Chapter 1

Human Rights and Police in India
CHAPTER-ONE

HUMAN RIGHTS AND POLICE IN INDIA

Introduction

The most distinct feature by which Human being is distinguished from other being and creatures in this Universe is that it is blessed with the power and quality of 'conscience' or 'reason', which other creatures lacked. It is because of this sense of 'conscience' that men has got an upper hand or say over all the other creatures of the world. The power of conscience empowers him to make decision between right or wrong, good or bad, moral or immoral, justified and unjustified. The notion of Human Rights directly connected to this sense of conscience. It is the outcome of this faculty, that the concept of human rights is as old as the human civilization. They are very much presents in almost all the religious texts, scriptures, books and sayings of nobles. Human rights have been defined as basic moral guarantees that all people in all countries and cultures have simply because they are human beings. Calling these guarantees "rights" suggests that they are attached to particular individuals who can invoke them, that they are of high priority, and that compliance with them is mandatory rather than discretionary. Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available
as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country.

**Human Rights**

The expression “human rights” denotes all those rights, which are inherent in our nature and without which we can not live as human beings. In other words, human rights being eternal part of the nature of human beings are essential for individuals to develop their personality, their human qualities, their intelligence, talent and conscience and to enable them to satisfy their spiritual and other higher needs. Further it is described that the rights, which are natural and inherent for the life and happiness of every individual, are called human rights. These rights are indispensable for the maintenance of human dignity and the individual enjoys these rights from birth to death. In fact human rights are the very essence of a meaningful life, and human dignity is the ultimate purpose of the Government.

The purpose of securing human rights as such is to provide protection to these rights against the abuse of power committed by the organ of states; to establish institution for the promotion of living condition me of human beings and for the development of their personality; and at the same time, to provide effective remedial measures for obtaining redress when these rights are violated. Kare vasak has aptly remarked that the human rights are essentially individual in character. They are meant to be enjoyed by individuals and they constitute a social phenomena by virtue of those for whom they are intended.
Kinds of Human Rights

According to the evolution of the contemporary concept, human rights have been divided into three categories by Louis B Sohn. These are otherwise known as three generation of human rights. Some western scholars have tried to analyse the 'three generation' of human rights.

The First generation rights are those that were concerned mainly with the civil and political rights of the individual or the 'liberty oriented' rights. These were meant to impose negative obligations on government to desist from interfering with exercise of individual liberties. These rights were among the major concerns of all liberal and democratic movements since the nineteenth century. Civil and Political rights included such rights as the to freedom of speech and expression, right to freedom of movement and right against arbitrary arrests which are even today considered as the essential safeguard for the citizens against arbitrary government or state power.

The Second-generation rights are those, which can be said to be 'security-oriented' and provide for social, economic and cultural security. These rights -social, economic and cultural- are more positive in nature in that they make it the duty of the state to ensure that these rights are realized. The Universal Declaration of Human Rights reflects the consensus on the principles which form the basis of the and second generation rights. The post colonial era witness the emergence of the second generation of human rights. The political leaders and thinkers of developing nations, who propagated the idea that economic, social and cultural rights, were prerequisite for the enjoyment of
civil and political rights led to this era. This second category of rights *inter alia* include right against exploitation, right to work, food, social security, health care and education, the right to freedom of culture and religion.

The concept of human rights in its comprehension has now travelled to encompass what are called **Third generation of rights**. They have evolved in response to various new concerns over which international consensus has emerged in recent years. The third generation of human rights are led by the scholars and thinkers of the and the third world countries, which conceived human rights as the right to development, right to peace, the right to one’s own natural resources and the to one’s own cultural heritage. In the contemporary context of globalization and economic liberalization, the collective right of a nation, especially the right to protect environment and natural resources appear to be most significant for the survival of the developing nations against the economic imperialism of the multinational corporation having their origins in the developed nations.

The third generation of human rights also emphasized on the ‘group rights’, i.e. rights of the weaker and vulnerable groups such as women, children, aged, minorities, refugees, prisoners etc. The Declaration on the right to development adopted by the UN General assembly in 1986 is the most important example of these rights.

The term ‘generation’ in somewhat misleading as it usually implies a succession of phenomena, whereby a new generation takes the place of the previous one. This is not as far as the three ‘generations’ of the human rights
are concerned. On the contrary, as Baehr has rightly pointed out, 'the idea is rather that the three ‘generations’ exist and should be respected simultaneously'. In other words, this implies that the problem of generation gap does not arises in the case of human rights, as it often happens in the case of human beings.

**Evolution of the concept of Human Rights**

The roots of the protection of the rights of man may be traced as far back in the Babylonian laws. Babylonian King Hammurabi had issued a set of laws to his people which is called Hammurabi’s codes, established fair wages, offered protection of property and required charges to be proved at trail. The codes, while often harsh in their punishments provided standards by which Babylonian could order their lives and treat one another. An Assyrian law, Hitti laws and the Dharm of the Vedic period in India also devised different sets of standards by which obligations of one was provided to another. Jurisprudence of Lao-Tze and Confucius in China also protected human rights. Thus, the world’s all major religion have a humanist perspective that supports human rights despite the difference in the contents.

Human rights are also rooted in ancient thought and in the philosophical concept of ‘natural law’ and ‘natural rights’. A few Greek and Roman philosophers recognized the idea of natural rights. Plato (427-348 BC) was one of the earliest writers to advocate a universal standard of ethical conduct. According to the Roman jurist Ulpian natural law was that which nature and
the state assures to all human beings. This meant that foreigners are required to be dealt in the same ways one deals with one’s compatriots. It also implied conducting of wars in a civilized fashion. The republic (C.400 BC) proposed the idea of universal truth that all must be recognized. People were to work for the common good. Aristotle (384-322BC) wrote in politics that justice, virtue and rights change in accordance with different kinds of constitutions and circumstances. Cicero (106-43 B.C.), a Roman statesman laid down the foundation of natural law and human rights in his work. The Laws (52 B.C.) Cicero believed that there should be universal human rights laws that would transcend customary and civil laws. Sophocles (495-406 BC) was one of the first to promote the idea of freedom of expression against the state. Stoics employed the ethical concept of natural law to refer to a higher order of law that corresponded to nature and which was to serve as standard for the laws of civil society and government. Later, Christianity, especially St Thomas Aquinas (1225-1274) rooted this ‘natural law’ in a divine law which was revealed to man in part discoverable by man through his God-given right reason⁵. The city-state of Greece gave equal freedom of speech, equality before law, right to vote, right to be elected to public office, right to trade and right of access to justice to their citizens⁶. Similar rights were secured to the Romans by the *jus civile* of the Roman Law⁷. Thus, the origin of the concept of human rights are usually agreed to be found in the Greco-Roman natural law doctrines of Stoicism (the school of philosophy founded by Zeno and Citium) which held that a universal force pervades all creation and that human conduct should
therefore be judged according to the law of nature. The Magna Carta (also called as the Magna Charta) or the Great Charter of the liberties of England granted by King John of England to the English baron on 15 June, 1215 was in response to the heavy taxation burden created by the third crusade and the ransom of Richard I, captured by the holy Emperor Henry VI. The English barons protested the heavy taxes and were unwilling to let King John rule again without some concessions in their rights. The overreaching theme of Magna Carta was protection against arbitrary acts by the King. Land and property could no longer be seized, judges had to know and respect laws, taxes could not be imposed without common council, there could be no imprisonment without a trial and merchants were granted the right to travel freely within England and outside. The Magna Carta also introduced the concept of jury trial in clause 39, which protects against arbitrary arrest and imprisonment. Thus, the Carta set forth the principle that the power of the King was not absolute. In 1216-17, during the reign of John’s son, Henry III, the Magna Carta was confirmed by the Parliament, and in 1297 Edward I confirmed it in a modified form. Although the Charter applied to a privileged elite, gradually the concept was broadened to include all Englishmen in the Bill of Rights in 1689 and eventually all citizens. The Carta was buttressed in 1628 by the Petition of Rights, and in 1689, by the Bill of Rights, to form the platform for parliamentary superiority over the crown and to give documentary authority for the rule of laws in England. In addition to the above, the writing of St Thomas
Acquinas and Grotious also reflect the view that human beings are endowed within certain eternal and inalienable rights.

The expression ‘fundamental rights of man’ was stated in the declarations and constitutional instruments of many states. For instance, the Declaration of Independence of the thirteen United States of America in 1776. (The Virginia Declaration, 1776); the Constitution of the United States of 1787 with amendments in 1789, 1865, 1869 and 1919 specified a number of rights of man. The Virginia Declaration of rights affirmed that all men are by nature equally free and independent and have certain inherent rights. The French Declaration of the Rights of Man and the Citizen of 1789 led other European countries to include the provision in their laws for the protection of human rights. Since the beginning of the nineteenth century it was recognized by the constitutional law of many states that human beings possess certain rights. Worth of the human personality began to be realized.

Thus the term ‘Human Rights’ came somewhat late in the vocabulary of mankind. It is a twentieth century name for what has been traditionally known as natural rights of man. Thomas Paine first used it in the English translation of the French Declaration of the Rights of Man and Citizen. The term natural law was replaced because the concept of natural law had become a matter of great controversy and the phrase ‘the rights of man’ was found unsuitable, as it was not universally understood to include the rights of women.
Views of the jurist on the question as to basis of human rights are divergent which have led to the emergence of different theories. Prominent amongst them are as follows;

(1) Natural Law theory: - Ancient thinkers and philosophers were of the view that human rights have been derived from the principle of eternal law as revealed in natural law which is also something called Divine law or law of Reason, unwritten law, Universal or Common law, eternal law or moral law. The source of natural law is either God or reason. The Greeks regarded natural law as being closely related both to justice and ethics. It was therefore conceived by the Greeks as a body of imperative rules imposed upon mankind by nature, the personified universe. Natural law notion was reflected in the writings of Aristotle, Cicero, Gaius and other philosophers. Aristotle, the Greek philosopher stated that it is natural justice that binds us all even those who have no association or covenant with each other. Stoics popularized the maxim 'live according to nature'. Cicero was of the view that true law is reason in agreement with nature, which is universally applicable, everlasting and unchanging. According to him natural law is universal in nature and therefore its application is not limited to any class or category of person. Later, Christian fathers extended the authority of natural law by asserting to it a divine origin. They have cited St Paul as approving their doctrine. Aquinas, the Christian theologian, advocated that natural law is derived from God. According to him
eternal law governs the world through the will of God and according to his wisdom. Thomasius also stated that natural law is a divine law, written in the hearts of all men.

Romans practiced natural law theory in the formation of body of legal rules for the administration of justice. The Romans view was that natural law is the immutable and universal part of civil law. Roman classical writers used the stoic theory as an ornament for their texts. Thus, the origins of the concept of human rights are usually agreed to be found in the Greco-Roman natural law doctrines of stoicism. The theory of natural law has therefore a religious base.

The theory of natural rights clearly derives from natural law. Natural right is an interest recognized and protected by a rule of natural justice. It was a body of principles superior to positive law. They arose from the very nature of man. The concept of natural rights found place in many documents of human rights such as bill of rights (England) of 1689, Declaration of Rights (Virginia) of 1779 and the Declaration of Independence (USA) of 1776. The Virginian Declaration of rights stated that ‘all men are by nature equally free and independent and have certain inherent natural rights of which when they enter a society, they cannot by any compact derive or divest their posterity.

Natural Law as the basis of Human Rights has been criticized on a number of grounds. Firstly, all rights and the creation of the law and since natural law; they are metaphor. Secondly, natural law theory regards that what is natural are innate, universal or immutable. But there have been conflicting
interpretation as to what is natural? Thus, the meaning of the law of nature is not precisely clear. Different jurists have given different meaning to it such as reason, religious or moral and therefore it is such a hazy concept that, if sought to be enforced, it can result in confusion. However, it has to be admitted that the nature has greatly influenced the growth of human rights law. There cannot be any doubt if it is said that human rights law has developed in the initial stage on the basis that its rules derive from the law of nature.

(2) Social Utility Theory: - Another theory, which has been advocated as to the basis of human rights, is the social utility. The theory maintains that what conforms to the utility (or the interests) of an individual represents the total sum of happiness of their individual and that what conforms to the utility (or the interest) of a community represents the total sum of happiness of the individuals composing that community. Under the social utility theory of human rights, those rights are considered genuine human rights which tend to increase the total happiness of human beings. Thus human rights are those which constitute permanent and general condition of human happiness.

The above theory does not appear to be sound as it generates the belief that the happiness of the individuals composing a community is necessarily the interest of that community, but it is not true. It is a delusion to think that there is necessary identity between the individual happiness and happiness of the community. Moreover, social utility may even be an outright conflict, at times, with human rights.
It is to be noted that the basis of human rights lies in the fact that an individual is a human being. Well-being and freedom in all aspects are important, as aspects are important aspects of the individual's existence because he is a rational being. These aspects are essential to an individual's existence because he is a rational being. These aspects are essential to an individual to live his life in a dignified manner and also because they bring happiness to him. Consequently, happiness and freedom constitute the foundation for human rights.13

**International Bill of Human Rights**

History has witnessed a revolution in the modern moral imagination over the last few decades. The important features of this revolution include the emergence of human rights as the prominent language of the good in international politics and the growth of non-governmental Human rights organizations around the world. Until 1945, international protection of individual human rights was confined to the treaties abolishing slave trade, the law of war and the minority rights treaties conclude after Versailles. It is only since 1945, in effect, that the right of all human beings as individuals have come under the protection of international law.14

The Universal Declaration of Human Rights was a great achievement of the Civilization. It sets out a list of basic rights — a “common standard of achievement” in the words of declaration itself— for everyone in the world, whatever their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. After extensive
discussion and debate, two or more international instrument were included ie providing legal obligation to states parties through the international Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These were both adopted in 1966 and they came into force ten year later. An optional Protocol to the former Covenant also provided machinery for the handling of complaints from individuals under specified circumstances. These three documents together constitute the International Bill of Human Rights.

**Human Rights in India**

The constitution of the Republic of India, which came into force on 26 January 1950, with 395 articles and nine schedules, is one of the most elaborate fundamental laws ever adopted. Indian Constitution is one of the longest and detailed constitutional document the world has so far produced. The preamble of the constitution pledges to secure to all the citizens of India Justice – social, economic and political, Liberty- of thought, expression, belief, faith and worship, Equality- of status and of opportunity; and Fraternity assuring the dignity of the individual and the unity and integrity of the nation. Two parts of the constitution embody most human rights, distinguishing between justiciable fundamental rights and non-justiciable directive principle of state policy (DPSP), namely in Part III and part IV of the Indian Constitution.

The judicially enforceable fundamental rights, which encompass all seminal civil and political rights and some of the rights of minorities, are
enshrined in part III of the constitution (article 12 to 35). These include the rights to equality, the right to freedom, the right against exploitation, the right to freedom, of religion, culture and educational rights and the right to constitutional remedies.

The judiciary non-enforceable rights in Part IV of the constitution are chiefly those of economic and social character. However, as Article 37 makes it clear, their non-justifiability does not weaken the duty of the state to apply them in making laws, since they are “nevertheless fundamental in the governance of the country”. Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21 (the right to life and personal liberty), many of these principles and made them enforceable.\(^\text{15}\)

In spite of all these legal provisions and safeguards the human rights situation on the ground in our country is not very sound and to enjoy human rights fully various movement and struggle have been initiated to enjoy all these rights.

A. Emergence of Human Rights & Civil Liberties Movement

It is axiomatic that the interest in human rights is rooted in the denial of life and liberty that was a pervasive aspect of the Emergency that was imposed by Late Prime Minister Mrs Indira Gandhi in the year 1975 to 1977. The mass arrests of the leaders of the opposition, and the targeted apprehension of those who could present a challenge to an authoritarian state, are one of the dominant
images that have survived. The involuntary disappearance of people was more than a symbol of the excesses of unbridled power.\footnote{16}

Forced evictions carried out in Delhi in what is known as ‘Turkman Gate’ conjures up visions of large scale razing of dwellings of those without economic clout, and of their displacement into what were the outlying areas of the city. The catastrophic programme of mass sterilisation is an indelible part of emergency memory.

The civil liberties movement, like PUCLDR which later on become PUCL, was a product of the emergency. Arbitrary detention, custodial violence, prisons and the use of the judicial process were on the agenda of the civil liberties movement.\footnote{17}

**B. Women’s Movement**

The same period also saw the emergence of a nascent women’s movement. In December 1974, the Committee on the Status of Women in India submitted its report to the Government of India preceding the heralding in of the International Women’s Year in 1975. The Status Report, in defiance of standard expectations set out almost the entire range of issues and contexts as they affected women. Basing their findings, and revising their assumptions about how women live, on the experiences of women and communities that they met, the Committee redrew the contours of women’s position, problems and priorities gave a fillip to the re-nascent women’s movement.
The women's movement has been among the most articulate, and heard, in the public arena. The woman as a victim of dowry, domestic violence, liquor, rape and custodial violence has constituted one discourse. Located partly in the women's rights movement, and partly in the campaign against AIDS, women in prostitution have acquired visibility. The question of the practice of prostitution being considered as 'sex work' has been variously raised, while there has been a gathering unanimity on protecting the women in prostitution from harassment by the law. The Uniform Civil Code debate, contesting the inequality imposed on women by 'personal' laws has been resurrected, diverted and re-started. Representation, through reservation, of women in parliament and state legislatures has followed the mandated presence of women in panchayats. Population policies have been contested terrain, with the experience of the emergency acting as a constant backdrop. 'Women's rights are human rights' has demanded a re-construction of the understanding of human rights as being directed against action and inaction of the state and agents of the state. Patriarchy has entered the domain of human rights as nurturing the offender.

C. Public Interest Litigation

In the late '70s, but more definitively in the early '80s, the Supreme Court devised an institutional mechanism in public interest litigation (PIL). PIL opened up the court to issues concerning violations of rights, and non realisation of even bare non-negotiable by diluting the rule of locus standi;
any person could move the court on behalf of a class of persons who, due to indigence, illiteracy or incapacity of any other kind were unable to reach out for their rights. In its attempt to make the court process less intimidating, the procedure was simplified, and even a letter to the court could be converted into a petition called as ‘epistolary’ jurisdiction’.

In its early years, PIL was a process which

- recognised rights and their denial which had been invisibilised in the public domain. Prisoners, for instance, hidden amidst high walls which confined them, found a space to speak the language of fundamental and human rights.

- led to ‘juristic’ activism, which expanded the territory of rights of persons. The fundamental rights were elaborated to find within them the right to dignity, to livelihood, to a clean environment, to health, to education, to safety at the workplace…. The potential for reading a range of rights into the fundamental rights was explored.

Individuals, groups and movements have since used the court as a site for struggle and contest, with varying effect on the defining of what constitutes human rights, and prioritising when rights appear to be in conflict.

D. Struggle Against Pervasive Discrimination

Dalit movements have kept caste oppression, and the oppression of caste, in public view. Moving beyond untouchability, which persists in virulent forms, the movement has had to contend with increasing violence against dalits
even as dalits refuse to suffer in silence, or as they move beyond the roles allotted to them in traditional caste hierarchy. The growth of caste armies in Bihar, for instance, is one manifestation. The assassination of dalit panchayat leaders in Melmazhuvur in Tamil Nadu is another. The firing on dalits by the police forces when they were seen to be rising above their oppression in the southern tip of Tamil Nadu is a third. The scourge of manual scavenging has been brought into policy and the law campaigns; there have been efforts to break through public obduracy in acknowledging that untouchability exists. In the meantime, there are efforts by groups working on dalit issues to internationalise deep discrimination of caste by influencing the agenda of the World Conference against Racism.

E. Resisting Displacement Induced By ‘Development’ Projects

There has been widespread contestation of project-induced displacement. The recognition of inequity, and of violation of the basic rights of the affected people, has resulted in growing interaction between local communities and activists from beyond the affected region, and the articulation of the rights and the injuries has been moulded in the process of this interaction.

Resource rights were agitated in the early years of protest in the matter of forests; conservation and the right of the people to access forest produce for their subsistence and in acknowledgment of the traditional relationship between forests and dwellers in and around forests. Environmentalists and those
espousing the dwellers’ and forest users’ causes have spoken together, parted company and found meeting points again, over the years. The right to resources is vigorously contested terrain.

**F. Communalism**

The 1980s, but more stridently in the 1990s, communalism has become a part of the fabric of politics. The anti-Sikh riots following Indira Gandhi’s assassination was a ghastly reminder that communalism could well lurk just beneath the surface. The demolition of the Babri Masjid on December 6, 1992 is an acknowledged turning point in majoritarian communalism, and impunity. The complicity of the state is undeniable. The killing of Graham Staines and his sons in Orissa was another gruesome aspect of communalism. The questioning of conversions in this climate is inevitably seen as infected with the communal virus. The forcible ‘re-conversion’ in the Dangs area in Gujarat too has communal overtones. Attacks on Christians are regularly reported in the press, and the theme of impunity is being developed in these contexts.

**G. New Movements and Campaigns**

The professionalising of the non-governmental sector has had an impact on finding public space for certain issues and in making work on the issues sustainable. Child labour, AIDS-related work, the area of devolution and aiding women’s participation in panchayat institutions, and battling violence against women have found support and sustainability in funding infrastructure development and support. These have existed alongside civil liberties groups
and initiatives, grassroots campaigns such as the Campaign for the Right to
Information based in Rajasthan, the development struggle which has the
Narmada Bachao Andolan at its helm, or the fish workers’ forum that has
combated, sometimes successfully, the encroachments by the large-scale and
capital-intensive into the livelihoods of traditional fishing communities.

*Movements for self-determination, militancy, dissent and the naxalite*
move have provoked various extraordinary measures which have, in turn,
prompted human rights groups into protest and challenge. The Terrorist and
Disruptive Activities (Prevention) Act (TADA) is an instance. The Armed
Forces Special Powers Act (AFSPA) continues. Encounter killings,
disappearances and the ineffectiveness of the judicial system in places where
‘extraordinary’ situations of conflict prevail, characterise the human rights-
related scenario. A jurisprudence of human rights has emerged in these
contexts.

*Networking, and supporting each other through conflicts and campaigns,*
is not infrequent. There are glimmerings of the emergence of, or existence of a
human rights community in this. This has had groups and movements working
on tourism, forest dwellers rights, civil liberties, displacement, women’s rights
and environment, for instance, finding a common voice in protesting the
nuclear blasts in May 1999, or in condemning the attacks on the filming of
‘Water’ which had undisguised communal overtones. There has also been a
building of bridges across causes and the emergence of an inter-woven community of interests.

As the vista of rights has expanded, conflicts between rights have begun to surface. There has been a consequent prioritisation of rights. The determination of priorities has often depended on the agency which engages in setting them—sometimes this has been environmental groups, at others workers, and yet other times, it has been the court, for instance. In this general setting, we embarked on a mapping of:

- Human rights issues
- Responses—state and non-state—to human rights situations
- Conflicts between rights and prioritisation of rights, and
- A miscellany of issues including the treatment, and the place of state and non-state violence, and the question of who speaks for whom, and the relationship between the advocate of an interest and the persons or classes of persons affected by the advocacy.

**Police**

The term “Police”, in its origin and early definition, is also very old. The widely accepted view is that it is derived from the Greek word “Polis” 19. This word means “City” and is derived from the Greek Tradition as “an organized civil force in a town or city for the preservation of life, property and health of the community and for the enforcement of Laws”. The Latin root of the term polis is “Politia” which literally stands for the condition of a ‘Polis’ or ‘State’.
It connotes a system of administration or regulation. The corresponding French word for police is ‘Policer’ meaning the power of the people. In European parlance, the word police means ‘force of the city’. It is said that the word ‘Police’ was imported from France to England in the early eighteenth century. Historically speaking, however, the title of the ‘Police’ was first used in the famous Police Act of the Parliament in England in 1929. This Act has been a milestone in the progress of Law enforcement throughout the world and particularly in the USA and India as well. It is consolidated and reorganized the numerous forces, existing in London, into one efficient paid body of officer, known as Metropolitan Police or Constabulary Police as it is called in democratic countries. Hence police and constabulary have become almost synonymous. It has been rightly observed that the “Police force, as a regular and recognized part of Modern state, is a comparatively modern innovation.”

As now generally used, the term “Police means the maintenance of public order and the protection of person and property from the hazards of public accidents and the commission of unlawful acts.” In the present-day concept of police, it means “the primary constituted force for the protection of individuals in their legal rights.” The complex structure of modern society and necessities of Governmental administration have tended to extend the police activities quite beyond concept of crime control. The police function in Modern time is constantly widening and now frequently includes patrol, criminal investigation, traffic regulation, special measures for controlling commercialized vices and facilities for dealing with female offenders and juvenile delinquents, regulation
of Labour Laws and other such type of governmental activity within the recognized domain of state legislation.

Growth and Development of Police

The growth of the police in early society is obscure. Men learnt to live in groups, and with the emergence of early form of community life he need was felt to maintain order among its members. There was no distinct law and order as such, and the Military was summoned for putting down all kinds of disturbances including the suppression of a recalcitrant chieftain or a rebellious group or the arrest of difficult offenders. It was soon realized that military personnel by virtue of their orientation to deal with an enemy were ill suited for putting down internal disorders. They were apt to use excessive force, causing resentment in the people. Their approach to law is repressive and dictatorial. It is apparent that the functionaries for the maintenance of law and order had to be different from the military force, as a result of which a specialized agency for the maintenance of internal disorder was born in the form of Central Reserve Police Force and Border Security Force.

Early Police

There are indications that the ancient civilization of Egypt and Assyria had some machinery to enforce their laws for maintain an orderly social structure. The Persian or Achaemenian Empire under Cyrus and Darius, which is remembered for its human approach to administration, is known to have promulgated the laws through law bearers. In Babylon, about two thousand
years before the birth of Christ, the great lawgiver, Hammurabi, which could not have been enforced without an efficient police system, enacted effective laws. The Greeks gave the modern world basic tenets for many Laws. The Spartan are known to have had a good police system.

**Roman Police**

Nothing much is known about the police organization under the Romans during their early Republican period. There is mention of “Questem Paraciddi” or trackers of murder, who were evidently policeman of early Rome but their members were presumably few. Their only obligation seems to arrest the accused person and present him before the assembly. During the Augustus rule an organized police system were evolved in the Roman Empire. Augustus created mysteriously large bodies of Vigiles consisting of policemen and firemen. The famous Pracetorian Guards consisted of ten thousand men and kept control over Military and Vigles. The Vigles kept the emperor informed about happenings in the domain.

In France Charlemagne made his own contribution to police system by introducing the Gendarmeric who were, to begin with, armed civilian to enforce the laws and keep the king’s peace.

**Police under Islamic Dynasties**

The Islamic rulers of Ommayid and Abbasid dynasties, whose empire ranged right from Cordaba on Spain to the northern border of India, evolved a
police system which consisted of a large police force of detective police, spies and postal officials.

**Modern Police System**

In Modern times, different types of Police system have developed in various parts of the world. But their distinguishing features have been the degree of centralization and decentralization as also the nature of their accountability to the people. In the authoritarian states, police function as a force, and is a highly centralized and strong arm of the Government. These states set up a secret political organization that operates independently of the regular civil police establishment. Political police are always centralized agencies. These states, among other things known as ‘Police State’ as they always tend to centralize the police control. The Nazi Germany and Fascist Italy are the two examples of police state, before the Second World War, as totalitarian regimes were in power in these countries. After the war, the police force in these countries was, however, reorganized.

The police force in the totalitarian countries stands on a different footing. As against the independence of the judiciary from any arbitrary interference by the executive and standing of the police as the agent of the Law in democratic societies, the executive in the totalitarian states wields the ultimate control over law and all its officials. The police are not only one of the ultimate sanctions of the state but also frequently used as such. In democratic countries, police forces are agents of the law of the land. Law entrusts their
duties and power to them and they are answerable in law for their actions. They are the employees of the community, for the most part uniformed. Their special purpose is to ensure that community laws are observed and they employ force, and wear uniform by having n exclusively domestic mandate and have the initial point of contact between citizen and enforcement machinery. British, American and India policemen are prototype of this model.

**Police system in early India**

The common belief is that police system is a British Creation. It is not correct to assume that the concept of police is foreign importation and is a European innovation. The idea of police was familiar to Indian long before the British came to India. Even as early as the Epic Age of Ramayana, we find examples of the employment of police for the purpose of keeping peace and regulating traffic. In the code of Manu, the lawgiver of ancient India, there are references of police system. One of the main duties of the ruler, according to these laws, was to restrain violence and punish the evildoers. During the Vedic period of Indian history, we find examples of the police officers for the purpose of maintaining law and order. A policed society is also revealed in the Sanskrit, Pali and Prakit literature. It is further evident from the recorded history of India that the kings of ancient India evolved an indigenous system of policing society long before the British thought of a regular police system. Police, as a state department, was well established during the imperial Rule of the Mauryas and the Guptas. Kautilya's Arthashastra gives an elaborate
A description of Vigilence and Surveillance characteristic of modern police system.

The Chief Officer of the Police in the city was known as Nagar Pala and sometimes as Kota-Pala. Nagar Pala meant one who protected the citadel. The name Kota-Pala has continued to our day as Kotwal in Hindi. In ancient India, as the tradition has come down to our days, the police was subservient to the Government. The rural Police system is also as old as the recorded Indian history, and it continued to unchange till the British came to the country. The police force, in charge of the village, appeared to have a different organization from those in charge of the cities. The village policemen were like our present day chowkidars i.e holding a Chowki or Police outpost. From this evidence, it is clear that there were four main elements in the police organization of ancient India, namely, crime detection responsibility, village watchmen, espionage and severe penal provisions. There are also the main characteristics of the modern police. Anxious as they were to maintain law and order, the early Muslim rulers of India revived and re-established some of the police traditions and functions of the ancient Indian state. The key police official under the Sultan was Kotwal who, along with his force, performed the routine duties of the police department including the patrolling of the city at night, guarding of the thoroughfares, maintenance of records of all arrivals and departures of strangers. The Sher Shah infused vitality and strength into this system in the early 16th century by retaining the traditional principle of local responsibility. He held the village headman responsible for the safety of the Area within his
village. It can, therefore, be said that the sultanate period of India history was marked with the rudimentary characteristics of the modern police system.

Western scholars unanimously hold the view that the India Police System is a creation of the British rule in India. They further point out that it is difficult to trace anything answering to the police system. It has, however, been conceded that from the Vedic period, the changing patterns of governments notwithstanding the protection of life and property of the people has been the cardinal function of the state. These scholars hold that it is difficult to isolate references to police organization in ancient Indian polity as the mention of different forms of crimes, administration of criminal justice and the structure of internal security system are inextricably linked with the broad stream of religion, ethics and political institutions. Unfortunately, these scholars have failed to appreciably understand and analyse the origin and development of the law enforcement institutions in ancient India since western police organizations themselves cannot be traced to antiquity. The police as a department had become a well-established administrative institution during the Mauryan Empire.

**Police and Human Rights Codes of Conduct**

Police are the first line of defence for human rights. They are the guardians of the law, including human rights law. The community depends on the police to protect the full range of rights through the effective enforcement of the country's criminal laws. There are '10 Basic Human Rights Standards
for Law Enforcement Officials’ that was prepared by Amnesty International (AI) in association with police officials and experts from different countries. They are based on United Nations law enforcement, criminal justice and human rights standards. They are intended as a quick reference, and not as a full explanation of or commentary on the applicability of international human rights standards relevant to law enforcement.

This document is intended to raise awareness amongst government officials, parliamentarians, journalists and non-governmental organizations of some fundamental standards that should be part of any police training and police practice.

It is hoped that police authorities will be able to use these 10 basic standards as a starting point to develop detailed guidance for the training and monitoring of the conduct of police agents. Certainly, it is the duty of all officers to ensure that their colleagues uphold the ethical standards of their profession – the standards outlined here are essential for exercising that responsibility. These are:

1. Everyone is entitled to equal protection of the law, without discrimination on any grounds, and especially against violence or threat. Be especially vigilant to protect potentially vulnerable groups such as children, the elderly, women, refugees, displaced persons and members of minority groups.
2. Treat all victims of crime with compassion and respect, and in particular protect their safety and privacy.

3. Do not use force except when strictly necessary and to the minimum extent required under the circumstances.

4. Avoid using force when policing unlawful but non-violent assemblies. When dispersing violent assemblies, use force only to the minimum extent necessary.

5. Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others.

6. Arrest-no person unless there are legal grounds to do so, and the arrest is carried out in accordance with lawful arrest procedures.

7. Ensure all detainees have access promptly after arrest to their family and legal representative and to any necessary medical assistance.

8. All detainees must be treated humanely. Do not inflict, instigate or tolerate any act of torture or ill treatment, in any circumstances, and refuse to obey any order to do so.

9. Do not carry out, order or cover up extra judicial executions or “disappearances”, and refuse to obey any order to do so.

10. Report all breaches of these Basic Standards to your senior officer and to the office of the public prosecutor. Do everything within your power to ensure steps are taken to investigate these breaches.
Similarly UN General Assembly on December 17, 1979 adopted at least eight Articles in the code of conduct for law enforcement that are expected to be followed by law enforcement officials in India in order to protect human rights; These are:

1. Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and protecting all persons against illegal acts, consisted with high degree of responsibility required by their profession.

2. They must protect and respect human dignity and maintain, and uphold human rights of all persons while performing their duties.

3. They should not use excessive force and if they have to, then it should be used when absolutely necessary.

4. They should keep confidential matters as strictly confidential unless they are expected to disclose them in the discharge of their duties or in the interest of justice. No law enforcement official should instigate or inflict or connive at torture or any cruel, inhuman and degrading treatment of any person even during an internal turmoil or a threat to national security or in a state of war.

5. They should take care of the health of persons in their custody and secure medical treatment for them immediately, whenever necessary.

6. They should not be corrupt. They should work to put down corruption rigorously.
7. They should respect the law of the land and its code of conduct. They should also vigorously oppose and prevent any violations of laws and the code of conduct.

The code of conduct for the police in India was adopted on the basis of the recommendations of the conference of Inspectors Generals of Police in 1960 and was finally enacted by the Government of India in 1985. Its provisions are as under:

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

2. The police should not question the property or necessary or necessity of any law enacted. They should enforce law firmly and impartially, with fear or favour, mice and vindictiveness.

3. The police should recognise and respect the limitations of their powers and functions. They should not usurp or even seen to usurp the functions of the judiciary and sit on judgment on cases of individuals and try punishing the guilty themselves.

4. In securing the observance of law or in maintaining order, the police should, as far as practicable, use the method of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required under the circumstance should be used.
5. The prime duty of the police is to prevent crime and disorder. The police must recognize that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.

6. The police must recognize that they are members of public, with only difference that in the interest of society and on its behalf they are employed to give full time attention to duties assigned to them.

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

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

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

10. The police should always be courteous and well mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people.
11. Integrity of the highest order is the fundamental basis for the prestige of the police. Recognising this the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed in both personal and official life so that the public may regard them as exemplary citizens.

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

13. As members of a secular, democratic state, the police should strive continually to the rise above personal prejudices and promote harmony and spirit of brotherhood amongst all the people of India transcending religious, linguistic, regional or sector ional diversities and to renounce practices derogatory to the dignity of women and disadvantageous segments of society.

To perform its duties efficiently, it is necessary that the state give power of coercion to he force which sometimes, consciously or unconsciously, happens to enjoy excessive authority and tends to become “law unto itself”. Because of the enormous powers and influence that the police tends to gather
for itself, it becomes prone to be most serious violator of human rights, the same rights that the force is expected to protect. There is no other agency that can even close to the kind of authority, which the police possess; therefore it also has the capacity to become the most dreaded and lethal violator of rights.

Attempts continue to be made by the government to make the force accountable for their acts. The National Police Commission appointed by the Government of India in 1977 issued a code of behaviour for the force. It included;

1. No police officer, knowingly or through neglect, make any false, misleading or inaccurate oral or written statement or make any entry in any record or documents kept or required for police purpose, or;

2. No police officers, either willfully or without proper authority or through lack of due care destroy or mutilate any record or documents made, kept or required for police purpose, or;

3. No police officers, without good and sufficient cause, altar or erase or add to any entry in such a record or document or;

4. No police officers, knowingly or through neglect make any false, misleading or inaccurate statement in connection with his appointment to the force.

It is thus made amply clear, time and again, that the police should respect and uphold human dignity and maintain, preserve and protect human rights of all persons at all times.
Police and condition of Human Rights in India

Despite an exhaustive list of precautionary measures provided to safeguard the interests of people, violation of their rights continue to be committed by the police everyday. The practical position on ground us quite different. The police has not been able to win the confidence of community at large. There has been continuous occurrence of police brutality and high handedness that has created an atmosphere of distrust and discord. Lately, the frequency of offences by the police has assumed alarming proportions. Sankar Sen, former Director General of Police (Investigations) who also worked with the National Human Rights Commission said in so many words that, “despite all the precautions, it is unfortunate that the reports of police violence and brutality received from various parts of the country convey an impression that the police forces in our country are full of sadist and blood thirsty maniacs who relish the sight of broken skulls and blinded eyes”

When the police turn into an irresponsible lot, the plight of people becomes deplorable.

Some of the infamous police actions are;

1. **Torture and violence under police custody**: Custodial violence in India existed since times immemorial. No period in the India history is bereft of this menace. It was understandable to a certain extent during progressive regimes of foreign rulers and the absolute kingships but responsible democracy would also compete to equal the past record is quite depressing. Unfortunately,
even after independence, police has not changed its methods of investigation and control of crime. Police regularly resorts to more and more brutal techniques of investigation and extraction of confessions. Torture in police custody is a common feature. In fact torture of under trials by police dates back to the Vedic age. Kautilya’s *Arthashastra* speaks about various kinds of torture such as, “burning of limbs, tearing apart by wild animals, trampling upon by elephants and bulls, cutting of limbs and mutilation”\(^4\). Torture is considered to be the most dependable weapon of police to extract confession from the most hardened of criminals.

2. **Custodial deaths**: In India, on an average, 1000 deaths occur in police custody every year. Unreported cases of custodial deaths may be much more. The state of Uttar Pradesh and Bihar usually are at the top of the custodial death’s chart. Torture of detainees, both with criminal and political backgrounds, in police custody remains endemic despite the fact that there are clear-cut directions to the police not to employ third degree methods on the under trials, either to extorts information or confession, or for simply seeking revenge to settle some old personal scores.

3. **Encounter Deaths**: Police in India has given birth to the concept of deaths in encounter battles it fights in ‘self-defence’, against person accused of being involved in criminals activities. It mean that the police confronts the criminal on a tip off from an informer or simply comes across them while on patrol duty and on being challenged they are fired upon. In the ensuing
exchange of fire, the criminal get killed, often alone, as his accomplices manage to escape under the cover of darkness. It is feared\alleged that what actually happens is that the person suspected of being involved in a number of criminals cases gets acquitted through courts orders for want of sufficient witnesses. Or, in some cases, he gets out on bail and then starts his usual criminals activity again. When the police takes a hardened criminals into custody, his arrest is kept unregistered, and the police simply kills him in cold blood and later reports that the person was killed in some encounter and exchange of fire with them.

4. **Preventive arrest**: Throughout the history of independent India governments have felt obliged to formulate laws to deal with cases of heinous nature on the plea that ordinary laws cannot effectively tackle the situation. Whether it is the problem of Naxalites, insurgency or terrorism, government get specific laws passed by parliament supposedly to deal with such situations. Defence of India Rules (DIR) or Maintenance of Internal Security Act (MISA) or Prevention of terrorist Act (POTA) are laws made by the parliament from time to time to deal with situation. Such laws are made tackle people who are involved in the anti-national activities, there are number of clauses that gives the police extra-ordinary powers to detain people for specific periods without being produced before magistrate. It creates immense scope for the police to act arbitrarily.
These are some most common complaints against the police in our country, which causes serious violation of the human rights related to life, liberty and dignity of its citizens, which is supposed to be safeguarded, by the police.
REFERENCES


4. See laws promulgated in the reigns of Urukagina of Lagash (3260B.C), Sargon of Akkad (2300BC) and Hammurabi of Babylon (1750 B.C).


6. See inaugural address of Justice PN Bhagwati, Supreme Court of India in the seminar on “Human Rights”.

7. Ibid.

8. The original Carta was in Latin consist of 70 clauses.

9. The Bill of Rights was officially entitled as an Act for declaring the rights and liberties of the subject and for setting the succession of the
crown. Charles II enacted it on the occasion of the accession of William of orange and Mary Stuart to the throne of England.

10. Sweden in 1809, Spain in 1812, Norway in 1814, Belgium in 1831, Denmark in 1849, Prussia in 1850 and Switzerland in 1874 made provision for the fundamental rights of man.


16. Another instance from the Emergency era is reported in Niyamavedi v. CBI (1999) 1 Ker LT 56, where the confessions of a police officer who pulled the trigger in a fake encounter a quarter of a century ago reopened hitherto unresolved questions.


18. As witnessed in cases concerning bonded labour, undertrial prisoners including women in ‘protective’ custody, for instance, Bandhua Mukti


20. Chamber’s 20th Century Dictionary, p 144. The term has been defined as “the system of regulation for the preservation of order and enforcement of law, the internal govt of a state”.


35. Chatterjee, S.K, op.cit, pp. 15-16.


37. ibid.


43. Union Ministry of Home Affairs letter No. VI-24021/97/84-GPA, 4.7.1985 and 10.7.1987, addressed to the chief secretaries of the states in India.
