2. Structural and Functional Analysis of Indian Police with Special Reference to Punjab

As mentioned in the introduction of this study, the police is the primary and frontier organ of any criminal justice system. The process of criminal justice begins with initiative of the police. More efficient the working of the police, more will be the success of the criminal justice system. The police is an active limb of the criminal justice system which serves both prosecution and the courts. It is an agency which deals the public before any other organ of the criminal justice system. Its public dealing is more direct and impact worthy. It is only the working of the police which can generate trust among the people in the criminal justice system of the State.

The role and functioning of the police depends on variety of factors, which includes political, social, economic and legal setups. Organisation is the most significant aspect of administration. Without it, the whole administrative efforts will be in vain. An organisation is a set of personnel working collectively to achieve a common objective. Organisation is both a structure as well as an activity to activate that structure. The structure of the organization sets the tone and trajectory of the functioning of any agency. Therefore, it will be worthwhile to analyse the organisational structure of police in India and the state of Punjab. The concept of modern policing in India was introduced under the British rule, particularly it was the Police Act of 1861 which set the ball rolling for the evolution of a comprehensive police system in India. It was this Act which become the corner stone of the police organization at all India level and various union territories and states in India. This Police Act gives each State Government the power to establish of its own police force.\(^1\) In addition to this Act, other legislations like, Indian Penal Code and Code of Criminal Procedure (Cr.PC) were also made to regulate the police operations. This act remained in force till recently. It was in 2008 that Punjab Police Act 2007 came into force and replaced the previous system.

The nature of the organizational structure of any police is by and large decided by the public policy of the state, or more particularly the policies of rulers. The main thrust

\(^1\) S.2 of the Police Act 1861.
of the rulers in pre-independence India, was to control their subjects. Therefore, the police structure was so built, which was meant to act as, an “efficient instrument for the prevention and detection of crime.” Though, after India got independence, a democratic system was adopted, which was meant to act as an instrument of service to the people, but the Police Act of 1861 continued in practice.

In the post independence period various reform committees and commissions were set up to in-tune the police organizational structure according to the needs of the time. These commissions have been constituted to review the functioning of the police, identify the flaws within the existing system of administration, and make recommendations. The National Police Commission, was set in 1977 by the Union Government. It was given wide terms of reference that included the organization, role and functions of the police, police-public relations, political interference in the police work, misuse of police powers and police accountability and performance evaluation. The commission produced 8 reports between 1971 and 1981. Lastly, it prepared a draft of a new Police Act to replace that of 1861. Many subsequent committees like Ribeiro Committee, Padmanabhaiah Committee and Police Act Drafting Committee under Soli Sorabjee in September 2005 have largely reiterated the above recommendations. But there has been delay on the part of the Government to introduce these recommended police reforms. In 1996, Mr. Prakash Singh, a retired police officer petitioned the Supreme Court and urged to issue “directions to Government of India to introduce reforms in Police suggested by various commissions in order to ensure that the police is made accountable essentially and primarily to the law of land and the people.” The Supreme Court referred to the recommendations made by various committees on police reforms and pointed out the requirement of reform to be made regarding:

(a) State Security Commission at State level;
(b) transparent procedure for the appointment of Police Chief and the desirability of giving him a minimum fixed tenure;
(c) separation of investigation work from law and order; and
(d) a new Police Act which should reflect the democratic aspirations of the people.

---

2 Preamble, of the Police Act, 1861.
5 Prakash Singh Vs. Union of India, 2006 (8) SCC 1.
The Supreme Court directed State Governments to establish State Security Commission and Police Establishment Board to determine transfers, postings promotions, etc. It also outlined the procedure for the selection of the Director General of Police, prescribed minimum two years tenure for police officers, and directed police departments to separate the law and order function from the investigation function. The Apex Court also ordered the creation of district and state level ‘Police Complaints Authority’ to deal with the grievances against the police.6

It was under these directions that Punjab Police Act, 2007 has been enacted which has come into force in the month of February, 2008. Though, the Punjab Police Rules are framed in 2011 by the Punjab Government but these are yet to be implemented.

A. ORGANIZATIONAL STRUCTURE

Each of the 28 states of India has a police force. The superintendence over it is exercised by each State Government. The head of the police force in the State is known as Director General of Police (DGP). The DGP is responsible to the State Government for the administration of the police force in the State and for advising the government on the police matters.

State Police Organizations in India are structurally organized into various formations. The structural formation of any State Police in India is as follows:

```
State
↓
Zone
↓
Range
↓
District
↓
Sub Division
↓
Circle
↓
Police Station
```

---

6 Ibid.
Police units in India are well-structured hierarchical organizations. Though, there is marginal variation in the ranks and hierarchical order in the different organization, however, there is a general uniformity in this context in most of the police organizations. The rank and hierarchical structure of the police organization is as following:

**Director General of Police (DGP)**

↓

**Additional Director General of Police (Addl. DGP)**

↓

**Inspector General of Police (IG)**

↓

**Deputy Inspector General of Police (Dy. IG)**

↓

**Senior Superintendent of Police (SSP)**

↓

**Superintendent of Police (SP)**

↓

**Additional Superintendent of Police (Addl. SP)**

↓

**Assistant/ Deputy Superintendent of Police (ASP/ DSP)**

↓

**Inspector of Police (Ins.)**

↓

**Sub-Inspector of Police (SI)**

↓

**Assistant Sub-Inspector of Police (ASI)**

↓

**Police Head Constable (HC)**

↓

**Police Constable**
**Director General of Police (DGP):** For the overall direction and supervision of the police force, the State Government appoints a Director General of Police, who exercises power, performs functions and duties, and has responsibility and authority as is prescribed. The Director General of Police is the Chief of the PHQ and has the senior most position in the hierarchy of the Police Force of the State and no other officer senior or equivalent in rank to the incumbent Director General of Police is posted to any position within the police organization to ensure that the unity of command is maintained at all times. However, there is no restriction on appointment of an officer of the rank of Director General outside the State Police organization/force.

![Figure 2.1 : Insignia of DGP](image)

**Additional Director General of Police (ADGP):** Additional Director General of Police (ADGP) is a high ranking police officer in Indian States & Union Territories. All ADGPs are Indian Police Service (IPS) officers and are in above super time scale (HAG) (pay-band-4) grade. The equivalent position or designation in the state government(s) or Government of India (GOI) of Additional Director General of Police are as Commissioner of Police (city), Special or Additional Director (GOI), Special or Additional Secretary (R), Cabinet Secretariat (GOI). The rank insignia of a Additional Director General of Police or Commissioner of Police (city) is the national emblem over crossed sword and baton.

![Figure 2.2 : Insignia of ADGP](image)
**Inspector General of Police (IGP):** The Inspector General of Police is a two-star rank officer and one of the senior most officers in the state police forces which usually head the police force in each city. All Inspector Generals are Indian Police Service (short form IPS) officers. They are in some states the commissioner of police for the city, that is, they head a police force for a particular city. The rank insignia of a Inspector General of Police or Joint Commissioner of Police is one star above crossed sword and baton.

*Figure 2.3 : Insignia of IGP*

---

**Deputy Inspector General of Police (DIG):** An Officer of the rank of Deputy Inspector General of Police heads each Police Range. He supervises the police administration of the Range field formations i.e. police districts, circles, police stations and other police units under his charge.

*Figure 2.4 : Insignia of DIG*

He reports directly to the Zonal Inspector General of Police. The Range office consists of the following Branches.

- General Branch
- Force Branch
- Crime Branch
- Law & Order Branch
Superintendent of Police (SP): The administration of the police throughout districts vests in an officer of the rank of Superintendent of Police. For an effective and efficient administration of the Police District, the Superintendent of Police, assisted by as many Additional, Assistant and Deputy Superintendents, are deemed necessary.

The SP office has the following branches/sections for efficient and quick disposal of its various functions and tasks:

- Receipt and Dispatch Branch
- Administration and Establishment Branch
- Confidential Branch
- Crime Branch
- District Special Branch
- Force Branch
- Accounts Branch
- General Branch
- Welfare Branch
- Complaints, Vigilance and DE Cell
- Legal and Prosecution Cell
- MOB, Photography and Scientific Aids Unit
- District Crime Record Bureau (DCRB)
- Computer Branch and MIS
- Police Special Cell
**Deputy Superintendent of Police (DSP):**  Deputy Superintendents are state police officers who belong to the provincial police forces, either direct entrants at that rank or promoted from inspector. DSPs who are members of the provincial forces (equivalent rank deputy superintendents) are equal in every way to IPS (equivalent rank assistant superintendent of police) although paid slightly less and fill the same positions (sub divisional police officer). Deputy Superintendents of Police who show potential could be promoted to the I.P.S after some limited years of service which varies from 8 to 15 years depending on the state.

![Figure 2.6: Insignia of DSP](image)

**Inspector of Police:** An inspector is a non-gazetted police officer ranking above a Sub-Inspector and below a Deputy Superintendent of Police (DySP). In the Rural areas Inspectors generally have jurisdictions over more than one police station (generally under a Sub-Inspector of Police). However, in many cities, Inspectors would be the Station House Officer (SHO) at every police station. The rank insignia for a Police Inspector is three stars, and a red and blue striped ribbon at the outer edge of the shoulder straps. In rural areas where an inspector is in charge of a police circle (consisting more than one police station) he is also referred to as "Circle Inspector"

![Figure 2.7: Insignia of Inspector of Police](image)
Sub-Inspector of Police (SI): A sub-inspector (SI) is generally in command of a police station (with head constables, the equivalent of corporals, commanding police outposts). He is the lowest ranked officer who under Indian Police rules and regulations can file a charge sheet in court, and is usually the first investigating officer. Officers subordinate to him cannot file charge sheets, but can only investigate cases on his behalf.

Figure 2.8 : Insignia of Sub Inspector of Police

B. POLICE HEADQUARTERS

Police Headquarter, popularly known as PHQ, is an apex organization of any State police force. PHQ is a large establishment divided into various wings, branches, sections or units. A senior officer, who is of the rank of Additional D.G., I.G. or D.I.G.P heads each of such unit. Each wing, branch or section of the PHQ has adequate number of officers and men with requisite resources for smooth and effective functioning and for an efficient discharge of the various functions assigned to the specific unit.

1. UNITS, BRANCHES, WINGS, SECTIONS OR DEPARTMENTS OF POLICE HEADQUARTER

Police Headquarter, being an apex, high powered and an important level of any police organization is assigned numerous functions, powers, duties and responsibilities. In order to discharge all these jobs efficiently and smoothly every police headquarter is divided into various units, branches, wings, sections and departments. Police Headquarters of various States have the following units as per their needs, demands and functional requirements. An officer of the rank of Additional Director General or Inspector General or Deputy Inspector General of Police heads each of such unit.
2. STRUCTURE, FUNCTION AND POWERS OF THE HEADQUARTER BRANCHES/UNITS

Each branch or wing and section of the Police Headquarter has an adequate structure and sufficient manpower and equipment according to the functional needs and duties assigned to it. The officers of various ranks are adequately empowered for an effective and efficient execution of the various tasks assigned to the respective branch or wing. Manpower planning is done in a judicious manner and adequate number of officers
and men from all ranks and cadres are included in the sanctioned strength of each wing or branch of the PHQ.

Functions, duties, powers and responsibilities of each functionary are specifically spelt out and efforts are made to ensure that adequate decentralization of powers and functions exists for an effective, efficient and timely disposal of work. Important and significant administrative and management parameters like supervision; command, control, coordination, reward, punishment and motivation are clearly spelt out to remove any type of functional and operational confusion and uncertainty.

Each of the above units may have the requisite well-stratified and well-articulated structure, sanctioned strength, powers, functions and duties according to the policing requirements of each State. The personnel belonging to police force are governed by the respective Police Rules and other administrative staff is governed by Civil Services Rules applicable in the respective State.

3. ROLE AND RESPONSIBILITY OF THE POLICE HEAD QUARTER

Police Headquarter (PHQ) headed by the D.G.P. has a significant role to play in the overall efficient and effective functioning of the respective State Police Organization. It is responsible for policy formulation, planning and implementation of various orders, schemes and plans. Competent crime management, effective maintenance of law and order, peace and internal security and an overall efficient policing are some of the important responsibilities of the PHQ. Various supervisory, command and control activities are exercised by PHQ, in order to keep the various field formations and other units competent, effective and functional. The PHQ works as a meaningful and effective link between the field formations, various units and the Government and the outside agencies and organizations. In order to achieve harmony among various administrative and police units, the PHQ maintains effective inter and intra coordination with all the concerned units.

C. COMMUNITY PARTICIPATION IN POLICING

The Commissioner of Police ensures involvement of the community in policing by constituting a Citizens' Policing Committee, every two years, for each locality or a group of localities or colonies, including slums. These Citizens' Policing Committees,
aimed at promoting people's participation in safeguarding their own life and property, consist of an appropriate number of local residents of the area with unquestionable character, integrity and antecedents, and having commitment to public safety and security. The Citizens' Policing Committees have a fair representation from all strata and professions of the society in the area, as also due gender representation.\(^7\)

The police takes the assistance of the Citizens' Policing Committees in identifying the existing and emerging needs and priorities of policing in the area, besides involving them in working out and implementing policing strategies and action plans, and in the performance of such other functions as prescribed.

Police also provide to the public, through the Citizens' Policing Committees, at regular intervals, a feedback on the action taken on the identified policing needs, and also endeavour to create public awareness on policing issues by promoting two-way communication through these Committees.

The meetings of these Committees are convened, as frequently as deemed necessary, but at least once in every three months. The concerned Assistant Commissioner of Police, besides the officer in charge of the Police Station, attends the meetings of the Committee.

1. COMMUNITY POLICING IN PUNJAB

Good governance and human rights in Punjab envisage a partnership between the community and police functionaries to ensure community policing. The perspective is yet to be absorbed in totality by the two sections. Lack of institutionalization of these activities does lead to certain adhocism. Importantly, the training of police functionaries has to be undertaken in a social and professional environment where it can be implemented. A policeman may be sensitized to gender issues but is handicapped to provide a rape victim with psychological assistance or an accident victim with medical aid unless these provisions are built into the police structures. Adhoc aid can be managed but for a sustained and professional input, institutionalization of the relevant services is necessary. This involves capacity building of the police force and support structures both

in terms of material resources and human capacities. To ensure that this project is not handicapped by adhoc initiatives and largess, efforts have been undertaken to institutionalize the community policing activities and in Punjab, Community Policing Resource Centres (CPRC) have been developed. The actions which have already been undertaken under the banner of Community Policing Resource Centres are:

i. Grievance Redress Unit
ii. Community Service cum Information Director
iii. Victim Assistance Unit
iv. Child Unit

2. FUNDING AND RESOURCE MOBILIZATION OF THESE C.P.

As per the Saanjh Report, each CPRC has been allocated Rs. 10,00,000/- as a one-time grant to meet the initial cost of setting up the centre. Punjab Government allocated fund of Rs.30 Crore, under the ‘Head 2055-Police-800- other expenditure-01-HAJ-08 setting up of Community Police Suvidha Center-42- Lumpsum Provision(Plan) for the year 2010-11,’ for recurring expenditure. Various donation accounts are also operated by the SP in charge of the CRPC in view to monitor the donations from community.

D. POLICE ORGANIZATION IN PUNJAB

The State of Punjab is divided into four zones –

i. Border Zone
ii. Patiala Zone
iii. Jalandhar Zone, and
iv. Bathinda Zone

Each Zone is headed by an Inspector General of Police. These zones have further been divided into Seven Ranges namely, Patiala, Bathinda, Ferozepur, Ludhiana, Jalandhar, Border and Rupnagar Range. Presently Punjab has 24 Police Districts headed by SSPs and 3 Commissionerates headed by IGPs.

Punjab Police has an armed compliment consisting of eight of Punjab Armed Police (PAP) battalions, seven battalions of India Reserve Battalion (IRB) and five battalions of Commandos.
Following are the three Commissionerates of Punjab:

i. Amritsar City
ii. Jalandhar City
iii. Ludhiana City

The table below presents the different Zones, Ranges and Districts of Punjab.

<table>
<thead>
<tr>
<th>Zones</th>
<th>Ranges</th>
<th>Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2. Batala</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Gurdaspur</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Pathankot</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5. Tarn Taran</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Sangrur</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Barnala</td>
</tr>
<tr>
<td></td>
<td>2. Rupnagar Range</td>
<td>1. Rupnagar</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. S.A.S Nagar</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Shaheed Bhagat Singh Nagar</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Hoshiarpur</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Kapurthala</td>
</tr>
<tr>
<td></td>
<td>2. Ludhiana Range</td>
<td>1. Ludhiana Rural</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Khanna</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Fatehgarh Sahib</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Mukatsar</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Mansa</td>
</tr>
<tr>
<td></td>
<td>2. Ferozepur Range</td>
<td>1. Ferozepur</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Fazilka</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Moga</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Faridkot</td>
</tr>
</tbody>
</table>
1. ORGANIZATIONAL STRUCTURE FIGURES OF PUNJAB POLICE

The following figures illustrate the structure of Punjab Police:

**Figure 2.1: Structure of Punjab Police**

![Figure 2.1: Structure of Punjab Police]

*Source: Punjab Police HQ*

It can be seen that the structure of Police in Punjab is categorized under 12 divisions under the DGP of the state. These divisions are further illustrated as under:

**Figure 2.2: Railway and Traffic Police**

![Figure 2.2: Railway and Traffic Police]

*Source: Punjab Police HQ*
Figure 2.3: Armed Battalions

Source: Punjab Police HQ
Figure 2.4: Law and Order

Source: Punjab Police HQ
Figure 2.5: Intelligence Wing

Source: Punjab Police

Figure 2.6: Rules Wing

Source: Punjab Police HQ
Figure 2.7: Human Resource and Development

Source: Punjab Police HQ

Figure 2.8: Administration Wing

Source: Punjab Police HQ
Figure 2.9: Crime Wing

Source: Punjab Police HQ

Figure 2.10: Information and Technology

Source: Punjab Police
Figure 2.11: Security Wing

Source: Punjab Police HQ

Figure 2.12: Vigilance Cell

Source: Punjab Police HQ
The Punjab Police Act, 2007 Act in its Preamble stressed upon a police which should facilitate democratic and effective functioning of community. The relevant extract from the Preamble of Punjab Police Act, 2007 is reproduced below:

“to respond to the democratic aspirations of the people and to provide for the establishment, regulation and management of the police, redefine its role, duties and responsibilities and to enable it to functions an efficient, professional, effective, accountable, people friendly, service oriented and responsive agency, free from extraneous influences, accountable to law by taking into account the emerging challenges of policing, enforcement of rule of law, the concern for security of the State and the society,
particularly the venerable sections and minorities, good governance, human rights and for the matter connected therewith or incidental thereto”.

Hence, the qualitative shift towards the protection of human rights is visible in this Act. In pursuance of this Act, the Punjab Police Rules, 2011, which are still pending with Punjab Government for approval, are drafted to replace those of 1934. Though these Rules are yet to be implemented but the focus here too is clearly to emphasize upon such a police which should deliver people oriented services as in these Rules also. Special stress has been laid down on the significance of human rights which is evident from the fact that these Rules consist of an independent Chapter on Human Rights i.e. Chapter 20 of these Draft Rules. The Preamble of these Rules also aimed, “to promote community policing to enlist an approval of confidence of the community and raising the level of efficacy of police.” Hence, Punjab is progressively orienting its activities to meet the increasing demands raised by the community.

E. FUNCTIONING OF POLICE AND PRESENT LEGAL FRAMEWORK

While performing its duties, the police have to accomplish various types of functions. These functions can be purely administrative or field jobs. Apart from the routine departmental procedure the police have to perform different functions in its public dealing. These functions are categorised into two categories, to maintain the law and order and investigative functions. In this course, it has to deal with various types of reporting activities like arrest, detention, trials and procedures of bails and bounds. It is these functions through which, the police can either protect the human rights or on the opposite, can become the violator of the same. If the police perform these functions efficiently and effectively, it can become the protector of the human rights, but if performs them inefficiently or does not perform at all, it can endanger those very rights. Therefore it would be appropriate to analyse the legal provisions for these functions as well as the changes and modifications made in them from time to time.

---

9 Preamble of (Draft) the Punjab Police Rules, 2011.
1. POLICE REPORTS

One of the most important functions of the police is criminal investigation and all the procedures or the functions of the police regarding it are conducted and concluded in the form of various types of police reports. Under section 2(1)(r) of the code of criminal procedure 1973, “The police report means a report forwarded by a police officer to a magistrate.”

These reports are mainly of three types – a) Initial or Preliminary Report, which can also be termed as ‘First Informatory Report’; b) Supplemental or Progressive Report; c) Closing or Final Report. The report writing includes following aspects:

i. Record the facts immediately, take notes, photographs and sketch map, prepare documentation

ii. Organise collected facts

iii. Write the report; concisely in paragraphs, and in sequence of events

iv. Evaluate the report, edit and revise it, if necessary.

a) Preliminary Report Or First Informatory Report

First Information Report (FIR) is the earliest and the first information which is received about the commission of the ‘cognizable offence’. It sets the ball of the criminal justice process rolling. This may include different types of preliminary reports and FIR is one of them. Under section 154 of the Cr.P.C., if any information disclosing a cognizable offence is given at the police station, the officer incharge must register it. The Supreme Court has asserted that it is not open to the police to question the “reasonableness or credibility of the information” at this stage.

The Officer Incharge of the police station (OiC) has to send the copy of FIR to the magistrate for information. The FIR should be registered immediately even before proceeding with the preliminary investigation. As mentioned in the first schedule of the Cr.P.C., ‘cognizable offence’ is a serious criminal offence that poses an immediate danger to society, such as murder, rape, or robbery.

---

10 S.2(1) (r) of the Cr.PC
police officer can investigate a cognizable offence without the orders of a Magistrate and a police officer can make arrest for such offence without any Warrant (S.2(c) Cr.PC).

Under section 157 of the Cr.P.C., two conditions must be satisfied before a police officer can start an investigation, these are:

i. He/she should have a reason to ‘suspect’ the commission of cognizable offence

ii. He/she should satisfy him/herself about the credibility of the information i.e. a police officer has to draw satisfaction, about the credibility of information, only on material which was placed before him/her at that stage. Before starting an investigation, the police officer should draw a reasonable inference that a cognizable offence has been committed. The inference should be made solemnly on the basis of the facts mentioned in the FIR. As far as the non-cognizable offences are concerned, the police officer can not register a case or start any investigation without a magistrate’s order and cannot carry out an arrest without a warrant from a magistrate. Under section 2(1) of Cr. P.C., as mentioned in first schedule, the non cognizable offence is an offence in which a police officer has no authority to arrest without a warrant.

The Supreme Court in *T.T. Anthony Vs State of Kerala Case*, has given directives that FIR is the record of the earliest information received about the commission of a cognizable offence. Therefore, question of registering second FIR does not arise. However, it is possible that more than one set of information may be received from time to time and from different people in respect of the same incident. In such a situation, before submitting the final report, the officer incharge of the police station must investigate “not merely the cognizable offence reported in the FIR but also other the connected offences found to have been committed in the course of the same transaction or the same occurrence.”

In case of non registration of FIR, the aggrieved person can approach the District Superintendent of Police or the concerned Magistrate to get his complaint registered.

---

13 S.156(1) of the Cr.PC.
14 S.2 (1) of the Cr.PC.
16 Section 154 (3) of the Cr.P.C.
17 Section 156(3) of the Cr.P.C.
The complaint in this regard can also be filed by National or State Human Rights Commissions. In case of rape victims, the Supreme Court has given certain directives, which are as follows:

1. As soon as the rape victim reports the crime at the police station, she must be informed about her right to get a lawyer before any questions are asked from her. The facts that she was informed of this right must be mentioned in the police report.

2. The police should make arrangements to provide the victim with a lawyer if she does not have access to one.

3. In all rape trials, anonymity of the victim must be maintained.

b) **Report Of Arrest**

Under section 58 of the Cr. P.C, when a police officer makes an arrest without warrant, then the officer incharge has to inform the magistrate of the ‘Ilaka’ or the area. It is also mandatory for SHOs in compliance of the judgment of Supreme Court in D.K.Basu Vs West Bengal.

**c) Report Of Death In Police Custody**

Under section 174 and 176 of the Cr. P.C, an investigating officer or officer incharge of the police station, shall inform the magistrate of any suspicious killing or suicide cases. In case of custodial death of any suspect the officer incharge of the police station is duty bound to inform the magistrate for making an enquiry into the cause of death.

d) **Report On Search And Seizures**

Under section 100 of the Cr.P.C, whenever a search is conducted with or without search warrants by the police officer, a list of articles should be prepared and a copy shall be delivered to occupant. All this is required u/s 38, 70, 72,74, 77, 78 and 79 of the Cr.P.C when the search warrant are issued u/s 93, 94, 95 and 97 of the Cr.P.C . In case of the recovery of suspicious unclaimed property, the information has to be sent to magistrate.

---

18 Delhi Domestic Working Women’s Forum Vs Union of India and others, 1995 SCC 14.
19 AIR 1997 SC 610.
20 Section 102 of the Cr.P.C.
e) **Report On Search Of Confined Person**

Under section 97 of the Cr.P.C., if during the course of search, a confined person is recovered, he shall be produced before a Judicial Magistrate, District Magistrate or Sub Divisional Magistrate, who had issued the search warrant, shall also be informed accordingly.

f) **Progress Report Or Supplemental**

A Progress Report or Supplemental is submitted after conducting the preliminary investigation. Such reports are of two types, namely, Cancellation Report and Untraced Report.

i) **Cancellation Report**

If the investigating officer concludes that there are not sufficient grounds for entering into further investigation after the preliminary investigation, then under section 157 (1) of the Cr.P.C, the officer incharge of the police station can submit a cancellation report to the Magistrate, for canceling the FIR.

ii) **Untraced Report**

Under section 169 and 173 (2) of the Cr.P.C, if on completion of investigation, there is no sufficient evidence on record against the accused for trial, then an untraced report will be submitted to magistrate, by the officer incharge of the police station.

**g) Final Report**

The final report is also termed as charge sheet. It is sent to the Magistrate for taking cognizance under section 170, 173(2) of the Cr.P.C. This report is submitted on the completion of the investigation if it is concluded that there is sufficient evidence against the accused.

**h) Supplementary Police Report**

Under section 173(8) of the Cr.P.C. if, after the submission of final report, the investigating officer collects certain additional evidence against the accused, then a supplementary police report may be submitted to the Magistrate before closing the prosecution evidence by the trial court.
2. LIABILITY OF SUPERVISORY POLICE OFFICER REGARDING POLICE REPORT

Under section 158 of the Cr.P.C., every police report sent to Magistrate shall be submitted through the supervisory officer. The supervisory officer includes, Sub-Divisional Police Officer, Superintendent of Police (Detective) and Senior Superintendent of Police of a District. The police report under section 173 (3) of the Cr.P.C. shall be submitted through the supervisory officer and he can direct the officer incharge of the police station to make further investigation before sending the final report to the Magistrate. Rule 27 (2) of the Punjab Police Rules states that all the reports shall be submitted through supervisory officer to Magistrate.

3. INVESTIGATION

After registering the First Information Report (in short FIR), the police starts the investigation. As per Supreme Court verdict in State of West Bengal Vs Swapan Kumar Guha and Others, an investigation cannot be started on mere unfounded suspicion. The “unlimited discretion” according to the Supreme Court, to start the investigation is a “ruthless destroyer of personal freedom.” The right of the police to conduct an inquiry must be conditioned by the existence of reason to suspect the commission of a cognizable offence. Such reason can be established only if facts in the FIR point towards an offence being committed. The Supreme Court laid down that an FIR which “does not allege or disclose that the essential requirements of the penal provision, cannot form the foundation or constitute the starting point of a lawful investigation”. In this case, the Supreme Court laid down following clear directives as far as investigation is concerned:

i. It is essential before starting an investigation that facts mentioned in the FIR disclose all the elements that are required to make up a cognizable offence.

ii. Powers of investigation must be exercised in strict accordance with constitutional guarantees and legal provisions.

iii. Courts have a duty to intervene in the investigation process to prevent the harassment of individuals, if their rights are being violated, and correct procedure is not being followed.

---

21 West Bengal Vs Swapan Kumar Guha and others, 1982 SCC 561.
22 Ibid.
Regarding the investigation also, there are certain directions of Supreme Court as laid down in *State of Haryana Vs Bhajan Lal and others*. According to this the court will not interfere in the investigation process as a rule, except in the following circumstances when the high court can cancel the FIR and other proceedings carried out by the police:

i. Where the allegations in the FIR do not constitute any cognizable offence or justify on investigation by the police.

ii. Where the allegations made in the FIR and the evidence collected by the police in support of the allegations does not point towards the guilt of the accused.

iii. Where investigation has been carried out by the police in a non-cognizable offence, without the order of a magistrate.

iv. Where the Cr.P.C. or any other law expressly prohibits the carrying out of such criminal proceedings against the accused.

v. Where criminal proceedings have been started with a dishonest intention to take revenge from the accused.

The National Human Rights Commission also lays down guidelines, regarding the methods of interrogation, which are as follows:

i. Torturing and degrading treatment of the suspects is prohibited.

ii. Interrogation of an arrested person should be conducted in a clearly identifiable place which has been notified for that purpose, by the government. The place of interrogation must be accessible. Relatives or friends of the arrested person must be informed as to where he/she is being interrogated.

iii. An arrested person should be permitted to meet a lawyer at any given time, during the interrogation.

The ‘Preliminary Investigation’ included following steps:

- Proceed to the scene with assisting teams
- Render assistance to the injured at the scene of crime
- Effect the arrest of a criminal if identified at the spot
- Locate the clues and identify the witnesses

---

23 AIR 1992 SC 604
• Maintain the scene of crime and protect evidence
• Interrogate suspects
• Note down all clues of events and remarks
• Arrange the collection of evidence
• Report the incident fully and accurately
• Delegate responsibility to other assistant supporting staff\textsuperscript{25}

As far as, the role of a Commission of Enquiry and its impact on police investigation is concerned, the Supreme Court in T. T. Anthony Vs State of Kerala Case\textsuperscript{26} said that the police is not bound by the findings of a Commission of Enquiry. It is the function of the State government to set up a Commission of Enquiry and to endorse or reject its findings or recommendations. The police is an independent investigation agency of the State and must act only in accordance with the law and the evidence before it.

4. **RIGHT AGAINST SELF-INCrimINATION**

During the course of investigation, one major issue which crops up is that of self-incrimination. Under Article 20(3) of the Constitution of India, no person shall be compelled to be a witness against him/herself. Section 161(2) of the Cr.P.C (1973) cast a duty on a person to truthfully answer all the questions except those which establish a personal guilt.\textsuperscript{27} However, under section 179 of the Indian Penal Code, refusing to answer any question asked by a public servant, who is authorized to ask that question, is punishable. But in the famous *Nandini Satpathy Vs P. L Dani*,\textsuperscript{28} the Supreme Court has cleared that although a person cannot refuse to answer but he cannot at the same time be “forced” to do so. In this case, the Supreme Court laid down the following guidelines regarding self-incrimination: -

i. An accused person cannot be coerced or influenced into giving a Statement pointing to her/his guilt.

ii. The accused person must be informed of her/his right to remain silent and also of the right against self-incrimination.

\textsuperscript{25} Supra note 8.
\textsuperscript{26} 2001 SSC 181.
\textsuperscript{27} Section 161(2) of the Cr.P.C, 1973
\textsuperscript{28} AIR 1978 SC 1025
iii. The person being interrogated has the right to have a lawyer by his/her side if he/she so desires.

iv. An accused person must be informed of the right to consult a lawyer of his choice at the time of questioning, irrespective of the fact whether he/she is under arrest or in detention.

v. Women should not be summoned to the police station for questioning in breach of section 160(1) of the Cr.P.C.

vi. As far as consulting a lawyer during the course of interrogation is concerned, the Supreme Court in *D.K. Basu Vs State of West Bengal*\(^{29}\) has clarified that the arrestee can meet his/her lawyer during the interrogation but not throughout the interrogation. However, the National Human Rights Commission in its guidelines, dated November 22, 1999, has insisted that, “the person arrested should be permitted to meet his/her lawyer at any time during the interrogation”. Under Section 160(1) of the Cr.P.C, even the children below 15 should not be summoned to the police station or any other place by the investigating officer. These children and women should be questioned only at their place of residence. Under Section 162(1) of the Cr.P.C, a statement made to a police officer during an investigation should not be signed by the person making it. Under section 25 of Indian Evidence Act, 1872, such statements, made under forced self-incrimination, are not admissible as evidence in a court of law.\(^{30}\) Under Section 330 of Indian Penal Code, 1861, causing “hurt” to get a confession is punishable by imprisonment upto 7 years. Section 319 of Indian Penal Code has defined ‘hurt’ as causing bodily pain, disease or infirmity to any person.

In the course of investigation, ‘telephone tapping’ is also not permissible. Under Article 19 of constitution of India, the right to express once convictions and opinions by word of mouth is conferred to every citizen, thus telephone tapping violates this right. Under Section 5(2) of Indian Telegraph Act., 1882, the investigating agency has no “unguided and unbridled power” to invade a person’s privacy through telephone

---

\(^{29}\) AIR 1997 SC 610.
\(^{30}\) S.25 of the Indian Evidence Act., 1872.
tapping. The Supreme Court in People’s Union for Civil Liberties Vs Union of India, has laid down following directives regarding telephone tapping:

1. Tapping of telephone is prohibited without an authorizing order from the Home Secretary, Government of India or the Home Secretary of the concerned State Government (in case of emergency this power may be delegated to an officer of the home department not below the rank of Joint Secretary).

2. The order, unless it is renewed, shall cease to have authority at the end of two months from the date of issue. Though the order may be renewed, it cannot remain in operation beyond six months.

3. Telephone tapping or interception of communication must be limited to the address(es) specified in the order or to address(es) likely to be used by a person specified in the order.

4. All copies of the intercepted material must be destroyed as soon as their retention is not necessary under the terms of section 5(2) of the Indian Telegraph Act., 1882.

The Indian Telegraph Act, 1882 lays down following five conditions or situations which allow telephone tapping:

i. In the interest of sovereignty and integrity of India

ii. In the interest of security of the State

iii. In the interest of friendly relations with foreign States

iv. In the interest of public order

v. For Preventing incitement to the commission of an offence.

National Human Rights Commission has also laid down certain guidelines on ‘Polygraph or Lie Detector Test’ during the course of investigation, which are as follows:

1. Lie detector tests must not be carried out without the consent of the accused.

2. If the accused volunteers to take a lie detector test, he/she must be given access to a lawyer to explain the physical, emotional and legal implications of the test. The implications must also be explained by the police.

3. Consent to take lie detector test must be recorded before a Judicial Magistrate.

---

31 Section 5(2) of the Indian Telegraph Act., 1882.
32 People’s Union for Civil Liberties Vs Union of India, AIR 1997 SC 568.
33 Section 5(2) of the Indian Telegraph Act, 1882.
34 Supra note 24, pp. 39-40.
4. The magistrate must take into account the time the accused has been in detention and the nature of her/his interrogation. This should be done to find out whether the accused is being coerced into giving consent.

5. At the time of recording consent, the accused must be represented by a lawyer. The lawyer will explain that the Statement (given during the test) does not have the status of a confessional Statement given to a Magistrate. It will have the status of a Statement made to the police.

6. The actual recording of the lie detector test should be done by / in an independent agency (such as hospital) and in the presence of a lawyer.

7. A full medical and factual narration of the manner in which information is received must be taken on the record.

5. ARREST

One of the most prominent functions or actions of the police is to make an arrest after the required investigation. Article 22(1) of the Constitution of India lays down that no person, who is arrested, shall be detained in custody without being informed, as soon as may be, of the grounds of arrest nor shall he or she be denied the right to consult and be defended by a legal practitioner of his/her choice. Under section 57 of the Cr.P.C., the arrested person cannot be kept in the custody for more than 24 hours without the order of the Magistrate. Under Article 22 (2) of the Constitution of India, the police has to inform or to present the arrested person before the magistrate of the area, within 24 hours of the arrest. The Supreme Court in Joginder Kumar Vs State of UP and other35 lays down following directives regarding the arrest:

i. Arrests are not to be made in a routine manner. The officer making the arrest must be able to justify its necessity on the basis of some preliminary investigation.

ii. An arrested person should be allowed to inform a friend or relative about the arrest and the place, where she/he is being held. The arresting officer must inform the arrested person when she/he is brought to the police station, of this right and is required to make an entry in the diary as to who was informed.

iii. It is the duty of the magistrate before whom the arrested person is produced, to satisfy her/himself that the above requirements have been complied with.

Under section 220 of Indian Penal Code, 1861, corruptly or maliciously detaining a person without recording his arrest, is punishable by maximum sentence of 7 years. Any arrest without warrant cannot be made unless there is no other way except arresting the accused to ensure his/her presence before the Criminal justice system or to prevent him/her for committing more crime or tempering with evidence or intimidating witness.

Even public assistance and participation is implicit in the law and structured in the system as far as the procedure of arrest is concerned. Under section 43 and 37 of the Cr.P.C., the citizen has the duty to aid a law enforcement officer who demands help in arresting or preventing the escape of any person whom he is authorized to arrest. Under section 39 of the Cr.P.C., a citizen has the obligation to inform the police about the commission of heinous offences. The police should acknowledge that the citizen and community have a role to play in this regard.

One of the major issues in the criminal justice procedure is that of ‘identification’ of the accused. Only after a right identification, the next procedure can be follow. In many cases, the accused earned acquittal because their identification was not free from doubt. The Rajasthan High court in State of Rajasthan Vs. Ranjida\textsuperscript{37} has set a sound precedent in this regard. Holding of test identification parade is all the more necessary where the name of the offender is not mentioned by those who claimed to be an eye witnesses of the incident but claim to be not able to recall the features in sufficient detail. In yet another case the Supreme Court has observed that “the holding of a test identification in such cases is as much in the interest of the investigation agency or the prosecution as in the interest of the suspect or the accused. While, it enables the investigating officer to ascertain the correctness or otherwise of the claim of those witnesses who claim to have seen the perpetrator of the crime and their capacity to identify him and thereby fill the gap in the investigation regarding the identity of the culprit, it saves the suspect or the accused from the sudden risk of being identified in the dock by the self same witnesses during the course of the trial. The line up of the suspect

\textsuperscript{37} AIR 1962 Raj. 78.
in a test identification parade is therefore a workable way of testing the memory and veracity of witnesses in such cases and has worked well in actual cases." In case of identification of a proclaimed offender in a terrorist case, the witness is provided security, his identification is concealed and the identification can be done just on the basis of photographs. The name of the witness is also kept secret.

Here one thing is worth mentioning that there is difference between ‘arrest’ and ‘police custody’. Arrest is a mode of formally taking a person in police custody, but a person may be in the custody in other ways. The concept of being in custody cannot, therefore, be equated with the concept of formal arrest, and, there is difference between the two. A man be may in police custody but not yet under arrest which is a formal and a legal affair. Police custody is of two types i.e. direct police custody and indirect police custody. Direct police custody means, police custody of a person after arrest as per the provisions of the Cr.P.C under Section 41 and 151. Under Section 46 of the Cr.P.C., following procedure is to be adopted for arrest or direct police custody:

1. In making an arrest, the police officer or other person making the same, shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action.

2. If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

3. Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

As far as indirect police custody is concerned, the courts have spelled out the concept in various judgments. In case of mere a suspect who have not been formally charged with any offence or arrested under any section of Code of Criminal Procedure, their presence with the police officer under some restraint amounts to custody. Study shows that some idea of restraint of movement of person whether by word or action and does not necessarily mean custody of formal restraint. Even indirect control over the

---

38 Ramanathan Vs. State of Tamil Nadu , AIR 1979 SC 1204.
39 Ibid.
41 Roshan Beevi Vs. Jr. Secy., Govt. of Tamil Nadu, 1984 Cr.LJ 134.
movements of suspect by the police amount to police custody. There are many aspects of indirect custody like an accused in the lock up of the Magistrate, an undertrial when sent by the Magistrate to a hospital for treatment, during the treatment he is no more in the lock up and even the policeman waits outside. Secondly a person appears before a police officer for making a statement leading the discovery of fact, he is deemed to have surrendered himself to the police and as such would be a person in custody of the police.

Similarly a protection given to the witness or the victim by the police can also be termed as indirect police custody. In Hussainara Khatoon, the Bihar police used the term ‘protective custody’ for this type of custody but the court pointed out that the expression ‘protective custody’ is an euphemism calculated to disguise what is really and in truth nothing but imprisonment and it is nothing short of a blatant violation of personal liberty guaranteed under Article 21.

The National Human Rights Commission has also laid down certain guidelines regarding the procedure that should be followed before and at the time of arrest. Prior to the arrest, the police should follow certain procedure which includes, (1) the arrest without warrant should be carried out only after “reasonable satisfaction” is reached about the genuineness of a complaint; a person’s complicity in the offence; and the need to make an arrest. (2) the arrest in bailable offences must be avoided unless there is strong possibility that the person will run away. A police officer must be able to justify an arrest without warrant in the following circumstances:

i. Where the case involves a grave offence such as murder, dacoity, robbery rape etc and it is necessary to arrest the suspect to prevent her/him from escaping or evading the process of law; and /or

ii. Where the suspect is given to violent behaviour and is likely to commit more offences; and /or

iii. Where the suspect needs to be prevented from destroying evidence; interfering with witnesses or warning other suspects who have not yet been arrested; and/or

---

43 Ibid, pp.81-82.
44 AIR 1979 SC 1360.
45 Supra note, 24.p. 43.
iv. the suspect is a habitual offender, who unless arrested is likely to commit similar or further offences.

According to National Human Rights Commission, the human dignity must be upheld and minimal force should be used while arresting and searching a suspect. As a rule, use of force should be avoided by making an arrest but in case the person being arrested offers resistance, minimum force should be used. Public displaying or parading of arrested person is not permitted and his /her dignity should be protected. Information regarding the arrest or detention should be communicated without any delay to the police control room and the district and State headquarters. A round–the-clock monitoring mechanism should be put in place in this regard. The commission also mentioned the same guidelines which the Supreme Court has laid down in the form of directives regarding arrest in various cases, like informing about the ground of arrest to the arrested person etc.\footnote{Ibid.}

\textbf{a) Legal Aid To The Arrested Person}

Under Art 39(a) of the Constitution of India, the Directive Principles cast a duty on the State to secure the operation of the legal system that promotes justice on the basis of equal opportunity. Fundamental Rights under Art 14 of the Constitution of India also provides Right to Equality before law. In Sheela Barse Vs State of Maharashtra\footnote{1983 SCC 96}, Supreme court has made an observation that denial of adequate legal representation is likely to result in injustice, and “every act of injustice corrodes the foundations of democracy and rule of law....” The court also issued directives that the police must inform the nearest Legal Aid Committee as soon as the arrest is made and the person is taken to the lockup. The Legal Aid Committee should take immediate effect to provide legal assistance to the arrested person at State cost, provided such person is willing to accept the legal assistance.

Under section 54 of the Cr.P.C., the arrested person is provided the right to get himself/herself ‘medically examined’ to afford evidence to disapprove the commission of an offence by him/her or establish the commission of an offence by any other person against his/her body. The arrested person can ask to be medically examined even at the
time when he/she is produced before the Magistrate or at any time during the period of detention.

b) Women In Police Custody

Women in custody are particularly vulnerable to physical and sexual abuse. Under section 376 (2) of Indian Penal Code, 1860 custodial rape is punishable by a minimum of 10 years rigorous imprisonment. Under Section 51(2) of the Cr.P.C., it is the duty of officer in-charge of police station to ensure that women are not harmed and searches of their persons are carried out only by women with strict regard of decency. The Supreme Court\textsuperscript{48} in the above mentioned case has given following directives regarding the safety and security of women in police lockup:-

(a) Female suspects must be kept in separate lockups under the supervision of female constable.

(b) Interrogation of females must be carried out in the presence of female police persons.

National and State Human Right Commission and Women Commissions are also playing a proactive role to ensure that such violations do not go unpunished. The NHRC has also laid down certain guidelines regarding this. According to it, the women should not be arrested between sun-set and sun-rise. As far as practicable, a woman police officer should be associated when the person being arrested is a woman. As far as the arrest of ‘children or juveniles’ is concerned the NHRC is of the view that force should never be used while arresting children. Police officer should take the help of respectable citizens to ensure that children and juveniles are not terrorised, and the need to use coercive force does not arise. The Juvenile Justice (Care and Protection of Children) Act, 2000 lays down that as soon as a juvenile in conflict with law is apprehended by the police, he/she should be placed under the charge of a special juvenile police unit or designated police officer who shall immediately report the matter to a member of the Juvenile Justice Board.\textsuperscript{49}

\textsuperscript{48} Ibid.
\textsuperscript{49} Section 10(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000
6. PREVENTIVE DETENTION

Under Article 22(5) of the Constitution of India, there are provisions for preventive detention under special preventive detention law. Under the same Article, the provisions are made that the arrested person should, as soon as possible, be communicated the grounds of detention and he/she should be given the earliest opportunity to make a representation against the detention. The Supreme Court has given following directives in *Ichhu Devi Choraria Vs Union of India*\(^{50}\) regarding preventive detention:

i. The detained person must be supplied copies of the documents, statements and other materials on the basis of which she/he is being detained, without delay.

ii. The authorities who have detained a person must consider the representation of the detained person against the detention as soon as possible.

iii. The burden of proving that the detention is in accordance with the procedure established by law lies on the detaining authority.

The preventive powers are also given to police under section 107, 109, 110 of the Cr.P.C., Under Section 107 Cr.P.C., if the police believes that a person is likely to commit a breach of peace, disturb public tranquility, he can be made to execute a bond for “keeping peace” before the executive magistrate. Under Section 109 of the Cr.P.C., a person whom the police believes to conceal his/her presence with the view to committing a cognizable offence, he can be made to execute a bond for “good behaviour” before the executive magistrate. Under section 110, the police can make the people whom they believe to be “habitual offenders, desperate or dangerous person” to execute a bond for good behaviour before an executive magistrate. The Supreme Court has\(^{51}\) given directives that the person arrested under these preventive sections must be provided with legal aid and police should lay down specific facts before the magistrate showing that the concerned person is a “clear and present” danger to the society.

---

\(^{50}\) 1980 SCC 531.
7. **HANDCUFFING**

Under Article 14, 19 and 21 of the Constitution of India, use of handcuffs and fetters on prisoners violates the guarantees of basic human dignity and this has been stated by the Supreme Court in various cases\(^{52}\) but still the handcuffs can be used by the police and Supreme Court has laid down following directives regarding it:

i. Handcuffs are to be used only if a person is:
   a. involved in a serious non-bailable offence and has been previously convicted of a crime and /or
   b. is of desperate character – violent, disorderly or obstructive; and /or
   c. is likely to commit suicide; and /or
   d. is likely to attempt escape

ii. The reason why handcuffs have been used, must be clearly mentioned in the daily diary report. They must also be shown to the court.

iii. Once an arrested person is produced before the court, the escorting officer must take the court’s permission before handcuffing her/him to and fro from the court to the place of custody.

iv. The Magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation.\(^{53}\)

The Supreme Court has also\(^{54}\) stated that the violation of court directives, regarding handcuffing by a police officer or any member of the jail establishment is punishable under Contempt of Court Act 1971. In *Sunil Batra Case*\(^{55}\), the Supreme Court has also made certain observations regarding the use of bar fetters. The Supreme Court observed that:

i. It must be absolutely necessary to put fetters;

ii. The reason for doing so must be recorded;

iii. The basic condition of dangerousness must be well grounded;

iv. Natural justice must be observed;

\(^{52}\) *Sunil Batra Vs. Delhi Administration*, 1978 SCC 494.


\(^{54}\) *Citizen for Democracy Vs. State of Assam*, 1995 SCC 743.

\(^{55}\) *Sunil Batra Vs. Delhi Administration*, 1978 SCC 494.
v. The fetter must be removed at the earliest opportunity;
vi. There should be a daily review of the absolute need for bar fetters; and
vii. Finally, if it is found that the fetters must continue beyond say (certain time) it would be illegal unless an outside agency like the district magistrate or sessions judges directs its continuance.

8. CUSTODIAL VIOLENCE AND LAW

Custodial violence has become a major problem as far as the functioning of the police is concerned. It has brought a bad name to the police and the legal arrangements regarding it should also be studied before studying other aspects of this problem. In D.K. Basu Vs State of Bengal,\(^56\) the Supreme Court has made certain observations regarding custodial violence. The court agreed that the police has a legitimate right to arrest a criminal and to interrogate him/her in the course of investigation. However, the law does not permit the use of third degree method or torture on an accused person. “Torture for extracting any kind of confession would neither be right nor just nor fair”. To the court, “Custodial torture is a naked violation of human dignity”. The right to life guaranteed under the Constitution also includes the right to live with human dignity. Thus, those who violate this fundamental right should be prosecuted by the State. The court also observed that in such instances, arrests are either disguised by not recording them or showing detention as prolonged interrogation. The court stressed that no matter what the circumstances, the State or its agents are not allowed to assault or torture people. In this regard the Supreme Court\(^57\) laid down following guidelines to be circulated to the Director Generals of Police and the Home Secretary of every State and Union territory and stressed that it shall be their obligations to put these guidelines up in every police station at a conspicuous place:

i. Use of third degree methods or any form of torture to extract information is not permitted.

ii. Police personnel carrying out arrest and interrogation must bear accurate, visible and clear identification/ name tag with their designations.

\(^{56}\) AIR 1997 SCC 610.
\(^{57}\) Ibid.
iii. Particulars of all police personnel handling interrogation of an arrested person must be recorded in a register.

iv. A memo of arrest stating the time and place of arrest must be prepared by the police officer carrying out an arrest. It should be attested by at least one witness who is either a family member of the arrested person or a respectable person from the locality where the arrest is made. The memo should be also counter-signed by the arrested person.

v. The arrested or detained person is entitled to inform a friend, relative or any other person interested in her/his welfare about the arrest and place of detention as soon as practicable. The arrested person must be made aware of this right as soon as she/he is arrested or detained.

vi. The arrested person may be allowed to meet his/her lawyer during interrogation but not throughout the interrogation.

vii. The time, place of arrest and venue of custody of the arrested person must be notified by telegraph to the next friend or relative of the arrested person within 8-12 hours of arrest, in case such person lives outside the district or town. The information should be given through the District Legal Aid Organisation and police station of the area concerned.

viii. An entry must be made in the diary at the place of detention in regard to the arrest. The name of the friend/relative of the arrested person who has been informed and the names of the police personnel in whose custody the arrested person is being kept should be entered in the register.

ix. The arrested person should be examined by a medical doctor at the time of arrest if he/she so requests. All bodily injuries on the arrested person should be recorded in the inspection memo which should be signed by both the arrested person and the police officer making the arrest. A copy of the memo should be provided to the arrested person.

x. The arrested person should be subjected to a medical examination every 48 hours by a trained doctor who has been approved by the State health department.

xi. Copies of all documents relating to the arrest including the memo of arrest should be sent to the area Magistrate for her/his record.
xii. A police control room should be provided at all district and State headquarters where information regarding arrests should be prominently displayed. The police officer making the arrest must inform the police control room within 12 hours of the arrest.

xiii. Departmental action and contempt of court proceedings should be initiated against those who fail to follow the above mentioned directives.

The Supreme Court has stated that failure to comply with these guidelines will not only render an officer, liable for punishment through departmental action but it also amounts to ‘contempt of court’. As far as custodial violence against women is concerned, the Supreme Court has also given directives regarding it. According to the Supreme Court, the Magistrate before whom an arrested person is produced shall inquire from the arrested person whether she/he has any complaints against torture and maltreatment in police custody. The Magistrate shall also inform such person of his/her right to be medically examined. Under section 176 of the Cr.P.C., it is mandatory to conduct a magisterial inquiry into every case of custodial death and the State also has a duty not only to register criminal cases but also to pay monetary compensation where human rights are violated by its officials.

In addition to this, the Supreme Court has made an observation that a woman judge should be appointed to carry out surprise visits to the police stations to see that all legal safeguards are being enforced. As mentioned before under section 376(2) of Indian Penal Code, 1860, custodial rape is punishable by a minimum of 10 years rigorous imprisonment. Under section 51(2) of the Cr.P.C., it is the duty of the officer incharge to ensure that women are not harmed and searches of their person are carried out only by women with strict regard to decency.

The NHRC, on 14th December 1993 issued instructions that it must be informed of every incident of custodial death or rape whether in judicial or police custody, within 24 hours of its occurrence. It was also added that any failure to report promptly would give rise to a presumption that an attempt was being made to suppress the incident. In subsequent instructions, it was Stated that the information on custodial deaths was to be followed by a post mortem report, a videography report on the post mortem examination,

an inquest report, a magisterial enquiry report, a chemical analysis report etc. In order to avoid delays in the scrutiny of such cases, the commission issued additional guidelines in December 2001 asking the States to send the required reports within two months of the incidents; it was underlined inter alia, that the post mortem report should be submitted in accordance with a new format that had been devised by the commission and circulated to the various State Governments.\(^{59}\) As far as torture is concerned, India has signed the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment (1994-95) on 14\(^{th}\) October 1997 but, so far, the ratification of the same is still awaited.

9. **BAILS AND BONDS**

Bail is another important aspect regarding the arrested person. The provisions regarding it are contained in Chapter XXXIII of Cr.P.C, from Section 436 to 450. Under Section 2(A) of the Cr.P.C., an offence is bailable if it is included in the first schedule. Under section 436(1) of the Cr.P.C., the police is duty bound to release the arrested person if he/she is willing to give bail. Under Section 440(1) of the Cr.P.C., the amount of bail bond shall be fixed with due regard to the circumstances of the case and it shall not be excessive. Under Section 440 (2) of the Cr.P.C., the High Court and the Sessions Court are empowered to reduce the bail amount fixed by the police or the magistrate. But, as Supreme Court has made an observation in *Hussainara Khatoon and others Vs Home Secretary of State of Bihar*,\(^{60}\) that even after the re-enactment in 1974, the Cr.P.C. continues to require people to be released on personal bond who pledge a certain amount of money, as far too many people spend time in prison simply because the bail amount is too high and they are unable to arrange for the money. The Supreme Court has observed that it is a “traversity of justice” that certain persons end up spending extended time in custody, not because they are guilty but because the courts are too busy to try them, and they as the accused, are too poor to afford bail. Poor people find it difficult to arrange for bail because quite often, the bail amount fixed by the Magistrate or the police is “unrealistically excessive”. In this context, the Supreme Court has made following directives regarding bails and bonds: -


\(^{60}\) AIR 1979 SC 1360.
i. If the accused have the roots in the community, that would deter them from fleeing. They may be released on bail by furnishing a personal bond without sureties. The following facts may be taken into account in this regard:
   a) the length of residence of the accused in the community
   b) the employment status and history of the accused
   c) family ties and relationships of the accused
   d) the reputation, character and monetary condition of the accused
   e) any prior criminal record including record of prior release on bail
   f) the existence of responsible persons in the community who can vouch for the reliability of the accused
   g) the nature of the offence that the accused is charged with; probability of conviction; and likely sentence insofar as these are relevant to the risk of non-appearance of the accused

ii. The bond amount should not be based merely on the nature of the charge but should be fixed keeping in mind the individual financial circumstances of the accused.

As far as accepting the surety from another individual from another part of the country or speaking a language other than the one spoken in the region reason is concerned, the Supreme Court has observed in Moti Ram and others Vs State of MP that provincial or linguistic divergence cannot be allowed to obstruct the court of justice. It directed that the accused person should not be required to produce a surety from the same district especially when he/she is a native of some other place.

10. COMPENSATION

Wherever the issue of custodial violence emerges, the issue of compensation to the victim also becomes pertinent. In D K Basu V State of West Bengal, the Supreme Court has made an observation that the State is not only obliged to prosecute those who violate fundamental rights but it also has a duty to pay monetary compensation to repair the wrong done by its agents in not being able to discharge their public duty of upholding

---

61 AIR 1978 SC 1594.
62 AIR 1997 SC 610.
people’s rights. The Supreme Court, in *Nilabati Behera Vs State of Orissa*, has also asserted that “convicts, prisoners or undertrials are not denuded of their fundamental rights under Art 21” of the Constitution and there is corresponding responsibility of the police and prison authorities to make sure that person in custody is not deprived of the Right to life. It further stated that the State must take responsibility by paying compensation to the near and dear ones of the person who has been deprived of his /her life by wrongful act of its agent. However, the court affirmed that the State has a right to recover the compensation amount from the wrongdoers. In 1996, the Law Commission of India introduced a new section in the Indian Penal Code i.e. 357-A deals with the comprehensive scheme of compensation to a victim of crime. Section 357(1) (b) of the Cr.P.C also empowers criminal courts at the time of sentencing, to make the perpetrator pay a fine which may in whole or in part be paid to the victim for any loss or injury caused by the offence committed. In above mentioned case, the Supreme Court has laid down following directives regarding compensation: -

i. The State has an obligation to pay compensation to a victim or to the heir of a victim whose fundamental rights have been violated by its agents.

ii. The State has a right to recover the compensation amount from the guilty officials after appropriate proceedings or inquiry.

iii. An order of compensation by the State in a criminal case does not prevent the victim or their heirs from claiming further compensation in a civil case (for loss of earning capacity).

Though, detailed legal arrangements have been made in the criminal law of the country but in practice, these laws have many limitations. As eminent lawyer Fali S. Nariman argues that “the criminal law in the country is hopeless, ineffective and defective.” Former Director, Bureau of Police Research and Development Mr. G.P. Joshi has expressed that, “The Police Act is outdated, not meant for a sensitive and

---

63 1993 SCC 746.
democratically accountable police force, and, therefore, needs to be replaced...Service oriented functions are missing from its character.”

F. LAWS REGARDING POLITICAL RIGHTS OF POLICE PERSONNEL

As police personnel are also citizens of the State, they are entitled to all those rights which are provided to the citizens but there are certain rights which are not provided to civil servants or there are certain restrictions on their rights. The Police Force (Restriction of Rights) Act, 1966, was enacted to provide for the restriction of certain rights conferred by Part-III of the constitution in their application to the members of the forces charged with the maintenance of the public order, so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Under section 3(1) of the Act, no member of the police service shall, without the express sanction of the Central Government or of the prescribed authority –

   i. be a member of or be associated in any way with any trade union, labour union, political association.

   ii. be a member of or be associated in any way with any other society, institution, association or organization that is not recognized as a part of the force of which he is a member or is not of a purely social, recreational or religious nature.

   iii. communicate with the press or publish or cause to be published, any book letter or other documents except where such communication or publication is in the bonafide discharge of his duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.

Under Section 3(2) of the Act, no member of a police force shall participate in or address any meeting or take part in any demonstration organized by any body of persons for any political purpose or for such other purposes, as may be prescribed.

Section 4 of the Act lays down the punishment for contravention of the provisions of section 3. The offence is punishable with imprisonment for a term of which may extend to two years or with fine which may extend to two thousands rupees or with both.
G. CODE OF CONDUCT FOR THE POLICE IN INDIA

Police are one of those agencies through which the performance of the government is manifested. Police have concern with the execution of the law, order given by the executive and with the maintenance law and order. It was found very difficult for a police officer to decide upon his behavior and dealings on the footing of the concept of democracy, in absence of a clear out code of police conduct. This void was filled in 1960 when a code of conduct for the policemen was adopted on the recommendations of the Conference of IGPs. This code has been adopted to raise the ethical standards in police service and raise its professional standing. On July 4, 1985, the Ministry of Home Affairs issued this Code of Conduct for the police and communicated to Chief Secretaries of all States and Union Territories and Heads of Central Police Organizations, which is as follow:

**Code of Conduct For Policemen**

1. The police must bear faithful allegiance to the constitution of India and respect and uphold the rights of the citizens as guaranteed by it.

2. The police should not question the propriety or necessity of any law duly enacted. They should enforce the law firmly and impartiality without fear or favour, malice or vindictiveness.

3. The police should recognize and respect the limitations of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgment on cases to avenge individually and punish the guilty.

4. In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable only the irreducible minimum of force required in the circumstances should be used.

5. The prime duty of the police is to prevent crime and disorder and the police must recognize that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.

---

6. The police must recognize that they are members of the public with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties, which are normally incumbent on every citizen to perform.

7. The police should realise that the efficient performance of their duties will be dependent on the extent of ready cooperation that they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and confidence.

8. The police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always be ready to offer individuals, service and friendship and render necessary assistance to all without regard to their wealth and or social standing.

9. The police should always place duty before self and should maintain calm in the force of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.

10. The police should always be courteous and well mannered, they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people.

11. Integrity of the highest order is the fundamental basis of the prestige of the police. Recognising this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life so that the public may regard them as exemplary citizens.

12. The police should recognize that their full utility to the State is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force and by keeping themselves in the State of constant training and preparedness.

13. As member of a secular, democratic State, the police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic or
sectional diversities and to renounce practices derogatory to the dignity of women and the disadvantageous sections of the society.

In the preceding pages, the researcher has gone through both organisational and functional aspect of the police, particularly in the State of Punjab. The study has been made in context of the legal and administrative frame work. It is worth mentioning here that like all the police forces in the world, Punjab Police has also adopted a uniform code. This brings a sense of discipline and team spirit among the personnel. It is clear that there exist enough provisions for the judicious functioning of the police. There are a number of court verdicts which clarify various legal provisions regarding the working of the police concerning human rights. There are also directives of various institutes and executive bodies laying down the guidelines for the same. Still there are rampant complaints against the police regarding the infringements of the human rights. After the introduction of the Punjab Police, Act, 2007 and framing of Draft of the Punjab Police Rules, 2011, one can notice that there are sufficient provisions for internal as well as external accountability for the police services. In the next Chapter, the researcher will endeavor to analyze, all other aspects of the Criminal Justice Administration with special reference to human rights.

* * *

* * *