



A Police Perspective on Human Rights

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The concept of human rights is in existence in India since ancient times. Indian Rishis and Munis strongly believed not only humans, but all other living and non-living beings including the earth, water, mountains, and air also have inviolable rights which need to be protected by one and all. At the time of independence, many pandits were identified, having excellent knowledge of Indian scriptures including the Ramayana, Mahabharata, and different smritis such as Manu Smriti, Yagnyavalkya Smriti, treatises such as Artha Shastra by Chanakya, and Panchatantra by Vishnu Sharma. Many of them were specially co-opted in making the Constitution of India. Practices followed during different regimes during the medieval period including the Mughals and the Marathas were examined in detail before coming to any conclusion. Ideologies propounded by Western political thinkers such as Niccolò Machiavelli in *The Prince*, and Hobbes and Rousseau guided the conceptualisation. Principles initiated during the French Revolution, American War of Independence, First and Second World War, League of Nations and United Nations, resulted in the famous Charter of Human Rights adopted in 1948. Members of the Constituent Assembly vigorously participated in the freedom struggle of India. The Drafting Committee made an in-depth comparative study of

different democratic Constitutions in the world. A culmination of these ideas is reflected in the debates of the Constituent Assembly spread over three years resulting in the emergence of the Constitution of India. The Indian Constitution is not only a static book but it is a dynamic and progressive conviction of the peoples' aspirations to find solutions to emerging problems in a democratic way.

Part 3: Fundamental Rights and Part 4 Directive Principles of the State

After a careful study of the prevailing constitutions in several countries in the world, the makers of the Indian Constitution prepared two separate

parts namely Fundamental Rights and Directive Principles in the Constitution. They together incorporate most of the democratic rights as well as the basic framework of the criminal justice system. The broad dividing line between the two parts is that while the fundamental rights are judiciable, the directive principles are not. In other words, any violation of the fundamental rights can be challenged before the courts of the country, and the courts if required, can ensure their enforcement by giving suitable directions to the Executive Wing of the Government. On the other hand, the principles mentioned in the Directive Principles are recognised to be of great



importance, but given the limitation of resources, the State is expected to implement them as per the availability of funds. Thus, the Constitution has made the fundamental point in the criminal justice system that there would be segregation between the Executive and the Judiciary and the actions of the Executive having bearing on fundamental rights are always open to challenge before the Judiciary by any individual whether he is the citizen or alien, an individual or an organisation.

Fundamental Rights

The Constitution of India guarantees the right to equality before the law, equality of opportunity in matters of public employment, protects freedom of speech and expression, assemble peaceably, form association of unions, move freely throughout the territory of India, reside and settle in any part of the territory of India and to practice any profession, or to carry on any occupation. From the criminal justice system, the Constitution significantly provides for protection in respect of conviction for offences. It states, “No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, no person shall be prosecuted and punished for the same offence more than once, and no person shall be compelled to be a witness against himself.” Thus the Constitution provides a guarantee against any arbitrary activity by the executive action and can be considered a firm foundation for the criminal justice system. It further underlines that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. The Constitution emphasizes, “No person who is arrested shall be detained in custody without being informed of the grounds of arrest, and he shall not be denied the right to defend by a legal practitioner of his choice, every person arrested shall be produced before the nearest magistrate within a period of twenty-four hours.” It also

provides certain reasonable precautions against preventive detention that it will not be more than three months unless approved by persons of the Advisory Board and these persons would be qualified to be Judges of the High Court. All these principles are the characteristics of the democratic system and its criminal justice system. Not only these, but the Constitution goes ahead and guarantees the freedom of conscience and free profession, practice and propagation of religion, freedom to manage religious affairs, freedom as to payment of taxes for promotion of any particular religion, freedom as to attendance at religious instructions or religious worship in certain educational institutions. Taking a bold step far ahead of its times, the Constitution provides protection to minorities against the majorities and states that the minorities will have the right to establish and administer educational institutions. The Right to Property is also assured by laying down the provision that no person shall be deprived of the property, save by the authority of law. To provide remedies for enforcement of these rights, it states; “the right to move the Supreme Court by appropriate proceedings for the enforcement of these rights is guaranteed.” Even a cursory look at these provisions will convince anybody that the basic tenets of the liberal democratic justice system are not only incorporated into the Indian

system but have been enhanced in a much more concrete manner than many other countries which claim to be democratic. This is particularly true about the rights of religious minorities for propagating their religion or to run their educational institutions as they like. In a historical step, the Constitution nullified all previous laws which went against these rights and further assured that in future, the Executive is prohibited from taking away these rights. And the duty is cast on the courts, “any law made in contravention shall to the extent of the contravention, be void”.

Thus the Constitution provided the strongest articulation of its intentions regarding the purpose of the governance, the process and the corrective measures. It emphasised that the cherished goals are equality, non-discrimination, and freedoms of expression, movement, and property rights. The process assures that there would be protection in respect of conviction for offences, protection of life and personal liberty and protection against arrest and detention. The corrective measures are also incorporated expressly by moving the courts for their enforcement. Thus the Constitution makers have left no doubts in the minds of anybody regarding the criminal justice system.

Directive Principles of State Policy

The Constitution does not stop at this but also lays down the Directive



Principles for all future laws. It states that the State shall endeavour for equal distribution of wealth, right to employment, equal pay for equal work for both men and women, protection of children against exploitation, free legal aid, and promotion of instructive and economic interests of depressed classes known as Scheduled Castes and Scheduled Tribes and other weaker sections. This inadequacy of means was the most important reason for not making these directive principles as fundamental rights. This was also the rationale for not providing for enforcement of these rights by any courts. Before we look into the aspects of the implementation of these rights and principles, let us have a look at the development of the human rights scenario at the international level.

Development of Human Rights at the International Level

The history of the development of human rights in individual countries goes long back, and some important milestones in this regard in the modern times could be recalled, for example, the *Magna Carta* and other charters and agreements in the U.K from the 12th century in the struggle of the people against the monarch, principles for which the French Revolution and American War of Independence were fought. Following the Second World War, the comity of nations came together and formed the United Nations. In 1948,

the General Assembly of the United Nations adopted the historic Declaration of Human Rights. It also set up the Commission on Human Rights in 1947. In thirty articles, the Universal Declaration of Human rights mentions that human rights are universal. All are equal before the law, right to life, liberty and personal security, right against cruelty, torture, right to move national tribunals for a remedy against violation of fundamental rights mentioned in the local constitution, and prevention against arbitrary arrest and detention. It further states that everyone is entitled to a fair and public hearing by an independent and impartial tribunal regarding any criminal charges against him, everyone shall be presumed to be innocent till proved otherwise, prevention against arbitrary interference with privacy, family, or correspondence. It underlines freedom of movement and residence within the state as well as outside the state, right to nationality and marriage. It declares that no one shall be deprived of property arbitrarily. It emphasises the freedom of thought, religion, opinion and expression as well as peaceful assembly and association. It mentions that everyone has the right to participate in the government and have equal access to public services. Everyone has the right to employment and equal pay for equal work. Everyone has the right to education, leisure and a standard of living adequate for the health and wellbeing

of himself and his family; everyone has the right to participate in the cultural life of the community.

In addition to this declaration, the United Nations has also made special efforts through UNESCO for the promotion of the rights of women and children to prevent any discrimination against them and to promote their wellbeing. Enforceability of human rights is critical for their realisation, and hence the United Nations has urged all member countries to incorporate these rights into their Constitution and provide remedies against their violations. The United Nations has also set up the High Commission for Human Rights which has been assisting in promoting and encouraging universal and effective respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The observations by the Commission are advisory in nature.

Establishment of Human Rights Commission in India

Meanwhile, in India, there was increasing concern that although the provisions mentioned in the above noted UN Charter were suitably reflected in the Indian Constitution, the Government should take extra efforts to implement these rights. The international non-governmental organisations as well as developed countries led by the USA, dominating the IMF and World Bank, which were providing aid to India, were putting continuous pressure on the Indian Government to improve its performance in the field of human rights. Given the above facts and changing social realities and emerging trends like crime and violence, the Government of India considered it essential to review the existing laws and procedures and the system of administration to bring about greater efficiency and transparency. The Government of India created National Human Rights Commission and enacted the Protection of Human Rights Act in 1993. In the words of the First Annual



Report by the Commission, “the Protection of Human Rights Act, 1993, provides the strongest reaffirmation by Parliament, since the framing of the Constitution, that respect for the rights of the people of India is central to the nation's well-being, progress and, indeed integrity.”

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Functions of the Commission

The Commission was assigned the following functions:

Section 12 of the Act, states:

- (a) Inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into a complaint of—
 - i) Violation of human rights or abatement thereof, or,
 - ii) Negligence in the prevention of such violation, by a public servant;
- b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- c) Visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- d) Review the safeguards provided by, or under the Constitution or any law for the time being in force for the protection of human rights, and recommend measures for their effective implementation;
- e) Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate measures;
- f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- g) Undertake and promote research in the field of human rights;
- h) Spread human rights literacy

among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars, and other available means;

- i) Encourage the efforts of non-governmental organisations and institutions working in the field of human rights;
- j) Such other functions as it may consider necessary for the promotion of human rights.

Enforcement of Human Rights in Practice

In the scheme of things, there are major Acts, including Representation of the Peoples Act, IPC, CrPC passed by the Union Government and minor or State Acts passed by the State Governments. These pertain to prohibition, prevention of gambling, regulation of assembly and many more aspects. In addition pronouncements by various High Courts, Supreme Court, and international covenants entered into by the Indian government, advisories by NHRC, National Women's Commission (NWC), National Children Commission (NCC), SC& ST Commission, Minorities Commission, Tribunals elaborate these rights from time to time. These are further coded by government resolutions, orders, manuals by the respective departments such as Police or Prison and standing orders by the Head of the Forces from time to time.

Law enforcement agencies, including security agencies, armed forces, and Central Armed Police Forces such as CRPF, BSF, ITBP CISF and State Police Forces have greater responsibility for protecting and promoting human rights. The State Police are the first respondents to public and personal grievances. The police have the duty to register various offences and investigate these offences. They are the only authority who can prosecute the accused before a court of law. Maintenance of law and order is a State subject, and this is done by the police.

Violations of Human Rights

Real or artificially created perception among a section of the population has tremendous potential to disturb the peaceful situation. This may be due to political clashes between Union and State ruling parties, sharp differences between followers of different religions and many other reasons. The situation is aggravated further by the IT revolution via social media, doctored by elements abroad and within the country. They have a toolkit to systematically create violence and damage the democratic fabric so that the democratically elected government and its representatives are not permitted to take decisions opposed by these vested interests. As we are living in a global village, developments in any part of the world impact us almost immediately, forcing police to resort to the use of force to quell violent



situations. Violent reactions in the form of lynching by mobs against attempts to convert Hindu women, tribals or Scheduled Caste persons by Christian missionaries or Islamic activists are frequently reported from various parts of the country. In many situations, political agitations turn violent. Misuse of the freedom of expression to hurt the sentiments of persons from other religions is resorted to by a section of fanatics and radical elements to influence the youth to disturb the peace.

Freedom of expression and the right to wield the stick ends where the nose of the other person starts. Freedom of expression is subject to reasonable restrictions as laid down by Constitutional provisions. Despite these, incidents of hate speech, war of words, rumours, fake videos, and viral fake news are frequently orchestrated by a section of the propagandists for their vested interests.

The situation gets aggravated when inimical countries including Pakistan, China and a few others indulge in low-cost proxy wars through targeted killings of innocent persons or terrorist incidents. An armed attack by Maoists on policemen and police stations is their declared strategy 'to overthrow the bourgeoisie regime'. In addition, attacks on traffic policemen or policemen going for raids by anti-social elements is a common feature in many urban and rural police stations. In such circumstances, police have no alternative but to resort to lethal as well as non-lethal use of adequate and minimum force in self-defence and/or to save public and private property. Agitators and their supporters allege that the demonstrations were peaceful and in pursuit of their right to protest. But this is subject to the satisfaction of the inquiring magistrate.

At the level of individual grievances, there are abuses of children, women, old age persons, Scheduled Tribes and Scheduled Castes as well as differently/specially-abled persons. Apart from these traditional offences,

technology-driven cyber offences and economic offences are also multiplying every year. The CrPC makes a distinction between cognizable offences and non-cognizable offences depending on the nature of gravity of the offence as understood by the police personnel at the police station.

Annually, approximately three lakh offences are registered under Major Acts, and two lakh offences are registered under State/Special/Minor Acts. This is in addition to law and order duties, patrolling, VIP arrangements, elections, and examinations, requiring policemen to work more than 12 hours daily.

In this background, the major violations of human rights can be summarised as denial of civil and political rights, influencing voters through violence or inducements besides pressurising tactics. At the police station level, there are few aberrations in the form of non-registration of offences, lowering of offences by putting milder sections, the threat of arrest, custodial violence, custodial rapes, custodial deaths, deaths in prisons, detaining of children in the police station, violation of orders related to women such as not to arrest them or call to police stations after sunset, assaulting innocent persons, non-arresting of genuine offenders, preparing fabricated evidence, tattooing on the

forehead of an accused as a thief as well as corruption in omission or commission of duty. Registering multiple offences for the same action resulting in police custody of helpless victims at the behest of political masters is also a misuse of authority and is a violation of human rights.

Following the enactment of the Human Rights Act, there is a plethora of self-declared human rights activists, who have emerged in almost every nook and corner of the country. Blackmailing the authorities in the name of human rights and actually indulging in extortionist activities is the favourite game of these crooked criminals. Criminal cases of cheating need to be registered against these without any fear. These persons pretend to be providing help to the victims, but actually indulge in collecting funds for self-promotion.

Analysis of Human Rights Violations

Close examination of these aberrations reveals that these are the result of undue influence from influential persons to arrest persons to recover property. In a few cases, these can be attributed to a false sense of justice among the police officers under the societal pressure to teach lessons to suspects involved in brutal rapes and murders. In another few cases, it is the result of the registration of false cases to harass estranged relatives including spouses, or





members of housing cooperative societies. Increasingly there is political pressure to arrest or release persons from opposition parties. It is also noticed that there is an increasing tendency to convert civil cases as criminal offences to overcome delays in civil courts or misuse of police machinery to settle scores with opponents. In several cases, false offences are registered to prevent employment to close relatives with whom there may be a property dispute. There is also a tendency of offenders to induce corruption at various levels including police stations, investigating officers, prosecutors, and in some cases, judicial officers to influence the outcome of the trials.

Limitations

When the criminal case is *sub judice*, the NHRC and SHRC prefer to stay away from the trials. However as seen above, the Human Rights Act Section 12 states: "Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court." Hence, it is imperative that in sample cases, the Commission should engage special counsel to represent the victim and to ensure that his human rights are protected.

Secondly, the directive by the NHRC and SHRC to pay compensation to the deceased in police action is frequently challenged in High Courts as there is a perception that the police action in self-defence does not entitle the victim's family/dependents to claim compensation. Moreover, this also adversely affects the morale of the

Force. It also raises the question about the human rights of the police. Are the police not entitled to have the protection of their human rights from such desperados? To provide micro-justice to service-related grievances of individual police officers and men, the Government has established Central and State administrative tribunals. However, a few State Governments have dispensed with these.

Thirdly, the deaths of prisoners may be due to natural reasons even after taking all precautions and providing all possible medical assistance. Charging prison officers for these deaths leaves an adverse impact on the discipline and morale of the prison officers.

Remedies

To overcome these aberrations and to ensure no incidents of police torture occur, the State police machinery in hotly contested elections must be placed under the Election Commission superseding the elected body. An attempt should be made to reduce human interface as much as possible and provide an online registration facility. As DG, Anti-Corruption Bureau and DGP Maharashtra, I had launched www.acbmaharashtra.net so people can report corruption cases, www.wahanchori.com and www.mobilechori.com for registering offences without any hassle. Similarly, most of the government services are being arranged online.

A few other measures which have been implemented recently include

installation of CCTV in police stations, submission of reports to NHRC and SHRC regarding custodial death, magisterial and CID enquiry in custodial death, installation of CCTNS throughout the country, provision of 112 India app in smartphones and cyber helplines valid for the entire country.

Apart from these measures, orientation/training programmes for newly recruited policemen and officers, and periodical induction training courses are arranged to emphasise the importance of human rights for all police officers.

I had also implemented a scheme involving common people in policing as Police Mitras to remove distrust and create an atmosphere of trust and bonding among the police and people. The Scheme was a great success and is operating in several States.

Strict supervision by senior officers, deterrent action, including filing criminal action against erring police officers and men, visits by NHRC and SHRC to police stations, and display of instructions given by NHRC at police stations have also helped to a great extent in reducing the number of violations. In another experiment implemented in Maharashtra, I ensured video linking of prisons and medical colleges/district hospitals. Before the Corona pandemic, in two years, 11000 prisoners benefitted from this Scheme. Similarly, NHRC needs to issue advisory to video-link prisons and medical colleges. This would prevent the deaths of prisoners to a certain extent.

Lastly, as suggested by the Supreme Court, aggrieved persons can approach the Police Complaints Authority at the State and District level to seek remedy.

I would conclude by observing that the protection and promotion of human rights demand constant efforts, and every concerned person should actively participate in this exercise. ■

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