

Are the Indian Police Respect Human Rights??? An Analysis

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ABSTRACT

Human rights violation by police in India is a very common issue. It takes place into various forms knowingly, unknowingly, consciously and unconsciously. Though constitution has been given human rights in the form of fundamental rights, and Human Right Commission is there but the violation of human rights by police serious problem, which is taking place frequently. There are various reasons behind this problem on the side of police personnel, faulty system and due to ignorance of their human rights by the people. The main objective of this paper is to focus on the rights of prisoners, victims and guilty and reasons behind the violation of human rights by police. Some suggestive measures also presented to prevent it.

Introduction

Human is the wisest social creature of this world. He has a distinguish personality and his character has a self respect and dignity. So he need some fundamental rights to develop his personality and live his life in dignify way. Thus he can contribute in social welfare and in sound society building. These fundamental rights must be inviolable. This thought gave birth to the concept of human rights. Human rights are minimum rights which are given to every human being without any discrimination of language, region, religion, caste, nation, gender, and socio-economic condition. A person got human rights because he is human, so he got it naturally by birth without any partiality of generation, caste, colour and gender. So it is fact that the human rights must be depending on primary needs of humanity. Human rights contained in the universal declaration of human rights. In Indian Constitution, human rights are called as fundamental rights. Human rights are also known as a fundamental rights, basic rights, inherent rights, natural rights and birth rights. Human rights are rights that belong to every

individual by virtue of being a human, these rights are necessary to make sure the dignity of every individual and the concept of human rights is mainly based on the notion of equality of each human being. "According to the protection of human rights Act-1993 "Human right means rights relating to life liberty equality and dignity of the individuals guaranteed by the constitution or embodied in the International Covenants and enforceable by court in India." Fundamental rights are guaranteed to citizens under article 12 to 35 in part-3 of the Indian Constitution.

The United Nation Centre of Human Right defines Human Rights as "Those rights which are important in our nature and without which we cannot live as human being". The Universal Declaration of Human Right which adopted on 1948, define human rights as "rights derived from the inherent dignity of human person". Human Rights are meaningless without the Primary Rights of freedom. Human rights are those basic standards without which a person cannot live his life with dignity.

It is the responsibility of State to maintain Law and order, security of citizens, to ensure their human rights, to safeguard their property etc. In a democratic welfare state this responsibility becomes more acknowledgeable. State fulfils its responsibility with the help of police force. In this way to maintain law and order, to control crimes and after any criminal case, to investigate, collection of evidences and to present the witness in the court is the responsibility of police. To do such type of sensitive and hectic work, various legal rights have been given to police. To use these rights without any partiality with a system, there is a fixed legal process. After any crime takes place police investigates and can call any suspected person in police station. If necessary, police can take suspected person in custody. But sometimes due to some reasons violation of human rights take place.

Human Rights of Prisoners

“Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess.” Justice V. R. Krishna Ayer (1978). In India conditions of human rights under police custody is seems to be very poor. Generally police hardly care about the human rights of the person under the custody. Police treat them as they are not human. After and just before going in police custody an individual faces several kind of human rights violation. Main problem faced by these people are not getting a trail, not getting bail, inhuman behaviours, poor living conditions, dearth of proper medical treatment at the time. Prisoners are human being and have the fundamental rights to live their life i.e. human rights. Nobody has the power to prohibit these rights from them. Human Rights of an individual in police custody are protected primarily by the Indian Constitution with the help other laws like Criminal Procedure Code, Indian Penal Code and Protection of Human Rights Act. Article 21 is the most important constitutional provision as it ensures to every person the right to life and personal liberty. These rights are also recognized by various international documents like Universal Declaration

of Human Rights, International Covenant on Civil and Political Rights.

Following are the Human rights in India under article 12 to35 in part-3 of the Indian Constitution:

1. Right to Equality-Article 14 to 18
2. Right to freedom- Article 19 to 22
3. Right against exploitation- Article 23 & 24
4. Right to Religion-Article 25 to 28
5. Cultural and Educational Rights-Article 29 & 30
6. Right to Constitutional remedies- Article 32

Beside these rights IPC and Cr.PC and IEA help in maintaining human rights in following ways:

- Right to get copies of decision. This right is derived from Cr.PC -363. According to this act an individual has right to get the copies of decision given by the court.
- If a person doesn't want to speak, after being arrest, it is his right to remain silent; no one can force him to speak. Right to be silent comes under Indian Constitution Article -20(3), and Cr.PC- 313(3))
- Though a person proved guilty, but still he is human. Nobody has right to take away this right and cannot treat him wrongly. He has the right to live his life with dignity. Right against inhuman treatment is given in Cr.PC - 46, 49, 50, 51, 57, 100 and 165.
- After being Arrest a person has right to have interview with friends, relatives and lawyers to discuss the case or matter. It is given in Indian Constitution, Article 22(1) and Cr.PC- 303.
- If any individual has been arrested in any case by police, he has full right to prove him as he is innocent. Right to prove innocence is described in Indian Evident Act 101.
- After any crime, if police arrest involved people, there is a proper process of it. Police should follow this process in investigation and in other formalities. Right to proper way of arresting, investigation is

given in Cr.PC -46, 49, 50, 51,57, 100 and 165.

- This is the right of any person being arrested to know the reasons of his arrest. Right to know the reason of arrest Article 22(1) describes about the right to know the reason of arrest.
- If the guilty person has no money or belongs to poor family, government is responsible to provide free legal advice. No one can deprive to the justice due to lack of money. So the Constitution's Article 21 and 39 provides Right to free legal advice to the arrested person.
- This is the right of arrested person to present before magistrate within 24 hours without any delay and this right is Constitution Article 22(2) Cr.PC -57, 76 and 167.
- It is very important to make sure that the person being arrested is physically and mentally fit. So medical checkup is essential. After that in jail medical inspection of the prisoner is necessary time to time. Right to medical inspection is given in Cr.PC -54.
- Habeas Corpus applied in cases where unlawful detention or imprisonment of a person is suspected. It is also known as protection of freedom. Article 32 and 226 deals with such types of cases.

Beside these the violation of human rights takes place in the form of Narco analysis, Polygraph/Brain mapping. Handcuffing should not be done unnecessarily. It comes under the violation of human rights. These points should be known to every person and especially police personnel. In this way it will prevent human rights violation to some extent:

- The police carrying out the arrest should bear accurate, visible and clear identification and name. All details of police personnel, who is interrogating must be recorded in a file (Supreme Court Order).

- The police should prepare a memo and time and date of arrest and attested by at least one person of family or any respectable person of the society. Family member, relative or friend of arrested person must be informed as soon as possible. Time and place of arrest and place of police custody should be informed to the relatives or friend of arrested person (Supreme Court Order).
- Medical examination of arrested person must be done by a trained doctor every 48 hours during police custody (Supreme Court Order).
- No woman will be restricted in the police station without any reason (Police Regulation).
- No indecent and nasty language will be used with the women under the investigation in police station and no scurrilous and indecent questions will be asked especially the rape victim will be treated with high sensitivity. If possible report will be written by female police, if not possible at least presence of one female constable will be ensure (Supreme Court Order).
- Statement of rape victim will be taken in the presence of nearest relative and at the time of medical inspection presence of male relative should be ensure, if it not possible female police will be sent (Supreme Court Order).
- Problems of laborers especially of women will be accounted sensitively and possible solution will be provided (Police Regulation).
- If anything recovered from culprit, receipt will be given and proper safety will be provided to the impoundment things (Cr.PC-51).

- If the person died in police custody, National Human Rights Commission will be informed immediately (Order of National Human Rights Commission).
- The information of a person being arrest will be given to his relatives by telephone and if there is not availability of telephone, relatives will be inform by written letter(Supreme Court Order).
- At the time of hearing or moving from one jail to another police can't use handcuffs until the permission is not granted from the related court (Supreme Court Order)
- Medical inspection of remanded person should be taken place within 48 hours (Supreme Court Order).
- Arrested person will be presented before court within 24 hours of being arrest (Cr.PC-57).
- Arrested person should be provided food and basic things in police station (Police Regulation)
- The victim who came to the police station it is compulsory to write report under appropriate act and the copy of FIR should be made available free. (Police Regulation).
- The person have brought to the police station will not be beaten or will not face inhuman behaviour. (Supreme Court Order).
- If a person called police station as witness he will be paid proper travel allowance (Act 160/2/ Cr.PC)

Human Rights Violation by police in India

"This week I was told to do an encounter.... I am looking for my target.... I will eliminate him." Police officer to Human Rights Watch (January 2009). In India most common human rights abuses by police are false charges, illegal arrests, disappearances, poor prison conditions, harsh mental and physical torture, harassment, fake encounters etc.

Registered cases against police personnel during 2009-2013

Year	No. of Complaints received during the year	Complaints declared false/Unsubstantiated	No. of cases registered during year
2009	54,873	28,120	14,975
2010	58,438	31,115	10,470
2011	61,765	28,789	11,171
2012	57,363	30,875	2,289
2013	51,120	26,640	1,989

Source--Crime in India (2013)

"Today jails are known as harassment centres, where corruption sounds and known as the source of inhuman and criminal thoughts"(Bhasin, 2011).

Police abuse of traditionally marginalized groups in India. They include the poor, women, Dalits, and religious and sexual minorities. Police often fail to

investigate crime against them because of discrimination, inability to pay bribes, or lack of social status or political connections. Fake encounter killings do occur frequently in India.

Some cases of violation of human rights by police in India are given below:

How police torture people to confess false charges. A vender in Varanasi told how police personnel tortured him to confess many, unrelated false charges. His hands and legs both were tied; police started beating him badly on the legs with rods and kicking. They were saying that he must tell the name of 13 person gang. Yet he did not know or he was not related with any gang (Human Right Watch Report, 2009).

In 2006 a woman named Gita Pasi was kept in the police station all over the night. In the morning, when her family members went to meet her, police said she had killed herself by hanging from a tree inside the police station. This fact was not believable because the branch of the tree was too low and it was impossible that she hanged herself from it. It was obvious that the police killed her in custody and then pretended she had committed suicide (Human Right Watch Order, 2009).

Arrests are usually made in retaliation for complaints of police abuse, for bribes or due to political or influence of powerful local political figures. The police also use coercion and torture to elicit confessions to false charges. As in the case of D K Basu Vs West Bengal in the Supreme Court, it is included production of a suspect before a magistrate within 24 hours of arrest. Individuals who are poor and belong to socially or politically marginal are especially victim of detention and ill-treated because they are not able to pay a bribe or have no connections with political figures that can intervene. *"Usually the violation of human right of prisoners takes place because they don't know their rights"*(Bhasin,2011).

Reasons behind violent behaviour of police

Police Officers told Human Rights Watch that they used "shot-cuts" to cope with overwhelming workloads and insufficient resources. So they usually refuse to register complains. Almost all police personnel are facing pressure from their superior to

solve cases in hours. Officers of the low rank often work in difficult conditions with hectic workload. They are required to be on call 24 hours a day, every day and sometimes living condition is very poor and live in tents or in filthy barracks at the police stations.

"We have no time to think, no time to sleep. Often the men are tired and irritable and mistakes take place" Gangaran azad, a sub inspector,UP (Human Rights Watch, 2009).

Some causes of such type of behaviour of police personnel are given below:

Familial Cause

Police personnel generally have to do their duty 24x7 without any break, so they become irritated. They hardly find time to spend with their families. Sometimes distance from family develops the feeling of frustration among them. Thus they behave badly with the people in custody. At the time of festivals they have to face heavy workload, it makes them more stressful.

Workload and Poor Living Conditions

Heavy workload is another cause of irritating behaviour of police personnel. Main problem is that working conditions are not favourable. Police especially of low rank live and work in unsatisfactory conditions. They are usually demoralised, exhausted, and government provides them tents or filthy barracks for a little sleep. Pressure of heavy workload without any break make their behaviour worst.

Corruption and Political Interference

Corruption has taken place in every system in India. Police department is not untouched with this disease. Bribe is the weapon of the rich but poor people are the victim of this weapon. "A police

constable told that police officer did not give appointment without money”(Verma, 2012). A recent example shows that the bribe became a part of police department. In Hazratganj police station police corps quarrelled and fight for the dividing the money bribery, which was gained by illegal means. (Hindustan Newspaper).

Another thing is that police face unnecessary political interferences in many cases and in the political pressure they arrests innocent people and release criminals unwontedly. Local people having political influence usually intervene in investigations and sometimes act to save criminals.

Defects in implementation in Investigation System

There are many defects also present in the implementation in investigation system. Investigation procedure should be carried out in the way which must retain the human rights of the person arrest. But most of the police officers apply their own way of investigation that most of the times include torture and violation to make pressure on the victims.

Lack of Judicial Vigilance

Lack of the judicial vigilance is the most important cause of the human right violation practiced by police. In India at most of the places judicial vigilance is almost absent. As the result police officers do whatever they want because they know very well that nobody will ask them about the ways which have applied by them during investigation.

Lack of Supervision of Lock-ups

Proper supervision of lock-ups is not strictly followed in most of the jails. No one care about the condition of the prisoners in jail. Almost each fortnight the news about death of prisoner can be seen in jail. Then others prisoners also puts the issue of ill

treatment by doctors and jail staff. Living condition in jails is poor. So it can be say that the reason behind these problems is the lack of proper supervision of lock-ups.

Defects in Training and Recruitment

One of the most important causes behind human rights violation is the defects in training and recruitment. During training programs there is no place of human rights. Respect of human rights of prisoners not learned by trainee police officers part of their training. In reality these moral teachings are not followed instead they have only learned physical trainings.

Out Dated Acts

The Indian police forces govern under the Police Act; 1861. It is actually very old and drawn by the British. They made this system on the basis of situation of that time and according to their needs and benefits, which is not totally in the favour of Indians. It cannot be apply that system in this modern era because conditions have changed very much. So this should be replaced by new judicial refined system because there are many defects present in this old system which are against the human rights of prisoners as well as humanity.

Lack of Public Co-operation

Image of police in India is not clean and because of this public avoid any type of contact and co-operation in any case. People know that if they co operate police, various problems faced by them. People are called repeatedly in police stations and misbehaved by police as they are guilty. So this is the reason behind the lack of public co operation.

Need of Interrogation Rooms

There is lack of separate interrogation rooms in jails. Because of this sometimes police faces uncomfortable in investigation.

Psychological Reasons, Stress and Strain

Working long hours without shifts is the first reason of stress of police personnel. Second thing is that junior officers usually face pressure from their senior officers to solve cases immediately, which is not an easy task and practically possible in many cases. Sometimes the relationship of junior and senior officer becomes stressful, when senior officers don't care about the problems of junior. "They say, 'investigate within 24 hours,' but they never care about how I will do[that]; what are the resources...."- sub inspector working near Varanasi, Uttar Pradesh (Human Rights Watch,2009).

Another thing is that criminals easily do not accept their crime. Police pressurised to solve the case immediately. So police use various methods to speak the truth, and sometimes police uses the methods violate the human rights. Sometimes for promotions police personnel do fake encounters and arrest innocent people.

Lack of Police Personnel

There is a lack of police personnel can be seen, posts are vacant in the police department. The recruitment of these posts takes much time. Sometimes due to some reasons these recruitments delayed many times.

In many parts of India, the police are the only visible state presence. police say that there is pressure from the public to punish crimes, this leads to the police acting as judge and jury, beating up suspects who are presumed guilty without trial "
- Meenakshi Ganguly(2012), South Asia Director, Human Rights Watch.

Suggested measures to prevent violation of Human Rights in Police Custody

A person is a criminal only if and when he is found guilty by a court of law; the police should also assume that a person in custody may be innocent, until his guilt is proved. After proved guilty in a case, the person has the right to live with human dignity, not as animal. There are needed to be strictly followed Articles 21 and 22(1) of the Constitution to maintain human rights of people. Violation of human rights by police must be seriously taken into account, other than there will be police raj. There should be a committee to inspect and look after the conditions of prisoners in the jail. They should ensure that the behaviour of jail staff with prisoners is good or balanced. The behaviour of police with common people should be so friendly that people cooperation in investigations took place. Making people aware about their rights as they are the member of human community is the main point. At the time of arrest any person police should follow the rules properly. Next point is that government should be taken in to account the conditions in which police personnel are giving services. Police personnel follow their duties 24 hours without taking break, this makes them irritated and tired. Their duties should be organised in shifts in such a way that they feel fresh and ready to bear their responsibilities in good manner. Time to time training programmes should be organized to update the police personnel with present demands and to cope with the problems. Sometimes workshops should be organised on human rights and other relevant topics.

Though corruption is the very serious problem in all the departments and police department is not untouched with this problem. But there should serious efforts to make the process of promotions and recruitments transparent. Sometimes for the promotion fake encounters and arrest of innocent people takes place. Government and police department should take serious step to prevent such

type of happenings. Democracy provides power with responsibility. So police personnel instead of showing their power to inferiors, should be best use of their power in maintaining law and order and protecting and following human rights.

Conclusion

Therefore it can be concluded that in India there is a dire need of immediate reform in police system which is made when India was in the hands of British. Now time has been changed, every system of the state supposed to be updated, but police system is remaining outdated. Government should take right step to the betterment of conditions of prisoners as well as police personnel. Violation of human rights in any condition is not acceptable. Police personnel should trained time to time to do their duties without violation of human rights in any way. So at the time of training the topic of human rights should be made compulsory. Police should behave prisoners as they are human, not as animal. Police should act so that public could co operate them easily in any matter. It is found that sometimes senior officers pressurise their juniors to do wrong things. *“Often, it is our superiors who ask us to do wrong things. It is hard for us to resist- Constable in Uttar Pradesh (Human Rights Watch Report, 2009).* Thus there is a need of worthy effort by the side of police as well by the government to secure the human rights of prisoners as well as the human rights of the common people. Police help line and women helpline and some other steps have been taken for the help of common people. These services are working excellently for bridging the gap between police and common people. But there is a need to do more efforts from the side of police to take public in confident.

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