them to enforce human rights of persons and be vigilant in order to prevent infringement of these rights. Further, these organizations have helped in bringing instances of human rights violations to the notice of the State/government, so that they can take action in that regard.²

In the international crusade against human rights violation, the role of NGOs can hardly be over emphasized, as a matter of fact, the development of international norms, institutions and procedures for the promotion and protection of human rights has gone hand in hand with the proliferation of Non-
Governmental International Organizations working in the field of human rights. NGOs played an important role during the drafting of the United Nations Charter as they lobbied for the inclusion of human rights provisions in the Charter and for a system that would give NGOs a formal institutional affiliation with and standing before UN Organs. The result was the incorporation of Article 71 of the UN Charter which provides that “the Economic and Social Council may make suitable arrangements for consultation with Non-Governmental Organizations which are connected with matters within its competence…” Article 71 was implemented in due course by the Economic and Social Council (ECOSOC) and it established a formal system that enables qualified NGOs to obtain consultative status with the ECOSOC. Since then, the human rights NGOs have played a very important role in the evolution of international system for the promotion and protection of human rights and in trying to make it work. However, NGO’s role got a significant boost to the World Conference on Human Rights held at Vienna in Austria in 1993.3

At International Level, the working of NGO’s in the protection of human rights of persons may be cited in brief as follows:

The International Committee of the Red Cross, which was established in the year 1863 by Henry Dunant, a physician of Swiss origin is known to be the first International Non-Governmental Organizations (INGOs)4. After Red Cross, there was tremendous increase in the number of INGOs, particularly due to the fact that the United Nations charter had extended the recognition to NGOs, under Article 71. Some of the prominent INGOs that came up were the International, Commission of Jurists, and Lawyers Amnesty International Committee for Human Rights, Human Rights Watch, etc. These Human rights INGOs perform a wide range of functions such as, preparations of reports of human rights violations, distribution of such reports and creating awareness among media about the human rights violations by providing the accurate information to them which carrying out the tasks of lobbying and advocacy, with respect to human rights.

Amnesty International is one of the largest and most active human rights organizations in the world. It is an independent body with headquarters in London,
United Kingdom and has a consultative status at the United Nations. It has many thousands local groups and active members. Some of the specific violation of human rights that Amnesty International (AI) aims to redress are freeing of prisoners detained on the belief, ethnic origin, sex, colour, language, etc. fair and prompt trials of political prisoners, the abolition of death penalty and putting an end to the torture meted out to prisoners.

Amnesty International concentrates only on political imprisonment, torture and execution. Its basic concern has been the individual in the cell. Amnesty International seeks to achieve its goal through persuasion and dialogue with National Governments. It seeks to have transparency in its working and finances. It has gained respectability around the world due to its voluntary character, moral stance and marshalling of facts and figures. It has grass roots capability through case adoption groups and takes initiative at national and international levels. It was Amnesty International that kept the issue of torture on the international agenda when in December, 1972, it launched a worldwide ‘Campaign for the Abolition of Torture’. The following year, the U.N. General Assembly approved a resolution inspired by Amnesty International, which formally denounced torture. A.I. continued to spotlight the issue by publishing the first worldwide survey on torture in 1973, organizing Conferences and circulating a petition of more than 1 million signatures, and it did not relax its pressure until the adoption of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1984.

Other items that have been put on the agenda, by NGOs in recent years include a High Commissioner of Human Rights, a proposal by Amnesty International at the Vienna World Conference, the International Criminal Court, another items pursued in Vienna, particularly by International Commission of Jurists. In 1977, Amnesty International received Nobel Peace Prize and in 1978 it received the U.N. Award for outstanding achievement in the field of Human rights.
The other prominent INGOs is Human Rights Watch working at an international level and highlights various types of human rights violations the world over. Human Rights watch is a USA based, INGO, with it’s headquarter in New York. It is organized on the basis of divisions, which are categorized not on membership, but on region and the theme of work carried out by that particular division. Human Rights Watch (HRW) carried out it work on human rights and prison conditions.

Human Rights Watch conducts fact finding investigations into human rights abuses in all regions of the world, publishes those findings in dozens of books and reports every year, generating extensive coverage in local and international media.\(^8\)

International NGOs have also provided money and in some cases, legal advices and lawyers to defend political prisoners on trial for their life or liberty and they have provided material and moral support to the families of detainees. It was NGOs that were also behind the establishment in the early 1980s of the United Nations Voluntary Fund for Torture, to support programmes that provide direct medical, psychological, social or other assistance to torture victims and their families.

The NGOs also provide human rights education to those in positions of authority particularly the army, the police and prison, officials and circumscribed the limits of their power so that they cannot abuse others by virtue of their positions. Judges and lawyers need to be educated about human rights so that the justice system is firmly grounded in the rule of law.\(^9\)

6.2 NGOs and Human Rights Movement in India

The concept of Human rights in India too has been modelled upon the definition given in the Universal Declaration of Human Rights, 1948. Section 2 (d) of the Protection of Human Rights Act, 1993 lays down definition of Human Rights:
“Human rights mean 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.”

The U.N. Declaration on Human Rights as well as other Human Rights Covenants have influenced very much on the Constitution of India and various Indian Statutes which cannot be overlooked. Therefore, it may be said that the above mentioned definition of human rights forms a guiding light for human rights NGOs in India as it does for Human Rights NGOs at an international level.

In the Indian context, the present Non-Governmental Organizations movement towards human rights activism owes its origin to emergency era during the Reign of Indira Gandhi and inherently to some of the leading events such as increasing weakness in professional efficiency of the State apparatus and many of the democratic institutions like the bureaucracy, political parties, judiciary and the media. Their social bias, political partisanship and the growing incredibility in popular perception which has a close bearing on India’s quest for nation building, economic development and social transformation. The emergency was a period characterised by the curtailment of civil liberties through amendments to the Constitution to clamp down on the right to enjoy the fundamental rights enshrined within it, the promulgation of ordinances that legitimised the government actions, such as arresting people on the pretext of ‘preventive detention’ as well as the establishment of new intelligence outfits, such as the CBI and RAW, which assisted the government with its agenda.

As a result of the severe repression of civil liberties by the government, several individuals and organizations came to the forefront, as champions of human rights. The most prominent among these was socialist stalwart Jayaprakash Narayan’s ‘Peoples Union for Civil Rights.’ A similar organizations that was established was the ‘People’s Union for Democratic Rights’. The importance of these organizations was that they were autonomous of the government and critical of its actions. Since then, the human rights movement in India has progressed with the establishment of other Human Rights Non-Governmental Organizations
fighting and promoting human rights at the grass-roots. For example, NGOs like Vigil India Movement (Bangalore), Citizen for Democracy (Aligarh), Prayas (Delhi), Human Rights Wing (Darbhanga, Bihar), Foundation for Legal Aid Environment and Social Action (Guntur), Peoples Union for Civil Liberties (Srinagar, J&K), Human Rights Education Movement of India (Madras i.e., Chennai), Legal Aid Services (W. Bengal), Andhra Pradesh Civil liberties committee (APCLC) (Secunderabad), Association for the Protection of Democratic Rights (APDR) Calcutta, Committee for the protection of Democratic Rights (CPDRP) Bombay, Citizens Committee for Civil Liberties and Democratic Rights, Goa, LOK Adhikar Sangh, Ahmedabad, People’s Union for Democratic Rights (PUDR) N. Delhi, Citizens for Democracy (CFD) N. Delhi, PUCL, Delhi, Karnataka Civil Liberties Committee (KCLC) Bangalore, Organizations for the Protection of Democratic Rights (OPDR), Tenali, Andhra Pradesh, Indian People’s Human Rights Commission, Mumbai, The Indian Society for Human Rights for all, Equal Justice to Criminal and Victims, are some of the trustworthy and prominent NGOs. Their activities include publishing newsletter, research work, organizing Seminars, Conferences. Besides the pro-active commitments of some NGOs in protecting and promoting the human rights of the persons, there are some individuals like Hingorani(Advocate), Sheela Barse (Social Worker), Arun Shourie (Journalist), Upendra Baxi (Jurist), Ashok Kumar Johri, D.K. Basu, V.M. Tarkunde (justice), Dr. A.M. Singhvi, Rajinder Sachar, (Justice), etc., their work contributions in enforcing the human rights of poor masses in the society is highly appreciable and are of paramount importance.11

It is remarkable to note in the context of India that the positive role that the non-governmental organization (NGOs) can play in furthering the cause of human rights has been recognised both by the protection of Human Rights Act, 1993 and the National Human Rights Commission (NHRC). The Act, 1993, in Section 12(i) has enjoined upon the NHRC to encourage the efforts of the NGOs and institutions working in the field of human rights. The NHRC on its part has, in its very first report clearly spelt out the three areas in which NGOs could be its direct assistance to it, in its mission. Firstly, because of their grass roots contacts, NGOs can most
effectively identify human rights violations, articulate them and seek redress from the Commission. The Commission expects the NGOs to play an active and positive role in bringing violations and complaints to its notice. Secondly, because, of the rapport the NGOs have with the public, they can be great assistance to the Commission by helping the Commission’s investigating staff as well as undertake investigations of violations on behalf of the Commission. Thirdly, the NGO can undertake research and serious studies as specific problems and issues in view of their specialized knowledge.

The Commission also encourages and utilizes the NGOs for organizing Seminars, training programmes and in spreading human rights awareness. To coordinate and canalize the efforts of NGOs working in the field of human rights and to make known their contribution to outside world, NHRC has compiled a National Register of NGOs working in Human Rights area. Human rights violations by the State and its organs have been articulated by a specialist group of NGOs known as ‘Civil Liberties and Democratic Rights Group’.

6.3 NGOs Role as Saviour of Human Rights of an Accused in India

The present system of administration of justice is very complicated and it has become very difficult for a common man to reap out of it. In Indian perspective, Non-Governmental Organizations (NGOs) are playing important role in responding the mass voice of weak, meek, poor, suppressed, downtrodden and exploited people and emerged as a powerful protective shield of assistance in the field of legal battle to the needy persons.

In this context, activised, sensitized, dynamic and dedicated approach of some prominent NGOs is worthy to appreciate. For example, Peoples Union for Democratic Rights (PUDR), Legal Aid Services, People’s Union for civil liberties (PUCL), Common Cause A Registered Society etc. have invoke the judicial process by way of Public Interest Litigation (PIL) and by letter writing to Apex Court of India and other highest authorities and in this way, these NGOs have
played a tremendous role in imparting justice to thousands of arrested persons as well as under trials prisoners.

The NGOs can play a significant role in protection and promotion of fundamental rights of accused persons at various stages such as, at pre and post arrest stage as well as during interrogation when some accusation has been labelled against him and his arrest is made by police officer, by providing him legal aid. NGOs work towards the release of prisoners by writing letters to prison officials, judges, and various government officers of the State. They also attempt to write letters directly to their adopted prisoners or to his or her family thereby giving moral support, and to provide economic and other assistance where possible. There are several instances where the NGOs were the first to report violation of human rights to the appropriate authorities. The Supreme Court and NHRC has taken action on several human rights violations complaints relating to accused person mainly reported by NGOs from different parts of the country. Human rights are those minimum guarantees, which are available to every human being whether he or she is accountable or not before the law. An accused person is also a human being and his fundamental human freedoms in all circumstances must be protected. The accused person has certain substantive rights in criminal investigatory process against legally unwarranted investigations as well as legally unwarranted arrest and pre-arrest illegal detentions and confinements. In such situations the accused can invoke the power of High Court under Section 482 of the Code of Criminal Procedure, 1973 or Article 226 of the Indian Constitution to get such investigation quashed. Similarly, he can invoke the writ jurisdiction of Supreme Court or High Court to get his release. Following are some illustrative cases instituted by the prominent NGOs to safeguard the human rights of the accused persons:

Legal Aid Services, West Bengal, a non-political organization, under the Executive Chairmanship of D.K. Basu brought in to the Cognizance of the Supreme Court regarding deaths in police lock-ups and custody, by addressing a letter to Chief Justice of India drawing his attention to certain news items published in the Telegraph dated 20-22 July, 1986 and in the Statesman and
Indian Express dated 17th August, 1986 regarding deaths in police lock-ups and custody. The chairman submitted that it was imperative to examine the issue in depth and to develop “Custody jurisprudence” and formulate modalities for awarding compensation to the victim and family members of the victim for atrocities and death caused in police custody and to provide for accountability of the officers concerned. It was also stated, efforts are often made to hush up the matter of lock-up deaths and thus the crime goes unpunished and “flourishes”. It was requested that the letter along with the news items be treated as a writ petitions under “public interest litigation” category.

Considering the importance of the issue regarding the custodial violence and deaths in police lock-up, the letter was treated as a writ petition and it was also directed that another letter addressed to CJI, by Ashok Kumar Johri meanwhile on the same issue, be listed along with the writ petition filed by Shri D.K. Basu.13

“Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law” – Kuldeep Singh and Dr. A.S. Anand, JJ. Observed. Court held that any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. “Custodial torture” is a naked violation of human dignity and degradation which destroys to a very large extent, the individual personality. Custodial crimes not only inflict body pain but the mental agony which person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law. Protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society.

“Torture” has not been defined in the Constitution or in other penal laws. Torture of a human being by another human being is essentially an instrumentation to impose the will of the ‘strong’ over the ‘weak’ by suffering. The worst torture has become synonyms with the darker side of human civilization……. Torture is anguish squeezing in your chest, cold on
ice and heavy as stone paralysing as sleep and dark as the abyss, torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself”.

The precious rights guaranteed by Articles 21 and 22 of the Constitution of India cannot be denied to convicts, undertrials, detenue and other prisoners in custody, except according to the procedure established by law. The Supreme Court condemned the tortuous methods adopted by the police and issued detailed guidelines to be followed in all cases of arrest and detention till legal provisions are made in that behalf as preventive measures14:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their proper designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be "attested by at least one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lockup shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, where he so requests be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy be provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

9. Copies of all the documents including the memo of arrest referred to above should be sent to the illaqa Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police central room should be provided at all Districts and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police central room it should be displayed on a conspicuous notice board.

The court made it clear that failure to comply with the said requirements shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings
for contempt of Court may be instituted in any High Court or the country, having territorial jurisdiction over the matter. The requirements, How from Articles 21 and 22 (1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), the Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, R.A.W., Central Bureau of Investigation (CBI), CID, Traffic Police, Mounted Police and ITBP. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

Police is no doubt, under a legal duty and has a legitimate right to arrest a criminal and to interrogate him during investigation of an offence but it must be remembered that the law does not permit use of ‘third degree’ methods or ‘torture’ of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. Though, the accused has committed the crime and violated the human rights of other persons is liable for punishment but it cannot justify the violation of his human rights except in the manner permitted by law. The Court also pointed at in Neelabati Bahera case that convicts, prisoners, or detenus or undertrials are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of fundamental rights of arrestees and detenus.

The Supreme Court, in Nandini Satpaythy’s case quoted Lewis Mayers Stated:

“To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of Statecraft. The pendulum over the years has been sewing to the right.”
Another excellent job performed by the NGOs by bringing out in to the notice of Supreme Court regarding the handcuffing and use of bar fetters by the police authorities. “Citizen for Democracy”, a famous NGO through its president Mr. Kuldip Nayar, an eminent journalist, through a letter brought in to the notice of the Supreme Court that the seven TADA detenues lodged in the hospital in the State of Assam were handcuffed and tied with a long rope to check their movement. Security guards were also posted outside the hospital. The Court treated the letter as a petition\textsuperscript{17} under Article 32 of the Constitution and held that handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is inhuman and in violation of human rights guaranteed to an individual under international law and the law of the land. The Supreme Court expressed serious concern over the violation of the law laid down by that Court in \textit{Prem Shankar Shukla’s} case\textsuperscript{18} against handcuffing of undertrial or convicted prisoners by the police authorities. His lordship observed:

“Handcuffing is prima facie inhuman and therefore, unreasonable, is overharsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict ‘irons’ is to resort zoological strategies repugnant to Article 21……”

Handcuffing should be resorted to only when there is ‘clear and present danger of escape’ breaking out the police control and for this there must be clear material, not merely an assumption. Where a person is arrested by the police without warrant and the police officer is satisfied on the basis of the above guidelines that is necessary to handcuff such a person he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate. However, in special circumstances the Magistrate may grant the permission to handcuff the prisoner or use of fetters. Continuously the troops keeping a prisoner in fetters day and night reduces the prisoner from a human being to an animal and that this treatment was cruel and unusual that the use of bars fetters was against the spirit of the Constitution.\textsuperscript{19}
Sunil Batra, a convict under sentence of death challenged his solitary confinement as well as Charles Sobraj, under-trial prisoner (a French National) challenged the action of Superintendent of Jail putting him into bar-fetters for an unusually long period commencing from the date of incarceration on 6th July 1976 till this Court intervened by an interim order on 24th Feb., 1978. Sunil Batra displayed judicial concern for a gruesome and hair-raising picture/conditions of the prisoners to such an extent that for the first time in the history of the Court, the Chief Justice of India, M.H. Beg along with justice V.R. Krishna Iyer and justice P.S. Kailasam visited the Tihar Jail on 23rd January, 1978 to ascertain the existing conditions. The Court also permitted the Citizens for Democracy (CFD), a human rights group to formally intervene in the case.

Another important area where a convict, by working a letter to Supreme Court highlights the practice of keeping undertrials with convicts in jails and suggest to segregate them and be kept in different cell, especially the young inmates from the adult convicts so that homosexual tendencies, as well as various diseases such as Aids, HIV, etc, may be avoided from spreading to other inmates of the jails. In this respect Sunil Batra (No 2)20 case may be cited.

The judicial process was set in motion by a letter written by a prisoner to a judge of the Supreme Court complaining of the brutal attack by the prison staff as a fellow prisoner. Prisoners are persons and having some rights and do not lose their basic Constitutional rights. Where the rights of a prisoner either under the Constitution or under other law are violated, the writ power of the Court can and should run to his rescue. Prison torture is not beyond the reach of Supreme Court under Article 32. Forsaking all procedural formalities, since freedom was at stake, the letter was treated by the Court as a petition for the writ of habeas corpus. In this case, the Court held that the practice of keeping undertrials with convicts in jails offended the test of reasonableness in Article 19 and fairness in Article 21. The undertrials are presumably innocent until convicted and if they are kept with criminals in jails, it violates the test of fairness of Article 21. Krishnan Iyer, J., delivering the majority judgment, held that integrity of physical person and his
personality is an important right of a prisoner, and must be protected from all kinds of atrocities. The Supreme Court has adversely commented upon the practice of causing physical injury to prisoners in the name of prison discipline. No personal harm, whether by way of punishment or otherwise, is it to be suffered by a prisoner without affording a preventive, or in special cases, post facto remedy before an impartial, competent available agency. “The Court also stressed the point that the goal of imprisonment is not only punitive but restorative, to make an offender a non-offender’.

The Supreme Court has assumed under Article 32, jurisdictions to consider prisoners grievances of ill-treatment and the Court emphasized that a prisoner, whether he be a convict, under-trial or detenu, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. Even when a person is convicted and deprived of his liberty in accordance with the procedure established by law, a prisoner still retains the residue of Constitutional rights. Articles 14, 19 and 21 are available to prisoners as well as freemen. Prison walls do not keep out fundamental rights.

Thus, the Supreme Court approved and reiterated the specific guidelines laid down by this Court in Sunil Batra’s (No.1) case and gave following directions to central and State Governments and the Jail authorities:-(1) that the petitioners torture was illegal and he shall not be subjected to any such torture until fair procedure is complied with. (2) No corporal punishment or personal violence on the petitioner shall be inflicted. (3) Lawyers nominated by D.M., Session Judge, High Court and Supreme Court will be given all facilities to interview, right to confidential communications with prisoners, subject to discipline and security considerations. Lawyers shall make periodical visits and report the concerned Court the result of their visits. (4) Grievance deposit boxes shall be maintained in jails which shall be opened by D.M. and Sessions judges frequently. Prisoners shall have access to such boxes. (5) D. M. and Sessions Judges shall inspect jails once every week, shall make enquiries into grievances remedial, and take suitable
actions. (6) No solitary or punitive Cell, no hard labour or dilatory change, denial of privileges and amenities, no transfer to other prison as punishment shall be imposed without judicial approval of the Sessions Judge.  

In this way, the Court has maintained that the conviction of a person for a crime does not reduce him to a non-person vulnerable to a major punishment imposed by jail authorities without observance of due procedural safeguards. The under-trials are in custody, but not undergoing punitive punishment. To improve the conditions in prisons, the Supreme Court has made several suggestions in *Ram Murthy’s* case, e.g. the Court has emphasized upon reducing overcrowding in prisons and upon giving proper medical care to the prisoners. Thus, Court has sought to humanise prison administration and condition of prisoners to some extent, by exposing the cruelty of prison administration system in India, through its various pronouncements and directives.

The tendency of jail authorities in continuously keeping the persons in jails as detenues or prisoners for years, in illegal detention, without any justification, even after they have been released or acquitted by the Court, has been highlighted by public spirited persons or non-governmental organizations, and brought into the cognizance of Supreme Court.

The Free Legal Aid Committee, Hazaribagh brought to the notice of the Court through a letter about the illegal detention of certain prisoners in the Hazaribagh jail for two or three decades without any justification. At the time of their detention prisoners were declared insane but afterwards they became sane but due to the inaction of authorities to take steps to release them, they remained in jails for 20 to 37 years. It was held that the prisoners remained in jail for no fault of theirs but because of callous and lethargic attitude of the authorities and therefore entitled to be released forthwith. The Court has emphasized that there should be an adequate number of institutions for looking after the mentally sick persons and the practice of sending lunatic, or persons of unsound mind into jail for safe custody is not desirable, because jail is hardly a place for treating such persons. Another judgment of far reaching importance is *Rudul Shah Case*.  

---
when he was kept in jail for 14 years, even after his acquittal by a criminal Court, where his right of personal liberty guaranteed by Article 21 was breach by jail administration. He was acquitted by the Court of Sessions, Muzaffarpur, Bihar, on June 30, 1968, but was released from jail only on October 16, 1982. This was done only when a habeas corpus petition was moved on his behalf in the Supreme Court. The fact situation revealed ‘a sordid and disturbing State of affairs’ for which the responsibility lay squarely on the Administration. The Court also asked the Patna High Court to find out if there were any other detenues suffering a fate similar to Rudul Shah’. The State authorities failed to place before the Court any satisfactory material for his continued detention for such a long period. The Court felt that not awarding damages in instant case would be doing merely lip services to fundamental Right to liberty which the State Government has so grossly violated, and directed to Bihar Government to pay Rs 35,000/- as compensation to Rudul Shah who had to remain in jail for 14 years.

PIL writ petition can be filed in the Supreme Court under Article 32 complaining of infraction of fundamental rights of individuals, or of weak or oppressed groups who are unable themselves to take the initiative to vindicate their own rights. The Supreme Court has ruled that to exercise its jurisdiction under Article 32, it is not necessary that the affected person should personally approach the Court. The Court can itself take cognizance of the matter and proceed suo motu or on a petition of any public spirited individual or body. The Court derives such a power by reading Article 32 with Article 142 and Article 141. Article 144 mandates all authorities to act in aid of the Court orders.

The Hussainara Khatoon cases to vindicate the right of personal liberty under Article 21 of the Bihar undertrials started with an article written by K.F. Rustamiji in the Indian Express, where he pointed out how undertrial prisoners were languishing in jails in Bihar for years without trial. An advocate, Kapila Hingorani, then filed a petition under Article 32 in the Supreme Court to protect the personal liberty of the undertrials.\textsuperscript{27}
In *Hussainara Khatoon (No.1) v. Home Secretary State of Bihar*, a petition of writ of habeas corpus was filed by number of undertrial, prisoners who were in fails in the State of Bihar for years awaiting their trial. The Supreme Court held that ‘right to a speedy trial’ a fundamental right is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. Speedy trial is the essence of criminal justice. In United States, speedy trial is one of the constitutionally guaranteed right under the sixth amendment. Bhagwati, J. held that although, unlike the American Constitution speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted in *Maneka Gandhi’s* case. No procedure which does not ensure a reasonable quick trial can be regarded as ‘reasonable, fair or just’. For this reason the Court ordered the Bihar Government to release forthwith the undertrial prisoners on their personal bonds.

In a significant judgment in *Abdul Rehman Antulay v. R.S. Nayak*, the Supreme Court has laid down detailed guidelines for speedy trial of an accused in a criminal case but it decline to fix any time limit for trial of offences. The burden lies on the prosecution to justify and explain the delay. The Court held that the right to speedy trial flowing from Article 21 is available to accused at all stages namely the stage of investigations, inquiry, trial, appeal, revision and retrial.

The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) The worry anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, enquiry or trial should be minimal; and

(c) Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witness or otherwise.
The Petitioner, Peoples Union for Civil Liberties, filed a writ petition under Article 32 of the Constitution for issuing appropriate directions for instituting a judicial inquiry into the fake encounter by Imphal police in which two persons were killed, to direct appropriate action to be taken against the erring officials and to award compensation to the members of the family of deceased. The police authorities denied the allegation of “fake encounter”. The Supreme Court held that killing of two persons in fake encounter by the police was clear violations of the right to life guaranteed in Article 21 of the Constitution and the defence of Sovereign immunity does not apply in such case. The Court awarded Rs. One Lakh as compensation to each deceased. Following Nilabati Bahera’s Case, the Court held that the provisions of Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 which says, ‘anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation for enforcing fundamental rights, are enforceable.’

A very grievous aspect of the present day administration of criminal justice is the long pre-trial incarceration of the accused persons. The poor persons have to languish in prisons awaiting trial because there is no one to post bail for them. This perpetrates great injustice on the accused person and jeopardised his personal liberty. Thousands of accused persons languish in jails awaiting trial for their offences. Sometimes an undertrial may remain in prison for much longer than even the maximum prison sentence which can be awarded to him on conviction for the offence of which he is accused. This adversely affects the rights of the undertrials who are presumed to be innocent till proven guilty. This also leads to overcrowding in prisons. One reasons for this State of affairs is the irrational law regarding bail which insists on financial security from the accused and their sureties and, thus, the poor and indigent persons cannot be released on bail as they are unable to provide financial security. Consequently, they have to remain in prison awaiting their trial. Thus, even persons accused of bailable offences are unable to secure bail.
The Women’s Action Research and Legal Action for women highlights the plight of children living in jails with their prisoner mother by filing a writ petition in the Supreme Courts, in *R.D. Upadhayay v. State of Andhra Pradesh*, and requesting the Court to pass appropriate directions for their proper care, welfare and development. It was said that in spite of several Constitutional provisions and laws made thereunder, such as Articles 15, 15(3), 21A, 14, 21, 23, 39(e) (f), 42, 45, 46, 47 and laws such as Guardian and Wards Act, 1890, Child Marriage Restraint Act, 1929, Hindu Adoption and Maintenance Act, 1956, Probation of offenders Act, 1958, Orphanages and Charitable Homes (Supervision and Control) Act, 1960, Child Labour (Prohibition and Regulatory) Act, 1968, Juvenile Justice (Care and Protection of Children) Act, 2000 Factories Act, 1948. Etc. and National Policy of State and its Committee of Government of India to U.N. Convention of Rights of Children, the Plight of children particularly living in jails has not been improved. The Supreme Court showing serious concern regarding the plight of children, living in jails with prisoners mother issued detailed directions for their interest regarding food, shelter, medical care, clothing, education and recreation facilities which are declared to Child’s right. The Court also issued directions as regards to their diet. The Court held that before sending a woman to jail who is pregnant, the authorities concern must ensure that jails in questions has basic minimum child delivery as well as for providing pre-natal and post-natal care for both, the mother and child. Birth of child in prison is not to be recorded as ‘prison’ in Birth certificate. It shall be registered in a local birth registration office. Child above six years is not to be kept with female prisoners. The Court directed that the jail Manual must be amended suitably so as to incorporate these changes.

Thus, the NGOs, social workers, public spirited persons and other voluntary Agencies in India are plying significant, dynamic and tremendous role in imparting justice to thousands of poor, weak, suppressed, downtrodden and exploited people, especially the undertrials, prisoners or accused persons, through its activised, sensitised, dynamic and dedicated approach towards the protection of human rights of these persons and emerged as powerful protective shield of assistance in the field of legal battle to these needy persons. These voluntary organisations are
providing justice to the undertrial prisoners or accused persons through legal aid, by its strategic arms like public internet litigation, Lok Adalat, etc. NGOs and public spirited persons came to rescue the fundamental rights to life and liberty of the undertrial or the accused persons when the same is being infringed by the authorities. Often, the person arrested or illegally detained, are not aware of their rights, then the NGOs and public spirited persons render their active services to those who do not have voice against the brutalities committed by arresting or detaining authorities. In other words, they are the voice of voiceless and the strength of the weaker sections who are ignorant of their fundamental rights. NGOs also work in rehabilitation, aftercare and treatment of offenders. In summing up, social workers and NGOs would help immensely in ensuring that the law enforcement officials strictly follow the procedural aspects laid down by law and that they are accountable for that in any regard.

6. 4 NHRC and Media: The Rescuers of Human Rights of an Accused:

The NHRC, like national human rights institutions in other countries, is an outcome of the process of universalization of human rights institutions. The United Nations, ECOSOC and UN Commission of Human Rights have been trying since 1946, to persuade nation-States including India to established National Human Rights Institutions, as it is widely believed that the translation of international human rights standards into reality is possible only with the establishment of such institutions. The guidelines suggested in the “Paris Principles”, therefore became the basis of the formation of India’s National Human Rights Commission.

No less significant than international factors are some of the domestic factors that has pressurised the Indian Government to established a National Human Rights Commission. The human rights movement in India led by civil rights organizations like PUDR, PUCL, CFD, CPDR, etc., since the time of national emergency, have been very critical of the role of State vis-a-vis human rights violation by State law enforcement and security machineries. The above criticism were also substantiated by the reports of Amnesty International and Asia Watch, various decisions of Supreme Court and High Courts, the reports of Law
Commission and the National Police Commission and many other research findings. The most potential and immediate factor behind the creation of NHRC is perhaps the issue of human rights in J&K, which most frequently hogged the headlines of newspapers and main news items of T.V. Channels.

However, in spite of all the Constitutional judicial, legal and democratic arrangements, Indian State was being constantly criticised for the violation of human rights, more particularly by the State agencies like military, para-military and police force. The police are essentially a law enforcing agency but if it becomes a law making or law violating wing then who should be the saviour of the downtrodden, poor undertrial prisoners or the accused persons from custodial or incarceration torture? Often, police relies more on fists than on wits or on torture than on culture, in such situations, no doubt, the judiciary is the last hope. Although, Supreme Court has expressed its serious concerns and worries towards police atrocities and death in police custody in several cases, the human rights violations were at its peak and the need for a quasi-judicial body dealing only with the cases regarding human rights was felt. Ultimately, Government of India incorporated the Protection of Human Rights Act, 1993 in the Statute Book, in order to ensure speedy and fair redressal to the victims of human rights violation and to discharge its Constitutional and international obligations. In accordance with the provision of the said Act, the Government of India, constituted a National Commission on Human Rights, empowering it to deal with the violations of human rights.

6.4.1 Structure of the Commission:

NHRC came into operation on 28th September, 1993 with a chairman and eight other members. A person who has been a Chief Justice of the Supreme Court is alone eligible to become the chairperson. The other members are appointed from the following categories namely:

(a) One member who is or has been a judge of the Supreme Court of India;
(b) One member who is or has been a Chief Justice of any High Court;
(c) Two members are appointed on the basis of their special knowledge or experience in the field of human rights; and

(d) The chairpersons of National Commission for the Scheduled Castes, National Commission for the Scheduled Tribes, National Commission for Minorities, and the National Commission for Women are the members.

All the members are appointed by the President of India upon the recommendations of a committee, consisting of the Prime Minister as the Chairperson and five other members as specified in the Act and they can hold office upto five years from the date of appointment, or until the age of seventy years. To fulfill its mandate, the Commission is assisted by Secretary General, police and investigative administrative, technical and scientific staff to support it in its effective functioning.34

6.4.2 Functions and powers of the Commission

The functions of NHRC as spelled out in Section 12 of the protection of Human Rights Act, 1993 make it the nodal institutions to promote and protect human rights in India. The Commission is mandated to discharge the following functions:

(a) To inquire into the violation of human rights or abetment thereof either *suomotu* or on a petition submitted by its affected party or on his behalf by any person, or negligence shown by a public servant in the prevention of such a violation.

(b) To intervene in any of the proceedings pending before a Court with the permission of such Court on any complaint of violation of human rights.

(c) To visit any jail or any institution where persons are detained or lodged for purposes of treatment, reformation or protection under the control of a State Government with an advance notice to study the living conditions of the inmates and to make recommendations.
(d) To review the safeguards for the protection of human rights provided by the Constitution or any of the existing law and to suggest measures to the Central and State Governments for their effective implementation.

(e) To review all the aspects that inhibit the enjoyment of human rights including acts of terrorism and recommend the remedial measures to the Government.

(f) To study the treaties and other international instruments on human rights and make recommendations to the Central Government for their effective implementation.

(g) To undertake and promote research the field of human rights.

(h) To propagate the concept of human rights and to promote the awareness for their protection among various sections of the society, it can undertake publication of books or pamphlets or conduct Seminars or use the media or any other means available to it.

(i) To promote and support the non-governmental organisations and institutions working in the field of human rights.

Thus, above mentioned functions reveals that the sole objective of the Commission is to provide justice to all whose rights are violated, particularly by State Officials. NHRC can intervene in any case involving human rights violation and can also visit any place of violation of human rights, the Commission has been given the power of a civil Court\textsuperscript{35} to conduct inquiries and investigations of such cases. NHRC can approach the Supreme Court or High Court concerned for such directions, orders or writs as that Court may deem necessary. Besides this, the Commission recommends to the concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary. Commission makes its reports public together with the comments and the action taken or proposed to be taken by the concerned governments or authority if any, on its recommendations.\textsuperscript{36}
6.4.3 Custodial Crime and NHRC

The functions assigned to NHRC are in scope and range. The Commission is required not only to promote and protect all fundamental rights enshrined in the Constitution of India but also those covered by Treaties to which India is a party. Most of the complaints which come before the Commission relate to such matters as custodial deaths and rape, disappearance of persons from custody, cruel, inhuman or degrading punishment and torture, gender related violence, atrocities against vulnerable sections of society, such on women, children and the disabled, especially those belonging to Scheduled Casts and Scheduled Tribes. The Commission can take cognizance of a matter *su motu* even if it receives no complaint about it.

India has inherited its police organization from its colonial past without much change in its repressive and exploitative colonial culture. This paradox creates a situation in which the greatest threat to the life, liberty and dignity of the people comes from its State law enforcement agency that is the police. The violation of human rights by police, especially torture and deaths in police custody has become a burning issue in the last two decades in India. Custodial death is a phenomenon that very much occurs in police custody everywhere in India. Unlike custodial death, there is no official or unofficial record of custodial torture cases, since torture in police custody due to the use of third degree methods is mostly suppressed and only few cases come to the notice of public. Numerous torture cases have been reported in the news media but these cases represent only a fraction of the real numbers. Amnesty International observed in its report, “torture frequently goes unreported unless there is an investigation by independent human rights or civil liberties body, some form of public pressure or protest or a political dimension. Even civil rights activists and journalists who expose human rights violation by police have also been detained and ill-treated.” Dr. Binayak Sen, an award-winning doctor and civil rights activists, was arrested on May 14, 2007 in Bilaspur under the charge of conspiracy for war against the State and treason under Section 121- and 124-A of Indian Penal Code, and the Chhattisgarh Special Public
Security Act, apart from being members of a banned extremist group CPI (Maoist) because he raised his voice against police atrocities and had been a fierce critic of Salwa Judum, the State supported anti-Maoist movement, and criticised the government. He was arrested with the sole motive of crushing Sen’s voice against the government. As prof. Updendra Baxi says, “by the very nature of the activity, illegal violence by police is difficult to document scientifically. It is, therefore, only through reports and Commission of inquiry, judicial decisions, scholarly analysis and official reports, works of NGO’s, media and lastly the fearful attitude of the citizens towards police that we learn about the varieties of the police torture.”

The most fundamental of all rights is undeniably the right to life and liberty. NHRC believes that the denial of this basic rights to a human being or impediments brought in the way of attainment of this right, in any manner, is cause of concern for the society as a whole. Therefore, when the State apparatus is accused of being the cause of custodial crime/violence (death, rape and torture in custody), it would not be wrong to say that it is willfully abdicating its most basic and fundamental duty towards the citizen in a democratic system, the Commission believes. The very core of democratic philosophy rests on the presumption that the State shall not do anything that impedes or denies the right to life of any individual except by due process of law. Therefore the Commission has, since its establishment, been grappling with the problem of the custodial justice system in the country. As a result of persistent efforts of the Commission, in recent years, more and more cases of violation in custody have been highlighted and exposed. It has always been the priority of the Commission to curb custodial violence.

Towards this objective, the Commission soon after its set-up, as its first effort to end custodial violence issued guidelines/instructions on December 14, 1993, to all District Magistrates and superintendents of police to report any incident of custodial rape, torture or death directly to the Commission within 24 hours of the occurrence. Information on custodial deaths was to be followed by a post-mortem report, a videography report on the post-mortem examination, an
inquest report, a magisterial enquiry report, chemical analysis report etc. Failure to send such reports, it will be presumed that an effort has been made to suppress the news of occurrence by such authorities. The Commission, since 1993 till 2006 has received the informations of 13,281 deaths having occurred both in police and judicial custody. Besides this, it has also taken an active interest in the matters relating to the alleged mass cremation of victims of indiscriminate killings in police encounters.

The Supreme Court has given a much wider dimension to the functioning of the NHRC through its ruling in Pramjit Kaur v. State of Punjab, where the Court held that under Article 32, it can refer any matter to the Commission for inquiry and the Commission then acts sui generis under remit of the Supreme Court and, in such a case, the Commission is not bound by the shakles and limitations of the NHRC Act. The Court has described the commission as “a unique body in itself.” Fundamental rights guaranteed by the Constitution represent the basic human rights possess by every human being. The Supreme Court jurisdiction under Article 32 “cannot be curtailed by any statutory limitations” including those contained in the various provisions of NHRC Act. The Court has emphasised that all act. The Court has emphasised that all authorities in the country are bound by the directions of the Court and have to act in the aid of the Court (Art. 144). Therefore, when the Court in exercise of its jurisdiction under Article 32 entrusts to the NHRC to deal with certain matters in the manner indicated in the Court order—the Commission would function pursuant to the directions issued by the Supreme Court and not under the Act constituting it. The Court has thus observed:

In deciding the matters referred by this Court, NHRC is given a free hand and is not circumscribed by any conditions. Therefore, the jurisdiction exercised by the Commission in these masters is of a special nature not covered by enactment or law and thus acts sui generis.

Reference may be made to another Supreme Court pronouncement in NHRC v. Arunanchal Pradesh, in this case, the Commission assumes a new role – that of a writ petitioner before the Supreme Court. NHRC filed a public interest
litigation under Article 32 for enforcing the rights under Article 21 of the Constitution.

6.4.4 Assertive Role of NHRC

In all cases of custodial deaths, the Commission has recommended payment of interim relief to the kith and kin of the victims and these recommendations, in most of the cases, were accepted and implemented by State governments. Besides this, it has also given recommendations for departmental or criminal actions to be taken against the guilty officials, but these recommendations are not always implemented by concerned authorities.

Custodial torture which is another form of violation of right to life and personal liberty in the most barbaric manner, has been a major concern of NHRC. The Commission believes in the view that custodial torture is preventable and that is the responsibility of the State to protect the rights of accused person in custody. “There should be zero tolerance for any kind of violations of human rights in custody”, has always been the motto of the Commission. Since day one, the Commission has seriously taken up many cases of custodial torture of various forms from various parts of the country, every year. The Commission after conducting enquiries and investigation of such cases, recommended stringent actions against the erring police personnel and other custodial authorities. But unfortunately these recommendations are not always implemented by State agencies.

NHRC as a monitoring body over deaths and other violence in Police custody, has been emphasizing on scientific, professional and human approach to be adopted by police personnel towards persons detained for investigations with a view to reduce custodial crime, the Commission has taken many steps to provide human rights training to the police personnel. It has made extensive recommendations, aimed at reforming certain aspects of the administration of the criminal justice system so as to make it more sensitive to human rights considerations.
The Commission monitored the implementation of TADA (Terrorist Disruptive Activities (Preventions) Act, 1987, after a thorough study of this draconian law, asked the Law Commission to suggest way to replace the Act. The fact is that the Commission continued efforts in monitoring and reporting its misuse at various States brought a nationwide debate on TADA ultimately leading to abolition in 2003.

NHRC has done a commendable job as an agencies of reforms, particularly in case of jail. The Commission has not only contributed in terms of studying into the factors leading to overcrowding of prisons, it has made several useful recommendations as to how to make jails more humane and prisoners adaptive to take up newer responsibilities after their release. In this regard, the Commission’s role in prison reforms in the Tihar Jail is noteworthy. In Tihar Case, after a thorough study, the Commission recommended for additional premises alongwith vocational courses in tailoring, carpentry and bookbinding to ensure that such prisoners earn their living after they are released. Besides, the Commission ensured that prisoners are provided with adequate medical care. The Commission has made impressive contribution on most neglected frontier of human rights, police lock-up and the conditions in sub-jails. The Commission has made persistent efforts to reform the criminal justice system thereby to make it more humane and just.44

In *Ram Deo Chauhan* alias *Rajnath Chauhan*45 case, the NHRC highlighted that to a minor accused, death penalty could not be awarded by Court, if this right is guaranteed either under the Constitution or under an International Covenant or under a law, and if he is denied access to such right, then it amounts to a clear violation of his human rights and a clear violation of his human rights and NHRC has the jurisdiction to intervene for protecting it. In a rare instance, the Supreme Court has admitted that its earlier judgments in one and the same case upholding the death sentence awarded by the trial Court and they confirmed by the High Court were a mistake and a violation of human rights of the accused. The Court in
a second review upholds the Assam Governor’s order commuting the death penalty/sentence to life sentence.

A Bench of Justice Aftab Alam and justice A.K. Ganguly in its order said: “Instances of this Court’s judgment violating the human rights of the citizens may be extremely rare but it cannot be said that such a situation can never happen…."

The Court further observed:

Human Rights are the basic, inherent, immutable and inalienable rights to which a person is entitled simply by virtue of his being born a human. They are such rights which are to be made available as a matter of right. The Constitution and legislation of a civilised country recognise them since they are so quintessentially part of every human being. That is why every democratic country committed to Rule of Law put into force mechanisms for their enforcement and protection.

Notwithstanding the fact that the Commission is only an investigatory and recommendatory body rather than an accusatory or judicial body, its sincere efforts in promoting human rights of accused persons and checking police atrocities, torture and use of third degree methods in custody and take initiative to prosecute against persons of authority found guilty of violation of human rights are appreciable. The Commission has endeavoured to give a positive meaning and content to the objectives set out in our Constitution, and PHR Act. It has worked vigorously and effectively to create awareness and to sensitize police officials about human rights. It has always embarrassed the police exposing their acts of violation of human rights. Its efforts in the field of custodial crime have not only highlighted the issue but also made the enforcement officials conscious of their duties and created in them fear of being exposed and punished for any of their excesses and mistakes. It is apparent that ‘custodial death’ or ‘torture death’ and ‘custodial torture’ are the products of the larger system of violent culture that exists in police organizations, which in turn is caused by various structural, procedural and behavioural shortcomings of the age-old colonial police system. It is widely realized both by the police authorities as well as the public in general that
a comprehensive reform in police organization is overdue, and for this purpose, Law Commission, National Police Commission, National Human Rights Commission, Bureau Police Research and development and various judicial decisions have suggested numerous reforms measures.

The need of the hour, besides the efforts that NHRC and judiciary are doing, is to implement all the reform measures suggested by various Commissions, Committees till today to make Indian Police a human rights sensitise organization. Today, police, in a democratic and human rights conscious society, is expected to change its aged-old role perceptions, personality traits, behavioural parameters and methods of operations. There is a need of paradigm shift from the perception of police being “an executive arm” or “agent of the State” or “a brutal law–enforcing machinery” and “a repressive force” into a “citizen friendly (citizen in uniform) police”, police as ‘public servants’ respecting and protecting the rights and liberties of the people who are the fount of all authority of the State and government including that of police in a democracy. Granting the immediate interim relief (monetary compensation) to the victims of custodial crime or to their family members on the Commission recommendations though may be considered its distinguished achievement, but it is not wise solution adopted by NHRC to the problem of custodial crime. For that, a comprehensive reform in police is required. The problem lies with the non-implementation or half-hearted implementation of its recommendations to check custodial crime/violence and more particularly the recommendations regarding departmental and criminal actions against the faulty police officials, by concerned authorities. The irony is that the Commission recommendations are neither considered worthless nor disrepute by the police organization but they are not implemented by them.

Despite Constitutional and legal safeguards judicial activism, continuous public criticism, judicial activism, continuous public criticism, serious efforts on the part of NHRC and other civil liberty organizations and free press, the problem of human rights violation by the police is still persisting. The violation of human rights by police and specifically torture and deaths in police custody has become a
burning issue in the last three decades in India. Custodial death has been brought to the centre stage as a human rights issue by human and civil rights organisations and the press in India as a part of their campaign against human rights violations. The issue of custodial deaths and torture has far reaching consequences for the victim; for the image of the police; and for a civilized and democratic society. It is a growing challenge for the survival of Indian democracy itself. This uncivilized practice of policemen not only seriously erodes the image of the police but more significantly it affects the legitimacy and credibility of democratic governance. The idea of liberty and justice enshrined in our Constitution will be a distant dream, if this inhuman act of police is not checked in time.
NOTES AND REFERENCES:

4. Supra Note, 2 at 18.
6. Supra Note 1 at 352.
7. Supra note 5 at 583.
8. Supra note 2.
9. Supra note 1 at 360-361.
23. Supra Note 20.
28. AIR 1979 SC 1360.
29. 1992 1 SCC 225.
30. Peoples Union for Civil Liberties v. Union of India, AIR 1997 SC 1203.
31. Supra Note 27 at 1100.
32. AIR 2006 SC 1946.
34. Sections 3 to 11 of the Protection of Human Rights Act, 1993.
35. Ibid section 13.
36. Ibid section 18.
38. Ibid.
41. Supra Note 27 at 1361.
42. (1996) 1 SCC 742.
43. Supra Note 37.
44. Dr. Tapan Biswal, Human Rights & Gender and Environment, 2006, Viva Book Private Limited at 134.
45. See The Hindu 3 (December 9, 2010).