CHAPTER - IV
CHAPTER-IV

HUMAN RIGHTS VIS-A-VIS POLICE ADMINISTRATION

In this chapter an analysis of the concept of Human Rights and Police Administration has been detailed facilitating an insight into these important instruments in charge of Protection of Rights. Further, in this chapter an attempt is made to find an interlink between these two operating systems at a theoretical plane, thus trying to prepare a platform on which the chapter following this is worked out.

Human Rights and Police Administration as we see them today, are noticeably different in their functioning. In the Indian context this is rather more apparent given to the familiarity of Police Administration as against the recent entry of Human rights. In other words, the current status of these in view, of their familiarity to Indian society clearly places Police Administration as an agency in charge of law and order, crime investigation etc. Thus, identifying it more as an extension or a limb of the state which falls under criminal justice system, much closer to Lenin's argument in his work on ‘State and Revolution’, while Human Rights is seen more as an agency in charge of Protection of Rights of the people because of its much published expressions as a champion and saviour of rights despite the fact that the state itself is a promoter to a full extent and benefactor to a great extent. Further, the complexity of the concept, their institutional structure,
their operational area and the agencies involved in operationalising Human Right activism, having in its composition with people drawn from judiciary thus have given Human Rights an edge over Police Administration which is more an administrative appointment as against that of Human Right which has political nominations. Further, the Human Right organisation headed by retired judge also seem to give them the sanctity desired while placing them above police as an agency scrutinising and surveilling the police as an activity. Much to the bitter taste of Police Administration the Human Right activism is also spreading among NGO's thus increasingly making it difficult for the agencies of state with coercive power to perform. This however is not seen in good taste by police and hence this attempt at theorising the relationship between Human Rights and Police Administration.

Between Human Rights and Police Administration there are a large number of areas and wide ranging issues which in fact are overlapping. Observing such areas, their relationship is often interpreted as being interdependent and critical. Police Administration being at the bottom level in the echelons of criminal justice system is rather accessible to positive and negative challenges. While, the Human Right being a larger canvas with universal concern pre-empts respect from amongst the police. This being their relationship at the primary level, interaction between them no doubt pre-supposes checks and balances while their opposing claim for superiority continues. The word 'Police', as in vogue in India today is indicative of a body of persons selected on the basis of a written and physical
examination and who are engaged in the task of prevention and detention of crime and enforcement of laws. It is one of the agencies of stated by means of which state seeks to meet its obligation to protect the Fundamental Human Rights. Any violation of this code of policing therefore only causes greater threat to this agency by those specialised bodies of state and NGO’s which are constantly monitoring an supervising the activities of this agency. Hence, Police Administration in India is also seen as protector of those rights as enshrined in the constitution while Human Right, is seen in Indian context as a champion and protector of rights striving to establish legal procedures in common land as constitutional principle that can be evoked whenever, there is an outrage of integrity or personal dignity or violation of rights of human beings. This being the context within which these two concepts are operating, covering and controlling a wide range of human activity, invariably derives their strength from the basic law and supreme document of the land that is the constitution.

The preamble of the constitution is the key to learn about the objectives and intentions of the constitution. This being fundamental to the rights enshrined in the constitution it has provided adequate provisions for its fulfilment under its various articles such as the fundamental rights which have a prime place in the Indian constitution as in case of the other democratic constitutions around the world. Having came into existence in the post world war era and also being basic document and the law of the land these provisions in the Indian constitution not only provides to its citizens the positive and negative rights but also speaks of their
duties too. While this is a positive contribution to the growth of an individual citizen, nothing under the constitution prevents the law enforcing agencies to act upon those who misuse or abuse their rights in the society. However as against this provision of the constitution, often in the interest of the unity of the nation and integrity of the state, the state itself has reserved the emergency powers that empower them to withdraw all the provisions of rights under its own constitution.

In order to weaken these provisions and strengthen the sovereign power in a democratic state, judiciary and agencies having judicial jurisdiction operate to strengthen the inalienable rights of human beings in a society. Thus, the constitution of India act both as a provider and facilitator of Rights. Hence the description of fundamental rights as the very foundation and corner stone of the democratic way of life. These rights under Indian Constitution have been guaranteed under 7 broad categories falling between article 14 to article 32\(^1\) one can clearly see the component of Human Rights enshrined in the equal terms with the Universal Declaration of Human Rights (1948). A comparative table (see Appendix No. VI\(^4\)) provides an insight into this. Adding on to this our constitution also has provided to a citizen the right to approach the highest court in the land the Supreme Court directly for any violation of these guaranteed (fundamental) rights within the frame work of the provisions of the constitution subjected to professional and preceding interpretations.\(^5\)

Law and order infect being the essential prerequisite of civilised society thus falls within the purview of Police Administration. Which in India is designed
and designated as an agency in charge maintaining law and order with coercive power sanctioned with restrictions on its use built into the system. While concentrating on their effort at realising these provisions of providing and facilitating rights enshrined in the constitution as an immediate goal these agencies also act as protectors of these rights from any misuse or abuse within or from outside the society.

The values of freedom and equality benefiting the dignity of the human individuals thus are made more complete and substantive in India, by adding on to these rights the ideals of economic and social justice in the constitution which so eloquently is proclaimed in the preamble, elaborated in the fundamental rights and in the directive principles. These objectives of the constitution therefore helps the subsequent governments in power to work on policy alternatives to establish an egalitarian society, free from exploitation of man, guaranteeing liberties not to a few but to all and bringing real freedom to the masses in a positive sense. These extensive provisions dealt at length in the Indian Constitution no doubt in all good sense reflects upon the good intentions of framers of Indian constitution as their anxious concern to see that the society as whole and every member of the society within it should get fullest opportunity to participate in the day today affairs of governance having an atmosphere full of liberties and the freedoms made available for the fullest blossoming of one's personality.
Having set out in the preamble these basic objectives as the national endeavour the fundamental social political ends to be sought by independent India has been elaborated in the ideals of justice, liberty and equality as expressed in the part III of the constitution. Having established this relationship between Human Rights and Indian Constitution as also shown in the comparative table (refer Appendix No. VI) It would be appropriate to understand the Human Rights in its historical context first and then move further Human rights being basically a concept enrolling the human being himself, recognises the dignity of the individual. It starts with the presumption that man is born free and is therefore entitled to all the rights and freedoms that exists in his own surroundings without distinction of race, colour, sex, language, religion or other difference of origin. It postulates that everyone has the right of life, liberty and security. In order to ensure that all the citizens avail of these rights equally, certain specific rights are deduced from this for applicability in day today life with the help of certain organisational structures. A specific right deduced from this is the recognition of the concept of ‘Rule of law’ and the adoption of ‘Due process’ and ‘Fair Trial’ backed by the right to effective remedy. Any breach of these norms therefore is to be remedied, which is also provided in the laws of the lands and particularly in the constitution in the shape of many writs the constitution being the fundamental law of the land by virtue of its position becomes an obligation on the part the those who live in the land and for those who govern it in equal terms. While citizens who are governed by it enjoy it, as a matter of right those will have to carefully utilise it since the onus of its utility lies in their hands and the delicacy with which they put it into
practice. Further the constitution which provides these rights at the same time has created agencies for protection of these ideals in their practice. Thus, police involving in the process of protection of rights of citizens being one such creation of their constitution, while ensuring these fundamental rights to their citizens without any hindrance from vested interest also embarks upon certain positive and negative actions to enrich the enjoyment of rights but certainly not violating Human Rights in dealing with public. It is therefore a cause for concern for the society and the academics in particular as to see how the performance of these two organisations are to be seen. Police on one court argue which of course is in defence of their performance their established role as police. Along with this there by ensuring the protection of Human Rights, does not of alone however put an end to their efforts at establishing social order in a given society. They infact put forth their case stating that they have two other vital roles to play apart from mere maintenance of law and order, they include.

a) A police force has duty under the law to bring law breakers and offenders to book. In other words, to use their initiative where so empowered by law to stop or prevent Human Rights violations occurring in society, try those who are identified as anti-social elements and criminals etc.

b) To examine their own actions methods and behaviour at the time of apprehending a criminal and establishing his interests and alleged
activities within the framework of the law established for the purpose in particular and law of the land in general.

Thereby to ensure that protectors of Human Rights are not its major violators. Thus involving the police in the process of protection of these rights of citizens. Since, much of the content of Human Rights as agreed to by nations under UN Charter is seen in the matrix of Fundamental Rights under the Indian Constitution. Police Administration in charge of protection of rights and maintenance of law and order to facilitate the civil societies to perform, does not wish to see Human Right as anything above than what is enshrined in the constitution while discharging their duties. However the bone of contention between Human Rights and Police Administration is very much hidden in this area of working of police and agencies that are in charge of Human Rights protection. While police believes in the fact that it is performing in handling ‘criminal’ for violation of the fundamental law of the land, the Human Right activism through its various forms believes in fighting for a fair trial for the ‘criminal alleged’, facilitating him to have his rights protected by indulging and throwing checks at police functioning. This, therefore has given way to a feeling among police that Human Right agencies are a nuisance in their functioning.

Police Administration is in fact a sub-system of the larger system viz., the criminal justice system. It constantly acts as a watchdog of rights including Human Rights in India. Therefore in order to understand the theoretical perspective of
Human Right in relation to Police Administration it is important to take a look at the larger part of this criminal justice system which envelopes police Administration. Before we embark upon the Police Administration with focused attention to understand its relationship vis-a-vis Human Rights this familiarity with criminal justice system will help us to appreciate the subject matter better. Conceptually, the criminal justice system may be defined as giving the criminal his due with probable difference to crime in the society. Obviously, its objective is to humanise the process of adjudication control arbitrariness guaranteeing equal status to all citizens as well as translating the motion of liberty in reality. It promotes a sense of security amongst the members of a given society and ensures the rights of victims and the accused. It motivates the public to participate in the process of prevention of crime, facilitating as overall growth of human personality without fear or favour. In other words, it is a mechanism to protect social values which it procedurally insures for reasons of fair play and justice to all, there by, supporting to strengthening the philosophy of equality, fairness, due process and functioning as per rule of law. Thus, criminal justice system can be utilised as a barometer civilisation, an indicator of the operational patterns of 'due process 'model' against the 'enforcement model', of the law enforcing agencies that are within a society.

The criminal justice system has before it, the individual whose protection from the whole system of governance including legislative, executive and the adjudicative agencies of the state itself as its main goal, despite being intricately
related to them. Police Administration being a limb of the executive, judiciary and the adjudicating activity derives its energy from legislative systems. In fact, of all the sub-systems operating under the political system Police Administration is the most significant sub-system, especially within the broad frame of the criminal justice systems as it exists today. Therefore their role and functions are dealt at length in the pages to follow, keeping view its constitutional status and the citizens rights which in its form as Human Right is taken to be the boon of contention here, under this study. Life, Liberty and Property have traditionally been considered as natural rights of the mankind. The foremost duty of the state therefore has been to ensure security of its citizens and to provide an atmosphere of non-worry to support their overall development. Further the state is also expected to protect these from the powerful and dominant sections of the society. People therefore have permitted the state to evolve police organisation under the grab which the state takes care of its obligation. Various constitutional provisions as enumerated below are the primary safeguards in this direction. They include;

a) Right to freedom to Freedom from Unwanted arrest.

b) Right to reasonable investigation, interrogation, search, seizure etc.

c) Right to legal defence.

d) Right to fair pre-trail detention; and

e) Right to an open (public) and speedy trail.
In the Criminal Justice Administration, police by their restrictive and coercive authority effects arrests, interrogation, search, seizure, detain people prior to trial and all these actions affect individual liberty. Further, these actions when initiated arbitrarily, individuals dignity will be in jeopardy. To prevent this the following provisions incorporated under our constitution (Diagram No 1).  

**DIAGRAM - 1**

**PROVISIONS SPECIFIED IN THE CONSTITUTION**

Right to Freedom from Unwanted arrest (Article (21))

- Right to reasonable Investigation, Search Seizure

Right to Legal Defence (Article 22(1))
Right to fair pre-trial detention (C.P.C. Sec. 303)
Right to an open (Public) & Speedy trial (Article 14, 19(1)(a)&21)

Grounds of Arrest to be informed (Article 22(1))
C.P.C. 167)

- Right to be brought before a Judicial Magistrate

The Right to Bail.

First Information Report (Article 20(3)).

- Right to Silence (Article 20(3)).

- Right to protection unlawful search & seizure.
Thus police being an agency of the state has been primarily entrusted with the task of preventive activity and have the duty of maintaining law and order. Prevention of the commissioning of crime and if has been committed, apprehending the culprit and producing him before the court of law within a stipulated time to get him convicted punished for the crime committed, however are the functions the police perform today, although it has undergone a considerable change in its style of functioning particularly in a democratic polity.  

This argument of the police has in it the strength to support the fact that the police have an indirect obligation to protect and safeguard the constitutional guarantees extended to the citizens. Police organisation and its functions since its inception has always played an important role in the prevention of crime. It was and no doubt still is a symbol for many citizens of society, of an imposer and enforcer of laws. The police represent the law in action, the public often sees the organisation as the arm of the executive and judicial authorities. In fact, police is the preliminary agency in administration of criminal justice systems in India. It is considered to be first line of defence against crime. In India police has borrowed its structural cadre base, discipline and rigidity from military. Our police system is horizontally stratified like military forces, they are organised into cadres depending upon rank-commissioned offices, non-commissioned offices, and men, although these are not the precise terms used in India. The principle of horizontal stratification affects more than the organisation of ranks. This stratification
accounts also for the relations between the central and state governments. Since the higher level offices of the rank of Superintendent of Police and above are normally the Union Public Service Commission recruits, falling under the Indian Police Service. The Ministry of Home Affairs at the central as well as the state are normally in charge of Police. These Indian Services Officer Cadre (IPS) which is recruited, organised, trained and disciplined according to national legislation are intermixed with state recruits selected by the State Public Service Commissions where by a chain relation is established between the centre and the state. Further in matters of Armed Reserve and Civil Police there exists a vertical division. In India, Police is a multi-levelled centralized bureaucracy and therefore its territorial as well as functional jurisdiction could be felt at national, provincial, and local level at the same time. But the command structure has hardly changed except that most of the states in India have upgraded the rank of Inspector General to that of the Director General of Police to reduce the bottleneck at the top. Similar upgrading of senior Police officers to the rank of Inspector-General of police overseeing Administration, crimes, specialised services followed. The rank structure carries with it the powers, privileges, responsibility and accountability of each rank.

In India police performs mainly following verity of function;

- Maintenance of law and order: this includes prevention of criminal activities; to deal with explosive situations created by political mobilisation, control of political demonstrations and public meetings organised by political parties; to deal with ‘ghearoes’ and ‘darns’
student indispline. Control of vehicular traffic and to deal with traffic violations & offenses etc.

- Investigations into the offences already committed, arresting the culprit and bringing him before the judiciary with witnesses and evidences collected during investigation.

- The third tasks implementation of social legislation\textsuperscript{12} to identify criminal offenders and criminals activities and wherever appropriate to apprehend offenders and participate in subsequent court proceedings.

- To reduce the opportunities for the commission of some crimes through preventive control and other measures.

- To aid Individuals who are in danger of physical harm.

- To protect constitutional guarantees.

- To facilitate the movement of people and vehicles.

- To identify problems that are potentially serious for law enforcement or government problems.
To create and mention feeling of security in the community.

To promote & preserve civil order and to provide other services on an emergency basis.\textsuperscript{13}

\textbf{Constitutional Position of Police in India:}

Police is a state subject under the constitutional of India. This falls under the seventh schedule under Article 246. The second entry in this State list deals with Police.\textsuperscript{14}

Apart from this, 309, 310 and 311 govern the service conditions of Police Officers like any other government official, but the fundamental rights of police personal are but on different level. Police officers occupy a peculiar position under the constitution. They are treated as holders of civil posts within the meaning of Article 311 while at the same time they are brought under disciplinary rules like Defence Forces Personnel.

A Police Officer is governed not only by the Police Regulations framed under the Police Act, but also by the rules made under Section 241 of the Government of India Act, in so far as they are not repealed or not inconsistent with the Constitution. Government has the option to proceed against a Police officer under any of these rules, provided that there is no substantial difference to the prejudice of the delinquent officer between the procedures under the two sets of rules.
The awful amount of power with the government at the centre as opposed to the State Government which maintains the Police, indicates how anomalous, ambiguous and tenuous the situation would be for members of the police force who had to serve competing interests of politicians not only at two different levels (State & Federal) but at various polarities co-exists to cater the needs of ruling individuals. However, despite of all these, the constitution's status of police provides continuity for them right from the colonial period. The constitution has neither changed the organisational form nor the Police powers or the functional formulations, style and modalities of role models. Virtually, nothing has been changed and has left everything that was in practice or in philosophy Police, Public and politicians were left alone to adjust themselves to the changed realities of the times. Despite these safeguards, one can trace the lack of effective constitutional safeguard to police officials which in fact have reduced them to the level of servility and humality. A new police Act is yet to be drafted to redefine the Police role under the change circumstances. Under the existing Police Act, the Police are working as a colonial instrument. The constitution of India neither purified nor sanctified the colonial police model but left it to get congealed. The apparatus was made pliable by politicians by applying unmindful of any long term or short term consequences. The current structure of Police was organised in 1950 when the constitution of India came into operation. The most important ministry that runs internal administration of Police Administration is known as Ministry of Home Affairs. The Ministry of Home Affairs consists of a secretariat, even attached
officers and eleven subordinate officers. The ministry has exclusive officers and eleven subordinate officers. The ministry has exclusive direct control over the officers like Central Intelligence Bureau, Central Bureau of Investigation, Central Reserves Police, Central Vigilence Police etc.16

In spite of all these differences Police department at the State and National levels have identical pattern of organisational structure, mode of functioning, the style and problems. Structurally, State Police in India is a four entry-level system; Constable level, Sub-Inspector level, Assistant Superintendent level and Deputy Superintendent level. This being the organisational structure of Police in India and in Karnataka (See Diagram No 2) are currently performing at minimum satisfactory level. On the other hand Human Rights Commission is formulated on the following lines.

**DIAGRAM NO. 2:**

Indian Police System

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  Inspector General of Police
    Deputy Inspector General
      Superintendent
        Assistant Superintendent

  State Police Service
    Deputy Superintendent
      Inspector
        Sub-Inspector
          Assistant Sub-Inspector
            Head Constable
              Constable
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National Human Rights Commission:

The National Human Rights Commission was constituted in October 1993 under the Human Rights ordinance or 28th September 1993, which was soon after enacted as the protection of Human Rights Act, 1993. It is a fully autonomous body. Its autonomy is derived out of the method of the appointment of members, their fixed tenure and statutory guarantees. The status they have been accorded the manner in which the staff is expected to be responsible to the commission, their conduct and its financial powers also ensure its autonomy.

Composition of the Commission:

The Act envisages that the Commission shall consist of:

a) Chairperson who has been a Chief Justice of the Supreme Court,

b) One Member who is or has been, a Judge of the Supreme Court.

c) One Member who is, or has been, the Chief Justice of a High Court;

d) Two Members to be appointed from amongst persons having knowledge or practical experience in matters relating to Human Rights.

The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for
the discharge of certain function. There shall be a Secretary General of the rank of the Secretary to Government of India who shall function as the Chief Executive Officer of the Commission. The Headquarters of the Commission shall be at Delhi and there is an enabling provision in the Act to establish offices at other places in India with the previous approval of the Central Government.

Functions of the Commission:

The following functions devolve on the Commission under the Act:

a) inquire, on its own initiative or on a petition presented to it by a victim or any person or any persons on his behalf, into complaints;
   - Violation of Human rights or abetment thereof; or
   - 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 person are 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 remedial 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 effort on non-governmental organisations and institution working in the field of human rights; and

j) such other functions it may consider necessary for the promotion of human rights.

State Human Rights Commissions:

There is an enabling provision in the Act for State Human Rights Commission to be constituted by the respective State Governments.

The State Commission shall consist of:

a) A Chairperson who has been a Chief Justice of a High Court;

b) One Member who is, or has been, a Judge of a High Court;

c) One Member who is, or has been a District Judge in that State;
d) Two Members to be appointed from amongst persons having knowledge of practical experience in matters relating to human right.

**Functions of the State Commission:**

A State Commission may inquire into violations of human rights only in respect of matters relating to any of the entries enumerated in List II (State List) and List III (Concurrent List) in the Seventh Schedule of the Constitution. However, if any such matter is already being inquired into by the National Commission or any other Statutory Commission, the State Commission shall not inquire into the said matter. Subject to his, the powers, the procedure of investigation, inquiry and steps to be taken there after are comparable to those of the National Commission.

**Annual or Special Report of the Commission:**

The State Commission shall submit Annual Report to the respective State Governments and may, at any time, submit Special Reports on any matter which in their opinion is of urgency or importance. It is enjoined on the State Government to cause to lay on the Table of the respective State Legislature the Annual and Special Reports of the State Human Rights Commission.
Human Rights Courts:

The Act envisages that for the purpose of providing speedy trial of offences arising out of violations of human rights, State Governments may with the concurrence of the Chief Justice of the concerned high Court specify for each District Court of Sessions to be a human Rights Court to try such offences. For every Human Rights Court, the State Government shall specify a public prosecutor for the purpose of conducting case in the Court.

Thus, Police Administration and Human Rights seem to overlap each other's powers and functions depending on certain issues while, they seem to present a consensus picture other times. If this is so in theses theoretical frame in the field level the reality seems to be quite different despite the fact that they are complimentary to each other. The Chapter Five, which is purely analytical in this regard speaks of it much more clearly with evidences.
FOOT NOTES:


6. Prerogative writs are *Viz.*, Habeas Corpus, Mandmus Prohibition, Certiorari and Quo Warranto.,


14. Police (including Railway and Village Police' subject to the provision of entry 2A of list I'. Entry 8 in list I (i.e.Union) pertains to Central Bureau of Intelligence and Investigation. Police officers belonging to state and Union cadre are posted to these bureau. Entry 9 List I (Union) deals with preventive detention for reasons connected with Defence, Foreign Affairs or the security...
of India. Entry 80 of list I deals with extension of the powers and jurisdiction of members of Police force belonging to any state to any area outside that state.

15. Ibid.,

16. Ibid.,

17. (No 10 of 1994) (hereinafter referred to as 'the act').

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