

HUMAN RIGHTS AND POLICE: A BIRD'S EYE VIEW

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Abstract: *The realisation of human rights depends on many factors. Among the various things, the role of Justice Administration officials of the state (especially Police) play vital role. In any country, police have enormous powers in the implementation of Law and Order. Along with powers and functions, they have a number of responsibilities, accountable to state, and public at large through their acts. Human Rights protection and their realisation too depend on the behavioural pattern of the police. As a law enforcing agency their attitude, ethical, moral conduct is very important in the promotion of Human Rights. Being a vital agency between the state and public, this paper is a modest attempt to highlight the powers of the police in the protection and promotion of human rights.*

Key Words: Human Rights, National Police Commission, Model Police Manual.

Introduction:

The basic aim of law is to establish a conflict free society and to train the men to live in peace and harmony in order to lead a life with ease. This in turn will help each society to establish the tenets of social justice on equal footing and able to help the men to realise their natural or human rights guaranteed both internationally and national realms.

To establish a conflict free society, in any type of governance, the law enforcing agencies, especially the institution of Police play a vital role in the implementation of the law and order dicta as envisioned either by the Constitution, Executive, Legislature or Judiciary. However, excessive use of powers conferred on them¹, or in misinterpretation² of any law would tantamount to the violation of human rights and prevents the free exercise of the rights public at large.

In any country, law enforcing agencies play a vital role to achieve the objects of enforcement of law and order to prevent any kind of violation of legal rules and regulations. In any kind of polity citizens have limited right to protect their rights and as well that of the rights of others. State being the guardian, the main responsibility is casted on the state to protect the rights of citizens and as well to enforce the law to achieve the objects of peace and security. The Law enforcing agencies mainly Police has entrusted this vulnerable task in augmenting the rights of

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The views expressed in the article are personal and research oriented and not official.

¹ Annual Report of the National Human Rights Commission for the year 2004-5, Para 4.5; See the various Report of the National Police Commission available at <http://www.bprd.nic.in>

² Recently two women named Renu Shrinivas and Saheen Dhada were arrested for expressing their views on the face book in the wake of Bal Thackeray's demise, by misinterpreting the provisions of the IT Act (Section 66), for details see Indian Express November 20, 2012, Pune Edition, at 1.

citizenry and to eradicate crime prevention. Being an agency of the state, police could take a lead role in the promotion and protection of human rights guaranteed to citizens both internationally and nationally. Considering the significant role that police could play in the promotion and protection of human rights, a subtle attempt is made in this paper to study the concept of human rights, powers of police, relationship between human rights and police through various international and national legal instruments and verdicts of the courts.

Concept of Human Rights:

Human Rights being inalienable natural rights, they are recognised internationally through a number of legal instruments. The basic philosophy of human rights in the beginning is to protect the inherent dignity of human persons and to promote their life and liberty to do justice without any deviance from the principles of law. However, in the later decades, especially in the late sixties and early seventies the common heritage of mankind doctrine has extended the realm of jurisprudential vistas of human rights to cover that of the States and other legal entities³. In view of the expansionist philosophical tenets of human rights, human rights may be described as Human Rights for all and All for Human Rights. This definition of human rights covers all persons, which include the legal persons. Internationally states beings subjects of international law and entered into various agreements to carry their obligations in municipal law, they act as protectors of human rights of their citizenry and all persons. To carry out the vision of the UN, the state would enforce the rights of the citizens through the aid and assistance of law enforcing agencies, which could play a vital role in exercise of their powers with due care and caution.

Powers of the Police

In any society the main object and aim of law is to alleviate the intensity of conflicts and prepare the men for the progressive development of a society. Hence, the implementation of the legal dicta, the state normally empowers the police to enforce the law and order to establish peace and security. This in turn means, the law enforcing officers especially police, have enormous powers and as well duties. As officers of the states, police have to enforce their rights in order to prevent crime in the society.⁴ This being the main task of police, the law of a state empowers police legally to enforce measures, methods, and means, in order to prevent criminal offences or to detect and apprehend the perpetrators of those offences.

The various law enforcing agencies of police are empowered with a vast number of powers. They are generally, warning, ordering, identification, investigation, summons, arrest, detention, movement of restriction in a certain area or building as per the order of the judiciary, raids on private places of individuals, search and seizure, collection of evidence, disaster management duties, intelligence and security, traffic duties, protection of weaker sections, cyber crimes, drug trafficking maintenance of records, enforcement of social legislation, using scientific and other methods to extract evidence etc⁵.

In exercise of these powers, police have a number of obligations to protect and promote human rights of persons at all times only by enforcing minimum use of force. By doing so and extending honour to human rights, they not only enforce the legal system in a straightjacket fashion but also could promote the due process of law. However, many a times, for varied

³ Oppenheim: International Law, (Jennings and Watts: eds.) 9th Edition, (Indian Reprint) 2003 Vol 1, Balakrishnan Rajagopal: International Law from Below, Cambridge 2003; also see Jeffery F. Addicott et al., (Eds.): Globalization, International Law and Human Rights, Oxford 2012

⁴ Gordan Kalajdziev: Police and Human Rights: A Manual for Police Training; Danish Institute of Human Rights; 2002, at 18

⁵ For details see the Draft Model code of Police Manual on Police Duties Powers and Procedures, BPRD, Government of India, Vol.II

reasons, police excesses lead to violation of human rights, and citizens look at them with fear than with friendliness⁶. In order to prevent such miscarriage of powers, both internationally and nationally a number of documents are adopted to prevent such misuses and to guide the police⁷.

Human rights and Police:

(a) International Scenario:

In order to protect and promote the human rights of the individuals across the globe, the United Nations adopted a number of documents to guide the states in the enforcement of legal mechanism at the national level. Among the various documents that deal with human rights, the following have a direct bearing on the functioning and exercise of rights by the police in the enforcement of human rights. They are in general: The Universal Declaration of Human Rights, the Covenant on Economics, Social and Cultural rights, the Covenant on Civil and Political Rights, and other international documents. The documents that specially concern with the police are :

- Declaration on the Protection of All Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1975)
- UN Code of Conduct for Law Enforcement Officials (1979)
- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989)
- UN Declaration on the Protection of All Persons from Enforced Disappearances (1992)
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- UN International Covenant on Civil and Political Rights (ICCPR), (1966)
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
- UN Standard Minimum Rules for the Treatment of Prisoners (1977)
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter referred to as Body of Principles) (1988)
- UN Convention on the Rights of the Child (1989)
- UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)
- UN Declaration on the Elimination of all forms of discrimination against Women (1967)
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Powers (1990).

Apart from the above, the office of the UN High Commissioner for Human Rights adopted a number of practical guides highlighting the linkage that exist between police and human rights⁸.

Among the various documents, the Code of Conduct for law Enforcement Officials adopted by the General Assembly prescribed a set of guidelines that need to be observed by all law enforcing agencies which is applicable also to police⁹. According to the Code:

⁶ Jayatilak Guha Roy (Ed): Policing in Twenty First Century; IIPA, 1999.

⁷ See the UN Code of Conduct for Law Enforcement Officials, 1979: UNHCR: A Pocket Guide on Human Rights for Police, and a Reports of Police Commission of India, and the Manual of Police Code of Conduct, 1908 and the various states efforts in national regimes and the efforts of the Bureau of Police Research and Development, Ministry of Home Affairs Government of India.

⁸ For details the Web Site of UNHCR <http://www.unhcr.org.in>; also see HR Standards and Practices for the Police : Expanded pocket Book on Human Rights for the police PTS No.5/Add.3, 2004

⁹ UNGA Res.34/169, December 17,1979.

- (a). Law enforcing officer in the performance of their duty at all times need to respect and protect the human dignity and uphold of the human rights of all people.
- (b). Law enforcement officials need to sue force only if necessary and with restraint.
- (c). It is the duty of the law enforcement officials to keep all the information obtained about the persons during their investigation confidential, and need to use only to the extent necessary in the administration of justice.
- (d). It is the duty of the law enforcement officials not to employ, torture or any other inhuman, cruel or degrading treatment that is inconsistent with the dignity of persons in custody.
- (e). Medical and other health facilities need to be provided for persons in their custody, whenever required without any delay.
- (f). At no point of time, law enforcement officials indulge in corrupt practices in any manner that may result in miscarriage of justice system.
- (g). The Law enforcement officials be vigilant and observe the law and the code of the UN at all times without any deviation, and if any deviation takes place, the same may be brought to the knowledge of the respective authorities for remedial mechanism in upholding the human rights of persons.

(B) National Regime:

The constitution of India is the first National document directly endorses the aims and objects of the Charter of the United Nations and the UDHR. The framers of the Constitution inspired by the Ideals of Human Rights, for the first time in the annals of Human Rights, bifurcated the mixture of justiciable (Civil and Political Rights), and non- justiciable (Economic, Social and Cultural Rights), adopted them as Fundamental Rights¹⁰ and Directive Principles of State Policy¹¹.

Among the various provisions, Art. 22 of the Constitution expressly stipulates that any persons arrested need to be informed of the grounds immediately and be produced before the magistrate within twenty four hours or at the earliest. Apart from the article, a number of judgments delivered by the Supreme Court of India, widely interpreting various provisions of the constitution, especially Article 21 of the constitution and laid down a number of safeguards for the enforcement of criminal justice system without any misuse by police. In a number of cases, the court held that whenever, the rights of the citizens are invaded with a mischievous or malicious intent, which include the excessive use of power by police, the court can exercise the jurisdiction, to compensate the victim by awarding appropriate compensation and specify any other remedial mechanism. In this regard, the Judiciary has invented the Public Interest Litigation or Social Action Litigation and disposed of a number of cases, especially to uphold the human rights of public at large from the inimical and vindictive acts of police¹². In addition to these provisions, especially that of the distribution of powers between the Union and the

¹⁰ Part III of the Constitution of India which is described as Fundamental Rights. This a broad purview of civil and political rights

¹¹ The Directive Principles of are comparable to that of Economic Social and Cultural Rights of the UDHR. The 42nd Amendment Act included the Fundamental Duties that are part of UDHR under Art. 29.

¹² The list of cases being huge, a few of them are stated: PUCL V Police Commr., Delhi Police Headquarters, 1989, 4 Scc, 730; Bhim Singh V State of J &K, 1 985, 4 SCC 677; Nilabati Behera V State of Orissa, 1993 2 SCC 746; D.K. Basu V State of West Bengal, 1997 1 SCC 416, A.K. Roy V Union of India , AIR 1982 SC 710 ; Sunil Batra V Delhi Administration, AIR 1978 SC 1675; Hussainara V Home Secretary, State of Bihar, AIR 1979 SC 1369; A.K. Ry V Union of India, AIR 1982 SC 710 et.al. also see Shaima Khan: the NHRC: Status Report of Police Excesses In India from the Year 1993-2007 Maja Daruwala: Human Rights and Policing: Landmark Supreme Court Directives & NHRC Guidelines 2005 Commonwealth Human Rights Initiative

States also deals with the powers of the police and the restrictions on the powers of police to be imposed by the state through a number of legislations¹³.

Apart from the constitution of India, a number of restrictions have been imposed on the powers and functions of police, especially to uphold the human rights of the people at large. They are the Police Act 1861, the reports of the various commissions of the Police, the Indian Evidence Act, the Penal and Civil Laws. The Police Commission which was established in 1977 at the National Level to bring a coherent and common parlance in the administration of police and to prevent the excessive acts of police. The Commission has submitted eight reports. The Commission in its eight reports made a significant number of recommendations to curb the inimical activities of the police and to uphold the human rights of public at large at especially, people in custody of police.

According to the Commission, in major excess of violation of human rights of people, a Judicial Commission needs to be appointed every time to inquire such violative acts of police to take appropriate action against erring officials and to remedy the victims. In its second report, it has recommended the constitution of Criminal Justice Commission by enlarging the present Law Commission of India on statutory basis. It also stated to establish a State Secretary Commission in every State to define the role of the police, to prevent the excessive interference of higher authorities of police and the service conditions of police especially that of the higher officials. The third report inter-alia suggested, an amendment to section 155 of Cr.P.C., for effective police response in non-cognizable offences to protect the weaker sections. It also recommended to regulate the issue of hand cuffling of people during an arrest. In order to prevent police excessive arrests in an unnecessary manner, an amendment to Section 2 (C) and (1) of the Cr.P.C., to remove the emphasis on arrest in the definition of cognizable and non-cognizable offences. It also suggested an amendment to Section 170 of Cr.P.C., to remove the impression of arrest is mandatory in non-cognizable offences.

The Fourth report made a number of suggestions with respect to the procedure for Registration of First Information Report, recording the statements of Witnesses, restoration of stolen property to victims of crimes; enhancing the powers of police for settlement of compounding offences in simple criminal matters; intimation of the grounds of arrest; restrictions on the use of third degree methods employed by police. It also suggested the constitution judicial commission by the High Court and the Sessions court to supervise the function of the lower judiciary in protecting the rights of victims and witness and to curb the excessive acts of police in upholding the human rights.

The Fifth Report mostly dealt with the reformation of police Organisation and the need for transparency in their acts and behaviour dealing with victims and criminals. Among the various recommendations, the significant one was the recruitment of Women Police and Police Stations to look after the Women's problems and rights. The Sixth and Seventh Reports concentrated on the structural changes on the recruitment and service conditions, financial allocation etc. Among the various suggestions, the significant one is, it requested the Government to separate the investigative staff from the law and order staff. The Eight report dealt with the accountability of police and the withdrawal of Sections 132 and 197 of Cr.P.C., which mandates the permission of police authorities to prosecute a police official. It also recommended to enact a new police Act to suit the modern needs of the country, especially to

¹³ George Matthew: Republic of India <http://www.thomasfleiner.ch/files/categories/intensivkursII/india2.Pdf> visited on 30-10.2012

train the police in upholding the human rights while exercising their powers under various civil and criminal laws¹⁴.

In response to the suggestions rendered by the National Police Commission, the Government has implemented some of the suggestions. However, the piecemeal approach of the Government could not yield desired results. It led to widespread criticism from various cross sections of the society and the judiciary in regular intervals. Taking into consideration of the widespread criticisms, Bureau of Police Research and Development started preparing a Model Police Manual to comprehensively deal with all aspects relating to police especially, to enhance the efficiency and transparency in their acts for the promotion and protection of human rights. This is in addition to various activities of BPRD and the various project studies and research regularly undertaken by it to augment the rights of the various sections of people of the society. It has adopted a number of reformatory measures to augment the rights of victims and to tackle the menace of excessive overcrowding of jails by under trial prisoners¹⁵. In the three draft reports, volume two has a special chapter dealing with especially highlighting the significant role of and linkage between human rights and police.

The draft Manual in no uncertain terms, condemns the rude and excessive behavioural patterns of police in discharge of their powers in many instances. To enhance the efficiency of police especially to augment the human rights of people it has rendered a number of suggestions¹⁶. Among the various, the following few need meritorious consideration.

- It advises the independence of police functioning without resorting to misuse of their powers by alienating with the stakes of theirs.
- Methods need to devise to prevent police registering false, unwarranted and improper cases, unauthorized calling of public to police stations, undue searches, seizures, unfair investigations, delayed trails, and indiscriminate arrests.
- Proper procedures be evolved to prevent crimes which is crucial in upholding the human rights of people.
- To prevent factors of inhuman behaviour, corruption, ulterior motives, undue political interference and other administrative and social influences, it impose duty on every police official, especially that of the higher officials to monitor and to impart training at periodic intervals to see the police officials follow the letter and spirit of law including imparting training in best practices of human rights.
- To protect the human rights of any victim, it impose a duty on police to assist him in all means to aware of their rights, and register a complaint even if a victim reach a wrong police station without denying on jurisdictional competence.
- To protect the witnesses, it prescribe the witnesses be examined at their place of residence than in the police station. In the case of women and children, this need to be followed scrupulously.
- It has made a remarkable number of suggestions to protect the rights of suspects or accused basing on the observations of the Supreme Court of India¹⁷. The police exercising their interrogation powers need to adopt decent practices with the accused at all times. No

¹⁴ For the reports see <http://www.bprd.nic.in>; also see the <http://www.humanrightsinitiative.org> for the abridged version of the recommendations of the NPC. Also See Dalbir Bharathi: *Police and People: Role and Responsibilities*, 2006; Jayatilak Guha Roy (Ed): *Policing in Twenty First Century*, 1999.

¹⁵ For a detailed acts of the BPRD see <http://www.bprd.nic.in>

¹⁶ See the Draft Police Manual: *Police Duties, Powers and Procedures*; Vol. II, at 360-379, available at <http://www.bprd.nic.in>

¹⁷ *Govinda V State of Madhya Pradesh & another* AIR 1975 SC 1378

arbitrary arrest be made. Stop torturous methods and custodial violence at any cost to prevent the miscarriage of justice.

- Women and Juveniles need to be extended special care and concern either conducting an inquiry or in custody.
- A code of conduct for police for the promotion of human rights be adopted.
- Intensive regular human rights awareness campus , seminars, symposia need to be conducted to educate the legal enforcing officers about the human rights of accused, victims and the general public.
- In every State in the office of the Director General of Police a Human Rights Cell need to be employed by an officer of the rank of Inspector General of Police to have a coordinating link with state human rights agencies, to promote research and to conduct checks against illegal acts of police, imparting key provisions of laws and judgments of the judiciary etc.

Concluding Observations:

Police play a vital role in the enforcement of law and order. The success of criminal justice systems mainly depends on the proper functioning of law enforcing officials, especially the police. At the same time, as responsible officers of the state, the police have an onerous task to protect and promote human rights as a part and parcel of the state. The best practices adopted by police, especially considering all sections of public which includes accused and victims have rights and they need to be augmented to the maximum extent without any deviation while discharging their powers and functions.

From the adoption of Police Act 1861, until date a number of laws and regulations adopted by both the Union and States to regulate the behavioural patterns of police in the promotion of human rights. But as rightly pointed out by the Police Commission and the Model Police Manual the excessive use of force or power need to be regulated to prevent the unscrupulous acts of the police. At the same time, the political leaders, pseudo fundamentalists on various counts need to stop exploiting police to sub serve their vested interests. This type of exploitative tactics are adopted by many a times especially to settle the civil disputes too at times where police have no role beyond the limits of law prescribed therein¹⁸. Many a times in spite of the repeated warning of the judiciary and higher police officials, a number of incidents are reported regularly that police interfere unwarrantedly in civil disputes¹⁹. This type of interferences constitutes as a threat to the free exercise of human rights of public at large.

In order to promote a human rights culture, as rightly observed by office of the UN High Commissioner for Human Rights, police need to be regularly equipped with the obligations and commitments of the state about its human rights. Human Rights standards be made part of the manuals of the police and be ably imparted to the police at every level starting from that of the level of police constables²⁰. The excessive interference of high officials, political bosses, and other type of corrupt and devise practices be discouraged and any amount of indiscipline

¹⁸ For example under Section 138 of the Negotiable Instruments Act, police have a limited role to produce an accused in the case of dishonor of a cheque before Magistrate. The Law only empowers the judiciary under sec 420 of IPC to punish the offenders. Many a times, police themselves act as agents of judiciary and try to settle the dispute in an arbitrators.

¹⁹ Ramlila Maiden Incident V Home Secretary , Union of India AIR 2012 SC and the case law cited there in; also see Subhiksha Trading Corp Ltd V Commissioner of Police, MANU/TN/0461/2010; See the warning of the Kerala Director General of Police: Keep of Civil Disputes; DGP tells police; Deccan Chronicle, April 2, 2012

²⁰ OHHCR: Human Rights Standards and Practice for Police; 2004

to protect human rights be sternly dealt²¹. At the same time, public also be imparted continuous training and protection through human rights education to know their rights and obligations towards society and the enforcement officers, especially police.

India is having a huge police contingent. At the same, the number of police personnel employed for law order machinery is negligible. Many a times, majority of the law enforcement agencies, especially those who are well trained and equipped to handle issue are mostly drafted many a times as security officers for the protection of Political leaders and other bosses of the State. This type of practices needs a halt. More and more law enforcing officials, especially, well trained officers need to be entrusted with the law and order machinery. The training and Research wing of Police Organisations need to establish partnerships with research organisations, and Professors for regular interaction for continued assistance for the promotion of human rights by police officials.

The police need to be trained in matters relating to contemporary developments in legal systems and be explained of the observations made by the judiciary. Any officers whomsoever deviate from defraying their obligations for any kind vested or personal interests need to be dealt sternly by the state. There is a need to enact a Comprehensive Police Act to cover all aspects relating to the functioning of police including a strict supervisory mechanism, taking into consideration of the suggestions of the National Police Commission, Judicial Decisions, Reports of Various Committees and the Model Police Manual instead of amending the Police Act 1861. Such an enactment with adequate provisions for implementation of good human rights practices certainly help the police to uplift their morale and functioning as friends of society. In any legal systems, the ultimate responsibility lies on the Law enforcing officers, especially police who could play a vital role in the booming of human rights.

²¹ See The Department- Related Parliamentary Standing Committee on Home Affairs (April 2002): *Eighty-Eight Report on The Demand for Grants (2002-2003) of Ministry of Home Affairs*, at 31