

## Unit 5

# Human Rights Best Practices

### 5.1 Introduction

The fifth unit introduces some of the best practices of Human Rights relating to the police. These best practices are based on statutory, conventional Human Rights norms and the outstanding judicial decisions. In this unit we will study the police powers in relation to arrest, interrogation, search, seizure and collection of evidence. The investigation is the exclusive domain of police. However the best practices place limitations on the wide powers of police, to protect and promote rights of the citizens. You will also study in this unit the contribution of the Indian judiciary to monitor and control the powers of police.

### 5.2 Objectives

After going through this unit, you should be able to:

- Define the powers of the police during investigation and how these powers are exercised in consonance with rights of the accused.

- Understand the limitations on powers of the police during investigation
- Outline the Human Rights best practices that govern the police in their activities.
- Point out the provisions in procedural, substantive and constitutional norms, outlining best practices.

### 5.3 Best Human Rights Practices

Criminal Law and its processes evoke more compassionate dialogue than any other branch of law about the balance between the prerogatives of governments and life, liberty and dignity of arrested persons. The pre-trial criminal process is an important and crucial phase in the criminal justice system wherein the police are empowered to conduct investigation in consonance with established principles of human life.

The best practices are based on the standards provided in the criminal major Acts along with the Constitution of India. They primarily

provide transparency and accountability of police practices during the pre-trial criminal process such as arrest, interrogation, search, seizure and collection of evidence. The Supreme Court of India in the late seventies articulated new rights and procedures to safeguard detainees. These new rights include right against unlawful arrest, search and seizure, right against torture, right to legal aid, right to bail, right against self-incrimination, right to counsel during custodial interrogation and right to claim compensation. These best practices impose limitations on the investigatory powers of the police and aim to protect and promote rights of citizens.

## 5.4 Police investigation and interrogation

The police enjoys wide powers during investigation that authorize them to arrest, with or without warrant, interrogate, conduct search, seize property, record statements of witnesses, and get confessions recorded by a magistrate. The police exercises all such powers in the course of investigation of crimes as per Sections 154 to 173 of Cr.P.C. These powers are put under close check by constitutional and statutory norms. These norms are constantly monitored by the judiciary to safeguard the interest of the

accused. The judiciary played a significant role in developing some principle rights such as the prohibition against unreasonable searches and seizures, the privilege against self-incrimination, right to speedy trial etc. to curtail misuse of the powers by investigation agencies.

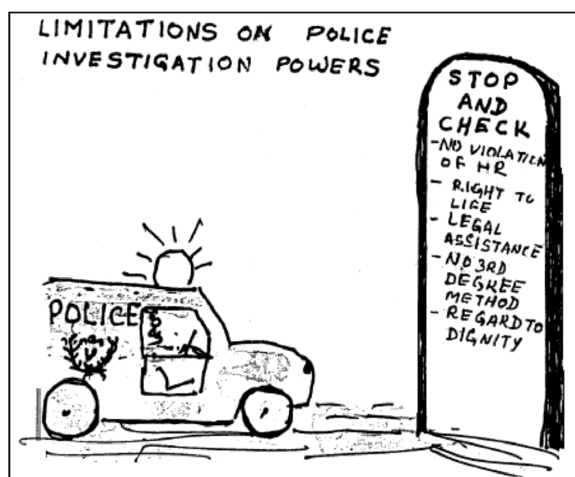
Investigative powers of the police can arise in two ways:

- (a) on receiving information relating to the Commission of a cognizable offence from an informant (Sec. 154 (1)),
- (b) on receiving order from any magistrate to investigate (Sec. 156 (3)) and,

The power to arrest entails serious infringement of personal liberty of a person. There are several provisions in the Criminal Procedure Code limiting the powers of arrest that are mentioned in Sections 41 to 60 and 151. These provisions provide necessary inbuilt safeguards against abuse of power of arrest.

They are:

- arrestee to be informed of ground of arrest and of right to bail (Sec. 50),
- Obligation to inform about the arrest and place of detention to a nominated person (Sec. 50 A),
- medical examination on the request of the arrestee (Sec.54),
- arrestee to be brought before a magistrate or a police officer without undue delay (Sec. 56)
- arrestee to be produced before a judicial authority within 24 hours (Sec. 57 ) and
- arrestee to be discharged only by an appropriate judicial order (Sec. 59)





Like the power of arrest, the police are also provided with the power to interrogate, search and seize the property involved in a criminal case. The power to interrogate witnesses can be exercised in the pre-arrest stage under Secs. 160, 161 and 162 or in the post-arrest stage either in police custody or in judicial custody. The Criminal Procedure Code has express provisions like Sec. 162 that prohibits statements given to the police during investigation from being admitted as evidence. Section 164 provides an elaborate procedure for judicial recording of confession. The conditions required to be met before recording a confession in terms of Sec. 164 provide adequate safeguards against extorting a confession. In the post-investigation stage confessions are to be recorded in terms of Sec. 281 of Cr.P.C.

- Police officer's power to require attendance of witnesses (Sec. 160),
- Examination of witnesses by police (Sec. 161), and
- Statements to the police not to be signed: use of statements in evidence (Sec. 162)

Similarly, search and seizure may be conducted in terms of general provisions under Secs. 93-105 or as per special powers of search and seizure after arrest under Secs. 51-52 of the Code.

- when search warrant may be issued (Sec. 93)
- search of place suspected to contain stolen property, forged documents etc. (Sec. 94)

- persons in charge of closed place to allow search (Sec. 100)
- disposal of things found in search beyond jurisdiction (Sec. 101)
- power of police officer to seize certain property (Sec. 102)
- search of arrested woman (Sec. 51(2))

Box 1 contains provisions regulating circumstances under which police can arrest persons without warrant.

### BOX 1

#### While effecting arrest, the police shall:

- Arrest a person without warrant only when there is a reasonable satisfaction about the person's involvement in a cognizable offence (Sec 41 Cr.P.C).
- Arrest a person to prevent the Commission of cognizable offence only when the police have knowledge of commission of any cognizable offence by that person and it cannot be prevented except by arrest. (Sec.151 Cr PC)
- When a person is arrested without warrant, handcuff the accused when it is necessary to detain at the police station and thereafter production before the Magistrate. Any use of fetters thereafter can only be under the orders of the Magistrate. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape. (Sec.49 of Cr PC and Article. 21 of the Constitution)



Box 2 contains measures to be taken during arrest of the accused.

## BOX 2

### While effecting arrest, the enforcement authority shall:

- Ensure that no person is deprived of right to life or personal liberty, except in accordance with a procedure established by law. (Art. 21 of the Constitution)
- Ensure that the arrestee is informed of the full particulars or the grounds of arrest (Art. 22 (1) of the Const.)
- Ensure that no person is denied the right to consult and be defended by a legal practitioner of his/her choice. (Sec.50 A (1) Cr. P. C)
- Ensure that the accused is produced before the nearest magistrate within 24 hours, excluding the time taken for traveling from the place of arrest to the magistrate's court. (Sec.57 Cr. P.C)
- Ensure that a person arrested without a warrant for a bailable offence is informed that he/she is entitled to be released on bail, so that he may arrange for sureties. (Sec.50 (2))
- Ensure that a friend or relative or other person who is known to him/ her and is likely to take interest in his/her welfare, is informed about the fact of arrest and the place where he/she is being detained. (Sec.50-A(1)Cr PC)
- Ensure that an entry of fact about the person informed regarding the arrest has to be made in a book to be kept in a police station about which the magistrate is duty bound to enquire. (Sec.50 A (3) & S 50 (A) (4) CrPC)

- Ensure that the identity of the police officer effecting arrest is clearly indicated.
- Ensure that, if at the time of arrest, some injuries are found on the person of the arrestee, the same must be specified in the Arrest Memo and the arrestee must be got medically examined. (Sec.53)
- Ensure that no woman is arrested after sunset and before sunrise, except in exceptional circumstances, for which a prior permission of a magistrate is necessary. (Sec.46 (4) Cr PC)
- Ensure that while effecting arrest of a woman, a woman police officer is associated, as far as practicable, and due regard must be given to the dignity of the arrestee.
- Ensure that no force or beating is administered under any circumstances while effecting arrest of a juvenile or a child.

IDENTITY OF THE POLICE OFFICER  
EFFECTING ARREST MUST BE CLEARLY  
INDICATED



The rights of the accused during interrogation are enunciated in Box 3 whereas Box 4 elaborates on interrogation of the witnesses by the police.



### BOX 3

**While effecting interrogation of the accused, the police shall:**

- Ensure that no person accused of an offence be compelled to be a witness against himself/herself. ( Art. 20 (3) of the Const.)
- Ensure that the accused is provided with legal assistance if he/she so wishes. (Art. 22 (1))
- Ensure that during interrogation presence of a lawyer is allowed if the accused so desires.
- Ensure that a police official takes the arrestee for medical examination on his request
- Ensure that the interrogation by the police is conducted on clearly identifiable places which have been notified by the Government (Sec. 54 Cr. PC)

### BOX 4

**While effecting interrogation of the witness, the police shall not:**

- Require any male person below 15 years of age or woman to attend at any place other than the place in which such male person or woman resides. (Sec. 160(1) Cr.P.C.)
- Compel the person being examined to answer such questions as would exposes him/her to a criminal charge or to penalty or forfeiture. ( Art. 20 (3) of the Constitution and 161 (2) )
- Procure 'compelled testimony' which includes evidence procured by physical threats, violence, mental torture, intimidation, frequent threats of prosecution, and the like. (Sec.163 Cr.P.C.)
- Obtain signature/thumb impression of the witness on any statement made by him to the police during the investigation (Sec. 162(1.) Cr.P.C.)





Box 5 contains functions and obligations of the police during search and seizure.

### BOX 5

#### While performing functions relating to search and seizure, the police shall:

- Ensure that the enforcement authority before entering into any premises to effect search/seizure of relevant evidence, shall record in writing, as far as possible, the reasons for believing that search would lead to discovery of such evidence. (Sec.165 (1) Cr. P.C)
- Ensure that where the production of a document or a thing is necessary, summons are obtained from the appropriate court or orders secured from an authorised officer requiring the person in whose possession or power the relevant document or thing is believed to be, to produce said document/ thing at a stipulated time and place specified in the warrant/ order (Sec.91 Cr. P.C.)
- Ensure that before proceeding to search the suspect or his belonging with a view to recover contraband under NDPS Act, the person concerned is informed that he has a right to insist on a search to be conducted in the presence of a magistrate/gazetted officer and, if the person concerned exercises his right, he must be searched in the presence of such magistrate/gazetted officer.
- Ensure that generally raids for conducting search should not be made after sunset and before sunrise. But where exigencies require immediate search, the reasons must be recorded in writing for making such exception
- Ensure that the dignity and privacy of the person searched is respected and there is no use of force or aggression (Art. 21 of the Const)
- Ensure that search of a woman is made only by a woman keeping in with the dignity of a woman.

### CASE 1: NANDINI SATPATHY VS. P.L. DANI AND ANR. 1978 AIR 1025

The former Chief Minister of Orissa, Nandini Satpathy was called by the Directorate of Vigilance in a 'disproportionate asset' case under the Prevention of Corruption Act. She refused to answer during interrogation. Thereupon Vigilance filed a complaint and the magistrate took cognizance of the offence and issued summons for her appearance. She challenged the validity of the magisterial proceeding.

Nandini Satpathy argued that she exercised her right to silence under Article 20 (3) of the Constitution and being a woman she was called to the police station for interrogation in violation of Sec. 160 (1) of Cr.P.C. She further submitted that the extent of Sec. 161 (2) to answer all questions truly does not extend to compel a person to give testimony against herself.

The court extensively dealing with Article 20 (3) and Article 22 (1) of the Constitution of India held that no person can be compelled to be witness against himself. The court interpreting Section 161 (2) clarified the position as per the section that one cannot be compelled to answer the questions which have a tendency to expose him/her to a criminal charge or to a penalty or forfeiture. The court also held that when a woman is called into a police station for interrogation and heavy load of questions are handed over, the fundamentals laid down in Section 160 (1) are violated.

### CASE 2: JOGINDER KUMAR VS. STATE OF U.P AND OTHERS (1994) 4 SCC 260

The petitioner, an advocate aged 28 years, was detained by the Senior Superintendent of Police, Ghaziabad for four days and his

whereabouts were not informed to the relatives despite their continuous efforts to know the place of detention and charges against him.

A writ petition was filed before the Court under Art. 32 of the Constitution. The Court held that arrest and detention in police lock-up cause irreparable harm to the reputation and self-esteem of a person. The Court recognized three important rights inherent in Article 21 and 22 (1) of the Constitution. They are: firstly, the arrested person has the right to inform his relative or friend or other person who is known to him about his arrest and the place of detention, secondly, the arrested person must be informed about this right by the police officer and thirdly, an entry shall be made in the Diary as to who was informed of the arrest. These protections flow from fundamental human right to personal liberty and freedom.

### Activity 1

*Do you think that the three rights of an arrested person recognized in the Joginder Kumar Case are enough to ensure safety of the arrested person in custody? Do these rights in any way obstruct the investigation of cases which are confidential in nature?*

### CASE 3: MRS ANGAMMAL, PETITIONER VS. STATE OF TAMIL NADU & ORS.

The petitioner filed a writ petition for directing the State of Tamil Nadu to pay compensation for the death of her daughter, Parvathy, in police custody. Parvathy, the deceased, was taken to police station for interrogation at night subsequent to allegation of adultery made by a woman police constable. The police version is that she was found hanging in the bathroom.

The magisterial inquiry found her death was a suicide and not due to torture by the police.

The petitioner vehemently opposed the procedural irregularity on the part of police to call a woman at night to the police station for interrogation. The court held that proviso to Sec. 160 (1) of the Cr.P.C. says that male person under the age of 15 years or woman shall be interrogated only at their place of residence. Adultery not being a cognizable offence, the procedure of summoning the deceased to the police station is a procedural irregularity on the part of police. The court awarded Rs. 50,000/- as compensation to the petitioner, a dependant of the deceased.

### 5.4.2 Safeguards Through Remand Proceedings

Article 21 of the Constitution of India confers the fundamental right to personal liberty, which can be curtailed only by due process of law. Due process of law shall ensure that the basic human rights of the concerned person are not violated. Various judicial decisions of the Apex Court have given wide interpretation to such fundamental rights, including right to live with human dignity. It also ensures that a person shall be presumed innocent until proved guilty by a competent court of law.

- S.56 of the Code of Criminal Procedure requires the arresting officer to send without unnecessary delay the arrestee before a Magistrate or before an officer in charge of a police station.
- S.57 puts a prohibition on the detention of the arrestee in custody beyond a period of twenty-four hours, excluding the time taken in the course of journey from the place of arrest to the Magistrate's Court.



- In case the investigation is likely to extend beyond twenty-four hours, the police shall request the magistrate for grant of remand in terms of S. 167. The magistrate is empowered under S. 167 Cr. P.C. to order the detention either in police/ judicial custody for a period not exceeding fifteen days at a time (in case of police custody, only for initial fifteen days). Judicial authorization of detention amounts to curtailment of personal liberty and therefore, due caution should be exercised while authorizing detention of an accused in police or judicial custody on production of the accused.

Box 6 deals with the limitation on the powers of the judicial authorities during remand proceedings. These provisions are applicable when investigation is not completed within 24 hours.

### BOX 6

*While conducting remand proceedings, the judicial authorities shall not:*

- *ordinarily, authorise detention in police custody beyond a period of initial fifteen days. (S.167 (1) Cr.P.C.)*
- *authorise detention of the accused in the custody for a term exceeding 15 days in the whole, whether he has or has no jurisdiction to try the case and, if further detention is unnecessary and the Magistrate has no jurisdiction to try or commit the case, then the accused may be forwarded to the Magistrate having such jurisdiction. (S. 167(2) Cr.P.C.)*
- *Authorise detention of the accused person in judicial custody beyond a period of ninety days, where the investigation relates to offences punishable for a period of more than ten years imprisonment and sixty days where it relates to any other offence. (S. 167(2) Prov.(C) Cr.P.C.)*
- *Exercise the powers of remanding a person in police custody unless he is a magistrate of first class or any magistrate specially empowered in this behalf by the High Court.( S. 167(2) Cr.P.C. Prov.(C) )*

### CASE 4: STATE OF MAHARASHTRA VS. CHRISTIAN COMMUNITY WELFARE COUNCIL OF INDIA AND ANR.

The High Court of Maharashtra directed the State Government to issue instructions immediately that no woman shall be detained or arrested without presence of a woman constable and in no case after the sunset and before sun-rise. The order was in relation to a case of detention and molestation of the wife of the deceased who died in police custody. The Government of Maharashtra filed an appeal before the Supreme Court urging that such a direction for presence of the woman constable would create practical difficulties to the police and even help the accused to evade the process of law.

The Supreme Court taking into consideration the practical difficulties of the direction issued by the High Court modified it to the extent that while arresting a female person, all efforts should be made to keep a woman constable present. If presence of a woman constable is not available after recording the reasons for immediate arrest, arrest may be permitted at any time of the day or night. This modification is to avoid opportunities for the accused to evade arrest and obstruct investigation.

### 5.4.3 Safeguards through Bail Proceedings

Every arrested person has been conferred with a right to seek bail. If the arrest is for an offence that is categorized as a bailable offence (the offences that are bailable and those that are non-bailable are listed out in the classification of offences provided in the First Schedule. Under the Code of Criminal Procedure), the accused has an absolute right to be released on bail, subject to requirements of bail conditions.





Section 436 provides the law relating to bailable offences. Similarly, S.437 that relates to non-bailable offences is also couched in a language that permits release on bail, subject to stringent statutory conditions. However, as the right to be released on bail is considered as an important incident of presumption of innocence of the accused, it is vital for the judicial authorities to view bail right in this light. It is interesting that S.436 A, introduced in 2005 recognizes the right of every under-trial to be released on bond, with or without sureties, if he has remained under detention for a period that is half of the maximum period for which the accused could be sentenced. This provision is likely to have a salutary effect in prison over-crowding as well.

Box 7 contains provisions to be followed by the judicial officers while granting bail in the case of bailable offences.

### BOX 7

#### While granting bail for a bailable offence, the judicial authorities shall:

- Ensure that an arrestee for a bailable offence, who is arrested and detained without a warrant, may be released on bail as a matter of right. (S.436(l) Cr.P.C.)
- Ensure that the arrestee is released on bail, as soon as he/she furnishes personal-cum-surety bond of the required amount.
- Ensure that where the arrestee is an indigent person to the satisfaction of the Court and is unable to furnish surety, instead of taking bail, such person is released on executing a personal bond without sureties for his appearance later. (S.436(l) Prov. Cr.P.C.)
- Ensure that where an arrestee of a bailable offence is unable to furnish surety within a week of his application for bail, the court may presume that he is an indigent person. (S.436 (l) Cr.P.C.)

- Ensure that the arrestee is informed by the Court at the first instance about his right to bail.
- Ensure that the arrestee is not required to furnish surety for unreasonable and excessive amount, so that the economic standing of the arrestee does not impede his right to bail.

### CASE 5: MOTIRAM VS. STATE OF M.P. (1978) 4 SCC 47

The petition was filed against refusal to grant bail ordered by the magistrate on grounds of not furnishing huge amount of surety demanded from petitioner. The petitioner being a mason, it was not an affordable sum of surety to be asked for grant of bail.

While hearing this petition, the court dealt with bail jurisprudence and remarked that one's incapacity to pay the surety results in losing liberty. He has to remain in jail during pre-trial proceedings when an arrestee is presumed to be innocent. The court held that in the interest of social justice and to ensure equal treatment to all citizens the petitioner should be released on their own bond for an affordable sum of surety.

### 5.4.4 Judicial Control of Investigation

The police and other law enforcement institutions are conferred extensive and wide powers to effectively investigate and exercise diverse kinds of restraints over the body or property of the accused persons. However, often the judiciary is required to adjudicate on the issues of abuse of aforesaid powers and make appropriate restorative decisions. The situations leading to abuse of investigatory or custodial powers relate mainly to instances of torture in the course of detention, arbitrary

and excessive detention, sexual abuse in custody, death in custody, extra-judicial executions, etc. In the recent times, the problem of abuse of powers in the course of extra-ordinary law and order situations and collusive disappearances and missing persons/children has appeared as a new form of abuse of powers by the state functionaries. Though there are a large numbers of apex court rulings that aim at laying down strict standards of exercise of executive powers, the judiciary at the lower levels still requires explicit enunciation of such standard setting norms.

Box 8 explains the responsibilities of the Judicial/Metropolitan Magistrate in the case of unnatural death or disappearance of a person in judicial custody.

### BOX 8

#### The court of the Judicial Magistrate/ Metropolitan Magistrate shall:

- Ensure that in case of death / disappearance of a person from the police/ judicial custody, or in the case of rape on any woman while in police/judicial custody, an enquiry is held by a Judicial Magistrate/Metropolitan Magistrate, within whose local jurisdiction the offence has been committed, in addition to the enquiry/ investigation held by the police. (S.176 (1A) Cr.P.C.)
- Ensure that the Magistrate holding such an enquiry shall record all the evidences collected during such enquiry.
- Ensure that in case the Magistrate considers it expedient to make an examination of the dead body of any person, who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

- Ensure that while conducting such an enquiry, wherever practicable, known relatives of the deceased are duly informed and such persons are allowed to remain present during the enquiry.
- Ensure that the body of the deceased is forwarded to the nearest Civil Surgeon or other qualified Government authorized medical man for examination.
- Ensure that if the body cannot be forwarded for medical examination within 24 hours, the reasons for the same are to be recorded in writing.

### CASE 6: SMT. NILABATI BEHERA ALIAS LALITA BEHERA VS. STATE OF ORISSA AND OTHERS 1993 (2) SCC 746

The son of Smt. Nilabati Behera, Suman Behera, aged 22 years, was taken into custody by the police on 1-12-1987 in connection with an offence of theft. On 2-12-1987 at 2 p.m., his dead body was found in the railway tracks. The police version was that the deceased managed to escape from the custody at 3 a.m. on 2-12-1987 and it was likely that he was run over by a passing train.

The petitioner herein filed a writ petition for compensation. The court held that it cannot be told to a citizen complaining of infringement of fundamental right under Article 21 to seek remedy under civil law. It is the responsibility of the state to ensure fundamental right to life and hence he is entitled to claim relief under public law by way of writ petition.

Further, the court added that the precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under

trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. The state would be liable where it fails to keep the prisoner safe in its custody.

### Check out your progress

1. List out the best Human Rights practices that the police have to observe during investigation?
2. Describe the circumstances under which the police can arrest persons without warrant?
3. Explain the measures to be taken during the arrest of the accused?
4. What are the rights of the accused during interrogation?
5. What are the measures to be taken by the police while interrogating a witness?
6. What are the safeguards provided to the accused during remand?

## 5.5 Let us sum up

Police has the primary responsibility to protect the life, liberty and dignity of the citizens. It places greater responsibility on the police when the accused or suspects are in their custody. During these circumstances, the police as a custodian are bound to take care of the safety and security of detainees. The above discussed best practices of human rights have been evolved based on statutory, conventional human rights norms and the outstanding judicial decisions. These best practices need to be strictly followed in everyday activities of police. We do hope that the above unit would enable the trainees to nurture the right attitude and approach towards accused and suspects.