4. Police and Human Rights with Special Reference to Punjab: An Appraisal

After having a brief analysis of the legal framework in which the police has to operate, one can analyze its operational aspect. The police which is meant to protect the Human rights of the citizens while operating, gets involved in un-intended and intended infringements of the Human rights of the same citizens.

A. POLICE AND VIOLATION OF HUMAN RIGHTS

The police has to operate in different situations, therefore its working and its implications can vary from situation to situation. As, a senior police officer has been quoted by S. Venugopal Rao, in his book 'Police Administrative', “the situation in which police violence becomes manifest can be divided into three broad categories. First, there is terrorism and other acute and dangerous forms of ideological violence to which policy response can be none other than that of counter violence. To the second category, belongs aggressive dissent which assumes ugly form of violence and can be controlled only through force. In dealing with violence of these two categories, counter violence is normative so long as it is regulated according to the law of land. However, with regard to the normal day-to-day investigations, an occasional streak of violence emerges which is uncalled for and which no civilized society can accept. This is mainly due to over enthusiasm or pressure and influence of the complainant or equivocal directions from the higher echelons.”

Sh. Y.S Jafa, ADGP, Maharashtra Police has put these three situations in other way. He terms them as, a) normal, b) abnormal and c) extraordinary situations. “A situation is normal, when law and order and crime are under control. An abnormal situation is where, though it is not gravely disturbed, violent and terrorist crime occasionally takes place, necessitating major deployment of force to keep terrorists at bay as in Nexal affected areas … An extraordinary situation exists when militancy and terrorism are widespread and law and order is seriously disturbed as it was when

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1 Cited in, Venugopal Rao S., Police Administration, Indian Institute of Public Administration, New Delhi, 1982.
terrorism was at its peak in Punjab and Kashmir.” The abnormal situation can also include the incidents like communal riots, arson and mass looting etc.

1. **HUMAN RIGHTS VIOLATION UNDER NORMAL CONDITIONS**

The violations of human rights or the offences by the police in discharging its normal duties can be categorized as follow:

a) Illegal arrest and wrongful detention  
b) Neglect of duty  
c) Manipulation of records and perjury  
d) Violence and  
e) Corruption

All the above types of violations, can overlap each other in the practice e.g. during an illegal arrest or detention or wrongful detention, the manipulation of records, violence or even corrupt practices can be adopted by the police personnel. It will be pertinent here to study all these infringement of right in detail.

a) **Illegal Arrest and Wrongful Detention**

The worst type of violation of human rights by the police occurs in the police custody itself. Therefore, the present researcher intends to analyses of custodial violence in detail. S.Subramanian, IPS, (Retd.), has rightly stated that arrest involves the deprivation of the liberty of an individual by the legal authorities. From the time a person is arrested and if not released on bail, he or she is under custody. Any use of force, threat, psychological pressure etc against the person in custody, by the authorities, is termed as custodial violence. With regard to the prevention, detection and investigation of the instances and cases related to violation of Human rights, the police are charged with inaction, over-action, excesses and misuse of rights. Despite many laws and institutional checks, the torture and ill treatment continues under the police custody which denies human dignity to the individuals. Moreover, the police highhandedness gets support of

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The Padmanabhaiah Committee, a police reform committee formed in 2000 has observed that “A large section of the people strongly believe that the police cannot deliver and cannot be effective if it does not use strong-arm methods against the criminals and anti-social elements of the society. And these people include India’s political class, the bureaucracy and large sections of the upper and middle class. In their own perception, the policemen feel that they are doing a job. They resort to torture for professional objectives to extract information or confession in order to solve a case; in order to recover stolen property or weapons of offence; in order to unearth other crimes that an arrested hardened criminal may have committed; in order to ascertain the whereabouts of other criminals and in order to locate hideouts….. another professional objective of the police often follows which is to determine the criminality of a professional criminal, who could be a burglar, a robber or a gangster or even a terrorist…by maiming him or by making him incapable of further crime. Amnesty International believes that this perception of torture as an effective means of policing or punishment is not only unlawful but is fundamentally flawed. The use of torture or ill treatment only serves to perpetuate violence and lawlessness rather than combating it.”

Human rights violations in custodial and correctional institutions are not an occasional phenomena but are widespread and deep rooted in the system. Justice Krishna Iyer has rightly observed that, “These institutions and not the inmates are the criminals.”

The fourth report of the National Police Commission has observed that “Police have a vast scope for exercise of powers affecting the rights and liberty of individual citizens. Power of arrest, search, seizures and institution of criminal cases in courts, mark several stages in executive police action which affords vast scope for misconduct by police personnel in different ranks, particularly at the operational level.”

Dr Deepa Singh has very rightly listed 73 types of practices of the violation of human rights adopted by the police in general and in custody particularly, which are:

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6 Supra note 4, p.88.
illegal detention, abusing, slapping, torture in custody, torture to extort confession, threats of various kinds, not allowing to sleep, not allowing to eat, not allowing to use toilet, not allowing to meet relatives, not allowing to meet counsel, artificial drowning, harassment/illegal detention of family members, relatives and friends of accused/wanted person, forcing to abuse and slap relatives, forcing to call names to female relatives, blackening of face, whipping in public, parading in public, handcuffing, arrest on false grounds, not allowing to contact friends, family members and relatives, non-communication of the grounds of arrest, forcing to sleep on ground, not allowing to take bath, forcing to sit on ground, offering drinking water in shoes, forcing to drink saline water, not allowing to wash/change clothes, not allowing to put on proper clothes, chaining like animals, not providing light/fan in police lockup, unhygienic conditions in lockup, no proper ventilation in lockup, preventive arrest without sufficient reason, detention in lockup in public view, arrest without telling reasons for arrest, house raiding during night and at odd hours, intruding privacy during raids, excessive use of force during arrest, lifting from road side, forcing women and children to attend investigation in police station, false implication in a case to justify illegal detention, forcing to do menial work in police station, non payment of wages of work done in police station, beggars/extortion of various kinds, degrading treatment of women, children and dead bodies, collecting food grains/fruits/vegetables etc from public under coercion, degrading treatment/harassment to those who visit police stations for various reasons, misbehavior with public on roads and at public places, extortion of money periodically from petty criminals, shopkeepers and venders under coercion, forcing tonsuring of head, tattooing on face, blinding, planned escape from police custody, rape/outraging modesty, indiscriminate use of force, bad character list, surveillance, non granting of bail in bailable matter, detention in the name of verifying sureties, maximization of offence, remand request without justification, delay in investigation, tutoring of witnesses, concocting evidence for various reasons, denial of medical facilities, transportation to court in the most degrading fashion, interception of private communications, censorship, deaths in police custody,
violation of human rights of down trodden, emergency, experience, surveillance and interception of private communication.  

As per Police Reform Committee headed by K. Padmanabhaiya, as far as victims of custodial deaths are concerned, they are mostly people coming from poor and backward section of the society with little political or financial power to backup. Personal enmity, caste and political considerations, and at times pecuniary benefits become important considerations for custodial deaths rather than investigation of cases. The most stunning aspect of these custody deaths is that these people are mostly from the marginalized section of the society like schedule caste, tribal people and women etc.

The illegal detention also includes the detention and harassment of innocent relatives. It is a regular practice for the police to arrest and detain women relatives of individual whom they want to question. Women are often detained illegally without charge for several hours or days as “hostages” to force the surrender of a husband or other male relatives. There is no legal basis for these arrests. Many times, such women have been subjected to sexual abuse and rape in detention.

According to Tod W. Burke and Joseph Reynolds, ‘police custody death syndrome’ is also responsible for unexplainable and sudden deaths of the victim in the custody. These deaths occur mostly after some amount of force is used, however, the force, by itself, may ordinarily not be sufficient to cause death. In most of the reported cases, these deaths were not attributed to deadly force by law enforcement officers and were not result of head strikes or blunt trauma. The arresting officer avoided impact weapons in an attempt to avoid significant injury. Suspicions would be raised after the subject was discovered dead. These scholars enlisted following list of thirteen symptoms which may prove useful to police toners attempting to identify the potential ‘police custody death syndrome’:

Bizarre or aggressive behaviour, violent behaviour, shouting, fear, panic, paranoia, violence towards others, dilated pupils, profuse sweating, unexpected

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8 Supra note 4.
9 Ibid, p.301.
11 Supra note 4, p.121.
physical strength, jumping into water, self inflicted injuries, shivering or hypothermia.\textsuperscript{12}

The police sometimes goes to the extent that it misuses the legal provisions for legalizing the illegal custody. In the garb of combating criminality, the police take the law into their own hands and systematically violate the basic rights of the citizen. Sh. V.M. Tarkunde\textsuperscript{13}, a noted jurist and human right activist, has explained this abuse of the Cr.P.C, to him, “one of the most abused provisions of the Criminal Procedure Code is section 151, which enables every police officer “knowing of a design to commit a cognizable offence” to arrest any person without orders from a magistrate and without a warrant. Many innocent persons have been arrested under this section either for ulterior motives or under political pressure. Sub section 2 of section 151 Cr.P.C requires that a person so arrested is not to be detained for more than 24 hours unless his further detention is authorized under some provisions of the Code. What is usually done in order to formally comply with this sub section is to take advantage of section 107 and 116 of the Cr.P.C which relates to the taking of security measures for keeping peace. Under these provisions, powers have been given to magistrate, who usually comply with what the police want, to enquire whether the arrested person is likely to commit any breach of peace or to disturb the public tranquility or whether he possesses or distributes seditious matter and whether he has been taking precautions to conceal his presence and so forth. The enquiry may last six months and the person may be kept under arrest during the period of enquiry.” According to the report of Third National Police Commission, the majority of arrests in the country even for cognizable offences were unnecessary. Thus, the police also violates the rights by making reckless arrests which were condemned by the Supreme Court.\textsuperscript{14}

The rights of under custody people are also violated in the absence of proper medical aid and examination. On the basis of a visit to Punjab in 1999, physicians for human rights (Denmark) made the following observations: -

\begin{flushright}
\textsuperscript{12} Ibid, p.299.
\textsuperscript{14} The Tribune, 31-1-08.
\end{flushright}
“While there are apparently no reports of direct medical participation in torture, most health professionals, especially those working in public or government hospitals, normally refuse to conduct medical examinations or provide treatment for torture survivors. The examinations conducted tend to be superficial and careless, resulting in mis- or under reporting. This finding was confirmed both by a member of the Punjab Human Rights Commission and officials of Forensic Medical Department at the Government Hospital Medical College. According to many of those interviewed, including the above officials, physicians often willingly prepare ‘Tailor made forensic reports’ for the police and refuse treatment for torture survivors.”\(^{15}\)

In the arrogance of authority, the policemen often come the worst violators of the law. The police often pressurize the doctors to distort the facts. In 1995-96, Annual Report of NHRC the commission made the observation that, the local doctor succumbs to police pressure which leads to distortion of the facts.”\(^{16}\) Not only this, in the fourth report, the National Police Commission observed further, “it may also be argued that departmental enquiries do not always bring out the truth and are mostly biased in favour of the policemen.”\(^{17}\)

b) Custodial Death And Prisons

Regarding the custodial violence NHRC has observed that it “is a naked violation of human dignity and degradation which destroys, to a large measures, the individual personality. It is a calculated assault on human dignity which no civilized State tolerates.” As per Annual Report of NHRC of 2004-05, overall 1493 custodial deaths were reported, of which 136 deaths were in police custody and 1357 deaths were reported in judicial custody.\(^{18}\) 1730 custodial deaths were reported. Of these majority deaths were of those inmates who were in judicial custody, that was 1591, while only 139 died in police custody. Uttar Pradesh tops the list of custodial deaths with 277 reported deaths while Punjab rank 5th with minimal death rate of 2.04%.\(^{19}\) This big number of deaths in judicial custody reveals the poor conditions of our prisons. This brings us to focus our study on

\(^{15}\) Cited in Supra note 5.
\(^{16}\) Ibid.
\(^{17}\) Supra note 7, p.142.
\(^{19}\) The Tribune, March 22, 2008.
the violation of rights in the jails. Such is the fear of confinement in the prison that it was reflected even in the autobiography of Jawahar Lal Nehru. The confinement according to him, “even for a short period, is a most painful affair, for it to be prolonged for years is a terrible thing. it means the slow and continuous deterioration of the mind, till it begins to border on insanity; and the appearance of a look of vacancy, or a frightened animal type of expression. It is the killing of the spirit by degrees and the slow vivisection of the soul. Even if a man survives it, he becomes abnormal and an absolute misfit in the world.”

“The prison regime of an incarcerated person should be utilized for the upliftment of morale, mental and vocational faculties of the prisoners, so that the prisoners may gainfully utilize their experiences on their return to the society. This is why the old notion that the prison was a ‘House of Captives’ has been changed to a ‘Correctional Homes’ or ‘Sudhar Ghar’, where prisoners get an opportunity to reform themselves. But regrettably the colonial notion of ‘House of Captive’ has not undergone a practical change and above mentioned data provided by NHRC has proved it. According to Justice R S Mongia, former Chairperson of Punjab State Human rights Commission, “One of the reasons for death of an inmate is poor facilities in the jail. The medical facilities in jail are not sufficient, leading to deterioration of their health. The inmates may also get frustrated and tend to commit suicide also.”

This condition has not changed too much despite about two dozens reports on prison reforms, including the Mullah Committee Report. The Mullah Committee has made the following observations regarding prison system in India:

“Prison administration in India has been off and on a subject of criticism in the press, Parliament and judiciary. Overcrowding in prisons, prolonged detention of undertrial prisoners, unsatisfactory living conditions, lack of treatment programmes and allegations of indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of the critics over the years.”

Apart from the natural deaths, the cause of serious concerns is the unnatural deaths of inmates in the prison. Some times it leads to public protest or jail rioting, like

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21 The Tribune, 22.03.2008.
22 Mullah Committee Report, as cited in Supra note 7.
what happened in Punjab Jails in the recent past. According to a study done by Dr. Deepti Srivastava, on the basis of 2002 data, the following types of unnatural deaths in Indian prisons were recorded: - Self harm, Death due to negligence of jail personnel, death due to firing, death due to assault by outside elements, murder by inmates and execution. Of these self harm or suicide deaths were 45, death due to negligence of jail personnel was only 1, deaths due to firing were 10, death due to assault by outside element were 5, nine cases were reported of murder by inmates, only 1 execution was recorded and 16 deaths were recorded due to other reasons. Hence, suicide or self harm cases are the single largest factor or almost half of the cases of reported deaths under jail custody. Majority of these were men. According to Deepti Srivastava this higher rate of self harm is evident in the inmates convicted of crime against another person than those convicted of property crime. Those in the initial phase of imprisonment show the highest rate of self harm. A large majority of respondents in this survey identified prison conditions as principle instigator of deaths in custody. This also includes medical negligence. Isolation from family and highly controlled, dehumanizing environment are also some of the other factors. Inmates attempting self harm are also under the influence of alcohol or drugs. The inmates view the incarceration as a punishment and disgrace. They are denied a decent place in the law abiding society, with loss of privacy, loss of their control over life, loss of family and friends, the closed social system of the prison and atmosphere of violence, fear and distress prevailing in the jail.

Justice P N Bhagwati has categorized three types of violations of human rights in the prison, firstly; through presumed innocent, they are subjected to psychological and physical privations of jail life; secondly; pretrial detention disrupts their family life and in most cases is economically disastrous for the family and thirdly; it prevents them from contributing to the preparation of their defence. Sometimes, the poor inmates or undertrial also bear the brunt of violation of their rights as they fail to furnish sufficient amount of money to get bail. Their custody period exceeds the jail terms which they may

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24 The Tribune, 31.03.2008.
25 Supra note 20, p.25.
undergo if declared guilty by the court. Because of this, many unprivileged people spend
their life in jail. National Human Rights Commission has admitted in its report in 2005
that over 3 lacs undertrials were languishing in jail, all over the country for longer period
than their minor offence would invite punishment. On the other hand, seven persons
accused of involvement even in terrorist acts, organized crime and murder, have manage
to get bail because of their clout and money power.\textsuperscript{26} This also bring into focus the
prevailing situation within the jail, as former Director General of Police (Prisons), Punjab
Mohammad Izhar Alam has admitted that there is nexus between some jail staff and
section of prisoners in providing the latter, drugs and mobile phones in jails.\textsuperscript{27} These
prisoners or criminals having clouts or links even operate their gangs from within the jail
peripheries. The jails are over-crowded and only the fittest of the inmates survive, the
weake are exploited by them and their rights are violated both by the inmates and the jail
personnel. The jail administration has been found to indulge in corrupt practices like even
medicines can be traced in Haryana Jails.\textsuperscript{28} In Punjab, recently jail riots were reported
mainly in central jail Jalandhar.\textsuperscript{29}

The over crowding of the jails and the lesser numbers of jail personnel leads to
such chaotic situations. Many cases were reported for jail break all over the country but
the one worth mentioning is the escape of 299 inmates from a Chhatisgarh Jail in
December 2007.\textsuperscript{30}

In its Annual Report 2004-05, the National Human Rights Commission has
analysed that the total prison population was 3,36,151 which indicated an overcrowding
of 41.47\% against the authorized capacity of 2,37,617. The undertrial prison s constituted
71.14 \% of the total prison population in the country. The women constituted 3.9\% and a
total of 1542 children were in jail with their mothers.\textsuperscript{31} The detail data of prison
population in India and its comparison with that of Punjab, in this report upto 31\textsuperscript{st}
December 2005, is as given below: -

\textsuperscript{27} \textit{The Tribune}, 03.05.2008.
\textsuperscript{28} \textit{The Tribune}, 27.03.2008
\textsuperscript{29} \textit{The Tribune}, 08.01.2008 and 31.03.2008.
\textsuperscript{30} \textit{The Tribune}, December 2007
\textsuperscript{31} National Human Rights Commission, Annual Report, 2004-05, p 17.
National Human Rights Commission
Prisons Statistics as on 31st December 2005

(Table-4.1)

<table>
<thead>
<tr>
<th>Country</th>
<th>No. of Jails</th>
<th>Capacity</th>
<th>Convicts</th>
<th>Under trials</th>
<th>Total Population of Prisoners</th>
<th>Female Prisoners</th>
<th>Children with female</th>
<th>Percentage of Population Exceeding the capacity</th>
<th>% of Undertrial</th>
<th>% of women prisoners</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>1312</td>
<td>248439</td>
<td>107857</td>
<td>250320</td>
<td>358177</td>
<td>13936</td>
<td>1737</td>
<td>44.17%</td>
<td>69.89%</td>
<td>3.89%</td>
</tr>
<tr>
<td>Punjab</td>
<td>26</td>
<td>11274</td>
<td>4912</td>
<td>10078</td>
<td>14990</td>
<td>776</td>
<td>86</td>
<td>32.96%</td>
<td>67.23%</td>
<td>5.18%</td>
</tr>
</tbody>
</table>

Source: Annual Report of NHRC, 2004-05

The condition of overcrowded prisons can be judged from the following data of Punjab jails presented in the CAG report:

Prison Population in Punjab

(Table-4.2)

<table>
<thead>
<tr>
<th>Year</th>
<th>Capacity of Prison</th>
<th>Actual strength of prisoners</th>
<th>Percentage of exceeded prisoners</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003-2004</td>
<td>10854</td>
<td>14665</td>
<td>35 %</td>
</tr>
<tr>
<td>2004-2005</td>
<td>10854</td>
<td>13942</td>
<td>28%</td>
</tr>
<tr>
<td>2005-2006</td>
<td>11274</td>
<td>14882</td>
<td>31%</td>
</tr>
<tr>
<td>2006-2007</td>
<td>11274</td>
<td>15079</td>
<td>33%</td>
</tr>
</tbody>
</table>

Source: CAG Reports from 2003 to 2007

As per the recommendations of 11th Finance Commission, if the capacity increases by 25% then the prisoners have to provide sleeping accommodation which can exceed the jail budget by 2.20 crores. The CAG has also reported that during the year 2002-2006, about 145 prisoners have absconded from the different jails of Punjab. Of which, the FIRs were registered in only three cases and enquiry was completed in only two cases. The CAG report has also observed that the jail administration cannot even

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provide escorts to the prisoners when they have to visit the court and because of this, about 21990 undertrial prisoners failed to present before the courts on the fixed date, during the year 2006-2007. This data provides only the tip of the iceberg about the prevailing conditions in the Indian jails.

Worst is the position of the women prisoners, the report of National Expert Committee on Women Prisoners exposes the scenario, as the committee observed, “Women in custody are a tragic testimony of judicial futility, statutory impotency and implementation calamity”. It further observed, "it is distressing that even benign directives of the courts have not succeeded in altering the custodial reality. Processes and procedures governing various forms of State custody and conditions prevailing therein continue mostly undisturbed and impervious to custodian reform groups”. Under section 27(3) of the Prison’s Act 1894, the un-convicted persons have to be kept apart from the convicted criminal prisoners. This is based on the needs to protect possible innocent people from the potentially harmful effects of being housed with the convicted criminals. The maintenance of the prison conditions also includes the proper health care of the prisoners and undertrials. The prisoners have a right to health care and this right includes a right not to contract diseases in prisons. In India, overcrowding has aggravated the problem of hygiene. The prisoners are not even tested for specific infectious diseases, although all prisoners undergo a medical examination when they begin serving their sentence.

Apart from the women, children in the jail, also get robbed of their childhood rights and demand urgent attention for the reform of juvenile homes. A complaint to the Supreme court through a letter pointed out how juvenile prisoners were being the subject to sexual abuse and were being sodomised by the adult prisoners with the connivance of jail warden. The court treated the letter as writ petition and appointed a District judge of Delhi as commissioner to visit Tihar Jail. The report of the commissioner showed that the

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33 Dainik Bhaskar, April 03.04.2008.
35 S.27(3) of the Prisons Act, 1894; See also, UN G.A Resolution 43/133, Principles for Protection of all Persons Under any form of Detention or Imprisonment, Principle 8, 1988.
juvenile prisoners were being sexually abused by the adult prisoners with the connivance of the jail warden and this had become almost a regular practice in the jail. This, unfortunately, had been possible because there was no effective segregation between juvenile prisoners and the adult prisoners and the juvenile prisoners were being sent to the ward of the adult prisoners for doing menial work.\textsuperscript{37} The Supreme Court in \textit{Ram Murti V. State of Karnataka}\textsuperscript{38} has observed that the overcrowding is a reason for mixing up of juvenile offenders with hardened criminals and thus getting further spoilt. Hence, the juvenile offenders come out of the prison after turning into trained criminals.

c) Neglect of Duty

Neglect of duty by the police in the normal times can also lead to the violation of the rights of the citizen. According to B Ratnakara Rao, in the “Executive”, the police is the major contributor in neglecting the duty to abide by the constitution and marinating the rule of law to the extent of “Danger.”\textsuperscript{39} As per the National Police Commission Report, the malpractice of non registration of cases is the first type of violation of the rights of citizen.\textsuperscript{40} This is done perhaps to escape from the burden of investigation and prove their efficiency through the official statistics about the crimes committed in the area. The worst sufferer here is the victim. The role of victim is very crucial in the working of the police. The victim reports the case and helps the police in investigation and further in detection of the offenders. Police and victims are mutually dependent for the successful prosecution of the offenders. The harassment of the victim at this stage by the police is not an uncommon feature. As observed by Bharat B. Dass, “The studies on victims of different offences and from different countries have found remarkably similar results: At the initial encounter, the victim dissatisfaction is related primarily to an uncaring, routine or hostile attitude on the part of police, the police refusal to take action and to general thoughtlessness and disregard to obvious victim needs”.\textsuperscript{41} The reasons for the neglect of duty, can be many. One of them is corruption. Many times the victims believe that the police is inefficient and corrupt, some times the police demand bribe

\textsuperscript{37} Supra note 21, p.37.
\textsuperscript{38} AIR 1997 SC 1739.
\textsuperscript{40} Cited in, Shanker Sen, \textit{Indian Police Today}, 1994 Ashish Publishing House New Delhi p 123.
from the victim to take action and other times, the criminal bribes the police to get free. Thus a large number of victims would not trust the police and would rather bear the loss in silence rather than report the crime committed against them, to the police.\textsuperscript{42} 

Section 161 of IPC deals with the acceptance of illegal gratification by a public servant. But this has been violated again and again by the persons at different positions in the police force and the corruption has become rampant. The corruption has spread its tentacles in many of the departments of the government. In certain departments, due to corruption, the governments are sustaining heavy financial losses year after year. In the case of the police, corruption is felt much more because of the fact that a policeman comes into direct touch with the public and has greater opportunities of oppression and extortion, which his police power affords. Not infrequently, people give them a bad name because the touts who hang about the police stations extract money from the people, on the false pretext that they would influence the station house officers. Persons involved in Prohibition Act, Gambling Act, Essential Commodities Act and other social enactments are prepared to part with money if it can get them some bigger advantage and they are prepared to tolerate the “necessary evil of corruption” so long as there is no actual harassment. I think a careful investigation would show that gambling and evasion of prohibition and excise laws are wide spread. If the station house officer can collect a large sum of money every week or month from those houses, the chances are that the policeman on the beat will insist on robbing the unfortunate street walker.\textsuperscript{43} Many Punjab police personnels are reported to be either suspended or arrested in various cases of corruption, the arrest of former Moga SSP and SP in Moga Sex Scam by the CBI is worth mentioning.\textsuperscript{44} 

\textbf{d) Manipulation Records And Perjury} 

As per report of National Police Commission 1977, the practice of manipulation of the records is a general practice in the Police force.\textsuperscript{45} Some-times this is done as a cover up exercise, to counter the criticism specially on behalf of the Human rights bodies

\textsuperscript{42} \textit{Ibid}, p.125.  
\textsuperscript{43} Supra note 3, p.70.  
\textsuperscript{44} \textit{The Tribune}, 27-2-08.  
\textsuperscript{45} Supra note 4.
According to Kiran Bedi, a retd. IPS Officer, the police officials mislead the media and citizens by manipulating crime statistics. In her words, “they never give you the right picture. Not even a single police officer has dared to reveal the correct crime graph.” According to another retired IPS officer of Punjab Police K.S Dhillon, “there are two kinds of policemen, the honest and the dishonest. The honest policemen rig the evidence to convict the man, he knows, is guilty. Perhaps it is the only way he can get a conviction. The dishonest policeman rig the evidence to convict the man he knows, is innocent.” Hence rigging or manipulation of records is considered as a part of the police operations but it is the dishonest rigging to convict an innocent man or to cover up a misdeed, which accentuates the violation of rights.

e) Use of Violence

In the normal times, the use of violence or more correctly, the abuse of violence by the police personnel, for their own vested interest or under some pressure is also an exercise which infringes the right of the common people. The police is legally empowered to use force if their duty so demands but it has to be on the basis of reasonable factors and under restricted limits. But in reality, the ruthless use of violent force has distorted the image of the police among the people. There are many in stances of this abuse of force and, it is this violent attitude of police, which made justice A.N Mulla to make a scathing an indictment on the Indian police in these words: “I say it with all sense of responsibility that there is not a single lawless group in the whole of the country whose record of crimes is anywhere near the record of that organized unit which is known as the Indian Police Force.”

Torture and encounter deaths are just one aspect of this use of force, otherwise, many a time, the police personnel use this force on behalf of certain influential persons or criminal lobbies. Some times, personal security guards are used by the leaders or their relatives to settle their own scores. As per NHRC Annual Report 2004-05, 123 intimations were received from various State government about the killings in encounters during the year 2004-05. 84 complaints were received

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46 Supra note  7, p.140.
47 The Tribune, 4-1- 2008.
about the alleged killing in fake encounters. According to National Human Rights Commission, there has been a steep arise in encounter killings in the country. According to this report, 83 people died in encounters with police in 2002-03, in 2003-04 the number rose to 100 and in 2004-05 it reached 122.\textsuperscript{51} Hence, the extreme form of the use of violent force by the police, is encounter deaths. These deaths increase in case of extra ordinary situations.

Different types of offences committed by the police are linked with each other i.e corruption and third degree methods and use of violence are related. Corruption motivates for torture. Some times torture is done to extract money and some time the police is bribed to stop the torture. Those who do not have money to offer, get tortured to prove that the police mercy is discretionary. The police brutalities apparently are part of the system, the system that brutalizes society and is damned by the society in return.\textsuperscript{52} Similarly, the illegal detention is also related with third degree or use of violence by the police. As the police is not quite comfortable keeping a man in illegal custody because of fear of being discovered by the judiciary or the magistracy or the media or the human rights groups, the tendency is to get over with the whole things quickly by the short cut methods of third degree.\textsuperscript{53}

2. POLICE WORKING IN ABNORMAL SITUATIONS

The abnormal conditions, as mentioned earlier, are those in which the police has to tackle mass protests, arson and communal riots etc. In these conditions, the role of police also undergoes a change and much more is expected from it. Lord Scarman has observed that in case of racial riots in UK, the police has to display considerable sensitivity and discretion in the matter of law enforcement. In such situations quite often, the disorders emanate “due to unimaginative and inflexible policing and over-reaction.”\textsuperscript{54} In India, this situation becomes more sensitive and as in context of 1984 Anti-Sikh riots and recently the Gujarat riots, the police is often blamed to play a biased or partisan role. Vibhuti Narain Rai has conducted a study on the neutrality of the police during the communal riots under the fellowship of National Police Academy, Hyderabad.

\begin{itemize}
\item \textsuperscript{51} Pushkar Raj and Sobha Sharma, “Culture of Encounters”, \textit{The Sunday Tribune}, 4-11-2007.
\item \textsuperscript{52} M.P. Singh, \textit{Police Problems and Dilemmas in India}, Mittal Publications, New Delhi, p. 299.
\item \textsuperscript{53} Supra note 4, p.100.
\item \textsuperscript{54} Shanker Sen, \textit{Indian Police Today}, Ashish Publishing House, New Delhi, 1994, p. 128.
\end{itemize}
came out with the conclusion that the neutrality of the police in communal riots is often viewed with suspicion. The general attitude of the police under such situations is mostly biased against the minority especially the Muslims. The Muslims were made a target of the police highhandedness even in the areas where the Muslims were at the receiving end i.e. in 1970 Bhiwandi riots, 901 Muslims were arrested against the 21 Hindus while the Muslim causalities in the riots were 59 and Hindu causalities were 17. Similarly, no Hindus were killed in police firing in Bhiwandi (1970), Ferozabad, (1972) Aligarh, (1978) Meerut (1982) riots while number of Muslims killed in police firing were 9, 6,7 and 6 respectively. Mr. Rai also came out with the conclusion that the general perception amongst the policemen about the Muslims, is that of a violent and cruel community and it is deeply embedded in their psyche.\textsuperscript{55} In UP, the Provincial Armed Constabulary (PAC) is specially viewed as an anti Muslim force. Apart from this study, Justice D.P Madon Commission on 1970 Bhiwandi Jalgaon riots also cited examples of biased attitude of the police force.\textsuperscript{56}

3. **VIOLATION OF RIGHTS IN EXTRA ORDINARY CONDITIONS**

The extra ordinary situation is a situation ridden by terrorism or insurgency. In India such situations prevailed in the States like Kashmir, Punjab, North Eastern States, Bihar, Jharkhand, Andhra Pradesh and Orissa, where the menace of Nexalite or Maoist terror groups prevails. Terrorism today has become a globalised danger to the humanity, democracy and peace. This is the most tough task which the civil force like police has to tackle. Dealing with terrorism is more difficult than combating with the enemy on the border in case of external aggression. Attacks of terrorists come from within and they are always sudden and cannot be judged before hand. Even the intelligence, many a time, fails to get sufficient information about the possible attacks and plans of these groups. Members of these groups live and function within the general masses. Hence, they are difficult to identify and check. Therefore, in the areas ridden with terrorism or insurgency, the police highhandedly deals with the people in order to identify these elements, and they are also equipped with special laws like the National Security Act, the Prevention of Terrorists Activities Act etc. and in the process the overuse of force results

\textsuperscript{55} Vibhuti Narain Rai, “Handling Communal Riots”, \textit{Seminar} No. 483, Nov. 1999, pp. 40-44.

\textsuperscript{56} \textit{Ibid.}
into the violation of rights of the general masses. Terrorism and insurgency are a complex phenomena embedded with political, social, economic and psychological factors. The emergence of terrorism as a weapon of proxy war between hostile nations further adds to this complexity. In these situations, some times army or paramilitary forces are also deployed to check the situation. But these forces instead of treating their deployment as assisting civil power or police in dealing with the particular emergency, they generally insist on assuming command. Hence, the police plays the second fiddle or it is subdued, which further lowers its morale. In the whole of this operation, the people, specially belonging to a particular minority or ethnic group, become a target and they are made to feel the harshness of the measures initiated against the terrorists. Hence, not only the individual rights but also the groups or ethnic rights are violated. These ethnic groups become more alienated and the terrorists exploit it as a tactical victory.

There are numerous examples of the abuse of special powers to the police in terrorist ridden areas i.e. in Nagaland where the villagers reported following types of tortures and violations of rights a) execution in public; b) Mass raping; c) deforming sex organs; d) mutilating limbs and body; e) electric shocks; f) puncturing eyes; g) hanging people upside down; h) putting people in smoke-filled rooms; i) burning down of villages and crops; j) concentration camps and; k) forced starvation and labour etc.

Thus, the counter terrorism measures of the State generate a new types of terrorism i.e. State terrorism. The State terrorism is taken as an answer for private terrorism. While the terrorism of the extremists is reprehensible, loathsome and condemnable, the State terrorism, army vices and police excesses also deserve to be treated with the same contempt and condemnation. The terror created by the State to repress the protesters, dissenters and the rebels who raise voice against State violence is a real danger to the democracy. In the areas ridden by terrorism, the police and other forces often indulge in ruthless use of violence and illegal custody and killings in the form of fake encounters. The methods and apparatus of State terrorism includes false imprisonment, torture, disappearance but above all in some cases even counter terrorist

59 Supra note 4, p.96.
60 Supra note 7, p.144.
squads or death squads are horned by the police. These counter terrorism squads, some time termed as ‘black cats’, often indulged in criminal activities like kidnapping and extortions. Some times they also indulged in contract killing for private gains. The fall-out of police highhandedness during the militancy period continues to persist. Not surprisingly, Punjab continues to report large scale custodial violence, even today.

The phase of militancy or terrorism also disturbs the other organs of criminal justice administration. The days of terror were not conducive to the day-to-day trials, hence it prolonged the trials and further denied justice.

In this extra ordinary situation, special laws like TADA, POTA, NSA etc give special powers to the police to contain terrorism. But the studies show that these laws were not used as much against the terrorists as they were used against the ordinary people and the petty criminals.

In one case, Supreme Court observed that, “it is made to believe that only TADA can control it (terrorism). But the data of conviction under this draconian law shows that convictions have been only in 1% of the cases while under the ordinary criminal cases, the conviction rate has gone upto 15%.” This proves the ineffectiveness of such laws and the Apex Court has accepted that TADA (and other such laws) is proved to be misused.

B. CAUSES OF HUMAN RIGHTS VIOLATIONS BY THE POLICE

As far as the causes of the human rights violations by the police is concerned, it is not easy to analyze these causes without going into the complexities under which the police has to perform. According to Ved Marwaha IPS, “a large majority of cases of police brutality take place not because of individual aberration, but because of systemic compulsion. The practice is more widespread than we would like to believe. It could not have gone unchecked since the British days if there was no tacit support of senior police officers, bureaucrats, politicians and the judiciary. The fact is that the practice also enjoys the support of large sections of public in the mistaken belief that it is necessary for

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62 The Tribune, 03.11.2007.
63 Supra note 51.
64 Harpreet Singh Giani, “Prolonged Trials”, The Sunday Tribune April 6, 2008
65 Arup Bhuyan vs. State of Assam, 2011(2) JCC 977. 
effective maintenance of law and order.” According to a survey conducted by Bureau of Police Research and Development, following are the major reasons for the poor performance of the police and the violation of rights through its conduct:

<table>
<thead>
<tr>
<th>Reasons</th>
<th>%age of response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political and other interferences</td>
<td>72.3 %</td>
</tr>
<tr>
<td>Lack of adequate resources</td>
<td>48.7 %</td>
</tr>
<tr>
<td>Lack of public support</td>
<td>48.6 %</td>
</tr>
<tr>
<td>Recruitment of wrong type of people</td>
<td>45.5 %</td>
</tr>
<tr>
<td>Inadequate supervision</td>
<td>42.4 %</td>
</tr>
<tr>
<td>Poor service conditions</td>
<td>38.8 %</td>
</tr>
<tr>
<td>Poor training</td>
<td>32.3 %</td>
</tr>
<tr>
<td>Low status in community</td>
<td>27.4 %</td>
</tr>
<tr>
<td>Poor salary</td>
<td>28.4 %</td>
</tr>
</tbody>
</table>

Hence, there are various dimensions of the reasons because of which the mal functioning in the police generates. These causes are mainly categorised into two categories, the internal and the external causes. The internal causes include administrative setup of the police system and the external causes refer to the environmental factors in which the police has to perform.

1. INTERNAL CAUSES

The internal factors refer to the legal framework, the administrative setup, the working conditions, the policies regarding the recruitment, training, transfers, internal accountability mechanism, Disciplinary mechanism, workload, morale and motivation among the personnel, social security etc. All of these factors provide a structural backup and a conducive atmosphere in which the police personnel can contribute their maximum with job satisfaction. In the Indian police system, there is some sort of lacking of all these factors.

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a) Legal Framework

First of all since date we are having a police Act 1861 which is a gift of colonial masters with the preferences of maintaining the law and order and not giving the justice. Other statutes like Evidence Act, Cr.P.C. etc, all are concerned about this very policy. This police should have undergone a change after the independence and justice should be given preference over the maintenance of the control over the subjects. Secondly all these Acts do have legal loopholes because of which either the police becomes restrictive and lacks in performance and efficiency or these are misused by the police itself in violating the rights of the people.  

b) Recruitment

The functioning and the nature of any body largely depends upon the nature of its staff. Hence, the most important aspect in any formal body is its recruitment. The persons who are recruited in the police come from the same social environment in which it operates. Therefore, these people inherit all the values, positive and the negative, attitude and the orientation from the society. Hence, the recruitment process is the most significant area which demands serious consideration. It is only this process through which good people can be selected or bad characters can get infiltrated into the force. In India, during the course of time, the image of the force has got maligned partly because of wrong recruitment. so much so that even the candidates with good character do not want to opt a career in police force. The Second Police Commission during the British period formed in 1902 has also commented on this image of police which adversely effects its recruitment. It observed that, “one of the strongest proofs that the commission has received of corruption of the police is the testimony of respectable parents, teachers and other gentlemen, to the difficulty experienced by a young man in accepting one of the direct appointment of the Sub Inspector and Inspector which are now sometimes offered. He finds himself a member of a corrupt service; he is surrounded by influences that forbid his acting uprightly. In more than one province, the commission has had before them, teachers who said that they could not encourage good lads to go into the police service and parents who confessed that they had to remove their sons from appointments.

69 The Tribune, 3-04-2008, Statement of Mohammad Izhar Alam, IPS.
in it so as to keep them straight. The evidence in most provinces is that the canker of corruption affects the force in greater or less degree from the constable to Inspector”.  

Apart from this, lot of political pressure has also adversely affected this. In the views of Joginder Singh, former Director of CBI, “95% of recruitment in the police is being done at the instance of highly placed politicians. I have seen criminals being recruited as Sub Inspector. This could only happen under political interference and pressure.”

Determining the minimum qualification for the recruitment, specially of constabulary is also a pertinent point as most of them today are semi educated and it is they who have maximum dealing with the public and therefore, the chances of the violation of the rights at the hands of such personnel become more. This semi educated stuff many a time has criminal background and hence the criminals get entry into the force and they have a great tendency to violate the rights of the people. Apart from the qualification, the minimum age level required for the recruitment is also a point to ponder. Mr. Shanker Sen has pointed out that “at present because of age relaxation, recruits of higher age groups are entering into various ranks of police… some of them arrive with frozen attitude and negative approach emphasized during the training … the IPS probationers should be caught young within the age bracket of 20 to 24 at the time of recruitment”. Contrary to this view, there is an another view that the direct recruitment in the higher offices of the police should be discouraged and internal recruitment through promotion should be encouraged as more experienced people will come up. An official with no experience of constabulary or field can not administer the same effectively. According to Sh. Ashwani Kumar, former IGP Punjab and former DG of BSF, observed that “senior ranks who form leadership of the force should be open to all those who have atleast twenty five years of police experience even if these individuals are from the lower ranks.”

70 See Supra note 5, pp. 18-19.
71 Ibid, p.23.
c) Training

After the recruitment, training is the process which prepares a person for the job. A person not only gets the information or the knowledge about the job and his duties but his skill is also enhanced in order to fulfil the requirements of the job. Apart from this, a training programme also prepares the psyche or mental makeup of a person so that he can easily get adjusted in the job and deliver his maximum. According to Edwin Delattre, “what is taught by the academies about the ideals should be woven into realities of the streets”. Hence, the practical aspect of the training should be emphasised. The police officer should also be motivated by a value system in the training centre so that he does not make misuse of his skills and knowledge. “Unfortunately, in our country, police training was patterned on the training given in military training establishments. The military model was accepted by police training institutes due to historical reasons and circumstances. The senior ranks of the police services in the second half of the 19th century, when police training institutes came into being were filled by the officer taken from the British Indian Army. While organizing training on the model of the army, the fact that the police and army had different roles to perform and to work in different environment, was not taken into consideration. The same trend continued even after independence. M.S. Gore Committee on police training, in 1971, has observed that the police training had been badly neglected over the years and the training arrangements, except in some central organizations were unsatisfactory both quantitatively and qualitatively. There is lack of professionalism in the training perspective and most of the training being imparted only prepared the police personnel as generalists. They lacked skills for genuine detection and thorough investigation. This lack of training in the investigating skills makes the police personnel impatient, because of which they look for shortcuts, which result into the violation of the Human rights. Due consideration has also not been given to the field training of the police personnel. The lack of field experience, in the higher offices, can create a gap between the theory and practice, as far as the protection and violation of human rights is concerned. Ashwani Kumar, while

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75 Supra note 73.
76 Ibid.
77 As cited in, Ibid.
79 Supra note 74, p.11.
stressing upon the need of good training and its effects on the working of the police, observed that “if a new entrant is suitably paid and is at least a graduate and has made a thorough study of police methods for collecting evidence, intelligence and investigating crimes, police psychology and hones his talents for imbibing the latest in technology and scientific aids to investigation and has also done further courses in law detection, interrogation and collection of intelligence in the State institution and universities, over a period of at least ten years, he will have gathered enough strength of character not to abuse his powers. Training is such a neglected area in the policing that good police officials do not want to get appointed there and it is this place, which desperately needs the services of good and experienced officials”\textsuperscript{80}. As far as human rights is concerned, till recently, no formal education about the Human rights and values was included in the syllabi of the police academy. The training methodology of the police needs to be restructured so that police force can be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation.

\textbf{d) Placement and Transfers}

The placements and transfers need a comprehensive policy for the working of any administration. Particularly in the police system, there are positions which are considered by the personnel as “lucrative posts” and there are other positions which are termed as “sidelines” also. There are always pulls and pressures regarding the placements for the lucrative posts which open the doors for the political and the vested interests to play a role in this process. This creates an unholy nexus between corrupt police officers and unscrupulous politicians.\textsuperscript{81} The politicians are approached by the police personnel to get posted or transferred to the desired position and in the exchange, the interest of the politician and indirectly the interest of the criminals are protected. The wholesale transfers of the police officers with each change of government has become a routine matter.\textsuperscript{82} The politicians also talk of good police personnel when they are used as a

\textsuperscript{80} \textit{Ibid.}


\textsuperscript{82} Supra note 66, p.14.
scapegoat in order to satisfy the public in case of certain political or other events. The officer have to undergo humiliation and harassment for being transferred again and again which results into demoralizing the force\textsuperscript{83} and such demoralized or frustrated police personnel have all the tendency to violate the rights of all the people.

e) Promotions

Promotion or career building process has its own significance in any administrative organ. It is this career building opportunity which can attract more and more able candidates to the police force. But, in police, the chances of promotion from lower ranks to the higher offices, are limited. “Police is a highly professional career”, as Sh Ashwani Kumar has observed, “and it is a pity, that today because a particular colonial pattern that has been followed, we deliberately push the more experienced officers into corrupt alleys, because they see no future in their present career.”\textsuperscript{84} The avenues of promotion are practically nil. “More than 85% of the constabulary joins as a constable and retire as a constable and there are no refresher courses or training for them. Many a time, the good work done by a constable is shown as the work done by a senior officer. Only the officer class is provided with some facilities and there are none for the other ranks. Moreover, the maximum pressure for police duties is on the constabulary and it is they who get killed or injured in riots but due recognition is not given by the public or the department to their services, all the time.”\textsuperscript{85} Hence, there is a clear cut lack of incentives in the force which can generate the feeling of frustration among the personnel which further adversely affects their work and their conduct with the people, resulting into the violation of rights.

There is also a very different situation as far as the relation between the promotion and the violation of human rights by the police, is concerned. There are situations, particularly in the terrorism ridden areas, where some times the ‘encounter culture’ flourishes because of the tradition or policy of rewarding such killings by the police through promotions and other monetary benefits.\textsuperscript{86}

\textsuperscript{83} Ibid.
\textsuperscript{84} Supra note 74.
\textsuperscript{85} Supra note 5, pp. 24-25.
\textsuperscript{86} Supra note 51.
Leadership and Departmental Supervision

In any organization, the supervision or the leadership or hierarchical relationship is significant as far as interpersonal relationship within the department is concerned. Lack of proper leadership or supervision or vague hierarchical relationship or in other words, the gap between the top management and the lower ranks, can adversely affect the functioning of the police.

The present system of administrative and political supervision over police suffers from many distortions. After the separation of the executive from the judiciary, with the amendment of the criminal procedure code in 1973, the so called magisterial control has lost its original motivation. Complete control has now passed on to political rulers. According to S.K. Ghosh, former IG of Police, Orissa, there is, “lack of leadership in higher ranks. The officers holding top posts are very often divided in their ranks and constantly jockeying the position even with the support of political parties and fail to inspire confidence in the force. Officers are prone to overlook indiscipline or dereliction of duty on the part of subordinate ranks, out of apprehension of incurring displeasure of a person, higher in authority”. The leadership pattern of the force, more or less, remained the same as during the British regime, although for reasons well known to all, the alien regime never followed it in their own home turf. Therefore, the question of a gap between the officials and the constabulary, is an area which has to be studied, to find out the reasons of inefficiency in the working of the force.

Sh Ved Marwaha, observed that, the constabulary remains most neglected part of the police force in India. In his views, “Almost 80% of the police budget is related to functions performed by the constabulary, but it is the most neglected component of the organization. As recommended by the National Police Commission, a constable must be treated as a skilled worker and his working and living conditions must be accordingly improved. The “colonial orderly system” is being followed in many parts of Indian police which creates dissatisfaction among that section of the force which has most direct interaction with the public. In June 1979, the Government of India organized the

87 Supra note 66, p.15.
88 Supra note 3, p.118.
89 Supra note 74, p.9.
90 Supra note 66, p.17.
conference of Chief Ministers of States to discuss the recommendations made by first report of National Police Commission. In this conference, the major recommendations were made to abolish the orderly system in the police force.\textsuperscript{91} This dissatisfied lot does not do justice to the people. As the constabulary has direct dealing with the people and they perform at the exit point of the administration, its strength should be increased in the proportion to the increase in population and work load. Though, in Punjab the strength of lower ranks has been increased from 77 to 80\% since the last 28 years, but the increase in higher ranks is much more, about 457\% in case of DGs ADGPs IGs and DIGs, and the question can be raised about this ‘top heavy’ administrative set up of police. The number of the total sanctioned strength in different categories in Punjab Police is given as below:

**Sanctioned Strength of Civil Police by Categories in Punjab**

The sanctioned strength of the civil police by categories in Punjab in 1980, 1990 and during 1998 to 2006\textsuperscript{92} is given in the following table:

**Sanctioned Strength of Police Personnels in Punjab**

(Table-4.3)

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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>DG, ADGP, IG, DIG</td>
<td>7</td>
<td>27</td>
<td>55</td>
<td>52</td>
<td>54</td>
<td>52</td>
<td>52</td>
<td>52</td>
<td>46</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>SP, ASP, DSP</td>
<td>196</td>
<td>400</td>
<td>565</td>
<td>565</td>
<td>565</td>
<td>576</td>
<td>576</td>
<td>576</td>
<td>572</td>
<td>378</td>
<td>378</td>
</tr>
<tr>
<td>Inspector, SI and ASI</td>
<td>3025</td>
<td>5763</td>
<td>7074</td>
<td>7110</td>
<td>7110</td>
<td>7107</td>
<td>7107</td>
<td>7107</td>
<td>7146</td>
<td>6127</td>
<td>6127</td>
</tr>
<tr>
<td>Head Constable</td>
<td>4664</td>
<td>8541</td>
<td>11340</td>
<td>11340</td>
<td>11340</td>
<td>11476</td>
<td>11476</td>
<td>11476</td>
<td>11456</td>
<td>8259</td>
<td>8259</td>
</tr>
<tr>
<td>Mounted Constable</td>
<td>184</td>
<td>184</td>
<td>184</td>
<td>184</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Constable</td>
<td>20777</td>
<td>38408</td>
<td>51141</td>
<td>51216</td>
<td>51216</td>
<td>51883</td>
<td>51883</td>
<td>51883</td>
<td>51760</td>
<td>37339</td>
<td>37339</td>
</tr>
<tr>
<td>Total</td>
<td>28853</td>
<td>53325</td>
<td>70359</td>
<td>70467</td>
<td>70285</td>
<td>71094</td>
<td>71094</td>
<td>71094</td>
<td>70980</td>
<td>52142</td>
<td>52142</td>
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</tbody>
</table>

*Source: Punjab Police HQ*


\textsuperscript{92} Punjab Police HQ
It is manifested from the above mentioned strength that the number of police personnel increased heavily during the 90s because of the State of terrorism which has been contained. This reduction can also have an explanation in the rolling back of the State in context of new economic reforms based on liberalization and privatization. Though the menace of terrorism does not loom large in Punjab as it was before but the reduction in the police strength cannot be viewed as a right step if the increased workload is kept in mind.

**g) Accountability Mechanism and Discipline**

In any force, discipline and internal accountability is the cardinal feature. A police force without discipline and without proper mechanism of accountability can become more dangerous than the criminals as it enjoys the legitimate powers which the criminals don’t. Unfortunately, the internal accountability mechanism within the police force in India, is far from satisfactory, this was observed by the first report of National Police Commission.\(^{93}\) Whatever the mechanism is present some times acts in a bias manner in case of violations of rights by the police personnel. The departmental enquiries, many a time, prove a proof futile exercise. The National Police Commission noticed that the percentage of substantiated complaints of police torture is the highest in Judicial enquiries, lower in magisterial enquiries and lowest in enquiries conducted by other agencies including departmental authorities.\(^{94}\) Mr. Venugopal Rao therefore suggested that “the conclusions to be drawn are obvious and make an unassailable case for mandatory judicial enquiry in every case of death in police custody, which should be carried out with the utmost expediency. As high powered judicial commissions are time consuming, there is a compelling need for creating an infrastructure whereby a senior judicial officer at the district level takes immediate cognizance of such events and carries out, on the spot enquiries to ensure justice and speedy action against erring policemen.”\(^{95}\)

In respect of custodial deaths, section 176 of the criminal procedure code is of little use in finding out whether a death in custody was due to natural causes or due to police misdemeanor. The reason for the inefficacy of section 176 is that the enquiry under the

\(^{93}\) Supra note 91.
\(^{94}\) Supra note 1, p.211.
\(^{95}\) *Ibid*
section is not proceeded by an investigation through an agency independent of the police establishment. Even an efficient judicial officer would find it difficult to reach a satisfactory conclusion in regard to the cause of a custodial death if the necessary evidence is not collected and read before him, after proper and impartial investigation. That is why, all custodial deaths and other violations of human rights alleged to have been committed by government agencies, including police force, should be investigated and dealt with by the Human rights Commission, which are now provided by the protection of Human Rights Act 1993.96

Apart from the departmental bias, there is also a lack of vigilant work culture on the part of higher officials, which also protects the violators of the rights and further encourages this culture of highhandedness. As noted by Deepa Singh, “superior officers are seldom vigilant so that they can discover the weakness, deficiency failure or an overt act of a subordinate and decide the appropriate disciplinary action to be taken and initiate and carry out the proposed action When disciplinary action is taken against officers for their lapses, their honesty, skill, courage or hard work are either not recognized or recognized after long lapse of time”.97 There are also some external factors responsible for this internal indiscipline or in accountability. As famous Shah Commission has observed, in case of the police highhandedness during the Emergency, some police officers behaved as though they were not accountable at all to any public authority. The decision to arrest and release a certain person was entirely on political consideration, which was intended to be favourable to the ruling party.98 Hence, the political pressures and the partisan role of the police personnel can also hinder the discipline and accountability within the force. Some times, some special police personnel, who are termed as ‘encounter specialists’ also get protection from his administrative bosses as well as political bosses, making the impartial enquiry against them, more difficult.99

97 Supra note 4, p.118.
98 Supra note 91, p.49.
99 Supra note 62
h) **Workload and Working Conditions**

As discussed before, the police personnel are heavily burdened with work, which make it difficult for them to work satisfactorily and give result. On the contrary, some times, these exhausted persons react in a bizarre manner, resulting into violations of the rights of the people. Apart from the basic function of maintaining law and order and investigating functions, the police is burdened with many odd jobs like removing the trees from the road, blocking the traffic, to de-addiction. It has to deal with the reports of unclaimed dead bodies or missing articles from the bank lockers. Thus, the police manpower is wasted in areas not required or essential for actual police work.\(^{100}\) The crime rate increases, as more and more police force in the urban areas, is engaged in VVIP duties and providing personal security.\(^{101}\) Moreover, the number or the strength of police force in India is not at par with the standard strength, there were 11704 police stations in the country. Delhi had the best manned stations with an average of hundred men and 10 officers per police station.\(^{102}\) In Punjab, the number of police stations, are as follows: \(^{103}\)

**Number of Police Stations in Punjab**

*Table - 4.4*

<table>
<thead>
<tr>
<th>District</th>
<th>Police Stations</th>
<th>Police Posts</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gurdaspur</td>
<td>14</td>
<td>10</td>
<td>24</td>
</tr>
<tr>
<td>Batala</td>
<td>14</td>
<td>06</td>
<td>20</td>
</tr>
<tr>
<td>Amritsar</td>
<td>13</td>
<td>09</td>
<td>22</td>
</tr>
<tr>
<td>Tarn Taran</td>
<td>12</td>
<td>12</td>
<td>24</td>
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<tr>
<td>Majitha</td>
<td>08</td>
<td>04</td>
<td>12</td>
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<tr>
<td>Kapurthala</td>
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<td>07</td>
<td>17</td>
</tr>
<tr>
<td>Jalandhar</td>
<td>24</td>
<td>07</td>
<td>31</td>
</tr>
<tr>
<td>Nawal Shehar</td>
<td>08</td>
<td>04</td>
<td>12</td>
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</table>

\(^{100}\) Supra note 5, p.26.

\(^{101}\) Madhav Godbole, “Mirage of Reforms”, in Seminar, 483, Nov.1999, p. 54.

\(^{102}\) Supra note 78, p.35.

\(^{103}\) Punjab Police HQ
<table>
<thead>
<tr>
<th>District</th>
<th>Police Stations</th>
<th>Police Posts</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hoshiarpur</td>
<td>14</td>
<td>05</td>
<td>19</td>
</tr>
<tr>
<td>Rup Nagar</td>
<td>12</td>
<td>07</td>
<td>19</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>21</td>
<td>02</td>
<td>23</td>
</tr>
<tr>
<td>Khanna</td>
<td>05</td>
<td>04</td>
<td>09</td>
</tr>
<tr>
<td>Jagraon</td>
<td>07</td>
<td>03</td>
<td>10</td>
</tr>
<tr>
<td>Firozepur</td>
<td>18</td>
<td>26</td>
<td>44</td>
</tr>
<tr>
<td>Faridkot</td>
<td>06</td>
<td>-</td>
<td>06</td>
</tr>
<tr>
<td>Mukatsar</td>
<td>08</td>
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<td>10</td>
</tr>
<tr>
<td>Moga</td>
<td>09</td>
<td>-</td>
<td>09</td>
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<td>Bathinda</td>
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<td>01</td>
<td>16</td>
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<td>Sangrur</td>
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<td>Patiala</td>
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<td>Barnala</td>
<td>08</td>
<td>02</td>
<td>10</td>
</tr>
<tr>
<td>GRP Punjab</td>
<td>11</td>
<td>-</td>
<td>11</td>
</tr>
<tr>
<td>Punjab</td>
<td>288</td>
<td>136</td>
<td>424</td>
</tr>
</tbody>
</table>

*Source: Punjab Police HQ*

The strength of police personnel per unit area i.e. per 100 sq. kms is 41 and per unit population of 1000, it is 1.3. This ratio is going to be deteriorate further, because the area coverage remaining constant, density of population is rising by leaps and bounds, which may further aggravate the role of police in the prevention and control of crime. All this adversely effects the process of effective investigation. The paucity of investigating staff at the police station level, and then again, the time devoted to the investigation by this staff, is very meager in comparison to the demand. The figures collected by National Police Commission in 1977 depicts that, an average investigating officer had to handle about 122 cases per year. This is so heavy a load, to be borne with

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any reasonable degree of efficiency. While conference of IGs of police has fixed a yardstick which has been endorsed in the report of Delhi Police in 1966-68, an officer can effectively investigate only 75 cases a year. A sample survey done by the National Police Commission in 6 States of the country revealed that an investigating officer is able to devote only 37% of his time in the investigational job, while the rest of the time is taken by other duties.\textsuperscript{105} Moreover as N.R. Madhav Menon\textsuperscript{106} has observed, less than 1% of total available time to the police, is devoted to investigation and processes of criminal cases. All these result into deterioration in the standards, which not only generate a feeling of frustration among the police personnel but it also promote the feelings of alienation, among the people.

As a result of this work load, the police personnel and specially the constabulary and the officers in the middle management, face many psychological and sociological problems. Their over-engagement with the job, many a time, results into their disturbed family life and broken marriages.\textsuperscript{107} According to one study, 85.2% respondents within the force considered ‘less time to attend to family’ as one of the major factor, for lesser job satisfaction in Indian Police.\textsuperscript{108} This also develops the symptoms of depression and fatigue among the policemen. A recent check up in the Punjab Police has exposed that many of policemen who are working in the field, are suffering from diseases like AIDS, hepatitis, blood pressure and other abdominal diseases etc. Most of them are obese which make them medically unfit to be in the force. All this is because of their disturbed daily routine, in which many a times, they have to skip their meals or they have to consume junk food from outside.

The working conditions are also, far from satisfactory. The police stations are not fully equipped which disrupts the investigative functions. At present, in India there are only 22 Forensic Science Laboratories which cannot help in solving more than 5% of total crime which is reported.\textsuperscript{109} The survey study done by P Nachimuthu also puts ‘lack

\begin{thebibliography}{99}
\bibitem{105} Supra note 54, p. 80.
\bibitem{107} Supra note 72, p. 47.
\bibitem{109} Supra note 54, p.85.
\end{thebibliography}
of proper working conditions’ as main factor for job dissatisfaction among 88.7 % respondents. ‘The absence of recreation or entertainment’ is on the top of the list, with 89.8 % of the respondents quoting it also as a factor of job dissatisfaction. The study also came up with an interesting observation that the level of job satisfaction among the female members in the police, is more than that of male members.\textsuperscript{110} This could be because the male members are more exposed to the field conditions. Inadequate housing facilities has been a major complaint of policemen coupled with lack of proper salary, facilities for children especially for education, lack of better medical facilities, lack of proper facilities at the work place for women police personnel etc are also other major causes of job dissatisfaction. After the report of Sixth Pay Commission, the IPS officers along with the defence personnel have shown their resentment that in spite of hardships in their jobs, they have not been treated at par with the other civil services. According to S. Joginder Singh, the person who works the hardest like the stonecutter, the bus driver, the policemen standing in the sun gets, the lowest salary. Far from educating their children in a good school, the wages given are not even sufficient for minimal level of subsistence. If the government pays suitably, then most of the corruption can be considerably reduced. The facilities given to the constable, are almost the same as are given to any class IV employees of the government and most of the senior officers of the department also consider them like that however educated, a constable may be.\textsuperscript{111} All this, not only adversely affects the morale of the police but it also discourages the new talented and energetic youths to opt for job as a career in police force.

This brings into focus the psychological and behavioural attitude of the police which is a major cause of the violation of the human rights at their hands. Generally, policemen are viewed as cruel and vindictive. As the police deals only with criminals and scum of the society, their general behaviour, with the public, is the same as with the criminals.\textsuperscript{112} Many experienced police personnel find no problems with this, as according to them, without this attitude, they cannot deal with the hardcore criminals. They also have to use counter violence, although unlawful.\textsuperscript{113} But there is a very bleak

\textsuperscript{110} Supra note 108, pp. 97-98.
\textsuperscript{111} Supra note 5, p.23 and p. 25.
\textsuperscript{112} \textit{Ibid.}
\textsuperscript{113} Supra note 74, p.10.
line between this lawful and unlawful counter violence and many a times, the police personnels cross this ‘Laxman Rekha’. According to S.K. Ghosh, the fear of reprisal, loss of pension, law suits and judicial enquiries into complaints, create a fear psychosis among the personnel which lowers their morale and brings uncertainty in their behavior while dealing with the general public. He further observed that the police, in recent times, are becoming more confuse timid and cautious. There is a tendency on the part of subordinate officers to avoid taking action, even on the orders of superiors. More than anything else, opinion has been growing over the years that it is better not to take any action at all, rather than get into the trouble. The cases of suicide by the police personnel because of the law suits against them have been cited in Punjab. And the cases of opening fire by the police personnel on their colleagues, is also becoming frequent in the armed forces. This is all due to the feeling of frustration and demoralized behaviour. Such a police cannot do justice to anybody.

i) Lack of Proper Communication and Participating Management

The grievances within the police force are not addressed properly and as mentioned earlier, there is a big communication gap between the officers and the constabulary. For a good administrative system, the proper internal communication is needed as it makes the functioning smoother and also increases interpersonal interaction. In the absence of this, the police become more mechanical which aggravated the whole the people working in it.

There is another view that the Indian police, which is working more on the colonial pattern, the command of the superiors cannot be questioned in any case. This straight jacket obeisance of the command makes the subordinates more alienated. Hence, their participation in the decision making process can encourage them to contribute much more. According to former Director General of Police K.P.S. Gill, IPS, the subordinates should be allowed to make an on the spot decision because they are the best people who are well acquainted with the conditions in the field. When this is not done, the subordinates work under pressure and cannot deal with the general public with fresh

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114 Supra note 3, p.121.
116 Interview in the Indian Express, 6 January, 2008.
mood and they also lack in initiative and proactive-working. The participation of the police or at least their feedback is also needed when the laws are framed by the legislature regarding the police. Many a time, the police have to function under the framework of such laws which they consider as inappropriate.

ej) Inappropriate Representation Of Women and The Minorities In The Police

Women and the minorities are those sections of the society who often become the victims of the violation of rights, at the hands of both, the criminals as well as the police. The police is not sensitized towards these sections and many a time, it plays a partisan role regarding them. Women in police custody, are very vulnerable to the atrocities at the hands of the police. Almost half of the population in any society belongs to the women but their actual representation in the police is far from satisfactory. Mostly, the policing is considered as the male oriented system and the women generally opt out of it. Because of the lack of adequate women staff, many a times, the police has to deal with the women citizens with the help only of their male staff. In such a situation, the chances of violation of their rights increases many-folds. As Sachar commission\textsuperscript{117} report has observed that the low representation in the police force for the minorities especially the Muslims, makes it difficult for the police to understand and to deal with the general people and the criminals in these sections. This lack of understanding also results into the violation of their rights.

2. EXTERNAL FACTORS

The police do not operate in a vacuum. It works in an environment and interacts with it. The environment has the impact on the police and its working and the police also affects the environment. This environment again can be categorized into two categories; one, the administrative environment and the second, the social and the political environment. The administrative environment as a whole is known as the criminal justice system in which the police has to perform, in coordination with other organs of the government like judiciary, prison system and civil administration, headed by the magistrate and further by the political executive. In the British period, the magisterial control over police was prevalent which after independence was passed on to political

\textsuperscript{117} Justice Rajinder Sachar, Social, Economic and Educational Status of Muslim Community in India : A Report, submitted to Prime Minister of India, Nov. 17, 2006.
rulers. Hence, the political environment and the social or the public also became important factors, which play a significant role in the working of the police.

a) **Criminal Justice Model in India**

The traditional paradigm of Criminal Justice system in India is based on ‘adversarial model’. This model was designed for adjudication of disputes between private parties over contracts and civil liabilities. It as S.P. Sathe has elaborated, “…envisioned passive role for the courts. It postulates that: - 1) The courts merely found the law or interpreted it but did not make it; 2) If they made the law, they did so only to fill in the interstices left by the statute and only to the extent necessary for the disposal of the matter before them; 3) After a matter is dealt with by a court and it has given its decision, that decision is binding on the parties and the same matter cannot be raised again before the same court or a court of concurrent jurisdiction. An appeal may, however, lie against the decision to a higher court. The decision of the highest appellate court is final and binding on the parties and the questions regarding rights and liabilities decided therein cannot be raised again before any court. This is known as the Principle of *res judicata*; 4) Only a person who has suffered an injury or whose right is violated can approach the court and initiate the judicial process. This is known as the requirement of *locus standi*; 5) A person who has a cause of action and locus standi to raise an issue before a court of law must do so within a prescribed time limit provided by the law of limitation. This paradigm postulated a litigant who is conscious of his rights and is willing to vindicate them by taking prompt resort to judicial process…. This paradigm is based on the negative concept of judicial function and is applied on the public law adjudication also. It suited the *laissez-faire* economy and minimum State concern.”

The police is an important sub-system of this criminal system, the other ones being the court, prosecution and the prisons. Any criminal justice system has the input in the form of law violation and output in form of reduced crime in the society. The police is the initial arm of this system which deals with the input and plays an important role in the output.

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119 Supra note 68, p.134.
This system with adversarial tradition was derived from Anglo-Saxon Common Law in which the rules were framed by giving every possible advantage to the accused and these rules dated from the period, when the accused persons were generally ignorant or illiterate and the persons convicted were usually hanged. But, the same rules now give an unfair advantage to a hardened criminal in getting full legal assistance. Once a criminal escapes punishment, he becomes more daring and develops the notion that crime pays. The hard fact is that the deterrent effect of the criminal law is directly proportional to the promptness and sureness of the sanctions. The penal reforms from Bentham and Romily, down to Lord Gardiner have advocated that the cure for crime lies in making the punishment more certain rather than more severe. In this connection, it may be further mentioned that in countries with adversarial traditions of criminal justice process, there is normally less harmonious relationship amongst the police, prosecutor and judges, than in countries, with inquisitorial criminal justice traditions. In adversarial system, justice consists in ensuring equal contest between the prosecution and the defence; and the procedural aspects of the law predominate. Consequently, there is a segmentation of the criminal justice system. The police is reduced to the position of a party in the discipline. Therefore, the adversarial nature the criminal justice system can also have an impact on the working of the police. The police operates in a model in which the burden of proof lies on the accused which leads to the violation of the rights in form of custodial violence etc. The ‘passive’ model also adversely effects the working of the police as it becomes reluctant to be proactive and come into action only after the crime is committed.

b) Judiciary

Judiciary is an important organs of criminal justice system and its functioning affects the working of the police also. According to Mr D R Karthikeyan, then Director General of National Human rights Commission of UN in 1998 while commenting on increasing reports of custodial deaths in police lockups said that, “it is necessary for law enforcing agencies to strictly follow the rules in order to punish the criminals, a law enforcer should not commit any crime. Whether it is wrongful confinement or false encounter, third degree methods should never be adopted.” He further expressed that the biggest contributing factor for denying human rights to the majority of people is “delayed
justice”. The delay in giving the justice by the court leads the police to adopt short cut methods which result into the violation of the rights. This delay, according to T Anantacharya, former DG of BSF, generates a ‘scant regard’ for judiciary in the police force. At present, about 96% of all police cases launched on the complaint of the effective citizens, fail each years to provide any relief to the complainants. This is also because of the large number of pendency of the cases, in the courts. This generates frustration in the police force, which further results into the violation of rights. The police views judiciary as a hurdle in its functioning and efficiency. The delay in passing judgments, also increases the number of undertials in the prisons which results into the overcrowding in the prisons and further aggravates the violation of the rights of the inmates.

The ‘due-process model’ which was adopted in the place of ‘enforcement model’ is sometime also viewed as a contradiction to the ‘crime control model’ of criminal justice. Under this system, the courts have been given wide supervisory jurisdiction over police besides the power of judicial review to determine the constitutionality of the law and executive actions. By virtue of this, the judicial interference in the law enforcement has assumed critical importance. Standards of police functioning, in investigation and crime control, are being set by courts besides the parliament. Some of these judicial decisions have gone in favour of the individual rights, much to the dismay of even honest officers in the police. In turn, the judiciary has come in for criticism, for liberalizing bails and endangering security and for failure to appreciate police difficulties in investigations, for disregarding police evidence on flimsy grounds and starting with the assumption that the police evidence is generally not trust worthy.

Hence, all the organs of the criminal justice system “rarely work harmoniously. They operate as Islands with at best only formal links, which are often too weak to sustain the pressure of their own burden. There is a ‘dire’ need for an increased cohesion

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121 The Delhi Times. 10-12-1998.
123 Supra note 78, p.35.
124 Supra note 1, p. 216.
among the three major agents, to sort out operational problems without interfering with each other.”

c) Society or the Public Support

P.S. Bawa former Director General of Police, Sikkim has termed policing as a ‘social activity’ that operates on behalf of State, to control or channelise the social contact of its citizens. As in a book on Criminal Justice Policy, a Senior Police officer explained the causes of increasing criminality and decreasing police deficiency, “…even under the more favourable circumstances, the capacity of the police to not act against crime is limited. The police do not create and cannot resolve the socio economic conditions that generate crimes. They are not responsible for the convulsion in society arising out of cultural pluralism…They struggle to function as an oasis in a desert of indiscipline which is an endemic disease in the society. They are expected to be different from the general matrix of the society, to which they belong. They do not enact the laws which they are required to enforce. They are not expected to sit in judgment over the criminal whom they arrest …crimes which are produced by society have to be tackled by society through holistic approaches.”

Though there are certain social factors which are out of the reach of police but there is no doubt that these social factors directly and indirectly influence the working of the police. The police personnel, after all, come from this very social background and inherit all the social evils of the society.

The image of the police and the support it gets from the public is very crucial in enhancing the morale and efficiency of the police. Both, the lack of public support and its support, lead to the violation of human rights by the police. The lack of public support generates frustration which leads to the misconduct by the police and on the contrary, in certain situations, the public consent also encourages the police to conduct false encounters in order to get rid of the anti-social elements, like terrorists. The public cooperation with the police administration can go a long way in assuring effective criminal justice administration. However, people’s cooperation and participation would depend upon the public perception of the ‘image of the police’. Public cooperation is

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126 Ibid, p.31.
127 Supra note 106, p. 217.
bound to come if the police change their stereotyped image and negative role from being a harasser of the people, violator of law and corrupt functionary into “a friend, philosopher and guide”\textsuperscript{128}. As per a study of Bureau of Police Research and Development, the police never gets public support, according to the opinion of 60.9% respondents, according to 10.7%, it always gets support and according to 28.4%, it sometimes gets support of the public.\textsuperscript{129} Following are the reasons which came up in this study for lack of public support -

<table>
<thead>
<tr>
<th>Reason</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Involvement in police and court proceedings</td>
<td>72.5%</td>
</tr>
<tr>
<td>Lack of confidence in police and courts</td>
<td>70.5%</td>
</tr>
<tr>
<td>Lack of fairness and impartiality on the police part</td>
<td>69.6%</td>
</tr>
<tr>
<td>Fear of reprisal from criminals</td>
<td>56.9%</td>
</tr>
<tr>
<td>Discourteous treatment by Police</td>
<td>44.5%</td>
</tr>
<tr>
<td>Police Corruption</td>
<td>32.4%</td>
</tr>
</tbody>
</table>

The media also has an important role in this context, as far as the image building of the police is concerned. According to Sh. Chaman Lal, Retired Director General of Police, the role of media in situations of terrorism and insurgency is far more important and sensitive than its peace-time function of, informing, educating and entertaining the public. The terrorist outfits make use of media and publicity in generating anti establishment feelings and propagating their ideas. Hence, media management by the State police is very crucial for fighting militancy.\textsuperscript{130} K.P.S. Gill, former Director General of Police Punjab, in his recent interview has stressed upon the use of media in such situations. According to him, Punjab police was the first to understand the usefulness of embedded journalism during the operation black thunder.\textsuperscript{131}

According to Ved Marwaha, the aggressive enforcement of law and order as a quick fix solution to the problem of rising crime without tackling the root causes for the increase in crime is the product of a ‘systemic compulsions’ which includes the public pressure also. The swing in the public from the tolerance of crime to zero tolerance, could

\textsuperscript{128} Supra note 122, p. 8.
\textsuperscript{129} See Supra note 4, p. 316.
\textsuperscript{130} Supra note 57, p. 20.
\textsuperscript{131} The \textit{Indian Express}, 6-1-2008.
create an environment in which extra legal police excesses enjoy considerable public support. He further observed that the use of third degree methods in the interrogation of suspects is not uncommon in many countries including India. The fact is that the brutal methods are often practiced by even the motivated and committed police officers and always, by the corrupt and ineffective ones.\textsuperscript{132} Therefore, the value system of the society develops the perception of the police personnel which leads to the violation of rights.

The social system creates a value system and the power system in which the police operates. Indian society is a society with great disparities and these disparities are reflected in the working of the police also as Mrs. Kiran Bedi has stated that there are two sets of laws in operation in the country, one for the poor and other for the rich. Those who have power and influence could get away with anything and the innocent and the poor get caught. The police sides with the rich and powerful. The poor and the unprivileged are always at the receiving end. Mrs. Bedi further observed that policing methods have not changed from the colonial days and any attempt to reform it had been consistently foiled by those, who derived benefits from the present system.\textsuperscript{133} This has also been expressed by Joginder Singh, former Director of CBI in his book, \textit{Inside Indian Police}. To him “the rule of law has become the rule of class”.\textsuperscript{134} Hence the police is not operating under the rule of law but under the rule of a particular class. Therefore it is bound to protect the interest of one at the cost of the others.

There is lack of 'proactive policing' as the police generally operates and deals with ‘aftermath; of crime and not the ‘beforemath’ The proactive policing demands public participation. The police, in this regard, must acknowledge that the citizen and the community have a role to play and, therefore it should have an infrastructure in which it can avail the cooperation of the masses. Community policing can be an effective solution to this problem.

d) Political Environment

As mentioned earlier, the police is an important instrument of the State in regulating the society. Hence, it cannot escape from the policy framework laid down by the government. Apart from this, the political interference also becomes a major factor

\textsuperscript{132} Supra note 66, p. 16.
\textsuperscript{133} As quoted in Supra note 120, p. 271.
\textsuperscript{134} Supra note 5, p. 16.
which influences the functioning of police. The politics have been gradually creeping into police decision making for a long time and the “Emergency” merely injected it explicitly and grammatically.\footnote{David H Bayley, “Police and Political Order in India”, \textit{Asia Survey}, Vol. XXIII No IV April 1983, p. 485.}

“The nexus among the politician, criminal and police have gone so deep that the police for the personal gain and under pressure, do not surface serious offences. It is evident from Telgi Stamp case worth over 23000 crores rupees that the DG of police alongwith some senior IPS officers have been implicated … the police are very biased towards crime as they are directly or indirectly pressurized by the politicians or the influential persons in the contemporary Indian society, which compel them not to act impartially”.\footnote{Supra note 104, p. 65.}

Regarding the problems of police as regards political interference in police, Punjab is no exception. The Punjab Police Commission (1961-62) observed: “The evidence led before the commission, has disclosed that members of political parties, particularly of the ruling party whether in the legislature or outside, interfere considerably in the working of the police, for unlawful ends. We have been told that politicians accompany the complainants to the police stations and try to influence the Station House Officer to take down the reports, implicating innocent persons, against whom the complainant has enmity… no objection can be taken to politicians accompanying their constituents for lawful purposes but the objection is that they approach the SHO for ulterior purpose and use their position to influence him. He is threatened that if he does not support them, they will bring orders from above for his transfer or will otherwise harm him in his career. The result of this political interference is disastrous and it has considerably and very seriously affected the police work in the State. The police is demoralized.”\footnote{Supra note 5, p. 214.}

There is a debate over the Police-Executive relationship. As observed in above discussion, the executive interference mostly become political which hinders the working of the police. But to make the policy enforcement more effective and police more responsive, the democratic control over police is necessary. For this executive
supervision by political authorities which represent the people is needed. The limits in this relationship should be well defined. A very effective statutory expression of this relationship is contained in New Zealand's Police Amendment, 1999.\textsuperscript{138} Sections 4 and 5 of this Bill outline the precise roles for both the Director General of Police or Commissioner and the Executive or Minister. Section 4 and 5 read as follows:

“Section 4. Responsibility and Independence of the Commissioner (DGP)

(1) The commissioner [DGP] is responsible to the Minister [Executive] for -

(a) the carrying out of the functions, duties and powers of the police; and
(b) tendering advice to the Minister and other Ministers of the Crown; and
(c) the general conduct of the police; and
(d) the efficient, effective and economical management of the police; and
(e) giving effect to any directions of the Minister on matters of Government policy.

(2) The Commissioner [DGP] is not responsible to the Minister, but must act independently, in relation to the following:

(a) enforcement of the criminal law in particular cases and classes of cases;
(b) matters that relate to an individual or group of individuals;
(c) decisions on individual members of the police;

Section 5. Minister's [Executive's] power to give directions

(1) The minister may give the Commissioner directions on matters of Government policy that relate to -

(a) the prevention of crime; and
(b) the maintenance of public safety and public order; and
(c) the delivery of police services; and
(d) general areas of law enforcement.

(2) No direction from the Minister [Executive] to the Commissioner [DGP] may have the effect of requiring the non-enforcement of a particular area of law.

(3) The Minister [Executive] must not give directions to the Commissioner [DGP] in relation to the following:

(a) enforcement of the criminal law in particular cases and classes of cases;
(b) matters that relate to an individual or group of individuals;
(c) decisions on individual members of the police.

(4) If there is dispute between the Minister [Executive] and the Commissioner [DGP] in relation to any direction under this section, the Minister [Executive] must, as soon as practicable after the dispute arises,
(a) provide that direction to the Commissioner [DGP] in writing; and
(b) publish a copy in the Gazette; and
(c) present a copy to the House of Representatives [Legislature] ”

Hence, in order to make police more unbiased and effective regarding its approach towards human rights, it should be given sufficient autonomy from the political interference, for which provision should laid down in the statute.

Not only the political interference but the politics within the rank and file of the police also have negative impact on the working of the police. There are in stances of increasing unrest in the Indian Police. There is a general disenchantment with the officers who exploit their subordinates.¹³⁹

3. **NEW DEVELOPMENTS**

The police force is facing new challenges everyday in the form of modernization of the techniques of crime especially the cyber crimes and then there are certain phenomena like globalization which has thrown up new challenges before it. The process of economic liberation and globalization set in motion in June 1991 cannot be carried forward to any appreciable outcome if the States cannot guarantee for maintaining law and order. In view of the increasing privatization, the basic functions of the government have boiled down to ensuring law and order and justice and providing the social security net for the weaker and neglected sections of the society. Hence, more and more is being expected from the police. There are not enough statutory arrangements to equip the police against the cyber offences.

The increasing menace of cross border terrorism is taking its toll in the efficient functioning of the police. The police force is not technically and appropriately educated

¹³⁹ Supra note 135, p.419.
to deal with high-tech crimes. The police, with its conventional infrastructure has failed to tackle these problems and hence, it often adopts shortcut measures resulting into the violation of human rights. As remarked in the latest survey report by "Ensaaf", an NGO, over the human rights violations in Punjab during the period of insurgency, after going through over 21,000 cases compiled by NHRC, The Tribune, official Municipal records and Human Rights organisations, there is "strong correlation found between lethal human right violations and overall lethal violence across time and space supports the conclusion that enforce disappearances and extra judicial executions were part of a specific plan or widespread practice used by security forces during the counterinsurgency". An immediate need is being felt to form a federal police agency to make the counterinsurgency operations more effective and flawless by creating a co-ordination among various states and between centre and state governments.

The population of India has already crossed one billion mark and it is one of those countries which have the majority of population belonging to young people. And, more and more youth are getting involved in the crimes as the younger generation is normally anti-establishment in outlook and very often, critical and suspicious of the police. The police has to tackle all these challenges.

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140 Ensaaf, Benetech, Violent Deaths and Enforced Disappearances During the Counterinsurgency in Punjab, India: A Preliminary Quantitative Analysis, The Benetech Initiative, 2009, California Ave.,