

Police & Human Rights in India: A Review

Abstract

Human Rights are those fundamental, inalienable rights available to those who are born on the place of earth. Human Rights transcends boundaries.

Human Rights and Police function is nothing but balancing between liberty of individual and state's responsibility to enforce law and administration should be in a win-win situation to respect human rights.

In order to effectively perform the function, police have been vested with some power which include the legitimate use of force. But the issue is when to use and how to use without disturbing the human rights. Extreme human right activist say that state should not use force at all but a conflict free society is an utopian concept. So, in order to strive a balance between human rights and police power these is need of law oriented police, and justifiable use of force by power. And there should be human rights cells in every police station.

Keywords: Law Enforcement, Accountability, Professionalism, Legitimate Use of Force, Rule of Law, Inalienable Rights, Egalitarian Rights, Justice, Humane Policing.

Introduction

It is an indispensable necessity of all kinds of government to have machinery in administration to enforce law and to prevent its breaches. This work is presently done by a very well organized system of police administration, but in olden days police organisation was amalgamated with revenue and other civil administration and the revenue officers besides, discharging revenue and other civil works were simultaneously entrusted to carry out the policing jobs also, which in course of time, came into gradual existence. Thus the organization of the police department was considered as one of the most important functionaries of the state in order to protect the society from evil minded out laws criminals and the strong.

Yajna Valkya says that detection of crimes and arrest of suspicious, protection of civil population and prevention of illegal acts were the basic functions of police.^[1] Kantilya too had held the same view. Hence policing is one of the most important requirements of a peaceful coexistence of the society. There are three styles of policing. There is watchman which emphasizes maintaining order. There is Legalistic which emphasizes law enforcement and professionalism and then there is a service which focuses on the treatment of the individual.

Aim of the Study

The Aim of the study is to depict a real picture of Human Rights situation in India. The Study shows several forms of Police brutality which endangers Human Rights. There is urgent need to reenact our antiquated police laws to ensure accountability of police & protection of Human Rights.

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. Image of police in eyes of common man is like an agent of state who do not shy away with the use of force. Police force enjoys poor credibility police is treated by the common man as an agent of rich and powerful. And this image has not developed suddenly. We can see its traces in past. Accounts of Kalidas indicates unsatisfactory performance of police personnel and integrity of official was also portrayed to be questionable and blemish. They are said to be experts in accepting bribes and alcohol addictions prevailed among them. Bana has also mentioned about their unpopularity among the people². It must have been done to their intolerable tortures, being committed on the innocent people. Further, The police Act of 1861 enacted by the Britishers to strengthen the repressive authority of the police in the aftermath of first war of Independence in 1857, still remains the

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cornerstone of Indian Policing in 21st Century. The purpose for this enactment on of police Act was to crush the dissent of any movement for self determination. This stands in sharp contrast to principles enshrined in all modern policing system which are to serve and to prevent crime by working with people.

After the Independence, a period which saw great atrocities committed upon the citizenry by the police in the aftermath of the Emergency. There was a hue and cry against the police and demands for dismantling the central police organisation. The government of India appointed a National Police Commission for fresh examination of the role and performance of the police, both as a law enforcing agency and as an institution to protect the rights of the citizens enshrined in the constitution. It recommended functional independence, strict accountability and professionalism. It is the duty of the police to preserve order and prevent crime. 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 citizen's rights. Corruption erodes public faith in police and undermines the rule of law, leading directly or indirectly the violation of Human Rights.

Human Rights are commonly understood as "inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. Human rights are thus conceived as universal and egalitarian. These rights may exist as natural rights or as legal rights, in both national and international law^[3]. The concept of human rights is related to the concept of human dignity. It means all such rights which are essential for the maintenance of human dignity can be put in the category of human rights.

There are many international treaties and declaration, which confer rights and freedom on individuals one of them is universal declaration of Human Rights of 1948 which was adopted first after the second world war. The historical accounts of India also proves the concept of Human Rights were manifested in ancient Hindu civilizations. According to Gita, "He who has no ill-will to any being who is friendly and Compassionate who is free from egoism and self sense and who is even minded in pain and pleasure and patient is dear to god" Kautilya's Arthashastra also talks about civil, Legal and Economic rights. And the preamble of the constitution of India also pledges social, Economic and Political Justice, equality of status and of opportunity and fraternity assuring the dignity of the individual right to freedom of speech, expression, profession, religion faith, association etc. also incorporated as fundamental right of citizen of India⁴.

All such rights and freedom may affect, and may be affected by, policing. Policing is one of the means by which states meet a fail to meet their obligations under law to ensure respect for and protection of the rights and freedom of individual and groups within their jurisdiction. Accountability of police for their acts or omissions is essential to the protection of all human rights, and this accountability is reinforced by the right to effective remedy when

convention rights and freedom are violated⁵. The protection of human rights by and through policing is implicit in the provisions of Article 28 of universal declaration of Human Rights. The Police plays a significant role in the protection of human rights as they are charged with responsibility of maintaining order and enforcing laws. Unfortunately at times, when discharging their duties, the actions of the police conflict with the human rights regulations. The use of abusive language, torture and third degree are few example of police deviance in a country like India. Violation of human rights during police custody to using third degree measures for unearthing the truth, indecent behaviour at women including rape, death of suspected person in police custody etc. The supreme court in D.K. Basu's state of West Bengal held that custodial death is perhaps the worst type of crime and human right violation in a civilized society governed by Rule of Law⁶. The court reiterated that any form of torture whether during investigation, interrogation or custody would squarely fall with in the inhabitation of Ar. 21 of the constitution. The Supreme court in Jogender Kumar Vs State of U.P. laid down certain guidelines governing arrest of a person during the investigation. The court reiterated that as soon as the arrest is made, a near relative or friend of the arrested person should be informed about the arrest stating grounds and place of detention. There must be an entry in the police dairy as to who was so informed.

These constitutional provisions are made to protect the human rights of people of India. Our country being a signatory to U.N. Declaration of Human Rights, has sought to protect the right of equality, right to life and liberty etc. through fundamental rights enshrined in Part III of the constitution. Besides these constitutional provisions, the National Human Rights commission and the State Human Rights commission as also the Human Rights courts set up under the protection of Human Rights Act, 1993 responsible for Protection and Promotion of Human Rights. The Commission is allowed to visit any jail or other institution under the central or the State Government where persons are detained or lodged. According to the Protection of Human Rights Act 1993, where the enquiry conducted by the commission discloses a violation of human rights, it can advise the government to take action against the guilty person or grant relief to the victim⁷.

In many respects, the human rights commissions have acted as a check. The Problem, however, is that an institution like NHRC in a country of India's size becomes too remote from the scene to be effective in many cases. A large number of police atrocities are committed in small towns villages of India, where people are not aware either of the commissions existence or of it's procedures. The NHRC in it's report for the year 1999-2000, expressed it's disappointment with the slow pace with which state government were acting to constitute state human rights commission. Till now only twenty states have established state human rights commission. It also noted that not all human rights commission that had been established were being appropriately supported through the provision of adequate financial

and manpower resources⁸. Hence, there problems needs to be rectified for the growth of Human Rights.

Conclusion

In India, the policing must be efficient, lawful and humane so that those who have to make laws and implement them cannot become the law breakers in the society. It is the responsibility of the government to ensure that police agencies are properly resourced.

Also there must be continuous external supervision and monitoring by the government and legal institutions. The Police must abide by the human rights regulations to ensure human dignity and involvement of society in policing. This will not only strengthen the bond between the police and society but also create a police friendly environment. There should also be a close cooperation & coordination between the police, bench and the bar. Any lacuna or draw back in the system would result in violation of Human Rights which are basic fundamental rights or inherent rights of every individual. Further, Government needs to amend the law appropriately so that policemen who commit atrocities on person in their custody are not allowed to escape by reason of paucity or absence of evidence. Thus, it is high time

to re-enact our existing antiquated police laws to ensure better accountability, efficiency society, friendly approach and helps in preventing human rights violations. Also, India must take immediate steps to curb inordinate delays in adjudication and accurate policing and investigation is must for right judgment.

References

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3. *Commonwealth Human Rights Initiative (2007), op. cit., pp. 20-24.*
4. *Article 19(1) of Indian constitution.*
5. *Commonwealth Human Rights Initiative, Summary of Recommendations made by Padmanabhaiah committee on Police Reforms available at <http://www.humanrightsinitiative.org>.*
6. *ALR 1997 SC 610*
7. *Section 18.*
8. *National Human Rights Commission : Annual Report, 1999-2000, p.88*