



## ROLE OF POLICE AND CRIMINAL JUSTICE ADMINISTRATION IN HUMAN RIGHTS ISSUES

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### INTRODUCTION

It is no surprise that the Police are usually the Respondents in most of the Human Rights case. The reason is the insensitive approach by the Police to handle effectively the cause of Human rights and typically involve in Policing excesses. There is a Human Rights Commission both at the National Level and State Level. Human Rights involve all ages, gender and sections, communities of society. It involves children, women, men , Muslims , Hindus , migrants , black , Asian , ethnic minorities and all sections of Humanity .

Where does the question of Human rights violations come thenceforth? Where are the limitations to the Judiciary Powers curtailed for its outreach . Let us explore certain dark areas where Human Rights violation is shockingly unabated and wherein the Judiciary's outreach of criminal Justice administration has been strongly curtailed.

### ROLE OF POLICE – DEFINITION:

The role of police is scientific method of investigation, the avoidance of third degree methods efficiency in professionalism and to act as a protector and saviour of the community. The significance of Police is to play the role of enforcement agency to serve legal services to the society. A welfare state is to be a police state only protection of law and order is the main function of the state. This function is carried out with the help of police. This is regarded as a sovereign function even today. This function by the state is considered as the most important and fundamental. The police in a democratic polity perform multiple and complex tasks towards this objective, the police have to be an effective organisation for the prevention, detection and investigation of crime, maintenance of law and order, protection of lives, liberties, and honour and possessions of the people, to bring offenders to justice and to render honest and impartial service of the people. The State, within an

increasingly tentative internal security situation in large parts of the country consequently, it is an urgent imperative to 2 secure a police organisation that is structurally cohesive functionally competent and operationally oriented to fulfil the wide ranging goals of the organization in providing efficient as well as qualitative services to the people in performing this, the police must maintain highest standards of integrity professionalism and service orientation while acting within the framework of the constitution and laws of the land.

### VULNERABLE GROUP OF PEOPLE AND HUMAN RIGHTS VIOLATION

There is Human Rights Violation even with Ethnic Minorities . The infamous case as in Andamans where the original tribes of the Jarawas, North Sentinelese, Great Andamanese, Onge and Shompenare the "particularly vulnerable" tribes were subjected to most inhuman treatment wherein women were lured with alcohol , drugs and monies and sexually exploited continuously by various sections of society – the Police , the



Guards , tourists and touts . Though each section might be guilty in one or other form of nexus and conspiracy , there is also the question of the criminal Justice administration of the Judiciary unable to play an active role as its powers are limited – and to a large extent curtailed . But then , young Jarawa Girls were the continuous victims of most heinous forms of sexual exploitation ; one fact being that they remain oblivious to the technology of secret spy cameras which actually film the violent sexual gang rapes and sold as digital pornographic films by the Mafias.

Coming to issue of Corporal punishment of children is central to some religious beliefs and to prohibit this in private schools is a violation of their right to practice their religion.

Ban on corporal punishment is both legitimate and proportionate. But religious practices are most overwhelming that neither the protectors of Human Rights or the Judiciary have any special powers to handle them. Both happen predominantly in the Christian dominant schools and Islamic School of studies – Madarasas ; it will be sheer inhumanity to close our eyes to this stark reality and liberate to the outcry that there is communal divide and segregation . The truth has to be seen in its plain color and justice in plain Black and White. Madarasas are hell for children with untold abuses and miseries for children that in a million cases, only single digit cases are reported.

The Judiciary, again, is stopped with a red circle as a mute spectator. Though it is well conscious to the abuses. The Police of course, though not the defacto Respondents have also very limited powers to enquire into the mechanisms these schools of operate with no single open ended leeway for scrutiny.

Third on list of diminished powers of Police and Criminal Justice administration in Human Rights happens to be the conditions of Jail inmates, who are of all sections , the children , women , men , foreigners , outcasts etc.

## CASES WITH REFERENCE TO EUROPEAN COURT OF HUMAN RIGHTS

In January 2010 the European Court of Human Rights<sup>76</sup> said that police blanket 'stop and search' powers, introduced under counter-terrorism legislation, is unlawful as ethnic minorities were disproportionately more likely to be stopped and searched. Between 2007 and 2009, nearly 310,000 young people aged 10 to 17 were stopped and searched by the police; 40% of these were Black children. Now the primary question arises if the Human Rights are grossly violated amongst the vulnerable Women and Children – yes, It is an undisputable fact. Though Men too as subject to grosser crimes, the percentage is more on the former.

In November 2004<sup>77</sup> the European Court of Human Rights said an 11 year-old boy did not have a fair trial because he did not understand the consequences of any penalty, including imprisonment. An independent psychologist said the boy was functioning between the age of a six and eight year-old. In November 2002 the High Court said children in prison must be given the same protection from abuse and harm as children in families and other institutional settings such as children's homes.

In January 2001 the High Court in Europe stopped three powerful news organisations from publishing the details of two 18 year-olds who had served custodial sentences for a murder they committed when they were 10 years old. The judge said the injunctions were necessary because of "real possibility of serious physical harm and possible death". So what does the Human Rights Act actually do for the common Human Being . Let us explore the Human Rights Act in U.K.

### European Convention on Human Rights (ECHR)

The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to. It incorporates the rights set out in the European Convention on

<sup>76</sup> *Human rights and criminal procedure - The case law of the European Court of Human Rights (2nd edition) (2018)*

<sup>77</sup> *Key case-law extracts - European Court of Human Rights (2004)*



Human Rights (ECHR)<sup>78</sup> into domestic British law. The Human Rights Act came into force in the UK in October 2000. What human rights are covered by the Act? The Act sets out your human rights in a series of 'Articles'. Each Article deals with a different right. However in India, we bind up with the practice of Human Right following Universal Declaration of Human Rights (UDHR) Next looking into the scenario of Indian Prisons.

#### FEW INSTANCES IN CHENNAI CENTRAL PRISON:

Coming to the gross conditions of Jail inmates in Central Prison of Chennai and Tamil Nadu and further beyond, there are many such cases of gross human Rights violation. The predators could be the Jail Wardens themselves and none of the Truth are out. The reason being – both the Judiciary and Police are out of the picture. To cite just a few instances in Central Prison;

1. There has been a very respectable housewife who was arrested due to cheque dishonor case and who was oblivious to the fact that there was a warrant obtained against her. Innocently she had walked to the nearby Police Station and was petrified to note that there was an arrest warrant against her and that she is taken to the prison. Therein, even before her tearful eyes could dry, the Jail Warden had summoned her into his room & on an anonymous condition that bail will be obtained for her in a day without objections, provided she yields to him. Yes, this story remained unreported among 1000 others.

2. There are scores of instances wherein the foreigners have not been able to express their resentments and apprehensions in the hand of the abusive officers. They are paraded stark naked, even in mid-nights. The foreigners have no proper access to their native nutritious foods for which they are rightly eligible – whatever be the crime for which they are under trail or for conviction. Parole is also not granted even for most advanced cases. The misery of

foreigners in prison thus remains an untold misery.

3. The recent case of gross violations being that of Tibetan students arrested in October 2019 just for the sake of being Tibetans and as a case of pre-emptive method 10 days before the arrival of Chinese President Xi Jing to meet the Prime Minister of India Shri Narendra Modi at Mahabalipuram, Tamil Nadu. Bail was granted just the day after the President of China left India. The Police had foisted false cases and even charge-sheeted them for very mischievous foisted offences. Where were the 10 odd Tibetans hauled up? From their rental house where they were studying for their exams. So the Role of Police and the administration of criminal justice in this case for human rights is an exemplary case of gross human rights violation.

4. Helpless wives who go the prison to meet their wards/sons/husbands are also clear targets for these lustful predators. Will Justice reach out to them? Will witnesses be present to testify? Will victims come out in the open? This is an impossible situation wherein only divine intervention can provide Justice.

Next, let's look at human rights in India. The law came into effect in 1993 with a subsequent change. The National Human Rights Commission of India (NHRC) is a legal and public body established on October 12, 1993 under the protection of the Human Rights Ordinance of September 28, 1993. It became the legal basis for the basis for human rights regulation by the Protection of Human Rights Act 1993 (PHRA). The NHRC is the National Human Rights Commission of India, responsible for the protection and promotion of human rights, and is responsible by law as "rights from the perspective of life, liberty, equality and dignity." International partnerships are defined and implemented by Indian legal systems.

#### SALIENT FEATURES OF NHRC, INDIA – A COMPARATIVE STUDY:

As enshrined in the British Law, the Human Rights in India has been toing the line of the United Kingdom, rightly so, because

<sup>78</sup> *Reforming the European Convention on Human Rights - Interlaken, Izmir, Brighton and beyond - A compilation of instruments and texts relating to the ongoing reform of the ECHR. (2014)*



our Legal System has its roots or even the volumes imported from these European Meadows. The salient of the NHRC<sup>79</sup> remains thus echoing the European lines thus;

Human rights protection provided by the NHRC to:

1. Aggressive or reactive of negligence in human rights violations by the Government of India or such violations by the officials.

2. Human rights protection and recommendation measures for effective implementation.

4. The effective implementation of NHRC for reviewing each and every factor violating human rights inhibiting the enjoyment of every human being and influencing the remedial measurements to analyse the treaty instruments.

5. Human rights education education between various parts of society and the recognition of safeguards to protect these rights through media, seminars and other publications that promote available funding.

6. Encourages NGO parliaments and institutions to work in the field of human rights.

7. The need to protect human rights is taken into consideration.

8. Request a public record or copy from judiciary or related office thereof.

#### CASE STUDY

Let us now examine the Court orders magnifying the gross human rights violations. Moreso in the recent case of the conditions of Migrant Labourers during the periods of Lockdown. Interestingly, the Apex Court had taken up, rightly so, the case of the migrant laborers as suo moto.

**Court :Supreme Court of India**

**Case No :Suo Motu Writ Petition (Civil) No. 6 of 2020<sup>80</sup>**

**Coram :THE HONOURABLE MR. JUSTICE ASHOK BHUSHAN, THE HONOURABLE MR. JUSTICE SANJAY KISHAN KAUL & THE HONOURABLE MR. JUSTICE M.R. SHAH**

**Parties : In Re : Problems And Miseries of Migrant Labourers**

**Date of Judgment : 09-06-2020**

Disaster Management Act, 2005 - Section 12, 51 - Suo Motu Writ Petition - movement by migrant's workers issue - The action of movement of these migrant labourers after enforcement of the Lockdown measures was by force of circumstances - this court view that the State may consider withdrawing Prosecution/Complaints lodged against such migrant labourers for the offences as referred to in Section 51 of the Disaster Management Act, 2005 and other related offences lodged against the migrant labourers during the period of Lockdown under Disaster Management Act, 2005 - apart from what has been indicated above certain further directions are necessary to be issued to ameliorate the conditions of the migrant workers pending consideration of other issues - <sup>81</sup>directions already issued to the Central Government, all States and Union Territories to consider withdrawal of prosecution/complaints under Section 51 and other related offences lodged against the migrant labourers who alleged to have violated measures of Lockdown by moving on roads during the period of Lockdown. ....

.... An application has also been filed on behalf of National human rights Commission seeking intervention in this matter as well as praying for issuing various directions as indicated in the application. Various applications for intervention, on behalf of different individuals and organizations, have also been filed stating

<sup>79</sup> Protection of Human Rights and National Human Rights Commission Reflections - by N. K. Padhi

<sup>80</sup> <https://indiankanoon.org/doc/28747724/> Last visited on 18th September 2022, 19:20hrs.

<sup>81</sup> <https://www.casemine.com/judgement/in/60e204c39fca195c6e04564a> Last visited on 27th September 2022, 21:33hrs.



certain facts pertaining to problems of migrant labourers. Intervenor has also suggested various measures to redeem the situation....

...An application<sup>82</sup> was filed by National human rights Commission for intervention, which has been allowed. In the application the National human rights Commission has referred to six instances where the National Human Right Commission has taken suo motu cognizance of the issues and had issued notices to various Government departments. We have no doubt that National human rights Commission shall take those proceedings to its logical end. National human rights Commission has also suggested certain short-term measures and long-term measures to ameliorate the conditions of the migrant workers. Reference of enactments, namely, Inter-state Migrant Workmen (Regulations of Employment and Conditions of Service) Act, 1979 as well as Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 have been made to. Reference has also been made to Unorganised Workers' Social Security Act, 2008.

With regard to working of the aforesaid enactments and the measures taken by the different States, we shall consider the response of the States and thereafter shall consider the issues raised regarding short-term measures and long-term measures....

....ORDER:<sup>83</sup>

Hon'ble Mr. Justice Ashok Bhushan pronounced the reportable order of the Bench comprising His Lordship, Hon'ble Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice M.R. Shah.

SUO MOTU WRIT PETITION (CIVIL) No(s). 6/2020

**Following directions are issued to the Central Government, all States and Union Territories in terms of the signed order:**

1. All states/union areas willing to identify chained migrant workers in the state who are

willing to return to their home fields and take measures on the way home by train/bus need to take over within 15 days of time period.

2. If additional demand arises, the railway must submit a return trip for migrant workers within 24 hours, in addition to the demand for 171 Shramik trains, as submitted by the Attorney General.

3. The central government can provide details of all systems available to hiking workers who have returned to the length of the house.

4. All states and union areas provide details of all current systems within the state.

The benefits can be taken by hikers, including various programs to provide employment.

5. The state has established recommendation centres at the block and district level to provide all necessary information about the government system and to help migrant workers identify employment opportunities and services that can be used in the program.

6. Details of all migrant workers who have reached the home have details about their ability to maintain the type of employment they have in their previous employment.

A list of migrant workers must be obtained in village, block, and district confessions to promote administration to expand the benefits of the various programs applicable to hiking workers.

7. The advisory center directed as above should provide the necessary information by expanding its subsidized members to migrant workers who wish to return to their hometown and return to their workplace.

8. All affected states/UTs retracting law enforcement/complaints in accordance with Section 51 of the Disaster Management Act and other related crimes against the Immigrant Workers' Accident management under Disaster Management Act, 2005.

<sup>82</sup> Ibid

<sup>83</sup> [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-375976.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-375976.pdf) Last visited on 27th September 2022, 22:20hrs.



## DISCUSSION

The apex Court has rightly dwelt into both the positive and negative impact of Police in the human rights issue of the migrant laborers and issued such guidelines which at best can be termed fair application of Justice . The explicit analysis of the Supreme Court by reviewing the NHRC application and the statistical analysis statewise of the reports submitted point to one clear derivative . The Judiciary , by taking suo moto<sup>84</sup> the cause of the migrants' plight had filled in the lacuna or the miscalculation in implementation of the National Disaster Management Act 2005 , which is silent on crores of Migrants' issue .

Thus , it is safe to infer grossly from that there are countless instances , as listed in page 1 to page 4 para a.) to d.) human rights concern are of serious nature but it can at best be address in very gross issue like that of the Apex Court taking up the migrants' cause suo moto and remains a lacuna for its effective dellvery through law enforcement agencies like Police or Enquiry Commissions . Suggestive for the Judiciary to empower its LokAdalat / Lok Ayukta and other arms like Alternate Dispute Resolution Center and National Legal Services Authority to extend righteous justice to the needy.

## CONCLUSION:

Providing a sense of security to ordinary citizens and attending their grievances is dependent on the establishment of a police force which is efficient, honest and professional. The fact that there is no such police in India, including the results of various committees and committees, complaints received by the Human Rights Commission, stories reported by the press, experiences of ordinary people on the streets, and so on. The need for police reformation is indeed an urgency. <sup>85</sup>There are two directions in which police reforms must be pursued simultaneously. One is to establish

statutory institutional arrangements that will ensure that the power of superintendence of state governments over their police forces provides police performance that is in strict accordance with the law. In other words, the police function to establish and maintain the rule of law, not the rule of politics. The performance of the police as an institution and the behavior of police personnel as individuals both need constant monitoring.

The other direction is to do everything possible to strengthen and improve policing under the existing system and structure. In addition to upgrading recruitment, training and leadership standards, the working and living conditions of lower police personnel need vast improvement- an exercise that should start with raising the status of the constabulary.

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