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FOREWORD BY EDITOR-IN CHIEF

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FEATURE ARTICLE

Emergence of Principle of Sic Utere Tuo Ut Alienum Non-Laedes in Environmental Law and Its Endorsement by International and National Courts: An Assessment

T.R. Subramanya and Shuvro Prosun Sarker

ARTICLES

The Problem of Rohingya Refugees in Bangladesh: A Critical Analysis

Nour Mohammad

Round Tripping and Treaty Shopping: Controversies in Bilateral Agreements & Remedies Forward-The Double Taxation Avoidance Agreement (DTAA) between Mauritius and India and the Dilemma

Rajendra Prasad Gunputh, Anupam Jha and Samperchand Pudaruth

Hindu Kush Himalayan Ecosystem as a Common Concern of Humankind: Imperative for Better Regional Jurisprudence

Debasis Poddar

Citizens of an Enemy State: The Enemy Alien Disability Rule in the Constitution of Nepal

Prakat Khatri and Kundan Raj Sharma

Protection of Traditional Knowledge: Emerging Issue of Intellectual Property Law

Madhu Soodan Poudyal

Status of Differently-abled Persons in Work Place: A Study of Courts inside Kathmandu Valley

Anupa Aryal

Conflict of Laws: Jurisdiction of the Court and Choice of Law in Cross-Border Matrimonial Suit in India

Indrani Kundu

Judicial Activism in Regulating 'Human Rights Violations' by Police Authorities in India

Sandeepa Bhat B.

An Appraisal of Tourism Law: Eclectic in Nature

Narayan Prasad Giri

Right to Education and Employment: A Step Towards Empowering Transgender Community

Naresh Kumar Vats and Megha Purohit

The Rise of Digital Era: A Changing Scenario of E-governance in Nepal

Ojaswi K.C. and Roshani Regmi

The Extra-Territorial Applicability of the Principle of Non-Refoulement and Its Interception with Human Rights Law

Shishir Lamichhane

'A Right to Water' in International Human Rights Law: Flow from Implicit to Explicit Right

Swechhya Sangroula



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Judicial Activism in Regulating ‘Human Rights Violations’ by Police Authorities in India

Dr. Sandeepa Bhat B.*

Abstract

The human right violations in police’s actions (or inaction) are in the headlines, quite often in India. The fundamental freedoms guaranteed under the Indian Constitution are often ignored during the course of such police actions, which the Judiciary in India has tried to regulate in many cases. The Supreme Court of India has laid down norms for many areas including custodial death, inhuman treatment in prisons, continued detentions in the prison after the completion of a term of imprisonment, fake encounters, unwarranted breach of the right to privacy of individuals and registering of fraudulent cases. Despite the continued efforts of the Indian Judiciary, the incidents of human right violations by the police have not abated due to two main reasons: a) the strong political influence of the police and b) the ignorance of the public, who still fear the police more than anyone else. This paper addresses the topic at hand in three parts. In the first part, the paper analyses the trendsetting judicial verdicts against the violation of human rights by police in India, especially in light of the Constitutional provisions. The second part addresses the problems that are still faced despite the judicial activism in the field and elaborates on the reasons for the continuation of problems. The final part of the paper addresses the steps that can be taken for strengthening the police reforms to prevent human right violations. It also looks into the need for necessary responses from other stakeholders in the field.

Police Actions Versus Police Atrocities: Constitutional Safeguards and the Judicial verdicts

Human rights are those inalienable rights, which cannot be parted away from human beings at any point in time. Though the kind of rights enjoyed by different sections of people may be different, even the hardest of hard criminals would also be left with certain human rights until the end of life. It is admitted that police authorities, while discharging their duties, are bestowed with a substantial amount of power and authority flowing from the sovereign powers of the State.¹ However, this does not mean that a blank cheque of power is conferred on the police. The police authorities dealing with criminals need to respect those rights which are inalienable to human beings.²

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¹ S. Krishnamurthy, *Human Rights and the Indian Police*, R.R. Publishers, Bangalore, 1994, p. 7.

² See US Department of Justice, ‘Principles of Good Policing: Avoiding Violence between Police and Citizens’, available at <https://www.justice.gov/archive/crs/pubs/principlesofgoodpolicingfinal092003.pdf>, accessed on 16 March 2017.

The Indian Constitution, which lists fundamental rights in Part III, is the repository of human rights in India; and the Supreme Court, in its proactive role, has assumed the position of custodian of human rights. While Articles 14 (right to equality), 19 (six freedoms), 20 (protection against *ex-post facto* laws, double jeopardy and self-incrimination), 21 (protection of life and personal liberty) and 22 (protection in case of arrest and preventive detention) of the Indian Constitution are the forerunners in the protection of human rights, other provisions in Part III supplement and expand these key provisions. As rightly observed by the Court in *T. V. Veteeswaran v. State of Tamil Nadu*³, the prison walls do not keep these fundamental rights out. Articles 21 and 22 are the most contested provisions in the cases of police atrocities.

Ever-growing Ambit of Article 21

The plain reading of Article 21 is that “No person shall be deprived of his/her life or personal liberty except according to procedure established by law”. However, with the creative judicial interpretations, it has become an inexhaustible source of many other rights.⁴ To start with, in *A. K. Gopalan v. State of Madras*⁵, the Supreme Court held that the personal liberty cannot be deprived without following the procedure established by law. The said procedure has to be established solely by the legislature. The enforcement authorities, like the police, must operate strictly within the four corners of law.

Almost three decades after *Gopalan*, the Supreme Court went a step further in *Maneka Gandhi v. Union of India*⁶. In *Maneka Gandhi*, while addressing the issue of impounding the passport of the petitioner, the Supreme Court held that the procedure established by law cannot be arbitrary, unfair or unreasonable. The procedure contemplated by Article 21 must depict reasonableness and fairness, and as such, the courts have power to adjudicate it. In the ultimate analysis, the Court held that though the Passport Act did not expressly require a hearing before impounding a passport, the requirement of such a hearing has to be implied therein. In addition, the decision made Article 21 the *sanctum sanctorum* of fundamental rights. This is also reflected in the statement of Krishna Iyer, J., “the spirit of man is at the root of Article 21”. The decision injected life and blood into the then dormant Article 21.

Between *Gopalan* and *Maneka Gandhi*, several attempts were made to expand the meaning of ‘personal liberty’ under Article 21. In *Kharak Singh v. State of Uttar Pradesh*⁷, the police’s visits at night involving the intrusion into the plaintiff’s residence and knocking at door, which disturbed his sleep and comfort, were held to be an invasion on the plaintiff’s personal liberty. Thus the plaintiff’s basis human rights were recognized and the police were asked to respect them, despite being a suspect. This also led to the subsequent development of right to privacy- as part and parcel of ‘personal liberty’ under Article 21- a right, which is also available to convicts and under-trials. The commonly resorted to telephone

³ *T. V. Veteeswaran v. State of Tamil Nadu*, AIR 1983 SC 361.

⁴ Bhagwati J. in *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁵ *A. K. Gopalan v. State of Madras*, AIR 1950 SC 27.

⁶ *Maneka Gandhi Case* (n 4).

⁷ *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

tapping by the police authorities is condemned by the Supreme Court in *People's Union for Civil Liberties v. Union of India*⁸ by saying that tapping the telephone is a serious invasion of privacy. Such an intrusion is justifiable only for exceptional reasons involving the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order and for preventing incitement to the commission of an offence.

The judicial trend after *Maneka Gandhi* is crystal clear that the term 'personal liberty' under Article 21 means much more than liberty of body. *Kartar Singh v. State of Punjab*⁹ supplemented *Maneka Gandhi* by stating that the right under Article 21 can only be deprived by a procedure, which is not only established by the legislature but must also be right, just and fair. In order to comply with the test of fairness, the principles of natural justice must be followed by the enforcement authorities. These developments have seriously influenced the police's actions especially in the process of criminal justice administration.

In the trial of criminal offenses, the right to fair and speedy trial has been recognised as one of the constituent elements of human rights. In *Hussainara Khatoon v. Home Secretary, Bihar (I)*¹⁰, the plaintiff filed public interest litigation on behalf of the under-trials, who were suffering in jail without trial. Justice Bhagwati observed that though the right to speedy trial is not specifically mentioned as a fundamental right, it is implicit in the content of Article 21. In *Kadra Pabadiya v. State of Bihar*¹¹, the Court commented that it is a crying shame to our adjudicating system, which keeps people in jail for years without trial.

*Hussainara Khatoon v. Home Secretary, State of Bihar (III)*¹² unveiled another shocking feature of prison administration. There were several women in prison for a long time under the banner of 'protective custody'. They were neither charged with any offence nor were their actions under investigation; however, they were the victims of offences held for the purpose of giving evidence. This effectively meant that they were imprisoned under the disguise of protection. The Court directed their immediate release from prison as well as to provide shelter in protective homes.

The judicial response towards handcuffing and the use of bar fetters is another area of importance in human rights' protection. In *Prem Shankar v. Delhi Administration*¹³, handcuffing was held to be *prima facie* inhuman and unreasonable. Therefore, the Court quashed the general rule of handcuffing every under-trial person accused of a non-bailable offence with more than three years' prison term during transport for trial. The handcuffing was confined to extreme circumstances, and required recording the reasons, which should be approved by the presiding judge. Krishna Iyer, J., while conceding that the prevention of escape of a prisoner is reasonable and in the public interest, stated that "the insurance against escape does not compulsorily require handcuffing".

⁸ *People's Union for Civil Liberties v. Union of India*, AIR 1997 SC 568.

⁹ *Kartar Singh v. State of Punjab*, AIR 1994 SCC 3569.

¹⁰ *Hussainara Khatoon v. Home Secretary, Bihar(I)*, AIR 1979 SC 1360.

¹¹ *Kadra Pabadiya v. State of Bihar*, AIR 1981 SC 939.

¹² *Hussainara Khatoon v. Home Secretary, State of Bihar, (III)*, AIR 1979 SC 1377.

¹³ *Prem Shankar v. Delhi Administration*, AIR 1980 SC 1535.

In *Sunil Batra v. Delhi Administration (I)*¹⁴, the Court ruled that the bar-fetters make too much intrusion into the personal liberty left of the prisoners. It can only be used to secure the safe custody of the prisoner, considering his/her characters, antecedents and propensities. Such a decision can only be made after consideration of the peculiar and special characteristics of each individual prisoner on a case by case basis. Thus, handcuffing and using bar-fetters merely for the convenience of the police is not justified.

Moving forward, the Supreme Court has hit hard on the police's torture and ill-treatment. The constitutional duty of the State and the judiciary to prevent police torture is highlighted by the Supreme Court in *Raghubir Singh v. State of Haryana*¹⁵ and *Rakesh Kaushik v. Superintendent of Central Jail, Bihar*¹⁶ respectively. In *Raghubir Singh*, Article 14 of the Indian Constitution was used to showcase the duty of the State to prevent police brutality. The Court observed that the State is duty bound to organise special strategies at the highest administrative and political level to prevent and punish police's brutality, otherwise the credibility of a rule of law would be lost in the eyes of people. In *Rakesh Kaushik*, the Court asserted that prison torture is not beyond its constitutional jurisdiction, and the courts owe a duty to the society at large to not ignore the dangerous reality of prison torture.

In *Sunil Batra v. Delhi Administration (II)*¹⁷, the plaintiff was kept in solitary confinement pending his appeal before the High Court. The Supreme Court highlighted that the conviction of a person for a crime does not reduce him to a non-person vulnerable to police atrocities. His human rights must be respected and a limited intrusion is permissible only with procedural safeguards. In the trend setting judgment of *Khatri v. State of Bihar*¹⁸, the claim was put forward for payment of compensation to the victims of alleged blinding by the police in jail. The Court not only condemned such cruel treatment, but also explored the new dimension of Article 21 by asking the State to compensate the victims by meeting the expenses of housing those blind men in a home for the blind. Similarly, in *Raghubir Singh v. State of Haryana*¹⁹, the Supreme Court observed that "[w]e are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death."²⁰

One of the darkest aspects of human rights violations by the police authorities in India is custodial deaths. The judiciary has frequently responded to the public outcry by not only reminding the police to treat the detainee with dignity but also by awarding monetary compensation to the victims of police ill-treatment.²¹ In *Nilabati Behera v. State of Orissa*²², the petitioner's son, who was taken into police

¹⁴ *Sunil Batra v. Delhi Administration (I)*, AIR 1978 SC 1675.

¹⁵ *Raghubir Singh v. State of Haryana*, AIR 1980 SC 1087.

¹⁶ *Rakesh Kaushik v. Superintendent of Central Jail, Bihar*, AIR 1981 SC 1767.

¹⁷ *Sunil Batra v. Delhi Administration (II)*, AIR 1980 SC 1579.

¹⁸ *Khatri v. State of Bihar*, AIR 1981 SC 928.

¹⁹ *Raghubir Singh Case* (n 15).

²⁰ *Ibid*, p. 1120.

²¹ M. P. Jain, *Indian Constitutional Law*, Sixth edition, LexisNexis Butterworths Wadhwa, Nagpur, 2011, p. 1223.

²² *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960.

custody for an investigation on theft, was found dead on railway tracks. The circumstantial evidence was clear enough to indicate that it was a case of custodial death. The Court went on to award exemplary damages of Rs. 150,000 to the petitioner.

Yet another face of police atrocity and arbitrariness is reflected in *Rudul Shah v. State of Bihar*²³. Rudul Shah, though he was acquitted by the Session Court in June 1968, was actually released from jail by the police only in October 1982. For a period of 14 years, he was kept in the jail against the Court's orders, and was released only after a *habeas corpus* petition was filed on his behalf. The Court awarded a compensation of Rs. 35,000 to the victim. This stands as a precedent for a series of subsequent cases involving similar facts.

While extending further the ambit of Article 21, the Supreme Court in *State of Maharashtra v. Prabhakar Pandurang Sanzgiri*²⁴, recognized the right of detainee to publish his book written during his detention. In *Francis Coralie v. Union Territory of Delhi*²⁵, the plaintiff detainee challenged the action of police authorities who refused to allow her to have interviews with her friends and family members. The Supreme Court, by extending the meaning of personal liberty to include the right to socialise with the family members and friends, directed the police to allow such interviews.

The Supreme Court has also relaxed the norms of *locus standi* while entertaining cases of police atrocities. In *Sunil Batra v. Delhi Administration (II)*²⁶, for example, by forsaking all the formalities, the Court entertained the letter from the petitioner complaining of a brutal attack by the prison staff on a fellow prisoner. Further, in *Sheela Barse v. State of Maharashtra*²⁷, the Court addressed the special concerns on women prisoners. It directed the police authorities to prevent torture and maltreatment on women in lock-ups. Need for separate lock-ups for female suspects guarded by female constables and presence of female constables during interrogation of females were highlighted by the Apex Court.

Protection under Article 22

While Article 21 is the *ground norm* in the protection of human rights of prisoners, Article 22 protects people from arbitrary arrest. Clauses 1 and 2 of Article 22 provide four safeguards against arbitrary arrest. First, the arrested person must be informed about the grounds of his/her arrest. Second, the arrested person not only has the right to consult a lawyer of his/her choice but also has a right to be defended by the lawyer. Third, the arrested person should be produced before the nearest Magistrate within 24 hours from arrest. Fourth, no person can be detained in custody beyond 24 hours without the authority of a Magistrate.

The above Constitutional safeguards are helpful in curbing the instances of wrongful arrest. The requirement of informing the arrested person of the grounds for arrest helps the arrested person in preparing his/her defence and seeking bail.

²³ *Rudul Shah v. State of Bihar*, AIR 1983 SC 1086.

²⁴ *State of Maharashtra v. Prabhakar Pandurang Sanzgiri*, AIR 1966 SC 424.

²⁵ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746.

²⁶ *Sunil Batra Case* (n 17).

²⁷ *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.

Therefore, the information provided by the police authorities must be sufficient to enable him/her to understand why he/she is arrested and must also provide an idea about the alleged offence. In the absence of such communication, as the Supreme Court held in *re Madhu Limaye*²⁸, the arrested person is entitled to be released. The right to consult a lawyer and the right to be defended have also developed as a strong procedural safeguard. With the 42nd Constitutional Amendment coupled with the introduction of Section 304 (1) to Criminal Procedure Code, an obligation has been imposed on the State to incur the legal expenses of an accused, if he/she has no sufficient means to hire a lawyer.

Added to the above requirements, the obligation of producing the arrested person before the nearest Magistrate within 24 hours eliminates the possibility of police arbitrariness. It ensures the immediate application of judicial mind, and therefore, the Magistrate should not act mechanically, rather should act judicially. In *Khatri v. State of Bihar*²⁹, the Supreme Court held that the above requirement must be strictly and scrupulously observed. In its absence, the person has to be released.

In *Joginder Kumar v. State of Uttar Pradesh*³⁰, the Court addressed the issue of arbitrary arrest. While severely criticising the arrest without proper reasons, the Supreme Court observed that the arrest may cause incalculable harm to a person's reputation and self-esteem. Such harm is irreparable and the innocent victims cannot be placed back to the original position. So arrest should be made not merely on suspicion but only after preliminary investigation leading to a reasonable satisfaction about the authenticity and *bona fideness* of the complaint. In addition, the arrested person has the right to inform his/her relatives or friends about the arrest and place of detention, and also the right to consult a lawyer of his/her choice. Any interruption by police in the exercise of these rights of detainee is unwarranted. Moreover, the Court directed the Magistrates to satisfy themselves that these requirements are complied with in every case. This step is praiseworthy, since the practical implementation of guidelines can only be ensured through a judicial check.

In *D. K. Basu v. State of West Bengal*³¹, the Supreme Court addressed the issue of custodial deaths in a holistic manner. While delivering judgment, A.S. Anand, J. referred to the Third Report of the National Police Commission in India and concurred with the view that the custodial violence and lock-up deaths have serious demoralizing effect on the society. Hence, for the purpose of interrogation during investigation, an accused should be arrested only when: (a) The case involves a grave offence and the accused needs to be arrested to instil confidence in the minds of terror stricken victims; or (b) There is an apprehension that the accused would abscond and evade the process of law; or (c) The accused is of violent behaviour and his/her movements need to be restrained to prevent commission of further offenses; or (d) The accused is a habitual offender and restraint is required to prevent commission of further offenses by him/her. In furtherance of this, the Court also laid down 11 guidelines which are required to

²⁸ *re Madhu Limaye*, AIR 1969 SC 1014.

²⁹ *Khatri Case* (n 18).

³⁰ *Joginder Kumar v. State of Uttar Pradesh*, AIR 1994 SC 1349.

³¹ *D. K. Basu v. State of West Bengal*, AIR 1997 SC 610.

be followed by the police very strictly. These guidelines flow from Articles 21 and 22 (1) of the Constitution, and are primarily directed towards the prevention of custodial violence and brutality.³² Failure to comply with these guidelines makes the concerned officer not only liable for departmental action but also for contempt of court.

In addition to Articles 21 and 22, Article 20 (3) is used as a tool to combat police's excesses in the process of interrogation. In *Nandini Sathpathy v. P.L. Dani*³³, the petitioner was asked to appear before the Vigilance Police Station in connection with an enquiry on the acquisition of assets, which was disproportionate to income. She was given a long list of questions to be answered, many of which were self-incriminatory in nature. The Supreme Court, while delivering the judgment, observed that the right against self-incrimination under Article 20 (3) is not limited before courts of law but extends to police interrogation as well. Moreover, the Court went on to analyze the 'compelled testimony' that goes against Article 20 (3). According to the Court, "the phrase 'compelled testimony' must be read as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like."³⁴ It is also interesting to note that the Court prescribed to punish those policemen who deviate from law, since "policemen may not be a law unto themselves expecting others to obey the law."³⁵ Hence, police interrogation, though necessary for fact finding, should not cross limits and violate Article 20 (3).

Continuing Problem: Difficulty in Drawing the Delicate Line of Human Rights' Protection

The plethora of judicial verdicts highlights the importance given by the judiciary in protecting the human rights of the prisoners. However, despite the judicial activism, the problem of police's intrusion into human rights is unabated. The root cause for such a continuation can be found in the nature of the obligations carried on by the police. On the one hand, police need to take prompt action to prevent the crimes and on the other hand, they should respect the human rights of all including the criminals. The Indian police, especially at the lower level, find this to be a difficult task.

The need for striking a delicate balance between the duty to prevent and prosecute crime, and the obligation to respect the human rights of criminals has put the police in a dicey state of affairs. While police inactions are severely criticized, the human rights violations by the police actions are equally challenged. Any action by the police needs to be well-thought and within the strict limits of authority. Unfortunately, the limits of authority are not codified, hence the subject has differing interpretations by different persons. This invariably has resulted in a situation of police being blamed for any action taken in the course of law enforcement.

³² Udai Raj Rai, *Fundamental Rights and Their Enforcement*, PHI Learning Pvt. Ltd, New Delhi, 2011, p. 311.

³³ *Nandini Sathpathy v. P.L. Dani*, AIR 1978 SC 1025.

³⁴ *Ibid.*

³⁵ *Ibid.*

The existing dilemma in the genuineness of police actions is also contributed by several other factors. One of the major reasons for difficulty in drawing a delicate balance between police actions and human rights' protection is the lack of education, especially at the lower level.³⁶ The essential educational qualification at the entry level for a police constable in India is just pre-university (10+2), which is almost least among all public duty positions. Thus, one cannot expect them to be good in logical reasoning as well as in proper decision-making. The strong political influence on the police authorities operates as another significant reason for human rights' violations in a multiparty democracy like India. Corruption also has its own role to play in the police's actions. In addition, the birth and growth of human rights NGOs in India has had a significant chilling effect on the police authorities, prompting them to take the shelter of not taking any action.

It is also significant to note that the police's image in the Indian public contributes further to the problem. Historically, the Indian public has not been positive or receptive of police, perhaps due to the colonial atrocities. Carrying this image of the police forward, people generally consider police as agents of the party in power. Their political control compels them sometimes to let loose a reign of terror and to do unjust and undesirable deeds.³⁷ The growth of media to expose these excesses, many a times with additional colours to promote its business and stay competitive in this commerce driven world, has accelerated the tarnishing of police image in the public. With these developments, the dilemma between the action and inaction has increased amidst the police community.

Conclusion

The efforts made by the Indian judiciary towards the protection of human rights of prisoners are undoubtedly commendable. The series of decisions on Article 21 of the Indian Constitution not only introduced new rights for the prisoners within the ambit of the said provision but also changed the sphere of operation of police authorities. However, this achievement is not without problems. Though the judiciary has taken up the task of a *post facto* determination of the legality of police actions, it has failed to codify the list of permissible and impermissible police actions. It is obviously understandable that the preparation of an exhaustive list is impractical; however, an indicative list would be useful in bringing more clarity and avoiding arbitrariness. In the absence of such indicative list, the police authorities would be left at the mercy of the judiciary. Since every *post facto* determination by the judiciary is subject to the individual perception of the judges, the ultimate conclusion on the legality of police actions may be unpredictable. It would thus be unfair to criticize the police who might have acted in good faith in the performance of their duty.

One of the best ways to deal with the problems of police's actions is to go to the roots of the problems. Our current system of police is inherited from the British rule, and hence, it is a more power-based system. This is due to the fact that the

³⁶ See Sankar Sen, *Trust with Law Enforcement and Human Rights*, APH Publishing Corporation, New Delhi, 2002, p. 336.

³⁷ M. P. Singh, *Police Problems and Dilemmas in India*, Mittal Publications, New Delhi, 1989, p. 166.

primarily task with which the police force was established during British India was to guard the interests of the British Empire in India. This necessitated the use of power, most often against human right norms, in order to perform such task. Carrying the same legacy forward even in the independent era is not suitable as the task of police in the independent India is to maintain law and order, and not to protect the ruling party's interest. This task has to be fulfilled by respecting the human rights of people, without which the police as an institution would continue as a compelled evil rather than an institution wherein the people can repose trust. Hence, police's sensitization to human rights is absolutely essential. Most of the time, such sensitization has been an afterthought in India, because it is tried after the police personnel assume their office. This amounts to a sheer waste of time and money. The true spirit of human rights in police can only be inculcated at the stage of development of their personality i.e. at the time of their studies and training. Hence, we need to move from the model of human rights sensitization as a non-receptive afterthought to a model of receptive inculcation during the stage of nurturing police personnel.