

HUMAN RIGHTS: AN ANALYSIS WITH REFERENCE TO ROLE OF POLICE IN CASE OF ARREST AND DETENTION IN INDIA

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I. Introduction

At present the concept of Human Right has stepped into various dimensions. Now people are more vigilant about their rights and news items on Human Right violations are frequent. The expansion of Human Rights of accused without balancing rights of victim and of law enforcing agency have put the police force in a fix. Due to unnecessary criticism and Human Right over-activism, the moral of police is decreasing making them less capable to tackle actual offender with iron hands.

The rights of the accused being eventually part of the human rights strategy must necessarily be recognized by the Constitution and the law of every country to safeguard the individual's personal liberty against the autocracy and authoritarianism of the state Government. Therefore, the principle that every person is to be presumed innocent until' proved to be guilty by the court dominates the criminal jurisprudential philosophy of India.

The police are primarily concerned- with the control of crime and the maintenance of law and order. Therefore it plays a vital role in criminal justice system including crime control.² The police are duty bound to protect the public against physical dangers, rescue lives, regulate traffic and preserve law and order in the streets and public places. It has also a significant role to play with regard to the prevention of crime and juvenile delinquency, atrocities against women and children, protection and human rights etc. and apprehending criminals by making arrests and prosecuting them.

Arrest is an arrest whatsoever may be its reasons and causes. The right to be informed of the grounds of arrest and detention attaches not only to the warrants less arrests but to all arrests and detention except, the arrests

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² Justice Malimath Committee Report on reform of Criminal Justice Administration- 2006.

made following the orders of conviction and sentence of imprisonment passed by a competent judicial tribunal. Now no more transgression of this right is expected in view of the insertion to the new code of criminal procedure which requires the arresting authorities to furnish forthwith the grounds of arrest to those arrested without the warrants from the court. The provision of this new section of the new code has opened a new vista in the field of the promotion of personal liberty of a person accused of an offence.

It is pertinent to mention that even dealing with the terrorists attacks the police and security forces are not entitled to take the law into their hands like terrorists. If it is allowed then it will lead towards misuse of powers. The police officers from top to lower ranks are being cautioned in this regard by the courts including Supreme Court.

Police organization is a key stone in the structure of Government and has successfully proved to be one of the strongest pillars to save the democratic system. But still they never get public sympathy and rather always criticized as human Rights violators. It is true that with the aim of detection of crimes to earn good name or to satisfy superiors with higher detection percentage, few police officers indulge in illegal activities of torture, illegal arrest and detention and even commit custodial death. It is evident on record that for Human Right violations, many police officers have been prosecuted in the court of law. So, it can be said while considering Human rights, it is necessary to strike a balance between the opposing interests of the individual and of the society.

In our present day social scenario, everyday there is a rapid increase in crime rates. Simultaneously, there is a vast expansion in the concept of Human Rights. Despite the Constitutional, legal and judicial safeguards, the power of arrest is often abused for various purposes. However it is apparent from incident of Mumbai relating to a film "MY NAME IS KHAN", police is helpless due to apathy of State Government to tackle the problems created by Shiv-Sena" and their leaders. Such type of incident should be tackled by giving more powers in the hand of police officers to safeguard the human rights of masses. The terrorists attack on "OSHO ASHRAM" at Pune recently may also be cited as an example in this regard.

So it is necessary to make certain suggestions to effect reforms in the legal frame work with a view to better achieving Human Rights of the accused. The following suggestions would mainly relate to the procedure of arrest and detention which may be incorporated to the Indian legal system,

(i) In the larger interest of administration of criminal justice and legal system, it is wise and ethical for the police not to arrest in any case bailable / non-cognizable offences so as to do away with manipulations.

(ii) The police personnel are to be given effective training against misuse or abuse of the power of arrest. This will act as good practical guidelines for clean police conduct, strict and right enforcement of law.

(iii) There is requirement of power between the police as per rank for doing the investigation on the basis of punishment which is laid down in the Indian Penal Code. It is suggested that the criminal offence which punishable up to 10 years and above and also death sentence shall be handed over for the purpose of investigation to the Deputy Superintendent of police or Deputy Commissioner of police.

(iv) In case of bailable offence, it is required to make a provision in the criminal procedure code, so that accused may be released on bail by concerned police station through a Constituted board consisting of Investigating officer of the case and others.

The meeting of such board must be held on prescribed time in the evening of every day, and. if bail is not granted by such police station, reason for refusal must be sent to the learned court along with necessary papers on the next day.

(v) A new provision in the Criminal procedure Code is required for creation of a post under Learned S.D.J.M., named as Learned Addl. S.D.J.M. who will hear only the remand of any arrestee. Such Addl. S.D.J.M. shall have power and try any case against illegal arrest or detention of any person against such police officer who have violated directions issued by Apex Court or High Courts regarding arrest and detention.

(vi) There shall be no bar to prosecute such police officer who failed to comply with the directions of the Apex Court or ' High Courts regarding arrest and in such case no permission is required for prosecuting such officer from the higher authority concerned.

(vii) The investigating officer of any case must submit charge sheet within 45 days from the day of commission of offence and within such period , if charge sheet is not submitted then a report explaining the reason for non submission of charge sheet duly prepared by such investigating officer must be sent to the concerned S.D.J.M. and after pursuing such report A Learned S.D.J.M. may permit such investigating officer to continue for next 45 days, otherwise investigating officer of such case must be changed by the concerned officer-in- charge of police station.

(viii) Police officers up to the rank of Inspector should be given special training of law and Human Rights so that they may become well acquainted and follow them accordingly.

(ix) Police officers are to be given more power to deal with Hard Core Criminal and terrorists including power to shoot directly in case of urgent need.

(x) Special cell is to be created for dealing with the problems of Human Rights violations.

II. Conclusion

Thus, an integrated comprehensive legal approach should aim at reducing the illegal police activities which are committed to satisfy superior officers. This would reduce the illegal arrest and detention and also protect the Human Rights which are violated by the police personnel making illegal arrest and detention. Therefore this titanic problem should be solved. Abiding by the abovementioned principles I can hope that the human rights relating to arrest and detention will be restored to consciousness in connection with the implementation of the age - old Indian arresting and detention procedure.