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## Police and Human Rights

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### **Abstract:**

*The guiding principles of criminal justice administration in a democratic society recognize the centrality of human rights in the enforcement of the rule of law. Accordingly, detailed standards for the protection of the rights of the accused and convicted persons are prescribed. The substantive relationship between the protection of human rights and the prevention of crime and treatment of offenders is institutionalized through formal processes and procedures built into the body of rules and regulations which the functionaries are required to follow. Notwithstanding the lingering legacy of its colonial culture, the criminal justice system of post-independent India promises full and faithful adherence to the preservation and protection of human rights of the persons accused and convicted of crime. Free India's concern and commitment to human rights.*

**Keywords:** Police human rights, violation issues protection constitution, acts.

### **1. Introduction**

Human Rights are human beings' rights. They are absolute and come from eternity and go to eternity. Human rights are not limited in time and space and therefore, human beings who are limited by time and space cannot do anything against the enjoyment of the same. Any attempts towards the denial of human rights will surely be resented against and followed by aggression or war. People including the police have tried to tamper with these eternal, absolute, universal birth rights of people but they could not succeed and they will not. For, human rights are not manmade rights. Author's Reflections on Human Rights

What are the Human Rights? Many police officers including the higher echelons do not know much about them; nevertheless, they speak as if they are the masters in the subject. For, if they know them they will not and cannot behave in the way they do now.<sup>1</sup>

There is some resistance from police officers to show due respect to human rights. They may say that the police work will become ineffective if human rights are fully honored. Human rights activists ask; "if the international community want the police to show due respect to human rights, why to resist the global movement"? Yes, there is a lot of truth in what they say. People all over the world do not think that the police may become ineffective if they start respecting human rights.

Violation of human rights by police is the worst crime in any democracy - in any civilized society - and in any culture governed by the rule of law. A police officer with a sense of discipline, respect to his self, decorum to his role in society, morality in his profession, honor to human beings will show respect and honor to human rights of people.

### **2. Milieu Analysis**

In India, police mean a body of people who torture and a police station means a torturing cell—a concentration camp—where all forms of atrocities may be committed to get information regarding the crime, the accomplices, culprits and to extract confessions. This feeling was more in the past than it is at present. In 1855, Torture Commission was appointed and ever since all law commissions, police commissions appointed from time to time, research studies, paper reports, reports of the commissions of inquiries, deliberations in the Legislatures/ Parliament, private conversations, public speeches, platform addresses, conferences, seminars, symposia,

<sup>1</sup> S.K. Chaturvedi, role of police in criminal justice system, (1996) P-23.

workshops, cultural programmes, cinemas, manoranjan programmes, street corner meetings, way-side performances, discussions in buses/ trains/restaurants, public complaints, letters to the editors, novels, etc., show that the public feeling is not altogether baseless. People are afraid to go alone to a police station as they fear that they will be treated in a cruel, inhuman or degrading manner.

Law enforcement, for many, means harassment to someone. People want arrest, handcuffing, humiliation, detaining in custody, calling of filthy names, demoralization, causing of starvation, jailing, remanding, etc. If at all the police do not want them to be brought in, the people do not allow the police to move matters in the way they want. In short, a situation has come into existence wherein the people want, demand and insist the police to violate human rights and at the same time they do not show any tolerating attitude to the violation of human rights. Some people want the police to use third degree methods on the suspects to get a confession and when they find that the suspect get serious injury or succumb to death owing to the injury thus caused, the entire public including those who insist the use of third degree methods turn against the police. The police are accused of human rights violations.<sup>2</sup>

Many a time, the political parties and at times the ruling government and the hierarchy in authority compel the police to violate human rights on the suspects. They want quick results. This sort of "sponsored violations of human rights" become an orphan when something goes wrong.

Fundamental rights, constitutional rights, civil rights, human rights, rights of accused/suspect and similar concepts are concepts of modern origin. Till recently, people and, to some extent, the police thought that the suspects/the accused in a crime have no rights whatsoever. Even today, many genuinely subscribe to the same view as said above) The impact of such an erroneous belief has been that many people, usually, do not go to the courts of law to get their rights established if at all they are violated. Instances are plenty to show that the police were accused of having violated the fundamental rights, civil rights, etc., of people. The public were afraid of going against the police as they thought that the police would cause further difficulties for the complainants. But, today, situations have changed because of the acceptance of human rights. There are any number of voluntary organizations, civic bodies, the press, politicians, legal aid committees, non-governmental organizations, public interest litigation societies, social workers, civic-minded bodies, etc., and all of them work for the establishment of social justice and justice for the handicapped. The movement is getting accelerated momentum and resultantly, the police are forced to work in such a way that they respect human rights of people. The compensation, sometimes, awarded by the Human Rights Commission, runs to several lakhs and in many cases, the police officers found responsible or guilty of the human rights violations are made liable to pay the compensation. A situation has come wherein the police officers are afraid to violate the human rights of people. As a result of the growing public awareness of human rights and their sacred purpose in the world, the courts in India consider it to be their sacred duty to see that human rights are protected. The Supreme Court of India holds: "Torture of a human being by another human being are essentially an instrument to impose the will of the strong over the "weak" by suffering. The work culture today has become synonymous with the darker side of human civilization".<sup>3</sup>

### 2.1. Objectives

- i. To know the Fundamental Rights of the Public.
- ii. To understand the Acts related to Human Rights.
- iii. To know the Human Rights issues.
- iv. To understand Violation of Human Rights by the Police.
- v. To know the Improvement of Human Rights in Behaviors of Police.

### 3. The Human Rights Issues

In India "THE PROTECTION OF HUMAN RIGHTS ACT, 1993" (Act No.10 of 1994), an Act to provide for the Constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental thereto was enacted by the Parliament in the Forty-fourth year of Republic of India; deemed under Chapter I Preliminary 1(3) to have come into force on the 28th day of September, 1993 received the assent of the President on 8th January,<sup>4</sup> 1994 and published in Gazette of India dated the 10th January, 1994 Part II-S, Ext.P.I (No.10).<sup>1</sup> Chapter I Preliminary: 2 Definitions (d) "Human Rights" means the right 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; (f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966.

Now, the question arises whether Act 10/94, i.e. the Protection of Human Rights Act, 1993 came into existence simply to acknowledge the enforceability of the International Covenant on Civil and Political Rights and the International Covenants on Economic, Social and Cultural Rights adopted "Try the General Assembly of the United Nations on the 16th December, 1966 in the Indian Court or whether in India it has become a MUST to enact by the Parliament to protect the Human Rights in India?

The rights relating to Life, Liberty, Equality and Dignity of the individual guaranteed by the Constitution enforceable by Courts in India respectively formed PREAMBLE of the Constitution of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic to secure for WE, THE PEOPLE OF INDIA - (Life) JUSTICE, Social, Economic and

<sup>2</sup> V.P. Srivastav Indian Police: Law and Reality, (1997) P-256.

<sup>3</sup> The Protection of Human Rights Act, 1993.

<sup>4</sup> The Protection of Human Rights Act, (1993) Act, No – 10 of 1994.

Political;<sup>5</sup> (Liberty) LIBERTY of thought, expression, belief, faith and worship; (Equality) EQUALITY of status and opportunity; and to promote among them all (Dignity) FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation<sup>4</sup> in our Constituent Assembly adopted, enacted and given to ourselves through the Constitution on the Twenty-sixth day of November, 1949, viz. just after twenty-seven months after we got the Independence and exactly 60 days prior to the Republic Day.

What are all related to the above four - (1) Life (Justice); (2) Liberty (Liberty); (3) Equality (Equality); (4) Dignity (Fraternity) - found place in the Part IV of the Constitution are practically of no use or purpose to the Indians since under Art.37 the provisions contained in this Part shall not be enforceable by any Court though it is continued to state 'but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state of apply these principles in making laws.,<sup>6</sup>

"The Preamble to the Constitution can be regarded as a key to its object and intention". "It is the function of the State, in order that human liberty might be preserved, a human personality developed, to give recognition and free play to rights of men. Fundamental Rights were practically to be found in every Constitution that came into existence after World War I. After World War II, as a result of the discussions on the proposed United Nations Charter of Human Rights, they have become more visibly important in most Constitutions framed after that War. For a prisoner all Fundamental Rights are enforceable reality, though restricted by fact of imprisonment. "The rights which are guaranteed under Part III of the Constitution as Fundamental Rights, are not merely natural rights recognized by the Constitution but are rights "conferred" by the Constitution."

"A right which has not been expressly declared to be a Fundamental Right in Part III is not a Fundamental Right". "Under the Indian Constitution it must be taken as settled law that no right can be regarded as Fundamental Right unless it is expressly included in Part III of the Constitution".

Part III of the Constitution of India dealt with the Fundamental Rights. Art.12 and 13 are General. Art.14 to 18 relate to Right to Equality. Right to Freedom is conferred under Art.19 to 22. Articles 23 and 24 are Right against Exploitation. Right to Freedom of Religion and Cultural and Educational Rights are guaranteed from Art. 25 to 30 in our Constitution.

"By the expressions "the Government and the Parliament of India" and "the Government and the Legislature of each of the States", the article obviously means the executive and the legislative authorities at the Centre and in the several States". The duty to abide by the Constitution and maintain the rule of law is cast upon all branches of the State, namely, the legislative, executive and judiciary".<sup>7</sup>

### 3.1. Violation of Human Rights by the Police

Of late, the issues of human rights have become contentious and the human right activists often regard their actions as being affirmative of the presence of a democratic State and characterize their activities as an effort to maintain and extend democratic rights. The human rights movement gathered momentum in the early 1970s when brutal police repression was used to quell the Naxalite movement in several States. A reign of terror was unleashed in West Bengal and Andhra Pradesh where a large number of alleged Naxalites were detained as under trials and many others were eliminated in "fake encounters" with the police or in organized program. For instance, 1783 Naxalites were killed in greater Calcutta alone between March 1970 and August 1971. In our country there is much cause for anguish and anger since the scale of human rights violation appears to have escalated—witness the 1984 massacre of Sikhs in the Capital, the 1987 massacre of Muslims in Meerut and the increasing numbers of women reported murdered by their husbands and in-laws every' year. Has the Police no responsibility or duty to prevent these happenings or to bring to books the violators of human rights? The post-emergency exposures of the excesses of the emergency through the televising of the Shah Commission proceedings did not come as a surprise to most people. Some of the main incidents where police have been found violating human rights in India are identified as follows—

- 1) Police lathi-charge on the blind people in front of Parliament in New Delhi.
- 2) Mass blinding of criminals at Bhagalpur.
- 3) Leg Breaking of criminals at Varanasi.
- 4) Gang rape by policemen at Narainpur.
- 5) Massacre of 60 Adivasi in police firing on April 20, 1981 and even disappearance of some of the bodies at Indervalli.
- 6) Baghpat incident of fake encounter and recent incident of Pilibhit in U.P. where 10 terrorists were reportedly killed in an encounter.
- 7) Atrocities and violations of human rights during counter-offensive operations in North Eastern India in States like Manipur, Tripura and Mizoram.
- 8) Repressive measures of police during anti-terrorist operations in Punjab and Kashmir including cases of "encounters"
- 9) So-called CAT operations (Civil Aided Anti Terrorist operations); by the special task forces.
- 10) The Rameeza Bee incident;
- 11) The Fernandes torture in police custody;
- 12) The Partapgarh electric shock interrogations and use of third degree methods.<sup>8</sup>

<sup>5</sup> The Protection of Human Rights Act (1993) Chapter – I.

<sup>6</sup> Constitution of India Part IV Act, 37.

<sup>7</sup> Indian Constitution of India: Fundamental Rights Act 12, 13, 14, 19-22, 23-24.

<sup>8</sup> Aparna Srivastav. Role of Police in a Changing Society, (1999) P. 75-83.

The time has come in India for a frank dialogue between civil libertarians who champion human rights and senior police officers so that each side understands the other's concerns. The fight against terrorism can be won only if the people are weaned away from terrorists and they can be weaned away only if they are assured that their rights will be respected.<sup>9</sup>

There is need for stern measures to weed out corruption, indiscipline, lawlessness and violators of human rights from the police force itself. During the last five decades, according to a report, police often violated human rights and used following third-degree methods against human beings-

- 1) Stamping on the bare body with heeled boots.
- 2) Beating with canes on the bare soles of feet.
- 3) Rolling a heavy stick on the shins with a policeman sitting on it.
- 4) Making the victim crouch for hours in 'z' position.
- 5) Beating on the spine.
- 6) Slapping with the cupped hands on both ears until the victim bleeds and loses consciousness.
- 7) Beating with rifle butt.
- 8) Inserting live electric wires into body crevices.
- 9) Forcibly laying nude on ice slabs.
- 10) Burning with lighted cigarettes and candle flame.
- 11) Denying food, water and sleep and forcing the victim to drink his own urine.
- 12) Stripping the victim, blackening face and parading him in public.
- 13) Suspending the victim by his wrists.
- 14) Hauling him on 'Aeroplane'. Victim's hands are tied behind the back with a long rope, the end hauled over a pulley, leaving the victim dangling in mid-air, swinging.<sup>10</sup>

The Shah Commission has raised two basic issues regarding the misuse of the police during the emergency

- 1) The rule of law was subverted by employing the police for questionable purposes.

2) There are dangers in giving "vast and **arbitrary** powers" in the hands of the police without providing effective and compelling safeguards against their possible misuse. The cases of patently unlawful detention that came up before the Shah Commission in the first two months of its hearing betrayed only a miniscule of the wide-ranging terror that the police had spread all over the country during emergency. National Police Commission in its first report has observed "Analysis of Complaint of Police Torture dealt with in Haryana, Madhya Pradesh, Maharashtra, Meghalaya, Punjab, Rajasthan, Tamil Nadu and Delhi in 1977 shows that 82 complaints were dealt with by magisterial enquiries, 17 by judicial enquiries and 430 by inquiries by other agencies like State CID, Vigilance etc." The brazen manner in which the police violated the human rights and were misused during the emergency of 1975-77 to subvert lawful procedures and serve purely political ends is brought out in Chapter XV of the interim Report II dated 26 April 1978 given by the Shah Commission of Inquiry, an extract of which is reproduced below:

- "The decision to arrest and release certain persons were entirely on political considerations which were intended to be favourable to the ruling party. Employing the Police to the advantage of one party is a sure source of subverting the rule of law."

On December 9, 1988, the U.N. General Assembly adopted without a vote—that is, with India's concurrence a body of principles for the protection of all persons under any form of detention or imprisonment. Earlier India explicitly made a reservation in regard to preventive detention while ratifying the International Covenant on Civil and Political Rights in 1979. But in 1988 it became a party to the adoption of these principles. Principle 4 envisages: "Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority" Principle 11 says that a detained person must be granted prompt hearing before a judicial or other authority. It adds "a detained person shall have the right to defend himself or to be assisted by counsel as prescribed by the law." "Principle 17 is equally explicit—"a detained person shall be entitled to have the assistance of a legal counsel. The National Security Act contains no such provision. Neither does Article 21 of the Constitution.

If the Government of India does not observe these principles in practice or refuses to secure the necessary enactment, the conclusion will be irresistible—it was guilty of sheer hypocrisy and moral cowardice when on December 9, 1988 it accepted these principles before the world body." Police and paramilitary forces of the country have to ensure that India's commitment before the U.N. General Assembly are duly honored and there are no violations of above principles.<sup>11</sup>

The half hearted implementation of some of the provisions of the special Acts by the police such as Terrorist and Disruptive Activities Act (TADA), Disturbed Area Act, Preventive Detention under National Security Act, 59th Amendment for Punjab etc. are the gross violations of human rights. The 59th Amendment of the Constitution snatches away the essence of human life—the protection of life and liberty under Article 21 of the Indian Constitution. In North East under Armed Forces (Special Provision) Act, Police and Security forces are often reported to be committing violations of human rights in various counter-insurgency operations.

<sup>9</sup> S. R. Ghosh. The Outcry of Police Brutality: An Analytical Study, (1983) P. 50-54.

<sup>10</sup> Shankar Sen, Gyan Police in Democratic Societies, (2000) P. 48-53.

<sup>11</sup> James Vadackumchery. Indian Police: What Wrong here, (1998) P-84-91.

In utter disregard to the human rights, police torture and killing of arrested people continue to be reported from time to time. Supreme Court judgments, protests in Parliament, public demonstrations—nothing deters the police from killing people in lock up. Two years ago, the Delhi based People's Union for Democratic Rights (PUDR) made a detailed investigation into custodian deaths of 48 people in Delhi and exposed the violations of human rights by the police personnel.<sup>12</sup>

Uncontrolled power of imprisonment and detention continues to be vested in the State Governments of India. "The labels attached to the repressive laws have changed from the Preventive Detention Act 1952 to Maintenance of Internal Security Act 1971 to National Security Act 1980

The power has remained intact.<sup>13</sup> Police violate human rights and a few abuses are chronic because they are systematically encouraged by the organization. In condoning systematic abuses of power by violating human rights, the police organization itself acts upon much the same rationale that the individual policeman uses to justify isolated street abuses. Even in democratic societies the law makers pass such statutes which are violative of human rights, knowing fully well that their enforcement encourages a host of police excess, including unlawful searches, dragnet arrests and systematic harassment. At present the police system and policing processes are iatrogenic and breed added injustice. Reforms in police carried out so far are only cosmetics not therapeutics<sup>14</sup>

#### **4. Suggestions for Improvement of Human Right in Behaviour of Police**

##### *4.1. Policeman Need to Be Educated on Human Rights*

Knowledge and awareness of human rights is most important for the police of democratic countries. There are many possible approaches to the methodology of teaching human rights to the police. The subject can be taught in an analytical issue oriented manner. It can be taught in a manner e.g. by comparing certain concepts in international human relations to concepts of the constitutional law. It can be taught in a historical dynamic perspective. Human rights can be taught in a clinical method by encouraging police officers to do research and write assignments on various human rights. A proper mix of all the above techniques of teaching can be utilized by police training institutions for training police officer in human rights issues. It is of utmost importance that training syllabus at each level of police functionaries are given adequate theoretical input of human rights. When police trainees are being prepared for promotion and leadership, they should be trained in the art of protecting human rights through their affective supervision and frequent visits to police stations and interrogation centres to ensure protection of human rights of the victims of police detention and custody.<sup>15</sup>

##### *4.2. Developing Sensitivity to Basic Human Rights*

Most civil liberty groups feel that the problem with the police in the country is that, it is highly insensitive. The cause may be the source of recruitment. Having witnessed discrimination and the accompanying unfairness and cruelty as a daily routine in their immediate surroundings, the average police person at the time of joining the force does not have much sensitivity to basic human rights.

This sensitivity can be imported to them through proper education and training. Knowledge of the various sections of the IPC and Cr. PC is just not sufficient. There should be a compulsory course in human rights and it must be drilled every police person that his primary loyalty is to the Constitution and the laws.

##### *4.3. Punishment to Guilty Officers*

An effective way to reduce police excesses on public is to punish guilty officers. Senior Police officials say that they come down heavily on those policemen who resort to coercion to exact a confession, but they strongly object to human rights organization frequently raking up the issue of police excesses.

##### *4.4. Vigilance of Voluntary Agencies*

Human Rights Organization like Amnesty International, Peoples Union for civil Liberty, Peoples' Union for Democratic Rights and Citizens for democracy should play a more constructive role rather than a partisan role. Such organizations should be permitted to see the plight of human rights in states like Punjab, Kashmir and North Eastern States etc. The States should welcome them and take the criticism in right spirit, to protect and preserve human rights. The Evidence Act must be amended whereby the injuries sustained by a person in police custody may presumed to have been caused by Police Officer in charge of his custody and this would shift the burden of proof on police. Infact, vigilance of the people's voluntary organizations like Amnesty International, Association for Human Right etc. is needed to make the Govt, and the police act with responsibility.<sup>16</sup>

<sup>12</sup> P.A. Sebastian, Violation of Human Rights – A Birds Eye View (1988) P-81.

<sup>13</sup> Preventive Detention Act, 1952.

<sup>14</sup> K.M. Mathur, Police in India: Problems and Perspectives (1991), P-63.

<sup>15</sup> Dr. Dalbir Bharati, Police and People: Role and Responsibilities, (2011) P-152.

<sup>16</sup> Giriraj Shah, Police Training by (2002), P-124.



#### 4.5. Centre Should Be Assigned a More Positive Role in This Respect

The issue of human rights must be addressed to the centre and not left to the State Governments, an active policy both to compensate for injustices arbitrary arrests, detentions and torture of villagers done in the past and to prevent them happening in the future, must be enforced.

#### 4.6. Judicial Guidelines to Police on Arrests

According to a ruling of the Delhi High Court, an aggrieved person has the right to approach a magistrate directly in cases where the police do not act in accordance with the law. The court made it clear that detention by a police officer beyond 24 hours was illegal and could "neither be cured nor waived". The court held that if the arrest or detention was denied by the police and the complaint disputed the same, the magistrate could make an inquiry into the question and also issue a search warrant.<sup>17</sup>

#### 4.7. Competency of the Police Force

A competent police officer can do a lot to save the police force from earning a bad name. The use of force may be a 'necessary evil' according to some policemen but they do accept that use of force is not always the best strategy. Fact and presence of mind are said to have saved a lot of trouble, defusing extremely explosive situations at times. A great measure depends on the tact and personality of the police officers. Policemen of right caliber are required at police stations, to improve the Human Rights record of the police.

4.8. 'A National Human Rights Commission' has been set up in 1993, headed by the chairman Mr. Rangnath Misra, to review the police performance on human rights and give its unbiased opinion. With this a long standing demand has been fulfilled. The first report of the NHRC has already been released in early 1995.<sup>18</sup>

### 5. Conclusion

It has to be made clear here that it is not only the Police that violates the Human Rights, but the Human Rights of the Police persons are also being violated by the Press, Public and Politicians. It is not out of place here to take a serious note about the activities of the A.P.C.L.C., P.U.C.L., etc. Organizations which are active only to protect the Naxalites, P.W. Gs, Terrorists from being dealt with under law for the commission of crime against the common public under the name and style of Revolution. A special training is needed for every one while entering the Government Service and at regular intervals thereafter as to "HOW TO TREAT THE MASTER IN DEMOCRACY". Under the present circumstances, for better, full and complete Protection of Human Rights, the National Human Rights Commission; State Human Rights Commissions in States and Human Rights Courts may be vested with inherently by impregnating them with powers to enquire, investigate and impose punishment bringing the gazette and non-gazette officials of all the wings of the Governments including the Judicial Officers and Judges and amalgamating Lok Ayuktha. Unless the Human Rights are extensively understood and implemented, there is every danger that the Institutions under Act 10/94 may turn out to be H.R.C. vs. Police which contingency would eventually harm the country's law and order situation.

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