

# Human Rights and Police Investigation

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# Take a human rights stand:

- ▣ Refusing to cooperate with police is a suspicious behaviour; innocent people have nothing to hide.
- ▣ Get to the crime through the criminal or get to the criminal through the crime.
- ▣ Police is not required to disclose exculpatory evidence.
- ▣ To get information from hardcore criminals, sometimes one needs to apply a degree of pressure or even torture.
- ▣ Confession is the most reliable form of evidence.
- ▣ A police officer who strikes a suspect should be dismissed from the service.

# Concept of Human Rights: The Origin

- ▣ In 539 B.C., the armies of **Cyrus the Great**, the first king of **ancient Persia** ( today's Iran ), conquered the city of Babylon. After his victory he freed the slaves, declared that all people had the right to choose their own religion, and established racial equality.
- ▣ These and other decrees were recorded on a **baked-clay cylinder**.
- ▣ Known today as the **Cyrus Cylinder**, this ancient record has now been recognized as **the world's first charter of human rights**. It is translated into all six official languages of the United Nations and its provisions parallel the **first four Articles of the Universal Declaration of Human Rights, 1948**.
- ▣ The **Magna Carta of 1215**, accepted by **King John of England**, is considered by many experts as the document that marks the recognition of **human rights in modern democracy**.

# Concept of Human Rights:

- ▣ Concept based on **natural rights**, a **universal concept**
- ▣ **First formal use in U.N. Charter of 1945**
- ▣ Two most imp. Covenants :
  - **Universal Declaration of Human Rights ,1948**
  - **International Covenant on Civil and Political Rights,1966**
- ▣ **Articles 9 to 12 of UDHR and Article 10 of the ICCPR lay down a basic minimum standard of treatment to which criminal justice system of a country must confirm.**

# Legitimate Aims of Police Investigation:

- ▣ Discovery of location, time, cause and manner, of a crime.
- ▣ Identification of perpetrator of crime.
- ▣ Apprehension of perpetrator.
- ▣ Recovery and preservation of Physical/ forensic Evidence.
- ▣ Identification/ Interrogation of witnesses.  
Presentation of evidence before a court for trial.

# Human Rights Protection During Police Investigation: Inter. Standards

- Investigations shall be **competent, thorough, prompt and impartial**. (Principles on Summary Executions, (Art. 9).
  - ▣ Everyone is to be presumed **innocent until proven guilty** in a fair trial. [Art. 11 (1) of the UDHR]
  - ▣ **Torture and other inhuman or degrading treatment** is absolutely prohibited. (Art. 5, UDHR, Art. 7).
  - ▣ No one shall be compelled to confess or to testify against himself/herself. [At. 11 (1) UDHR ]



# Human Rights Protection During Police Investigation: Inter. Standards

- ▣ Neither arbitrary nor **unduly intrusive investigatory activities** shall be permitted. (Art. 12 UDHR)
- ▣ No one shall be subjected to **arbitrary interference with his privacy, family, home or correspondence.** (Art. 12 UDHR)
- ▣ No one shall be subjected to unlawful **attacks on his honour or reputation.** (Art. 12 UDHR)
- ▣ Confidentiality and care in the handling of sensitive information are to be exercised at all times (Art. 4, Code of Conduct)

# Bangladesh-The Constitutional & Statutory Framework: Goal, Resolve & Scheme

## ▣ Constitutional Framework:

- The Goal---Preamble---Secure Fundamental Human rights — Justice- to all citizens
- The Resolve- Human Rights and respect for the dignity and worth of the human person are protected -Art-11
- The Scheme- Part III Art. 26 to 47-A
- Code Of Criminal Procedure, 1998
- Torture and Custodial Death (Prevention) Act, 2013.



# Two Facets of the Picture :Rhetorical and Real.

- ▣ The rhetorical part entails:
- ▣ International Instruments like UDHR,1948 , ICCPR,1966 & United Nations Convention against Torture,1984.
- ▣ Enumeration of constitutional guarantees having imprints of human rights.
- ▣ Reiteration of the provisions in substantial and procedural laws ; Cr. P.C. & Torture and Custodial Death (Prevention) Act, 2013.
- ▣ Judicial pronouncements on matters concerning jurisprudence of human rights and the infringement of human rights.

# Real Part: Human Rights & Police Investigation

- Point of first contact--Reg. Of FIR, Arrest & Investigation
- The institutional framework - Inherited from the British.
- Police matters are governed by the Police Act of 1861, Cr.P.C. and Evidence Act.
- No significant changes to initiate police reforms, - police principally an instrument of coercive state power.

# Police Investigation :Major Issues

- **Major Issues:**
  - Illegal arrest and detentions,
  - Unfair treatment,
  - Custodial violence & torture to extract confessions and
  - Lock up deaths despite legislation like **Torture and Custodial Death (Prevention) Act, 2013.**

# Police Investigation : Arbitrary Arrest And Detention:

Section 54 and 167 of the Cr.P.C.1898, which confer wide powers upon police to arrest a person without warrant on **reasonable suspicion**, are the main provisions prone to misuse.

- ▣ In **D.K. Basu v. State of West Bengal (1997) 1 SCC 416** The S.C. of India laid down 11 guidelines to be followed by police.
- ▣ In **Rudul Shah v. State of Bihar, (1983) 4 SCC 141**, the Supreme Court ruled that the victims of unlawful or **illegal arrest were entitled to compensation for violation of their fundamental rights** under Part III of the Indian Constitution.

# Police Investigation : Unfair Treatment & Human Dignity

- ▣ It is not uncommon to see that suspects are paraded in public.
- ▣ Seldom informed that they are entitled to legal aid .
- ▣ The behaviour of police is quite abusive.

# Police Investigation : Torture

- ▣ Police and other enforcement agencies continue with the mind-set that torture is an essential investigative tool, rather than unscientific or crude.
- ▣ The Parliament of Bangladesh has enacted 'Torture and Custodial Death (Prevention) Act, 2013. Section 3 prescribes that this law will prevail upon any other existing law.
- ▣ Still allegations are that torture is practiced as a routine and accepted means of investigation for eliciting incriminating information.



# Torture To Extract Incriminating Information & Right to Silence

- ▣ The right to remain silent is inherent in the presumption of innocence. The decision to remain silent is not an indication of guilt. The right to silence is also enshrined in international conventions. Article 14, Paragraph 3(g) of the International Covenant on Civil and Political Rights states that everyone is entitled “not to be compelled to testify against himself or to confess guilt.”

# Torture: The Contours?

“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 is suspected of having 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 an official capacity.”

**(Article 1 of Convention Against  
Torture)**

# Human Rights & Police: Lock up deaths

- ▣ Reportedly many incidents of extra-judicial killing by law-enforcing agencies.
- ▣ To combat this problem, a PIL was filed by non-governmental organization **BLAST**. The petitioners referred to incidents of gross abuse of power, including allegations of custodial death, torture and inhuman treatment, especially the killing of a young student, **Rubel**, in remand .
- ▣ The High Court vide **judgment dated April 74, 2003**, laid down a comprehensive set of recommendations regarding necessary amendments in **Cr.P.C. , the Police Act, and the Evidence Act**, and directed that these should be acted upon within six months.  
(*BLAST and Others v. Bangladesh and Others* (1998)[28])

# Best Practices in Police Investigation:

- Lawful purposeful action
- Presumption of Innocence
- Respect for Right to silence
- Forensic recovery of chain evidence
- Disclosure of exculpatory evidence
- Keeping an Open Mind “Tunnel vision is insidious”

# Implications of Ignoring Human Right Norms by Police:

- Human dignity is transgressed .
- Erosion of crucial public confidence and support in police.
- Hampering of effective prosecutions in court .
- Guilty may go free – the innocent may get punished.
- Tarnishes the image of judiciary.
- Erosion of Rule of law.



# How to Minimize Human Rights Violations in Police Investigation

- ▣ Reforming the mind<sup>?</sup> set of police by sensitising them about importance of human rights.
- ▣ Preparation and use of investigation standard operating procedure ( SOP ).
- ▣ Training in modern scientific/ forensic investigative tools and techniques.
- ▣ Efficient Performance  
Parameters/Evaluation System and  
Improved Supervisory Mechanism



# How to Minimize Human Rights Violations ?

- Use of I. T. for close monitoring of investigation
- Strict Disciplinary Rules for the Police Officers.
- Departmental/Financial Incentives for Good Officers.
- Accessibility of supervisory officers.
- Establishment of civilian oversight bodies like police complaints authorities, public safety commissions, police-public committees, police ombudsperson .

# Role of Judiciary

To put it in the words of Justice V.R. Krishna Iyer :

- ▣ "Rights, however, solemnly proclaimed and entrenched in great instruments are but printed futility unless a puissant judiciary armed with legal authority, remedial process and jurisdiction, operational and pragmatic, transforms the jurisprudence of human rights into public law of enforceable justice.

THANKS