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The Principles of Police Interrogation and the Human Rights

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Introduction:

Human Rights are considered as the basic fundamental rights which are guaranteed to every human by the virtue of being born as a Human. In the democratic nations, all the rules and regulations are framed keeping in mind the human rights of the citizens and any law which violates the basic rights shall be declared null and void.² With due adherence to these rights, the Police authorities are duty bound to maintain peace and harmony in the society. The term police, though not defined anywhere yet refer to the group of executive officers who have been deployed by the legislation to make sure that the rules/laws/policies framed by the parliament shall be followed by the society. So, it can be said that Human Rights and Police interrogation are two faces of the same coin.³

While fulfilling their duties, the police officers sometimes go beyond their scope and violates the human rights of the accused. It has been seen in several cases that the police have used force while interrogating the accused in the name of efforts for search.⁴ However, to curb this culture and to keep a check on the executive power given to the police authorities, parliament came up with the substantive as well as procedural regulations.⁵ Along with the legal provisions, the constitution of India also safeguard the human rights of the accused within the purview of article 21 of the Indian constitution. The Hon'ble Supreme Court in the case of *Maneka Gandhi v. Union of India (hereafter UOI)* held that the police is duty bound to catch the perpetrators of law but while performing their duties, the state need to adopt a just, fair and reasonable procedure.⁶

In the present paper the author will focus on the key aspects of police interrogation and human rights of the accused. This paper focuses on the legal and constitutional rights of the accused at the time of interrogation, the issue of violence during police custody or Judicial custody along with techniques of investigation followed by the police. The author will also rely on few landmark judgements passed to prevent the human rights of the accused along with the

¹ The author is a student at Symbiosis Law School, Hyderabad.

² JOSEPH CHITTY, THE LAW OF NATIONS, 4 (6th ed., New Edition, 1844).

³ Frank Edwards et al, *Risk of being killed by police use of force in the United States by age, race-ethnicity and sex*, 116(34) PNAS, 16793, 16794 (2019), <https://www.pnas.org/content/pnas/116/34/16793.full.pdf>.

⁴ State of UP v. Ram Sugar Yadav, AIR 1985 SC 416.

⁵ Rupali Lekhi, *The Key Principles of Police Interrogation about Human Rights*, ProBono India (2020), <http://probono-india.in/research-paper-detail.php?id=549>.

⁶ Maneka Gandhi v. Union of India AIR 1978 SC 59.

international conventions. At the end the author will also try to highlight the need of legal assistance during the time of interrogation to prevent violation of fundamental/human rights of an accused.

1. The Principles of Police Interrogation

Interrogation is a process of examining an accused, done by the executive authorities to extract some relevant information pertaining to the case in hand. The Police may use various techniques of interrogation during the process but has to make sure that the human rights of the accused shouldn't be hampered.

1.1 Constitutional Mandates:

- a. **Right against Self-Incrimination:** As per article 20(3) of the Indian Constitution, no person accused of any offence can be compelled to be a witness in his own case.⁷ Police authorities while interrogating can't compel the person to admit the crime or can't use any other method to make him say the same. The Hon'ble Supreme Court in the case of *Nandini Sathpathy v. P.L. Dani*⁸, explained the extent of article 20(3)⁹ and sec 161(2) of the Code of Criminal Procedure¹⁰. The court held that no one can force the person to say something and the accused has a right to silence as a fundamental right. Similarly, the apex court in the case of *Selvi v. State of Karnataka* overruled the judgement of the High Court and held that narco-analysis, polygraph tests and brain-mapping are cruel and attracts the provision of article 20(3)¹¹ as the person don't stay in senses while making any statement during this type of interrogation.¹²
- b. **Basic Right to life:** Any person who is under the police interrogation possess basic human right to life, security and free autonomy. The Police while interrogating anyone can't infringe the basic fundamental rights given under article 20 and 21 of the Indian Constitution. The authorities are bound to tell the accused of it's wrong and provide free legal aid to him if required. The right to avail free legal aid comes under article 21¹³ and the apex court put forth the importance of the same in the case of *Khatri and Ors v. State of Bihar*, where the hon'ble court held that it's the

⁷ IND. CONST. art 20 cl. 3.

⁸ *Nandini Sathpathy v. P.L. Dani*, AIR 1978 SC 1025.

⁹ *Supra* note 9.

¹⁰ CODE CRIM. PROC. § 161 cl. 2.

¹¹ *Supra* note 9.

¹² *Selvi v. State of Karnataka*, 2010 (7) SCC 263.

¹³ IND. CONST art 21.

duty of the state to provide free legal aid to the indigent person. Also, the court added that failure to inform the accused about such rights will hamper the very essence of the trial.¹⁴

- c. **Right to be produced:** The authorities are also constitutionally bound to produce the accused within 24hrs to the nearest magistrate as per article 22(2) of the Indian constitution.¹⁵ In case of failure to present the same, the officer arrested has to give the reasoning to the court why he failed to do so.¹⁶ This is to make sure that the arrest shouldn't be made to extract the information from the arrestee.
- d. **Safeguard against Torture:** The Police authorities while interrogating or using techniques of interrogation need to make sure that it should not amount to torture be it mental or physical.¹⁷ Any kind of inhuman treatment or any act which may violate the right of the person to live with dignity or curb his/her independence without any legal backing shouldn't be performed. The Hon'ble Supreme Court in the case of *DK Basu v. State of West Bengal*¹⁸, gave the guidelines that are to be followed by the police officials while arrest and also stated that any torture done to the accused while interrogation is in complete violation of Human Rights. Also, any confession made to the police while in their custody isn't maintainable in the court of law as per section 24 of the Indian Evidence Act.¹⁹
- e. **Right to equality:** While interrogating, every accused or the person getting interrogated should be treated equally and get equal protection of law as enshrined in article 14 of the Indian constitution.²⁰ As per the criminal jurisprudence, the accused is not guilty till proven and hence should be treated humanly and equally. Hence, it's the duty of the police officers to make sure that none of the human right should be violated during the process of interrogation.

1.2 Statutory Mandates

- a. **Person arrested must be told the grounds of arrest:** As per section 50 of the CrPC, the police officer while arresting an accused needs to tell the grounds on which he got

¹⁴ Khatri and Ors v. State of Bihar, 1981 (1) SCC 627.

¹⁵ IND. CONST art 22 (2).

¹⁶ Poovan v. Sub Inspector of Police, MANU/KE/0246/1993.

¹⁷ *Supra* note 7 at 85.

¹⁸ DK Basu v. State of West Bengal, 1997 (1) SCC 416.

¹⁹ IND. EVID. ACT § 24.

²⁰ IND. CONST art 14.

arrested.²¹ Also, if the right to avail a bail exist then, the authorities are duty bound to tell that as well. This is mandatory to safeguard the right to freedom and right to know of the person.²²

b. Right to legal aid: As per section 304 of CrPC, every accused has the right to avail legal remedy and it's the duty of the police authorities to let the accused know about such rights.²³

c. Right to meet lawyer during interrogation: The accused can seek help of the lawyer during interrogation but the counsel can't be present thorough the session. It's the duty of the authorities under section 41D of CrPC to make sure that the accused is aware of such rights and to let him/her meet the lawyer.²⁴

1.3 International Rules and Regulations:

There are several treaties and agreements/conventions which deals with the safeguard of the rights of the people in general. There are certain conventions that have been made to prevent the accused from the brutal and inhuman treatment done by the executives. The few of the conventions are:

1. **Universal Declaration of Human Rights:** It was adopted by all member states of the United Nations. It provides for the principle of presumption of innocence under article 11(1).²⁵ It also provides for the right to life²⁶ under article 3, denial of subjection to torture, unhuman or degrading treatment or punishment²⁷ under article 5 and also states that no one should be arrested, detained or exiled arbitrary²⁸ under article 9. This shows that the intent of the convention is to make sure that the police authorities while exercising their power shouldn't cross their boundary.
2. **Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:** In this declaration it was decided by the member states that they will take all the effective measures to prevent torture and all other inhuman activities to be performed within their jurisdiction and to criminalize such activities. Along with this, they have to

²¹ CODE CRIM. PROC. § 50.

²² IND. CONST art 19.

²³ CODE CRIM. PROC. § 304.

²⁴ CODE CRIM. PROC. § 41D.

²⁵ Universal Declaration of Human Rights, art 11 cl. 1.

²⁶ *Id.* art 3.

²⁷ *Id.* art. 5.

²⁸ *Id.* art 9.

prohibit the statements made under pressure or under torture shouldn't be considered as the evidence in the court of law.

3. **Protection of All People under any Form of Detention or Imprisonment:** United Nations has laid down the detailed set of principles to safeguard all the people who are under detention or imprisonment. As per principle 21(2), no detainee can be subjected to torture or inhuman behavior during the course of investigation or nothing should be done which may hamper his ability to speak up the truth.²⁹ Similarly, principle 23(1) states that the interrogation done should be recorded and the investigation or interrogation officer details should be recorded to maintain the transparency.³⁰ This shows that it's supposed that the officials should reveal their identity and keep the recording of the whole interrogation process in order to keep the process fair.

2. The issue of custodial violence at police station:

Every individual has few fundamental rights and the infringement of such rights leads to question the existence of the democracy and social well-being. Accused, being a human posses human rights and no one can infringe those rights from them. Although there are domestic as well as international laws to stop such violations but the authorities in the name of duties keep on interrogating accused with the techniques which hamper their physical or/and mental ability.³¹ A common form of interrogation is third-degree. In this the officer humiliate the accused mentally and torture him to extract some information relevant to the case. The Hon'ble Supreme court in the case of *DK Basu v, State of West Bengal*³² held that third degree methods of interrogation is impermissible and inhuman. They also stated guidelines that need to be followed while undergoing the process. The inhuman methods used by the police authorities is condemned by the law and the court but still persist. One similar case of *State of Madhya Pradesh v. Shyamsunder Trivedi and Ors*,³³ where the police beaten the accused to an extent that he died due to injuries. Similarly, the death of Ankit Gujjar in

²⁹ **Protection of All People under any Form of Detention or Imprisonment, UN. Doc. A/43/49 1988, prin. 21 cl. 2.**

³⁰ *Id.* prin. 23 cl. 1.

³¹ RS Saini, *Custodial Violence in law and Practice with Reference to India*, 36(2) ILI, 192, 200 (1994), <https://www.jstor.org/stable/43951530>.

³² *Supra* note 20; *see also* Gyanesh Rai v. State of UP, MANU/UP/1325/2015.

³³ *State of Madhya Pradesh v. Shyamsunder Trivedi and Ors*, 1995 (3) SCALE 343.

Tihar Jail³⁴, tribal man died in Madhya Pradesh due to custodial violence³⁵ and the death of man and his son in Tamil Nadu³⁶ are some recent cases showing the brutality of the police authorities. As per the survey of National Campaign Against Torture, around 1731 people dies in custody in India during 2019³⁷ as well as according to center around 348 died in police custody and 5221 died in Judicial custody in last three years.³⁸ This shows how the care takers of the law and order seems to break it in a continuous manner. The legislature on a very face of it condemns such act and under curb such activities under section 330³⁹, 331⁴⁰ and 348 of the Indian Penal Code⁴¹, section 76 of CrPC⁴² as well under section 29 of the Police Act of 1861⁴³. It also states under section 25⁴⁴ and 26 of the Indian Evidence Act⁴⁵ that any statement made in front of the police official during the custody won't be valid in the eyes of law. Although, such laws and international conventions are there still the habit of misusing of the power to earn monetary benefits or to fulfill any other grudge is prevalent in the country. The custodial death is concerned to be as the worst crime in the civilized society⁴⁶ and it's a blow on the right to life of any individual.

3. Need to have legal aid during Interrogation:

The situation is getting worse even after rules and regulations have been passed by the competent authorities. In order to bring a change in the situation it is necessary to provide legal aid to the accused while interrogation. One of the main reasons behind the continuous crime of custodial violence is the privacy and the autocracy which the

³⁴ Rocky Singh, *Delhi High Court Transfers Probe into death of Tihar inmate Ankit Gujjar to CBI*, THE HINDU (October 2, 2021, 15:02 PM), <https://www.thehindu.com/news/cities/Delhi/delhi-high-court-transfers-probe-into-death-of-tihar-inmate-ankit-gujjar-to-cbi/article36353847.ece>.

³⁵ Editor, *Senior Cop Removed After Tribal Man's Custodial Death in Madhya Pradesh*, NDTV (October 2, 2021, 15:17PM), <https://www.ndtv.com/india-news/senior-khargone-cop-removed-after-tribal-mans-custodial-death-in-madhya-pradesh-2538235>.

³⁶ Ashutosh Tripathi, *CBI files 2 cases in custodial deaths of father, son in Tamil Nadu*, HINDUSTAN TIMES (October 2, 2021, 15:30 PM), <https://www.hindustantimes.com/india-news/cbi-files-2-cases-in-custodial-deaths-of-father-son-in-tamil-nadu/story-G2BTSSPhk6F6oszSIOQBDI.html>.

³⁷ Editor, *Five Custodial deaths in India daily, says report*, THE HINDU (October 2, 2021, 15:45PM), <https://www.thehindu.com/news/national/five-custodial-deaths-in-india-daily-says-report/article31928611.ece>.

³⁸ Editor, *348 died in Police Custody, 5221 in Judicial Custody in 3 years: Centre*, NDTV (October 2, 2021, 15:48PM), <https://www.ndtv.com/india-news/348-died-in-police-custody-5-221-in-judicial-custody-in-3-years-centre-2508306>.

³⁹ IND PENAL CODE § 330.

⁴⁰ *Id.*, § 331.

⁴¹ *Id.* § 348

⁴² CODE CRIM. PROC. §76.

⁴³ The Police Act 1861, § 29.

⁴⁴ IND. EVID. ACT § 25

⁴⁵ *Id.*, § 26.

⁴⁶ *Supra* note 20.

officers have during the time of remand⁴⁷. So to fill this void, the legal aid provider must be there with the accused. The role of the legal advisor was given in the Havana Principles which includes giving advice to the clients about their legal rights and duties, to take necessary legal actions to protect their interest, to uphold their human and fundamental rights and to work for the interest of the client. Along with this, the legal advisor will protect the right against self-incrimination, right to silence of the accused. An advisor will also keep a check that the client is being there in a proper condition and detained by giving due respect to his/her basic rights.⁴⁸ This practice is prevalent in England and Wales as well as in European Union. The EU court of Human Rights in the case of *Salduz v. Turkey*⁴⁹ as well as in *Dayanan v. Turkey*⁵⁰, established the principals that should be followed by the counsellor while being there with the client. Though there exist a provision of letting the accused know about his rights but the implementation of that particular part seems not to be done. To make sure it's effective usage, the legal advisor should be able to intervene in the interrogation as and when required along with this all the interrogation must be done before him/her. Also, the advisor should have the liberty to act independently i.e. there should not be any kind of restriction or interference in the process of interaction between the client and the counsel. The state should take the responsibility of making sure that all the interrogations done in the custody must be recorded and should be done in the present of the legal counsel to make sure that the rights of the accused are not infringed.

Conclusion:

The constant misuse of power given to the executives have thrashed the stone of democracy which was laid down by the constitution makers. Police was considered to be as someone who use force to maintain law and order prior to independence, but post it the legislation bring laws to keep the check on the powers given to them but unfortunately essence of that brutality can be seen even now in few cases. The government need to start welfare programs, presentations, seminars, webinars and other such things to create awareness among the society regarding their rights as well as to create awareness among the police personals about their duties and boundaries while interrogating accused. If no strict action will be taken against such crimes

⁴⁷ CODE CRIM. PROC. § 16.

⁴⁸ Paul Mevis & Joost Verbaan, *Legal Assistance and Police Interrogation*, 4 ELR, 175, 182 (2014), https://www.elevenjournals.com/tijdschrift/ELR/2014/4/ELR_2210-2671_2014_007_004_002.pdf.

⁴⁹ *Salduz v. Turkey*, [2008] ECHR 1542.

⁵⁰ *Dayanan v. Turkey*, [2009] ECHR 2278.

then soon the country would face a group of criminals living peacefully in Khadi wardi, carrying arms with them and committing crimes in the name of law and order.