

## VIOLATIONS OF HUMAN RIGHTS IN POLICE CUSTODY

Shailesh Mishra\*

### *Abstract*

*All human beings are born free and equal in dignity. To protect human rights is to ensure that people receive some degree of decent human treatment. To violations of human rights means to treat them as if they are less than human and undeserving of respect and dignity. For example, acts which are typically deemed to be crimes against humanity, including genocide, torture, slavery, enforced sterilization or medical experimentation, rape etc. According to the present democracy concept, police should always be a friend, guide and philosopher to the entire citizen including the criminals in the society. There are many existing legislation for protection of human rights of accused in police custody but their right continue to be violated. The lack of implementation of the existing legal framework has been inadequate for the protection of human rights of accuse in police custody.*

**Keywords:** Human rights, police custody, illegal detention, custodial violence, torture

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\* UGC-NET, LL.M; B.A.LL.B.(H); Email: [adv.shaileshmishra@gmail.com](mailto:adv.shaileshmishra@gmail.com); Contact: +91-9452390388

## **INTRODUCTION**

Every individual as a member of the human society has some basic rights which are considered as human rights. This can be used against the state or any other public authority irrespective of any other consideration. So every single individual has inborn right to live in dignity in all situations including the time of arrest and under police custody.

In India, the rights of individuals under police custody are protected by Indian constitution and by many other legislation like Indian penal code, code of criminal procedure and protection of human rights act. All these rights are also recognised by various international covenants like UDHR, ICCPR, Convention against torture and cruel inhuman or degrading treatment or punishment and Body of principles for the protection of all persons under any form of detention or imprisonment.

And in spite of all the above mentioned national and international legal standards for the protection of rights under police custody, in India human rights violations under police custody are widespread. Most of human rights violations take place at the time of the administration of law and order by the police. Now day's custodial violence has become the part of the police culture and the incidences of custodial deaths and quite common.

The concept of human rights violation in police custody can be defined in many ways like police brutality, police unrestrained behaviour, police torture, custodial violence and lock-ups crime.

The term 'police' broadly connote the purposeful maintenance of public order and protections of persons and property, from the hazards of public accidents and the commission of unlawful acts. It is specially applies to the body of civil officers charges with maintaining public order and safety and enforcing the law including the prevention and detention of crime<sup>1</sup>.

## **POSITION IN INDIA**

In India, the history of human rights violations in police custody can be traced to British period. Even after 57 years of independence, in a democratic country like India, the police remains virtually a terror to the people and almost absolutely unaccountable for the violations

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<sup>1</sup> Ghosh, S.K. and Rustamji K.F., Encyclopedia of police in India Vol. 1, New Delhi , Ashish Publishing House, p.3

of human rights of people in their custody. Though custodial torture, custodial deaths and other forms of human rights violations in police custody are very common today and the people are being fed up with hearing and talking of such custodial abuses, no static steps have been taken so far for a permanent solution.<sup>2</sup>

Since conviction rate is considered as the benchmark to measure the ability of an investigating every police officer would try to accomplish the maximum conviction rate to his credit by hook or crook. This will definitely help to increase the rate of police torture.

Nowadays custodial violence has become a part of the police culture and the incidence of custodial deaths is quite common. Though the academic world and judiciary have become conscious of the need of a study of the causes of human rights violations in police custody, its importation into the realm of Human Rights, on any systematic scale, is not yet attempted. In the field of Human Rights, a deep study of the causes of human rights violations in police custody from the legal standpoint has so far received little attention. Though much has been written on this topic, most of them concentrate on individual issues. The area of human rights violations is so vast both in the national and international perspective. Though many of the police officers have co-operated in a better manner, much difficulties arose in the task to penetrate the shields of defence of police staff who tried to conceive the realities in interrogation, torture etc.

### **CUSTODIAL VIOLENCE AND PERSECUTION IN LOCK-UPS**

The presumption of innocence imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt. And also police should have to presume that a person in the custody be innocent until his guilt has been proved.

Article 11(1) of the UDHR,<sup>3</sup> Article 14(2) of ICCPR<sup>4</sup> and Rule 84(2) of the standard minimum Rules<sup>5</sup> provide principle of innocent. Since arrested persons are presumed innocent, police may impose only those conditions and restriction on them as will ensure

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<sup>2</sup> *Kartar Singh v. State of Punjab*, (1994) 3 S.CC 569

<sup>3</sup> Article 11(1): “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

<sup>4</sup> Article 14(2): “This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”

<sup>5</sup> Rule 84(2) of the Standard minimum Rules reads: “Acquitted prisoners are presumed to be innocent and shall be treated as such.”

their appearance at trial, prevent their interference with evidence and further commission of offence.

There exist a number of violations of human rights in police lockup and surely there is the public dissatisfaction with the police functioning. Police officers know well what is going on in police stations yet they, allow them. Among the violations the most common forms are illegal detention, prolonged detention, manipulation of records of detention, custodial torture, custodial death, custodial suicide, custodial rape, denial of food, clothing and medical care, denial of access to council and interaction with relatives or friends.

### **ILLEGAL DETENTION AND MANIPULATION OF RECORDS OF DETENTION**

Detention means deprivation of personal liberty except as a result of conviction for an offence whereas imprisonment means deprivation of personal liberty as a result of conviction for an offence.<sup>6</sup>

The relevant standard is laid down in article 9(3)<sup>7</sup> of ICCPR. The code of criminal procedure section 50, 56 and 57 mandate that no person can be detained in custody without informing the ground for arrest and that person must be presented before a Magistrate within twenty-four hours of arrest. Article 21 and article 22 of constitution of India provide additional protection other than Code. And according to the article 226 and 32 entitle person seek judicial intervention through the writ of habeas corpus for his release from unlawful detention and also through inherent jurisdiction of the High Court under section 482 of the Code. However, these legal protections can be made use of only if someone is aware of all this legal and constitutional rights of arrested person.

### **PROLONGED AND UNCOMFORTABLE DETENTION**

Every person who has been arrested has the right to be produced before the Magistrate within twenty-four hour of his arrest and if it will not followed by police then confinement become wrongful confinement.

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<sup>6</sup> Ponnain M., Panch Ramalingam and Rani Ponnaian , Glimpses of Human rights, 1999, p.252

<sup>7</sup> Article 9(3): *“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement”*.

3<sup>rd</sup> paragraph of article 9 of ICCPR requires that in criminal case, any person arrested or detained should be brought promptly before a judicial authority, whose function is to determine the lawfulness of a person's arrest or detention in given case<sup>8</sup>.

Article 22(2) of constitution of India also protects the right of arrested person to be produced before the magistrate within 24 hours of arrest. Similar to article 22(2) section 56 and 57 and 76 of the criminal procedure 1973 reiterate the same. Section 167 of the Code also requires the police to produce the accused person before the nearest Magistrate within 24 hour of his arrest.

The Supreme Court in *Sheela Barse's*<sup>9</sup> case has imposed a duty on the Magistrate before whom the arrested person is produced to enquire from the arrested person whether he has any complain of torture or maltreatment in police custody and inform him that he has right under section 54 of the criminal procedure to be medically examined.

In *Joginder Kumar's*<sup>10</sup> case the Supreme Court, with the object of enforcing the directions issued by it to the police regarding information to a friend or relative of an arrested person an making of an entry in the Diary to this effect, imposed a duty upon the Magistrate also, before whom the arrested person is to be produced, to satisfy himself that these requirements are complied with.

All these guide line given by SC to stop the malpractices of the police at the time of custody of the accused. There are many cases in which detainee died in police custody but no action can be taken against police because of lake of evidence.

## TORTURE

The term 'torture' has neither in constitution nor in any penal law. Convention against torture<sup>11</sup> considers it as the infliction of several pain or suffering on a human being by another

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<sup>8</sup> Article 9(3) : "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement".

<sup>9</sup> AIR 1983 SC 96

<sup>10</sup> *Joginder Kumar v. State of U.P. & Others* 1994 SCC 260

<sup>11</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and open for signature, ratification and accession by general assembly resolution 39/46 of 10 Dec. 1984.

human being who is acting in an official capacity.<sup>12</sup>

Article 15 of convention against Torture provides greater protection to person in police custody by requiring each state party to ensure that any statement procured by ill-treatment shall not be invoked as evidence in a proceeding.<sup>13</sup> However statement shall be made admissible as evidence against a person accused of torture which is made by the detainee.

In India apart from the constitutional law protection against torture also provide under criminal law as well as under procedural law. I.P.C. section 220 provides for punishment to an officer or authority who detains or keep person in confinement with corrupt or malicious motive. And provide punishment under section 330 for causing hurt to extort confession or information and section 331 for causing grievous hurt. Similarly, the code of criminal procedure prohibits offering of threats, promises or inducement to extract information under section 163(1) and 163(3). Similarly section 24, 25, 26, and 27 of evidence act mean to protect persons suspected of crime from police atrocities.

In spite of the law which provides safeguard to the suspects, the torture and degrading treatment of police still continue. Police continuously uses method like third degree.

In *D.K. Basu*<sup>14</sup> case Supreme Court declare third-degree method illegal. And also the Supreme Court has referred to the historical decision of the U.S. Supreme Court in *Miranda v. Arizona*<sup>15</sup> which several safeguards have been laid down by the U.S. Supreme Court.

## CUSTODIAL DEATH

Right to life considered most important, human, fundamental, natural, inalienable, and

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<sup>12</sup> Article 1 : “For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in the official capacity. It does not include pain or suffering arising only from inherent in or incidental to lawful sanctions”

<sup>13</sup> Article 15: “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” In India, there exist laws in this regard. The allegation is that many accused persons are afraid to speak openly that they were subjected to torture by the police, for, they are afraid of the evil consequences if such a statement is made even to the court. Of late, the media brings out such matters to the attention of the public and as such there is an increased thinking that the policemen/officers are not as courageous as they were earlier to use torture indiscriminately on people under their custody.

<sup>14</sup> AIR 1997 SC 610

<sup>15</sup> 384 US 436; 16 L ED. 2D 694(1966)

transcendental right and hence it should be given the highest protection from all quarters. Custodial death is one of the worst crimes in civilized society governed by the rule of law, said by Supreme Court in *D.K. Basu* case<sup>16</sup>. Death due to torture is murder as defined in section 302 of the Indian penal code which provides death as maximum punishment.

From the sources of India itself the amnesty International has received a report of 36 deaths in custody in 1993 and also the report of 68 deaths in police custody as a result of torture or medical neglect throughout India, excluding the state of Jammu and Kashmir.<sup>17</sup> Deaths of criminal suspects in police custody is most of those who are tortured in order to extract confession or information and in some appear to be innocent of any crime too.

### **ACCOMODATION, FOOD, MEDICAL CARE**

A person in police custody is entitled to a minimum level of physical conditions as regards accommodations, food and medical care. Poor conditions of confinement are incompatible with State's obligations under Article 10(1)<sup>18</sup> of ICCPR. Every person in police custody needs all accommodation specially sleeping accommodation according to environment of the place, but this requirement is not satisfactorily followed in any stations.

Food is also one of the most important requirements of the life but this one also not properly provide by any police station.

The detained person has a right to have him medically examined. A proper medical examination shall be offered to a detained person as promptly as possible after his admission to the place of detention, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge. This would enable the arrested person to complaint to the Magistrate that he has been subjected to torture while in police custody. This puts restraint on the exercise of third degree methods by the police. Section 54 of the code of criminal procedure also gives right to arrested person to get himself examined by medical practitioner.

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<sup>16</sup> *Supra* note 14

<sup>17</sup> National human rights commission, annual report, 1998-99

<sup>18</sup> Article 10(1) of the International Covenant on Civil and Political Rights reads: "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

In *D.K. Basu v. State of West Bengal*<sup>19</sup>, Supreme Court made it clear that everyone should be medically examined at or after every 48 hours in police custody. Police officers detaining a person in their custody should also ensure that he is medically examined for any illness, injuries - afresh or old and they should make a record of the same along with suitable arrangements for treatments of any illness.

## DENIAL OF ACCESS TO COUNCIL

An individual does not become an insignificant person because he is under detention in police lock-up. He enjoys many rights and his rights are not surrendered to the whims of police authorities. Article 14(3) (b) of ICCPR gives the provision of legal aid to arrested person.

The U.S. Supreme court in *Escobedo*<sup>20</sup> and *Miranda*<sup>21</sup> case expanded and expounded the concept of right to counsel as a pre-trial necessity. In U.S.A. the suspect has a right to remain silent. He has also a right to consult with his attorney. The police are law-bound to effectively advise the suspects of his rights.

Even in India the suspects have many rights but police don't inform them about their right. According to Article 22 (1), an arrested person has the right to counsel and to be defended by a lawyer of his choice.

Before 42<sup>nd</sup> constitutional amendment in *Janardan v. State of Hyderabad*<sup>22</sup>, Supreme Court had held that Article 22 does not guarantee any absolute right to be supplied with a lawyer for by the State.

But in 1976, by the Forty-Second Constitutional Law Amendment Act, Article 39-A was inserted to provide for free legal aid to indigent accused. In *Nandhini Sathpati v. State of Orissa*<sup>23</sup> Supreme court had held that, the right enshrined in Article 22 (1) extends to the accused not only from the time of his arrest under any punitive law but also during the custodial interrogation. Section 303 of code of criminal procedure gives right to defended by a pleader of his choice.

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<sup>19</sup> *Supra* note 14

<sup>20</sup> *Escobedo v. Illinois*, 378 US 478 (1964)

<sup>21</sup> *Miranda v. Arizona*, 384 US 436 (1966)

<sup>22</sup> 1951 SCR 344

<sup>23</sup> 1978 CriLJ 968



Section 126 of Evidence Act provide that the communication between client and his council is to be privileged and time of consultation the accused shall not be surrounded by police officer.

In this context the supreme court in *Sheela Barse*<sup>24</sup> case held case held that whenever a person is arrested and taken to the police lock up, intimation of the fact of such arrest must immediately be given to the nearest legal aid committee so that immediate steps can be taken for the purpose of providing legal assistance to the arrested person at State cost.

### **DENIAL OF OPPORTUNITY TO INTERACT BETWEEN DETAINEE AND HIS FRIENDS AND RELATIVES**

In Francis Coralie Mullin case<sup>25</sup> supreme Court held that the accused has right to have a free and unfettered consultation with his friends and relatives out of the hearings of the police officer. It is very clearly said that there is a right of interaction with confers right to legal consultation and also the need and the scope of the arrestee to consult his near and dear one goes without saying specifically when there are large scale allegation regarding violations of conferred right of arrestees by the police. As the absence of specific provision in this regard gives the police more power to grant or deny the opportunity according to their will and the study has also clearly mentioned the denial of police.

### **OTHER UNATTENDED HUMAN RIGHT VIOLATIONS**

There are many degrees of violations of human rights in police custody which are unnoticed by many of the human rights activists. They are included here in the ‘unattended categories’. The police are very often committing violations of human rights like informal or arbitrary arrest of innocent people, excess use of force against the person arrested, unwanted handcuffing, humiliating the arrested person, using of filthy language, arbitrary denial of bail etc.

### **ARBITRARY ARREST**

Arrest is not defined in the Code of Criminal Procedure, 1973. It is the deprivation of a person of his liberty by legal authority or at least by apparent legal authority<sup>26</sup>. Arrest is

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<sup>24</sup> *Supra* note 9

<sup>25</sup> *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors* AIR 1981 SC 746

<sup>26</sup> K.N. Chandrasekharan Pillai, R.V. Kelker’s Criminal Procedure (1993), p. 53

usually the preliminary stage of placing a person in police custody and it is initial stage from where custodial violence arises. Hence it is inevitable that the arrest of a person is to be made strictly in accordance with the procedure established by law.

In India power of arrest is one of the chief sources of corruption in the police. Moreover as the National Police Commission suggested nearly 60% of the arrests were either unnecessary or unjustified and such unjustified police action accounted for 43.2% of the expenditure of the jail<sup>27</sup>.

In foreign countries, arrest of a person is affected only after evidence against him is collected. The police get enough time to collect such evidence. But in India, everyone is impatient and the people, politicians, media and those in authority are not only interested to see that some suspects are arrested at the quickest time possible, but also to see that they are humiliated and interrogated in depth. The pressure exerted by them compels the police to take some people, guilty or otherwise, in custody. Everyone wants quick results in investigation but the policemen are not provided with anything that can aid crime-investigation. Naturally this leads to arbitrary arrests.

Article 9(1) of ICCPR says that no one may be subjected to arbitrary arrest, detention or imprisonment.<sup>28</sup> The police can arrest a person only if there is a charge of crime against him. Anyone cannot be arrested only on a complaint or slight suspicion.

Constitution of India Article 21 provides protection against arbitrary arrest or illegal detention. It is supplemented by Article 22, which provides certain procedural safeguards against arbitrary arrest or detention.

Section 41 of the Code authorizes any police officer to arrest any person, without an order from a Magistrate, who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned. Officers in charge of police stations are to report to the District Magistrate all cases of arrest without warrant.<sup>29</sup> In making an arrest the police officer is required to actually touch or confine the body of the person to be arrested unless

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<sup>27</sup> National Police Commission, Third Report (1980), pp. 30-31.

<sup>28</sup> Article 9(1): "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law".

<sup>29</sup> Section 58 Code of Criminal Procedure, 1973

there is a submission to the custody by word or action.<sup>30</sup> The Supreme Court, in *Joginder Kumar*<sup>31</sup> case, to prevent the indiscriminate arrests, directed that Director General of Police of all States in India shall issue directions that a police officer making an arrest should also record reasons for making the arrest.

*D.K Basu*'s<sup>32</sup> case lays down specific guidelines that must be followed while arresting and interrogating suspects. These guidelines are based on CrPC's provisions and are very much a part of regulations laid down in police manuals and rule books. The Supreme Court has said that failure to comply with these guidelines not only renders an officer liable for punishment through departmental action but also amounts to contempt of court.

### UNNECESSARY HANDCUFFING

It is a principle of the criminal law that a person alleged to have committed an offence is liable to arrest. Power of handcuffing a person is not absolute. It is subjected to restrictions by the legislation, court decisions and the police rules of each state. Section 49 of the CrPC puts down that no one shall be subjected to more restraint than is necessary to prevent his escape. Unnecessary handcuffing or handcuffing for the purpose of humiliating people is considered to be a human rights violation. Arrest should be legal and there should not be any occasion to have informal arrests of people. Informal arrest can be considered only as abduction or kidnapping. Handcuffing in routine is violation of Art.21.

In *Prem Shankar Shukla v. Delhi Administration*<sup>33</sup> the court held that handcuffs should be used in the 'rarest of rare cases' and they were to be used only when the person was 'desperate', 'rowdy' or the one who was involved in non-bailable<sup>34</sup> offence. There should ordinarily be no occasion to handcuff persons occupying a good social position in public life, or professionals like jurists, advocates, doctors, writers, educationalists, and well known journalists.

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<sup>30</sup> Section 46(1), Code of Criminal Procedure, 1973

<sup>31</sup> *Supra* note 10

<sup>32</sup> *Supra* note 14

<sup>33</sup> 1980 SCC 526

<sup>34</sup> Non-bailable offences are laid out in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC]. Bail in such offences is given at the discretion of the police or the court.

In *Sunil Batra v. Delhi Administration*<sup>35</sup> Supreme Court held that handcuffing without a magistrate's approval is not permitted, save in rare instances. In such instances, the burden of proving that the use of handcuffs was warranted lies on the police. If the detaining authority or escort party fail to satisfy the court about the genuineness of the danger or threat posed by the person who was handcuffed, they will be liable under law.

### **FALSE MEMO OF ARREST**

In *D.K. Basu* case the Supreme Court in its land mark decision directed that memos of arrest should be prepared at the time of arrest which should be attested by at least one witness and countersigned by the arrestee. The memo of arrest should also include the time and date of arrest. But in most of the cases these guidelines are not strictly followed. In many cases arrest memos do not contain the signature of witnesses to the arrest. When lawyers bring it to the notice of Magistrates, they usually express their helplessness and advice lawyers to file contempt petitions

### **FAILURE TO INFORM THE GROUND OF ARREST**

An arrested person should be made aware of the grounds of his arrest in order to make him capable of defending himself. Article 9(2) of the ICCPR recognizes right to inform arrested person ground of arrest<sup>36</sup>. Also article 5(2) of the European Convention says that, anyone who is arrested must be "informed properly, in a language which he understands, of the reasons for his arrest and of any charge against him"

In India, this is a newly propounded duty of the police as an essential part of right to life and liberty enshrined under Article 21 of the Constitution. Article 22 (1) of the Constitution<sup>37</sup> lays down that an arrest will be illegal if the arrested person has not been communicated grounds of his arrest. Similar provisions are contained in Section 50 of the Code of Criminal Procedure.

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<sup>35</sup> 1978 SCC 494

<sup>36</sup> Article 9(2) of the ICCPR reads: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". Thus the Covenant contemplates a two stage notification, *firstly*, at the time of arrest and *secondly*, as soon as the charge is framed.

<sup>37</sup> Article 22(1): "No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest nor shall be denied the right to consult, and to be defended by a legal practitioner of his choice"

Similarly, when a person is to be arrested under a warrant, Section 75 of the Code<sup>38</sup> requires that the police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required shall show him the warrant. The same requirement to notify the grounds of arrest is provided under Section 55 of the Code<sup>39</sup> where a police officer deposes any officer subordinate to him to arrest a person.

In spite of the above provisions, it is difficult to ensure protection of the rights of the arrested persons from the indiscriminate and arbitrary exercise of powers by the police.

In *Sheela Barse v. States of Maharashtra*<sup>40</sup>, the Supreme Court has taken serious note of non-disclosure of grounds of arrest and issued directions that, “*whenever a person is arrested by the police without warrant he must be immediately informed of the grounds of his arrest and in case of every arrest, it must be made known to the person arrested that he is entitled to apply for bail.*”

## ARBITRARY DENIAL OF BAIL

There are many reasons why pre-trial detention should be avoided. Economic crisis in the family of the detainee, who usually are from economically backward situations, is another argument in favour of the release of the detainee on bail by the police. Detention, even for a short span of time is bound to cause disruptions in his private life.

Section 50(2) of the Code of Criminal Procedure guarantees this right to an arrested person<sup>41</sup>. First proviso to sub-section (1) of Section 436 gives discretionary power to the officer in whose custody a person is or the court to discharge the accused on bond without sureties for his appearance.

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<sup>38</sup> Section 75, CrPC: “The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and if so required, shall show him the warrant.”

<sup>39</sup> Section 55(1) CrPC: “When any officer in charge of a police station or any police officer making an investigation under Chapter XII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.”

<sup>40</sup> *Supra* note 9

<sup>41</sup> Section 50(2): “Where a police officer arrests without warrant any person other than a person accused of a nonbailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.” There are also provisions for the release of persons arrested under warrant. Chapter XXXIII of the Code of Criminal Procedure contains provisions relating to bail and bonds.

If a crime is bailable, the police can release the arrested person on bail and so it is his right to be released on bail. Instead of bail, he can even be released on a personal bond if the police officer considers it to be enough. In the case of bailable offences to which Section 436 applies, a police officer has no discretion at all to refuse to release the accused on bail, so long as the accused is prepared to furnish surely.

Section 437 gives the court or a police officer power to release an accused person on bail even in non-bailable offences. But such person shall not be released on bail if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life. Such person shall also not be released on bail if the offence is cognizable and the accused had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence. But in view of first proviso to sub-section (1) a person (i) under the age of sixteen years, or (ii) a woman or (iii) a sick or (iv) infirm person may be released on bail even if the offence charged is punishable with death or imprisonment for life or the accused is a previous convict of the category stated above.

Last proviso of section 436A provided that “no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law”

*Hussainara Khatoon & Others v. Home Secretary, State of Bihar*<sup>42</sup> lays down that the length of residence of the accused in the community; the employment status and history of the accused; family ties and relationships of the accused; the reputation, character and monetary condition of the accused; any prior criminal record including record of prior release on bail; the existence of responsible persons in the community who can vouch for the reliability of the accused; the nature of the offence that the accused is charged with; probability of conviction; and likely sentence insofar as these are relevant to risk of non-appearance of the accused should be taken into account while determining bail conditions.

Section 440 (1) CrPC lays down that the amount of bail bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.

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<sup>42</sup> AIR 1979 SC 1360

In *Motiram & others v. state of M.P.*<sup>43</sup> Supreme Court gave following direction-

- I. Bail should be given liberally to poor people simply on a personal bond, if reasonable conditions are satisfied.
- II. The bail amount should be fixed keeping in mind the financial condition of the accused.
- III. The accused person should not be required to produce a surety

The police normally refuse to grant bail in many cases mainly because the police officer does not want to take the risk. Due to the laziness or irresponsibility of the police officers many accused who are having permanent residence etc. are refused bail in the police stations and unnecessarily they spend twenty four or more hours in the police custody and they get bail only in the court. Thus the system of granting bail in the police station has to be made liberal especially in the cases of persons accused of less serious offences.

### **CHARACTER ASSASSION AND USING OF FILTHY LANGUAGE**

Code of Conduct for the police lay down that 'a police officer shall be deemed to have committed abuse of authority if he is uncivil to any member of the public'. Vulgar language and filthy expressions are regularly uttered by police personnel while effecting arrest. If people belonging to uncivilized area speak filthy language there is justification. But police personnel most of whom are hailing from civilized family back ground is also using this language to those even from civilized family set up.

### **CONCLUSION**

The police are empowered to enforce the criminal laws and many regulatory laws which are designed to make society orderly and safe. Police have been vested with additional authority and powers. Providing a sense of security to ordinary citizens and attending to their grievances is dependent on the establishment of a police force which is efficient, honest and professional. The fact that such a police force does not exist in India, as attested by the findings of various commissions and committees, the complaints received by the human rights commissions, the stories reported by the press and the experiences of the common people on the street. The need for police reform is self-evident and urgent.

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<sup>43</sup> AIR 1978 SC 1594

The legislative framework of India ensures rights to the person under the police custody like no person can be detained in custody without informing the grounds for arrest and also that a detainee must be present before a magistrate within twenty-four hours under the code of criminal procedure and also there are constitutional protection available under articles 226 and 32 entitle a person to seek judicial intervention through writs.

And there are international instruments which ensure the protection of person in the police custody like U.N. Convention against torture, ICCPR and UDHR etc. and also various judgments and guide line given by Supreme Court and High Courts.

Police and public relation should be friendly enough to create a mutual respect. The cardinal principle behind the concept of human rights is the recognition of the rights of everyone to live with dignity and let others also live with such dignity. The police should also follow the same philosophy since they also form a part of society. The police should bear in mind the fact that they are also human beings and that either the notoriety or reputation they have earned in their service does not end with their retirement. Hence, it is necessary for the police to reorient its style of functioning for playing a more effective role in controlling crime and winning support and confidence of the people.