

HUMAN RIGHTS DURING ARREST AND DETENTION

- by **T. Murali Krishna**, Supdt. of Police

Human Rights as defined in The protection of Human Rights Act, 1993 are "the rights relating to **life, liberty, equality** and **dignity** of the individual guaranteed by the Indian Constitution as embodied in the Fundamental rights and the International Covenants and enforceable by courts in India".

Right to liberty, a fundamental right, is guaranteed by the Central and State Governments in accordance with the Indian Constitution. Depriving a person of his/her liberty would mean arresting and detaining that person. However, no one shall be deprived of his/her liberty save in the following cases and in accordance with a procedure prescribed by law:-

- a) The lawful detention of a person after conviction by a competent court.
- b) The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law.
- c) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or which it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so,
- d) The detention of a minor by lawful order for the purpose of educational supervision or his/her lawful detention for the purpose of bringing him/her before the competent legal authority.
- e) The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants,
- f) The lawful arrest or detention of a person to prevent his affecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

The Supreme Court of India in its judgements from time to time on Articles 21(Life and personal liberty) and Article 22 (Protection against arrest and detention in certain cases) of the The Constitution of India stressed the importance of the protection to be given to the life, liberty and dignity of the individual. While interpreting Article 21(Life and personal liberty) and 22(Protection against arrest and detention in certain cases) of the Constitution of India the Supreme Court had pronounced a land mark judgment on arrest and detention which has now become the law of the land and has to be scrupulously followed. The operative part of the judgment is as follows:

(1997) 1 Supreme Court Cases 416

(BEFORE KULDIP SINGH AND DR. A.S.ANAND.J.J.)

Writ Petition (Crl.) No. 539 of 1986

D.K.BASU .. Petitioner

Vs.

STATE OF W.B. .. Respondent

With

ASHOK K.JOHRI .. Petitioner

Vs

STATE OF U.P. .. Respondent.

Writ petitions (Crl.)No.539 of 1986 with No. 592 of 1987 decided on December, 18, 1996.

Constitution of India – Arts. 21, 22 and 32 – Custodial violence- Torture, rape, death in police custody/lockup – Infringes Article 21 as well as basic human rights and strikes a blow at rule of law – Torture involves not only physical suffering but also mental agony – It is naked violation of human dignity and destructive of human personality.

GUIDELINES:

- 1) Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police

personnel who handled interrogation of the arrestee must be recorded in a register.

- 2) Police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- 3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lockup, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- 4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police Station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

- 5) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- 6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- 7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officers effecting the arrest and its copy provided to the arrestee.
- 8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well
- 9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the area Magistrate for his record.

10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

The judgment has become the law of the land and is to be scrupulously followed by all law enforcement agencies including the police while arresting a person.

Once a person is lawfully arrested his/her detention becomes lawful. Therefore, an illegal arrest would mean that the detention would be illegal. It is imperative that a police officer takes extreme care in adhering to the fundamental rights of detained persons. A **"detained person"** means **any person deprived of personal liberty except as a result of conviction for an offence** and **"detention"** means **the condition of detained persons**. A police officer

should be extremely careful in protecting the human rights of those arrested and in their custody till the detained person is produced before the Judicial Authority and subsequently transported to the Jail on court directions.

The following principles, laid down by the United Nations and followed by law enforcement agencies all over the world in respect of persons in detention, shall be adhered to:-

- (1)** A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty
- (2)** All persons under any form of detention shall be treated in a humane manner and with respect for the inherent dignity of the human person.
- (3)** Special treatment and special status should be provided for
 - Women especially pregnant women and nursing mothers.
 - Children and juveniles
 - Aged, sick or handicapped persons.
- (4)** No person under any form of detention shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment. The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the

widest possible protection against abuses, whether physical or mental including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently of the use of any of his natural senses, such as sight or hearing or of his awareness of place and passing of time.

- (5)** Unconvicted detainees should be kept separately from convicted persons, children from adults, women from men .
- (6)** A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.
- (7)** If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.
- (8)** A detained person shall be allowed adequate time and facilities for consultation with his legal counsel.
- (9)** The right of a detained person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or

restricted save in exceptional circumstances to be specified by law or lawful regulations when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

- (10) Interviews between a detained person and his legal counsel may be within sight but not within the hearing of a law enforcement official.
- (11) Communications between a detained person and his legal counsel shall be inadmissible as evidence against the detained person unless they are connected with a continuing or contemplated crime.
- (12) A detained person shall have the right to be visited by and to correspond with, in particular with members of his family and shall be given adequate opportunity to communicate with the outside world subject to reasonable conditions and restrictions as specified by law or lawful regulations.
- (13) It shall be prohibited to take undue advantage of the situation of a

detained person for the purpose of compelling him/her to confess, to incriminate himself/herself otherwise or to testify against any other person.

- (14) No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.
- (15) The duration of any interrogation of a detained person and of the intervals between interrogation as well as the identity of the officials who conducted the interrogations and other persons shall be recorded and certified in such form as may be prescribed by law.

In conclusion it is hereby emphasized that all police officers should show empathy . They should put themselves in the place of the arrested and detained person. Would a police officer or his/her relative, arrested and detained for an offence, like to be treated other than in any other manner specified above? Certainly not. Protection of human rights is guaranteed by the Central and State Governments and police officers being Government servants have the onerous responsibility to safeguard the rights of citizens during arrest and detention.



“...And the court awards you twenty five thousand for the loss of faculty in your right arm.”