1. Introduction, Scope and Methodology

"Injustice anywhere is a threat to justice everywhere"

– Martin Luther King

“In modern times a State is adjudged, evaluated and known by the just governance and the effectively of its system to deliver justice. As Justice J.S. Verma had rightly remarked that, "Human dignity is the quintessence of human rights", it is first and foremost duty of the State to render respect to the dignity of every individual by protecting, preserving and promoting human rights. For this, apart from the constitutional provisions and democratic set up, what the State needs to do is to provide its people with an efficient Criminal Justice System. The Criminal Justice Administration includes three basic organs, the Police, the Court and the Prison.

The basic concern of police in particular and Criminal Justice Administration in general is to protect the rights of the citizens. Human rights are recognized claims of individuals which are based on accepted value setup of any society. The concept of human rights emerged out of the assimilation of moral and political discourses in a society. As far as moral connotation is concerned it is the value system of a society which makes every member of the society to be responsible towards each other’s rights. As stated in Article 1 of the Universal Declaration of Human Rights, all human beings are "endowed with the reason and conscience and should act towards one another in a spirit of brotherhood". But the problem arises when this does not happen. It is in this situation that the rights of man face threat and the political concern for the rights emerges in the form of the State and its mechanism. This threat can be both internal as well as external, or from within the society and any aggression from outside the State. To deal with both types of infringements the man has evolved the idea of State. As far as external threat is concerned, the State owns defence mechanism involving para military and military...

bodies. But threat from within the society is more complex and some time even more subtle. To protect the human rights in domestic arena, State needs a mechanism known as Criminal Justice Administration.

The Police is primary and a frontier agency of this Criminal Justice System. It is the police which not only brings the culprits before the judiciary but also checks any further infringement of human rights beforehand by maintaining law and order. The police agency directly deals with the people. Hence, it is significant body to protect the human rights. But the role of the police is also marred by a paradoxical situation when the very rights, it is supposed to protect, come under threat at the hands of the police itself. Almost all human rights agencies, whether governmental or non-governmental, have reported or received complaints against the police as major violator of human rights.

The human rights situation is some time presented in media in simple terms of black and white without analysing the complexities of the situation and that of the role of the police. The present study aims to analyze this very situation. The working of the police is not independent, it depends upon the policies and laws of the State and the social milieu in which it operates. Police cannot be viewed as an independent body. It is to be studied as an organ of a given Criminal Justice System. Hence, the present study also focuses upon the nature of Criminal Justice System which is working in India. The study specially focuses upon the role of the police with human rights perspectives in the State of Punjab.

A. CRIMINAL JUSTICE ADMINISTRATION

The State is duty bound to provide a judicial system coupled with enforcement agencies and a redressal system for creating a civil environment under which every individual can enjoy his rights and liberties. This also includes a good criminal justice system.

Criminal justice administration provides legal arrangements and procedures through which a citizen can seek justice in case of the violation of his rights and he can also seek appropriate compensation and redressal for it.

As defined in the report of the Committee on Draft National Policy of Criminal Justice, “the Criminal Justice means the criminal law, the criminal procedure, the institutions of enforcement of the criminal law and the personnel involved in
administering the system. Its objects are prevention and control of crime, maintenance of public order and peace, protection of the rights of victims as well as persons in conflict with the law, punishment and rehabilitation of those adjudged guilty of committing crimes and generally protecting life and property against crime and criminality.”

Criminal Justice System includes certain multiple sub-systems such as the police, the prosecution, the judiciary, the prisons and a number of co-existing social control mechanisms outside the formal State system. It is important that for a successful Criminal Justice System each of these sub-systems accomplish a desirable degree of efficiency and effectiveness in supporting the mission of freedom from crime.

The main sub-system of the criminal justice administration are further governed by three independent elements, namely (a) the laws, substantive and procedural; (b) the institutional structure set up to enforce and administer the laws, in each sector; and (c) the quality of personnel who are entrusted with the job of administering the institutions. The Indian criminal justice system evolved in the course of its long history from the Hindu period onwards.

In ancient India, the concept of crime is explained in Rigveda and developed further by Manu in *Manu Samriti*. Manu characterised the crime into 18 different categories. The *Rigveda* defines the concept of “Jivagrib” as a person with the duty to control the crime. Similarly, Manu specified that the main duty of the king is to refrain from the violence and punish the evil doers. He also mentioned about the concept of patrolling, spies system and police posts to be administered by the king. *Apasthamta Dharm Sutra* (600 BC to 300 BC) also explained about the crime and the code of conduct to control the crime. Kautilya in his epic work *Arathasastra* (300 BC), gave a detailed account of criminal administration. He also gave the concept of ‘Durgpal’ or ‘Kotpal’ as special officials with the duty to control the crime. He also emphasized over a strong ‘guptachar’ or spy system. This concept of criminal administration was enforced by

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3 Ibid, p.6.
Chandragupta Maurya and later on, Ashoka the Great also used to have a well-oiled spy system.

Later, in the medieval period, the Afghan rulers introduced the concept of ‘Faugdar’ or ‘Kotwal’ who was in charge of law and order administration with other duties like maintaining the register of all the inhabitants of his area and the Kotwal had to report it directly to the Mohasib about all the cases causing any breach of order. The Kotwal also had to perform the duty like patrolling, guarding the vintage points, maintaining the record of all the arrivals and departure of the strangers. In spite of this, there was no independent police organization which existed during this time. After the Afghan rulers, the Mughal rulers also continued with this office of Kotwal. The powers of Kotwal are well defined in *Ain-e-Akbari*, a book written by Abul Fazal, one of the ministers of Mughal emperor Akbar. A western author Edward recognized Kotwal as a police officer, responsible for the maintenance of public order and decency in the society. According to him, Kotwal was responsible for 1) the detection of crime; 2) clamping curfew in the city; 3) fixing prices and rates of goods; 4) examining weight and measures; 5) maintaining social decency; and 6) preserving public security and order.

Under the Mughals, the administration of order began to take shape in India. At the provincial level, there was a Subedar or Nazim, under whom there were many Faugdars with above mentioned duties. The Mughals also introduced rural policing and appointed Chowkidars under Faugdar, at the village level. During this period, due to administrative indifference, there was no clear distinction between the police and the army. The Police as a civil force developed only during the British period. All these Muslim rulers, guided by the *Quran*, introduced semantic traditions and conventions in Indian criminal justice administration.

But it was during the British period that the modern Indian criminal justice administration emerged. The Britishers not only introduced the western system but also blended it with the Indian traditions in this regard.

The system of administration of justice in the Presidency town of Bombay was revised in 1827 and from that time, the law administered by the Criminal Courts was in

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7 Supra note 5, p. 60.
accordance with the law laid down in Regulation XIV of 1827. But in the other two
Presidencies of Calcutta and Madras, the Mohammadan Criminal Law remained
operative till the Indian Penal Code came into force.

The Indian Penal Code came into operation on 1 January 1862. It was drafted by
the First Law Commission of India, of which, Lord Macaulay was the President and
Neeleod, Adderson and Mellet were the other members. They drew not only upon
English and Indian laws and regulations, but also upon Livingstone Louisiana Code and
the Code of Napoleon. The Draft Code was placed before the Governor General of India-
in- Council in the year 1837 and it was revised by Sir Barnes Peacock, Sir J.W. Colville
and others. After its completion in 1850, it was presented before the Legislative Council
in the year 1856 and ultimately it was passed on 6 October 1860. The Indian Penal Code
was thus given effect to on 1 January 1862. In the Indian Penal Code, the Criminal law of
India has been codified. It deals specifically with offences, being the substantive law.

For the proper trial of offences, provided under the Indian Penal Code, Procedural
Law was necessary. But prior to 1887, there was no uniform consolidated Criminal
Procedure for the entire British India. There were a few separate Acts for the Presidency
towns and Provinces. Having realized the necessity of a uniform Law of Criminal
Procedure, uniformity was introduced in 1882 for the whole of British India, both in the
Presidency towns of Calcutta, Madras and Bombay and also in Moffussil courts. Thus, a
uniform Code of Criminal Procedure was passed in 1882. Thereafter, came the Code of
Criminal Procedure, 1898, which remained operative till the present Code of Criminal
Procedure, 1973, was enacted. The Code of Criminal Procedure Bill was introduced in
the Rajya Sabha on 4 December 1972 and it was passed on 13 December 1972. The Lok
Sabha passed the aforesaid Bill with certain amendments on 12 December 1972 and
again in the Rajya Sabha on 18 December 1973, by adopting all the amendments carried
out by the Lok Sabha. The Code of Criminal Procedure got the assent of the President of
India on 25 January 1974 and it came into force on 1 April 1974.  

In the West, there are mainly two models for the criminal justice administration
Adversarial System and Inquisitorial System. The former was adopted in the Anglo-

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9 Justice Shamsul Islam Jafri, “Administration of Criminal Justice In India”, as cited in
http://www.allahabadhighcourt.in/event/admin_of_criminal_justice_in_india.html
Saxon system of England which later greatly influenced Indian system of criminal justice. Under this system, the role the of courts remains passive and the burden of proof lies on the individual. But in the Inquisitorial System, which was adopted by France and other continental nations, the courts perform the investigative role. As India is a poor country, the burden of proof over the individual can sometimes, adversely affect the delivery of Justice.

From the above observation, it is clear that under the Indian criminal justice system the question of justice cannot be separated from the issue of social justice. Bharat B. Das, in his study on ‘Victims in the Criminal Justice System’, observed that the Indian Constitution has the signature tune of ‘Social Justice’ and the criminal justice administration under it, is to be geared towards the same goal. 10 Hence, the criminal justice system can not be distinguished from the perception of human rights in the broader sense.

The subject of criminal law and procedure is included in Concurrent List, (Items 1 and 2 of List III of the Seventh Schedule) of the Constitution of India. Therefore, the Union Government and the State Governments have jurisdiction over the subject. This develops a peculiar problem of different models of criminal justice system under the Union Government, State Governments and Union Territories. This can lead to the denial of natural justice to the citizens. Hence, the need was felt for a national policy on criminal justice. For this purpose, a special committee was constituted to draft the National Policy on Criminal Justice by the Ministry of Home Affairs in July 2007.

The committee pointed out following key elements, on the basis of which, such policy should be drafted:

(a) The role of the Central and State Governments, given the scheme of the Constitution in respect of law and policy making as well as their implementation;
(b) the imperatives of human rights protection and the obligations of the State under the Constitution and international human rights instruments;
(c) the changing nature of the crime and its management in the context of developments in technology, market economy and globalization on the one hand,

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and the shifting trends in the modern warfare strategies with proxy wars, increasingly substituting the conventional wars on the borders, on the other;

(d) the implications of terrorism and organized crime which raise issues of national security;

(e) the relative neglect of victims in the criminal justice system;

(f) the lack of adequate data and systematic planning for better co-ordination, increased efficiency and performance evaluation of the system;

(g) the special needs of weaker sections of the people in policy making and allocation of resources for the system;

(h) the need for diversion, settlement and alternate ways of dealing with crime;

(i) the question of deterrence and effectiveness of punishments;

(j) institutional reforms in the police, prosecution, courts and the correctional services; and

(k) the role of media, civil society, and NGOs in the prevention of crime and treatment of offenders etc.  

It is an irony that the very criminal justice administration which is meant to protect the rights, is sometimes alleged to be the violator of the rights itself. Sometimes, it fails to provide justice or redress, sometimes, it delays justice and at the extreme, sometimes, goes on to violate the rights of the citizen. The causes can be structural, procedural or practical problems and may also include the environmental factors like social and political circumstances. The focus of the present study revolves around this very aspect along with the context of the police system.

B. POLICE

The word police is derived from the Greek work “Politeia” or its latin equivalent “Politia”. “Politia” is latinisation of Greek word “Politeia” which is derived from “polis” or city-State and which means “Citizenship, Administration or Civil Polity”. In Latin, “Politia” stands for State and administration. Hence, the word police is a body of State or administration which involves civil servants whose duty is the preservation of order, prevention and detection of crime and enforcement of laws. Today, the police is designated as the “executive civil force” of the State which is entrusted with the duty of

11 Supra note 2, p. 6.
maintaining public order and of enforcing regulations for the prevention and detection of crime. In other words, the police is a constituted body of persons, empowered by the State to enforce the law, protect property and limit civil disorder. A dictionary of the French and English Tongue, published by Randle Cotgrave in 1611, defined the verb policier as ‘to order, govern, rule advisedly’, while police itself meant ‘civil government’ and generally the government of a city or a town. In France, over the next two centuries, ‘police’ began to attach itself with specific tasks mainly concerned with the management and good order of urban areas.

Alternative names for police force, used in different countries include constabulary, gendarmerie, police department, police service, crime prevention, protective services, law enforcement agency, civil guard or civic guard. Members of the police force are often termed as police officers, troopers, sheriffs, constables, rangers, peace officers or civic/civil guards. In Ireland, the police personnel, are called the Garda Síochána i.e. guardians of the peace.

As far as the function and the role of the police is concerned, conventionally, the police is designated as the executive civil force of the State which is entrusted with the duty for maintaining public order and enforcing regulations for the prevention and detection of the crime. But, this role is developing into a multi-functional and multi-dimensional affair in the contemporary world. Today, the police is expected, not only to act as a negative enforcement agency, checking all sort of crimes, but also seen as a positive agency which is indulged in community policing and contacting people of social front for making reforms.

1. **THE EVOLUTION OF THE POLICE**

The evolution of the police can be traced back to ancient civilizations like China, Greece, India and even the epoch of Roman empire. Law enforcement in Ancient China was carried out by "Prefects". The notion of a Prefect in China has existed for thousands of years. Prefects were government officials appointed by local magistrates, and these Prefects usually reported to the local magistrate, just as modern police report to the
judges. Under each Prefect, were "sub-prefects" who helped the law enforcement agency of the area. Some Prefects were responsible for handling investigations, much like modern police detectives collectively.  

In Ancient Greece, publicly owned slaves were used by the magistrates as police. These slaves were used to guard public meetings, to keep order and for crowd control, and also assisted with dealing with criminals, handling prisoners, and making arrests. Other duties associated with modern policing, such as investigating crimes, were left to the citizens themselves. During the period of Roman empire, the policing existed in the form of local watchman, hired by the cities to provide some extra security. These watchmen were known as “Vigiles”.  

Modern police in Europe has a precedent in the Hermandades or "brotherhoods", peacekeeping associations of armed individuals, a characteristic of municipal life in medieval Spain.

France, Britain and Ireland have made special contribution in the evolution of modern policing. In France, the police system is the direct descendant of the ‘Marshalcy’ of the ancient regime, commonly known by its French title, the ‘Maréchaussée’. The Marshalcy dates back to the Hundred Years War whereas some historians trace it back to the early twelfth century. During the revolutionary period, Marshalcy commanders generally placed themselves under the local constitutional authorities. As a result, the Maréchaussée, whose title was associated with the king, was not disbanded but simply renamed gendarmerie nationale in February 1791. Its personnel remained unchanged, and its role was significant. However, from this point, the gendarmerie, unlike the Marshalcy, was a fully military force.

The first police force in the modern sense was created by the government of King Louis XIV in 1667 to police the city of Paris, the largest city in Europe at that time. The royal edict, issued by the Parliament of France on 15 March 1667, created the office of Lieutenant General de Police (Lieutenant General of Police), who was to be the head of the new Paris police force, and defined the task of the police as "ensuring the peace and

14 Whittaker, Jake. "UC Davis East Asian Studies". University of California, Davis. UCdavis.edu, (http://eastasian.ucdavis.edu/research.htm)
16 Ibid.
quiet of the public and of private individuals, purging the city of what may cause disturbances, procuring abundance, and let each and everyone live according to their station and their duties".  

After the French Revolution on 12 March 1829, a government decree created the first uniformed police in France, known as Sergents de Ville (City Sergeants), which the Paris Prefecture of Police's website claims, were the first uniformed policemen in the world.

The history of policing in England has special significance for India as Indian police system is the legacy of the British colonial system. Hence, to understand Indian police system, it will be worthwhile to analyse the evolution of the police system in England. In United Kingdom, the development of police forces was much slower than in the rest of Europe. The function of the British police was performed by private watchmen, which existed from 1500 onwards, thief-takers and so on. The former were funded by the private individuals and organisations and the latter were granted rewards for catching the criminals who would then be compelled to return stolen property or pay restitution. The word police was borrowed by the Britishers from the French people. The word and the concept of police itself was "disliked dubbing it as a symbol of foreign oppression". Before the 19th century, the first use of the word police, recorded in government documents in the United Kingdom, was the appointment of Commissioner of Police for Scotland in 1714 and the creation of the Marine Police in 1798 (set up to protect merchandise at the Port of London). This force is still in operation today as part of the Metropolitan Police and is the oldest police force in the world. Even today, many British police forces are referred to officially by the term "Constabulary" rather than "Police". The police force got constituted in Scotland under the Glasgow Police Act as passed on 30 June 1800 and the first organized police force in Ireland came about through the Peace Preservation Act, 1814. The Irish Constabulary Act of 1822 marked the beginning of the Royal Irish Constabulary. On 29 September 1829, the Metropolitan Police Act was passed by the British Parliament, allowing Sir Robert Peel, the then Home

17 Ibid.


19 Supra note 15.
Secretary, to constitute the London Metropolitan Police. This promoted the preventive role of police as a deterrent to the urban crime and disorder.20

In United States of America, the police system is mostly based on modern British model. But the role of the police got new dimensions here. After the civil war, policing became more para-military in character, with the increased use of uniforms and military ranks. In 2005, the Supreme Court of the United States ruled that the police do not have a constitutional duty to protect a person from harm.21 The contemporary concept of community policing or a police system with more social role evolved in the US. Other roles or branches of policing like police detective, police with auxiliary administrative duties and specialized police units like bomb squad, are also the result of ever emerging needs of the modern State and society.

Today is the age of internationalism or globalization. Hence, the international interactions have increased manifold, giving birth to new threats to the human rights. This has generated the need for international policing or global role of police. In United Nations, the policing is playing an important role in peace keeping missions. The international community seeks to develop the rule of law and reform security institutions in States recovering from conflict.22 In the mid of 1990s, a new term “Transnational Policing” has emerged, which mention the policing that transcended the boundaries of the sovereign nation-State. 23 Transnational policing pertains to all those forms for policing that, in some sense, transgress national borders. This includes a variety of practices. But cross-border police cooperation, criminal intelligence exchange among police agencies working in different nation-States, and police development-aid to weak, failed or failing. The cross-border policing has a long history in Europe. The setting up of ‘Interpol’ before the Second World War, is one such example. Apart from this, the cross-border exchange of information had also been frequent. In 1992, the Schengen Treaty took

place. It formalized aspects of police information exchange across the territory of the European Union.  

2. POLICING IN INDIA

The evolution of modern policing in India over the years has been guided by the compulsion and needs of the dominant ruling class. In our present day democratic arrangements we must understand that the police has been the principal medium through which the dominant classes have sought to perpetuate their hold on power and authority by fair and foul means. Thus, it makes the police an instrument of oppression and gives it the image of a rough and ruler friendly organizations rather than an impartial and neutral agency which objectively enforces the rule of law. As M.P. Singh has observed, “India’s Police system is basically British, specifically Irish constabulary model, superimposed on indigenous Mughal administrative functional mould with invisible remnants of Hindu policy.”

The indigenous system of police in India was very similar to that of Saxon England. Both were organized on the basis of land tenure. Just as the ‘Thana’ Police Stations in the time of King Alfred was required to produce the offender or to satisfy the claim, so in India, the zamindar was bound to apprehend all disturbers of the public peace and to restore the stolen property. By and large, the zamindars were a number of subordinate tenure-holders, required to perform police duties and to bear, for the areas of their charges, the responsibilities which rested upon the zamindar for the whole State. Finally, as a rule, there was the joint responsibility of the villagers, which could only be transferred if they succeeded in tracking the offender to the limits of another village. This village responsibility was enforced through the headman, who was always assisted by one or more village watchmen. The latter was the real executive police of the country.

Although, as a rule, there was only one watchman for the village, he was assisted by all the male members of his family, by the other village servants, and in some cases by the whole village community if need be. His duties were to keep watch at night, find out all arrivals and departures, observe all strangers, and report all suspicious persons to the headman. He was required to note the character of each man in the village, and if a theft

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25 See Supra note 5, p.59.
were committed within the village bounds, it was his business to detect the thieves. If he failed to recover the stolen property, he was obliged to make up the amount of the value of it, to the extent his pocket permitted and the remainder was levied on the whole village. Mountstuart Elphinstone (1843) stated that this extraction of money is evidently unjust, since the village might neither be able to prevent the theft nor to make up the loss. However, it was only in particular cases that insistence was on to its full extent. Some fine was generally levied and the neglect or connivance was punished by transferring the *inam* (reward) of the watchman to his nearest relation.

The fixation of the responsibility was necessary, as, besides the usual temptation to neglect, the watchman himself used to be a thief. To ensure greater protection than the village police was able to provide, payments were often made to the leaders of plundering tribes to induce them to prevent depredations by their followers, a system which till date is prevalent in many parts of the peninsula. In large towns, the administration of the police was entrusted to the ‘kotwal’. He was usually paid a large salary, from which he was required to defray the expenses of a considerable establishment of police. In Poona, for example, the Kotwal received Rs. 9,000 a month, but he had to maintain a very large establishment of peons, some horse patrols, and a considerable number of Ramosis. He was also answerable for the value of stolen property. His appointment, however, was considered a lucrative one, as the pay of his establishment was very low. Both, his subordinates and he supplemented their salaries by unauthorised exactions from the inhabitants.

3. **PROBLEMS WITH THE SYSTEM OF POLICING**

The above described system was no doubt well suited to the needs of a simple, homogeneous, agricultural community, but could not support the strain of political disorder. Extortion and oppression flourished unchecked through all gradations of the officials, responsible for the maintenance of peace and order. Both village watchman and the heads of villages, and even the higher officials, connived at crime and harboured offenders in return of share of the booty. Their liability to restore the stolen property or make good its value was disregarded; or if this obligation was enforced, neither the property nor its value was restored to the owner. Fines were imposed when a more severe punishment was called for; and offenders who were possessed of any property could
always purchase their liberty. According to Sir Thomas Munro, “all the people, employed to keep guard are either themselves robbers or employ them, and many of them are murderers, and though they are now afraid to act openly, there is no doubt that many of them still secretly follow their former practices.”

Many offenders were arrested but great numbers got escaped as connivance was prevalent among the watchmen who were themselves thieves. The inhabitants were often backward in giving information for the fear of assassination, which was very common and sometimes really took place.

Where crimes have long been encouraged by the weakness of the government, by the sale of pardons, and by the connivance no reformation could be looked for.

The British period had a great impact on the modern Indian police system even in the post independence period. Not only the legal but modern Indian policing system has also inherited a cultural legacy of its colonial past. In fact, Mr. Ashwani Kumar, the former IGP Punjab, has attributed all the present ills of the Indian police to its ‘colonial hangover’. However, we cannot ignore the contribution of the Britishers period in introducing the modern policing in India. The Britishers came to India in the form of colonial exploiter and they wanted peaceful and orderly conditions suitable for their mercantile interest. Therefore, peace, order and control over highway crimes were their high concerns. After gaining political control over one major portions of India, their main concern was to have a strong Centre. All this underlines the basic nature of the British police system which was basically a criminal administration system, maintained with brute use of force. Lord Cornwallis focused his attention on the reorganization of the criminal justice system through his Judicial Plan of 1790. He himself observed, “the administration of justice is oppressive, unjust and corrupt. The law administering criminal justice was also uncertain and inadequate to bring the culprits to the book.”

The Britishers adopted the prevailing muslim criminal law at that time. But that was a bit discriminating in nature because a muslim murderer could not be convicted on account of the evidence from a non muslim and one muslim witness was equal to two hindu

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witnesses. This system was carried on by the native officials like Kazi, Mufti and Maulavis. The Britishers gradually intended to reform this traditional administration. Therefore, they handed over the powers of criminal administration to the district magistrate or the collector. Under the British system, the criminal administration was subordinate to the revenue administration and this symbolized their preference for protecting their economic interests. First of all, in 1792, Lord Cornwallis organized a separate police force under the District Magistrate of Bengal. This replaced the Zamindari and Thanedari system. Under this system, each police zone with an area of 400 sq. miles, was supervised by a Daroga. In 1793, under the Judicial Plan of Lord Cornwallis, every district was divided into zones of 20 sq miles, each headed by a Daroga, who was appointed by the District Magistrate. Under Daroga, there was armed constabulary and above him was the direct control of the Kotwal. Both Kotwal and Daroga were to apprehend the criminals and prevent the incidence of crime and to maintain peace and order. Every police station under Daroga had a Moharir, a Zamandar and 10 Burkandaz. In 1808, the office of the Superintendent of Police was created in Calcutta, Dhaka and Murshidabad District. The area of the Superintendent was equivalent to the District Magistrate. Later on, in 1810, this system was also introduced in Patna, Banaras and Bareilly. In 1829, Division Commissioner replaced the office of Superintendent of Police. Various police reform committees under Lord Wellesley (1801) and Lord William Bentick (1806), recommended that village police system should be given more powers in order to check the crime. In 1818, during the rule of Warren Hastings, the powers of the Superintendent of Police were expanded and the provision of preventive detention on security grounds was introduced for the first time in India. In 1843, Sir Charles Nappier organized the Sind Police Force on the model of Royal Irish Constabulary. This model had a system in which the entire territory was under one Inspector General and the districts were headed by the Superintendent of Police. The latter was made responsible both to the IG and the Collector or DM. The Sind Police Force was basically para-military in nature and not a civil force. Later on, this model was

29 Ibid, p 80
30 Supra note 5, p. 61
31 Supra note, 28.
introduced in other parts of British India too.\(^{32}\) In 1854, the Tehsildar was empowered to exercise certain police powers and the office of the Daroga was placed under his supervision. The first war of Independence or revolt against the Britishers in 1857, gave a shock to the prevailing police system and a dire need was felt to reform and reorganise the police system. Because of this revolt, in 1858, the British Crown took over the control of East India Company which led to a qualitative change in the criminal justice system in India.

In 1860, the newly organized Police Commission submitted its report on the basis of which, The Police Act, 1861, was enacted, which was later on amended in 1895 and continued in the Independent India too. This act introduced a police system with uniform structure in India. It retained some old features, modified certain others and introduced many new things e.g. the office of the Daroga was converted into that of Sub Inspector. In 1860, Indian Penal Code and in 1861, Code of Criminal Procedure (Cr.P.C) was also introduced. The Cr.P.C was later on amended in 1869, 1872 and 1882. In 1898 and later on in 1973, a new Cr.P.C was introduced. The Cr.P.C explained the duties of the police in case of an offence against the State or sedition. It laid down paramilitary duties for the security of the State and maintenance of peace and public order, to the police and this was given precedence over the basic police duties of investigation and trial of criminal offences.\(^{33}\) This also reflected the focus of the Britishers, as far as the nature and the functioning of the police was concerned. The basic thrust of the Police Act, 1861, can become clear by the terms of reference of the Commission which drafted this act. Following are the main points which were put before the Commission and which still govern the Indian police: -

a) the Indian police to be subject to the civil government and its functions to be civil not military;

b) its functions to be protective (as to the public) repressive (as to criminal) and detective police and judicial functions to be separated;

c) the organization and discipline of the force to be similar to that of the Indian Army and to be centralized in the hands of the executive government;

\(^{32}\) Supra note 5.

\(^{33}\) Ibid.
d) the pay of the lower ranks to be at par with that of an unskilled labourer;
e) the internal economy of the force to be in the hands of the police officers;
f) only one force to be any locality not one under the police officers and one under a magistrate and
g) the village police to be used primarily as sources of information and not employed on executive duties.  

The Police Act of 1861 was the cornerstone of the police system but even after 1861, many recommendations regarding the reforms were made and even some structural changes were also introduced. In 1872, the Indian Evidence Act was introduced. In 1900, the Prison Act was enacted and adopted. In 1902, Indian Police Commission under Lord Curzon made certain recommendations and similarly in 1912, the Royal Commission recommended to make the police organization more simple and effective. In 1923, the League Commission recommended that fifty percent of the police officials should be recruited from amongst the Indians. In 1946, the Delhi Special Police Establishment Act was enacted to check the corruption in the police force. This Delhi Special Police Organization later on became Central Bureau of Investigation (CBI) under the Indian Government. In 1934, on the basis of the Police Act of 1861, the Punjab Police Rules of 1934 were introduced. These rules were operative till 19 February 2008. On 20 February 2008, Punjab Police Act, 2007, came into force after receiving the assent of the Governor of Punjab. It is pertinent to mention here that Punjab Government though has drafted the Punjab Police Rules, 2010 which are still pending for notification by the Punjab Government.

Ironically, in the post independence history of India any move to change the basic framework which even remotely leads to the lessening of control over the police, has been resisted by all means. Over half a century after independence has passed and many commissions have been set up but their recommendations have not relieved the police of its negative image.

In any free society, all organs of governance or private enterprises feel a compelling need to contribute positively to the growth and progress of the country. If this
is true, then, how can those who join the police, continue to be identified as a grossly negative force of oppression? Even today, the police continues to be inextricably enmeshed in and is unable to come to terms with contemporary social reality. It is increasingly becoming alien and painfully irrelevant to the current Indian situations. This is a matter of concern for all the citizens and academicians. The society too, wants these most manifest arms of governance to become more people-friendly and compassionate. Having known the police only as a repressive, corrupt and aggressive agency, the society has to be the first to get involved in the process which the police should follow.

A well disciplined and idealistic police force could have set the example for others by its own lawful and correct behaviour. But this was too much to expect from a much maligned, misused, abused and colonial police, which the country got in legacy at the time of transfer of power.

The need of the hour is to reshape and reorient the old police so as to fit it into the new concept of a democratic setup as enshrined in the Constitution of India. Reforms in the police are imminent to give it a human face with human values and to further tone up the criminal justice administration in India.

C. HUMAN RIGHTS

The two concepts, the human rights and the Criminal Justice Administration are closely related. In its western perspective, human rights originated parallel to the emergence of the modern State. The Rights are a protective measure against the State suppression. The State is supposed to protect the rights of the individual and not to interfere with them. The social contract theory of State perceives that the State came into being to protect the natural human rights. The legal perception is that the rights are not natural but are provided by the State only, as Jermy Bentham has claimed that no right is possible without the State. Similarly social democrats like Laski has held that a State is known for the rights it provides to its citizens. Thus, the question of Human rights stands in the backdrop of the State vs Individual perception.

The Problem of human rights is as old as the history of man’s struggle for survival vis-à-vis his fellow human beings. But, the concept of human rights in its modern connotation emerged with the evolution of the modern State. The question of
human rights involves both the individual and the society. Everyone has been bestowed, by nature, certain characteristics: as an individual and as a social being. The meaning of human rights is determined in a perspective as “socially acceptable claims of the individual”. Rights consist in claims of individuals which seek to restrict arbitrary power of the State and which are required to be secured through legal and constitutional mechanisms. In addition, these may include some benefits which the State may extend to its citizens to improve the quality of their life. With the spread of consciousness, the concept of rights has been modified in two important directions. It is now admitted that the advantages of rights should not be confined to a tiny privileged class position by virtue of its money and manipulative power and secondly rights should not be confined to delimiting the sphere of State activity and authority. These should also prescribe the functions and responsibility of the State so as to make them beneficial to the bulk of the society.  

J. Wardan has used the concept of rights in the following three different ways:

1. To describe a type of institutional arrangement in which interests are guaranteed legal protection, choices are guaranteed legal effect, or goods and opportunities are provided to individuals on a guaranteed basis.

2. To express the justified demand that such institutional arrangements should be set up, maintained and respected.

3. To characterize a particular sort of justification for this demand, namely a fundamental moral principle that accords importance to certain basic individual values such as equality, autonomy and morality.  

The first usage is understood as legal right, while the other two as moral or natural right.

1. EVOLUTION OF THE CONCEPT OF HUMAN RIGHTS

Like all other social norms the human rights possess historical character. Therefore, understanding human rights historical perspective has special significance for this study.

The idea of human rights is directly related with the idea of human dignity. Thus, all those rules which are essential for the maintenance of human dignity may be called human rights. The World Conference on Human Rights, held in 1993 in Vienna, stated in the Declaration that “all human rights derive from the dignity and worth inherent in the human person, and human being is the central subject of human rights and fundamental freedoms.”38

This concept, as mentioned above, has its roots in the course of history and it can be traced back to the ancient civilizations both of the West and the East. These “rights” or established customs or “understandings” regarding the relationship between the ruler and the ruled, developed in different forms in various parts of the world. These found their way in the Greek political system, Roman law in Europe, the Confucian system in China and the Panchayat system in India.39 The Hindu Vedas,40 the Babylonian Code of Hammurabi, the Bible, the Quran (Koran) and the Analects of Confucius are five of the oldest written sources which address questions of people’s duties, rights and responsibilities. In fact, all societies, whether in oral or written tradition, have had systems of propriety and justice as well as ways of tending to the health and welfare of their members.

Rights found expression in the concept of natural law and became the symbol of people’s movement against absolute despotism and the corner stone of constitutional democracy everywhere. The Magna Carta in England,41 the American Declaration of Independence,42 the French Declaration of the Rights of Man,43 the Bolshevik Revolution in Russia can be cited as important landmarks in the development of the concept of human rights. Each of these declarations, related developments and emerging institutional framework, have made important contribution in advancing the concept of human rights.

38 Extracted from http://www.history.com/this-day-in-history/house-passes-the-13th-amendment
39 The Constitution (Seventy Third Amendment) Act, 1992; http://indiacode.nic.in/coiweb/amend/amend73.htm
40 There are four Vedas namely Rig Veda, Sama Veda, Yajura Veda and Athrva Veda.
However, being very relevant to their own time and specific circumstances, now these rights lacked totality of the concept and were narrow in their scope and application. For instance, in the Greek political system, rights existed only for the “citizens” and not for the majority who were referred to as “aliens” and “slaves”. Magna Carta\textsuperscript{44} yielded certain concessions only for the feudal lords and not for the common man, though it set limitations for arbitrary rule and laid the foundation of the rule of law. The American Declaration followed by constitutional amendments in the form of Bills of Rights, contained fairly exhaustive guarantees for the rights of man. But in practice, their application was largely confined to those who constituted what was abbreviated as WASP i.e. White, Anglo-Saxon and Protestant.\textsuperscript{45} Slavery continued to be a part of the system and the blacks of African origin were referred to as “Negros” and not as men. It was in 1864 that slavery in America was legally abolished after a bitter civil war, which even threatened the unity and integrity of the United States. While the American and French declaration\textsuperscript{46} set the seal on the basic principles of equality before the law, freedom of thought, human dignity and democratic government, the countries undergoing rapid industrialization were experiencing the need for social justice and economic security. True, the French Declaration proclaiming liberty, equality and fraternity for all, to date, represented the most revolutionary social concept. However, liberty and equality soon provided to be mere empty slogans for poor peasants and factory workers. Since the mid-nineteenth century, the demand for economic security, social justice, civil and political rights, appeared in the forefront of socialist movements. In 1917, the Bolshevik Revolution in Russia went one step ahead. It emphasized that economic and social rights were as important as the civil and political rights. In Europe and North America, the concept of natural rights was secularized, rationalized and democratized by the end of the eighteenth century. There emerged a concept called “the Rights of Man” and “man”, of course, embracing woman at least conceptually. This concept covered substantially what is now known as civil and political rights. Not only that these rights were fully secured

\textsuperscript{44} Supra note, 41.
\textsuperscript{46} Supra note, 43.
but these were widely recognized as norms with beginning of the mid-nineteenth century and the developments that followed, sometimes accompanied by violence, within industrial-capital economy of Europe and North America, took a new direction. Trade union rights, better wages, better working conditions considerably improved a lot of the majority, constituting the working class. Flow of wealth and additional resources from colonial territories also had cumulative effect in ensuring, alongwith civil liberties, a minimum of economic and social security to almost all the people in North America and Europe. While countries in Europe and North America with rapid industrialization, were moving towards larger freedoms, both political and economic, the people of the rest of the world were more or less experiencing the sufferings and humiliations of colonialism and imperialism. During the colonial era, the rights available to the citizens in metropolitan countries were denied by the same metropolitan powers to their “subject” people in the colonies. It was natural that interaction and comparison between the people of the two sides helped in generating awareness and demand for human rights among the people under colonial rule. For these people, a declaration of great historical significance was the clarion call made by the great freedom fighter Bal Gangadhar Tilak that “Swaraj (complete self-government and independence) is my birth rights and we shall have it.”

2. **TYPES OF RIGHTS**

First of all, under the natural law the concept of Natural Rights emerged. The theory of Natural Rights is based on the view that these rights did exist prior to the birth of the State itself and therefore, cannot be violated by the State. This theory of Natural Rights of individual was used to checkmate the theory of Divine Rights of the Kings. John Locke has beautifully summed up this principle. To him, “absolute monarchs are but Men.” These rights are supposed to be absolute in nature. This view was also held by Jean Jacques Rousseau. Paradoxically, the growth of the State itself put limitations on the natural rights of every individual in the interests of their collective existence. Now,

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a new concern to protect the rights from the State intervention and the limitations of the State has come to the fore. The scholars advocating this theory, are of the view that the State is necessary, not to create the rights but to secure them, hence, the State is not the creator but the protector of the rights.

The Legal Theory developed at this point of time, put forth the view that State is the only creator of the rights and no right is possible out of it. Jermy Bentham, one of the greatest champions of this theory, in his work Principles of Legislation (1789), observed, “… real laws give birth to real rights …”\(^{49}\) He rejected the idea of Natural Rights and forwarded the idea of Legal Rights, which are given and protected by the State and at the same time, the State has the right to restrict or withdraw them. Under unwritten Constitution of England, these rights came to be called as civil rights, civil liberties and freedoms of individual liberty. When guaranteed and entrenched by a written Constitution, these rights are called Fundamental Rights. These rights are further categorized as Political, Social, Cultural and Economic Rights.

The evolution of rights has been classified by Louis B. Sohn into three phases of first generation, second generation and third generation rights.\(^{50}\) The first generation rights focused upon the rights of the individual. The second generation rights focused upon the society and the social perspective of the rights. These rights are mostly based on socialist Marxist ideology and emphasized over the socio-economic rights or right to equality. Here a new term emerged as ‘democratic rights’ which includes not only the present social and economic rights but all the other rights, which the struggle is going on to get State recognition and protection. The democratic rights, for broadly suggest a set of those rights which enable the individual, as a citizen of his community, country or nation, to take part in public life, to elect government of his choice, to influence government decisions and to acquire political office through the prescribed procedure.\(^{51}\)

The third generation rights are centered upon group rights, specially ethnic groups and communities like family, religious community, social club, trade union, professional

\(^{49}\) As Cited in Supra note 36, p. 288.
\(^{51}\) Supra note 36, p. 304.
associations, social groups etc. It includes the right to self-determination, the right to development and the right to peace.

There is another classification of rights i.e. in terms of negative and positive rights. Negative rights suggest the sphere where the State is not permitted to enter. These suggest the sphere of individual freedom which shall not be encroached by the State. Positive Rights, on the other hand, prescribe the responsibility of the State in securing rights of individuals and providing basic conditions and services for the survival and the betterment of the life. A capitalist State gives precedence to negative rights while a socialist State to positive rights. A welfare State aims at combining negative rights with positive ones as far as feasible. The negative rights have another aspect too which includes the duties, i.e. the negative rights of one become the duty of another.

D. PHILOSOPHICAL PERSPECTIVES ON THE RELATIONSHIPS BETWEEN THE STATE AND HUMAN RIGHTS

There are various philosophical perspectives regarding the role of the State vis-à-vis the rights of the individual. The rights come to the fore only when authority of the State is sought to be limited, or when individuals and their groups demand a positive role of the State. Even under Article 12 of the Constitution of India, the Fundamental Rights have been provided to the individual against the State. Ernest Barker has remarked “Ideally, rights will always be derived simultaneously from two sources and will possess double quality-

(1) The source of individual personality and the quality of being a condition of its development;

(2) The source of the State and its law and the quality of being secured and guaranteed by the action of that law.”

Even the natural rights theorists see the role of the State vis-à-vis the rights of the individual. This theory perceives that the rights are natural and are not given by the State but the State is necessary to protect these rights. The role of the State is limited and it is

52 Ibid.
53 Ibid. p. 283.
not supposed to interfere in the rights of the individual. The thinkers like Thomas Hobbes advocated the right to “self preservation” and John Locke even gave the idea of resisting the State in case it interferes or infringes with the rights of the individual. Rousseau even expressed the views that the natural rights can be had even at the cost of the civil society or the State. Therefore, this school views State as “Necessary Evil” in context of the rights of the individual.

The Legal Right theorists like Bentham have exactly the opposite view saying that the rights have no substance until these are guaranteed by the State. This implies:

(a) Firstly there are no rights prior to the State, because these come into existence with the State itself;
(b) secondly, it is the State which declares the law and thereby guarantees and enforces rights. No right can exist beyond the legal framework provided by the State; and
(c) finally, as the law may change from time to time, the substance of rights also changes therewith. There can be no ‘fixed’ rights in any society, not to speak of eternal or universal rights.

The social welfare theory of Laski, Green, Hobhouse and Hobson views the rights in social perspective and establishes the co-relationship between the rights and the social welfare. Laski considers rights “as the conditions of social life without which no man can seek, in general, to be himself at the best.” The end of the State is to maintain them, for rights are useful as they serve the ends of the State. The State has to create the conditions that enable the individual to achieve the best self, in consonance with that of others. Therefore, this theory developed the idea of welfare State and positive rights.

Close to this view is the Idealist Theory of Hegel and Green, to whom the rights of the individual are actually social rights. Hegel argues that human needs and desires are social needs and Green is also of the view that individuals have the rights as members of

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57 Supra note 36, pp.287-88
58 Ibid.
the society and these can be attained only through social cooperation by working towards common good. There can be no conflict between individual rights and the interest of the community. This theory has not emphasized the role of the State directly but it reflects this very social perspective. Here the society, the fellow human beings and the State become equally responsible for the fulfillment of the rights.\(^{59}\)

Marxist theory of rights as expounded by Karl Marx and Lenin holds that the rights maintained by any society are the rights of its ruling class or dominant class at the expense of the dependent class. The capitalist society protects the rights and interests of the capitalists and ignores the working class. Workers will have to overthrow the capitalists and socialize the important means of production in order to create a new order that would protect the rights and interests of the working class.\(^{60}\) According to this view, the State is a class institution which protects the rights of the ruling class only. As far as the positive role of the State is concerned, Marxism stressed upon the socialist State to maintain economic equality by controlling all the means of production. This view gives importance to the socio-economic rights rather than the political and cultural rights. The communist States like USSR and China have been alleged to curb the civil and political rights and freedom of its citizens in the name of the equality, though, recently, there have been a shift toward more liberal State. Therefore, in general, Marxism views the State as more of a suppresser of the rights, than its protector. The human rights, according to this ideology, can be fully enjoyed only in a stateless communist society.

1. **THE PROCESS OF UNIVERSALISATION**

It was by the middle of the twentieth century that, as a result of the convergence of several historical factors, the concept of human rights, which was universal in its approach and comprehensive in its content, emerged. Besides, what amounted to a revolutionary was the principle of international concern with human rights. This development found expression in the Charter of the United Nations, the first international instrument which, in unequivocal terms, proclaimed “universal respect for, and


\(^{60}\) *Ibid*. p.308.
observance of Human rights and fundamental freedom for all without distinction on race, sex, language or religion. The Charter made promotion of these rights as one of its basic purposes and obligated the member States to take joint and separate action in cooperation with the United Nations for the achievement of this purpose”. Thus, the UN Charter ushered in a new international law of human rights. Until then, the question of human rights was considered to be a matter between the State and individuals within its territory. For the first time in the history of mankind, human rights were being universalized and internationalized – rights which every individual whatever one’s origin, could claim as a member of the human society. It was just the beginning of a new era and concerted efforts were needed to keep it moving forward towards the desired goal. It was, therefore, deemed necessary to define human rights and fundamental freedoms so that the objectives of the Charter could be pursued and an international system for the promotion and protection of human rights could be instituted. Hence, the next step followed in December 1948. After three years of preparatory work, the UN General Assembly proclaimed the Universal Declaration of Human Rights. It defined specific rights – civil and political as well as economic, social and cultural, with equality and freedom from discrimination as a principal and recurrent theme. It spells out the rights to life, liberty, and security of person, fair trial by due process of law, freedom of conscience, thought, expression, association and privacy, freedom of movement and the right to leave one’s country and return to it, right to marriage and family, right to work and leisure, health care and education and so on. What is most significant is that it declares the Will of the people to be the basis of the authority of the government. The Universal Declaration was not conceived as a law but as a ‘common standard of achievement’ for all peoples and all nations. It stirred the moral consciousness as well as the political assertiveness of the people in various countries. Notwithstanding its strong impact and the momentum that it generated worldwide for observation and protection of human rights, the Declaration carries no legal sanction to compel the States to meet the obligation of ensuring observance and implementation of human rights as enshrined in the Declaration. To seek such a legal framework and to convert the norms set in the Declaration into legally binding obligations, efforts were made in the, beginning of 1947. The process was long
and arduous, indeed. Eventually, after twenty years of preparatory work accompanied by protracted debates, negotiations and compromises to accommodate differing views, the General Assembly promulgated in December 1966, International Covenants comprising three instruments: International Covenant on Economic, Social and Cultural Rights; International Covenants on Civil and Political Rights; and Optional Protocol to the Covenants on Civil and Political Rights. With more than 130 States who have already become party to the two Covenants, they have assumed a prime place in international instruments that influence and at the same time judge the conditions of individual rights in particular countries. Besides, over the decades, scores of other instruments, dealing with specific rights of Stateless persons, refugees, women, elimination of all forms of discrimination and so on have also been proclaimed.

The development of international protection of human rights may be said to have its roots in antiquity, but a real beginning was made only during the early 19th century with the humanitarian intervention at International level. The League of Nations was established in 1919. The contribution of International Labour Organisation and the Committee on International Intellectual Co-operation and Health Committee under the aegis of the League was equally noteworthy in creating an atmosphere at international level and in securing fair and humane conditions of labour, fostering intellectual freedom and improving collective action against epidemics. However, the League failed to protect human rights and international peace and perished in the gunfire and smoke of the war. Thereafter, the threat to human rights during the World War II, intensified the International concern about the rights and the United Nations was created in 1945. Apart from the Human Rights Declaration and the two International Covenants on Human Rights, adopted by the UNO, many other efforts were made at the International level. The European Convention on Human Rights was signed in 1950 and American Convention on Human Rights in 1969. Both undertook to protect and promote a number of rights. The Permanent Arab Commission on Human Rights (1968) and the African Charter on Human Rights came later in 1981. The development of the concept of human rights has tended to cover the ever widening area of human activity with the passage of time.
E. SCOPE OF THE RESEARCH

The scope of the present research encompasses the domain of policing and criminal justice administration through the lens of human rights with a special reference to Punjab. The researcher has carefully studied the system of policing and criminal justice administration prevailing in Punjab. The entire research covers various issues prevailing in the system of policing in Punjab with respect to human rights. By incorporating both doctrinal as well as empirical research methods, the researcher is able to bridge the gap which exists between the perceptions of the criminal justice administrators with regard to human rights and the people who most frequently come in contact with the police.

Thereafter, the research lays down suggestions which would facilitate the policymakers for Punjab police in order to ensure that human rights of the citizens of Punjab are duly taken care of while administering justice. Hence, the applicability of the research can be extended across the state of Punjab.

1. BROAD OBJECTIVES OF STUDY

In the light of the foregoing discussion the present study broadly focuses upon the following objectives:

1. To study the evolution of Human rights internationally
2. To study the comparative perspectives of the evolution of world police investigation systems
3. To study the present conditions prevailing in the Human rights and Police Investigation in the light of historical, psychological and sociological perspectives
4. To describe the concept of human rights and police investigation in India
5. To find out various stages of development in police working and human rights
6. To study the effects of Human rights on the behavior of police personnel
7. To study public perceptions about police behavior
8. To suggest suitable remedial measures to improve the human rights which will in turn enhance the professional and behavioral performance of police personnel in India
F. METHODOLOGY

1. INTRODUCTION

The concept of research methodology can be divided into two parts – ‘research’ and ‘methodology.’ Research is a “process through which a problem, which has been explicitly defined, or a potential problem can be enquired while, the concept of methodology relates to all the tools and techniques through which data is collected in order to understand the problem in question and arrive at a valid and authenticated conclusion”. Further, there are various techniques which can be incorporated in a research to justify its objectives, such as case study approach, interviews, discussion, surveys etc.

2. RESEARCH PHILOSOPHY

Research philosophy is the concept through which a broad structure of the research is decided. Philosophy of the research refers to the way of thinking of the researcher in respect of carrying out the research.

In order to decide upon the right research philosophy, a researcher has to understand two concepts which are the pillars of research philosophy. These two concepts are epistemology and ontology.

   a) Epistemological Orientation: Epistemology is based upon true facts which can be scientifically tested. It is a structural approach in which data analysis is based upon scientifically proven facts. While choosing the research philosophy, a researcher has to make a choice between four concepts of epistemology. These concepts are:

63 A. Bryman, and E. Bell, Business Research Methods, New York: Oxford University Press Inc., 2003, define the process of research methodology as a very structured and scientific way to approach a problem by incorporating various tools and techniques in order to derive solutions to the problem in the process.
(i) **Positivism**: According to positivism, the results, which are obtained through different data collection techniques, can be scientifically tested and can be analysed in a structured manner.

(ii) **Interpretivism**: The approach of interpretivism is not at all scientific in nature and hence, does not require structured methods to be executed.

(iii) **Realism**: realism philosophy states that there are certain circumstances when a particular group of people share same feelings in response to some common happenings, situations etc.

(iv) **Post-Positivism**: The scope of post-positivism also includes values which affect the human behaviour such as passion, politics, etc. which are not taken care of in the Positivism approach.⁶⁷

Since the present research aims at critically evaluating the police and criminal justice administration from the human rights perspective, therefore understanding the effect of external factors such as power, politics, etc becomes extremely important. Hence, in the present research, post positivism approach is most suitable.

b) **Ontology**: Ontology is the approach which states that every situation warrants a unique direction and hence, is unique in nature. There are two pillars under the concept of ontology, which are constructivism and objectivism.

In the peculiar facts and circumstances of the present research, constructivism orientation would do justice to the aims and objectives since there are many external factors involved.⁶⁸

3. **RESEARCH APPROACH – INDUCTIVE VERSUS DEDUCTIVE**

In the present research, the researcher is incorporating a mixed approach to justify the objectives of the research. The foundation of criminal and police administration

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⁶⁷ According to S. Minocha, *Dissertation Preparation and Research Methods*. Harlow: Pearson Education, 2005. This approach also takes into consideration the effect of judgment and inferences of individuals. Moreover, in order to successfully carry out a post positivism research, the researcher requires a great deal of patience, courage, imagination, sympathy and interpersonal communication skills.

⁶⁸ M.J. Polonsky and D.S. Waller, *Designing and Managing a Research Project: A Business Student's Guide*. Thousand Oaks: Sage Publications, 2005, stated that in situations where complex process (involving various external factors) is involved, following constructivism approach is beneficial as it takes into consideration the different believes of various policy makers.
system has been critically analyzed by comprehensively analyzing the literature available on the topic while, empirical research has been undertaken in order to evaluate the effectiveness of the police and criminal justice administration system.

4. RESEARCH STRATEGY

There are various research strategies available to the researcher through which the researcher can choose an optimal strategy. The main approaches which can be incorporated by the researcher are as follows.

i. Experimental Research Design
ii. Survey Method
iii. Case Study Approach

In the present research, since the police and criminal administration system have been critically analyzed with the human rights perspective, therefore incorporating both survey approach and theoretical approach were most suitable. Survey method facilitated the process of data collection, since the sample size was very large, while theoretical approach deduced the findings in respect of evolution of the police and criminal justice administration.

5. METHODS OF DATA COLLECTION

Data in any research forms a very integral part of the research since the findings and recommendations are filtered from the data collected. In the present research, the following tools of data collection have been incorporated:

a) Primary And Secondary Data

The present study is partly doctrinal and partly empirical. The study mainly depends upon the primary sources in order to deduce authenticated findings in respect of the objectives. The data has been collected mainly from the state of Punjab. Primary data has been collected through random sampling with the help of questionnaire. Since

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70 Supra note 68.
71 J.A. Maxwell, Qualitative Research Design: An Interactive Approach. London: Sage Publications, 2004, argues that a researcher must understand the pros and cons of different data collection tools before selecting them for his research so that he may choose those data collection tools which best fit his research.
the dataset which is adequate for the present research relates to violation of human rights or the protection of human rights in the state of Punjab by police, therefore, data has been collected through judicial magistrates, jail officials and police officials.

b) Tools For Data Collection

In the present research quantitative data collection tools have been incorporated. Since, in the present research the researcher could manage to get the survey administered to large population, therefore, the sample size is very large. Hence, survey method extends the flexibility to the researcher to collect data from the entire sample and thereafter, analyze the same in absolute terms.

6. SURVEY

In the first phase of data collection, the data has been collected from 1594 geographically segmented (within Punjab) official of the Police and Criminal Justice Administrative System. This survey has been distributed to officers of all ranks in different districts and ranges throughout Punjab. These officials have been shortlisted through random sampling technique wherein, the criteria for selection of a sample was that the respondents should be a part of the police and criminal administrative system of Punjab state. The questionnaire used to collect the data has been divided into various sections as presented below:

1. In the first section, the perceptions concerning the human rights of complainant/victim have been analysed.
2. In the next section, perceptions concerning human rights of witnesses have been analysed.
4. Section IV analyses perceptions concerning human rights of undertrial.
5. Section V analyses perceptions concerning human rights of the convicted person.

Supra note 67, states that in order to collect data for any research, a researcher needs to make a choice between qualitative or quantitative tools of data collection.
7. DATA SAMPLING – RANDOM SAMPLING

In the present research random sampling techniques have been used. The questionnaire was administered to 2494 respondents, that is, sample size (N) is 2494. The bifurcation of the sample is as under:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Designation of Respondents</th>
<th>No. of Respondents to whom survey was administered</th>
<th>No. of responses accepted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Judicial Magistrates</td>
<td>70</td>
<td>61</td>
</tr>
<tr>
<td>2.</td>
<td>Jail Officials</td>
<td>35</td>
<td>33</td>
</tr>
<tr>
<td>3.</td>
<td>Police Officials</td>
<td>1500</td>
<td>1500</td>
</tr>
<tr>
<td>4.</td>
<td>Witnesses</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>5.</td>
<td>Complainant</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>6.</td>
<td>Accused</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>7.</td>
<td>Prisoners</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>8.</td>
<td>Undertrial</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>9.</td>
<td>Convicted Person</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>2505</strong></td>
<td><strong>2494</strong></td>
</tr>
</tbody>
</table>

The surveys were administered with 2505 respondents, however, the responses of 11 respondents were rejected due to incomplete filing of surveys.

a) Secondary Data

The secondary data has been collected from the law libraries of different universities, police offices and departments in Punjab and other States also. The secondary sources include the published work in the form of books, articles and research papers in the national and international journals, internet, websites and newspapers on the theme of this research work.

8. DATA ANALYSIS

Through the critical review of literature, the police and criminal justice administration effectiveness in Punjab have been analyzed with a special reference to Human Rights. These findings which were arrived at by critically analyzing the data
collected through secondary sources meet objective nos. 1 to 6. Thereafter, questionnaires have been administered to 2494 respondents through which answers have been furnished to objective nos. 3 and 7.

In order to analyze data collected through critical analysis, a structured approach has been incorporated. In this structured technique for analysis of qualitative data, a three phased agenda has been followed. In the first phase of analysis, the data is reduced to relevant sections. After the data has been categorized, it becomes important to present the data in a manner which is appropriate for the analysis. Thereafter, inferring conclusions from the shared data becomes essential.

The process of transcription and summarization of the data plays a very vital role since in secondary data collection, the scope for ambiguity in the process of data transcription is very high. With a view to surpass this crucial area, the above stated structural framework has been incorporated.

G. SCHEME OF CHAPTERIZATION
The present research has been divided into six chapters.

Chapter-1 ‘Introduction, Scope and Methodology.’ The first chapter introduces the topic and lays down the problem in question. In this section, the concept of policing, its evolution, criminal justice administration system, human rights have been introduced with special reference to Punjab. The concepts are explained through a broader perspective which narrows down to micro level. This Chapter also elaborates the scope of the present research and the methodological tools which are applied by this researcher in order to carry out the research. The broad aims and objectives of the research are also presented in this Chapter.

Chapter-2 ‘Structural and Functional Analysis of Indian Police with Special Reference to Punjab.’ It comprehensively analyses the structural as well as functional characteristics of Indian police. Thereafter, the system of policing in different States and union Territories is explained. Henceforth, the researcher lays down three structural

and functional aspects of police in the state of Punjab. Moreover, the old rules (1934 Rules) which governed Punjab police have been highlighted and issues arising in various domains have been acknowledged. Thereafter, a critical analysis of the new rules (2011 Rules) has been presented. Hence, chapter 2 comprehensively analyses different aspects of Indian police from the lens of Punjab and relates them to the human rights perspective.

**Chapter-3 ‘Criminal Justice Administration and Human Rights: International and National Perspective.’** This chapter elaborates about the nature of criminal justice administration in India. This chapter reviews the International perspective regarding criminal justice administration and makes a brief comparative analysis with the Indian system. The evolution of the present structural framework of the criminal justice system in India is also reviewed in this section of the study.

**Chapter-4 ‘Police and Human Rights with Special Reference to Punjab: An Appraisal.’** It details about the situation of human rights violation in context of the working of the police. An attempt is made to study various types of infringements of the rights of the citizens at the hand of the police and its functioning along with other organs of the criminal justice administration. The causes behind these violations are also analyzed with the help of primary and secondary sources, particularly focusing upon the situation in Punjab.

**Chapter-5 ‘Punjab Police, Criminal Justice Administration and Human Rights: An Empirical Study.’** This part of the study critically analyses the empirical data collected by the researchers from both the perspective of the administrators of criminal justice as well as the people who most frequently interact with the Punjab police. This data has been collected quantitatively by administering questionnaires to 2494 geographically segmented (within Punjab) Officials of the Police and Criminal Justice Administrative System. In the first phase of data collection, data has been collected through judicial magistrates, jail of officials and police officers. The second phase of data collection and analysis, compares this data with the data collected through complainants, witnesses, accused, undertrials, convicted persons and prisoners. Hence, the data inferred is highly valid and authenticated.
Chapter-6 ‘Conclusion and Suggestions.’ This chapter concludes the research and lays down various suggestions for the policymakers so that the current issues being faced by the Punjab police may be circumvented. Also, practically applicable suggestions have been laid down in this chapter which could ensure the protection of human rights of citizens of State of Punjab.

The following figure very well illustrates this scheme of Chapterisation.

**Figure 1.1: Scheme of Chapterisation**