PROTECTION OF HUMAN RIGHTS VIS-À-VIS
ROLE OF POLICE IN THE MAINTENANCE OF
LAW AND ORDER - A CRITICAL STUDY

ABSTRACT
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INTRODUCTION

**Role of Police – Definition:** The role of police is scientific method of investigation, the avoidance of third degree methods efficiency in professionalism and to act as a protector and saviour of the community.

The basic role of police functions as a law enforcement agency and renders service to law.

A welfare state is to be a police state only protection of law and order is the main function of the state. This function is carried out with the help of police. This is regarded as a sovereign function even today. This function by the state is considered as the most important and fundamental. The state has to implement many measures for the benefit and welfare of the people.

The police in a democratic polity perform multiple and complex tasks towards this objective, the police have to be an effective organisation for the prevention, detection and investigation of crime, maintenance of law and order, protection of lives, liberties, and honour and possessions of the people, to bring offenders to justice and to render honest and impartial service of the people. However, the changing internal security scenario has added a new dimension to the tasks of the police and brought the police force closer to the center. State of governance within the increasingly tentative internal security situation in large parts of the country consequently, it is an urgent imperative to secure a police organisation that is structurally cohesive functionally competent and operationally oriented to fulfil the wide ranging goals of the organization in providing efficient as well as qualitative services to the people in performing this, the police must maintain highest standards of integrity professionalism and service orientation while acting within the framework of the constitution and laws of the land.
The police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals. Many hard core criminals like extremists, the terrorists, drug peddlers, smugglers who have organized, gangs, have taken strong roots in the society. It is being said in certain quarters that with more liberalization and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights. To deal with such a situation, a balanced approach is needed to meet the ends of justice.

The administrative law it is very significant to the role of police in maintaining the law and order in the context of a welfare state where human rights are given highest importance chapters V and VI of the Andhra Pradesh Police Manual enumerates the following on the important powers and duties of police officers.

Let 100 criminals escape but not one innocent person be punished the provision of constitutional fundamental right of the police law.

The police is a name instead of a place, the crime preventor.

No crime without punishment.

No punishment without law.

Above two statements are in the beginning of ancient time. The man can observe and learn from animals and birds. The view of top talent is a crime created and developed. For example, the lion killed and eat some other animals, the birds killed and eat some other insects, the eagles killed and eat some other snakes and insects, etc, the safety of the people is the supreme law the sovereign power of police, the safety of the
state is the supreme law the sovereign power of police, police is the flesh of the law, police is the blood of the law, police is the nerves of the law, police is the backbone of the law, police is the eye of the general public, police is the protector and saviour of the community.

Role of Indian Police and Human Rights: In a well-ordered democracy and welfare state the police is supposed to be a disciplined force trained to uphold the law and enforced democratic institution to function on constitution lines. In India the British colonial administration introduced a police system primarily to protect and defined the establishment. Conceived and structured as a staunch ally and the establishment spawned by it, the police system established by the act of 1861 matured in time into a veritable colonial law-and-order force. A sort of police raj did surely take shaped by 1947, where the police was a major player in the ordering of rural and urban society, in the suppression of political opposition and in consolidation of state control. Since independence the need for thorough reform has been felt and urged not only by civil society and academic observers but by the government itself. Recently once again the government has expressed its readiness to replace the archaic 1861 Police Act with a new law and to increase accountability and upgrade procedures to handle every day crime. Earlier initiatives like the national Police Commission in 1979, the Vohra Commission 1993, the Ribeiro committee 1998, the Padmanbhaiah Committee 2000 and the Human Right Commission have advocated this reform. But nothing has happened. Why it is so, and what are the emerging trends in the police system of India in the absence of such reforms are issues of serious concern for all those interested in the working and consolidation of democracy in India. Fortunately some of the senior police officer, former and present, themselves has shown interest in the urgent need for reforms. The book
under review by a former senior police officer is an example of such a senior concern. Police and Politics in India, written by Kripal Dillion, a former senior police officer, is as a social science analysis of the working of the police in India in a wider perspective taking into account the historical evolution of the police system in India, the social fabric in which it works, the rules and regulations that determine its structure and government its processes, the political atmosphere that influences and limits its working and behaviour. The author traces the evolution of the Indian Police structured as a staunch ally and defender of the British rule and the establishment generated by it and latter becoming the protector of law and order and defender of citizens rights in the welfare state of independent India, The author, rather than simply analyzing the police organization and its style of functioning, takes into account the social and political environment in which it has to work, analyses the whole administrative structure and legal system of the polity and looks into that the working of the police at the state and center levels. Tracing the process of transfer of the administrative and police system from a colonial coercive state to an independent welfare state, the author finds that no change was made in the bureaucratic and police structure. Accordingly, unlike the police in mature democracies, the Indian police continue to be answerable to civilian bureaucrats, both in the district and at the state levels, rather than to the legislature. Not only do the antiquated police acts of 1861 remain in force, the colonial system of criminal justice too survives in full measures decades after the new constitution came into force. In fact, the gulf between the police and their police has grown, not diminished. The police are now more wary, more distrustful and more alienated in respect of the police.

The concept of human rights has come the declaration of American independence in 1776. The Universal Declaration of Human Rights which was adopted on 10th December, 1948. Human Rights in India Related issues were created by social and
religious movements in India during the 18\textsuperscript{th} and 19\textsuperscript{th} centuries. The abolishment of sati (1829) the formation of the torture commission in the Madras Presidency in 1855, introduction of widow remarriage by legislation (1856), and prohibition of child marriage (1929). The protection and preservation of Human Rights from the very basis of the human civilization. Right to decent life, protection from ill health and unemployment, freedom of expression, right to education, social security and others many rights. These rights are inherent to every individual and for this reason it is called Human Rights, Human Rights are very much essential for a good and qualitative human survival liberty of the individual and respect for his dignity. These principles have been enshrined in the fundamental rights. The constitution of India has made provision for a specific fundamental rights that a citizen cannot be compelled to be a witness against himself the Indian Police act, under which the entire police organization in India derives its legitimacy and the policemen their powers of function, prohibits unwarranted personal violence by police officers to any person in police custody. Their punitive procedures, both administrative and judicial, in case of complaints of custodial violence. Custodial violence is anathema in any civilized society. It is ironic to see that whereas the state is the guarantor and protector of human rights, most of the cases are registered against the state itself, which concern the violence of human rights. The image of the police in public mind is not much different from that in the British period, when it was used to suppress the people with an iron hand. People still perceive the police as brutal, corrupt and inefficient. In fact the police have shown all the three faces, i.e., as a savior, a victim and an abusing force, in the domain of human rights violations in our country. The observance of human rights by the police has already become mandatory by law and they have no choice in the matter. Any violence will invite legal action and punishment. This issue basically involves a question of values and ethics. The British policeman, nicknamed
Bobby, has earned the reputation of being extremely civil, courteous and well mannered. His Indian counterpart can do the same provided the officers in uniform become the forefront of positive values. The NHRC has been doing commendable work in continuously encouraging the police forces of various states, through their high ranking officers, in spreading human rights education. The commission also organizes and supports various seminars aimed at making police personnel aware of the importance of human rights. Custodial violence has attracted the attention of the number of custodial deaths which have been reported in the media. The number of deaths in police custody as reported to the NHRC has shown a decline in a number of states, with Bihar, Kerala, Orissa, M.P, Punjab, Rajasthan, Tamilnadhu, Karnataka, and Pondicherry. The Human Rights Commission recommended lots of suggestion to Indian Police. NHRC favour of depoliticisation of the higher ranks of the police. It has suggested that frequent transfers of the state police chief should be discouraged, police should be made less authoritarian, yet more accountable, and the investigated branch should be separated from the law and order handling, and thus it should be insulted extraneous pressures. The police definitely needs to change its image, and human rights education can play a meaningful role in remodeling the image of the police.

**Police Organization:** The police force of the Andhra Pradesh State is under the general control and supervision of Director General and Inspector General of Police appointed by the State Government. Office of the Director General and Inspector General of Police, which is also called as Chief Office or DGP Office, consists of

1. Police headquarters with State Control and Communication complex.
2. Administrative Wing.
3. Law and Order Wing.
4. Technical Wing.
5. Recruitment and Training Wing.

The Director General and Inspector General of Police, hereafter referred as Director General of Police (DGP) is assisted by:

1. Addl. DGP (Law & Order)
2. Addl. DGP (Administration)
3. Special /Addl. DGP (Crime Investigation Department)
4. Addl. DGP (Intelligence and Security)
5. Addl. DGP (Armed Police)
6. Addl. DGP (Technical Services)
7. Special/Addl. DGP (Recruitment & Training) and Chairman, State Level Police Recruitment Board (SLPRB).
8. Addl. DGP (Traffic, Planning & Highway Patrolling), Hyderabad.
10. IGP (Greyhounds)
11. IGP (Homeguards)
12. Director, A.P. Forensic Science Laboratory (APFSL)

**Different Types of Police in Andhra Pradesh**

As per manual book of police the following is the different types of police in Andhra Pradesh.

1. Andhra Pradesh Special Police
2. Armed Reserve Police
3. Special Armed Reserve Police
4. District Police
5. Commissioner of Police, Hyderabad City
6. Traffic Police
7. Women Police
8. Crime Investigation Department
9. Department of Intelligence and Security
10. Police Communication
11. Police Transport Organization
12. Police Home-Guard Organization
13. Police Computer Services
15. Department of Counter-Intelligence
16. Department of Cyber Crime
17. Central Crime Station & Detective Police
18. Department of Special Investigation Team
19. Department of Prosecution
20. Anti-narcotic Cell
21. Vigilance Cell
22. Department of Mounted Police
23. Department of Bomb Disposal and Dogs Squad
24. Department of Correctional Institutions
25. Department of Anti-Corruption Bureau
26. Department of District City State National Crime Records Bureau
27. Department of Finger and Foot Print Bureau and Photographic
28. Department of Clues Team (Scientific Investigation Forensic Science Laboratory)
29. Department of Recruitment and Training
The Articles 256 and 257 Executive Power of the states is subordinate union parliament – the centre protect the states. They are:

1. Border Security Force
2. Central Reserve Police
3. Central Industrial Security Force
4. Central Bureau of Investigation
5. Central Intelligence Bureau
6. Railway Protection Force
7. Coastal Guard
8. Indo-Tibetan Border Police
9. Rapid Action Force
10. Director of Enforcement
11. Research and Analysis Wing

The organization chart of Director General of Police is presented and separately attached hereunder.

Recommendations of the National Police Commission

The Commission produced eight reports between 1979 and 1981, suggesting wide ranging reforms in the existing police set-up. The following recommendations have been selected from different reports of the NPC:

(i) First Report (February, 1979): Complaints against the police – The Commission however recommended that a judicial inquiry should be made mandatory in the following categories of complaints against the police:

- alleged rape of a woman in police custody;
- death or grievous hurt caused while in police custody; and
• death of two or more persons resulting from police firing in the dispersal of unlawful assemblies.


Role of Police: Basic function of police, law enforcement agency and render service to law, service-oriented role relief to people distress situation.

Political Interference in Police Work: The State Security Commission should:

• lay down broad policy guidelines and directions for the performance of preventive tasks and service-oriented functions by the police;

• evaluate the performance of the State Police every year and present a report to the State Legislature;

• function as a forum of appeal to dispose of representations from officers regarding their being subjected to illegal orders and regarding their promotions; and

• generally keeping the functioning of the police in the state under review.

Statutory Tenure of Service: The expiry of tenure of chief of police should require the approval of the State Security Commission.

Selection of Chief of Police: The panel should be prepared by a committee headed by the Chairman of the Union Public Service Commission.

Transfer/Suspension Orders: Orders passed by any authority other than those specified in the Act will be rendered null and void.

(iii) Third Report (January, 1980): Police and the Weaker Sections:

➢ The NPC recommended the protection of civil rights act or other atrocities against scheduled castes and tribes.
➢ The district level under the sub-divisional officer to inquire complaints from SC/ST to lapses in administrative measures for their relief.

➢ The NPC recommended section 155 code of CRPC effective police response non-cognizable complaints in two categories of cases.

➢ To protect a member of the weaker sections from exploitation and injustice.

➢ To prevent a possible breach of public peace that absence of effective action on complaint of a non-cognizable offence, enacted setting procedure allotment of land to land less poor handing over possession of land to the landless. Record of this kept in the police station records.

**Postings of Officers:** The police station responsibility of the DSP. The chief of police responsible for selecting and posting superintendents of police in charge of districts.

**Guidelines for Avoidance of Vexatious Arrests:** Malafide arrests get exposed on habeas corpus petitions filed in high courts large number of unjustified arrest take place all the time.

The NPC recommended that sections 2(c) and 2(1) of the Code of Criminal Procedure should be amended to remove the emphasis on arrest in the definition of cognizable and non-cognizable offences and section 170 of the Code of Criminal Procedure should be amended to remove the impression that it is mandatory to make an arrest in non-bailable cases.

**Guidelines regarding use of Handcuffs:** The threat of putting handcuffs on persons under arrest is another source of corruption and harassment.

- No person shall be handcuffed who, by reason of age, sex or infirmity can be kept in custody without handcuffs.
• No person arrested on a bailable offence shall be handcuffed, unless for some special reasons, it is believed that he is likely to escape.

• In cases under judicial custody, court's instructions should be obtained before handcuffing the accused.

• Under trial prisoners and other accused persons should not be handcuffed and chained unless there is reasonable expectation that such persons will use violence or attempt to escape. The police escort must be sufficiently strong to prevent escape.

• Whenever any accused is handcuffed, the fact and reasons should be stated in the Sentry Relief Book.

• In no case should prisoners or accused persons, who are aged and bed-ridden in hospitals, or women or juvenile or civil prisoners, be handcuffed or fettered.

**Provision of Imprest Money to Police Station:** Police station to meet expenditure on several legitimate needs of the station. It recommended that police stations should be provided with an adequate imprest amount to meet the contingent expenditure in day-to-day work. Adequate funds should be provided at station level to eliminate causes of corruption, which often engulf even the honest officers.

(iiv) **Fourth Report (June, 1980): Registration of FIR:** The NPC has recommended an important amendment to Section 154 Cr.P.C. which would make it incumbent on a police station to register an FIR whether or not the crime has taken place in its jurisdiction and then transfer the FIR to the concerned police station, if necessary.

**Examination of Witnesses:** The examination of witnesses should be conducted as far as practicable near the scene of offence or at the residence of witnesses concerned at some convenient place nearby.
Statement of Witnesses: This statement of facts can be in third person in the language of the investigating officer himself and a copy of the statement should be handed over to the witness under acknowledgement.

Restoration of Stolen Property to Victims of Crimes: NPC has recommended a change in the existing provisions in law to facilitate early return of the recovered property to the victims concerned even at the stage of investigation, protected by appropriate bonds for their safe retention and later production in court.

Compounding Offences: The NPC has recommended both parties to dispute to settle the matter amicably compromise simple cases. This facility is available only at the state of trail. This amendment in law would also reduce the work load in courts.

Intimation about Arrest: The NPC has recommended section 50-A in Chapter V of Cr.P.C. requiring the police to give intimation about the arrest of a person of his family or relative or friends or care of interest any one.

Use of Third Degree Methods: To reduce the use of third degree methods, the NPC has recommended:

- Surprised visits by senior officers to police stations to detect persons held in illegal custody and subjected to ill treatment
- The magistrate should be required by rules to question the arrested person if he has any complaint of ill treatment by the police and in case of complaint should get him medically examined.
- There should be a mandatory judicial inquiry in cases of death or grievous hurt caused while in police custody.
- Police performance should not be evaluated on the basis of crime statistics or number of cases solved.
- Training institutions should develop scientific interrogation techniques and impart effective instructions to trainees in this regard.

**Inspections of courts:** The level of High Court as well as Sessions Courts to ensure proper functioning of the subordinate courts. A whole time functionary of the rank of a senior District Sessions Judge who is qualified for appointment as High Court Judge may be attached to each High Court to inspect the district courts periodically. A similar functionary of the rank of Additional Sessions Judge may be entrusted with inspections at the district level.

**Attendance of Witnesses:** The allowances payable to witnesses for their attendance in court should be fixed on a realistic basis and their payment should be effected through a simple procedure, which should avoid delay and inconvenience.

(v) **Fifth Report (November, 1980): Recruitment to the Police:** Recruitment to the Police must be at two levels only - Constables and Indian Police Service.

**Psychological Tests:** An important part of the selection procedure. The Central Government should develop the psychological tests with the help of the Ministry of Defense.

**Evaluation during Training:** The Commission recommended that there should be constant evaluation of the performance, attitudes and behaviour of all recruits during training and those who are not shaping as good policemen should be weeded out.

**Control of the District Magistrate:** Presently, under section 4 of the Police Act of 1861, the District Police is subject to the "general control and direction" of the District Magistrate. The police should perform with full accountability to the law of the land. Require active cooperation of different departments and in such matters coordination by the District Magistrate. The role of the District Magistrate as a chief coordinating authority should be recognised and respected by the police.
Causes of Poor Police Public Relations: Police public relations are in a very unsatisfactory state. Police partiality, corruption, brutality and failure to register cognizable offences are the most important reasons. Police do in fact harass even those people who try to help them.

Vertical Communication in Police: Every policeman must develop an attitude of utmost courtesy and consideration towards members of the public who come to him for help. Police personnel at lower levels behave towards public is largely conditioned by the manner in which they are themselves treated by their own higher officers within the force. Need for reform in behaviour and conduct of police officers towards one another.

Victims of Crime: The criminal justice system shows no concern for the victim of crime at any stage. The legislation of a Criminal Injuries Compensation Act is recommended.

Need for Transparency: All police activities, to the extent possible, should be open, except in four specific areas, which are (i) operations, (ii) intelligence on the basis of which operations are planned and conducted (iii) privacy of the individual citizen and (iv) judicial requirements.

Women Police: Crimes against women and children and in tackling the problem of juvenile delinquency. Duties now performed by their male counterparts. Recruited in much larger numbers than at resent, particularly in the ranks of Assistant Sub-inspectors and Sub-inspectors of Police.

(vi) Sixth Report (March, 1981): Examinations for Promotion of Officers: Before promotion to the ranks of Superintendent of Police, DIG and IG, all IPS officers should be required to undergo specifically designed pre-promotion courses followed by an examination and an objective selection process. Those who are not able to qualify for
the post of DIG and IG even after being given two more chances should be retired from service.

**Creation of Central IPS Cadres**: Two Central IPS Cadres should be constituted - one for the paramilitary organisations and the other for such organisations as IB, CBI, RAW, etc.

**Police Commissionerate System for Major Cities**: The Commission has therefore recommended that in cities with a population of 5 lakhs and above and even in places where there may be special reasons like speedy urbanisation, industrialisation etc., the system of police commissionerate would provide more effective policing and should be introduced.

**Communal Riots**: The NPC recommended during communal riots interest is not taken in investigation of heinous and serious crimes. Special investigating squads under the State CID should be set up comprising officers of proven integrity and impartiality. Vigorous investigation should be followed by prosecution to ensure deterrent punishment to the offenders. Withdrawal from trial of cases occurring during communal riots by the State Governments with a view to promoting communal harmony often proves illusory and has to be discouraged.

**Reservation in the Force**: The Commission has expressed its view against reservation of vacancies in the police for minorities and other weaker sections on the basis of their share in population. The force along caste and communal lines and it goes against the fundamental police philosophy that it must rise above caste and creed and act impartially as the agent of law and order. The composition of the force should reflect the general mix of communities as it exists in the society and thereby command the confidence of different sections of the society.

**Separation of investigating staff from law and order staff**: The NPC suggested the separation of staff at the police station level in the seventh report. The Commission
has expressed an opinion against the bifurcation of staff on the ground that the police work can not be put in water-tight compartments.

(vii) Seventh Report (May, 1981): Norms for Police Stations: A police station in a rural area should not have jurisdiction of more than 150 kms. An urban police station should not be required to police more than 60,000 population. If it registers more than 700 crimes annually, another police station may be created. Police stations in cities with more than 900 cognizable IPC offices should have a Dy. SP/ ASP as SHO. Police Stations investigating over 300 IPCs per year should be headed by an Inspector of Police. The third category will consist of smaller police stations headed by Sub Inspectors. An investigating officer should not be required to investigate more than 50-60 IPC cases in India.

Restructuring of Civil Police Hierarchy: Increase in the strength at middle levels of ASI/SI/Inspector. Increase in the strength of these ranks should be offset by reducing numbers at the lower levels of constabulary. Large number of investigating officers and improve promotional opportunities for the lower ranks.

Management of the Police Force: The internal management of the police force in the state should be entirely under the purview of the chief of police. The powers of the heads of the state police forces in respect of personnel and financial management and to provide infra-structural facilities for the growth of the police should be enhanced.

Central Law for Armed Police Forces: There should be a central enactment to ensure uniformity in composition, officering pattern, training, discipline and efficiency of the state armed police battalions.

Establishment of a Central Police Committee: The State Security Commissions to advise them on matters relating to:

(i) police Organisation and police reforms of a general nature;
(ii) central grants and loans to the State Police Forces for their modernisation and development; and

(iii) budgetary allotments to State Police Forces.

**Establishment of an All India Police Institute:** An all India Police Institute on the lines of similar professional institutions existing for Engineers, Chartered Accountants and other professionals be created. This Institute kept under the proposed Central Police Committee.

**(viii) Eighth Report (May, 1981): Police Accountability:** The annual administration report of the head of the police force and assessment report of the Central Police Committee will provide additional material to the State Security Commission to prepare a final report on the performance of the state police to be placed before the State Legislature. The police functionaries individually as well as in groups should be sensitised to the idea of accountability to the people.

**Withdrawal of Protection:** Sections 132 and 197 of the Cr.P.C. 1973 provide protection to various categories of public servants against any prosecution brought against them relating to performance of official duties. The protection available to the police officers under these sections should be withdrawn so that the private complainant is free to press his complaint against police official for a judicial pronouncement without there being a provision to obtain prior permission of the competent authority for such prosecution.

**Enactment of a Model Police Act:** The Police Act of 1861 should be replaced by a new Police Act, which not only changes the system of superintendence and control over the police but also enlarges the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the community.
Response to NPC's Recommendations: The idea of police reforms. Politicians and bureaucrats have developed a great vested interest in retaining control and superintendence over the police organisation. The subject in April 1997 by Shri Indrajit Gupta, the then Union Home Minister to the Chief Ministers of all States exhorting them to rise above narrow partisan or political considerations and introduce police reforms on the lines recommended by the NPC, failed to produce even a single response. The existing system is unacceptable. It has resulted in subverting the rule of law and in obstructing the growth of a healthy and professional system of policing. It must change.

Human rights

Human rights in simple language may be categorised as the fundamental rights to which every man or woman living in any part of the world is entitled by virtue of having been born as a human being, the rights that are required for the full and complete development of human personality. Human rights are derived from the dignity and worth inherent in human person. The Courts in India have been recognising and enforcing the human rights as natural rights of mankind or as Constitutional mandates or as rights of an Indian in an independent polity.

Generally speaking, human rights are regarded as those fundamental and inalienable rights, which are essential for life as a human being. There is, however, no consensus as to what these rights should be. Human rights may be interpreted as being different, according to the particular economic, social and cultural society in which they are being defined. Human rights have so far escaped a universally acceptable definition, presenting a problem to international regularisation.

Human rights represent claims which individuals or groups make on the society. They include the right to freedom from torture, the rights to life, inhuman treatment,
freedom from slavery and forced labour, the right of liberty and security, freedom of movement and choice of residence, right to fair trial, right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, the right to marry and form a family, the right to participate in one's government either directly or indirectly or through freely elected representatives, the right to nationality and equality before the law. These rights cannot be compromised universally. These rights are natural because they were derived from nature and could not be legally alienated by the ruler.

**Definition:** The definition of the term still eluded all. In India, the Protection of Human Rights Act, 1993 defines human right as:

"*Human rights* means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India".

The United States defined human rights in a policy document in 1978 and said:

"*Freedom from arbitrary arrest and imprisonment, torture, unfair trial, cruel and unusual punishment and invasion of privacy. Right to food, shelter, health care and education and freedom of thought, speech assembly, religion, press, movement and participation in Government.*"

The concept of human rights falls within the framework of constitutional law and International law. For this purpose, it has been identified to "defend by institutionalized means the rights of human beings against abuses of power committed by the organs of the State and at the same time to promote the establishment of human living conditions and the Multi-dimensional development of human personality".

**Protection of Human Rights Act, 1993**

India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the General

However, there has been growing concern in the country and abroad about issues relating to human rights. Having regard to this, changing social realities and the emerging trends in the nature of crime and violence. Government has been reviewing the existing laws, procedures and system of administration of justice with a view to bring about greater account ability and transparency in them and devising more efficient and effective methods of dealing with the situation.

Wide-ranging discussions were held on the subject at various fora such as the Chief Ministers’ Conference on Human Rights, seminars organized in various parts of the country and meetings with leaders of various political parties. Taking into account the views expressed in these discussions, the Human Rights Commission Bill, 1993 was introduced in the Lok Sabha on 14th May, 1993. The Bill was referred by the Speaker to the Standing Committee of Parliament on Home Affairs. In view of the urgency of the matter, the Protection of Human Rights Ordinance (1993), was promulgated by the President on 28th September, 1993, after incorporating certain amendments having regard to the discussion in the said Standing Committee.

The salient features of the present Bill are:

(i) the constitution of a National Human Rights Commission consisting of five members appointed by the President with a Chairperson who has been a Chief Justice of the Supreme Court;

(ii) the Chairperson of the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women and the National
Commission for Minorities, will be deemed to be members of the Commission for the
discharge of certain functions;

(iii) the commission will be a fast-finding body with powers to conduct inquiry
into complaints of violation of human rights;

(iv) the Commission will be assisted by investigating agencies of the Central and
State Government, the Government may also constitute one or more special investigation
teams;

(v) the State Government may set up Human Rights Courts for speedy trial of
offences arising out of violations of human rights and may also specify a Public
Prosecutor or appoint an advocate as Special Public Prosecutor for the purpose of
conducting cases in such Courts;

(vi) the Commission may make recommendations for the effective
implementation of the existing laws and treaties on human rights;

(vii) the Commission may under take research in the field of human rights and
take measures to promote awareness of human rights among all sections of society;

(viii) the Constitution of the State Human Rights Commission on the lines of the
National Human Rights Commission.

An act to provide for the constitution of a National Human Rights
Commission, State Human Rights Commissions in States and Human Rights Courts
for better protection of human rights and for matters connected therewith or incidental
thereto.

The Problem

Protection of Human Rights Vis-à-vis – Role of Police in the Maintenance of
Law and Order - A Critical Study.
Significance of the Topic

The police at the present day have enormous responsibilities. On the one hand, the police have to maintain the law and order in the society. On the other hand, they should not violate human rights, which are guaranteed under the Constitution of India and the U.N. Declaration on Human Rights. This is indeed beset with complications and innumerable problems on all sides. In this connection, the functions of the police may be briefly examined. The present study clearly shows that those who have to make the laws and implement them are themselves becoming the law breakers in the society. This is indeed a deplorable situation and results in violation of human rights on a large scale. The criminal justice system can function satisfactorily only when there is a close cooperation and coordination between the police bench and the bar. Any lacuna or drawbacks in the system would result in violation of human rights which are basic fundamental rights or inherent rights of every individual. In this connection, the concepts which are employed in the thesis require some elaboration and detailed discussion.

Objectives of the Study

The objectives of the study are as under:-

1. To study the crime and criminal justice in Police Organisation
2. To know the structure and organisation of Police Department
3. To examine the safeguards in protection of human rights in the maintenance of law and order
4. To analyse the reports of different committees and their recommendation in protection of human rights
Hypotheses

After the preliminary observation of the subject matter and the conceptual frame of reference of the study, in the course of the study so carried out, following research hypotheses were formulated.

1. There are adequate number of safeguards for the protection of human rights under the constitution of India.
2. Enforcement of Rule of Law in defence of human rights is the primary duty of police.
3. Implementation of the Recommendations of National and State Human Rights Commission Reports is not completely satisfactory in so far as the response of Police is concerned.
4. Role of Police in maintenance of law and order with regard to human rights and judicial trends needs to be strengthened and redefined.

REVIEW OF LITERATURE

There are many standard works dealing with human rights and the police organizations. The author had gone through quite a number of books by visiting various libraries and the following are a few important works which need special mention. The data for the project work has been drawn from the under mentioned books on a doctrinal basis.

Leadership in Police is totally different and difficult from that we find in any other walks of life. It is so in as much as the ability to inspire and motivate the rank and file is so demanding that sacrificing of life in the line of duty is part of their occupational hazard. In the specific context of upholding Human Rights also, the police leadership has to set an example and be a role model for the subordinate ranks. Or else, they cannot enforce observance of Human Rights by their subordinates. Today, Human Rights are
truly internationalized but not fully internalized. The internalization of Human Rights culture is now an irreversible need of the times and the police leadership has a crucial role to play in this regard (Ravi Prakash Kodumagulla and A. Suryanarayana, 2011).\(^1\)

Ben Golder and George Williams (2006)\(^2\) addressed the impact which post-September 11 counterterrorist legislation has had on human rights and civil liberties in a number of common law jurisdictions. The authors conclude that the counter-terrorist legislative regimes in the countries discussed in the article do impinge significantly upon human rights, and argue in favour of a ‘balancing approach’ towards reconciling such legislation with domestic, regional and international human rights obligations. The authors conclude with some general guidance for legal and policy decision-makers on how to balance the (frequently opposed) interests of national security and human rights protection.

Thomas K.V. (2006)\(^3\) collected a lot of historical and empirical data and on the basis of that certain findings were arrived at. The article unfolds these findings and comes out with a number of recommendations for harmonizing the relations between police and civil human rights groups by effecting changes in their style of functioning/operations. Other related issues relevant to the topic of research such as disparities in development leading to socio-economic instability, deprivation and exploitation of weaker and marginalized sections, emergence of left-wing extremism and their depredations, land-reforms, unsociability, gender-issues etc. are also covered in the article. One noteworthy feature of the article is that its contents are unbiased and based on ground level quality


research and the findings and recommendations are relevant and applicable to law enforcement agencies as well as civil/human rights groups and NGOs operating in states/areas with major law and order problems.

Milan Ambrož (2005) discussed in this article indicate that the respondents are aware of the power of the economy over social issues in all social affairs in our society. They see the networking role, professional knowledge and leadership skills of the Ombudsman as core competencies in solving problems pertaining to human rights brought about by increasing social inequality. Complex problems regarding human rights demand coordination between national and international governmental and non-governmental organisations because human rights are becoming a central dimension of international affairs today.

Pogge (2002) emphasized the Universal Declaration's Article 28 which says that “Everyone is entitled to a social and international order in which this the rights and freedoms set forth in this Declaration can be fully realized.” Pogge sees in this Article a plausible norm, namely that both countries and individuals have negative duties not to be complicit in an international order that unfairly disadvantages poor countries and the people in them. A coercive political order, whether national or international, “must not avoidably restrict the freedom of some so as to render their access to basic necessities insecure — especially through official denial or deprivation. If it does, then all human agents have a negative duty, correlative to the postulated social and economic human rights, not to cooperate in upholding it unless they compensate for their cooperation by protecting its victims or by working for its reform. Those violating this duty share

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responsibility for the harms (insecure access to basic necessities) produced by the unjust institutional order in question”.

Yash Ghai (2001) assessed progress toward the objectives of the Copenhagen Declaration on Social Development (referred to as “the Declaration”) and Programme of Action by using a human rights strategy. The Declaration seeks to make human rights the framework for policies to achieve the goals of the World Summit for Social Development, held in Copenhagen in 1995. This strategy assumes that the norms and machinery of human rights would inform decisions on development policies. It also assumes that rights would empower social and economic groups hitherto excluded from or disadvantaged in development and entitlements. In particular, it assumes that human rights norms that require and support democracy would provide the basis of political and social stability, and that social and economic rights would eliminate the worst consequences of poverty. The author concludes that, although human rights provide a suitable framework for the goals of the Declaration, and there is considerable merit in using it, little progress has been made in the realization of rights that are central to the agenda of the Declaration. There has been more progress in democratization than in social justice, but even there the progress is strictly limited because there is no international consensus on the importance of rights. There are varying understandings of human rights, and there is no great commitment to this ideal on the part of governments. Even Western governments, which claim to be the foremost champions of human rights, attach greater importance to their national interests than to the realization of human rights. The achievement of global justice necessitates a massive transfer of financial and other resources internationally, from richer to poorer countries, and domestically, from richer to poorer classes. There simply is not the will at either level for these redistributions. On the

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contrary, the processes of globalization accentuate the disparities between the rich and poor, globally and nationally.

METHODOLOGY

Legal scholars, interested in having insight into policy of law its implementation or ‘understanding’ ‘social dimension’ or role of law, in the absence of their own well developed legal research methodology, have to place their reliance on the social science techniques of data collection (such as interview, questionnaire, schedule or observation) and research methodology. Ultimately, this approach of legal researchers has led to the evolution of a sort of ‘hybrid’ legal research methodology having a blend of (traditional) analytical (legal) research and empirical (social) research.

A systematic investigation of the first dimension of law (as a normative science), generally, falls in the domain of legal academia. A scholar of law, generally, undertakes a rigorous systematic analysis, exposition and critical evaluation of legal rule, legal principle, legal concept or doctrine (i.e. legal fact).

On the basis of the objectives of the present study the hypotheses have been formulated regarding to the subject by the following historical-cum-analytical method of approach. For this purpose the data was collected from authentic sources of information like commentaries on law relating to protection of human rights and the role of police in maintenance of law and order.

The information from different sources collected through the law reports, law journals, e-journals, periodicals, all India reports, Supreme Court cases, High Court cases and local laws belonging to human rights. Data collected from special laws applicable to the human rights and its protection through law and order maintained by Police Department.
As the topic of the study needs an empirical approach, the researcher was developed his work by non-doctrinal, historical, comparative, constitutional and analytical approach.

**SOURCES OF INFORMATION**

The information for the thesis can be collected by following any of the two approaches – (a) A doctrinal approach; (b) A non-doctrinal approach. Doctrinal approach is also known as fundamental approach. It is also described as textual in nature. It consists of 2 kinds of sources - (a) Primary and (b) Secondary. The primary sources are concerned with legislation and case laws. The secondary sources are concerned with articles published in leading journals, law reviews, text books, etc. The non-doctrinal approach is known as functional or contextual. It deals with social values, constitutional interrelations, principles of justice, good conscience, etc. In the preparation of the present thesis mainly the doctrinal approach has been adopted and the necessary material has been drawn from both primary and secondary sources.

**Chapterization**

The thesis has been divided into six chapters.

**Chapter–I: Introduction:** In this chapter, the significance of the topic is brought out. Further, the hypotheses of the dissertation and objectives of the study are also discussed. Further, the concept of human rights and the police organization are elaborately discussed in this chapter. It is clearly pointed out that the police have a tight rope walking. They have to do their normal duties of maintaining law and order. In fact, this is the main function of the police. However, in recent times, various new types of crimes known as White Collar Crimes are being committed by people on a massive scale.
In fact, it becomes very difficult to secure evidence in such white collar crimes. The scams committed in recent times by people like - (a) Telgi (Stamp paper scam), (b) Kosa Raju Venkateswarlu (Krishi Bank) and (c) Ramalinga Raju (Satyam Computers).

Chapter–II: Crime and Criminal Justice System in Police: In this chapter, the essential ingredients of the concept of crime are explained in detail. Further, the nature of criminal justice system and the classification of various offences are also brought out.

Chapter–III: Police: Organization, Investigation of Crimes and Safeguards for the Protection of Human Rights under the Constitution of India: In this chapter, the following important points are discussed:-

a. The organization of police  
b. Investigation by the police  
c. Safeguards for the arrested persons under the Constitution of India and the criminal procedure code for the protection of human rights of the arrestee.

Chapter–IV: Human Rights and Police Enforcement – International Conventions and Safeguards: In this chapter, the research scholar interpreted the information on conducting police investigation and enforcement of human rights. There is also a description with regard to international conventions and international reports on human rights enforcement in different countries like Bangladesh, Ukraine, Kenya, Sri Lanka, Pakistan, USA, Malaysia and Indonesia.

Chapter – V: Human Rights and Judicial Trends Vis-à-vis Role of Police in the Maintenance of Law and Order: In this chapter, the recent trend on the protection of human rights is brought in the context of role of police.
Chapter – VI: Conclusion: In this chapter, a brief summary of the thesis is put forth together with the observations, findings and suggestion of the research scholar. Every effort has been made to make the thesis as comprehensive and as authoritative as possible.

SUMMARY

Summary of Chapter-I: Generally speaking, human rights are regarded as those fundamental and inalienable rights, which are essential for life as a human being. There is, however, no consensus as to what these rights should be. Human rights may be interpreted as being different, according to the particular economic, social and cultural society in which they are being defined. Human rights have so far escaped a universally acceptable definition, presenting a problem to international regularisation.

The concept of human rights falls within the framework of constitutional law and International law. For this purpose, it has been identified to "defend by institutionalized means the rights of human beings against abuses of power committed by the organs of the State and at the same time to promote the establishment of human living conditions and the Multi-dimensional development of human personality".

Ever since civilized societies came into being, police force, in one form or other has been made to function from times immemorial. The Constitution of India provides police is a state subject, list 2 entry 2 and residuary powers are vested with the Centre. There are central police organizations while state has its own police force with different divisions and units. To quote but a few are Central Bureau of Investigation (CBI), Central Reserve Police Force (CRPF), Border Security Force (BSF), Indo-Tibetan Border Police (ITBP), Central Industrial Security Force (CISF), Railway Protection Force (RPF) and Central Intelligence Bureau (CIB).
The police at the present day have enormous responsibilities. On the one hand, the police have to maintain the law and order in the society. On the other hand, they should not violate human rights, which are guaranteed under the Constitution of India and the U.N. Declaration on Human Rights. This is indeed beset with complications and innumerable problems on all sides. In this connection, the functions of the police may be briefly examined.

The present study clearly shows that those who have to make the laws and implement them are themselves becoming the law breakers in the society. This is indeed a deplorable situation and results in violation of human rights on a large scale. The criminal justice system can function satisfactorily only when there is a close cooperation and coordination between the police bench and the bar. Any lacuna or drawbacks in the system would result in violation of human rights which are basic fundamental rights or inherent rights of every individual.

**Summary of Chapter-II:** The concept of crime revolves around the guilty act and guilty mind i.e., actus reus and mens rea. Only when both these aspects are concurrently present, the penal liability gets attracted. This concept no doubt is good enough for blue collar crimes like theft, cheating, misappropriation etc., where the mental element undoubtedly play a crucial role. Unless there is guilty mind in blue collar crimes, no penal liability can be attracted. The society had advanced since the blue collar crimes of ancient times and today white collar crimes are being committed on a massive scale. For example – Organized crime, internet frauds including banking frauds, adulteration of food, hoarding of essential commodities, human trafficking etc., where the mental aspect cannot be made the basis of criminal liability. The doctrine of strict liability as propounded in Reyland vs. Fletcher and absolute liability as propounded in Bhopal Gas leakage case, Union Carbide vs. Union of India etc., are to be followed and applied.
Cases like bribe burning, dowry deaths etc., is blatant violation of human rights, but it is very difficult to prove such offences. The Evidence Act has also to be amended so that the onus probandi i.e., burden of proof is shifted from prosecution to the accused. The scope of such offence is elaborately brought out in this chapter. Offence has also been classified under different heads and analyzed in detail.

**Summary of Chapter-III:** The police is a state subject and its organisation and working are governed by rules and regulations framed by the state governments. These rules and regulations are outlined in the Police Manuals of the state police forces. Article 246 of the Constitution of India places the police, public order, courts, prisons, reformatories, borstal and other allied institutions in the State List. Superintendence over the police force in the state is exercised by the State Government. The head of the police force in the state is the Director General of Police (DGP), who is responsible to the state government for the administration of the police force in the state and for advising the government on police matters. To enable the police have greater and speedier reach and the public to gain easier access to police help, police posts have been set up under police stations, particularly where the jurisdiction of the police station, in terms of area and population, is large.

Keeping the above points in mind, the research scholar conducted a study on (a) the organisation of police, (b) investigation by the police and (c) safeguards for the arrested under the Constitution of India and the criminal procedure code for the protection of human rights of the arrestee.

**Summary of Chapter-IV:** Enforcement is practiced as a routine and accepted means of investigation. Most police and other law enforcement officers consider agony as an essential investigative tool, rather than unscientific or crude. Policy makers and bureaucrats believe there is nothing wrong in punishing a criminal in custody, not
realizing, first that a person under investigation is only an accused, not a convict, and second, that torture is a criminal act, not a method of punishment. There is a lack of societal awareness about torture, its nature and gravity. This allows torture to be practiced by all sections of law enforcement agencies, as well as paramilitary and military units. In fact, agony and violence are used in the country as methods of social control.

India’s National Human Rights Commission has repeatedly recommended that the Indian government ratify the Convention against Torture and criminalize torture in the country.

In this chapter the researcher the following points are discussed: (i) The procedures to be followed by the police conducting investigation and having custody of the accused person. (ii) Enforcement of human rights and (iii) The international conventions and municipal legislation on the subject. An in-depth study with regard to these matters together with some important cases and current incidence that take place in the society was discussed.

It is clear from the analysis that the role of police in maintaining law and order, protecting at the same time the human rights of individuals is indeed a Herculean task. This is particularly so in view of the fact that at the present day various kinds of crimes are being committed, for example – organized crimes, human trafficking, drug addiction, foreign exchange smuggling etc. In such cases, the police cannot easily get to the truth and extract the truth from the accused. It becomes necessary to apply the modern techniques like lie detection, mind mapping etc., though it may amount to some extent the violation of human rights, in particular testimonial compulsion, which is not allowed under Article 20 Clause 3 of the Constitution of India. Nevertheless, such techniques are being lawfully used with the permission of the Court and in spite of the fact that on employment of such techniques what is being successfully detected by the police is only a
tip of the iceberg. Therefore, the role of police in this connection is indeed an unenviable task.

**Summary of Chapter-V:** Maintaining social order is such a fundamental police function, and social order is so fundamental to the realization of human rights that the protection of human rights can be seen, in itself, as a police function. The very specific ways in which police protect particular human rights give further support, if it were needed, to the notion that the protection of human rights is a police function. Indeed, it is argued that the protection of human rights should stand alongside the prevention and detection of crime; the preservation of social order; and the provision of assistance in emergencies as one of the primary functions of policing.

The relationship between human rights and policing should be characterised by these three concepts - protection, respect and entitlement. However, the protection of human rights by policing is a very positive aspect of the relationship and this need and deserves further consideration. Therefore, the researcher presented the recent trends on the protection of human rights in the context of the role of police.

**Summary of Chapter VI:** The summary, conclusions and suggestions for the whole thesis has presented in this chapter.

**CONCLUSION**

1. It is concluded that the police personnel work together and ensure human rights violation free zone with indicators in the Field Action Project of the Institute’s initiative. This can be achieved by collaborative efforts of the police and other stakeholders such as lawyers, human rights activists and the non-governmental organizations working in the field of human rights.
2. Despite the rhetoric on rule of law, constitutional provisions, the existence of human rights laws and institutions such as the NHRC, the fact remains that at bottom the Indian police are a government department functioning under government orders with hardly any meaningful autonomy, an issue that needs serious analysis.

3. The focus on crime and investigation detracts attention from the fact that the Indian police organization, based on the colonial Irish paramilitary police model with specific characteristics as designed by Charles Napier in the 1840s, was originally set up to put down by brute force political resistance to British rule; that structure has not only been retained without change in the post-colonial period, but has been vastly strengthened to put down political resistance to regressive development policies, whether non-violent resistance as in the Narmada Bachao Andolan or violent resistance as in the Naxalite movement.

4. Most of the provisions of the Indian Penal Code and the Criminal Procedure Code possess a narrow focus on security of state and public order at the cost of human rights protection and service provision, which needs to be removed along with similar reform of the Police Act of 1861.

5. The sample size of the HRW report (excluding Uttar Pradesh) may appear small considering that India is a large country with 28 states and 7 union territories.

6. The issues of decentralisation, democratisation and empowerment of panchayati raj institutions (PRIs) for discharging police functions need to be addressed.

7. The sufferings of large sections of ordinary people in Jammu & Kashmir, the north-eastern states and the Central Tribal Belt including women and children,
under the adverse impact of the imposition of ‘lawless laws’ such as the Armed Forces Special Powers Act and Criminal Law Amendment Act, affecting human dignity needs addressing.

8. Intelligence systems oriented to security of the state and public order do not respect human rights concerns and priorities and must be addressed.


10. The role of the two All India Services, the IAS and the IPS, in over-all law and order management needs reconsideration.

11. A variety of programmes have been developed in Anglo-American countries for training police for the prevention of juvenile delinquency the international criminal police organization, the international federation of senior police officers and the international association of chiefs of police have often made important suggestion bearing on police training.

12. The National Human Rights Commission has measure as the police to magistrates court every fifteen days for extending their remand period. Magistrates would extend the remand period through video-conferencing, indeed, e-mail connectivity to all police stations will provide for speedy correspondence as in most of the states video-conferencing facility has been provided to DGP, Zonal IGs, Range DIGs and SPs of the district level.

**SUGGESTIONS**

1. Scientific investigation tools should be adopted in investigation of cases than that of third degree methods.

2. Education of police personnel vis-à-vis civil society in terms of the human rights sensitization programmes.
3. Curb the political interference in the police functioning.

4. The role of media is that it should give the authentic information of any incidence or issue.

5. The media should also bring to the light the positive role played by the police i.e., the success stories of police in protection of human rights.

6. There should be meeting, dialogue or conference amongst police, public and media.

7. Discussion on organised crime, inequality in Indian society, and criminalization of politics.

8. Seminars should be organised at various levels like, District, State and National with regard to human rights and the role of police.

9. Participation of NGOs on the area of women and children, minorities, disabled and their marginalised section of the society.

10. Emphasis to be given on public–police relation.

11. Ways and means to improve the efficiency of the police in protection of Human rights.

12. The role of police is to put up posters & charts outside the police station to comply with the Right to Information.

13. Special measures to be taken, to create legal awareness among the public, on issues of right of accused, procedures of bail, FIR, probation, special protection for children, women & weaker sections of the society.

14. The police should realize that they had lots of legal powers to control the human rights violations and so it is their responsibility to protect human rights without submitting to any kind of pressures like that of the media, public and the politicians.
15. Law enforcement officials shall at all times fulfil the duty imposed on them by law, by serving the community and by protecting all persons against illegal acts with regard to human rights, consistent with the high degree of responsibility required by their profession.

16. Law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

17. Training and clear guidelines shall be made available on all matters of police activity affecting human rights.

18. Police shall develop strategies for law enforcement which are effective, lawful and respectful of human rights.

19. Police officials should have a general understanding of the most relevant human rights standards and what these mean in daily operations.

20. Police training that aims to increase ‘professional policing’ and includes human rights aspects.

21. The important principle in ensuring Human Rights is the ‘Protection against double jeopardy’. This means that no person can be punished for the same offence twice. This has been enshrined in the Indian Constitution in Article 20(2) and also in the Criminal Procedure Code.

22. Compliance with the eleven requirements enumerated in D.K.Basu, should be ensured in all cases of arrest and detention.

23. Computerization, video-recording, and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions and antedating in regard to FIRs, Mahazars, inquest proceedings, Port-mortem Reports and Statements of witnesses etc. and to bring in transparency in action.
24. An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power to investigate complaints of custodial violence against Police personnel and take stern and speedy action followed by prosecution, wherever necessary.

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