

HUMAN RIGHTS AND POLICE ATROCITIES: AN APPRAISAL

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“The ideal police officer is expected to have the wisdom of Solomon, the courage of David, the strength of Samson, the patience of Job, the leadership of Moses, the kindness or good Samaritan, the strategy of Alexander, the faith of Daniel, the diplomacy of Lincoln, the tolerance of the Carpenter of Nazareth and finally an intimate knowledge of every branch of natural, biological and social sciences.”¹

Introduction

For an effective realization of human rights in any given society, a ‘Human Rights Culture’ needs to be evolved. And speeding of Human Rights Education and Promotion of Human Rights literacy are sine qua non for creating the human rights culture for only people who are aware can assert about their rights. However, educating people and making them aware about their rights. However, educating people and making them aware about their human rights in a society as complex and textured as ours in the task that is, at once both daunting and crucially important. It is also a task that calls for great perseverance, for it requires deep and lasting commitment. Indeed, there is no easy way to create a culture of human rights; all sections of society have a role to play and an ideal to sustain, if the cause of human rights is to take root and flourish against the cruel odds of social injustice and inequality, the problems of poverty and the fanatical destructiveness of terrorism.²

The constitution of a country provides the basis framework of government and legal institutions. The India Constitution makes no reference to the police in any of its Articles except in Article 33 which provides for restriction of fundamental rights in their application to the forces charged with the maintenance of public order. The police and various matters connected with the Criminal Law final mentions in the 7th Schedule of the Constitution.³ The

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1. Quoted by Sri Srikanth Reddy, *Police in Developing Society*, p. 144.

2. Singh Gurjeet, *Promoting Human Rights through Education and Awareness: Some Observations on the Role of University Grants Commission and The National Human Rights Commission*, Edt. Ranbir Singh, Ghanshyam Singh, Human Rights education, Law and Society, NALSAR University Hyd. 20004 at p.28.

3. Art.246.

problem of police excess on suspected offenders and others is of almost universal nature. Article 5⁴ of the UDHR incorporated the right of protection against torture and the same has been sought to be achieved through the Declaration of the Fifth United Nations Congress held in 1975. Though there is no specific and protection in the Indian Constitution against torture, the combined effect of rights against self - incrimination and of life and liberty is too evident.

Human Right recognizes the inherent dignity and fundamental freedoms of all members of human family and is the foundation for all basic freedoms, justice and peaces in the world. Disregard and contempt fro human rights in the recent past have resulted in barbarous acts shocking the conscience of mankind. Human Rights, when protected by the Rule of Law, ensure peace in society by preventing man from turning violent and rising in rebellion against tyranny and oppression.

Origin of Police

The word 'police' are derived from the Greek word Politeia or its Latin equivalent Politia. The term Politia stands for the 'state' or 'administrative'. In the present context, the term police connotes a body of civil servants whose primary duties are preservation of order, prevention and detection of crimes and enforcement of law. As pointed out by the Earnest Fround, police functions generally relate to promoting public welfare by restraining and regulating the use of property and liberty of persons⁵.

History of police force in India

There are reference to the existence of Police systems in epics namely, Mahabharata and Ramayana. The ancient history of India further reveals that there was a well organized police force during the regime of ancient Hindu rulers. The Gupta dynasty in ancient India was particularly known for its excellent law and order situation through a well - organized system of police. The chief of the police force was called Mahadandadhikari” He had a number of subordinates officers called “Dandadhikaris” to assist him.

The Mughal rulers in India also had a well organized police force for maintaining laws and order in society. The police officials called the “Fauzdar’ was in charge of the entire police force with a number of subordinate’s officials called ‘Darogas’ or Kotwals’ working under him. The Indian Police Act, 1861, an aftermath of the wars of Independence of 1857 s, was enacted to “reorganize

4. Art. 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

5. Ernest Fround: The Police, Policy and Constitutional Rights. p. 6

the police and to make it more effective instrument for the prevention and detection of crime" as laid down in the preamble of the Act.

It cannot be denied that the police in India do often function in an illegal manner. The question is not whether human rights violation by the police later place or not. It is common knowledge that large scale illegalities by the police do latter place. The root cause of human rights violation by the polices lies in the manner of its functioning in the Indian criminal justice system⁶.

It is not that the police is not aware of the importance of Human Rights. Human Rights re integral to the ethos of a civil society. The founding fathers of the Indian Republic were committed to their protection in Independent India. Human rights are not an alien concept but an essential part of the Indian philosophy. They were incorporated in the Indian constitution as fundamental rights much before their general acceptance even in the western countries. The Indian constitution guarantees the right to life, liberty and equality to every citizen. A comprehensive list of fundamental rights is contained in the constitution and covers all the essential civil and political rights. A unique feature of the Indian constitution is that an aggrieved citizen can seek judicial intervention for a violation of a fundamental right. The constitution contains further list of rights as the directive principles. Even though unlike the fundamental rights they can not be enforced by a court of law I the instruments of the state are expected to observe them in sprit is not entirely in letter.

The police being the most important law enforcement agency have special responsibility to ensure that they are not violated by any individual groups or an instrument of the state. It can cure for and take legal action to ensure that no one violates them. It is the weaker section of the society: women, children, sick and the aged, the physically weak; tile poor and destitute - the economically weak; and the minorities, the dalits and the backward the socially handicapped who needs police protection.

Rights against illegal arrest and detention

Power of arrest has been given to the police officer and judicial Magistrate but they always misuse the power. Therefore, Indian constitution gives protection against arrest and detention.⁷

Article 22 guarantees the following safeguards against arrest or detention made under the ordinary law relating to the commission of offences.

6. Ved Marwah ,Human Rights and Role of Police 40,JILI.1998,at p.138

7. Article 22

Right to be informed as soon as may be of the grounds for arrest or detention

Clause (1) of Article 22 requires that any person who is arrested should be informed of the grounds for such arrest. It is an imperative requirement. The object is to enable the person arrested to know as to why and for what offence he has been arrested. It is to afford him the earliest opportunity to remove any mistake or misapprehension or misunderstanding in the mind of the authority making arrest. Grounds for arrest are to be informed to enable the detained to prepare for his defence and to move the court for a writ of habeas corpus or for bail.

Right to consult and to be defended by a legal practitioner of his choice

Clause (1) of Article 22 further provides that the person arrested "shall not be denied the right to consult and to be defended by a legal practitioner of his choice".⁸

Earlier, it was held that a demand to consult a lawyer must be made by the person arrested and that the court was not bound to provide to him the help of a lawyer unless a request was made by him.⁹

In *Joginder Kumar Vs State of U.P.*¹⁰, the Supreme Court has ruled that the right of arrested person to have some one informed about his arrest and to consult privately with lawyer inherent in Article 21 and 22. Thus, the right to consult the lawyer means the right to consult him away from the hearing of police.

Right to be produced before the nearest magistrate within 24 hours of arrest

Clause (2) of Article 22 provides that "every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding him away from the hearing of police.

Right not be detained in custody beyond 24 hours without the authority of the magistrate.

Clause (2) of Article 22 mandates that the arrested person shall not be detained in custody beyond the said period of 24 hours without the authority as a magistrate. If there is failure to produce the arrested person before the

8. AIR 1983 SC 1086.

9. *Ram Swarup Vs Union of India*, AIR 1965 SC 2.

10. AIR 1994 SC 1349.

nearest Magistrate within 24 hours, it would make the detention illegal.¹¹

Exception to clause (1) and clause (2) of Article 22, Clause (3) of Article 22 provides that the safeguards guaranteed by clauses (1) and (2) of Article 22 are not available to be the following person -

- (a) Any person who for the time being as an enemy alien;
- (b) Any person who is arrested or detained under any law providing for preventive detention.

In *D. K. Basu Vs State of West Bengal*¹² the Supreme Court has laid down detailed guidelines to be followed by the Central and State investigating and security agencies in all cases of arrest and detention.

Suggested Reforms

The National Police Commission considered the problem of police image and their relationship and interaction with the general public to improve the existing situation the Commission made the following suggestion in their Fifth Report.

The understanding that dissent on the part of public is not necessarily a threat to public order; These targets require improved training and orientation programmes for the police personnel; Better amenities should be provided at the police station and lock-up; The traffic police have a high-visibility profile and they, therefore, need special attention in terms of improvements; The system of patrolling must be revamped so that the public get the feeling that crime is being prevented.

In the background of custodial torture cases coming before the courts, the judiciary has made the following suggestions for improvement of police image:-

Policeman should be made to understand that they are basically to help the public and not harass them. The use of force should be minimized to the barest necessity so that public voluntarily extends a helping hand to the police. In order to win public co-operation and supports, the police must demonstrate absolute impartiality in its work without being influenced by the pressure from political high ups. Proper training should be imparted to police man of all ranks and they should be apprised of the latest techniques of crimes detections and investigation. The police force should be adequately staffed and equipped with latest weapons to meet new challenges. The Police Acts of 1861 needs to be amended as recommended by the National Police Commission in its

11. *Ganapati K. Reddy Vs Nafisal Hasan*, AIR 1954 SC 636.

12. AIR 1997 SC 610.

Fifth Report. The police machinery should be insulated from political interferences as recommended by Dharm Vira Commission Report. Surprise visits to police stations and similar units of senior officers should be intensified. This would help in early detection of persons held up in unauthorized custody and subjected to ill - treatment.

MALIMATH COMMITTEE REPORT¹³

With the increase of crime in the society and the State's endeavor to control it in an effective way, the Government of India, Ministry of Home Affairs, constituted a Committee on reforms of criminal justice system to examine its working and suggest ways and means to improve the whole system of criminal justice administrations. The committee examined in detail the two main systems of criminal justice, i.e. adversarial system and inquisitorial system which are followed in France, Germany and other countries. The Committee suggested that some of [the good points can be adopted in our present system to make it more effective. This may include assigning a pro active role to the judges, to give directions to the investigating officers and the prosecution. The Committee has suggested certain far - reaching changes in various sections of the Code of Criminal Procedure.

The Committee recommends that without subjecting the accused to any duress, the court should have the freedom to question the accused to elicit the relevant information and if he refuses to answer to draw an adverse inference against the accused. This results in great prejudice. The accused has several rights and they have been liberally extended by the decision of various courts including the Supreme Courts. The Committee has recommended that the accused should know all his rights and States should see that these are published in regional languages and are distributed among all accused persons. The Committee has also recommended certain important changes in the area of justice to victims of crime. The Committee has felt that the administrations of criminal justice will assure a new direction towards better and quicker once the rights of victim are recognized by law.

The Committee has also dealt with this improvement area of administrations of criminal justice. There is a need to improve the police image and ensure credibility. For this the following changes have been suggested: The investigating wing should be separated from the law and order wing. There should be a security Commission at National and State level as recommended by the National Police Commission; in each district a separate police

13. The Committee was headed by Justice V. S. Malimath, a former Chief Justice of Karnataka and Kerala High Courts.

superintendent should be made responsible for collection and dissemination of criminal intelligence.

The Malimath Committee has also recommended certain important changes with regard to prosecution, trial procedure, witness and perjury. The Committee has also explained the role of courts and judge which will help to improve image in the country. One of the important areas where challenges have been suggested is re-classifications of offences. The Committee classified the offences such as:

i) Social Welfare Code, ii) The Correctional Code IV) The Criminal Code, iv) Economic and others offences.

Conclusion

In democracy police being a visible symbol of the authority of the society and individuals citizen with regards to their basic right. To that extent policeman is an agent who is required to maintain a proper equilibrium between the public and the government. The government and the police are bound by the Constitution to uphold the rule of law and to respect the Fundamental rights of the citizen.