

## Unit 3

# Police and Human Rights

### 3.1 Introduction

After understanding the concept of Human Rights and the institutions that protect human rights, let us move to learn towards the role, function and accountability of police in a democracy. Observerance and respect for Human Rights in the police process is a positive step towards people oriented police. You will study in this unit the principle of rule of law, preventing arbitrary use of power and mandates of the police to protect and safeguard the rights of the citizens. This unit will acquaint the learners with the code of conduct that governs the police in their everyday activities and the restrictions on use of force leading to human rights violations. It will also take you through the several initiatives on police reforms.

### 3.2 Objectives

After going through this unit, you should be able:

- Define the role, function and accountability of police in a democracy

- Understand the principle of rule of law and respect for human rights in policing
- Outline the code of conduct that governs the police in their everyday activities.
- Evaluate the Human Rights standards in police and police reforms initiatives
- Point out the Human Rights violations committed by police and internalize the preventive measures for protection of people's rights.

### 3.3 Policing is a Public Service

The police are the first visible point of contact of citizens. It is the only agency that has the widest possible contact with the people. Police functions are mostly prohibitive and regulatory in nature and this leaves an impression on the individual citizens that police interferes with the life, liberty and freedom of the people. It is the duty of the police to preserve order and prevent crime. When there is a violation of law, it is the duty of the police to apprehend the offenders and produce them before the court to be dealt with the procedure established by law.



Policing essentially is a public service and in a democracy it is responsive to the people. It is that public institution which widely affects large sections of population in their everyday lives, more seriously than any other agency of government. In fact, police is the most 'aggressively critical' public institution and therefore any malpractice or violation of human rights committed by the police comes into critical public gaze in the media and by human rights groups. Police as a public institution is created and strengthened by law and therefore must be more responsible to people.

Whenever violations of human rights by police are reported it causes an overall effect of loss of faith in the police as a protector and upholder of citizens' rights. The failure to respect human rights in everyday police process alienates public sympathy and support, which leads to undermining the people's confidence in police.

The purpose and objectives of police in a democratic society are

- Prevention and detection of crime
- Maintenance of public order
- Respect for rule of law
- Respect for the dignity of human person, and
- Respect for freedom, liberty and rights of citizens.

The police powers and functions related to investigation involve search, seizure, questioning, interrogation, arrest, etc. These powers and functions are defined by law and procedure. The individual liberty and freedoms guaranteed under the Constitution and other criminal laws limit the powers and functions of the police officers in discharge of their duties.

### CASE ONE

One of the studies about people's perception about police in the state of Rajasthan revealed the following facts. The public opinion was that only 11% interacted with the police and about 89% never met the police. Among these 24% were from cities and 17% from rural areas. Only 5% women interacted with police. This reflects the gap between the police and public and also the fact that public specially women avoids interaction with police in general.

### Activity 1

*When police is a public service like any other public office of a state government such as revenue, municipality, water work, electricity, then why are people scared to visit a police station and interact with the police? How can we make police stations a congenial public reception centre for frequent visits of citizens?*

### 3.4 Rule of Law and Police

The Rule of Law is a fundamental value in a democracy. It refers to a government subjected to the law and a system in which the law will prevail over the whims of individual officials. No one is above the law and every person is equal before the law. Rule of law denotes equality before the law and absence of arbitrary powers in any organization

Rule of Law runs as a golden thread through the fabric of the Indian Constitution. The following three important principles of Rule of Law are reflected in the Indian Constitution and applicable to police in their everyday activities.

- **Absence of arbitrary powers:** Article 14 (Right to Equality) of the Indian Constitution includes right against arbitrary use of power by the government and imposes obligation on the police to act in a just, fair and reasonable manner. Article 21 (Right to life and personal liberty) requires the government to act justly, fairly and reasonably in matters of life and liberty.
- **Equality before law:** The Preamble of the Constitution of India intended to secure equality of status and opportunity. Right to Equality is a basic structure of the Indian Constitution. Articles 14, 15, 16, 17 and 18 of the Indian Constitution guarantee the fundamental right of equality.
- **Supremacy of the law:** Article 13 expressly provides for judicial review and Article 32 confers writ jurisdiction on the Supreme Court under which the Court has power to issue any order or grant any relief for violation of

Fundamental Rights. This jurisdiction of the Supreme Court cannot be restricted, except according to the provisions of the Constitution. Right to approach the Supreme Court under Article 32 itself is a fundamental right.

#### CASE TWO

Corruption is becoming an integral part of Indian society, including the police. A study was conducted by Transparency International India. About 87% of the citizens alleged that they have paid bribes to police to get the service. The study also indicated that the police show indifferent attitude towards citizens when they approach them for help, which forces them to pay the bribe to get the work done. Interestingly, apart from paying bribe, 70% of people took alternate routes like using influence and approaching middlemen.

Corruption erodes public faith in police and undermines the rule of law, leading directly or indirectly to violation of human rights. It further affects the image and reputation of the individual police personnel and the police organization..

#### Activity 2

*Discuss how corruption in police can lead to violation of human rights and suggest how to prevent these practices at the level of police stations.*

### 3.5 Role of Police in a Democracy

The Police Act of 1861 visualized the role of the police as a mere law enforcement agency. The National Police Commission (1978) suggested that the police should assume a service oriented role of which law enforcement is only a part. It further pointed out that due

recognition should be given to the police station as the basic unit of contact between the people and the police. The National Police Commission also recommended that the entire police philosophy, culture and attitude should be such as to make a police station appeal and function as a ready source of relief for the people in distress situation and the vulnerable, more so in the case of women and weaker sections.

The Indian Constitution, with the ideals of equality, liberty and social justice has brought a new perspective on the role of police in performance of their duties. The police in a democratic society is required to perform multifarious functions, besides the maintenance of law and order. The social legislations have added new dimension to the role of police. In fact, the role of police has been redefined to include the values of democratic polity, secularism, social justice, human dignity and building up a democratic image of police to serve the community. The concept of development and distributive justice has further extended the role of police to new arenas. In a democratic society, the police is responsible to the people. What values do the police serve in a democratic society? Are the police to be principally an agency of social control? Does the police have any basic commitment to the Rule of Law?

### CASE THREE

The Delhi Police passed externment order against one Premchand alleging that he was initiating unlawful activities in Connaught Place and nearby places wielding a knife. Premchand denied the allegations and stated that he was used as a stock witness in about 3000 cases in the past 25 years by the police officers in Delhi. He was forced by the police to give false testimony to safeguard his

business and family on several occasions. Premchand further said that, when he refused to act as a stock witness the police passed an externment order against him

### Activity 3

*When and under what circumstance an externment order can be given by the police? What is a stock witness and why does police use this practices? Have you heard of any incidences like this? Discuss the legality of police externment order against Premchand.*

### 3.6 Police Accountability

The wide discretionary powers vested with the police and its potential for misuse brings into sharp focus the question of accountability of police powers for achieving the dual objectives of the interest of State and the society, as well as individual rights of citizens. Accountability is a crucial aspect of the ethics of policing. How police is to be controlled and managed is a continuing area of concern. Accountability is not about the control of police but about the responsibility for the way in which the control is exercised.

Police accountability can be better explained in two senses. One, police as employed by the community to provide a service and the community should have the means to ensure that it gets the appropriate service. In the second sense, public and police must communicate with each other and work in partnership to maintain trust between themselves. The principle of accountability is linked to responsibility that is exercised through legally enforceable rules. The development of multiple layers of accountability will make the police into a service rather than a force. The accountability

is threefold - accountability to the people, accountability to law and organizational accountability.

The following four indicators are essential for effective police accountability:

- *Democratic* - The structural linkages of police with the local elected representatives
- *Transparency* - Awareness of the community about the activities of the police and interaction with the media
- *Legal*- Structures and mechanisms of police accountability and its mutual acceptance with the community
- *Internal discipline* -The rules, procedures and mechanisms to deal with complaints against police.

### **Activity 4**

*Identify the rules and provisions under the Police Act and State Police Rules, about internal and external accountability. Read the latest publication of Crime in India<sup>1</sup> and list out the number of disciplinary enquiries initiated against the police in your district/state.*

## **3.7 Human Rights Violations by the Police**

Some extent of use of force is legally built into the role of police. The police are permitted to use force under certain circumstances mainly in case of arrests and search. If a person resists arrest or attempts to evade it, the police officer may use 'all means necessary' to effect the arrest except that that these means should not cause death of a person unless that person is accused of an offence punishable with death or life imprisonment.

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<sup>1</sup> Annual Publication by the National Crime Records Bureau.

The police are also permitted to use civil force for dispersal of an unlawful assembly and if necessary by arresting and confining those involved. The force used by the police in such situations should be minimum which is necessary and warranted by the situation. The police are frequently criticised for use of excessive force during interrogation in police custody. The National Police Commission (NPC) has pointed out that "use of force against individual in police custody in his loneliness and helplessness is a grossly unlawful and most degrading and despicable practice that requires being condemned in strongest term. Nothing is as dehumanizing as the conduct of police in practicing torture of any kind on a person in custody. Police image in the estimate of public has badly suffered by the prevalence of this practice in varying degrees

The Human Rights violations committed by the police take several forms, beginning with illegal detention/arrest, false implications, use of torture that may lead sometimes to deaths in custody. Cases are also reported about rapes in police custody and disappearances. Every year NHRC receives several complaints against the police. These were discussed in unit 2 and more details are given in unit 4.

## **3.8 Code of Conduct for Police**

The Code of Conduct for police in India is based on the principle of necessity and proportionality. Force should be applied only to the extent required for the legitimate ends of law enforcement and maintaining public order. In dispersal of violent assemblies, police may use firearms to minimum extent necessary, only when less dangerous means are not



practicable. It has already been underlined that the Constitution of India in Article 19 (1) gives the right of assembly to its citizens - "all citizens have the right to assemble peacefully without arms". This includes the right to hold meetings and take out processions. According to Article 19(3), individual rights and liberty must give precedence to public order in case of disturbed public tranquility, order or peace. If there is serious threat to public order or peace from any assembly, it can in accordance with law be considered unlawful and dealt with accordingly.

## Government of India Code of Conduct for Police

The Ministry of Home Affairs developed the following principles as code of conduct for police in India. These guidelines were communicated to all Chief Secretaries of all the States/Union Territories and Heads of Central Police Organization on 4 July, 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 of any law duly enacted. They should enforce the law firmly and impartially without fear or favour, malice or vindictiveness.
- (3) The police should recognize and respect the limitations 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 the 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 amount of force required under the circumstances should be used.

- (5) The prime duty of the police is to prevent



crime and disorder, and the police must recognize 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 of the public with the only difference being that in the interests of society and on its behalf they are employed to give full attention to duties which are normally incumbent on every citizen to perform.
- (7) The police should realize that the efficient performance of their duties will be dependent on the extent of cooperation that they receive from the

public. This, in turn, will depend on their ability to secure public approval of their conduct and actions 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 or social standing.
- (9) The police should always place duty before self, should remain 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 this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both their personal and official life, so that the public may regard them as exemplary citizens.
- (12) The police should recognize that their full utility to the State is best ensured only by maintaining a high standard of discipline, by faithfully performing their duties in accordance with the law and by implicitly obeying the lawful directions of the commanding ranks and maintaining absolute loyalty to the force

and by keeping themselves in a state of constant training and preparedness.

- (13) As members of a secular, democratic State, the police should strive continually to rise above personal prejudices and should promote harmony and the spirit of common brotherhood among all of the people of India, transcending religious, linguistic and regional or sectional diversities, and should renounce practices derogatory to the dignity of women and the disadvantaged segments of society.

### 3.9 Police Reforms

The history of police reforms in Independent India can be explained in three phases. In the first phase the focus was more on administration of the police rather than on reorientation of police based on democratic traditions. The second phase was from 1977-1996, wherein some positive steps were taken by appointing the National Police Commission, Public Interest Litigation and other reforms. The third phase since 1996 till present witnessed several initiative in the area of police reforms

In response to the Public Interest Litigation filed by two former Director General of Police in 1996 requesting to direct the central and state governments to address the poor quality and performance of police in India, the Supreme Court had given directives in 2006 to the Union Home Ministry. Later, the Government of India constituted a Police Act Drafting Committee (PADC), which submitted a draft outline for enactment of a new Police Act on 25th August 2006. Based on this proposed Draft Outline for a new Police Act, the Supreme Court directed various state governments to inculcate its



directives and modify their respective Police Acts. The basic objective of these Supreme Court directives was to have functional autonomy for the police and accountability for conduct and performance. How far these have been considered while the respective state governments drafted their Police Act is a matter of further research and analysis.

### Case 7: Prakash Singh vs. Union of India

Two former Director Generals of Police approached the Supreme Court, seeking directions to central and state governments to fill the gaps and bad practices in the functioning of the police. The Supreme Court issued seven directives and instructed the governments to take suitable steps for police reforms. The seven directives are as follows:

- 1) The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country.
- 2) The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department.
- 3) Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer in

charge of a Police Station shall also have a prescribed minimum tenure of two years unless they are found unfit due to disciplinary proceedings

- 4) The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people.
- 5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers
- 6) There shall be a Police Complaints Authority at the district level to look into complaints against police officers.
- 7) The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organizations.

#### Check your progress

1. What do you mean by Rule of Law? Explain with an example while dealing a client at your work place?
2. What is police accountability? Enlist some of the measures to increase accountability at your level at the police station?
3. What are the police reform measures taken at your state on the basis of the directives of the Supreme Court?





## Let us Sum up

In this unit the trainee has been taken through a wide range of Human Rights issues and policing. These have been explained through case studies and activities. The major areas that are covered in this unit are : role, function

and accountability of police, rule of law, Human Rights standards, police reforms and Human Rights violations by the police. Once these aspects are clear, we would take you to custodial justice, which is an important area of concern in the arena of Human Rights.