

CHAPTER 22

Human Rights and Police Responsibilities

519. “Human Rights” means the right to life, liberty, equality and dignity as guaranteed by the Indian Constitution.

1. Every human being is entitled to certain natural rights by virtue of his being a member of human society. These rights are called human rights. The supreme court while interpreting Article 21 of the Constitution of India emphasized that a human being has not only a right to live but has a fundamental right to live with dignity and it is the duty of every other human being to respect that right.

2. As a founder member of United Nations Organization, India is a party to “the Universal declaration of Human Rights 1948”. India also ratified the two international conventions on, (a) civil and political rights and (b) economic, social and cultural rights. These Universal declarations of rights (1948) were incorporated as fundamental rights in the Indian Constitution listed in Articles 14 to 32. Some of the important among them are;
 - i. Right to every citizen, of equality before law and equal protection of laws.

 - ii. Right to freedom of speech

 - iii. Right to assemble peacefully and without Arms.

 - iv. Right to form Unions.

 - v. Right not to be prosecuted and convicted for any offence except for violation of law in force at the time of committing the offence.

 - vi. Right not to be compelled to be a witness against himself.

- vii. Right not to be deprived of his life and liberty except according to procedure established by law.
 - viii. Right not to be arrested without informing the grounds and to be produced before a magistrate as early as possible but not later than 24 hours.
 - ix. Right to consult any one of his choice on his arrest.
 - x. Right to defend himself against any allegation, and
 - xi. Right to seek redressal by way of writs for any of the above violations made against him.
3. Our Criminal Justice system is based on “due process of law”, i.e. every act of the individual, Executive, Legislature or Judiciary is within the framework of law. Police as law enforcement authority are also part of this law. Police in their duties to maintain law and order or in detection, investigation, prosecution of cases directly deals with the public and without public co-operation they cannot discharge their duties effectively. Powers are given to them for effective discharge of duties but not to misuse them, either for their selfish aggrandizement or to exhibit their power and vanity. There is also a misconception that results cannot be achieved unless third degree methods are used and it is not possible to deal with same hard core criminals and suspects within the framework of strict law. It is not correct. There is no conflict between strict law enforcement, relentless pursuit of offenders, punishment of offenders on one side and observance of human rights on the other. The police officer should understand that he cannot take law into his own hand and he is not expected to be over anxious to achieve results with the means that is not legally allowed.
4. Various forms of custodial violence, torture, ill treatment of women and children, fabricating false cases against innocent persons and attempts to save real culprits, lockup deaths, custodial rapes, acts of omission or commission against weaker section, poor and less-privileged, unwarranted arrests, unlawful searches and excessive use of force are some of the manifestations of human rights violations by police. The general complaint is that police officers who are to uphold the law should not and cannot themselves indulge in illegal acts. It, undermines human dignity, brutalizes the police system, forfeits the trust of people and the judiciary and above all affects the image of the police organization as a whole. It also exposes the police officers to the risk of criminal liability and punishment. Custodial violence and

tortures do not act as short cuts in any significant way to achieve the goals and objectives. In fact they are the tools of an unprofessional and unscientific police officer.

5. The other practices to be strongly put down are rude and discourteous behavior, refusal to entertain complaint, over bearing attitude, minimizing the gravity of offence, delayed or poor or biased investigation, taking sides, perverse enquiries into complaints, unjustified searches and arrests. Such practices will assume complex dimensions if victims are women or belonging to other weaker sections.

Reasons for violation of human rights by police

520-1. Some of the reasons for violation of human rights by police can be attributed to the following,

- A. Lack of interrogation techniques.
 - B. Lack of scientific temper and professionalism.
 - C. Lack of knowledge of criminal law and procedures for investigation.
 - D. Unrealistic public expectation for results.
 - E. Political and official pressures for quick results.
 - F. Misconception that laws are not sufficient to achieve results legally.
 - G. Sadistic pleasure on the part of some police officers.
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1. As on today it is felt that much is desired from police and there is much needed change required in their attitude from age old and conventional methods. Many of the police interrogations are crude, devoid of scientific techniques. Scientific temper in the investigation is becoming a casualty due to lack of aptitude in acquiring professionalism. The entire investigation of a criminal case is interwoven with the law and procedure and the evidence is to be gathered in tune with the law of evidence, acceptable in criminal courts. The investigation in a criminal case is to be placed for the test of criminal courts of law, challenged by the legal experts on behalf of the accused. But, the present legal knowledge of an investigating officer is limited to the knowledge he acquired during his induction training. If alone, he gets equipped with sufficient legal knowledge during his training in refresher courses relating to interrogation and investigation, much of these crude methods could be avoided. Sufficient knowledge of law, will remove his misconception, that law is not sufficient to achieve results legally. A well trained police officer with an aptitude to learn interrogation techniques, acquiring

professionalism, taking advantage of the latest scientific aids at his command, need not turn to brutal measures to achieve results.

2. Police officer as one directly dealing with public, should constantly bear it in mind that he needs the assistance of the public either to maintain law and order or to gather evidence from witnesses or in obtaining clues during investigation. He can get such co-operation from the public only when he is polite and courteous in his dealings. Even, in dealing with the accused, there is no scope for vindictivity as he does everything ordained by his duties. He should understand that his act is within the framework of law and should not exceed legal limits in his undue anxiety to get results.

Human Rights of different sections of public

521. Every police officer must be aware of the legal rights of various individuals to enable him to respect such rights, not only statutory but also to earn the good-will of the public.

Human Rights of Victim

- 1-A. When a cognizable case is presented, it should be registered forth-with by the SHO, furnishing a copy free of cost.
 - B. Render immediate medical aid by moving him to hospital if he is injured.
 - C. Protect him from further danger if necessary.
 - D. Inform the stages of investigation from time to time as a duty.
 - E. Do not make the complainant go round the police station but he feels that he is being harassed more by the police than the accused.
 - F. Furnish the necessary documents to victim or his legal heirs of accident cases free of cost to enable them to claim compensation in tribunals.
 - G. Do not ask the complainant to go to the jurisdictional police station if they approach the wrong police station. Register the case and transfer it.
 - H. Let the complainant feel free when he represents his case and do not frighten him to give a wrong impression that police are not his friends but masters.

Human Rights of Witnesses

- 2-A. Examine witnesses at their place and do not call them to police station unless it is difficult or impractical.
- B. Examine women and children at their places of residence.
 - C. Remember witnesses are there to help investigation. Therefore deal with them courteously.
 - D. Child witnesses should be handled with special care.

Human rights of suspects or Accused

- 3-A. While surveillance as prescribed in the police regulations, authorized by law and approved by the Supreme Court in AIR SC 1975 page 1378, is permissible, unnecessary intrusion into the privacy of persons is forbidden. Therefore a margin on the right lines should be drawn to avoid any interference with the right to privacy.
- B. Interrogation of suspect is a power vested with the police. But, interrogation should be within the legal framework. Prolonged detention in the name of interrogation may amount to harassment and ultimately turn out as wrongful confinement.
 - C. Searches of places and more so dwelling houses have to be made strictly in accordance with procedures laid down U/s 100 CrPC. Police officer entering dwelling houses for searches should observe decency and decorum respecting the sentiments of women while discharging their duty. The assistance of women constable or women witness should be taken while searching the person of a woman. Any unlawful search not only vitiates the purpose but gives opportunity to the accused to use the right of private defense.
 - D. Attempts to torture accused or suspects to obtain confessions are not only an offence under Section 330 or 331 IPC but it is useless as such evidence is not admissible under law. Besides there is a danger of the suspects or accused confessing falsely in order to escape physical torture, in which case, one is likely to be misled in his investigation.
 - E. No accused should be forced physically or psychologically to say anything which is likely to be self-incriminating. Such evidence is prohibited under article 20 clauses (3) of the Constitution but voluntary disclosures of their own free will, while in police custody

and discovery of a fact in consequence to that information is not barred under Section 27 I.E. Act.

- F. There should be no arbitrary arrest. All arrests must strictly conform to the requirements of law and procedure. Arrests need not be made just because a police officer has a power to arrest. The necessity to confine is the principle behind the law. The person to be arrested is entitled to know the grounds for arrest as per Article 22 of the Constitution and Section 50 of CrPC.
- G. Every person arrested should be informed that he has right to go on bail, if it is a bailable offence and he should be informed that he may arrange for sureties (Article 22 of Constitution and Section 50(2) of CrPC.)
- H. The arrested person shall not be subjected to more restraint than is necessary to prevent his escape (Section 49 CrPC). Handcuffs should not be used without the orders of the court.
- I. An accused person arrested shall have the right to be examined by a medical practitioner. (Section 54 CrPC).
- J. The arrested person shall not be detained unnecessarily for a longer period than is necessary and at any cost should be produced before a magistrate within 24 hours excluding journey time. (Section 57 CrPC)
- K. The arrested person is entitled to consult any one of his choice and it shall not be denied (Article 22 of the Constitution).
- L. The accused charged of any offence has a right to be defended by an advocate of his choice. (Section 303 CrPC).
- M. During custody, the arrested person is entitled for fair treatment and no custodial torture or ill treatment is permissible.
- N. Most of the custodial deaths take place during illegal detention. Produce the accused within 24 hours of arrest and obtain police custody from court for interrogation if necessary. This will increase the responsibility of police and minimize irresponsible custodial tortures.

Human rights of Women

4. A national policy for custodial Justice to women was recommended by an expert committee on custodial Justice to women, Government of India (1983). Following are some of the important guidelines for police officers dealing with women.
 - A. Women shall be shown special treatment wherever they interfere with the system whether as complainants, victims, accused, witnesses or inmates of institution, giving respect for gender dignity and habitative concern for women.
 - B. Separate prisons and police lockups, correctional centres and separate courts shall be set up exclusively to deal with women.
 - C. Recognizing the children of custodialised women as innocent, the State shall conscientiously respect the rights and privileges of the children accompanying the women in custody.
 - D. The police, prison, correctional, judicial personnel dealing with women shall be specially trained.
 - E. Women shall be arrested only in case of absolute necessity and only between sun rise and sunset except in exceptional cases.
 - F. Arrests and search of women including interrogation shall be conducted according to strict standards of decency. Women police officers shall search women and escort women prisoners.
 - G. Basic amenities and privacy shall be provided to women prisoners.

Human rights of Juveniles

5. Juvenile Justice (Care and protection of children) Act 2000, is a human rights legislation and is enacted to lay down procedures while dealing with neglected and delinquent juveniles. Every police officer should be acquainted with the provisions of this Act while dealing with delinquent

juveniles. The following are some of the important points relating to juveniles.

- A. When a delinquent juvenile (Juvenile in conflict with law) if arrested for committing any offence, 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 anybody does not offer surety, he shall be forwarded to observation home pending enquiry.
- B. Interrogate a juvenile delinquent with sympathy, care and caution.
- C. Question the juvenile in isolation and never be authoritative. Be kind but firm.
- D. Whenever a statement is to be recorded from a juvenile witness keep him at ease and make him to speak the truth away from influences.
- E. Do not launch security proceedings against a juvenile.

The Protection of Human Rights Act 1993

522. Important provisions of the Act:-

- 1. It is applicable to the whole of India.
- 2. Human rights are, the rights relating to liberty, equality and dignity of the individual guaranteed by the Constitution.

The National Human Rights Commission – Constitution

523-1. The National Human Rights Commission has been formed comprising a Chairman and four members.

2. In addition to this, the Chairperson of National Commission for Minorities and the Chairperson of National Commission for Women will also be the members of the National Human Rights Commission.
3. The headquarters of the Commission is at Delhi and the Commission functions through the Secretary General, who is also the chief executive officer of the Commission.
4. The members of the Commission will hold office for five (5) years.

Functions of the Commission

- 5-A. The National Human rights Commission can suo-moto under take enquiries on information or on a petition into the components of violation of human rights or abetment thereon or against officials not preventing such violation.
 - B. The Commission can intervene in any proceeding involving such violation pending before a court.
 - C. The Commission can visit any jail or any other place for retention where persons are allegedly confined. The commission can also summon any person and examine on oath.
 - D. The commission can also receive any document or affidavit, petition etc.
 - E. The Commission can ask for investigation by any Central or State government agency.
 - F. After enquiry the Commission has the power to direct the State or Central Government to initiate prosecution.

- G. The Commission will submit an annual report to Central Government and to State Government concerned about violation of human rights that were brought to its notice.

State Human Rights Commission

6. State Government, can constitute a State Human Rights Commission with per Section 36, the National Human Rights Commission. In Sikkim a State Human Rights Commission has not been constituted. In absence of State Human Rights Commission a State Police Board constituted under the Sikkim Police Act, 2008 attending the complaints related with Human Right Violations.

Code of conduct for the police to avoid allegations of violation of human rights:

524-1-A. Police are expected to work within the framework of law and are not expected to take law into their own hands on the plea that the existing law is not sufficient. They cannot play that role of lawmakers and judiciary. It is for the other wings to take care on the point of sufficiency or insufficiency of law. Police are only expected to play the role of an enforcing agency.

- B. The police in establishing and enforcing law must as far as practicable, use the methods of persuasion, advice and warning. When use of force is inevitable, it must be as per the procedure and to be the bare minimum.
- C. The police officers must remember that they are also members of civilized society.

- D. They should remember that their efficiency depends upon the ready co-operation of the public.
- E. They should always be courteous and well mannered and they should be dependable, predictable and impartial.
- F. They should remember their own limitation and shall not usurp the functions of judiciary.

Awareness

- 2. The human rights awareness includes awareness about the rights of the accused, victim and the rights of the general citizens. A growing awareness will reduce these violations. This is also possible by educating the law enforcing authorities. They should be trained about the rights of the citizens. Accessibility to the public and prompt response to their grievances goes a long way in protecting the human rights. Enactment of laws or making amendments in laws may help to a certain extent but what is really needed is a change in attitude and proper understanding of human rights.

Duties of Human Rights Cell in the Office of the DGP

- 525.** There is one Human Rights Cell in PHQ under the control of SP/SSP, CID. The role and duties of this Cell shall be as follows:
- 1. The Human Rights Cell will act as the main link between the NHRC and the State Police agencies.
 - 2. All important cases/complaints referred by the Commission to the State Human Rights Cell wherever specifically indicated, would be got enquired into by an officer of appropriate level. Thereafter, the recommendations made by the Commission are to be followed up to ensure appropriate action against the delinquent officials is initiated and remedial measures taken, wherever required.

However, in cases where the Human Rights Cell feels that an impartial enquiry may not be possible due to extraneous considerations, then it may recommend investigation by the State CID or even the CBI.

3. To keep a close watch on the alleged violations of Human Rights by police personnel which come to light through the newspapers, publications/other sources including complaints to different functionaries.
4. All enquiries/case relating to police atrocities/harassment/abuse of authority, being sent by the Commission to the District Supdt. Of Police for ascertaining facts and verification, may be monitored by the Cell. A copy of all such references will be sent to the Cell, to enable them to monitor timely response from the SPs. They will also ensure follow up action wherever specific directions have been passed by the Commission by way of compliance.
5. Human Rights Cell to regularly interact with the District SsP on human rights petitions/complaints and issue instructions/guidelines, so as to minimize and prevent violations of human rights by the police.
6. To conduct surprise visits to Police Stations, to check cases of illegal detention and abuse of authority.
7. To take such other steps as may be necessary for preventing violations and protecting and respecting the Human Rights of the citizenry who come in contact with the police functionaries.
8. Special care has to be taken to see that women, children and the vulnerable sections of the society, are not harassed by the police by calling them to the police station in avoidable circumstances.
9. To coordinate with State Police Training Centre to ensure that their in-service training curriculum have sufficient elements of human rights jurisprudence for the trainees of all ranks. Such a module would aim at educating and sensitizing on the following matters:
 - A. Constitutional provisions relating to rights of citizens.

- B. Key provisions in the substantive law that provide explicit “do’s” and “don’ts” in matters of arrest, interrogation, search and seizure etc.
 - C. Landmark judgements of the Supreme Court on human rights matters; and
 - D. The implications of fall-outs and non-observance of the human rights guidelines/instructions/laws, while discharging their duties and responsibilities.
10. Organize inter-active sessions/capsule courses of appropriate duration in all training institutions where prominent personalities, lawyers, NGOs are called for participation.
 11. Compilation of the departmental circulars and directions on the human rights mandate, issued by the PHQ from time to time and see that these are re-circulated for recapitulation.
 12. To identify specific areas of societal human rights violations in the State and to plan out preventive and rehabilitative schemes in conjunction with the concerned Departments (for instance in the field of Child Rights-child sexual abuse, child-labour Gender Justice, Juvenile Justice, non-criminal mentally ill lodged in prisons, discrimination towards the under-privileged, Backward/SC/ST in specific areas etc.)
 14. Personally monitor investigation of cases relating to custodial deaths, rape and torture/illegal detentions in police custody and take remedial measures/follow up departmental action.
 15. Actively promote human rights literacy and awareness through publications and media programmes.