The Concern of Police with Human Rights in India

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ABSTRACT
The protection of human rights is fundamental to genuine and lasting law and order. The universal declaration of human rights recognizes that 'It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by rule of law'.

Each society evolves its control mechanism to ensure stability, integration and cohesion among it's individual. So institutions are important in the life of a nation. In India, where a recent democracy is shaping the lives of millions of diverse people, in a land ravaged by centuries of colonialism and exploitation, the needs for a well functioning institution is undisputed. The institution of police is obviously an important one in the democratic system of the country. The security and well being of the citizens is dependent upon the police.

Keyword-- The institution of police is obviously an important one in the democratic system of the country.

I. INTRODUCTION

The police as an institutionalized mechanism of control have been accepted as a valid tool for maintaining order all over the world. As an executive arm of the government, hierarchically organized police is responsible for the maintenance of order, public peace and tranquility.

Needless to mention the place of tranquility can only be achieved in an environment where people are ensured of security and given assurance that their rights can not be snatched by any person or group how so ever might is he. Obviously the duty of protection of the rights falls on the shoulders of police force.

The concern of police with human rights begins with the preamble to the Constitution which resolves 'to secure all its citizens:
Justice, social, economics and political;
Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity; and,
To promote among them all
Fraternity assuring the dignity of the individual and the unity and integrity of the Nation'.

II. RIGHT TO JUSTICE

There can be no justice unless police takes cognizance of crime, investigates in order to find truth, and helps the victim of crime who is an aggrieved party. A sense of justice appeases the disturbed mind. A person wronged by someone as a right to seek justice from the state which has a system designed for this purpose. The object of investigation is only to prosecute but also an effort to seek justice. Therefore, a citizen is entitled to justice which the state is bound to secure.

The denial of rights leads to injustice. The interest of every citizen is demonstrated in the Declaration which states that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and therefore it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

The principle of justice is incorporated in the following stipulations of the Constitution:
1. Equality before law. Art 14
2. Prohibition of discrimination. Art 15
3. Protection in respect of conviction of offenses. Art 20
4. Equal justice and free legal aid. Art 39A
5. Separation of judiciary from executive. Art 50
6. Assumption that a person is innocent till proved guilty.
7. Rule’s of open trails.
8. Need for expeditious trial.

III. RIGHT TO BE HEARD

This is a sequel to the right to justice which is implicit in the preamble and Art 14. Every complainant approaching police station has a right to be heard. This right is incorporated in Sec 154 and 155 of CrPC. In both
cases the complaint shall be recorded and the copy of the
complaint given to the complainant free of cost.

Justice is not available to one who is not heard
either by police or the court. Therefore, in cognizable case,
the police is bound to record complaint, and in non-
cognizable case, the police has to inform the complainant
the remedy available, i.e., ‘refer the informant to the
Magistrate.’

IV. RIGHT TO PROTECTION OF LIFE
AND PERSONAL LIBERTY

Art 21 states: ‘No person shall be deprived of his
life or liberty except according to procedure established by
law. Stated in functional terms, it means that police cannot
detain any person unless there are reasonable grounds for
action. Any detention of a person without taking
cognizance of a case or without valid order of a court or
competent authority or reasonable grounds for preventive
purposes is illegal and cannot be made.’

There is a provision in Sec 160 CrPC to require
attendance of any person who appears to be acquainted
with the facts and circumstances of the case. So a suspect,
for that matter, can be summoned under this section.
There is no need to resort to subterfuges and frustrate the
legal stipulations, besides into the risk of committing an
illegality.

V. PROTECTION AGAINST ARREST
AND DETENTION

Art 22 states: (1) No person who is arrested shall
be detained in custody without being informed, as soon as
may be, of the grounds for such arrest nor shall he be
denied the right to consult, and to be defended by, a legal
practitioner of his choice.

(2) Every person who is arrested and detained in
custody shall be produced before the nearest magistrate
within a period of twenty-four hours of such arrest
excluding the time necessary for the journey from the
place of arrest to court of the Magistrate and no such
person shall be detained in custody beyond the said period
without the authority of Magistrate.

There are four stipulations in this Article:
1. The person arrested shall be informed of the grounds
of arrest. This is also contained in Sec 50 CrPC which lays
down that ‘Every police officer … shall forthwith
communicate to him full particulars of the offense for
which he is arrested or other grounds for such arrest.’
2. He has a right to consult the legal practitioner of his
choice.
3. He shall be produced before the nearest magistrate
within 24 hours of his arrest.
4. Freedom from detention beyond the said period except
by the order of the Magistrate.

In addition to the above, the police officer shall
also inform the person arrested in bailable case that he is
entitled to be released on bail.
The points arise out of these provisions:
(a) No arrest shall only because it is lawful to do so. The
police officer will have to justify the arrest.
(b) The person arrested is entitled to have a friend, relation
or any person known to him informed that he has been
arrested and the place of his detention. An entry shall be
made in the police diary as to who was informed. This
order is necessary to prevent the panic to the family when
a person is missing.
(c) The person arrested has a right to medical examination
‘which will establish the commission by any other person
of any offense against his body.’ (Sec 54 CrPC). In the
case the Magistrate shall direct the examination.

VI. RIGHT FOR SPEEDY TRAIL

The police can register cases, but the investigation
should be done without causing undue delay. The suspects
can not and should not be kept in suspense for long. The
code of criminal proceeding (CrPC) 1973 prescribes
limitations of the period of time for investigation in certain
categories of crime.

VII. RIGHT TO BAIL

It consists of the following provisions:
1. There is a right to be released on bail in all bailable
cases. It is also supported by the obligation in this respect
as contained in Sec 50(2) CrPC: ‘Where a police officer
arrests without warrant any person other than a person
accused of a non-bailable offense, he shall inform the
person arrested that he is entitled to be released on bail and
that he may arrange for sureties on this behalf.’
2. The right of a child under 16 years, woman, sick or
infirm person to be released on bail even in non-bailable
cases.

The Supreme Court has, on the basis of the
principle ‘Bail and not jail’ ordered that a person who is
not able to get a surety can be released on his personal
bond, thus reposing confidence in the integrity and dignity
of the individual.

VIII. REGULATIONS ON HANDCUFFS

In a landmark judgment prohibiting use of
handcuffs generally, the Supreme Court made a scathing
comment on the practice of police putting irons in the soul
of the arrested person. It states: Handcuffing is prima facie
inhuman and therefore, unreasonable, is over-harsh and at
first flush, arbitrary … (To) inflict ‘irons’ is to resort to
zoological strategies repugnant to Art 21.’ Therefore,
‘irons forced on under trials in transit must conform to the humane imperatives of the triple articles (14, 19, 21).

The Court categorically states: ‘We lay down as necessarily implicit in Articles 14 and 19 that when there is no compulsive need to fetter a person’s limbs, it is sadistic, capricious, despotic and demoralizing to humble a man by manacling him. Such arbitrary conduct surely slaps Article 14 on the face. The minimal freedom of movement which even a detune is entitled under Article 19 (Sunil Batra AIR 1978 SC 1675) cannot be cut down cruelly by application of handcuffs or other hoops. It will be unreasonable to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safe-keeping… So it is that to be consistent with Arts 14 and 19 handcuffs must be the last refuge, not the routine regimen’. 6

In a judgment delivered on 1st May, 1995 in case Citizens for Democracy vs the State of Assam, the Supreme Court has taken a serious objection to the use of handcuffs on the undertrial prisoners under medical treatment in a hospital. The Court says: ‘We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner-convicted or under-trial while lodged in a jail or anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back.

The Court has spelled out action to be taken under certain circumstances:
1. ‘Where person is arrested by police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines (in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and finding that no other practical way of forbidding his escape is available), that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters can only be under the orders of the Magistrate.
2. When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for handcuffing of the person so to be arrested.’
3. ‘In all cases where a person arrested by police is produced before the Magistrate and remand judicial or non-judicial is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the remand.’
4. ‘Where the police or jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out then the said prisoner be produced before the Magistrate concerned and a prayers for the permission to handcuff the prisoner be made before he said Magistrate.’
5. ‘The police and jail authorities on their own shall have no authority to direct the handcuffing on any inmate of a jail or during transport from one jail to another or from jail to Court and back.’

The Court has further warned: ‘We direct all ranks of the police and the prison authorities to meticulously obey the above mentioned directions. Any violation of any of the directions issued by us by any rank of police or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other legal sections under law.’

Two things are clear. One, the principle of the dignity of the individual has been vindicated. Two, the Court has spelled out the limitation on the authorities and thus given directions which have the force of law and are actionable.

IX. RIGHTS PERTAINING TO ARREST

The arrest of a person is a limitation on the right of freedom. This being a fundamental right, the police must be extremely cautious in deciding about arrest and subsequent procedure to be followed. The sequence is as under:
1. Decision that arrest is justified as it cannot be made merely because the offense is cognizable.
2. Recording the decision to arrest giving full justification.
3. The grounds of arrest to be informed to the arrested person.
4. The right to be released on bail in a bailable case even on personal recognizance.
5. In case of arrest, information is to be given to his relative or friend or anyone known to him in order to enable him to contact his people.
6. An entry of the above to be made in the diary.
7. Since he has a right to consult his lawyer, facility to be provided to do so.
8. Handcuffs not to be used unless justified and permitted by court.
9. To be produced before the nearest magistrate within 24 hours.
10. To be kept in reasonable surroundings while under remand or in the lockup.

X. SELF-IMPLICATION PROHIBITED

‘No person accused of any offence shall be compelled to be a witness against himself.’ Art. 20.

This stipulation is in accordance with Sec. 26 of Indian Evidence Act which states: ‘No confession made by any person while in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.’
There is, however, one exception. Sec. 27 of Indian Evidence Act lays down that ‘when any fact is deposed to as discovered in consequence of information received from a person accused of any offense, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, are related distinctly to the fact thereby discovered, may be proved.’

XI. WOMEN AND CHILDREN NOT TO BE CALLED TO POLICE STATION

There are two significant rights:
(1) Right of a female to be searched by another female with strict regard to decency. Sec 51(2) CrPC.
(2) Right to be examined at the place of her residence. Sec 160(1) CrPC lays down ‘that no…woman shall be required to attend at anyplace other than the place of her residence in which such…woman resides.’

The rights of children are spelled out in the Probation of Offenders Act and the Juvenile Justice Act. These have also been spelled out by the UNICEF and the UNO in their various pronouncements.

XII. RIGHTS OF PREVIOUS CONVICTS

The expression ‘personal liberty’ in Art 21 is very significant. This extends to the rights of privacy. The domiciliary visits by police to the house of a ‘bad character’ are prohibited as these violate the right of privacy of the individual and his family as well as affects his dignity. Moreover, there is no logic for such a visit. It was merely a hangover of the colonial times. All visits to the residence have to be authorized by law.

XIII. RIGHTS OF CONVICTS

Another right is contained in Article 20(1) in two parts. It states that:
(a) ‘no person shall be convicted of any offense except for violation of law in force at the time of the commission of the act charged as an offense; and
(b) no person shall ‘be subjected to penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offense.’

Another specific right is in Art 20(2) which states that ‘No person shall be prosecuted and punished for the same offense more than once.’ The convicted persons are also protected by the UN’s Standard for the Treatment of Prisoners, 1955.

XVI. PROHIBITION OF TORTURE

Although it is not specifically prohibited in the constitution, it would be naïve to assume that it is permitted. It is prohibited in the Constitution in an implied manner.

(a) The preamble assures ‘the dignity of the individual.’
(b) Art 21 categorically states that no person shall be deprived of his life (death in custody) except according to procedure established by law (in the case of right of private defense, apprehending a criminal under certain circumstances)
(c) Fundamental duty of a citizen including a policeman to abjure violence as per Art 51A (i) and abide by the Constitution which means rule of law.
(d) Offenses affecting the human body in general and specific offenses u/s 330 IPC (voluntarily causing hurt to extort confession), 331 IPC (voluntarily causing grievous hurt to extort confession) and 348 IPC (wrongful confinement to extort confession).
(e) Over a period of time a certain jurisprudence has developed to suggest that the burden of proof that the death of a detenu or an injury was not caused by the policeman in whose custody the detenu was lies on police.

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REFERENCE