

Manual on Human Rights for Police Officers



National Human Rights Commission
India

MANUAL
ON
HUMAN RIGHTS
FOR
POLICE OFFICERS



NATIONAL HUMAN RIGHTS COMMISSION

Faridkot House, Copernicus Marg

New Delhi - 100 001, India

Manual on Human Rights for Police Officers

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Foreword

The National Human Rights Commission ever since its inception under the Protection of Human Rights Act in the year 1993, has endeavoured to give a positive meaning to the objectives set out in the Act and has worked vigorously, to create awareness about human rights and to sensitize public authorities in promoting and protecting the human rights of the people.

The nation has myriad expectations for an efficient and effective police force emerging from the reality that we are in a democracy and the police have a major responsibility of being the protectors of the rights of citizens and the rule of law, while ensuring the safety and security of all equally. It further requires the police to create the security environment which best promotes democracy and good governance.

The Commission realises that a better trained and a sensitised police force would be well equipped to face the enormous challenges the country faces today. Training and sensitisation in human rights of the Police Force has consequently been a major initiative of the Commission over the years.

The Manual on Human Rights for the Police Officers, apart from sensitising the police force, would also enhance their response capacity. A sensitised and responsive police force would be well geared to reach out to those sections of society who may not be in a position to raise their voice against exploitation due to ignorance, backwardness, illiteracy and poor economic conditions.

The Manual would help the police officers to consolidate their knowledge about the various relevant legal and Constitutional provisions, improve their professional skills and help them in evolving a methodology to facilitate better policing. It is also expected to enable the police officers to analyse, introspect and make sincere efforts in bridging the gap between the expectations of the public and the actual service delivered to them.

I am confident that the Manual would serve its purpose by guiding the police force in bringing about a change for the better and building police as a professional service for the people.



(K. G. Balakrishnan)
Chairperson, NHRC

Preface

There is no other wing of governance which touches the life of the citizens so closely as the police. Its functions which, in earlier days were primarily confined to preservation of public peace, law and order and prevention and detection of crime, are now perceived to include the protection of the democratic set up of our polity as enshrined in the Preamble to our Constitution, which among other things, includes ensuring a life of dignity to all citizens.

For all these rights and freedoms to prosper, a firm interface between the guardians of law and civil society is the first and foremost need. In order to attain this interface in a democratic set up and a welfare State it is the image of arbitrariness and torture that needs to be shed and refurbished by all ranks of the police force by adopting high professional standards in solving crimes and handling criminals. The role of the police leadership is crucial in this endeavour. It has to be understood that a misplaced protective approach, towards the acts of omission and commission by their subordinates, breeds an attitude of impunity, which is very adversarial to human rights ethos. They need to ensure that their subordinates work with the spirit to promote rule of law, which alone can serve as a guarantee against violations of human rights.

The National Human Rights Commission – ever since its inception- has been receiving large number of complaints against police for making unjustified, indiscriminate arrests, including implication of innocent persons in false cases. The civil society considers it as a serious assault on human dignity and violation of human rights. It is no longer a supine and meek spectator of the assault on human dignity inflicted in the form of custodial violence. The degree of public outrage sometimes manifests itself in an uncontrollable fury leading to attacks on the very guardians of the law. This, of course, also cannot be condoned as the civil society is as much expected to confirm to the rule of law, as the police, to enforce it. But the police cannot fail to take note of it.

While it's a well recognized fact that the powers vested with the police are immense, it is equally true that the power inherent in the role of the police can have a positive side as well. In wielding power what is required is high standards of competence and undying faith in human dignity. Unscrupulous power management is the mother of all evil that bedevils

the relationship of the police with civil society. We have to assist the society to achieve equilibrium and balance and convert ourselves into potent facilitators of equality and not disparity; for development and not stagnation; for harmony and not discord; for solace and not misery.

Police Officers as service providers to the citizens of this country need to reflect upon and take stock of the gap between the expectations of the people from the police and the actual service being delivered to them. It has to be ensured that as the very first step, policemen do not directly or indirectly, become violators of human rights. This is a prerequisite for them to act as protectors of human rights.

A democratic country like India needs democratic policing, which is based on the idea of the police as protectors of the rights of citizens and the rule of law, while ensuring the safety and security of all equally. It further requires the police to create the security environment which best promotes democracy and good governance.

The police are expected to show special consideration and sensitivity while dealing with cases of violations of human rights of the weaker sections of our society viz. women, children scheduled castes & scheduled tribes, persons with disabilities, and senior citizens. Sociological changes, measures being taken to empower them would owe their success to a large degree to how police handles the matters brought to their notice: sexual abuse of women and children in custody constitutes the gravest form of violation of human rights and dignity. It has to be noted and be always at the back of our mind that women and children constitute the bulk of the civil society. A proactive approach by police in curbing such pernicious evils as trafficking in women and children will not only be a right step towards cleansing the society of evil practices but a salutary measure too, towards enhancing human dignity.

The content and the context of human rights has essentially been there in all the major texts on policing in India, at times explicit, but mostly in an implicit manner. To cite an instance, maintenance of law and order and prevention and detection of crime has been the essence of an Act as old as the Police Act of 1861. One cannot miss the fact that the two very basic and primary functions of the police (maintenance of law and order and prevention and detection of crime) itself are fundamental in the protection and the promotion of the human rights of the people.

The idea in developing a Manual is to formulate a comprehensive description on Human Rights and Policing without loading too much of theoretical information and leaving scope for intellectual deliberations. I am glad that this line of thought is well reflected in the Manual. The inclusion of significant topics like, 'Need for an Attitudinal Change,' and, 'Protection of Human Rights through Scientific Investigations,' make it very pertinent and applicable to the day to day functioning of the Police department.

I am happy to place on record my deep appreciation for Dr. Aparna Srivastava, Research Officer, NHRC (Ex-Fellow Bureau of Police Research and Development, New Delhi), for the extensive research she undertook on the issue and for meticulously designing and authoring the Manual. I also appreciate the sincere efforts made by Sri Satinder Pal Singh, IPS, DIG, NHRC in supervising and reviewing the drafts at every step, apart from providing several valuable inputs. The able and constant guidance of Sunil Krishna, IPS, Director General (Investigation) and the encouragement and advice given by him, helped immensely in finally shaping up the Manual.

It is hoped that the Manual would spur the police officers to be proactive on human rights issues, thereby serving the purpose for which it is meant.



(P. C. Sharma)
Member, NHRC

INTRODUCTION

Policing and Human Rights are closely interrelated concepts. Ironically though, the general belief is that good policing cannot go hand in hand with human rights. One really needs to examine whether this is actually so and also if human rights is something which, as a concept, has come up very recently and is more in the nature of imposition on the police force.

This analysis becomes more crucial in the face of incidents which have been disturbing for the society and the nation on the whole. Police, it would not be wrong to say, have been in news almost every day for wrong reasons most of the time in recent history. Nithari incident had shocked the country. The incident however, cannot be viewed in isolation. An analysis of the reasons that led to the situation would state that the police is unfortunately, always obsessed by the fact that increase in crime figures would be held against them and that they could be penalized for that. Incidence of inaction, non-registration of cases, tampering with evidence, custodial crime and police excesses or brutality like rape, molestation, torture, fake encounter and death in police lockups and prisons are also reported with disturbing regularity.

Indeed one gets an impression from reading this news that the police instead of defending legal and custodial rights of the people, functions as an instrument of violation. It conveys a notion that police force in our country is made of insensitive, brutal and corrupt officials, ignoring the fact that thousands of policeman have given their lives to protect and safeguard the integrity of nation and have rendered valuable service in crime prevention by putting down organized crime and by giving relief and succour to people affected by natural calamities.

It is argued that the concept of human rights is opposed to effective law enforcement as the latter would necessarily imply “bending the rules” at times. In other words, end justifies the means. A tendency to use overwhelming force in controlling demonstrations, physical pressure to extract information from detainees, or excessive force to secure an arrest can be observed now and then, it is believed. While law enforcement is thought to be a war against crime, human rights are considered nothing more than obstacles in achieving this objective.

As a matter of the fact violations of human rights by police only make the already challenging task of law enforcement more difficult. When the law

enforcer becomes the lawbreaker, the result is an assault on human dignity, on the law itself and on all institutions of public authority. The effects of human rights violations by the police has a multi dimensional impact in eroding public confidence, hampering effective prosecutions in court, isolating the police from the community, resulting in the guilty avoiding sentence, and the innocent being punished. It results in police agencies being reactive, rather than being responsive and preventive in their approach to crime, bringing agents and institutions of public authority into disrepute and even escalating civil unrest at times.

Respect for human rights by law enforcement agencies on the other hand, enhances their effectiveness. Where human rights are systematically respected, police officers develop professionalism in their approach in solving and preventing crime and maintaining public order. In this sense, respect for human rights by police is, in addition to being a moral, legal and ethical imperative, also a practical requirement for law enforcement. When the police are seen to respect, uphold and defend human rights, public confidence is built and community cooperation is fostered, legal prosecutions are successful in court and fair administration of justice is served.¹

The police force needs to appreciate, believe and work on the fact that violation of the rights of the individuals is not a requirement for a result oriented performance. Had that been the case, some of the states which have reported the largest number of human rights violations cases in the recent years would not have been high on crime index as well.

The Manual has been planned in a manner that it covers the entire gamut of human rights related to policing. The first chapter of the Manual focuses on several issues on police public interface, wherein maximum numbers of human rights violations by police men are reported i.e. Registration of FIRs, Arrest and detention, encounters, handcuffing, rights of women, rights of children, rights of victims and rights of suspects. Chapter two is on Judiciary and Policing - Inclusive of Case Laws. Chapter three discusses National Human Rights Commission Guidelines on policing; Chapter four is on Protection of human rights through scientific investigation, and Need for an attitudinal change in the police officers is the last chapter or Chapter five of the manual.

¹ Police and Human Rights - Manual for Police Training – Republic of Macedonia

The purpose of the compilation of this Manual is to highlight that the emphasis on protection of human rights of the masses is nether a new concept nor something that is being imposed on the police force unreasonably...the crux and the emphasis of all the texts from the Constitution of India, to the IPC, Cr. PC, the reports of the Police Commission, Judicial decisions etc has been to follow the path of human rights. It is the most sacred duty of the police force and doing so, not only enables them to give a result oriented performance, but helps them in winning over the public support too.

Human Rights vis-à-vis Policing

Introduction

The basic role of the police in a democratic set up is to function as a law enforcement agency and render impartial service to law, without any heed to wishes, indications or desires expressed by the government which either come in conflict with or do not conform to the provisions contained in the Constitution or laws. The police have a duly recognised service-oriented role in providing relief to people in distress situations and are required to be trained and be well equipped to perform the service oriented functions.² The more conscientiously the policemen perform their functions, the more they will be sync with their service oriented role and consequently with the protection of the human rights of the masses.

As stated in the Introduction, the concept of human rights is not new for the police; it has been there always, highlighted in all the State Police Training Manuals, the various Police Commission Reports, the IPC and Cr.PC and above all, the law of the land, the Constitution of India. Interestingly, the Police Act of 1861 which is looked upon as a repressive Act also had certain distinct features which underline the significance of human rights, albeit indirectly, by referring to maintenance of law and order and prevention of crime as the primary functions of the police.

The idea that good policing necessarily implies a total commitment and thorough investment in the protection of human rights of the people runs through all the above mentioned documents. The thought may not come across explicitly most of the time but the underlying current, ethos, and emphasis cannot be missed. The following topics and analysis of the same would clearly bring out this fact. These are the facets wherein the Police-Public interface takes place. Each of these topics, has diverse aspects to it, and could have been developed into separate chapters. Nonetheless, an attempt has been made to cover the essential components in each one of these topics. Overlapping of content to some extent, while discussing these topics, was unavoidable as the issues are deeply interlinked.

² Second Report of the National Police Commission

I. Registration of FIRs

One of the most serious, frequent and common grievances against the police in India is the non-registration of the First Information Report.

The infamous Nithari incident, in 2007, once again brought forward the fundamental issue of the police's tendency not to register an offence. Nithari was definitely not the sole incident; across the country it has been a common experience that police is reluctant to register complaints. It is with the registration of the FIRs that the entire process of the criminal justice system comes into motion. However, the police is neither inclined nor willing to do its job in most of the cases.

A. Reasons for Non-Registration

There are certain reasons why the police react in a certain manner and why they are not agreeable to register complaints. The most significant reason is the political angle of the issue. The anxiety of the political executives in the State Government to keep the recorded crime figures low so as to claim before the State Legislature, the public and the press that crime is well controlled and is even going down as a result of 'efficient' police administration under their charge, percolates down. The police is naturally then, obsessed by the fact that increase in crime figures would be held against them and that they could be penalized for that. This attitude permeates the entire hierarchy down the line and is reflected at the police stations in their reluctance and refusal to register cases as and when crimes are brought to their notice.

Power and money corrupt the entire process and that is the second most important reason for the prevailing attitude of the policemen. There is significant political interference and many a times when influential people are involved in a particular case, the police personnel tend to take a way out by not registering the case. They may go to the other extreme however, when they make victims the accused and their aggressors are treated as aggrieved wherever politicians and power brokers back the law breakers.

In many police stations registration of FIR is considered to be a favour rather than a legal obligation. Consequently, there have been reported cases of police charging payment for registering FIRs. Follow-up actions also, many a times, entails an expenditure which a victim cannot afford; especially in rural areas where the awareness is still less.

Again it is noticed that subordinate officers try to avoid registration of cases by pointing out that the offence occurred in the jurisdiction of another police station. As a result, a complainant has to run from pillar to post to locate the particular police station and get the case registered. Under S. 154 Cr P C, it is stated that the officer-in-charge of a police station has to register a case and draw up an FIR as soon as a complaint of cognizable offence is made at the police station.³ There is no scope for non-registration of cases under the pretext of jurisdictional controversy. Doing so would then amount nothing less than denying the persons, seeking redressal, their basic human right.

There is another reason specially in the rural set ups, wherein disputes to be registered have a significant social implication - the caste-based repercussions — and the police men fear that any action on their part, including registration of complaints, would trigger off major upheavals. It is particularly true for cases wherein the village panchayats take certain decisions which itself may be inhumane and the police would be required to take a stern action against the culprits. They prefer to play it safe to maintain peace and tranquility in that particular circle/area. Another reason why the police inspectors resist registration of offence and further action is due to the fear that that occurrence of such incidents (eg thefts, robberies etc) in his area would imply that he had failed in his duties and that a stern disciplinary action could be taken against him.

The superiors in the police force can play a significant role here, by taking a lead and motivating the juniors to be fair and impartial in their duties. They need to ensure that disciplinary action is taken in case of every instance of failure to perform duties and attempts to hush up cases. All policemen need to be made clear that failure to discharge their duties and not taking right action implies, not only breach of human rights but violating certain laws as well.

There are other important factors too, for police being in a denial mode most of the time, like heavy work load and inadequate staff. Existing investigators already overworked, avoid taking up additional cases and shun responsibility.

³ The Fourth Report of the National Police Commission recommended an important amendment to Section 154 Cr.P.C to make it incumbent on a police station to register an FIR whether or not the crime has taken place in its jurisdiction and then transfer the FIR to the concerned police station, if necessary.

B. The Law says -

Article 14 of the Constitution guarantees to all persons' equality before the law and equal protection before the law within the territory of India. Police officers must register an offence on receiving information about a cognizable offence. It is not far fetched to say that Registration of FIRs then becomes a prerequisite for granting equal protection to everyone before the law.

C. Supreme Court directives⁴

1. An FIR must be registered as soon as information about a cognizable offence is received.
2. Before starting an investigation, police officers should make a rational inference that a cognizable offence has been committed. The inference should be made solely on the basis of facts mentioned in the FIR.
3. Courts as a rule, will not interfere in the investigation process except in the following circumstances when the High Court can cancel the FIR and other proceedings carried out by the police:
 - (i) Where the allegations in the FIR do not constitute any cognizable offence or justify and investigation by the police.
 - (ii) Where the allegations made in the FIR and the evidence collected by the police in support of the allegations do not point towards the guilt of the accused.
 - (iii) Where investigation has been carried out by the police in a non-cognizable offence without the order of a magistrate.
 - (iv) Where the CrPC or any other law expressly prohibits carrying out of criminal proceedings against the accused.
 - (v) Where criminal proceedings have been started with dishonest intent to take revenge from the accused.

⁴ Human Rights and Policing, CHRI, New Delhi, April 2005

The Chapters 2 and 3 of the Manual have discussed the topic further in terms of guidelines and directions by the Judiciary and NHRC respectively.

D. Review

The police system on its part has made sincere efforts for removing this malpractice of not- registering FIRs. This can be gauged by the examples in Uttar Pradesh in 1961, 1962, 1970 and 1971 and in Delhi in 1970 when the State Government and the Union Territory administration and the Chiefs of Police at that time took a bold and realistic stand in this matter and started a drive for free registration of crimes. The police stations readily responded to this lead given from the top with the result the recorded crime figures showed a big leap and reflected the real crime situation more accurately. For example, the total cognizable crime registered in Delhi in 1970 marked an increase of 81% over the figures of 1969 while the increase under the head 'robbery' was as high as 725%!⁵

A very encouraging and professional trend has been adopted by the Delhi Police recently, which can be replicated in other states. The FIR of all the cases registered in various Police Stations in Delhi, except those categorized as "Sensitive" by the concerned Addl. CP/DCP District, are being uploaded on the website within 24 hours, in compliance of the order dated 6.12.2010 of the Hon'ble Delhi High Court in Writ Petition No (Crl.) 468/2010 and a copy of FIR is also provided to the accused persons.

The model Police Act drafted by the Soli Sorabjee Committee (October, 2006), punishes a police officer, who "without lawful reason, fails to register a First Information Report" with imprisonment for a term which may extend to three months or with fine or both. The draft is at present under the consideration of the Parliament.

The Police leadership needs to take a strong initiative and monitor the registration of FIRs personally. Taking action against policemen who fail to take appropriate action would help in bringing about a change in attitude and would lead to more professionalism on the part of the police force.

II. Arrest and Detention

Law empowers the police to arrest people and to use reasonable force for doing so if it becomes necessary. The police arrest a large number of people

⁵ Fourth Report of the National Police Commission

in their day to day work. For instance, in India, a total of 28, 49, 025 persons were arrested by the Police under various IPC crimes during the year 2009.⁶

There is enough data to show that the police do not use this power judiciously. The National Police Commission estimated that a large number of arrests made by the police were not only unnecessary from the point of view of controlling crime but needlessly imposed avoidable burden on the state exchequer in the form of expenditure on harbouring and maintaining the arrested persons in jails. The arrests were for minor offences and 43.2% of expenditure in the concerned jails was incurred on prisoners who “need not have been arrested at all.’

One of the studies conducted on the basis of empirical data collected from different states in India confirmed these findings. It showed that the number of preventive arrests and arrests for petty offences were substantially large, the percentage of under trial prisoners was unusually high and most of them were there because they were not able to post bail or furnish sureties.⁷

In one such case documented by the National Human Rights Commission, a young man was picked up by the police for questioning in a theft case reported by his employer, taken to the police station and beaten mercilessly. According to the police, they had summoned him for questioning on June 13, 1995, released him and again called him on June 14; 1995. The investigation later revealed that the man was detained illegally in custody from June 8 to June 13. He consumed some poisonous substance on June 14, was rushed by the police to the hospital where he was brought dead. The Commission was distressed to see the “blatant manner in which the records had been tempered by the very people who were duty bound to maintain law and order and to uphold the rule of law.”⁸

In another case investigated by the NHRC, a clerk of a bank was detained by the police in illegal custody for 13 days. This action of the police was in response to a case reported by that bank. The man was tortured, as a result of which, he sustained fracture of his neck and femur bone of the leg.⁹

⁶NCRB, Crime in India 2009

⁷ Law Commission of India: Consultation paper on Law relating to arrest, Nov 2000

⁸ Case No 115016/24-98-99

⁹ Case No 9302/95-96/NHRC

In most of the cases, the arrest is done without sufficient evidence; consequently the rate of conviction is as low as 2%. An illegal practice followed by the police is to detain the relatives of the person they are looking for if they cannot find him. Many a times such illegally detained persons are ill - treated and tortured till the absconding person surrenders. In a typical case of this type, the police arrested the father and brother of a suspect in a murder case and detained them illegally in their custody for a day. When the National Human Rights Commission asked for a report from the authorities, the Senior Superintendent of the district denied the allegation and reported that the persons in question had been summoned to the police station for a brief interrogation. The NHRC's inquiry, however, showed this to be false and established that the two had been illegally detained to force the surrender of the suspect.¹⁰

A. Reasons for indiscriminate arrests and illegal detention

One of the reasons for indiscriminate arrest and illegal detention may be the fact that police are in total control of suspects when they are in police custody. The pressure to solve a particular case is another reason. The police force has neither the time, patience nor willingness to resort to scientific investigation techniques for solving a case. Lack of infrastructural support is also responsible for lukewarm response to the option of scientific investigations.

Preventive arrests also can be a cause for violation of human rights of the people. There are two noticeable trends. On the one hand, on the pretext of national security, before 26th Jan or 15th Aug, petty criminals or people belonging to a particular community are taken into custody. On the other hand, in order to keep a petty criminal out of police station's jurisdiction, sometimes weapons and drugs are implanted to falsely implicate him and send him to judicial custody for a prolonged period. The same process may be repeated when the person is released from custody. Needless to say, such, 'criminals' get saddled with a track of criminal record during the course. Many of them subsequently become easy targets of extra judicial killings, once a reward is announced on their head.

¹⁰ Case no 1501624/98-99/NHRC

The preventive arrests are some times done in accordance with political directives, especially during situations like emergency or elections. In all such cases, the human rights of individuals and groups become a casualty.

B. The Law says -

The Constitution of India

Article 22 - Protection against arrest and detention in certain cases -

- (1) No person who is arrested shall be detained in custody **without being** informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- (2) Every person who is arrested and detained in custody **shall be produced** before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

The Criminal Procedure Code

Section 50

Person arrested to be informed of grounds of arrest and of right to bail.

Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

Section 50 A

Obligation of person making arrest to inform about the arrest, etc., to a nominated person. –

- (1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

- (2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.
- (3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.
- (4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub section (3) have been complied with in respect of such arrested person.

Section 51

Search of arrested persons

- (1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to, furnish bail.
- (2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

Section 56

Person arrested to be taken before Magistrate or officer in charge of police station.

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Section 57

Person arrested not to be detained for more than twenty-four hours.

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable,

and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court.

The SC guidelines on Arrest and the National Human Rights Commission's Guidelines on Arrest are contained in the Chapter 2 and 3 respectively.

C. Basic rules to ensure Custodial Justice -

1. Everyone is entitled to equal protection of the law, without discrimination on any ground and especially against violence or threat.
2. The police officers should be especially vigilant to protect potentially vulnerable groups, such as children, the elderly, women, refugees, displaced persons and members of minority groups.
3. To treat all detainees in custody or under detention with compassion and respect, and in particular protect their safety and privacy.
4. Not to arrest a person, unless there are legal grounds to do so, and to ensure that the arrest is carried out in accordance with the procedure established by law.
5. To ensure that all detainees have access promptly after arrest to their family and legal representative and to any necessary medical assistance.
6. To ensure that all detainees are treated humanely.
7. Not to carry out, order or cover up extrajudicial executions or disappearances in any circumstances or under pressure.

D. Review

Detention is the most basic deprivation of a person's freedom. It is a limitation of a person's liberty by the exercise of police control over his movements. Human rights abuses take place in police custody despite the fact that the treatment of persons in detention is sought to be very closely regulated under both international law and domestic law. The weaker sections of society are generally the target groups in such cases. They neither have the awareness, resources and connections to save themselves. A shift in the mindset of the police and following the rules of custodial justice would go a long way in protecting the human rights of masses.

III. Encounters

Encounter killings have been taking place all over the country over the years, at times degenerating into what are called fake encounters. Between 2000 and 2007 there have been 712 cases of police encounters in the country with UP topping the list at 324, and Gujarat figuring almost at the bottom with 17.¹¹

Many of them have been quite controversial in nature and are counter productive, encouraging contempt for law within the police. Fake encounters, staged by the police officers, resulting in the killing of even criminals are illegal and have landed senior police officers in a sea of trouble.

A. Reasons for false encounters

- False encounters are, at times, staged by police officers because there is pressure by the political masters to show quick results by means, fair or foul. The public, particularly the educated middle class, also do not mind if the police take the law in their own hands and become executioners, particularly with regard to the dreaded criminals.
- Police dilemma is compounded by the slow moving criminal justice system in the country. Trials drag on interminably for years and the outcome remains uncertain, particularly in respect of the criminals enjoying money and muscle power. Hence, the pressure on the police for short cut, and extra legal methods. Very often there is connivance of the political bosses and support of the public too.¹²
- Power, control and authority are the reflexes which work while the policemen gun down criminals and even unarmed innocent people at times, during fake encounters. They know they can get away with it. In the majority of the cases that have been reported to the Commission regarding cases of alleged fake encounters, the factual details are similar, for instance the criminals were shot dead while trying to run away after firing on police or in self defence.

B. The Law says

No one including the police has an unqualified right to take the life of another person. Causing death of a person by a police officer may amount

¹¹Complicated encounters –Doval, Ajit Kumar - The Indian Express, Aug 04 2010

¹² Human Rights and Inhuman Wrongs - Sen,Sankar; Saujanya Books, 2010

to murder or culpable homicide not amounting to murder, unless it is established that the causing of death is for justifiable reasons. If a police officer kills someone in an encounter, he/she must prove that the death was caused either in the legitimate exercise of the right of private defence or in the use of force, proportional to the resistance offered, while arresting a person accused of an offence punishable with death or life imprisonment. This can only be ascertained by a proper investigation and not otherwise.

The National Police Commission in its report powerfully recommended that fake encounters are to be sternly discouraged by the police leaders, as this is not a remedy for the situation. The answer is to strengthen the law and legal processes.

IPC Sections - on Encounter

- Use force in self-defence only to protect yourself and others from the actions of the assaulting criminals/offenders, whose actions reasonably cause the apprehension of death or grievous hurt to you or to others – Section 97 and Section 99 IPC.
- Use of force for self-defence should start only when there is a reasonable apprehension of danger to the body arising from the act or threat to commit an act by the assaulting offenders/criminals. Moreover, use of force for self-defence should continue only as long as such apprehension of the danger to the body continues - Section, 102 IPC.
- Use force for self-defence to the extent of causing death or any harm to the assaulting offenders/criminals only if an assault by them reasonably causes the apprehension of death or grievous hurt to you or to others -Section 100, IPC

C. Review

There are many who feel that there is a higher rationale for such actions of fake encounters in compelling circumstances, as the law of the land has repeatedly found itself helpless in dealing with individuals bent on bleeding the country. Their argument, that the rule of law is a means to an end and not an end in itself, often finds support in the jurisprudential principles of *salus populi est suprema lex* (the people's welfare is the supreme law) and *salus res publica est suprema lex* (the safety of the nation is supreme law). Even the Supreme Court of India, in the case of *D.K. Basu vs. State of West Bengal* [1997 (1) SCC 416] accepted the validity of these two principles and

characterised them as “not only important and relevant, but lying at the heart of the doctrine that welfare of an individual must yield to that of the community.” In some of the cases of fake encounters however, there was not much on record, even to establish the criminal past of those killed.¹³

The negative impact of such cases is the impression it creates that all encounters in which police and security forces are involved, are fake. Society needs to be reassured that the majority of encounters are genuine and mostly in response to murderous attacks on security personnel. The fact that, on average, over 1,200 policemen get killed every year grappling with terrorists, insurgents, underworld mafia and other anti-social elements, bears ample testimony to this fact. The other downside of such incidents is that it erodes the people’s trust in governance. Administrations begin to be seen as instruments of repression and self-aggrandisement and politicians as perceived as manipulating their power for political and personal gains. This erosion can lead to a dangerous de legitimisation of the polity.

The need to work only within the parameters set by Rule of law while dealing with encounters has therefore, to be strongly reflected in the police actions.

The National Human Rights Commission has considered the issue and in order to verify whether the law has been upheld, it recommended a procedure to be followed in the cases of encounter deaths by all the States/UTs in the country. The Guidelines were conveyed to all the States/UTs in 1997, those were further revised in 2003. After a careful consideration of the whole matter, the Commission had recently revised the procedure, in May 2010 to be followed by the States/UTs, in case of deaths during the course of police action. The revised guidelines of NHRC are contained in Chapter Three of the Manual.

IV. Handcuffing

Handcuffs are used frequently during transportation of prisoners from the jail to court, of accused from the site of the alleged crime to the police station or to court, and from the jail/police station to the hospital. During these movements, the use of handcuffs is supposed to be the exception, not the rule.

¹³ Complicated encounters–Doval, Ajit Kumar - The Indian Express, Aug 04 2010

However, in a large majority of cases, the escorting authorities admit that judicial permission is not received and the reasons for using restraints are not documented in the police station diary.

A. Reasons

- Restraints are sometimes necessary for legitimate security reasons.
- Police work can be dangerous, and a small minority of arrestees and detainees are desperate and violent.
- Political considerations also play a vital role in some case.
- They are used many a times by the police personnel, both publicly and privately, to humiliate, debase and intimidate arrestees and detainees.
- Power and corruption also lead to cases of human rights violations regarding handcuffing.

B. The Law says

The Supreme Court of India has repeatedly condemned the unnecessary use of handcuffs by the police as a violation of the right to personal liberty guaranteed by Article 21 of the Constitution of India. The landmark Supreme Court case on handcuffing is *Prem Shankar Shukla v. Delhi Administration* (1980). In this case, the validity of certain clauses of the Punjab Police Rules, which made handcuffing mandatory during arrest, was challenged. In his opinion, Justice V R Krishna Iyer eloquently stated: “The guarantee of human dignity which forms a part of our constitutional culture . . . spring[s] into action when we realize that to manacle man is more than to mortify him, it is to dehumanise him and, therefore, to violate his very personhood too often using the mask of dangerousness and security.”

In *Prem Shankar Shukla* and other leading cases, the Supreme Court has laid down strict procedural guidelines specifying both when and how the use of handcuffs is appropriate. According to the Court, handcuffing is legal only if the arrestee is –

- (a) involved in serious non-bailable offences; and
- (b) previously convicted of a crime, of desperate character, likely to commit suicide, or likely to attempt to escape. The use of handcuffs and the reasons for their use must be recorded. It is illegal to walk

fettered political prisoners through the streets. Furthermore, the police must gain judicial permission before they use restraints during an arrest or on a detainee.

The human rights-conscious court summed up its opinion of handcuffs in *Sunil Batra (II) v. Delhi Administration* (1980):

“To fetter prisoners in irons is an inhumanity unjustified, save where safe custody is otherwise impossible. The routine resort to handcuffs and irons bespeaks a barbarity hostile to our goal of human dignity and social justice.”

The Police Commission Reports and the State Police Manuals too emphasise, that the human rights of prisoners during escorting and handcuffing should be taken care of. The following guidelines must be observed:

- No person shall be handcuffed who, by reason of age, sex or infirmity can be kept in custody without handcuffs.
- Under trial prisoners and other accused persons should not be handcuffed and chained unless there is reasonable doubt that such persons will use violence or attempt to escape. The police escort must be sufficiently strong to prevent escape.
- In no case should prisoners or accused persons, who are aged and bed-ridden in hospitals, or women or juvenile or civil prisoners, be handcuffed or fettered¹⁴.

Andhra Pradesh Police Manual mentions the following orders in regard to escorts over prisoners-

1. The police officer of highest rank present shall be responsible that the handcuffs fit properly.
2. If the prisoner is violent and is strong and able to offer considerable resistance, the handcuffs may be coupled behind his back instead of in front of his body.
3. The practice of fastening the chain to a bed while the escort rests or feeds and all other methods of attachment are absolutely forbidden.

The West Bengal Police Manual says prisoners arrested by the police for transmission to a Magistrate or to the scene of an enquiry, and also under-trial prisoners, shall not be subjected to more restraint than is necessary to prevent their escape. The use of handcuffs or ropes is often an unnecessary indignity. In no case, shall women be handcuffed, nor shall restraint be

¹⁴ Fourth Report of the National Police Commission

used to those who either by age or infirmity are easily and securely kept in custody. Great caution shall be exercised at all times in the removal of handcuffs and other fastenings from prisoners en route whether by land or water. Handcuffs shall be kept in good order. If broken, they shall be mended or replaced without delay.¹⁵

C. Review

Despite the clear, specific and unambiguous judgments from the Supreme Court and the details in the State Police Manuals, the abuse of handcuffs continues.

Proper directions and monitoring by the senior officers of the police force would lessen the abuse of human rights regarding handcuffing. Sensitisation of the force regarding the use of handcuffs would definitely help in reducing the gap in theory and practice.

V. Rights of Women

Although Women may be victims of any of the general crimes such as 'Murder', 'Robbery', 'Cheating', etc, only the crimes which are directed specifically against Women are characterised as 'Crimes Against Women'. Various new legislations have been brought and amendments have been made in existing laws with a view to handle these crimes effectively.

A total of 2,03,804 incidents of crime against women (both under Indian Penal Code and Special and Local Laws) were reported in the country during 2009 as compared to 1,95,856 during 2008, recording an increase of 4.1% during 2009. These crimes have continuously increased during 2005 - 2009 with 1,55,553 in 2005, 1,64,765 cases in 2006, 1,85,312 cases in 2007, 1,95,856 cases in 2008 and 2,03,804 cases in 2009.¹⁶

Police, who are at the frontline of the criminal justice system, are often called upon to intervene when an act of violence against women is in progress or shortly after it has occurred. Their attitude and response to all involved can have a dramatic impact on ensuing developments, including the prevention of future violent acts and the protection of victims. For example, in situations of recurring acts of domestic violence, the police

¹⁵ Third Report of the National Police Commission

¹⁶ Andhra Pradesh, covering nearly 7.1% of the country's population, has accounted for 12.5% of total crimes against women in the country by reporting 25,569 cases. West Bengal with 7.6% share of country's population has accounted for nearly 11.4% of total crime against women by reporting 23,307 cases in 2009.

response can help victims leave a violent relationship or, conversely, the victim, believing that nothing and no one can assist them, may remain in an abusive, violent setting.

A. Reasons for violence against Women

Violence against women is a violation of their dignity, safety and human rights. The problem is immense and multi dimensional, particularly with regard to dowry harassment, rape and domestic violence. Yet it is often seen as a private matter, something that goes on behind closed doors. The Police, it is believed, need not interfere in the personal matters of the people and does not have a specified role, unless women actually reach out for help.

Police, does not work in a vacuum, they are a part of the society and are as much likely to be influenced by the societal trends, like others. The patriarchal mindset which is there in the society is reflected in the attitude, mindset and behaviour of the policemen, so when women victims or their families reach out to the police for help, the tendency is to blame the women for the misdeeds that have occurred with them. This is particularly true for the cases of rape, domestic violence and honour killings. The response of the police force is often guided by the prevailing mindset.

Another reason why the police does not respond in time or does not respond at all to the complaints is due to the widespread corrupt practices like bribery and influential connections. They tend to overlook or hush up the matter.

B. Dowry Harassment

Payment of a **dowry** gift—often financial, has a long history in many parts of the world, including India. There are civil laws, criminal laws and special legislative acts in the country against the tradition of Dowry. Someone accused of taking dowry is therefore subject to a multiplicity of legal processes. The payment of a dowry was prohibited in 1961 under Indian Civil Law. Subsequently, Sections 304B and 498 A of the Indian Penal Code were enacted to make it easier for the wife to seek redress from potential harassment by the husband's family.

The cases under the Dowry Prohibition Act have increased (in the year 2009) by 1.7% as compared to the previous year (5,555). 24.1% cases were reported from Andhra Pradesh (1,362) followed by Bihar (1,252) accounting

for 22.2% of total cases at the National level. The highest crime rate was reported from Orissa at 2.3 as compared to 0.5 at the National level.¹⁷ But the statistics do not give a complete picture as many of the cases go unreported. One of the studies showed that for every reported dowry violence case almost 229 cases go unreported and unregistered.¹⁸

Though 94% cases of cruelty by husbands/relatives under section 498(A) and 304(b) IPC are charge sheeted by the police, conviction rates, however, in cases of offences u/s 498(a) are between 19-20% and in respect of offences u/s 304(b) is 32%.

1. The Law says

Section 498A of the Indian Penal Code (IPC), which defines the offence of matrimonial cruelty, was inserted into the IPC by an amendment in 1983. Offenders are liable for imprisonment as well as a fine under the section and the offence is non bailable, non-compoundable and cognizable on a complaint made to the police officer by the victim or by designated relatives.

The section provides an explanation that elaborates the meaning of cruelty as follows:

- a) any wilful conduct which is of a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb, or health (whether physical or mental) of the woman; or
- b) harassment of the woman where such harassment is with a view to coercing her, or any person related to her, to meet any unlawful demand for any property or valuable security, or is on account of failure by her or any person related to her to meet such demand."

2. Role of Police

- Any demand resulting in mental or physical harassment is a cognizable offence, under the Dowry Prohibition Act.
- Most of the cities have a special Anti-Dowry cell headed by an ACP, to supervise the handling of dowry related complaints. Dowry related deaths are investigated by officers in the rank of DSPs.
- Harassment complaints can be made to the nearest All Women Police Station, who can also arrange for counselling.

¹⁷ <http://ncrb.nic.in/CII-2009>

¹⁸ Human Rights and Inhuman Wrongs - Sen,Sankar; Saujanya Books, 2010

- For emergency complaints the Control Room 100 can be contacted.

3. Review

Mere existence of the provisions of law does not, however, work unless there is will to implement them vigorously. As a result a large number of cases go unreported or do not enter within the domain of the law. The Dowry Prohibition Amendment Act, 1986, enjoins the state government to appoint dowry prohibition officers u/s 8(b) with a hope that dowry prohibition officers would render assistance to persons subjected to dowry demands and help in collection of evidence and prosecution of the offenders. The fact remains that dowry prohibition officers are not functioning in most of the states.¹⁹

While for long, Section 498 – A, helped disadvantaged women to fight against harassment, in the past few years courts have come across various incidents, where women have misused it to harass the members of their matrimonial homes and to extort money from them. Police is expected to play their role vigilantly in such cases. A thorough investigation must be done before booking someone under the Section by the police.²⁰ While discharging their duties towards women, the policemen, must not violate the rights of accused.

C. Domestic Violence

Domestic violence includes physical, psychological and sexual attacks against women in the home or within a family context. It can include violence towards a woman by a family member other than the husband (such as a son, mother-in-law or other relatives) and also violence perpetrated by the husband, which is sometimes referred to as “spousal abuse”.

In spousal abuse, violence against women is about the abusive use of power and control, with the violence sometimes being directed not only towards a woman in an intimate relationship, but also towards her children, relatives, friends, family and other supporters.

¹⁹ Human Rights and Inhuman Wrongs - Sen,Sankar; Saujanya Books, 2010

²⁰ Delhi HC pulled up the Delhi Police for registering a case of dowry against a person without carrying out a proper probe. Court noted that the law is being misused with innocent family members of the husband also being booked under the provision. Misuse of dowry law sparks concern- TOI, Times City, 8/3/11

It is often difficult for a woman to report violence, pursue legal action or end the relationship because of:

- Fear for her safety or that of her children
- Fear that her children will be apprehended or taken away by the husband if it is alleged that she is in some way an unfit mother
- Influence of her extended family or children
- Emotional attachment and loyalty to the abuser
- Low self-esteem and self-blame
- Economic dependency on the abuser
- Religious values or pressure from the cultural community
- Social isolation and lack of a support system
- Authorities denying, minimizing or rationalizing the severity of the violence

- Lack of legal information about victims' rights and mechanisms' in place

1. The Law says

The Protection of Women from Domestic Violence Act, 2005, Section 8

Duties of police officers, service providers and Magistrate

A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-

- (a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
- (b) of the availability of services of service providers;
- (c) of the availability of services of the Protection Officers;
- (d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant: Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

2. Review

It has been reported that police would put all manners of hurdles in even registering cases of domestic violence, even when the victims feared for their very lives. In cases where wives had been murdered, the police have at times, been found to play an active role in destroying evidence and passing off these cases as suicides or accidental deaths – simply because, it has been alleged, they had been bribed.²¹ The policemen need to take the domestic violence cases seriously and must do the needful in all the cases. They must be sympathetic to women victims and give due respect to their primacy. Also, they must inform the aggrieved person of her right to obtain relief by way of a protection order whenever a complaint of domestic violence is received or an officer is present at the place of an incident of domestic violence.²²

D. Rape

Rape is one of the most reprehensible crimes and is often unreported. It has threatened women of all countries since time immemorial. Between 1990 and 2008, reported rapes soared by 112 percent nationwide, according to the National Crime Records Bureau, while cases of molestation and sexual harassment also increased between 2001 and 2008. Such figures likely understate the problem. Many survivors of sexual violence do not report attacks because they fear ridicule or retribution, as well as assumptions that victims of sexual assault are “bad,” “loose,” or otherwise responsible for the attack. Survivors and their families may also be reluctant to subject themselves to the criminal justice system, which offers no victim and witness support and protection program, and which may inflict additional trauma.

Not least of the disincentives for reporting abuse is the prospect of undergoing a forensic examination. Evidence collection techniques are rarely standardized and are frequently difficult. Too often, survivors must make grueling trips from one hospital or ward to another, and receive multiple examinations at each stop. Medical workers frequently collect evidence inadequately or insensitively, and it may then be lost, poorly

²¹ Legal Status and Remedies for Women in India –Mukherjee, Roma, Deep and Deep Publications 1997

²² Section 5 of The Protection of Women From Domestic Violence Act, 2005.

stored, or subject to processing delays, rendering it unusable. At trial, judges often lack adequate information to interpret the medical evidence.

Indian criminal law does not require corroboration by forensic evidence to secure a conviction for rape, yet in practice, such evidence plays a critical role. Lawyers and activists say that the seriousness with which police investigate a complaint of rape usually depends on the manner in which a doctor collects and reports forensic evidence, and judges frequently give this evidence significant weightage. A rape survivor who has endured considerable indignity to provide evidence may see the perpetrator walk free if the evidence is improperly collected, stored, or reported.

1. The Law says

As per Section 375 of Indian Penal Code a man is said to commit the offence of rape with a woman under the following six circumstances:

1. Sexual intercourse against the victims will,
2. Without the victims consent,
3. With her consent, when her consent has been obtained by putting her or any person that she may be interested in fear of death or hurt,
4. With her consent, when the man knows that he is not her husband,
5. With her consent, when at the time of giving such consent she was intoxicated, or is suffering from unsoundness of mind and does not understand the nature and consequences of that to which she gives consent,
6. With or without her consent when she is under sixteen years of age.

2. Review

The police must be sensitive to the victims of rape and should respect their rights. In cases of rape or attempted rape, medical examination of the accused and the victim soon after the incident often yields a wealth of corroborative evidence. Such an opportunity should not be lost on any account. It has been a settled principle of law that delay in making a complaint or reporting a crime often results in embellishment.

E. Sexual Harassment at Workplace

In 1997, the Supreme Court passed a landmark judgment in the Vishakha case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. The Supreme Court has made it

mandatory, in offices where women are employed, to have monitoring committees – popularly known as VISHAKA committees. These internal committees will have women employees, advocates and social workers to inquire into allegations.

1. The Law says

The Protection of Women against Sexual Harassment at Workplace Bill, 2010, seeks to ensure protection of women against sexual harassment at the workplace, both in public and private sectors whether organised or unorganized. Women can now complain against harassment ranging from physical contact, demand or requests for sexual favours, sexually coloured remarks or showing pornography.

The police can take up the findings of the committee if it's a cognizable offence.

2. Review

Police should handle the cases reported, in a sympathetic, positive and a practical way. The process to initiate, emphasise and continue the whole process of learning, re-learning and unlearning for the police force needs to be strengthened. An effort, to change the paternalistic mindset which often rules the police attitude, should be made by conducting more sensitisation and training programmes.

F. Trafficking in Women

The International Organization for Migration estimates that nearly one third of global human trafficking involves women and children from South-East Asia. It is believed that a great many of the people, including children, who are trafficked are eventually forced to engage in some form of commercial sexual exploitation. Children, especially girls, are trafficked and exploited for a number of reasons, including:

- (a) A culture of impunity. In some regions and countries, there exists a culture of social, political and legal impunity for exploiters, which encourages the demand for sexually exploitative services such as child prostitution;
- (b) Client demand for child prostitution;
- (c) Discriminatory attitudes and client prejudices, including preferences for specific ages, genders, race, ethnicity, skin colour/tone and social

status, contribute to a demand for sexual exploitation by defining a person (child) as “exploitable” in the eyes of some. This discrimination makes some victims, especially young girls, invisible and outside the normal scope of state protection;

- (d) Armed conflict and political instability tend to help drive women and children into the grasp of traffickers who lure victims with the promise of a better life elsewhere. In reality, the victims are moved to a new location where they are victimized and exploited. In some places, forced prostitution and rape are used as tools of terror, subjugation and humiliation. Victims may lose their sense of self-respect and self-worth, be ostracized by family and community and drift towards prostitution as the only viable means of survival and shelter.

1. The law says

Art. 23 (1) of Indian Constitution states “Traffic in human being and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.” Immoral Traffic Prevention Act was legislated in 1956, which made commercial sexual exploitation an illegal activity. It was further amended in 1986. In 2006, the Ministry of Women and Child Development proposed an amendment to ITPA, Which is yet to be passed. Several sections of IPC make almost every activity in relation to trafficking a crime.

There are other wide range of other relevant Acts viz. Child Marriage Act, Dowry Act, SC/ST prevention of atrocities Act, Organ Transplant Act, Child Labour Act etc. India had also signed/ratified/acceded to, several relevant International conventions viz.

- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949 Convention) - Ratified,
- Slavery Convention - Signed, Supplementary Convention on the Abolition of Slavery - Ratified,
- International Covenant on Civil and Political Rights - Acceded, International Covenant on Economic, Social and Cultural Rights- Acceded,
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)-Ratified,
- Convention on the Rights of the Child (CRC)-Acceded, Forced Labour Convention, 1930 (No. 29)-Ratified,
- Abolition of Forced Labour Convention, 1957 (No. 105)-Ratified,

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)-Ratified, Equal Remuneration Convention, 1951 (No. 100) - Ratified.

- India has also signed SAARC Convention on preventing and combating trafficking in women and children for prostitution.

2. Role of Police

The trafficking in women and children assumes wider and complex dimensions (both in the context of intra and inter country trafficking) due to the involvement of transnational organized criminal groups. In many cases, victims are afraid to cooperate with the police for fear of reprisal from traffickers or for fear of being returned home, where they could face alienation, abuse or further violence. Police can however, play a very effective role in preventing and addressing the issues related to trafficking.

Reports from two states majorly affected by trafficking are worth citing here:

a) Karnataka

The United Nations Office on Drugs and Crime (UNODC) has acknowledged the proactive action taken by the Bangalore police in preventing trafficking of children, and documented the role of the city police in starting the first child helpline, much before the National Child Line 1098 came into existence.

Fifteen-year-old Pinky was rescued by the Cottonpet police from a dance bar in Bangalore. A 10-year-old domestic help was rescued from an apartment in HSR Layout. These two and many more children and adolescent girls were rescued by the Bangalore police through the novel initiative MSV.²³

MSV strives to help children realise their rights and empower them to be their own first line of defence. They do this by providing education, health care and training in market-viable vocational courses.²⁴

b) Andhra Pradesh

In a significant effort to prevent trade and exploitation of human beings in India, an Anti-Human Trafficking Unit was established in Andhra

²³ Bangalore Police Initiative in Preventing Human Trafficking – Makkala Sahai Vani (MSV): Child help line by Police with NGO support.

²⁴ Deccan Herald, 19th Oct, 2007

Pradesh, in partnership with the US Govt and the United Nations.

The UN Office on Drugs and Crime and the Andhra Pradesh government opened the first **Anti Human Trafficking Units** in the State. Additional Units have been planned in Bihar, Goa and Maharashtra and these units, along with that in West Bengal, will come up in the next five years. These units will train law enforcement officials on the various aspects of the human trafficking.

3. Review

The trafficking of women causes untold miseries as it violates the individual's rights to life, dignity, security, privacy, health, education and redressal of grievances. The victims are subject to threats, including emotional blackmail, violence, and confinement, as well as the threat of apprehension by authorities, detention, prosecution and deportation.

Replicating the initiatives of the State Police of Karnataka and Andhra Pradesh in other states would be helpful in addressing the issue of trafficking. Community policing can also be beneficial in this regard. A sensitized police along with a vigilant community would help to ensure that women are not exploited and re-trafficked.

G. Honour crimes

Honour crimes, including killing, are one of history's oldest forms of gender-based violence. It assumes that a woman's behaviour casts a reflection on the family and the community. If women fall in love, seek a divorce even from a violent or abusive husband or enter into a relationship outside their marriage, they are seen as violating the honour of the family and perhaps also that of the larger community. When a woman engages in these acts she can sometimes be subject to violence at the hands of her own family members, including her husband, brothers, cousins, uncles or father. In some cultures, a family will murder a daughter if it is unable to provide a suitable dowry, which could shame and dishonour them in the eyes of the local community.

Honour killing is the most intimate of all crimes since it is those who, being tied to the woman through love or affection, are required to carry out her execution and kill her in cold blood. In some communities, a father, brother or cousin will publicly take pride in a murder committed in order to preserve the "honour" of a family.

Honour crimes can also include the violent disfiguration of a woman, most often of her face. This is sometimes done by throwing acid, boiling oil or water at the woman. Such crimes occur for reasons as varied as family feuds, land disputes, refusal of sex, refusal of a romantic relationship, inability to meet dowry demands, marital disputes, rejection of a marriage proposal, political enmity and so on. Besides the immense physical pain of acid attacks, the victims also suffer from a lifetime of stigmatization, resulting in loss of self-esteem and an inability to study or work, living in shame, hiding the disfigurement with a veil or retreating into social isolation.

However, there can be no excuse to sanction violence or murder, whatever the cause. The issue has deep rooted socio-economic and cultural dimensions but the police have an important role to play. Their response should be quick and unprejudiced, taking the sensitivity of the situation into consideration and with an intention to provide timely and proper protection to those seeking it.

H. Review

The state has a responsibility to protect the victims of crime against women.²⁵ The fact however, cannot be denied that a larger number of violence against women cases, suicides due to neglect and even dowry deaths, rape and kidnapping go unregistered. At other times they are badly investigated and consequently fall in court.²⁶

The policemen need to take such cases seriously and must do the needful in all the cases. They must be sympathetic to women victims and give due respect to their privacy. They must not shrug off responsibility by holding the woman responsible for her situation or labelling it as a personal matter of the complainant.

The senior officers again play a decisive role in such matters. There have been instances wherein dowry deaths have been affirmed as suicides by the lower ranks, resulting in extreme injustice for the dead and her family. Apart from taking stern action against the culprits, the senior cadre must take action against the policemen who fail to take timely and appropriate steps in such matters either because of workload, the crime statistics, connection or the money factor. In many cases, victims are not even aware

²⁵<http://www.unodc.org/documents/justice-and-prison-reform>

²⁶The Police are not protecting women in the way they should –Rustamji K F. Crime Against Women, OC Sharma, Saujanya Books, 1994

of the mechanism in place to seek justice. Awareness campaigns at the grass root to educate women about what to do in threatening situations and informing them about police procedures will greatly help. Better policing combined with speedy conviction and awareness campaigns can make a lot of difference.

There is another aspect of the issue. While taking action against the offenders/criminals, the policemen should also be vigilant in not being unfair to the innocent people. There have been instances, under the Dowry Prohibition Act, wherein innocent people have been put behind bars. The fact remains any law is as strong or effective as those who implement it. If the police is sensitive and honest, then the law would never be misused.²⁷

VI. Rights of Children

Children are the future of every nation and every child has the right to be protected, and to be treated with care, dignity and respect. They are a vulnerable group in society who need special care, attention and protection.

The concept of 'protection of children' is well known, in a general sense, in the law and refers to all activities designed to guarantee and protect children and their rights so that they may live, grow, develop and participate optimally in society in accordance with the dignity to which they are entitled as human beings, and so that they may be protected against violence and discrimination in order to ensure the moral values and well-being of all children.²⁸

The Constitution of India recognizes the rights of children and includes several articles dealing with their liberty, livelihood, and development of childhood, non-discrimination in educational spheres, compulsory and free education and prohibition of their employment in factories, mines and hazardous industries.

Police officers deal with children on a regular basis, as victims of crime and abuse requiring perhaps more attention than adult victims. Protection of the rights of the children should be of prime concern for the police force. The Nithari incident proved that it was police apathy, to the whole racket of kidnappings and abductions, which worsened the situation. Apart from failing in their duty to prevent and register the crime, the police attitude

²⁷ Khaki mein Insaan - Kumar Ashok, Rajkamal Paperback, 2010

²⁸ Commonwealth Human Rights Manual for Police Personnel, 2005

displayed a total lack of sensitivity and concern for the children. It would not be inappropriate to add that the attitude again reflected the mindset of the force that the marginalised sections of the society (the children who suffered belonged to the downtrodden segment) are not worth of any action or protection by the force and that they are not obliged to perform their duties towards them. Police officers should provide special attention and protection to all children who are victims of crime. All children should be treated equally, regardless of their social standing, and with dignity. A poor child who has been abused should be treated in the same way as a child from a rich family.²⁹

On the other hand, children who are suspected of criminal conduct should be treated with care as well, as there are likely to be societal and behavioural reasons for childhood criminal activity. Children who are treated by police as if they were already fully-grown hardened criminals are quite likely to become such criminals.

Some of the common crimes against children punishable under the Indian Penal Code (IPC) are a) Foeticides (Crime against being born) Section 312, 314, 315 IPC, b) Infanticides (Crime against newborn child) Section 316 IPC, c) Exposure & Abandonment (Crime against children by parents or others to expose or to leave them with the intention of abandonment): Section 317 IPC, d) Kidnapping & Abduction,) Kidnapping for exporting (Section 360 IPC), ii) Kidnapping from lawful guardianship (Section 361 IPC), iii) Kidnapping for ransom (Section 363 read with Section 384 IPC), iv) Kidnapping for camel racing etc. (Section 363 IPC), v) Kidnapping for begging (Section 363-A IPC), vi) Kidnapping to compel for marriage (Section 366 IPC), vii) Kidnapping for slavery etc. (Section 367 IPC), viii) Kidnapping for stealing from its person (under 10 years of age only) (Section 369 IPC), e) Procurement of minor girls (for inducement to force or seduce, to illicit intercourse): Section 366-A IPC, f) Selling of girls for prostitution (Section 372 IPC), i) Buying of girls for prostitution (Section 373 IPC),f) Rape, k) Unnatural Offences.

A. Trafficking in Children

Trafficking of children is a serious problem in India. The nature and scope of child trafficking range from industrial and domestic labour, to forced early marriages and commercial sexual exploitation. The rise in the

²⁹Commonwealth Human Rights Manual for Police Personnel, 2005

demands for trafficked labour synchronises with changing economic structures globally.

Article 23 states that “prohibition of traffic in human beings and forced labour”.-

- (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- (2) Traffic in human beings would include traffic in women and children for immoral or other purposes.

The Immoral Traffic (Prevention) Act, 1956 is a law made by Parliament under Article 35 of the constitution for the purpose of punishing acts which result in traffic in human beings. The Indian Penal Code and the Criminal Procedure Code have separate provisions prohibiting traffic in human beings. According to the penal code, selling, letting for hire or otherwise disposing of, or buying, or hiring or otherwise obtaining possession of any girl under the age of 18 years for the purpose of prostitution or for any unlawful or immoral purposes is also an offence. In 1958, by a central enactment organized prostitution as a profession has been abolished all over the country and the running of brothels has been made an offence.

There are several gaps in law enforcement. Some of the significant issues are (a) Lack of priority in dealing with the problem of trafficking, (b) Lack of training, orientation, skills and knowledge, (c) Failure to initiate action against traffickers; (d) gap between reported crimes and unreported ones and (e) Lack of partnership of police with civil society and other government departments in addressing the issues of trafficking.

The policemen must take steps to combat trafficking in children in their areas along with the support of the local institutions like panchayats and civil society members. Police in the states which share international borders, may work in collaboration with govt agencies of the bordering states to take preventive steps.

B. Child Labour

Child labour in India is a socio - economic phenomenon arising essentially out of poverty and lack of development. Intensive measures are being undertaken to eliminate child labour in India.

Legal framework:-

- **Article 21:** ... Right to Life.
- **Article 24** -“prohibition of employment of children in factories, etc - No child below the age of fourteen years shall be employed to work in any factory or mine or be engaged in any hazardous employment”

Directive Principles of State Policy

Article 39 ... (e) ... the tender age of children are not abused... and not forced by economic necessity to work which is unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood...protected against exploitation and against moral and material abandonment.

National Legislation for protecting children from child labour:-

- Child labour (Prohibition and Regulation) Act 1986.
- The Factories Act 1948.

The court in *M.C.Mehta v. State of T.N* noted that menace of child labour was widespread. Therefore, it issued wide ranging directions in the context of employment and exploitation of children in Sivakasi prohibiting employment of children below the age of 14 and making arrangements for their education by creating a fund and providing employment to the parents or abled bodied adults in the family. These directions were reiterated in *Bandhua Mukti Morcha v. Union of India*, concerning the employment of children in carpet weaving industry in India.

The Police Officers are expected to take timely and suitable action in each of such reported incidents, particularly if, the child labourer belongs to the weaker sections of the society. The Commission issued guidelines on Bonded/forced labour and the role of police in one of its recent publications.³⁰

C. Juveniles and Police

It would be relevant to mention the ambiguity relating to the age of children under various legislations -

³⁰ http://nhrc.nic.in/Publications/guideline_for_police_personnel_on_various_HR_issues

- Article I of the Convention on Rights of Children (CRC) defines a child as any one below the age of eighteen years.
- ILO Convention No. 138 of 1973 refers to child labour as any economic activity performed by a person under the age of fifteen provided, fifteen is not less than the age of completion of compulsory schooling.
- As per the Child Labour (Prohibition and Regulation) Act, 1986, a child below the age of fourteen years should not be employed to work in any factory or mine or engaged in any other hazardous employment.

The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juveniles in conflict with law in India. The Act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system.

- 'Juvenile' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years under the Act.
- 'Delinquent juvenile' means a juvenile who has been found to have committed an offence

The Act has been enacted by the Parliament to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles. This provides protection to the juveniles from stigmatisation, publication of names etc. which may lead to identification of the juvenile before the court. The Act further provides that the following orders cannot be passed in relation to a Juvenile: -

- a) A juvenile cannot be sentenced to death;
- b) A juvenile cannot be imprisoned; and
- c) A juvenile cannot be committed to prison in default of (i) payment of fine or (ii) furnishing surety.

A juvenile is saved not only from the deleterious effects of a jail life but also from the disqualification attached to a conviction for an offence.

The criminal procedure code, 1973 contains certain provisions dealing with juvenile delinquency. Section 27 of the code reads –

“any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought

before the court is under the age of sixteen years, may be tried by the court of a chief judicial magistrate, or by any court specially powered under the children act 1960 or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders” .

Thus the state has the duty of according proper care and protection to children at all times, as it is on their physical and mental well being that the future of the nation depends. A child produced before the court charged with bailable or non bailable offence, is to be released on bail with or without sureties. The court shall not release him, if the release is likely to bring him into association with any ill-reputed criminal or may expose him to moral danger. Such a child must be committed to a remand home.

The officer in charge should inform the parents or the guardian to be present when the child is produced before the juvenile court. The officer in charge should also inform the probation officer.

The Procedures

- The parents must be immediately notified upon the initial apprehension of the juvenile.
- The care, humanness, firmness and care for welfare must be consciously bestowed by the personnel on his admission into the juvenile detention centre.
- During the initial contact between the juvenile and the police and the other agents of the juvenile homes, the well being of the juvenile must be respected and no harm should be caused to him or her.

Provisions of JJ Act in the Andhra Pradesh Police Manual clearly mention that when a delinquent juvenile (Juvenile in conflict with law) is arrested for committing any offence; he shall not be kept in lockup nor handcuffed. He shall be released on bail whether the offence is bailable or non-bailable provided an undertaking is given by his parents or guardians to take care of him and for production in court. If any body does not offer surety, he shall be forwarded to observation home pending enquiry.

A juvenile delinquent should be interrogated with sympathy, care and caution. He should be questioned in isolation and police officers should never be authoritative with him/her.

The Punjab Police Manual states that a history sheet shall never be opened for a juvenile discharged from Borstal or Certified School or released under Section 360, Cr. P.C. or treated as a bad character neither watched nor interrogated, unless suspected of committing crime. The West Bengal Police Manual specifies that all juvenile convicts shall, on release, be taken to their homes by the police and handed over to their relation in the presence of two respectable residents of the neighbourhood. Superintendents of Jails shall send notice of the approaching release of such convicts to the Superintendent of Police one day previously.

D. Female Foeticide

The preference for a son continues to be a prevalent norm in the traditional Indian society. This is evident from the declining sex ratio which has dropped to alarming levels, especially in the northern states according to Census 2001 reports.

The Constitution under Article 14, expressly proclaims equality before the law and under Article 15, unequivocally prohibits discrimination on grounds of religion, race, caste, sex or place of birth.

Violations/Penalties under the Pre-natal Diagnostic Techniques (Prohibition of Sex-Selection) Act, 1994

For Minor Offences:

- Case may be launched u/s 25 of the Act. Punishment may extend to 3 months or with fine, which may extend to Rs. 1,000/- for first offence. Additional fine upto Rs. 500/- per day for the period of contravention for subsequent offence.

Or Show cause notice u/s 20(1),(2) for temporary suspension of registration.

Or Under Section 20(3)

- U/s 22(3) of the PCPNDT Amendment Act, imprisonment which may extend to 3 years and with fine which may extend to Rs. 10,000/- .Case is to be launched in the court u/s 28 of the Act.³¹

Despite the existence of the Prenatal Diagnostic Techniques Act, there is a dire need to implement and strengthen this law since the number of

³¹ <http://pndt.gov.in>

convictions is despairingly low. The reason why the law has proved ineffective is because it is difficult to regulate all clinics that use ultrasound for sex determination as well as for a host of other purposes including detection of genetic abnormalities in the foetus. Its implementation needs to be improved upon. There is a need to plug the loopholes. That is where the Police needs to play a very effective role and contribute in the gender balancing drive in the country.

As justice Bhagwati has rightly quoted “the child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into the maturity, into fullness on physical and vital energy and most breadth, depth and height of its emotional, intellectual and spiritual being”.

E. Review

Children have the same basic human rights as adults, but because of their age and vulnerability they need extra measures to protect them. They do not know the technicalities of life. The citizens in general and the police officers in particular must perform their duties and fulfil their responsibilities regarding them. They must be more than willing to protect the rights of the children.

Children, especially young children, are sometimes ignorant of the fact that they are being abused or exploited. Whatever the appearances, police should not take it for granted that children are willing participants in crime, for example in prostitution - the child may have little choice, or become involved in the activity after being abused or exploited. Police must see the rehabilitation and re-socialisation of such children as the ultimate objective.

Children should be protected against sexual exploitation and abuse. Police officers can play an important role in the protection of children. The state should take measures to protect children from being encouraged or forced to take part in any unlawful sexual activities or practices, prostitution, pornographic performances or material. The police should also assist the state in preventing children from being stolen or sold for any purposes like drug abuse, trafficking and labour.

The police are legally and morally situated in an important role in this regard and need to see themselves as protectors of children and their rights as especially vulnerable persons.³²

³² Please refer to Chapter on Protection of Children in NHRC's Guidelines for Police Personnel on various Human Rights Issues

VII. Rights of Victims

A. Background

The position of victims has not merited the attention it deserves. In the pursuit of investigation and prosecution of crime, victims are sometimes overlooked, poorly protected or even mistreated by police officers.

Any citizen might become a victim. Police must ensure that they treat every victim with dignity, respect and compassion, irrespective of the victim's religion, caste, status, sex, age, etc. Police officers should always avoid treating victims of crime in a way that compounds the initial suffering resulting from the crime itself. Such people are already victims at the time when police attends to them, and have suffered because of the actions of someone else. Therefore, police should not treat them in such a way that they effectively become victims for a second time. The importance of proper training on how to deal with and support victims of crime cannot be overstated. Similarly, there is an overarching need at police station level for systems and information for referring victims to supportive agencies.

B. The Law Says

Constitution of India

The obligations of the State in the Indian Constitution to protect and help victims of violation of human rights can be culled from Article 14 and Article 21, which contain important fundamental rights to be read with directive principles of State policy contained in Articles 39-A, 41, 46 and 51(c) of the Constitution.

The first part of Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.. The second part of the article has a positive content indicating an obligation on the State to extend "equal protection of law" to every person.

It is the responsibility of the State to prosecute offenders and provide retribution for offence to the victims of crime. When the State has undertaken the responsibility to protect "right to life and property" of all its citizens, it is the obligation of the State not only to prosecute the offenders as violators of human rights but at the same time to extend help and support to the victims of crime.

Victims who suffer by crime or abuse of power are deprived of the normal quality of enjoyment of life and sometimes face threat to their well being and safety. All victims have a right to seek help and protection from the State as their fundamental right included in Article 21 which guarantees to every person protection of his “life and personal liberty”.

The Universal Declaration of Human Rights, as the basic document adopted by the United Nations Organisation in 1948, recognises the right of every individual to all human freedoms and a life with dignity. It is therefore the moral and legal obligation of the State not only to refrain from interference with these freedoms but it is also its duty to facilitate the individual to realise such freedoms by lawful means.

C. The Process

The victim of a crime sets the criminal justice mechanism in motion by giving information to the police which is expected to reduce it to writing. The most common and frequent problem faced by many of the victims while reporting a case, is absence of a receptive and a sympathetic attitude of the police towards the victims. The traumatised victim comes to the police station with great mental stress. He is often treated with total lack of courtesy and sensitivity. Victims experience great difficulties in getting cases registered. The problem is compounded when the victim happens to be from the weaker section of the society or from a low socio- economic background. Even after registration, many a time’s investigation is done carelessly and the investigation officer does not feel obliged to share the progress of the case with the victim.

D. Women as Victims of Crime

Police officers should always ensure that their actions guarantee that women are treated with dignity and respect. They have a very important role to play in the protection of women, beginning with recognition of their exclusion from many areas of life, their inadequate voice, and their vulnerability to abuse within and outside of the family.³³

Violence against women can be physical, sexual or psychological, and includes beating, sexual abuse, rape, harmful traditional practices, sexual harassment, forced prostitution, trafficking in women and exploitation-related violence. Violence against women, in all its forms, violates and

³³Commonwealth Human Rights Manual for Police Personnel, 2005

impairs or nullifies the enjoyment by women of human rights and fundamental freedoms.

When women are victims of crime the police officers need to take special care. The following principles can be emphasised-

- Police officers should always respect the victim's dignity. This is reflected in the way police talk and deal with victims.
- If possible a female police officer should assist a woman victim, especially when she has been the victim of a violent crime or abuse. Where possible, statements should be taken in private.
- In the case of a victim of abuse, the police officer should remember that he or she is dealing with a person who has already been impaired, who has been ill-treated and humiliated, and who will therefore be much more vulnerable than other members of the community, The police should not worsen the primary suffering by adding to it with their own conduct.
- Police officers are usually the first point of contact for female victims. The welfare and well-being of the victim should be the police officer's highest priority. The crime occurring cannot be reversed, but adequate help and assistance to the victim will definitely contribute towards limiting the negative consequences of that crime.

In *Delhi Domestic Working Women's Forum v. Union of India*, The Supreme Court indicated the following, "Broad parameters for assisting the victims of rape." "

- The complainants in sexual assault cases may need to be provided with legal representation.
- Legal assistance would have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station; the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
- The police is under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed.
- A list of advocates willing to act in these cases should be kept at the police station for victims who do not have a particular lawyer in mind or whose own lawyer is unavailable.

- An advocate would be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims are questioned without undue delay, advocates would be authorised to act at the police station before leave of the court is sought or obtained.³⁴

E. Compensation and Assistance

The constitutional right of a victim of custodial crime to receive compensation was reiterated by the Supreme Court in *Nilabati Behera v. State of Orissa*. The court pointed out that it was not enough to relegate the heirs of a victim of custodial violence to the ordinary remedy of a civil suit. The right to get relief of compensation in public law from courts exercising their writ jurisdiction was explicitly recognised.

This was further developed in *D.K. Basu v. State of West Bengal*, where it was explained that “the award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the state.... the relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them.”

F. Review

There are no provisions in the existing law to help and support the victim or allow him any participation in the enquiry or investigation of crime. After the commission of the crime against him and till the actual trial begins in court, he is at the mercy of the State and the society. The victim requires greater help and support soon after commission of crime. At that initial stage the victim needs medical treatment, psychological support and legal aid.

It is the victim’s right to insist that he be provided proper medical care, safety of his life and property and protection against harassment by police and the media. He is also required to be protected from the accused and

³⁴ Rights of the Victims in the Indian Criminal Justice System, Muralidharan.S, NHRC Journal, 2004

his associates. It is his right to see and ensure that the police investigation is in right direction and there is no tampering with the available evidence, such as testimony of the witnesses and the medical evidence to be tendered by the doctor.

He has also a right to insist that eyewitnesses of the incident are given adequate protection, so that they are able to appear in court and give evidence fearlessly without intimidation, allurements or harassment. The victim's rights are required to be zealously guarded equally with the rights of defence of the accused.

Police as the first group of people to get in contact with victims of crime have a critical role to play. Needless to add, their behaviour may determine if victims feel protected and respected, or if they feel re-victimised and neglected. Apart from the rights of victims, negative treatment can also affect public perceptions of the police and impact on community relations. Needless to say, victims can also play an important role in solving the crime and apprehending the perpetrators, and should be treated with respect and care as victims and witnesses.

Imparting proper training on how to deal with victims of crime to the police force, with a perspective that they understand their basic role and responsibilities towards victims would indeed go a long way in bringing about a much required change.

VIII. The Rights of the Suspects

The accused in India are afforded certain rights, the most basic of which are found in the Indian Constitution. A person who is suspected or accused of a crime enjoys several constitutional and legal protections. These are contained in Chapter III of our Constitution and several other legislative enactments including the Code of Criminal Procedure.

A. The Law Says

In Chapter III of the Constitution which deals with fundamental rights, Article 21 provides that no person shall be deprived of his personal liberty except according to procedure established by law and Art 22 says that such person shall be informed of the reason for his arrest. It further provides that any person held in custody or detained shall be brought before the Judge of the nearest competent Court and shall not be further held in custody except upon and in terms of the order of such Judge. A person

charged with an offence shall be heard in person or by an Attorney-at-law at a fair trial by competent Court. This Article also sets out that every person shall be presumed innocent until he is proved guilty.

On the other hand, the Code of Criminal Procedure contains several safeguards accorded to the accused, commencing from his arrest to the conclusion of the trial. In this process the law also contains several provisions that would ensure a fair trial for the accused.

B. Rights while Arrested and detained

Studies show that the number of preventive arrests and arrests for petty offences were substantially large, the percentage of under trial prisoners was unusually high and most of them were there because they were not able to post bail or furnish sureties.³⁵

The following safeguards are provided by the Constitution, IPC and Cr.PC and also the guidelines given by the Supreme Court.

- Art. 21 of the Indian Constitution - No person is deprived of his/her right to life or personal liberty, except in accordance with the procedure established by law.
- Guidelines on Arrest, DK Basu vs State of West Bengal AIR 1997 SC 610 - The identity of the police officer effecting arrest is clearly indicated by means of a name plate and rank.
- Art 22 of the Indian Constitution - The arrestee is informed of the full particulars or the grounds of arrest.
- Section 50 –A (1) Cr. PC - A relative or a friend of the arrestee is informed about the fact of arrest and the place where he/she is being detained.
- Section 50 A (3) Cr.PC - That information regarding the arrest and the person informed about the arrest is recorded in the designated register kept in the police station.
- That if some injuries are found on the body of the arrested person at the time of arrest, the same are specified in the Arrest Memo and the arrested person is medically examined.
- Section 46(4) Cr. PC - That no woman is arrested after sunset and before sunrise, other than in exceptional circumstances.

³⁵ Law Commission of India- Consultation paper on Law relating to arrest, Nov 2000

- Section 46 (4) Cr. PC - That a woman police officer is associated while effecting arrest of a woman.
- That no force or beating is administered under any circumstances while effecting arrest of a juvenile or a child. Respectable citizens may be associated while arresting juveniles and children.
- Protect the dignity of the person being arrested. Public display or parading of the person arrested should not be permitted at any cost.
- S-51(2) Cr.P.C Searches of the person arrested must be done with due respect to the dignity of the person. The use of force should be avoided and the care for the right to privacy should be taken. Searches of women should only be made by other women, with strict regard to decency.
- If a person is arrested for a bailable offence, the police officer should inform him of his entitlement to be released on bail so that he may arrange for sureties.
- Information regarding the arrest and the place of detention should be communicated by the police officer effecting the arrest without any delay to the police control Room and District/State Headquarters.
- Section 160(1) Cr.PC - That a written order is sent to any person who may be required to come to the police station for the purpose of questioning.
- Section 41 of the Cr. PC – Not to arrest a person without warrant, unless there is a reasonable satisfaction, on the basis of investigation done, about the person’s involvement in a cognizable offence and there is a need to affect his/her arrest.
- Section 151 of Cr.PC – Not to arrest a person unless the commission of an offence cannot otherwise be prevented.
- Section 49 of Cr.PC and Art 21 of the Indian Constitution – Not to use more force than is necessary to restrain an arrested person.
- Section 160 (1) of Cr.PC- Not to summon to police station, woman or any male person, below 15 years of age associated with a case. The questioning of any such person may be done by the police officer only at the place of residence of such woman/minor.
- Section 57 Cr.PC – Not to detain any arrested person beyond 24 hours without the express order of a Magistrate.
- The use of handcuffs or leg chains should be avoided. Wherever required, it should be resorted to strictly in accordance with the law.
- Article 20(3) of the Constitution of India - that “no person accused of any offense shall be compelled to be a witness against himself.

It is important to understand that any person detained by the police, whether for questioning, for the purpose of verification of identity, to test alcohol level, etc. is in the custody of police and is, therefore, under the care of the State. It is the responsibility of the State to ensure protection of the human rights of all persons in its custody.

C. Search and Seizure

Every citizen has the right to be free from unreasonable government intrusion into his or her person, home, business, and property. Lawmakers and the courts have put in place legal safeguards to ensure that law enforcement officers conduct searches and seizures only under certain circumstances, and through specific methods.

D. Right to Counsel

Article 22 of the Constitution of India guarantees an accused the right to a lawyer. Hon'ble Supreme Court in Hussainara Khatoon (IV) has held that "...the right to free legal service is clearly an essential ingredient to a reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the status under constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required..."

The right to counsel applies during all custodial interrogations (i.e. the accused has been brought into police custody for questioning) and at all critical stages of a prosecution after formal proceedings have begun. These stages include post-indictment interrogations, arraignment, guilty plea, and trial.

E. Right to a Speedy Trial

The Constitution provides an accused the right to a speedy trial. Although this right is not explicitly stated in the constitution, it has been interpreted by the Hon'ble Supreme Court of India in the judgment of Hussainara Khatoon. This judgment mandates that an investigation in trial should be held "as expeditiously as possible".

The accused is not to be detained in police custody for more than 24 hours without being produced before a Magistrate. An officer not below the rank of sub-inspector is to produce the accused to a Judicial Magistrate who may allow the accused to be held remanded to fifteen days in police custody. If a Judicial Magistrate is not available, an Executive Magistrate so empowered

by the High Court may allow for a remand up to seven days, which a Judicial Magistrate may extend up to not more than fifteen days in total.

In cases involving punishment of more than ten years; the charge sheet has to be submitted within a period of sixty days by the prosecuting agency.

If it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing an arrest, the Magistrate may award such compensation, not exceeding one thousand rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit. Criminal charges may also be filed on the police for wrongful confinement. This is an implication of Section 41 of the Cr. PC wherein it is clearly stated that a person cannot be arrested without warrant, unless there is a reasonable satisfaction, on the basis of investigation done, about the person's involvement in a cognizable offence and there is a need to affect his/her arrest.

F. Review

Investigation and detection of crime are very important elements in solving crime. The focus of any investigation therefore should be on discovering the truth and keeping in mind that the suspect is presumed innocent until proven guilty. The focus should therefore be on the facts and not the person. Police should always ensure that they respect and protect the basic human rights of every person, including the accused, during the investigation process. For example, during investigations, interrogation of suspects, personal searches, searches of vehicles and premises, and the interception of correspondence and communications.

Police Officers must refrain from any action that can be interpreted as aiming to extract a statement from an arrested or accused person which therefore cannot be said to have been given of his or her free will. They must not rely on confessions as primary evidence to solve crime, because it has been established that torture or pressure on the suspect to compel him or her to testify can result in a false confession, given by the suspect in order to prevent further torture or pressure. Also, the officers need to be vigilant about the fact that the phenomenon of false confessions is not limited to situations where people have been subjected to torture or ill-treatment. There have been instances wherein individuals tend to confess to crimes they did not commit, often for complex personal and psychological reasons.

This is apart from the fact that this may lead to human rights abuses such as torture of suspects. Police officers should always fulfil their duties in a professional and ethical manner with due regard to the basic rights of every person, including the victims and the accused.

CONCLUSION

Policing a country of over 1.1 billion people is not an easy task. And policing a country with insufficient police stations and inadequate and ill-equipped police forces makes the task almost formidable. Seldom the difficult conditions under which policemen function, for instance long working hours, less than adequate working conditions and equally bad living conditions, are given a thought by the people they work for. The fact also remains they are not entitled to form unions (like in other organisations) for their rights and genuine demands. On an average, every year, 4- 5 % policemen are suspended and are punished, whereas in any other department it is difficult to take disciplinary action against even one person out of 1000. ³⁶

The National Human Rights Commission has always championed the cause of human rights for everyone in the country. In the affidavit filed in the SC, in the Prakash Singh vs Union of India case, the NHRC was the only respondent which pleaded that the protection of the human rights of the policemen was of paramount importance if they are expected to protect the human rights of others.

In a democratic society, the police force is accountable to the people they serve, upholding the rights of the citizens and following the due process. The police force in India has however been unable to win support for itself and the general impression is that it is still far removed from the needs and aspirations of the people it is meant to serve. The emphasis in the chapter has been on the major areas of police public interface, where the problems exist. A brief mention of the laws on the issues discussed, has been made to highlight the fact that protection of human rights has always been the underlying theme of all the laws. Stress thus needs to be given on performance of the duties by the police force, within the parameters specified by the human rights.

³⁶ Khaki mein Insaan - Kumar, Ashok , Rajkamal Paperbacks 2010

The police officers can catalyze the process of change by acting suo motu (on its own motion) in this regard.³⁷ They must enforce the law, uphold human rights, use no more than the minimum force than is necessary and act without fear or favour. Their performance can make a huge impact in changing the ground reality of a resurgent India. And this is an area too important to allow the politicians and bureaucrats, to continue to interfere. Any initiative taken towards this end is sure to provoke a positive response from the people. The help and the cooperation from the people would overflow. The police just need to take the first step!

³⁷The New Khaki – The Evolving Nature of Policing in India – Arvind Verma, CRC Press, New York, 2010

Judiciary on Policing and Human Rights (Inclusive of Case Laws)

I. REGISTRATION OF FIR

State of Haryana v BhajanLal & Others air 1992 sc 604

A. Background

A First Information Report [FIR] was registered by the Haryana Police against Ch. BhajanLal, on a complaint by a private person that he possessed assets disproportionate to his known sources of income. BhajanLal - Union Minister and former Chief Minister of Haryana - went to the High Court asking for the FIR to be cancelled, saying that it was registered because of the political rivalry that existed between Ch Devi Lal, the existing Chief Minister of Haryana and him.

The High Court ordered cancellation of the FIR and all proceedings undertaken on its behalf, on the ground that the allegations did not make up a cognizable offence to start a lawful investigation. The State of Haryana appealed to the Supreme Court against the order of the High Court. of Haryana v Bhajan Lal & Others air 1992 sc 604

B. Observations by the Supreme Court

The Supreme Court said that the order of the High Court cancelling the FIR, was bad both in law and on the facts. They asserted that everyone, whether individually or collectively, must abide by the law and even the judiciary cannot interfere with the investigation process unless police officers improperly and illegally exercise their investigatory powers. However, the Supreme Court cautioned that where a police officer transgresses the circumscribed limits and causes serious prejudice to the personal liberty and the property of a citizen, courts will step in and issue appropriate orders.

Section 154 (1) of the Code of Criminal Procedure, 1973 [CrPC] says that if any information disclosing a cognizable offence is given at the police station, the officer incharge must register it. The Supreme Court asserted that it is not open to the police to question the reasonableness or credibility

of the information at this stage. *An FIR should be registered immediately and even before proceeding with a preliminary investigation.*

The Court also commented on Section 157 CrPC which says that two conditions must be satisfied before a police officer starts an investigation:

i) S/he should have a reason to suspect the commission of a cognizable offence.

The reason to suspect must arise from the allegations made in the first information given to a police officer and at this stage the question of adequate proof of facts alleged in the FIR does not arise.

First Information Report is the earliest and first information that is received about the commission of a cognizable offence. It sets the ball of the criminal justice process rolling.

Cognizable offences are mentioned in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC]. Section 2 (c) CrPC defines cognizable offence as an offence, in which a police officer can arrest a person without a warrant. In practice, cognizable offences are offences in which a police officer can register a case and start an investigation without a magistrates order and carry out an arrest without a magistrates warrant.

ii) S/he should satisfy her/himself about the credibility of the information.

A police officer has to draw his [her] satisfaction [about the credibility of information] only on materials which were placed before him[her] at that stage and only the first information together with the documents, if any, enclosed.

C. Directions by the Supreme Court

1. An FIR must be registered as soon as information about a cognizable offence is received.
2. Before starting an investigation, police officers should make a rational inference that a cognizable offence has been committed. The inference should be made solely on the basis of facts mentioned in the FIR.
3. Courts will not as a rule interfere in the investigation process except in the following circumstances when the High Court can cancel the FIR and other proceedings carried out by the police:
 - i. Where the allegations in the FIR do not constitute any cognizable offence or justify an investigation by the police.

- ii. Where the allegations made in the FIR and the evidence collected by the police in support of the allegations do not point towards the guilt of the accused.
- iii. Where investigation has been carried out by the police in a non-cognizable offence without the order of a magistrate.
- iv. Where the Cr PC or any other law expressly prohibits carrying out criminal proceedings against the accused.
- v. Where criminal proceedings have been started with dishonest intent to take revenge from the accused.

Non-registration of First Information Reports [FIR] is one of the most serious, frequent and common grievances against the police. This problem is compounded when the person against whom a complaint is made is rich and powerful. Article 14 of the Constitution guarantees to all persons' equality before the law and equal protection of the laws within the territory of India. Police officers must register an FIR immediately on receiving information about a cognizable offence. Persons aggrieved by non-registration of FIR can approach the District Superintendent of Police or the concerned Magistrate to get their complaints registered. Alternatively complaints in this regard can also be filed before the National or concerned State Human Rights Commission.

II. Basis of Investigation

State of West Bengal v Swapan Kumar Guha & others 1982 SCC 561

A. Background

Sanchaita Investments of Calcutta was offering extraordinarily high rates of interest to attract cash deposits from the public. The Commercial Tax Officer, Bureau of Investigation suspected some fraud was being committed. He asked the police to register a First Information Report [FIR] on the grounds that such high rates of interest could not be sustained, therefore the deposit scheme was being promoted with the intention of making quick or easy money, in violation of the Prize Chits and Money Circulations Schemes [Banning] Act, 1978.

The police registered an FIR and started an investigation on the basis of the Commercial Tax Officer's suspicions. However, the High Court cancelled the FIR and subsequent police proceedings, saying that they were

illegal and without jurisdiction. The State of West Bengal appealed to the Supreme Court against the decision of the High Court.

B. Observations by the Supreme Court

The police do not have unfettered discretion to start an investigation. Unlimited discretion, the Supreme Court said is a ruthless destroyer of personal freedom. An investigation cannot be started on mere unfounded suspicion. They emphasised that fundamental principles of justice are based on the logic that the process of investigation cannot be used to harass people against whom no offence is disclosed. Carrying out investigation without a proper basis imperils the personal liberty and property of the individual, which are sacred and sacrosanct.

The right of the police to conduct an inquiry must be conditioned by the existence of reason to suspect the commission of a cognizable offence. Such reason can be established only if facts in the FIR point towards an offence being committed. The Supreme Court laid down that an FIR which does not allege or disclose that the essential requirements of the penal provision are *prima facie* [on the face of it] satisfied cannot form the foundation or constitute the starting point of a lawful investigation.

This case also re-examined the question of when the courts can interfere in the investigation process. The Supreme Court said that if after considering all relevant aspects, the courts are satisfied that an offence has been committed; they will allow the Investigation to proceed without interference. However, if no offence is disclosed, courts re under a duty to interfere and stop the investigation to prevent any kind of uncalled or and unnecessary harassment to an individual.

C. Directions by the Supreme Court

1. It is essential before starting an investigation that facts mentioned in the FIR disclose all the elements that go to make up a cognizable offence.
2. Powers of investigation must be exercised in strict accordance with Constitutional Guarantees and legal provisions.
3. Courts have a duty to intervene in the investigation process to prevent harassment of individuals if their rights are being violated and correct procedure is not being followed.

Police officers often find themselves under pressure to register cases on flimsy grounds.

The Supreme Court has laid down that a just balance has to be struck between fundamental rights of citizens and the expansive power of the police to investigate an offence. Subjecting a person to a police investigation on the basis of vague and unverified information is a violation of fundamental rights. It will only lead to censure and ordering of inquiry against the errant officer by the courts who are under a duty to ensure innocent people are not harassed by the investigative process.

III. Investigation of Offences

T. T Anthony V State of Kerala Air 2001 SC 2637

A. Background

In a well-known incident in Kannur district of Kerala, five persons were killed and several injured in police firing. The police fired in order to control activists belonging to the opposition, protesting the visit of a minister in the ruling UDF coalition. Cases were registered against eight named and many unidentified persons belonging to the opposition party for creating the disturbances that led to the police action. Meanwhile, due to public uproar, the UDF Government instituted a judicial inquiry into the incident.

In the intervening period, the UDF lost the election and the opposition came to power. The report of the Commission of Inquiry, which was released after the new government came to power held the Executive Magistrate and the Deputy Superintendent of Police responsible for the deaths. The findings of the commission were accepted by the new government and cases were registered against the Executive Magistrate and the police officials involved in the firing. The Executive Magistrate and the police officials appealed to the Supreme Court after the High Court turned down their request for cancelling the cases against them.

The appeals raised two significant questions of law:

- (i) whether a second First Information Report [FIR] can be registered in respect of an offence that has already been registered, and if it can form the basis of a fresh investigation

- (ii) whether the report of a Commission of Inquiry into the same incident is binding upon the investigating agency.

B. Observations by the Supreme Court

- (i) FIR [First Information Report] is the record of the information received first in time and is written and registered on the basis of that information. In other words, it is the record of the earliest information received about a cognizable offence. Therefore, the Supreme Court affirmed that the question of having a second FIR does not arise.

However, it is possible that more than one piece of information may be received from time to time and from different people in respect of the same incident. In such a situation, the Court clarified, that before submitting the Magistrates report, the officer in charge of a police station must investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence. They said that, if after filing the investigation report before the magistrate, the investigating officer comes across further information or material, he [she] need not register a fresh FIR, he [she] is empowered to make further investigation, normally with the leave of the court to collect further evidence.

- (ii) The Supreme Court said that the police is not bound by the findings of a Commission of Inquiry. The government for varied reasons of its own sets up a Commission of Inquiry and it is for them to endorse or reject the findings or recommendations. However, the police as an independent investigating agency of the State must act only in accordance with the law and on the evidence before it.

Nevertheless the police can take advantage of the facts and findings of a Commission of Inquiry as a factor in its own investigations but the findings should not preclude the investigating agency from forming a different opinion if the evidence obtained by it supports such a conclusion.

C. Directions by the Supreme Court

1. There can only be one FIR in respect of an incident.
2. If any additional information is received after the FIR is registered, the police can investigate on it and mention the result in the report to

the magistrate submitted by the investigating officer.

3. If the investigating officer comes across any evidence after the report to the magistrate has been sent, s/he can carry out further investigation and send supplementary reports to the magistrate.
4. Report of a Commission of Inquiry is not binding upon the investigating agency.

The investigating agency can form a different opinion on the basis of evidence collected by it.

Registration of more than one FIR in respect of a particular incident has been disallowed by the Supreme Court. However, if any additional information is received in connection with the incident, it should be recorded under Sec 161 of the Code of Criminal Procedure, 1973 [CrPC] and mentioned in the charge-sheet. The Supreme Court has categorically said that the police is under a duty to investigate not only the cognizable offences that are made out in the FIR but also any other offences that may have been committed in the same incident or transaction.

Section 173 (2) (i) Criminal Procedure Code, 1973 [CrPC] requires the officer in charge of a police station to forward a report to the authorised magistrate in the prescribed form as soon as an investigation is completed. Section 173 (8) says that nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report has been filed before the magistrate. It also categorically says that after the report has been forwarded to the magistrate, if the officer in charge of the police station obtains further evidence, oral and documentary, s/he should forward report/s to the magistrate about the evidence.

This section authorises an investigating officer to orally examine any person acquainted with the facts and circumstances of the case. Section 161 (2) obliges such person to truthfully answer all questions relating to the case put by the investigating officer except those which expose her/him to a criminal charge, penalty or forfeiture. Section 161 (3) empowers the investigating officer to reduce into writing any statement made to her/him in the course of investigation. It also casts a duty on the investigating officer to make a separate and true record of the statement that s/he has reduced into writing.

IV. Right against Self-Incrimination

Nandini Satpathy V P. L Dani Air 1978 SC 1025

A. Background

Nandini Satpathy - former Chief Minister of Orissa - against whom a case had been registered under the Prevention of Corruption Act, was asked to appear before the Deputy Superintendent of Police [Vigilance] for questioning. The police wanted to interrogate her by giving her a string of questions in writing. She refused to answer the questionnaire, on the grounds that it was a violation of her fundamental right against self-incrimination. The police insisted that she must answer their questions and booked her under Section 179 of the Indian Penal Code, 1860, which prescribes punishment for refusing to answer any question asked by a public servant authorised to ask that question.

The issue before the Supreme Court was whether Nandini Satpathy had a right to silence and whether people can refuse to answer questions during investigation that would point towards their guilt.

B. Observations by the Supreme Court

Article 20 (3) of the Constitution lays down that no person shall be compelled to be a witness against her/himself. Section 161 (2) of the Code of Criminal Procedure, 1973 [CrPC], casts a duty on a person to truthfully answer all questions, except those which establish personal guilt to an investigating officer.

The Supreme Court accepted that there is a rivalry between societal interest in crime detection and the constitutional rights of an accused person. They admitted that the police had a difficult job to do especially when crimes were growing and criminals were outwitting detectives. Despite this, the protection of fundamental rights enshrined in our Constitution is of utmost importance, the Court said. In the interest of protecting these rights, we cannot afford to write off fear of police torture leading to forced self incrimination.

While any statement given freely and voluntarily by an accused person is admissible and even invaluable to an investigation, use of pressure whether subtle or crude, mental or physical, direct or indirect but sufficiently substantial by the police to get information is not permitted as it violates

the constitutional guarantee of fair procedure. The Supreme Court affirmed that the accused has a right to silence during interrogation if the answer exposes her/him into admitting guilt in either the case under investigation or in any other offence. They pointed out that ground realities were such that a police officer is a commanding and authoritative figure and therefore, clearly in a position to exercise influence over the accused.

C. Directions by the Supreme Court

1. An accused person cannot be coerced or influenced into giving a statement pointing to her/his guilt.
2. The accused person must be informed of her/his right to remain silent and also of the right against self incrimination.
3. The person being interrogated has the right to have a lawyer by her/his side if s/he so wishes.
4. An accused person must be informed of the right to consult a lawyer at the time of questioning, irrespective of the fact whether s/he is under arrest or in detention.
5. Women should not be summoned to the police station for questioning in breach of Section 160 (1) CrPC.

An essential element of a fair trial is that the accused cannot be forced to give evidence against her/ him. Forcing suspects to sign statements admitting their guilt violates the constitutional guarantee against self incrimination and breaches provisions of the Code of Criminal Procedure, 1973 [CrPC] It is also inadmissible as evidence in a court of law. In addition, causing hurt to get a confession is punishable by imprisonment up to seven years.

This has been clarified/ modified in D.K Basu v State of West Bengal AIR 1997 SC. The Supreme Court has said that the arrestee [arrested person] may be permitted to meet his lawyer during interrogation, though not throughout the interrogation. Children below 15 and women should not be summoned to the police station or to any other place by an investigating officer. They should only be questioned at their place of residence.

Under Article 20 (3) 16 Section 162 (1) Code of Criminal Procedure, 1973 [CrPC] directs that a statement made to a police officer during investigation should not be signed by the person making it.

Section 25, Indian Evidence Act, 1872 Section 319 of the Indian Penal Code, 1860 defines hurt as causing bodily pain, disease or infirmity to any person.

V. Basis of Arrest

Joginder Kumar V State of U.P and Others 1994 SCC 260

A. Background

Joginder Kumar, a lawyer aged 28 was called to the office of the Senior Superintendent of Police [SSP], Ghaziabad in connection with some inquiries. He was accompanied by friends and his brother, who were told by the police that he would be released in the evening. Next day, too, he was not released as the police wanted his help in making further inquiries. When his family went to the police station on the third day, they found that he had been taken to an undisclosed location. In effect, Joginder Kumar was illegally detained over a period of five days.

His family filed a habeas corpus writ petition with the Supreme Court to find out his whereabouts. The Court issued notices to the State of Uttar Pradesh and to the SSP to immediately produce Joginder Kumar and answer why he was detained for five days without a valid reason; why his detention was not recorded by the police in its diary; and why he was not produced before a magistrate.

B. Observations by the Supreme Court

The Court said that the law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively.

They pointed out that the Third Report of the National Police Commission identifies wrongful use of arrest powers as one of the chief sources of corruption in the police and that nearly 60% arrests made by police officers are unnecessary and unjustified. Strongly opposing the practice of carrying out indiscriminate arrests, the Supreme Court said that an arrest cannot be made simply because it is lawful for a police officer to do so. The existence of the power to arrest is one thing...the justification for the exercise of it is quite another....the police officer must be able to justify the arrest.

Arrest and detention in police lock up can cause incalculable harm to the reputation and self-esteem of a person. Therefore, arrests should not be made in a routine manner on mere allegation that a person has committed an offence. If police officers do not wish to face legal or disciplinary action, they should see that arrests are made only after reaching a reasonable satisfaction about the complaint being true and the case being *bonafide* [genuine]. Even then, the Court said that the officer making the arrest must function under a reasonable belief both as to the person's complicity in committing the offence and the need to effect an arrest.

C. Directions by the Supreme Court

1. Arrests are not to be made in a routine manner. The officer making the arrest must be able to justify its necessity on the basis of some preliminary investigation.
2. An arrested person should be allowed to inform a friend or relative about the arrest and where s/he is being held. The arresting officer must inform the arrested person when s/he is brought to the police station of this right and is required to make an entry in the diary as to who was informed.
3. It is the duty of the magistrate before whom the arrested person is produced to satisfy her/himself that the above requirements have been complied with.

Arrests should not be made, unless they are absolutely necessary and there is no other way except arresting the accused to ensure her/his presence before the criminal justice system or to prevent her/him from committing more crimes or tampering with evidence or intimidating witnesses. Unnecessary and unjustified arrests lead to harassment and loss of faith in the system. They also account for 43.2 % expenditure in jails according to the Third Report of the National Police Commission.

On the other hand, corruptly or maliciously detaining people without recording an arrest is punishable by a maximum sentence of seven years. Article 22 (1) of the Constitution lays down that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of arrest nor shall s/he be denied the right to consult and be defended by a legal practitioner of choice.

VI. Arrest Procedure, Custodial Violence and Compensation

D. K Basu V State of West Bengal Air 1997 SC 610

A. Background

D.K Basu - Executive Chairman of Legal Aid Services, West Bengal - wrote a letter to the Chief Justice of India, saying that torture and deaths in police custody are widespread and efforts are often made by the authorities to hush up the matter. Because of this, custodial crimes go unpunished. Some newspaper reports published in the Telegraph, Statesman and Indian Express newspapers were also attached to support the contention. Basu urged the Supreme Court to -

- i) Examine the issue in depth
- (ii) Develop custody jurisprudence and lay down principles for awarding compensation to the victims of police atrocities
- (iii) Formulate means to ensure accountability of those responsible for such occurrences.

The Supreme Court treated the letter as a writ petition. While the writ was under consideration, the Supreme Court received another report about a death in police custody in Uttar Pradesh. This prompted the Court to issue notices to all state governments and the Law Commission of India to submit suggestions on how to combat this all-India problem.

B. Observations by the Supreme Court

Custodial torture is a naked violation of human dignity, the Supreme Court said.

The situation is aggravated when violence occurs within the four walls of a police station by those who are supposed to protect citizens. The Court accepted that the police have a difficult task in light of the deteriorating law and order situation; political turmoil; student unrest; and terrorist and underworld activities. They agreed that the police have a legitimate right to arrest a criminal and to interrogate her/him in the course of investigation. However, the law does not permit the use of third degree methods or torture on an accused person. Actions of the State must be right, just and fair; torture for extracting any kind of confession would neither be right nor just nor fair.

- (i) The Right to Life guaranteed by our Constitution includes the right to live with human dignity. The State is not only obliged to prosecute those who violate fundamental rights, it also has a duty to pay monetary compensation to repair the wrong done by its agents in not being able to discharge their public duty of upholding peoples rights. Compensation, the Court said, is not to be paid by way of damages as in a civil case [the victim is free to file a civil case to privately recover damages from the wrongdoer for loss of earning capacity] but under public law for breach of duty by the State in not being able to protect its citizens. However, there can be no strait-jacket formula as each case has its own peculiar facts and circumstances.
- (ii) The Court recognised that the worst violations of human rights take place during investigation when the police use torture and third degree methods to get confessions. In such instances, arrests are either disguised by not recording them or showing detention as prolonged interrogation. The Court stressed that no matter what the circumstances, the State or its agents are not allowed to assault or torture people. They then laid down an elaborate set of guidelines in respect of arrest and interrogation.

The Court directed that the guidelines which are given below should be circulated to the Director General of Police and the Home Secretary of every state and union territory and it shall be their obligation to have them put up in every police station at a conspicuous place.

C. Directions by the Supreme Court

1. Use of third degree methods or any form of torture to extract information is not permitted.
2. Police personnel carrying out arrest and interrogation must bear accurate, visible and clear identification / name tags with their designations.
3. Particulars of all personnel handling interrogation of an arrested person must be recorded in a register.
4. A memo of arrest stating the time and place of arrest must be prepared by the police officer carrying out an arrest. It should be attested by at least one witness who is either a family member of the arrested person or a respectable person from the locality where the arrest is made. The memo should also be counter-signed by the arrested person.

5. The arrested or detained person is entitled to inform a friend, relative or any other person interested in her/his welfare about the arrest and place of detention as soon as practicable. The arrested person must be made aware of this right as soon as s/he is arrested or detained.
6. The arrested person may be allowed to meet her/his lawyer during interrogation but not throughout the interrogation.
7. The time, place of arrest and venue of custody of the arrested person must be notified by telegraph to next friend or relative of the arrested person within 8-12 hours of arrest in case such person lives outside the district or town. The information should be given through the District Legal Aid Organisation and police station of the area concerned.
8. An entry must be made in the diary at the place of detention in regard to the arrest. The name of the friend/relative of the arrested person who has been informed and the names of the police personnel in whose custody, the arrested person is being kept should be entered in the register.
9. The arrested person should be examined by a medical doctor at the time of arrest if s/he so requests. All bodily injuries on the arrested person should be recorded in the inspection memo which should be signed by both the arrested person and the police officer making the arrest. A copy of the memo should be provided to the arrested person.
10. The arrested person should be subject to a medical examination every 48 hours by a trained doctor who has been approved by the State Health Department.
11. Copies of all documents relating to the arrest including the memo of arrest should be sent to the Area Magistrate for her/his record.
12. A police control room should be provided at all district and state headquarters where information regarding arrests should be prominently displayed. The police officer making the arrest must inform the police control room within 12 hours of the arrest.
13. Departmental action and contempt of court proceedings should be initiated against those who fail to follow above-mentioned directives. Failure to follow proper procedure while arresting and interrogating suspects is a very serious matter.

D.K Basu's case lays down specific guidelines that must be followed while arresting and interrogating suspects. These guidelines are based on Code of Criminal Procedure, 1973 [CrPC] provisions and are very much a part of regulations laid down in police manuals and rule books. The Supreme

Court has said that failure to comply with these guidelines not only renders an officer liable for punishment through departmental action but also amounts to contempt of court.

VII. Treatment of Women and Legal Aid

Sheela Barse V State of Maharashtra 1983 SCC 96

A. Background

Sheela Barse - a journalist and activist for prisoners' rights - wrote to the Supreme Court saying that of the 15 women prisoners interviewed by her in Bombay Central Jail, five admitted that they had been assaulted in police lock-up. Given the seriousness of the allegations, the Court admitted a writ petition on the basis of the letter and asked the College of Social Work, Bombay to visit the Central Jail to find out whether the allegations were true. The College submitted a detailed report which, in addition to admitting that excesses against women were taking place, pointed out that arrangement for providing legal assistance to prisoners was inadequate.

B. Observations by the Supreme Court

Failure to provide legal assistance to poor and impoverished persons violates constitutional guarantees. Article 39-A [Directive Principle of State Policy] casts a duty on the State to secure the operation of a legal system that promotes justice on the basis of equal opportunity. The right to legal aid is also a fundamental right under articles 14 [Equality before Law] and 21 [Right to Life and Personal Liberty].

The Court expressed serious concern about the plight of prisoners, unable to afford legal counsel to defend themselves. They said that not having access to a lawyer was responsible for individual rights against harassment and torture not being enforced.

Stressing the urgent need to provide legal aid not only to women prisoners but to all prisoners whether they were undertrials or were serving sentences, the Court said that an essential requirement of justice is that every accused person should be defended by a lawyer. Denial of adequate legal representation is likely to result in injustice, and every act of injustice corrodes the foundations of democracy and rule of law.

Expressing serious concern about the safety and security of women in police lock-up, the Supreme Court directed that a woman judge should

be appointed to carry out surprise visits to police stations to see that all legal safeguards are being enforced.

C. Directions by the Supreme Court

1. Female suspects must be kept in separate lock-ups under the supervision of female constables.
2. Interrogation of females must be carried out in the presence of female policepersons.
3. A person arrested without a warrant must be immediately informed about the grounds of arrest and the right to obtain bail.
4. As soon as an arrest is made, the police should obtain from the arrested person, the name of a relative or friend whom s/he would like to be informed about the arrest. The relative or friend must then be informed by the police.
5. The police must inform the nearest Legal Aid Committee as soon as an arrest is made and the person is taken to the lock-up.
6. The Legal Aid Committee should take immediate steps to provide legal assistance to the arrested person at State cost, provided such person is willing to accept legal assistance.
7. The magistrate before whom an arrested person is produced shall inquire from the arrested person whether s/he has any complaints against torture and maltreatment in police custody. The magistrate shall also inform such person of her/his right to be medically examined.

Women in custody are particularly vulnerable to physical and sexual abuse. Courts take a very serious view of complaints regarding custodial rape or harassment. Of late, the National and State Human Rights Commissions and the Womens' Commission are also playing an increasingly proactive role to see such instances do not go unpunished. It is the duty of the officer in-charge of a police station/post to ensure that women are not harmed and searches of their person are carried out only by women with strict regard to decency.

Section 54 Code of Criminal Procedure, 1973 [CrPC] confers the right to an arrested person to get her/himself medically examined to afford evidence to disprove the commission of an offence by her/him or establish the commission of an offence by any other person against her/his body. The arrested person can ask to be medically examined either at the time s/he is produced before a magistrate or at any time during the period of detention.

VIII. Handcuffing

Prem Shankar Shukla V Delhi Administration 1980 SCC 526

A. Background

Prem Shankar Shukla - an undertrial prisoner at Tihar Jail - sent a telegram to the Supreme Court that he and some other prisoners were being forcibly handcuffed when they were escorted from prison to the courts. Shukla pleaded that routine handcuffing and chaining of prisoners was continuing despite the Supreme Court directive in Sunil Batra's case that fetters/handcuffs should only be used if a person exhibits a credible tendency for violence or escape.

B. Observations by the Supreme Court

Using handcuffs and fetters [chains] on prisoners violates the guarantee of basic human dignity, which is part of our constitutional culture, the Supreme Court said. This practice does not stand the test of articles 14 [Equality before law], 19 [Fundamental Freedoms] and 21 [Right to Life and Personal Liberty].

To bind a man hand and foot; fetter his limbs with hoops of steel; shuffle him along in the streets; and to stand him for hours in the courts, is to torture him; defile his dignity; vulgarise society; and foul the soul of our constitutional culture. Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to manacle a man is more than to mortify him; it is to dehumanise him; and therefore to violate his very personhood.

They rejected the argument of the State that handcuffs are necessary to prevent prisoners from escaping. Insurance against escape does not compulsorily require handcuffing there are other methods whereby an escort can keep safe custody of a detenu [detained person] without the indignity and cruelty implicit in handcuffs and other iron contraptions.

The Supreme Court asserted that even orders from superiors are not a valid justification for handcuffing a person. Constitutional rights cannot be suspended under the garb of following orders issued by a superior officer. There must be reasonable grounds to believe the prisoner is so dangerous and desperate that s/he cannot be kept in control except by handcuffing.

C. Directions by the Supreme Court

1. Handcuffs are to be used only if a person is:
 - a) involved in serious non-bailable offences has been previously convicted of a crime; and/or
 - b) is of desperate character- violent, disorderly or obstructive; and/or
 - c) is likely to commit suicide; and/or
 - d) is likely to attempt escape.
2. The reasons why handcuffs have been used must be clearly mentioned in the Daily Diary Report. They must also be shown to the court.

IX. Compensation

Nilabati Behera V State of Orissa 1993 SCC 746

A. Background

Nilabati Behera, a distressed mother, wrote a letter to the Supreme Court asking that she be monetarily compensated for the death of her 22 year old son in police custody. She said that her son, Suman Behera was beaten to death at a police post after being detained in connection with a theft.

The Supreme Court immediately admitted a writ petition on her behalf and took up the case. Rejecting the police version that Suman Behera was killed by a running train after he escaped from police custody; the Court asserted that the post-mortem report clearly showed that he died as a result of being beaten up. The question before the Court was whether Nilabati Behera had a right to claim compensation for the wrongful acts of the policemen who caused her sons death.

B. Observations by the Supreme Court

Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 lays down that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. This Covenant has been ratified by India, which means that the State has undertaken to abide by its terms.

The Supreme Court asserted that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 [Right to Life

and Personal Liberty] of the Constitution and there is a corresponding responsibility on the police and prison authorities to make sure that persons in custody are not deprived of the Right to Life.

The State has a duty of care to ensure that the guarantee of Article 21 is not denied to anyone. This duty of care is strict and admits no exceptions the Court said.

The State must take responsibility by paying compensation to the near and dear ones of a person, who has been deprived of her/ his life by the wrongful acts of its agents.

However, the Court affirmed that the State has a right to recover the compensation amount from the wrongdoers.

They said that the purpose of law is not only to civilize public power but also to assure people that they live under a legal system which protects their interests and preserves their rights. Therefore the High Courts and the Supreme Court as protectors of civil liberties not only have the power and jurisdiction but also the obligation to repair the damage caused by officers of the State to fundamental rights of citizens.

It may be added that over the years an enforceable right to compensation has come to be accepted as a part of international customary law.

C. Directions by the Supreme Court

1. The State has an obligation to give compensation to a victim or to the heirs of a victim whose fundamental rights have been violated by its agents.
2. The State has a right to recover the compensation amount from the guilty officials after appropriate proceedings or inquiry.
3. An order of compensation by the State in a criminal case does not prevent the victims or their heirs from claiming further compensation in a civil case [for loss of earning capacity].

While it is mandatory to conduct a magisterial inquiry into every case of custodial death the State also has a duty not only to register criminal cases, but also to pay monetary compensation where human rights are violated by its officers.

Courts and human rights commissions regularly give directions to the government to monetarily compensate victims or their families for incidents of custodial death, rape, violence or assaults on dignity. In a majority of these cases, compensation amounts are recovered from the salaries and other benefits of the guilty officials.³⁸

³⁸ Courtesy: Human Rights and Policing: CHRI, April 2005

National Human Rights Commission Guidelines – on Policing

I. Encounter Deaths/ Deaths Caused in Police Action

In 2003, the NHRC noted that the guidelines issued by the Commission in 1997 were not being followed in their true spirit and made some additions to its existing guidelines. The Commission also expressed concern that all states were not sending information about deaths in encounters and asserted that availability of proper statistics was necessary for the effective protection of human rights and discharge of the NHRC's duties. Responding to public concerns that in reported encounters, sufficient efforts are not made to ascertain the cause of death and whether the deceased have committed any offences, the National Human Rights Commission directed all states and union territories to ensure adherence to proper police procedure and conduct of impartial investigations.

The Revised Guidelines to be followed in cases of *deaths caused in police action* - issued in May 2010 by NHRC, are as follows-

- A. When the police officer in charge of a Police Station receives information about death in an encounter with the Police, he shall enter that information in the appropriate register.
- B. Where the police officers belonging to the same Police Station are members of the encounter party, whose action resulted in death, it is desirable that such cases are made over for investigation to some other independent investigating agency, such as State CBCID.
- C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall be investigated by State CBCID or any other specialised investigation agency.
- D. A magisterial enquiry must be held in all cases of death which occurs in the course of police action, as expeditiously as possible, preferably, within three months. The relatives of the deceased, eye witness, witnesses having information of the circumstances leading to encounter, police station records etc. must be examined while

conducting such enquiry.

- E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/ police investigation.
- F. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/ recommended only when the gallantry of the concerned officer is established beyond doubt.
- G. (a) All cases of deaths in police action in the states shall be reported to the Commission by the Senior Superintendent of Police/ Superintendent of Police of the District within 48 hours of such death in the following format:
 - 1. Date and place of occurrence
 - 2. Police station, district
 - 3. Circumstances leading to death:
 - (i) Self defence in encounter
 - (ii) In course of dispersal of unlawful assembly
 - (iii) In the course of effecting arrest
 - (iv) Any other circumstances
 - 4. Brief facts of the incident
 - 5. Criminal case No.
 - 6. Investigating agency
- (b) A second report must be sent in all cases of death in police action in the state by the Sr. Superintendent of Police / Superintendent of Police to the Commission within three months providing following information:
 - 1. Post mortem report
 - 2. Inquest report
 - 3. Findings of the magisterial enquiry/ enquiry by senior officers disclosing:-
 - (i) Names and designation of police official, if found responsible for the death;
 - (ii) Whether use of force was justified and action taken was lawful;
 - (iii) Result of the forensic examination of 'handwash' of the deceased to ascertain the presence of residue of gun powder to justify exercise of right of self defence; and

- (iv) Report of the Ballistic Expert on examination of the weapons alleged to have been used by the deceased and his companions.³⁹

II. Lie Detector Tests

The NHRC has laid down guidelines for the conduct of the Lie Detector Test or polygraph test in view of the complaints that the police, without explaining to people the full implications of a lie detector test, was making them take it, in violation of their fundamental right and the fact that lie detector or polygraph tests are not regulated by any particular law as such. While issuing these guidelines, the NHRC followed the principle: in the absence of a specific law, any intrusion into fundamental rights must be struck down as constitutionally invidious [violative]. The NHRC said that the invasiveness of a lie detector test overrules the argument of the police that the authority to use lie detector tests comes from their powers under the Code of Criminal Procedure [CrPC] to question and interrogate suspects and stated that, holding of such tests is the prerogative of the individual and not an empowerment of the police. It must perforce be regarded as illegal and unconstitutional *unless* it is voluntarily undertaken under non-coercive circumstances.

Also, there is no scientific evidence to prove that results obtained from polygraph tests are conclusive. Failing a lie-detector test does not mean that the person is guilty. Polygraph tests measure responses on the premise, that a person is being untruthful, if there are sudden changes in her/his breathing, heart and blood pressure rates. A truthful person can fail the test if s/he is nervous, has health problems or is just surprised by the question.

The Guidelines are as follows -

1. Lie detector tests must not be carried out without the consent of the accused.
2. If the accused volunteers to take a lie detector test, s/he must be given access to a lawyer to explain the physical, emotional and legal implications of the test. The implications must also be explained by the police.
3. Consent to take a lie detector test must be recorded before a Judicial Magistrate.
4. The magistrate must take into account, the time the accused has been in detention and the nature of her/his interrogation. This should be

³⁹ Please see www.nhrc.nic.in - List of Important Instructions/Guidelines by the Commission

done to find out whether the accused is being coerced into giving consent.

5. At the time of recording consent, the accused must be represented by a lawyer.

The status of a confessional statement given to a magistrate will have the status of a statement made to the police.

6. The actual recording of the lie detector test should be done by/in an independent agency [such as a hospital] and in the presence of a lawyer.
7. A full medical and factual narration of the manner in which information is received must be taken on record.

III. Police-Public Relations

National Human Rights Commission guidelines on police-public relations are of particular relevance to officers at the cutting edge level, i.e those who are posted at police stations. These guidelines have been communicated to all chief secretaries and police chiefs. They are an invaluable aid for police officers to perform their duties in a manner compatible with prevailing human rights standards.

Toll free telephone number for the public to convey crime information

Police services of all states should set up a toll free telephone number for the public convenience. In Kerala, this number is 1090. The National Human Rights Commission has recommended that for the purpose of uniformity, all states should have the same number i.e 1090. The commission has advocated that:

- The number should be dedicated to public use and installed in the Police Control Room/Police Station/ Sub-Divisional Office.
- The number should be toll free within the state, enabling people from remote parts or interiors of districts to access it.
- Callers should not be compelled to reveal their identity. They may be given a code number to identify themselves to know the result of the investigation.
- Callers should be rewarded for their public-spirited service by issuing commendation certificates if the information results in detection of crimes.

Registration of offences and information about progress in investigation

Transparency in the investigation process must be maintained. The Commission has stressed that complainants must have access to information about their cases and has given the following guidelines -

- A First Information Report [FIR] should be registered promptly on receiving a complaint about a cognizable offence.
- A copy of the FIR should be given to the complainant and an entry about this should be made in the First Case Diary.
- If the complaint does not make out a cognizable offence, the police should explain to the complainant, the reasons why the complaint cannot be registered.
- If investigation is not completed within three months of the FIR being registered, the complainant should be informed in writing giving specific reasons for the delay. Section 154 (2) CrPC lays down that a copy of the FIR shall be given free of cost to the complainant
- Proof of having informed the complainant [postal acknowledgement or written acknowledgement] about reasons for the delay in investigation should be kept on the Case Diary file.
- If investigation is not completed within six months of registering the FIR, the complainant should be informed again in writing about the reasons for non completion of investigation, and the acknowledgement should be kept on the Case Diary file.
- If the investigation is not completed within one year, a more detailed intimation [memo] should be prepared by the investigating officer giving reasons for the delay to the complainant. The intimation should be endorsed by a gazetted officer who directly supervises the work of the investigating officer. The gazetted officer should personally verify the reasons for delay given by the investigating officer. A record of the intimation and its acknowledgement by the complainant should be kept on the Case Diary file.
- The complainant should be informed once the investigation is completed and a charge-sheet is filed before the court. A copy of the charge-sheet should be given to the complainant by the police. In case the complainant is not available for some reason, her/his family should be informed.

Meeting of Station House Officers with the Public

In order to strengthen police-public relations, Station House Officers [SHO] must hold regular monthly meetings in areas falling under their jurisdiction. This will enable people to voice their grievances to the SHO. It will also give the police an opportunity to inform people about law and order issues and enlist their cooperation in maintaining peace and preventing crime. The Commission has advocated that senior officers should also take part in these meetings along-with Station House Officers.

In a democratic nation, people's participation in governance is of utmost importance. As a vital component of the governmental machinery, the police too, are under an obligation to take into account community aspirations and tailor policing to serve the community's needs best. Transparency and openness in functioning are excellent ways to break barriers and engage in people-oriented policing.

IV. Arrest

Concerned with the large number of complaints about abuse of police powers, particularly in relation to arrest and detention, the National Human Rights Commission has drawn up a set of guidelines based on constitutional provisions, existing laws, Supreme Court decisions and National Police Commission recommendations.

PRE-ARREST

- The power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest. [Joginder Kumar's case - (1994) 4 SCC 260]
- Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.
- After Joginder Kumar's pronouncement of the Supreme Court the question whether the power of arrest has been exercised reasonably or not is clearly a justifiable one.
- Arrest in cognizable cases may be considered justified in one or other of the following circumstances :
 1. The Case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent him from escaping or evading the process of law.
 2. The suspect is given to violent behaviour and is likely to commit further offences.

3. The suspect requires to be prevented from destroying evidence or interfering with witnesses or warning other suspects who have not yet been arrested.
4. The suspect is a habitual offender who, unless arrested, is likely to commit similar or further offences. {3] Report of National Police Commission}
 - Except in heinous offences, as mentioned above, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not leave the station without permission, (see Joginder Kumar's case (1994) SCC 260.
 - The power to arrest must be avoided where the offences are bailable unless there is a strong apprehension of the suspect absconding.
 - Police officers carrying out an arrest or interrogation should bear clear identification and name tags with designations. The particulars of police personnel carrying out the arrest or interrogation should be recorded contemporaneously, in a register kept at the police station.

ARREST

- As a rule use of force should be avoided while effecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.
- The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted of at any cost.
- Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy. Searches of women should only be made by other women with strict regard to decency. (S.51 (2) Cr.PC.)
- The use of handcuffs or leg chains should be avoided and if at all, it should be resorted *o strictly in accordance with the law repeatedly explained and mandated in judgment of the Supreme Court in Prem Shanker Shukla v, Delhi Administration [(1980) 3 SCC 526] and Citizen for Democracy v. State of Assam (1995) 3 SCC 743].
- As far as practicable women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided.
- Where children or juveniles are sought to be arrested, no force or

beatings should be administered under any circumstances. Police Officers may for this purpose, associate respectable citizens so that the children or juveniles are not terrorised and minimal coercion is used.

- Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands. Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well and also given a copy on demand. (S.50(1) Cr. PC.)
- The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention. The police should record in a register the name of the person so informed. [Joginder Kumar's case (supra)].
- If a person is arrested for a bailable offence, the police officer should inform him of his entitlement to be released on bail so that he may arrange for sureties. (S. 50(2) Cr. PC.)
- Apart from informing the person arrested of the above rights, the police should also inform him of his rights to consult and be defended by a lawyer of his choice. He should also be informed that he is entitled to free legal aid at state expense [D.K. Basu's case (1997) 1 SCC]
- When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of this right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same. This must also be recorded contemporaneously in a register. The female requesting for medical help should be examined only by a female registered medical practitioner. (S.53 Cr. P.C.)
- Information regarding the arrest and the place of detention should be communicated by the police officer effecting the arrest without any delay to the police control Room and District / State Headquarters. There must be a monitoring mechanism working round the clock.
- As soon as the person is arrested, police officer effecting the arrest shall make a mention of the existence or non-existence of any injury (s) on the person of the arrestee in the register of arrest. If any injuries

are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned in the register, which entry shall also be signed by the police officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.

- If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer 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. At the time of his release from the police custody, the arrestee shall be got medically examined and a certificate shall be issued to him stating therein the factual position of the existence or non-existence of any injuries on his person.

POST ARREST

The person under arrest must be produced before the appropriate court within 24 hours of the arrest. (Ss. 56 and 57 Cr. PC.)

- The person arrested should be permitted to meet his lawyer at any time during the interrogation.
- The interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Govt. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation taking place.

¢ The methods of interrogation must be consistent with the recognized rights to life, dignity and liberty and right against torture and degrading treatment.

ENFORCEMENT OF GUIDELINES

1. The guidelines must be translated in as many languages as possible and distributed to every police station. It must also be incorporated in a handbook, which should be given to every policeman.
2. Guidelines must receive maximum publicity in the print or other electronic media; It should also be prominently displayed on notice board, in more than one language, in every police station.
3. The police must set up a complaint redressal mechanism, which will promptly investigate complaints of violation of guidelines and take corrective action.

4. The notice board which displays the guidelines' must also indicate the location of the complaints redressal mechanism and how that body can be approached.
5. NGOs and public institutions including courts, hospitals universities etc., must be involved in the dissemination of these guidelines to ensure the widest possible reach.
6. The functioning of the complaint redressal mechanism must be transparent and its reports accessible.
7. Prompt action must be taken against errant police officers for violation of these guidelines. This should not be limited to departmental enquiries but also set in motion the criminal justice mechanism.
8. Sensitisation and training of police officers is essential for effective implementation of these guidelines.

V. NHRC Directions - Mandatory Reporting of Custodial Death/ Rape and Video- Filming of Post Mortem Examinations

All cases of custodial death and custodial rape whether in police lock-up or in jail must be reported to the NHRC within 24 hours of occurrence by the concerned District Magistrate or Superintendent of Police. Failure to report promptly will give rise to the presumption that there is an attempt to suppress the incident. All post-mortem examinations in respect of custodial deaths should be video-filmed and a copy of the recording should be sent to the NHRC along-with the post mortem report. Autopsy Report forms prescribed by the NHRC should be used to record the findings of the post-mortem examination.

Article 21 of the Constitution lays down that No person shall be deprived of his [her] life or personal liberty except according to procedure established by law. When constitutional rights of a person are invaded, the court has the jurisdiction to compensate the victim by awarding monetary compensation. This was communicated by the Commission to Chief Secretaries of all states and union territories in its letter dated December 14, 1993.

The Commission in its letter dated August 10, 1995 to Chief Ministers of all states has recognised that video- filming involves extra cost. But human life is more valuable than the cost of video-filming and incidents when video-filming is warranted are limited. These forms have been developed by the NHRC after obtaining views of experts.

The Commission has written to Chief Ministers/ Administrators of all states and union territories (in its letter dated March 27, 1997) to prescribe its *model autopsy form and inquest procedure*.

Protection of Human Rights through Scientific Investigations

A. Introduction

The application of science and technology to the detection and investigation of crime and administration of justice is not new to India. Although our ancestors did not know forensic science in its present form, scientific methods in one way or the other seem to have been followed in the investigation of crime. References to these are found in Kautilya's 'Arthashastra,' which was written about 2300 years ago. The use of fingerprints as signatures by illiterate people in India, introduced centuries ago, was considered by some people as ceremonial only, till it was scientifically proved that identification from fingerprints was infallible.⁴⁰

Over the years, the requirements of investigations have diversified in accordance with crimes, which in today's world have become extremely complex. Modern technological developments including progress in communication technology have facilitated criminals in the commissions of crimes across the globe. Crimes involving computers are a case in point.

Such crimes can range across the spectrum of criminal activity, from child pornography to theft of personal data to destruction of intellectual property. Those who investigate computer crimes have to understand the kind of potential evidence they are looking for in order to structure their search. Files may have been deleted, damaged, or encrypted, and the investigator must be familiar with an array of methods and software to prevent further damage in the recovery process. This in turn has made it imperative to have more effective methods of cyber crime control and their investigations.

An alarming trend observed over the period is the large number of acquittals in criminal cases. In the Anglo-Saxon Model of jurisprudence followed in our country, the burden of proof is on the prosecution to prove a case beyond reasonable doubt. Proof in majority of the criminal cases rests mainly on oral testimony. Experience has shown that oral testimony is rejected in majority of the cases either because witnesses who are examined long after

⁴⁰ Tewari RK, Ravikumar, KV. Development of Forensic Science in India: A Historical Account. Journal of the Indian Academy of Forensic Sciences 1999

the event don't remember the details of the incident or give false evidence on account of threats or inducements. This leads to failure to protect the right to justice. This lacuna can be removed to a large extent, by adducing expert scientific evidence to prove the case against the accused.⁴¹

Scientific investigation methods can help to nail down the criminals by ensuring their identification. The process is assisted by a wide range of evidence which may be collected through voice printing, DNA Test, forensic polygraphy (Lie Detection), Forensic Acoustics - Speaker Identification, photomicrography, forensic toxicology, drug analysis, forensic osteology and odontology, wild life forensics, ballistics, portrait description, etc.

B. Human Rights and Scientific Investigations

One of the main reasons why criminal cases do not generally end up in conviction is due to the absence of sufficient and impeachable evidence. Failure to get conviction not only results in lowering the credibility of the police but also adversely affects the rights of the victims to get justice. Proper use of scientific aids during the course of investigation may lead to gathering evidence which is otherwise not possible by other means. The quality of evidence gathered by using scientific methods is also relatively high and has greater admissibility in the Court of Law.

Scientific Investigation also contributes to the protection of human rights of the alleged accused person in many ways. Often due to lack of sufficient evidence there is a tendency on the part of investigating officers to resort to illegal practices such as torture and use of other third degree methods on the persons suspected to have committed a particular crime. Such practices by the police personnel lead to gross human rights violation of the suspect, sometimes resulting in injuries to the suspected person or even death in custody during interrogation.

Further, absence of supportive evidence sometimes renders an innocent person unable to prove his innocence. This not only amounts to violation of human rights of the alleged accused (innocent) but also goes against the legal maxim of not punishing an innocent person. In such cases, scientific investigation by the investigating agency may lead to collection of evidence which can prove the innocence of the alleged accused person. At the same time, scientific investigation also obviates the need of resorting to illegal

⁴¹ State of the Art Forensic Science: For Better Criminal Justice – NHRC, 1999

practices such as torture and third degree methods, for gathering evidence during the course of investigation, and thus, contributes towards better observance of the human rights norms by the police.

C. Approach of the Police towards Scientific Investigations

It has been observed that the police officers are sometimes resistant to the idea of adopting methods of scientific investigations. One reason may be the fact that the police teams are generally hard pressed for time and are expected to deliver results within a short span. There is neither the time nor the patience to conduct scientific investigations. Moreover, many Police departments lack infrastructural support and the required training too. To cite an instance, the awareness to preserve the crime scene is many a times missing, because of which a lot of crucial evidences are lost. Reference to Arushi Murder case can be cited in this regard.⁴²

Proper training of all the police personnel in forensic science applications would help to ensure that the crime scene is not disturbed and the clues, having strong evidentiary value, are neither lost nor contaminated. Such training would also help to ensure that appropriate physical clue material is picked up and preserved till it reaches the hands of forensic scientists. Though the outcome of the application of forensic science has often been appreciated, yet the level of expertise and specialisation leaves much to be desired. Basic training in scientific investigation is thus a sine-qua-non for police personnel.

Another aspect is that sometimes the adoption of scientific techniques by the police personnel is confession oriented rather than scientific investigation oriented. To elaborate, scientific investigation techniques are at times put into practice with a biased perspective i. e to gather evidences, with an objective to corroborate the confession extracted from the suspect, to prove him an accused. This trend defeats the very purpose of independent and impartial scientific investigations.

Encouraging trends have however, been observed in recent times. Police officers, even in the lower rung, have been open and receptive to the whole idea of scientific investigation and the advantages associated with it. The

⁴² On – the - scene pieces of evidence were not picked up by the investigating team like the finger prints and the blood samples. The entry of outsiders to Arushi’s room was not sealed as a result of which the evidences were trampled upon and destroyed. Out of the 26 fingerprints lifted, 24 were found to be too bad for any evidentiary purpose - TOI: Times City: No one killed Arushi, Dt Dec 31, 2010.

need of the hour is to adopt scientific investigation on a large scale. Encouragement and support from the senior officers of the police force in this regard would go a long way in increasing professionalism in the police and better protection of human rights.

D. Conclusion

During the last few decades, forensic science has evolved into a scientific tool to identify and convict criminals. In heinous cases of sexual assault, a timely medical examination and proper sampling of body fluids followed by forensic analysis can offer irrefutable evidence, circumventing the need of prolonged arguments. In case of disputed parenthood of a child, mere comparison of the DNA of body tissue of the child with the father and the mother can offer the infallible proof of biological parentage within a week. No other evidence of corroboration is necessary.⁴³

The increased use of forensic science investigations have also been welcomed by the UN High Commissioner on Human Rights in its resolution 2000/32, in situations where grave violations of human rights and international humanitarian law have occurred, and further coordination has been encouraged with a view to promoting quality, consistency and establishing procedures to evaluate the use of forensic expertise and the results of those efforts.

Realising the significance of scientific methods of investigation in the protection of human rights, the National Human Rights Commission has been urging the Ministry of Home Affairs and the State Governments to implement the recommendations of a report entitled "State of the Art Forensic Sciences: For Better Criminal Justice," submitted in 1999 by a *Core Group of Experts* constituted by the Commission.⁴⁴ In its revised guidelines on Deaths in Police Action (covered in Chapter 3), the Commission added that the result of the forensic examination of 'handwash' of the deceased, to ascertain the presence of residue of gun powder to justify exercise of right of self defence, should be reported to the Commission along with the details of the ballistic examination report of the weapons alleged to have been used by the deceased and his companions.

⁴³ State of the Art Forensic Science : For Better Criminal Justice –NHRC, 1999. See <http://nhrc.nic.in/publications.htm>

⁴⁴ The Ministry of Home Affairs has recently decided to enact a Forensic Science Services Act. The National Human Rights Commission has nominated a member for the Committee, constituted to draft the same.

The procedure outlined in the NHRC 'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' has been accorded the force of law by the Supreme Court in a recent judgment⁴⁵. It was held that "these guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narcoanalysis technique' and the 'Brain El.'

Increasing sophistication of crime requires rigorous evidences that stand scrutiny in the courts of law. This in turn makes adequate and timely use of forensics a necessity for the police set up. The police leadership needs to play a significant role here. It is they who need to facilitate the culture of scientific investigation in the police force. They must encourage and motivate the police force to adopt such methods as it would make a huge impact towards delivering justice. A police force adequately trained in the usage of forensic skills, would impart precise results and thereby protect the human rights of the people.

⁴⁵ Smt. Selvi & others vs. State of Karnataka

Need for an Attitudinal Change

A. Introduction

History of modern police organisation in India dates back to the year 1861 when the Police Act was enacted by the British. Based on the draft bill submitted by the Police Commission of 1860, the explicit objective of the Police Act was to set up a civil constabulary for preserving internal tranquillity in the country in “all ordinary circumstances”. However, the hidden objective of setting up the police was to strengthen and help in the consolidation of the British Empire in the country. Police, as an instrument of the executive, was thus a tool of oppression in the hands of the rulers, particularly if some one opposed the Government or any of its agencies.

Right from the inception, the police organisation based on the Police Act of 1861 was not really intended for rendering service to the people. Courteous behaviour by the policemen was therefore not so much of a requirement. With the passage of time, practices like the use of force, discourteous behaviour, brutality and frequent use of torture got increasingly built into the functioning of police during the British Rule in India and these practices became part of accepted norms of behaviour of policemen. The Government of the day, the British Government, also did not object to it as the police was the principal tool to maintain the alien rule and a brutal and oppressive police furthered their interests. The society also accepted it as it hardly had any option.

In the post-independence era too, unfortunately, the image of the Police organisation in the country did not change much, primarily because hardly any effort was made to initiate a new work culture. As a consequence, people still consider the police as an indifferent, brutal and corrupt force.

The objective of the Police force in a democratic country like India should be to provide selfless service to serve the Indian Constitution and to all the citizens. Police personnel in the Country need to be citizen friendly and human rights oriented. They should be particularly sensitive towards the women, children, minorities and other vulnerable sections of the society.

The attitude of the police force requires a sea change as much as their image and the equations they share with the public. Such attitudinal change

will inspire greater confidence in the public whom the police is supposed to serve. Today, because of high-handedness of the police and their indifferent behaviour, people shy away from approaching the police. A service oriented attitude in the police force will lead to a better police – public relationship which in turn, will result into an efficient police delivery mechanism at the grass root level that is the police station.

The inescapable truth is that, if they can help it, a majority of the law abiding Indians would like to avoid stepping into a police station. Nor would they like to be visited by a policeman in public view. It is unfortunate that this is so even sixty decades after we became free from the alien rule.⁴⁶ With rapid socio-economic changes taking place in the country, there has been tremendous awakening and a growing awareness in the people regarding their rights. As a result, there has been a growing public discontent and dissatisfaction with the police force in the country in the recent times. There is a growing concern in all sections of the society against inhuman and impolite behaviour by the policemen and the third degree methods employed by them.

This has resulted into a widening gap between the police and the public. There have been many instances when the police itself has been the target of public violence. Attitudinal change in the police force, with police becoming more citizen friendly and human rights oriented, will help in bridging the gap between the public and the police. This will also lead to greater involvement of the people in day to day policing and assist the police in better performance of their functions of prevention and detection of crime.

B. Gaps in theory and practice

The attitude of the police officers reflects the dichotomy and dilemma in their job. On the one hand, the public want police officers to be tough on crime and criminals, while on the other, police officers are expected to respect and protect the human rights of suspected criminals. This is many a times a difficult situation for police officers, especially if they have a certain mindset, are not well trained or do not comprehend the application of human rights principles in their daily activities. Therefore, there are possibilities that some police officers, while performing their duties, tend to violate the human rights of others.

⁴⁶ On Police Reforms, An open letter to President Abdul Kalam by RK Raghavan, Frontline, Aug 17 – 30, 2002

The absence of the conducive work conditions to the police force is also one of the reasons leading to failure on the part of the force. The poor working conditions especially at lower level have resulted in demoralising and demotivating the police force. Investing in the infrastructure and improving the working conditions would go a long way in motivating the police force for a dedicated, unbiased performance, without comprising on any aspect.

As a matter of fact, there is no dearth of laws, policies and guidelines for the Police on various issues pertaining to human rights. This includes the Code of Conduct, Code of Behaviour and the UN Conduct. However, a lot seems to be still amiss. A careful analysis of the same would bring out the fact why the policemen are often not aligned to protection of human rights and what can be done to address the larger concerns and bridge the gaps.

The interactions between the Police and the Public are manifested in the following areas, and this is precisely where the attitudinal change is required on behalf of the police force – arrest and detention, investigation of crime, dealing with victims of crime and specialised groups like women, children and marginalised sections. Some examples of human rights violations by police officers in these areas are: unlawful arrest and detention, excessive use of force/torture, discrimination and covering up crime, thereby defeating the very purpose of the existence of the police force.

Some of these aspects have already been dealt in Chapter 1. However, it seems pertinent that a reference to these is made here in the context of topic covered.

The first stage of violation starts with the reluctance, delay and even refusal to register FIRs or denying a copy of the report to the people. It takes quite some courage for the public, particularly the poor and illiterate to reach out to police, the threatening ambience of the police station and the hostile attitude of the staff there, makes things even worse for the victims and their families. The main cause for their attitude is the archaic mindset of the police, which does not conform to a democratic set up and does not keep pace with the rapidly changing socio-economic scenario, i.e police is meant to be the service providers to people and nothing less. The strong will power to help and serve the downtrodden, to get to the depth of issues/cases and comprehend them with a humane approach is not there. Moreover, the intent to win over the confidence of the people and reach out to them is missing too.

The next step in the police proceedings which results in human rights violations is indiscriminate arrest and illegal detention. In Cr.PC, it is mandatory that as soon the person is arrested he has to be brought before the Court without delay and the delay should not be beyond 24 hours, exclusive of the time necessary for journey from the place of arrest to Magistrate Court. To circumvent this law, a method often adopted by the police is to pick up the suspect and detain him illegally for many days without any permission from the Court; no information is given to the relatives regarding the whereabouts of such detained person. Even if such illegally detained person dies, the police often do not own responsibility as there is no evidence to show that such a person died in police custody.

The care and custody of arrested person/suspect is an extremely important aspect of policing. Human rights abuses happen in police custody, despite the fact that the treatment of persons in detention is very closely regulated under both international law and domestic law. One of the reasons is the fact that police are in *total control* of suspects when they are in police custody. The important thing to remember when dealing with suspects of crime is the fact that, during the investigation stage of the legal process, they are suspects only - they have the right to be presumed innocent. Therefore, the focus of any investigation should only be to discover the truth.

There is a misconception that criminals will not fear the police unless dealt with an iron hand and a belief that a criminal cannot be interrogated over a cup of tea, meaning thereby that some extent of force/torture is justified to extract information. Custodial violence is generally the tool through which the police create fear and authority. The tendency to control and create a fear factor is actually the outcome of a very limited perspective and understanding on the part of the police force.

The other is the corrupt practice of extorting money. The control, fear and the money factor are interrelated. It is a common knowledge that many police stations in the country register a criminal complaint only after it is backed by an illegal payment. The money is paid by the people to get the police in action (eg registration of FIR). Any follow-up action by the police also entails an expenditure which generally a victim can hardly afford but is forced to pay. It is equally true that victims become the accused, and their aggressors are treated as the aggrieved, wherever power and money direct the same.

Killing of criminals during police actions in another area wherein the maximum violations take place. The police attitude during such extra-legal executions reflects the power and control they exercise while a person is in custody. It is the helpless and the unarmed people that are shot down by the police. Instead of letting the legal procedures taking its course, it is considered to be an easy way out to knock out the person/s. The attitude also reflects the mindset that criminals do not deserve to survive in a civilised society. It is not just that criminals are targeted during these fake encounters, many a times innocent people are framed as criminals and shot dead indiscriminately to attain targets and win laurels for the force or for any other ulterior reasons. The whole process affirms the outlook that police can do and get away with anything they wish to. The alignment of the police functioning to the human rights parameters is non-existent in all such cases.

It is mostly the poor and the marginalised sections of society, including women, against which violence is perpetrated by the police force. One of the reasons is that they are not in position to protect themselves due to poverty and lack of awareness. This is largely the result of a feudal mindset wherein it is not considered improper to falsely implicate and violate the rights of the masses, as and when required. In fact there are certain groups that are graphically described as, 'police property', and are the principal victim of police atrocities and violence. Whenever there is a commission of any heinous offence u/s 392, 395 or 460, generally tribes like Sansis, Bavarias, Pardis, Bangladeshis etc are picked up and subjected to torture/harassment. This is largely due to the age-old beliefs and prejudices existent in the society, which are reflected in the police perception too.

Added to these, the existence of police sub-culture of "Sub Chalta Hai" further aggravates the situation. The culture applauds and rewards the credo that ends justify the means.

There is also an unbearable pressure by seniors in the police force which stresses on the achievement of target at all cost. The quantification of the Police performance through the statistics or the figures achieved is in fact, most of the times disastrous for the system and for human rights in particular.

Political considerations have also impacted the police functioning in more than a way. From the days of emergency till now, there have been several instances, under various regimes, wherein the political executives have

used the police to further their vested interests. Police has, on several occasions in the past, under directions of the political masters have violated the human rights of the people specially in the context of implementing legislations like POTA(Prevention of Terrorist Act).

Absence of leadership qualities also adds on the problem of increased incidences of violations of human rights. Police leadership need to consciously and consistently work on building an atmosphere to facilitate the observance of human rights. Instead of being disillusioned by the existing practices, they must take the lead to reform and adopt good practices. They also need to be careful about not being swayed away by the customary practices of being placed at the higher pedestal by the lower staff or the masses and loosing touch with the ground realities in turn. This is particularly true for postings in the rural set ups because the *mai baap* tradition is still predominant there. Their actions should reflect their commitment to the people who they are meant to serve. The violations of human rights cases should therefore be dealt with severity. Taking stern action against the guilty would send the message loud and clear, down the hierarchy. It has been observed that cases of violations of human rights are minimum where the police leadership is committed, strong and honest.

C. Consequences of human rights violations by police officers

Violations of human rights by police officers can only make the already difficult task of law enforcement even more difficult. When the law-enforcer becomes the law-breaker, the result is not only an assault on human dignity, and on law itself, but also the creation of obstacles which prevent the progress of effective policing.

Negative effects of police violations of human rights include:

- destroy, albeit slowly, public confidence in the police;
- isolate the police from the community;
- often prevent effective prosecutions in court;
- often result in the guilty going scot - free and the innocent being punished;
- leave the victim of crime without justice for his/her suffering;
- result in police officers becoming 'enforcers' instead of 'law enforcers,' (removing the element of law' from law enforcement');
- force the police to be reactive, rather than preventive and pro-active in their approach to crime;

- they can damage the credibility of the state
- they can even lead to civil unrest.

The police men need to realise the consequences of human rights abuses by police, that it alienates the community in which they live and work, leading to distrust and making police work harder to do. In contrast to this, respect shown by the police for human rights actually improves police effectiveness. In addition to being a legal and ethical obligation, it also makes practical sense. Adherence to the International human rights norms, domestic laws and respect for human rights can be a guiding principle to bring about a change in the attitude of the police.

D. Gains for respecting the human rights of the people

When police are seen to respect, uphold and protect human rights:

- (i) public confidence in the police grows and community co-operation with the police increases;
- (ii) a contribution is made to the peaceful resolution of conflicts and complaints;
- (iii) prosecutions of offenders are successful;
- (iv) police are seen as part of the community, performing a valuable social function;
- (v) the fair administration of justice is served and, consequently, confidence in the system increases;
- (vi) an example is set for others in society to respect the law; and
- (vii) police get closer to the community and are accordingly better able to prevent crimes through proactive policing.

E. The Way forward

It is an established fact that the prevention and detection of crime is an area in law enforcement which demands high standards of morality and ethics from law enforcement officials.

The fact is that what the criminals fear most is not torture but uncompromising and proper legal action. Often the information extracted by use of torture is incorrect and misleading; torture merely hardens the criminals and brutalises the police. This also makes the innocent and law abiding citizens wary of the police. The crimes, which are claimed to have been solved by the police by way of torture rarely results in the conviction of accused at the time as the evidence collected through hard interrogation

techniques often suffers from legal infirmities. Experience has shown that torture at the hands of police causes major setback to the Criminal Justice System. Besides the fact that torture is inhumane and that it violates the basic human rights of a suspect, a reason for the prohibition of torture is the fact that police officers can never justify committing one crime to solve another.

Whatever may have been the crime which any individual might have been accused of committing, it is not for the police to punish him, for law doesn't give it any such power. In fact, it condemns any such action which is punishable u/s 330 and 331 IPC. Law certainly expects an investigator to unravel the mysteries of sordid crime but it does not approve of his turning into another criminal to solve crime. The rule of law must prevail in all circumstances and for all ends.

Women and Children are a significant vulnerable group in society, who need special protection and care. When dealing with female victims or perpetrators, police should take special measures to ensure that their rights are protected.

Police officers have a duty to serve and protect all members of the community in which they work. They have to enforce and uphold the law. This also means that they have to conduct their duties as police officers in a disciplined and professional manner, respecting, protecting and promoting human rights.

F. Conclusion

Efficient and effective policing is one of the most important constituents of good governance. An awesome responsibility devolves upon the police force in this regard as the quality of policing that is provided to the citizens needs to be improved. This improvement can only come about if the police force accepts the need for a paradigm shift in their mind sets and attitudes. Police service which respects human rights will result in more effective policing and a law enforcement structure built on honour, professionalism and legality rather than fear and physical force.

A well motivated police force is the best guarantee against injustice. Police leadership has a significant role to play here. It is a time when police leadership should come forward to redefine the culture of the police organisation in the country. Legality and ethics are to be accorded the highest significance by the seniors.

Sensitisation of the police force to respect human rights would help in bringing about a change in the attitude of the force. The National Human Rights Commission with an objective to sensitise and periodically update the police functionaries, conducts training programmes and issues specialised handbooks and compilations on the subject. This Manual is a step further in this direction.

Torture should not be used as a tool for detecting crime. Appropriate knowledge of forensic science, forensic medicines and other scientific method of investigation should be used to solve the crime. Forensic science laboratories should be well equipped and the Govt should ensure that a competent and sufficient man power is employed in the same. It is also the need of the hour that there should be forensic unit attached with each and every police station so that investigation can be conducted without resorting to torture. The protection of human rights through scientific investigations has been exclusively dealt in Chapter 4 of the Manual.

The functioning of lower level police officers should be continuously monitored and supervised by their superiors to avoid custodial violence and ensure adherence to the lawful standard method of investigation.

Computerisations, video-recording, and modern method of record maintenance should be introduced to avoid manipulations of important records like FIR , daily diaries, PMRs, statements of witnesses important documents etc. and to ensure transparency in the action.

The Crime and Criminal Tracking Network System (CCTNS), a massive modernisation drive launched recently to take police into the IT era, would address the issue mentioned above. The new system will be implemented by the NCRB. People will have better options for lodging complaints and will have a more transparent law and order machinery. FIRs can be lodged immediately on computer, so there would be no delay. It will eliminate manual keeping of records and the burden on the police station will be reduced. Records will also be better maintained. The Indian Police are being readied and, “ capacity building by training has started in almost all states at district levels.” A select group of inspectors and constables are also being trained. But as emphasised earlier, *the biggest challenge would be to break the mindset of our policemen.*⁴⁷

⁴⁷ The Technological Advancement in Police Set up in India – Light Years Ahead – Josy Joseph, Sunday Times of India, Jan 16th, 2011.

Technological advancements are significant and desirable but the shift in attitude is even more essential as it is a humane approach by the police that would go a long way in the protection of human rights of the masses.

United Nations Code of Conduct for Law Enforcement Officials

(Adopted by General resolution 34/169 of 17 December, 1979)

Article 1

Law enforcement officials shall have the duty imposed upon them by law, of serving the community and by protecting all person against acts, consistent with the high degree of responsibility required by their profession.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5

No law enforcement officials may inflict, instigate torture, other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement officials invoke superiors orders or exceptional circumstances such as state of war or a threat of war, a threat to national security, internal to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6

Law enforcement officials shall ensure the full protection of all the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7

Law enforcement shall respect the law any commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reasons to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Code of Conduct for the Police in India

The Ministry of Home Affairs developed a code of conduct that serves as a guideline for police force in the country and communicated to the Chief Secretaries of all the States/ Union Territories and Heads of Central Police Organization on July 4, 1985.

1. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.
2. The police should not question the propriety or necessity any law duly enacted they should enforce the law firmly and impartially with doubt fear or favour, malice and vindictiveness.
3. The police should recognized and respect the limitation of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgment on cases to avenge individuals and punish guilty.
4. In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum force in required in the circumstances should be used.
5. The prime duty of the police is to prevent crime and disorder and the police must recognized that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.
6. The police must recognize that they are members or the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties which are normally incumbent or every citizen to perform.
7. The police should realize that the efficient performance of their duties will be dependent on the extent of ready cooperation that they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and action and to earn and retain public respect and confidence.
8. The police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always

be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth and/or social standing.

9. The police should always place duty before self should maintain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.
10. The police should always be courteous and well mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people.
11. Integrity of the highest order is the fundamental basis of the prestige of the police. Recognizing the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.
12. The police should recognize that they are full utility to the State is best ensure only be maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force and by keeping themselves in the state of constant training and preparedness.
13. As member of secular, democratic state, the police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic or sectional diversities and to renounce practices derogatory to the dignity of women and disadvantage sections of society.

Code of Behaviour for Police Officers⁴⁸

The National Police Commission (vide Report V. Chapter XL) had recommended a 13-point Code of Behavior for Police Officers, and further recommended that this Code of Behavior should govern the conduct of the members of the police, as a whole, in our country.

The NPC recommended the following Code of Behaviour for Police Officers which would supplement the organisational principles and codes. It is the special responsibility of all Police Training Institutions and the National Police Academy that all Police personnel imbibe the Code in both letter and the spirit.

(1) *Neglect of Duty*

No police officer without good and sufficient cause shall—

- (a) neglect or omit to attend to or carry out with due promptitude and diligence anything which it is his duty as a member of a police force to attend to or carry out, or
- (b) fail to work his beat in accordance with orders, or leave the place of duty to which he has been ordered, or having left his place of duty for a bona fide purpose fail to return thereto without undue delay, or
- (c) be absent without leave from, or be late for, any duty, or
- (d) fail properly to account for, or to make a prompt and true return of, any money or property received by him in the course of his duty.

(2) *Disobedience to orders*

No police officer shall, without good and sufficient cause, disobey or omit or neglect to carry out any lawful order, written or otherwise, or contravene any provision of the Police Regulations containing restrictions on the private lives of members of police forces, or requiring him to notify the chief officer

⁴⁸ The National Police Commission (vide Report V. Chapter XL) had recommended a 13-point Code of Behavior for Police Officers, and further recommended that this Code of Behavior should govern the conduct of the members of the police, as a whole, in our country. (Letter No 67/2/85- Trg/BPR & D dated 14th April 1986)

of police that he, or a relation included in his family, has a business interest in his jurisdiction within the meaning of those Regulations.

(3) *Discreditable conduct*

No police officer shall act in any manner prejudicial to discipline or conduct himself in such a manner which is reasonably likely to bring discredit on the reputation of the police force or of the police service.

(4) *Misconduct towards a member of a police force*

- (i) A police officer shall be deemed to have committed misconduct towards a member of a police force, if—
 - (a) his conduct towards another such member is oppressive or abusive, or
 - (b) he assaults or misbehaves with him.
- (ii) No police officer shall, without good and sufficient cause, commit misconduct, as before said.

(5) *Falsehood or prevarication* No police officer shall —

- (a) knowingly or through neglect make any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for police purposes, or
- (b) either wilfully and without proper authority or through lack of due care destroy or mutilate any record or document made, kept or required for police purposes, or
- (c) without good and sufficient cause alter or erase or add to any entry in such a record or document, or
- (d) knowingly or through neglect make any false, misleading or inaccurate statement in connection with his appointment to the police force.

(6) *Corrupt or improper practice* No police officer shall —

- (a) in his capacity as a member of the force and without the consent of the chief officer of police or the police authority, directly or indirectly solicit or accept any gratuity, present or subscription, or
- (b) place himself under a pecuniary obligation to any person in such a manner as might affect his properly carrying out his duties as a member of the force, or
- (c) improperly use, or attempt so to use, his position as a member of the force for *his* private advantage, or

- (d) in his capacity as a member of the force and without the consent of the chief officer of police, write, sign or give a testimonial of character or other recommendation with the object of obtaining employment for any person or of supporting an application for the grant of a licence of any kind.

(7) *Abuse of authority*

- (i) A police officer shall be deemed to have committed abuse of authority if he —
 - (a) without good and sufficient cause makes an arrest, or
 - (b) uses any unnecessary violence towards any prisoner or other person with whom he may be brought into contact in the execution of his duty,
 - (c) is uncivil to any member of the public.
- (ii) No police officer shall commit abuse of authority as aforesaid.

(8) *Neglect of health*

No police officer shall neglect his health or without good and sufficient reason neglect to carry out any instructions of a medical officer appointed by the police authority or, while absent from duty on account of sickness, commit any act or adopt any conduct calculated to retard his return to duty. It is essential and desirable that every officer takes special care to maintain and improve his health by proper exercises etc.

(9) *Improper dress and untidiness*

No police officer shall, without good and sufficient cause, while on duty, or while off duty but wearing uniform in a public place, be improperly dressed or be untidy in his appearance.

(10) *Drunkenness*

No police officer shall be in a state of drunkenness which renders him unfit for duties which he is or will be required to perform or which he may reasonably foresee having to perform.

(11) *Being an accessory to a disciplinary offence*

No police officer shall be an accessory to a disciplinary offence either by conniving at it or knowingly becoming accessory to any offence against discipline.

(12) *Damaging the unity of the force*

No police officer shall by commission or omission do or fail to do anything, which creates or is likely to create divisions in the police force on grounds of religion, caste or community or affect the reputation and effectiveness of the force as an unbiased and impartial agency.

(13) *Anti-national conduct*

No police officer shall do anything which affects or is likely to affect the security and integrity of the nation or lowers or is likely to lower the repute of the country.

Annexure 4

Speedy Disposal Of Child Rape Cases – NHRC Guidelines

- (i) The complaint relating to child rape cases shall be recorded promptly as well as accurately. The complaint can be filed by the victim or an eyewitness or anyone, including a representative of non-governmental organization, who has received information of the commission of the offence. The case should be taken as follows:
 - a) Officer not below the rank of SI and preferably lady police officer.
 - b) Recording should be verbatim
 - c) Person recording to be in civil dress
 - d) Recording should not be insisted in police station, it can be at the residence of the victim.
- (i) If the complainant is the child victim, then it is of vital importance that the reporting officer must ensure that the child victim is made comfortable before proceeding to record the complaint. This would help in ensuring accurate narration of the incident covering all relevant aspects of the case. If feasible, assistance of psychiatrist should be taken;
- (ii) The Investigating Officer shall ensure that medical examination of the victim of sexual assault and the accused is done preferably within 24 hours in accordance with Cr. PC Sec. 164 A. Instruction be issued that the Chief Medical Officer ensures the examination of victim immediately on receiving request from I.O. The gynecologist, while examining the victim should ensure recording the history of incident;
- (iii) Immediately after the registration of the case, the investigation team shall visit the scene of crime to secure whatever incriminating evidence is available there. If there are tell-tale signs of resistance by the victim or use of force by the accused those should be photographed;
- (iv) The Investigation Officer shall secure the clothes of the victim as well as the clothes of the accused, if arrested, and send them within 10 days for forensic analysis to find out whether there are traces of semen

and also obtain report about the matching of blood group and if possible DNA profiling;

- (v) The forensic lab should analyze the evidences on priority basis and send report within couple of months;
- (vi) The investigation of the case shall be taken up by an officer not below the rank of S.I. on priority basis and, as far as possible, investigation shall invariably be completed within 90 days of registration of the case. Periodical supervision should be done by senior officers to ensure proper and prompt investigation;
- (vii) Wherever desirable, the statement of the victims u/s 164 Cr. PC shall be recorded expeditiously;
- (viii) Identity of the victim and the family shall be kept secret and they must be ensured of protection. IOs / NGOs to exercise more caution of the issue.

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- The Police are not protecting women in the way they should –Rustamji K F. *Crime Against Women* , OC Sharma, Saujanya Books, 1994
- TOI - Times City: No one killed Arushi, Dt Dec 31, 2010.
 - The Police Act of 1861
 - The IPC and the Cr.PC

Legislations/Conventions and Protocols

1. Universal Declaration of Human Rights(1948)

2. International Covenant on Civil and Political Rights, 1966
3. Convention Against Torture and other Cruel, inhuman or Degrading Treatment or Punishment
4. Convention on the Rights of the Child, 1989
5. United Nations Code of Conduct for the Law Enforcement Officials
6. Constitution of India(Select)
7. Criminal Procedure Code
8. Indian Penal Code 1860
9. Juvenile Justice (Care and Protection of Children)Act, 2000
10. International Convention for the Suppression of the Traffic of the Women and Children
11. Convention on the Elimination of all forms of discrimination Against Women
12. Protections of Human Rights Act, 1993 as amended in 2006
13. Police Act 1861
14. Dowry Prohibition Act, 1961 (Amendment 1985, 1986)
15. The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

Websites

1. <http://parliamentofindia.nic.in>
2. <http://ncrb.nic.in/>
3. <http://bprd.nic.in/>
4. <http://nhrc.nic.in/>
5. <http://mha.nic.in/>
6. <http://www.nls.ac.in/>
7. <http://www.unodc.org/>
8. <http://narcoticsindia.nic.in/>
9. <http://www.unifem.org.in/>
10. <http://www.humanrightsinitiative.org/>
11. <http://trg.svpnpa.gov.in/>
12. www.nhrc.nic.in

CORRIGENDUM

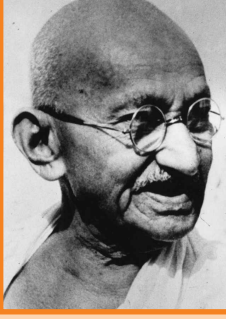
Page No.	Existing Sentence/Phrase in the Human Rights Manual for Police Officer	To be replaced by
15	nether	neither
15	the crux	The crux
17	...they will be sync with...	... they will be in sync with...
19	Doing so would then amount nothing less than denying...	Doing so would then amount to nothing less than denying...
20	Article 14 of the Constitution guarantees to all persons' equality...	Article 14 of the Constitution guarantees to all persons equality...
23	indiscriminate	indiscriminate
33	Dowry Prohibition Act	Dowry Prohibition Act, 1961
35	Dowry Prohibition Amendment Act, 1986	Dowry Prohibition (Amendment) Act, 1986
38	...against the victims will	...against the victim's will
38	Without the victims consent	Without the victim's consent
39	The Protection of Women against Sexual Harassment at Workplace Bill, 2010	Comment: The said Bill has not yet into been passed legislation
40	Immoral Traffic Prevention Act	Immoral Traffic (Prevention) Act
40	...proposed an amendment to ITPA, Which is yet to be passed.	...proposed an amendment to ITPA, which is yet to be passed.
40	Child Marriage Act	Prohibition of Child Marriage Act, 2006
40	Dowry Act	Dowry Prohibition Act, 1961
40	SC/ST prevention of atrocities Act	Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
40	Organ Transplant Act	Transplantation of Human Organs (Amendment) Act, 2011
40	Child Labour Act	Child Labour (Prohibition and Regulation) Act, 1986
40	Supplementary Convention on the Abolition of Slavery	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
42	...in partnership with the US Govt...	...in partnership with the US Government...
45	a) Foeticides	a) Foeticide
45	b) Infanticides	b) Infanticide
47	(e) ... the tender age of children are not abused...and not forced by economic unsuited to their age or strength	(e) ... the tender age of children are not abused and ... not forced by economic necessity to enter avocations unsuited to their age or strength
47	The Factories Act 1948	The Factories Act, 1948
47	Child Labour (Prohibition and Regulation) Act 1986	Child Labour (Prohibition and Regulation) Act, 1986
48	Convention on Rights of Children (CRC)	Convention on the Rights of the Child (CRC)
54	In Delhi Domestic Working Women's Forum v. Union of India, The Supreme Court indicated	In the Delhi Domestic Working Women's Forum v. Union of India, the Supreme Court indicated....
58	...while affecting arrest of a juvenile	...while effecting arrest of a juvenile or a child.

Continued....2

Continued from...1

CORRIGENDUM

Page No.	Existing Sentence/Phrase in the Human Rights Manual for Police Officer	To be replaced by
61	desciplinary	disciplinary
61	affidivit	Affidavit
61	police public interface	police-public interface
62	use no more than the minimum force than is necessary	use no more than the minimum force necessary
64	magistrates order	magistrate's order
64	magistrates warrant	magistrate's warrant
65	Prize Chits and Money Circulations Schemes (Banning) Act, 1978	Prize Chits and Money Circulation Schemes (Banning) Act, 1978
66	...they will allow Investigation to proceed...	...they will allow investigation to proceed...
66	...courts re under a duty...	...courts are under a duty...
68	Magistrates report	Magistrate's report
72	Next day, too, ho he was not released...	Next day, too, he was not released...
85	The Guidelines are as fallows -	The Guidelines are as follows -
88	along-with	along with
88	uxistence of power	existence of power
89	...resorted *o strictly...	...resorted to strictly...
91	POSTARREST	POST-ARREST
91	...within 24 hours ofthe arrest...	...within 24 hours of the arrest... Comment: Insert space between 'of' and 'the']
91	Govt.	Government
91	Under the sub-head "Post-Arrest", there should be consistency in the symbol used for the bulleted points	
91	...electronic media; It should also be...	...electronic media; it should also be...
92	along-with	along with
92	...that No person...	...that no person...
92	When constitutional rights of a person are invaded	When constitutional rights of a person are infringed upon
99	...if some one...	...if someone...
100	...resulted into a widening...	...resulted in a widening...
101	...and specialised groups like women, children...	...and special groups like women, children...
103	...including women, against which violence...	...including women, against whom violence...
103	...in more than a way.	...in more than one way.
104	Police has, on several occasions in the past, under directions of the political masters have violated...	The police have, on several occasions in the past, under directions of the political masters, violated.
104	...about not being swayed away by...	...about not being swayed by...
104	loosing touch	losing touch
107	Govt	Government



"My idea of society is that while we are born equal, meaning that we have a right to equal opportunity, all have not the same capacity."

Mahatma Gandhi



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