

HUMAN RIGHTS AND POLICING:

Landmark Supreme Court Directives & National Human Rights Commission Guidelines

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Contents

Foreword	(i)
Introduction	1
<i>Registration & Investigation of Offences</i>	
State of Haryana v Bhajan Lal.....	3
State of West Bengal v Swapan Kumar Guha.....	5
T.T Anthony v State of Kerala.....	7
Nandini Satpathy v P.L Dani.....	9
People’s Union for Civil Liberties [PUCL] v Union of India and another.....	11
Delhi Domestic Working Women’s Forum v Union of India and others.....	13
<i>Arrest and Detention</i>	
Joginder Kumar v State of U.P and others.....	15
D.K Basu v State of West Bengal	17
Sheela Barse v State of Maharashtra.....	20
Icchu Devi Choraria v Union of India.....	22
Gopalanachari v State of Kerala.....	24
<i>Handcuffing/Chaining</i>	
Prem Shankar Shukla v Delhi Administration.....	26
Citizens for Democracy v State of Assam.....	28
Bail and Bonds	
Hussainara Khatoon v Home Secretary State of Bihar.....	30
Motiram and Others v State of M.P.....	32
<i>Compensation</i>	
Nilabati Behera v State of Orissa.....	34
<i>National Human Rights Commission Guidelines</i>	
NHRC Guidelines on Encounter Deaths.....	36
NHRC Guidelines on Lie Detector Tests.....	39
NHRC Guidelines on Police-Public Relations.....	41
NHRC Guidelines on Arrest.....	43
Afterword	46
<i>Annexures</i>	
Code of Conduct for the Police in India.....	47
U.N Code of Conduct for Law Enforcement Officials.....	49
Index.....	51

Justice J.S Verma

Former Chief Justice of India

& Former Chairperson National Human Rights Commission

Foreword

The presumption that everyone knows the law is a myth that causes needless suffering to millions of people in India – especially those who are unlettered. Ignorance of laws – and the rights guaranteed by them – facilitates blatant misuse of authority by law enforcers, whose job is to protect people’s rights. Merely putting in place, provisions for the protection of human rights without empowering people through human rights education about the means to ensure their compliance is meaningless. Rule of law to be meaningful must meet the end of legal awareness.

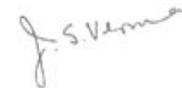
One of the essential functions of the National Human Rights Commission (NHRC) is to spread a human rights culture, and to aid the empowerment of people for the better protection of human rights in the country. Non-governmental organisations in particular have been making a valuable contribution in this respect by sharing the responsibility of the State and the NHRC. The Commonwealth Human Rights Initiative (CHRI) is one such organisation actively involved in this effort. This compilation is a step in that direction.

While police officers must know the limits and nature of their authority, citizens too, must know their rights, even when they have to answer to the law. A proper balance of individual rights and public interest has to be achieved through the mechanism of the rule of law. This is the essence of human rights law and the avowed purpose of this compilation.

The law laid down by the Supreme Court is the law of the land and binds everyone. The Supreme Court decisions included in this compilation relate to matters impinging on the basic human rights of individuals to life and liberty, which are sacrosanct. The NHRC guidelines are meant to inform citizens as well as the police about their rights and duties; to enable people to protect themselves with this knowledge; and to guide the police in the performance of their task by indicating that any transgression would be illegal.

I do hope this compilation will serve its purpose of improving knowledge about the law amongst citizens and amongst personnel of law enforcement agencies.

9. February 2005



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Introduction

Respect for human rights lies at the heart of good governance. In a democratic society, it is the responsibility of the State to protect and promote human rights. All State institutions whether they are the police department, the army, the judiciary or civil administration have a duty to respect human rights, prevent human rights violations, and take active steps for the promotion of human rights.

The role of the police is especially significant in this respect. The police is charged with the responsibility of maintaining order and enforcing laws. Therefore, the onus of bringing those who break the law – including laws which protect people’s human rights – before the criminal justice system lies on the police.

Unfortunately, many a time, while discharging this duty, actions of the police conflict with human rights. Police officers are pressured to get quick results, often with unofficial guarantees that they may use any means possible to accomplish the task at hand. However, the police as protectors of the law have both a legal duty and a moral obligation to uphold human rights standards and act strictly in accordance with the law and the spirit of our Constitution.

The Constitution - the supreme law of our country - entitles everyone living in India to protection of their human rights. Part III, the chapter on Fundamental Rights, which is referred to as the heart of the Constitution, guarantees basic human rights to all. It pledges that the State will safeguard human rights and will protect citizens from undue invasions on their liberty, security and privacy.

The Supreme Court has over the years, explained and elaborated the scope of Fundamental Rights. They have strongly opposed intrusions upon them by agents of the State, by asserting that the rights and dignity of individuals must always be upheld. The Court has laid down certain directives for law enforcement. These directives deal with various aspects of police work at the station house or cutting edge level, such as registration of a case; conduct of an investigation; carrying out of an arrest; treatment of an arrested person; grant of bail; questioning of a suspect; and protection of the rights of women, poor and the disadvantaged. They also have the force of law.¹ **An officer who wilfully or inadvertently ignores Supreme Court directives can be tried in court under relevant provisions of the Indian Penal Code and under the Contempt of Courts Act, 1971.**

The National Human Rights Commission [NHRC] too has issued guidelines for police officers. The Commission has been established under a special Act of Parliament to protect and promote the human rights of all people living in India. The National Human Rights Commission addresses violations of human rights by recommending registration

¹ Article 141 of the Constitution states that the law declared by the Supreme Court is binding on all courts in India. In *P.L.O Corp v Labour Court* 1990 SCC 632, it has been held that this article recognises the role and power of the Supreme Court to alter the law and in the course of performing this function, interpret legislation in such a manner that it may be harmonised with social changes.

of criminal cases against the guilty; disciplinary action against errant officers; and payment of compensation to the victims. Because an overwhelming majority of complaints received by the National Human Rights Commission concern the police, the Commission has made it mandatory to report any case of custodial death or rape within 24 hours and to provide it with a video-film of the post-mortem examination. The Commission has also issued guidelines to the police on encounter deaths; lie detector tests; arrest; and police-public relations. **Guidelines of the National Human Rights Commission are increasingly being subject to positive interpretation by the courts. This means that officers accused of violating human rights may be called upon to explain why these guidelines were not followed.**

This compilation includes sixteen landmark judgements of the Supreme Court and four significant National Human Rights Commission guidelines dealing specifically with human rights and policing. While the directives/ guidelines mentioned here do comprise the core of the jurisprudence on human rights and policing, this is by no means an exhaustive list. The directives/ guidelines mentioned here lay out the correct procedure to be followed by *Station House Officers* in the conduct of their official duties. **Non-adherence to these judgements/guidelines is taken to be a sign of malafide intention and breach of good faith. It also invites legal and disciplinary action against the officer concerned.**

The protection of Section 197 of the Code of Criminal Procedure [CrPC]² only applies to acts done in the discharge of official duty. Assaulting a suspect during investigation; fabricating a false case; using abusive or threatening language; demanding a bribe; or indulging in unruly conduct are not a part of official duty. It is no part of an official's duty to commit an offence and never can be.³

² Immunity from prosecution for public servants without prior sanction of the government/ appointing authority for any offence alleged to have been committed in the discharge of official duty.

³ Ratan Lal & Dhirajlal: *Code of Criminal Procedure*, Wadhwa & Company, Nagpur 2002, page 636

Registration of FIR

STATE OF HARYANA V BHAJAN LAL & OTHERS AIR 1992 SC 604

A First Information Report [FIR]⁴ was registered by the Haryana Police against Ch Bhajan Lal, on a complaint by a private person that he possessed assets disproportionate to his known sources of income. Bhajan Lal - Union Minister and former Chief Minister of Haryana - went to the High Court asking for the FIR to be cancelled, saying that it was registered because of the political rivalry that existed between Ch Devi Lal, the existing Chief Minister of Haryana and him.

The High Court ordered cancellation of the FIR and all proceedings undertaken on its behalf, on the ground that the allegations did not make up a cognizable offence⁵ to start a lawful investigation. The State of Haryana appealed to the Supreme Court against the order of the High Court.

Supreme Court Observations

The Supreme Court said that the order of the High Court cancelling the FIR was bad both in law and on the facts. They asserted that everyone, whether individually or collectively, must abide by the law and even the judiciary cannot interfere with the investigation process unless police officers improperly and illegally exercise their investigatory powers. However, the Supreme Court cautioned that "where a police officer transgresses the circumscribed limits" and causes "serious prejudice to the personal liberty and the property of a citizen" courts will step in and issue appropriate orders.

Section 154 (1) of the Code of Criminal Procedure, 1973 [CrPC] says that if any information disclosing a cognizable offence is given at the police station, the officer in-charge must register it. The Supreme Court asserted that it is not open to the police to question the "reasonableness or credibility of the information" at this stage. An FIR should be registered immediately and even before proceeding with a preliminary investigation.

The Court also commented on Section 157 CrPC which says that two conditions must be satisfied before a police officer starts an investigation:

- (i) *S/he should have 'reason to suspect' the commission of a cognizable offence.*

The "reason to suspect" must arise from the allegations made in the first information given to a police officer and at this stage "the question of adequate proof of facts alleged in the FIR does not arise"

⁴ First Information Report is the earliest and first information that is received about the commission of a cognizable offence. It sets the ball of the criminal justice process rolling.

⁵ Cognizable offences are mentioned in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC]. Section 2 (c) CrPC defines cognizable offence as an offence, in which a police officer can arrest a person without a warrant. In practice, cognizable offences are offences in which a police officer can register a case and start an investigation without a magistrate's order and carry out an arrest without a magistrate's warrant.

(ii) *S/he should satisfy her/himself about the ‘credibility of the information’.*

□A police officer has to draw his [her] satisfaction [about the ‘credibility of information’] only on materials which were placed before him[her] at that stage namely the first information together with the documents, if any, enclosed□

Supreme Court Directives

1. An FIR must be registered as soon as information about a cognizable offence is received.
2. Before starting an investigation, police officers should make a ‘rational inference’ that a cognizable offence has been committed. The inference should be made solely on the basis of facts mentioned in the FIR.
3. Courts will not as a rule interfere in the investigation process except in the following circumstances when the High Court⁶ can cancel the FIR and other proceedings carried out by the police:
 - i. Where the allegations in the FIR do not constitute any cognizable offence or justify an investigation by the police.
 - ii. Where the allegations made in the FIR and the evidence collected by the police in support of the allegations do not point towards the guilt of the accused.
 - iii. Where investigation has been carried out by the police in a non-cognizable offence⁷ without the order of a magistrate.
 - iv. Where the CrPC or any other law expressly prohibits carrying out criminal proceedings against the accused.
 - v. Where criminal proceedings have been started with dishonest intent to take revenge from the accused.

Non-registration of First Information Reports [FIR] is one of the most serious, frequent and common grievances against the police. This problem is compounded when the person against whom a complaint is made is rich and powerful. Article 14 of the Constitution guarantees to all persons ‘equality before the law and equal protection of the laws’ within the territory of India. Police officers must register an FIR immediately on receiving information about a cognizable offence. Persons aggrieved by non-registration of FIR can approach the District Superintendent of Police⁸ or the concerned Magistrate⁹ to get their complaints registered. Alternatively complaints in this regard can also be filed before the National or concerned State Human Rights Commission.

⁶ By issuing a writ to protect the fundamental rights of a person under Article 226 of the Constitution or by using its powers under Section 482 of the Code of Criminal Procedure, 1973 [CrPC] to prevent abuse of court process or secure the ends of justice.

⁷ Non-cognizable offences are mentioned in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC]. Section 2 (1) CrPC defines non-cognizable offence as an offence, in which a police officer has no authority to arrest without a warrant. In practice, non-cognizable offences are offences in which police cannot register a case without a magistrate’s order or carry out an arrest without a magistrate’s warrant.

⁸ Under Section 154 (3) CrPC

⁹ Under Section 156 (3) CrPC

Basis of Investigation

STATE OF WEST BENGAL V SWAPAN KUMAR GUHA & OTHERS
1982 SCC 561

Sanchaita Investments of Calcutta was offering extraordinarily high rates of interest to attract cash deposits from the public. The Commercial Tax Officer, Bureau of Investigation suspected some fraud was being committed. He asked the police to register a First Information Report [FIR] on the grounds that such high rates of interest could not be sustained, therefore the deposit scheme was being promoted with the intention of making quick or easy money, in violation of the Prize Chits and Money Circulations Schemes [Banning] Act, 1978.

The police registered an FIR and started an investigation on the basis of the Commercial Tax Officer's suspicions. However, the High Court cancelled the FIR and subsequent police proceedings, saying that they were illegal and without jurisdiction. The State of West Bengal appealed to the Supreme Court against the decision of the High Court.

Supreme Court Observations

The police do not have "unfettered discretion" to start an investigation. Unlimited discretion, the Supreme Court said is a "ruthless destroyer of personal freedom" An investigation cannot be started on mere unfounded suspicion. They emphasised that fundamental principles of justice are based on the logic that the process of investigation cannot be used to harass people against whom no offence is disclosed. Carrying out investigation without a proper basis imperils the personal liberty and property of the individual, which are "sacred and sacrosanct"

The right of the police to conduct an inquiry must be conditioned by the existence of reason to suspect the commission of a cognizable offence. Such reason can be established only if facts in the FIR point towards an offence being committed. The Supreme Court laid down that an FIR which "does not allege or disclose that the essential requirements of the penal provision are *prima facie* [on the face of it] satisfied cannot form the foundation or constitute the starting point of a lawful investigation"

This case also re-examined the question of when the courts can interfere in the investigation process. The Supreme Court said, that if after considering all relevant aspects, the courts are satisfied that an offence has been committed, they will allow the investigation to proceed without interference. However, if no offence is disclosed, courts are under a duty to interfere and stop the investigation "to prevent any kind of uncalled for and unnecessary harassment to an individual"

Supreme Court Directives

1. It is essential before starting an investigation that facts mentioned in the FIR disclose all the elements that go to make up a cognizable offence.
2. Powers of investigation must be exercised in strict accordance with constitutional guarantees and legal provisions.

3. Courts have a duty to intervene in the investigation process to prevent harassment of individuals if their rights are being violated and correct procedure is not being followed.

Police officers often find themselves under pressure to register cases on flimsy grounds. The Supreme Court has laid down that a just balance has to be struck between fundamental rights of citizens and the expansive power of the police to investigate an offence.¹⁰ Subjecting a person to a police investigation on the basis of vague and unverified information is a violation of fundamental rights. It will only lead to censure and ordering of inquiry against the errant officer by the courts who are under a duty to ensure innocent people are not harassed by the investigative process.

¹⁰ T.T Anthony v State of Kerala AIR 2001 SC 2637

Investigation of Offences

T.T ANTHONY V STATE OF KERALA AIR 2001 SC 2637

In a well-known incident in Kannur district of Kerala, five persons were killed and several injured in police firing. The police fired in order to control activists belonging to the opposition, protesting the visit of a minister in the ruling UDF coalition. Cases were registered against eight named and many unidentified persons belonging to the opposition party for creating the disturbances that led to the police action. Meanwhile, due to public uproar, the UDF Government instituted a judicial inquiry into the incident. In the intervening period, the UDF lost the election and the opposition came to power. The report of the Commission of Inquiry, which was released after the new government came to power held the Executive Magistrate and the Deputy Superintendent of Police responsible for the deaths. The findings of the commission were accepted by the new government and cases were registered against the Executive Magistrate and the police officials involved in the firing. The Executive Magistrate and the police officials appealed to the Supreme Court after the High Court turned down their request for cancelling the cases against them.

The appeals raised two significant questions of law: (i) whether a second First Information Report [FIR] can be registered in respect of an offence that has already been registered, and if it can form the basis of a fresh investigation (ii) whether the report of a Commission of Inquiry into the same incident is binding upon the investigating agency.

Supreme Court Observations

(i) FIR [First Information Report] is the record of the information received first in time and is written and registered on the basis of that information. In other words, it is the record of the earliest information received about a cognizable offence. Therefore, the Supreme Court affirmed that the question of having a second FIR does not arise.

However, it is possible that more than one piece of information may be received from time to time and from different people in respect of the same incident. In such a situation, the Court clarified, that before submitting the Magistrate's report, the officer in charge of a police station must investigate □not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence□ They said that, if after filing the investigation report before the magistrate, the investigating officer comes across further information or material, □he [she] need not register a fresh FIR, he [she] is empowered to make further investigation, normally with the leave of the court□ to collect further evidence.

(ii) The Supreme Court said that the police is not bound by the findings of a Commission of Inquiry. The government for varied reasons of its own sets up a Commission of Inquiry and it is for them to endorse or reject the findings or recommendations. However, the police as an independent investigating agency of the State must act only in accordance with the law and on the evidence before it. Nevertheless the police can take advantage of the facts and findings of a Commission of

Inquiry as a factor in its own investigations but the findings should not preclude the investigating agency from forming a different opinion if the evidence obtained by it supports such a conclusion.

Supreme Court Directives

1. There can only be one FIR in respect of an incident.
2. If any additional information is received after the FIR is registered, the police can investigate on it and mention the result in the report to the magistrate¹¹ submitted by the investigating officer.
3. If the investigating officer comes across any evidence after the report to the magistrate has been sent, s/he can carry out further investigation and send supplementary reports to the magistrate.
4. Report of a Commission of Inquiry is not binding upon the investigating agency. The investigating agency can form a different opinion on the basis of evidence collected by it.

Registration of more than one FIR in respect of a particular incident has been disallowed by the Supreme Court. However, if any additional information is received in connection with the incident, it should be recorded under Sec 161 of the Code of Criminal Procedure, 1973 [CrPC]¹² and mentioned in the charge-sheet. The Supreme Court has categorically said that the police is under a duty to investigate not only the cognizable offences that are made out in the FIR but also any other offences that may have been committed in the same incident or transaction.

¹¹ Section 173 (2) (i) Criminal Procedure Code, 1973 [CrPC] requires the officer in charge of a police station to forward a report to the authorised magistrate in the prescribed form as soon as an investigation is completed. Section 173 (8) says that nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report has been filed before the magistrate. It also categorically says that after the report has been forwarded to the magistrate, if the officer in charge of the police station obtains further evidence, oral and documentary, s/he should forward report/s to the magistrate about the evidence.

¹² This section authorises an investigating officer to orally examine any person acquainted with the facts and circumstances of the case. Section 161 (2) obliges such person to truthfully answer all questions relating to the case put by the investigating officer except those which expose her/him to a criminal charge, penalty or forfeiture. Section 161 (3) empowers the investigating officer to reduce into writing any statement made to her/him in the course of investigation. It also casts a duty on the investigating officer to make a separate and true record of the statement that s/he has reduced into writing.

Right Against Self-Incrimination
NANDINI SATPATHY V P.L DANI AIR 1978 SC 1025

Nandini Satpathy - former Chief Minister of Orissa - against whom a case had been registered under the Prevention of Corruption Act, was asked to appear before the Deputy Superintendent of Police [Vigilance] for questioning. The police wanted to interrogate her by giving her a string of questions in writing. She refused to answer the questionnaire, on the grounds that it was a violation of her fundamental right against self-incrimination. The police insisted that she must answer their questions and booked her under Section 179 of the Indian Penal Code, 1860, which prescribes punishment for refusing to answer any question asked by a public servant authorised to ask that question.

The issue before the Supreme Court was whether Nandini Satpathy had a 'right to silence' and whether people can refuse to answer questions during investigation that would point towards their guilt.

Supreme Court Observations

Article 20 (3) of the Constitution lays down that no person shall be compelled to be a witness against her/himself. Section 161 (2) of the Code of Criminal Procedure, 1973 [CrPC], casts a duty on a person to truthfully answer all questions, except those which establish personal guilt to an investigating officer.

The Supreme Court accepted that there is a rivalry between societal interest in crime detection and the constitutional rights of an accused person. They admitted that the police had a difficult job to do especially when crimes were growing and criminals were outwitting detectives. Despite this, the protection of fundamental rights enshrined in our Constitution is of utmost importance, the Court said. In the interest of protecting these rights, "we cannot afford to write off fear of police torture leading to forced self incrimination"

While any statement given freely and voluntarily by an accused person is admissible and even invaluable to an investigation, use of pressure whether "subtle or crude, mental or physical, direct or indirect but sufficiently substantial" by the police to get information is not permitted as it violates the constitutional guarantee of fair procedure. The Supreme Court affirmed that the accused has a right to silence during interrogation if the answer exposes her/him into admitting guilt in either the case under investigation or in any other offence. They pointed out that ground realities were such that a police officer is a commanding and authoritative figure and therefore, clearly in a position to exercise influence over the accused.

Supreme Court Directives

1. An accused person cannot be coerced or influenced into giving a statement pointing to her/his guilt.
2. The accused person must be informed of her/his right to remain silent and also of the right against self incrimination.
3. The person being interrogated has the right to have a lawyer by her/his side if s/he so wishes.¹³
4. An accused person must be informed of the right to consult a lawyer at the time of questioning, irrespective of the fact whether s/he is under arrest or in detention.
5. Women should not be summoned to the police station for questioning in breach of Section 160 (1) CrPC.¹⁴

An essential element of a fair trial is that the accused cannot be forced to give evidence against her/himself. Forcing suspects to sign statements admitting their guilt violates the constitutional guarantee against self incrimination¹⁵ and breaches provisions of the Code of Criminal Procedure, 1973 [CrPC].¹⁶ It is also inadmissible as evidence in a court of law.¹⁷ In addition, causing 'hurt'¹⁸ to get a confession is punishable by imprisonment up to seven years.¹⁹

¹³ This has been clarified/modified in D.K Basu v State of West Bengal AIR 1997 SC 610. The Supreme Court has said that the "arrestee [arrested person] may be permitted to meet his lawyer during interrogation, though not throughout the interrogation". However, the National Human Rights Commission in its guidelines dated November 22, 1999 has insisted that, "the person arrested should be permitted to meet his [her] lawyer at any time during the interrogation".

¹⁴ Children below 15 and women should not be summoned to the police station or to any other place by an investigating officer. They should only be questioned at their place of residence.

¹⁵ Under Article 20 (3)

¹⁶ Section 162 (1) Code of Criminal Procedure, 1973 [CrPC] directs that a statement made to a police officer during investigation should not be signed by the person making it.

¹⁷ Section 25, Indian Evidence Act, 1872

¹⁸ Section 319 of the Indian Penal Code, 1860 defines "hurt" as causing bodily pain, disease or infirmity to any person.

¹⁹ Section 330, Indian Penal Code 1860

Telephone Tapping

**PEOPLE’S UNION FOR CIVIL LIBERTIES [PUCL] V UNION OF INDIA AND
ANOTHER AIR 1997 SC 568**

The People’s Union for Civil Liberties [PUCL] filed a writ petition with the Supreme Court challenging the constitutional validity of Section 5(2) of the Indian Telegraph Act, 1882, which authorises the government to intercept messages “on the occurrence of any public emergency or in the interest of public safety” if it is satisfied that it is “necessary or expedient to do so” in five given situations.²⁰ PUCL approached the Court on the basis of a report on tapping of politicians’ telephones by the Central Bureau of Investigation [CBI]. It asked for the provisions of Section 5(2) to be interpreted in the light of fundamental rights and read down to include procedural safeguards that would discount arbitrariness and prevent indiscriminate phone tapping by law enforcement or investigating agencies.

Supreme Court Observations

The right to have a telephone conversation in the privacy of one’s home or office is part of the Right to Life and Personal Liberty enshrined in Article 21 of the Constitution, which cannot be curtailed except “according to the procedure established by law”. The Supreme Court asserted that telephone tapping amounts to an invasion of privacy in violation of this core right.

The Freedom of Speech and Expression guaranteed by Article 19 of the Constitution includes the right to express one’s convictions and opinions freely by word of mouth. When a person is talking on the telephone s/he is exercising this freedom.

Article 17 of the International Covenant on Civil and Political Rights, 1966 expressly forbids arbitrary interference with privacy, family, home or correspondence and stipulates that everyone has the right to protection of the law against such intrusions. The Supreme Court affirmed that international law, if it does not conflict with national legislation will be deemed as municipal [domestic/national] law.

Elaborating the scope of Section 5 (2) of the Indian Telegraph Act, 1882 the Court clarified that this section “does not confer unguided and unbridled power” on investigating agencies to invade a person’s privacy. Telephone tapping is only permitted in the following two circumstances:

- (i) ‘on the occurrence of a Public Emergency’ : This means “the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action”.
- (ii) ‘in the interest of Public Safety’ : This means “the state or condition of freedom from danger for the people at large”.

The test of whether the above circumstances exist would be “apparent to a reasonable person”. The Supreme Court strongly asserted, that if the two circumstances are not in

²⁰ In the interests of (i) the sovereignty and integrity of India (ii) the security of the State (iii) friendly relations with foreign States (iv) public order (v) preventing incitement to the commission of an offence

existence, the Central or State Government or their duly authorised officers cannot resort to phone tapping²¹

Supreme Court Directives

1. Tapping of telephones is prohibited without an authorising order²² from the Home Secretary, Government of India or the Home Secretary of the concerned State Government.²³
2. The order, unless it is renewed shall cease to have authority at the end of two months from the date of issue. Though the order may be renewed, it cannot remain in operation beyond six months.
3. Telephone tapping or interception of communications must be limited to the address(es) specified in the order or to address(es) likely to be used by a person specified in the order.
4. All copies of the intercepted material must be destroyed as soon as their retention is not necessary under the terms of Section 5 (2) of the Indian Telegraph Act, 1882.

*The right to privacy is a sacred and cherished right. There must be strong, cogent and legally justifiable reasons for law enforcement agencies to interfere with this right. Even then, proper procedure must be followed as intrusion into a person's home, professional or family life in the name of investigation or domiciliary visits - without a proper basis- is not permitted.*²⁴

²¹ In the five given situations allowed by Section 5 (2) of the Indian Telegraph Act, 1882

²² Under Section 5(2) of the Indian Telegraph Act, 1882

²³ In an urgent case, this power may be delegated to an officer of the Home Department, Government of India or the Home Department of the State government, who is not below the rank of Joint Secretary. Copy of this order should be sent to the concerned Review Committee within one week of passing of the order. This Review Committee shall consist of the Cabinet Secretary, Law Secretary and the Secretary Telecommunications at the Central Government. At the state level, the Committee shall comprise of Chief Secretary, Law Secretary and another member (other than the Home Secretary) appointed by the State Government. The Committee shall on its own, within two months of the passing of an order under Section 5 (2) investigate whether its passing is relevant. If an order is in existence, the Committee should find out whether there has been a contravention of the provisions of Section 5 (2). If the Review Committee on investigation concludes that provisions of Section 5 (2) have been contravened, it shall direct destruction of the copies of the intercepted material.

²⁴ Kharak Singh v State of Uttar Pradesh and Others (1964) 1 SCR 332

Rape Victims

**DELHI DOMESTIC WORKING WOMEN'S FORUM V UNION OF INDIA &
OTHERS 1995 SCC 14**

The Delhi Domestic Working Women's Forum was pursuing a case in which six girls - belonging to a tribal community - travelling by train from Ranchi to New Delhi were molested and raped by a group of army men in their compartment. Though they were beaten and threatened by the culprits, the girls did register a First Information Report [FIR]. However, because the investigations and trial dragged on for over six months, the girls who worked in New Delhi as domestic help were not able to actively assist in the prosecution of the case, which was being carried out in Aligarh, Uttar Pradesh.

Concerned over unnecessary delays, particularly in the investigation and trial of rape cases, the Forum petitioned the Supreme Court to frame guidelines for ensuring a speedy trial so that rape victims are not needlessly harassed and allowed to get on with their lives.

Supreme Court Observations

□Speedy trial is one of the essential requisites of law□ the Court asserted. In rape cases, the course of justice cannot be frustrated by prolonged investigations. They said that it is important that investigations and trials should be carried out expeditiously, otherwise the guarantee of 'equal protection of law' under Article 14 and the guarantee of 'life and personal security' under Article 21 of the Constitution are meaningless.

Noting the seriousness of the crime, the Supreme Court said that rape shakes the very foundations of victims' lives. For many, its effects are long-term and so sustained that they face difficulty in having personal relationships; their behaviour and values are altered; and they suffer from constant fear and anxiety.

In addition to the trauma of rape itself, □victims have to suffer further agony during legal proceedings□as complaints are handled roughly and not given the attention that they deserve. Victims are more often than not humiliated by the police and the experience of giving evidence in court is so distressing, that it puts severe psychological stress on them. Because, many of them feel re-victimized after reporting the crime, the Supreme Court laid down specific guidelines on how to deal with rape victims, which are given below:

Supreme Court Directives²⁵

1. As soon a rape victim reports the crime at the police station, she must be informed about her right to get a lawyer before any questions are asked of her. The fact that she was informed of this right must be mentioned in the police report.
2. The police should make arrangements to provide the victim with a lawyer if she does not have access to one.
3. Every police station must maintain a list of lawyers capable enough to explain the nature of proceedings to the victim; prepare her for the case; assist her in court and in the police station; and provide guidance on agencies and organizations that help in counselling and rehabilitation of rape victims.
4. The lawyer so chosen by the police to assist the victim must be approved by the court. However, in order to ensure victims are questioned without undue delay, the lawyer may be authorised to act at the police station before permission of the court is taken.
5. In all rape trials, anonymity of the victim must be maintained.

Rape cases require extra sensitivity from the police. Care must be taken to see that the victim is not made to feel small or uncomfortable and her statement is recorded by a woman. Unnecessary references and passing of derogatory remarks that the victim contributed to the crime is not permitted. A rape is a rape no matter what the reputation or profession of the victim is.²⁶

The law favours protection of the victim. It lays down that inquiry and trial of rape cases should be held 'in camera'²⁷ [closed court] and that her identity should not be disclosed to the media.²⁸

²⁵ Apart from the under-mentioned directives, the Supreme Court has also given other directives, which though not directly related with the police, are of significance. They have recommended setting up of a Criminal Injuries Compensation Board to award compensation to the victim whether or not the prosecution is able to secure a conviction. The compensation amount should take into account the pain, suffering, shock, loss of earning capacity and expenses that may have been incurred on account of child birth if the victim has become pregnant. They have also directed that compensation for the victims must be ordered by the courts on conviction of the offender.

²⁶ Section 155(4) of the Indian Evidence Act, 1872 which allowed admittance of the sexual history and reputation of the complainant in court has been scrapped.

²⁷ Section 327(2) Code of Criminal Procedure, 1973 [CrPC]

²⁸ Section 327(3) CrPC

JOGINDER KUMAR V STATE OF U.P AND OTHERS 1994 SCC 260

Joginder Kumar, a young lawyer aged 28 was called to the office of the Senior Superintendent of Police [SSP], Ghaziabad in connection with “some inquiries”. He was accompanied by friends and his brother, who were told by the police that he would be released in the evening. But Joginder Kumar was taken to a police station with the assurance that he would be released the next day. Next day, too he was not released as the police wanted his help in making “further inquiries”. When his family went to the police station on the third day, they found that he had been taken to an undisclosed location. In effect, Joginder Kumar was illegally detained over a period of five days.

His family had to file a habeas corpus writ petition with the Supreme Court to find out his whereabouts. The Court issued notices to the State of Uttar Pradesh and to the SSP to immediately produce Joginder Kumar and answer why he was detained for five days without a valid reason; why his detention was not recorded by the police in its diary; and why he was not produced before a magistrate.

Supreme Court Observations

Rejecting the police version that Joginder Kumar was cooperating with them out of his own free will, the Court said that “the law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively....”

They pointed out that the Third Report of the National Police Commission identifies wrongful use of arrest powers as one of the chief sources of corruption in the police and that nearly 60% arrests made by police officers are unnecessary and unjustified. Strongly opposing the practice of carrying out indiscriminate arrests, the Supreme Court said that an arrest cannot be made simply because it is lawful for a police officer to do so. “The existence of the power to arrest is one thing.... the justification for the exercise of it is quite another.. ..the police officer must be able to justify the arrest....”

Arrest and detention in police lock up can cause incalculable harm to the reputation and self-esteem of a person. Therefore, arrests should not be made in a routine manner on mere allegation that a person has committed an offence. If police officers do not wish to face legal or disciplinary action, they should see that arrests are made only after reaching a “reasonable satisfaction” about the complaint being true and the case being *bonafide* [genuine]. Even then, the Court said that the officer making the arrest must function under a “reasonable belief” both as to the person's complicity in committing the offence and the need to effect an arrest.

Supreme Court Directives

1. Arrests are not be made in a routine manner. The officer making the arrest must be able to justify its necessity on the basis of some preliminary investigation.

2. An arrested person should be allowed to inform a friend or relative about the arrest and where s/he is being held.²⁹ The arresting officer must inform the arrested person when s/he is brought to the police station of this right and is required to make an entry in the diary as to who was informed.
3. It is the duty of the magistrate before whom the arrested person is produced to satisfy her/himself that the above requirements have been complied with.

Arrests should not be made, unless they are absolutely necessary and there is no other way except arresting the accused to ensure her/his presence before the criminal justice system or to prevent her/him from committing more crimes or tampering with evidence or intimidating witnesses. Unnecessary and unjustified arrests lead to harassment and loss of faith in the system. They also account for 43.2 % expenditure in jails according to the Third Report of the National Police Commission.³⁰

On the other hand, corruptly or maliciously detaining people without recording an arrest is punishable by a maximum sentence of seven years.³¹

²⁹ Article 22 (1) of the Constitution lays down that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of arrest nor shall s/he be denied the right to consult and be defended by a legal practitioner of choice.

³⁰ Government of India, 1980, page 31

³¹ Section 220 Indian Penal Code, 1860

Arrest Procedure, Custodial Violence and Compensation
D.K BASU V STATE OF WEST BENGAL AIR 1997 SC 610

D.K Basu - Executive Chairman of Legal Aid Services, West Bengal - wrote a letter to the Chief Justice of India, saying that torture and deaths in police custody are widespread and efforts are often made by the authorities to hush up the matter. Because of this, custodial crime goes unpunished and therefore “flourishes”. Some newspaper reports published in the Telegraph, Statesman and Indian Express newspapers were also attached to support the contention. Basu urged the Supreme Court to examine the issue in depth and (i) develop ‘custody jurisprudence’ and lay down principles for awarding compensation to the victims of police atrocities (ii) formulate means to ensure accountability of those responsible for such occurrences.

The Supreme Court treated the letter as a writ petition. While the writ was under consideration, the Supreme Court received another report about a death in police custody in Uttar Pradesh. This prompted the Court to issue notices to all state governments and the Law Commission of India to submit suggestions on how to combat this all-India problem.

Supreme Court’s Observations

“Custodial torture is a naked violation of human dignity□ the Supreme Court said. The situation is aggravated when violence occurs within the four walls of a police station by those who are supposed to protect citizens. The Court accepted that the police have a difficult task in light of the deteriorating law and order situation; political turmoil; student unrest; and terrorist and underworld activities. They agreed that the police have a legitimate right to arrest a criminal and to interrogate her/him in the course of investigation. However, the law does not permit the use of third degree methods or torture on an accused person. □Actions of the State must be right, just and fair; torture for extracting any kind of confession would neither be right nor just nor fair□

(i) The Right to Life guaranteed by our Constitution includes the right to live with human dignity. The State is not only obliged to prosecute those who violate fundamental rights, it also has a duty to pay monetary compensation to repair the wrong done by its agents in not being able to discharge their public duty of upholding people’s rights. Compensation, the Court said, is not be paid by way of damages as in a civil case [the victim is free to file a civil case to privately recover damages from the wrongdoer for loss of earning capacity] but under public law for breach of duty by the State in not being able to protect its citizens. However, there can be no strait-jacket formula as each case has its own peculiar facts and circumstances.

(ii) The Court recognised that the worst violations of human rights take place during investigation when the police use torture and third degree methods to get confessions. In such instances, arrests are either disguised by not recording them or showing detention as prolonged interrogation. The Court stressed that no matter what the circumstances, the State or its agents are not allowed to assault or torture people. They

then laid down an elaborate set of guidelines in respect of arrest and interrogation. The Court directed that the guidelines – which are given below – should be circulated to the Director General of Police and the Home Secretary of every state and union territory and it shall be their obligation to have them put up in every police station at a conspicuous place.

Supreme Court Directives

1. Use of third degree methods or any form of torture to extract information is not permitted.
2. Police personnel carrying out arrest and interrogation must bear accurate, visible and clear identification / name tags with their designations.
3. Particulars of all personnel handling interrogation of an arrested person must be recorded in a register.
4. A memo of arrest stating the time and place of arrest must be prepared by the police officer carrying out an arrest. It should be attested by at least one witness who is either a family member of the arrested person or a respectable person from the locality where the arrest is made. The memo should also be counter-signed by the arrested person.
5. The arrested or detained person is entitled to inform a friend, relative or any other person interested in her/his welfare about the arrest and place of detention as soon as practicable. The arrested person must be made aware of this right as soon as s/he is arrested or detained.
6. The arrested person may be allowed to meet her/his lawyer during interrogation but not throughout the interrogation.
7. The time, place of arrest and venue of custody of the arrested person must be notified by telegraph to next friend or relative of the arrested person within 8-12 hours of arrest in case such person lives outside the district or town. The information should be given through the District Legal Aid Organisation and police station of the area concerned.
8. An entry must be made in the diary at the place of detention in regard to the arrest. The name of the friend/relative of the arrested person who has been informed and the names of the police personnel in whose custody, the arrested person is being kept should be entered in the register.
9. The arrested person should be examined by a medical doctor at the time of arrest if s/he so requests. All bodily injuries on the arrested person should be recorded in the 'inspection memo' which should be signed by both the arrested person and the police officer making the arrest. A copy of the memo should be provided to the arrested person.
10. The arrested person should be subject to a medical examination every 48 hours by a trained doctor who has been approved by the State Health Department.
11. Copies of all documents relating to the arrest including the memo of arrest should be sent to the Area Magistrate for her/his record.
12. A police control room should be provided at all district and state headquarters where information regarding arrests should be prominently displayed. The police

- officer making the arrest must inform the police control room within 12 hours of the arrest.
13. Departmental action and contempt of court proceedings should be initiated against those who fail to follow above-mentioned directives.

Failure to follow proper procedure while arresting and interrogating suspects is a very serious matter. D.K Basu's case lays down specific guidelines that must be followed while arresting and interrogating suspects. These guidelines are based on Code of Criminal Procedure, 1973 [CrPC] provisions and are very much a part of regulations laid down in police manuals and rule books. The Supreme Court has said that failure to comply with these guidelines not only renders an officer liable for punishment through departmental action but also amounts to 'contempt of court'.³²

³² Proceedings under the Contempt of Courts Act, 1971 can be started in any High Court

Treatment of Women and Legal Aid
SHEELA BARSE V STATE OF MAHARASHTRA 1983 SCC 96

Sheela Barse - a journalist and activist for prisoners' rights - wrote to the Supreme Court saying that of the 15 women prisoners interviewed by her in Bombay Central Jail, five admitted that they had been assaulted in police lock-up. Given the seriousness of the allegations, the Court admitted a writ petition on the basis of the letter and asked the College of Social Work, Bombay to visit the Central Jail to find out whether the allegations were true. The College submitted a detailed report which, in addition to admitting that excesses against women were taking place, pointed out that arrangements for providing legal assistance to prisoners were inadequate.

Supreme Court Observations

Failure to provide legal assistance to poor and impoverished persons violates constitutional guarantees. Article 39-A [Directive Principle of State Policy] casts a duty on the State to secure the operation of a legal system that promotes justice on the basis of equal opportunity. The right to legal aid is also a fundamental right under articles 14 [Equality before Law] and 21 [Right to Life and Personal Liberty].

The Court expressed serious concern about the plight of prisoners, unable to afford legal counsel to defend themselves. They said that not having access to a lawyer was responsible for individual rights against harassment and torture not being enforced.

Stressing the urgent need to provide legal aid not only to women prisoners but to all prisoners whether they were undertrials or were serving sentences, the Court said that an essential requirement of justice is that every accused person should be defended by a lawyer. Denial of adequate legal representation is likely to result in injustice, and "every act of injustice corrodes the foundations of democracy and rule of law...."

Expressing serious concern about the safety and security of women in police lock-up, the Supreme Court directed that a woman judge should be appointed to carry out surprise visits to police stations to see that all legal safeguards are being enforced.

Supreme Court Directives

1. Female suspects must be kept in separate lock-ups under the supervision of female constables.
2. Interrogation of females must be carried out in the presence of female policepersons.
3. A person arrested without a warrant must be immediately informed about the grounds of arrest and the right to obtain bail.
4. As soon as an arrest is made, the police should obtain from the arrested person, the name of a relative or friend whom s/he would like to be informed about the arrest. The relative or friend must then be informed by the police.
5. The police must inform the nearest Legal Aid Committee as soon as an arrest is made and the person is taken to the lock-up.

6. The Legal Aid Committee should take immediate steps to provide legal assistance to the arrested person at State cost, provided such person is willing to accept legal assistance.
7. The magistrate before whom an arrested person is produced shall inquire from the arrested person whether s/he has any complaints against torture and maltreatment in police custody. The magistrate shall also inform such person of her/his right to be medically examined.³³

Women in custody are particularly vulnerable to physical and sexual abuse. Courts take a very serious view of complaints regarding custodial rape³⁴ or harassment. Of late, the National and State Human Rights Commissions and the Women's Commission are also playing an increasingly proactive role to see such instances do not go unpunished. It is the duty of the officer in-charge of a police station/post to ensure that women are not harmed and searches of their person are carried out only by women with strict regard to decency.³⁵

³³ Section 54 Code of Criminal Procedure, 1973 [CrPC] confers the right to an arrested person to get her/himself medically examined to afford evidence to disprove the commission of an offence by her/him or establish the commission of an offence by any other person against her/his body. The arrested person can ask to be medically examined either at the time s/he is produced before a magistrate or at any time during the period of detention.

³⁴ Custodial Rape is punishable by a minimum of ten years rigorous imprisonment under Section 376 (2) of the Indian Penal Code, 1860

³⁵ Section 51 (2) CrPC

Preventive Detention

ICCHU DEVI CHORARIA V UNION OF INDIA 1980 SCC 531

Mahendra Choraria, who was accused with smuggling, was put in preventive detention by the Customs Department under a special Act [COFEPOSA].³⁶ The Customs Department detained him on the basis of two tape-recorded conversations, some documents and statements of several persons.

Choraria argued before the Supreme Court in a writ petition that his detention was illegal because he was not provided with copies of statements, documents and other materials that were being relied upon to detain him. The petition maintained that undue delay in providing these materials amounted to denying him an opportunity to make a representation before a court against his detention.

Supreme Court Observations

Article 22 (5) of the Constitution lays down that whenever a person is preventively detained under a special law, the detaining authority should as soon as possible communicate to the arrested person, the grounds of detention and afford her/him the earliest opportunity to make a representation against the detention.

The Supreme Court asserted that if the detaining authority wants to preventively detain a person, it must do so "in accordance with the provisions of the Constitution and the law and if there is any breach of any such provision, the rule of law requires that the detenu [detained person] must be set at liberty...." They said that it was the duty of the courts to satisfy themselves that all procedural safeguards have been observed in this respect.

Though COFEPOSA was framed to eradicate the evil of smuggling, the Court said that it must not be forgotten that "the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil" Detaining people without trial constitutes an encroachment on personal liberty - one of the most cherished values of humankind. They said that personal liberty is a most precious possession, life without it would not be worth living. Therefore, the courts have a duty to uphold it.

Prescribing the under-mentioned procedure, the Supreme Court affirmed that the law laid down in this case would be equally applicable in the event of preventive detention under any other Act.

Supreme Court Directives

1. The detained person must be supplied copies of documents, statements and other materials on the basis of which s/he is being detained, without delay.
2. The authorities who have preventively detained a person must consider the representation of the detained person against the detention as soon as possible.

³⁶ COFEPOSA- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 is one of several special Acts.

3. The burden of proving that the detention is in accordance with the procedure established by law lies on the detaining authority.

Preventive detention is not allowed under normal circumstances. It has to be authorised under a special Act. Even if an Act specifically provides for preventive detention, the officer who has preventively detained a person must furnish convincing proof to the magistrate that the detained person constitutes a threat to society, and all the procedural requirements of the Act have been satisfied. The detaining officer must also provide the detained person copies of the statements, documents or other proof on the basis of which s/he has been preventively detained. This is part of the detained person's fundamental right to make a representation against the detention.³⁷

³⁷ Article 22(5) of the Constitution: Protection against arrest and detention in certain cases

Preventive Arrest and Bonds for Good Behaviour
GOPALANACHARI V STATE OF KERALA 1980 SCC 649

Gopalanachari, a 71 year old man wrote to the Supreme Court that he was wrongly imprisoned in Kottayam sub-jail, Kerala after being picked up by the police. He was charged under Section 110 of the Code of Criminal Procedure, 1973 [CrPC]. This section is supposed to be used by the police for making people whom they believe to be “habitual offenders, desperate or dangerous persons” execute a bond for “good behaviour” before the Executive Magistrate. Gopalanachari wrote that though he could not hear or see properly and constituted no threat to the community, yet he was taken before the magistrate. The police told the magistrate that he was an ex-criminal, trying to conceal his presence from a night patrol and on being questioned did not give his correct name and address. Therefore, he should only be released after he executed a bond that he will not indulge in any criminal or anti-social activities over the next two years.

Because, he was unable to immediately arrange for bail and execute the bond, the magistrate sent Gopalanachari to prison. The Supreme Court admitted his petition and asked the State of Kerala give a list of prisoners charged under Section 110 CrPC in Kottayam sub-jail. The Court was informed that there were six such prisoners in the sub-jail and some of them had been lodged there for several months.

Supreme Court Observations

Police powers must be exercised in accordance with the Right to Life and Personal Liberty guaranteed by Article 21 of the Constitution. Actions of the State or its agents must be [right, just and fair; and not arbitrary; fanciful or oppressive] the Supreme Court asserted.

Using Section 110 CrPC to harass innocent people violates the spirit of the law. Shocked to discover that there were others like Gopalanachari, the Court said that [if men can be whisked away by the police and imprisoned for long months and the court can keep the cases pending without thought...fundamental rights remain symbolic and scriptural....]

They said, unless this section is prevented from misuse, many a poor person can be imprisoned by being labelled [‘habitual’, ‘desperate’ or ‘dangerous’]. It is not permitted in our free Republic to pick up homeless people or have-nots under the pretext of Section 110 CrPC. To be poor is not a crime in this country.

The Supreme Court directed magistrates to be vigilant and ensure Section 110 is not used randomly as a matter of routine. Courts must insist on [convincing testimony] and should not accept readily produced, made to order testimony as was given by the police in this case. [To call a man dangerous is in itself dangerous; to call a man desperate is to affix a desperate adjective; to stigmatise a person as hazardous to the community is itself a judicial hazard; unless compulsive testimony carrying credence is abundantly available]

Supreme Court Directives

1. The person being charged under Section 110 and other preventive sections of the CrPC must constitute a "clear and present" danger to society.
2. The police must lay out specific facts before the magistrate showing why the person is a threat to the community and should be made to sign a bond for good behaviour.
3. The person undergoing proceedings under Section 110 CrPC must be provided with legal aid.
4. The magistrate is under a duty to make sure that Section 110 CrPC is not misused by the police.

Preventive powers under Sections 107³⁸ 109³⁹ & 110 CrPC should be exercised with due caution. Care must be taken to ensure innocent persons are not harassed and presented before magistrates for executing good behaviour bonds under the garb that they are suspected persons or habitual offenders. Power of preventive arrest under Section 151 CrPC⁴⁰ should not be used randomly by the police to pick people off the streets, especially those belonging to economically weaker sections of society. Unjustified use of these sections can invite judicial scrutiny. Magistrates have a duty to ensure that preventive sections are not being misused by police officers.

³⁸ Section 107 of the Code of Criminal Procedure, 1973 [CrPC] is supposed to be used by the police to make a person whom they believe is likely to commit a breach of peace; disturb public tranquility; or do a wrongful act - that may cause peace to be breached or public tranquility to be disturbed - execute a bond for "keeping the peace" before the Executive Magistrate.

³⁹ Section 109 CrPC is supposed to be used by the police to make a person whom they believe is taking precautions to conceal her/his presence with a view to committing a cognizable offence, execute a bond for "good behaviour" before the Executive Magistrate.

⁴⁰ Section 151 CrPC authorises a police officer, knowing of a design to commit a cognizable offence, to arrest the person designing to commit the offence, if it appears that commission of the offence cannot otherwise be prevented. This section is often misused.

PREM SHANKAR SHUKLA V DELHI ADMINISTRATION 1980 SCC 526

Prem Shankar Shukla - an undertrial prisoner at Tihar Jail - sent a telegram to the Supreme Court that he and some other prisoners were being forcibly handcuffed when they were escorted from prison to the courts. Shukla pleaded that routine handcuffing and chaining of prisoners was continuing despite the Supreme Court directive in Sunil Batra's case⁴¹ that fetters/handcuffs should only be used if a person "exhibits a credible tendency for violence or escape".

Supreme Court Observations

Using handcuffs and fetters [chains] on prisoners violates the guarantee of basic human dignity, which is part of our constitutional culture, the Supreme Court said. This practice does not stand the test of articles 14 [Equality before law], 19 [Fundamental Freedoms] and 21 [Right to Life and Personal Liberty].

□To bind a man hand and foot; fetter his limbs with hoops of steel; shuffle him along in the streets; and to stand him for hours in the courts, is to torture him; defile his dignity; vulgarise society; and foul the soul of our constitutional culture□ Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that □to manacle a man is more than to mortify him; it is to dehumanise him; and therefore to violate his very personhood....□

They rejected the argument of the State that handcuffs are necessary to prevent prisoners from escaping. □Insurance against escape does not compulsorily require handcuffing...there are other methods whereby an escort can keep safe custody of a detenu [detained person] without the indignity and cruelty implicit in handcuffs and other iron contraptions□

The Supreme Court asserted that even orders from superiors are not a valid justification for handcuffing a person. Constitutional rights cannot be suspended under the garb of following orders issued by a superior officer. There must be reasonable grounds to believe the prisoner is so dangerous and desperate that s/he cannot be kept in control except by handcuffing.

Supreme Court Directives

1. Handcuffs are to be used only if a person is:
 - a) involved in serious non-bailable offences,⁴² has been previously convicted of a crime; and/or
 - b) is of desperate character- violent, disorderly or obstructive; and/or
 - c) is likely to commit suicide; and/or
 - d) is likely to attempt escape.
2. The reasons why handcuffs have been used must be clearly mentioned in the Daily Diary Report. They must also be shown to the court.

⁴¹ Sunil Batra v Delhi Administration 1978 SCC 494

⁴² Non-bailable offences are laid out in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC]. Bail in such offences is given at the discretion of the police or the court.

3. Once an arrested person is produced before the court, the escorting officer must take the court's permission before handcuffing her/him to and fro from the court to the place of custody.
4. The magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation.

Use of handcuffs, chains or ropes to bind prisoners amounts to inhuman treatment. The rule regarding handcuffs is that they should never be used as a matter of routine. Their use is permitted only in exceptional cases and that too with judicial permission, on the grounds that the person poses a 'clear and present' danger and there are genuine reasons to believe that s/he will attempt escape.

CITIZENS FOR DEMOCRACY V STATE OF ASSAM 1995 SCC 743

Kuldip Nayar - eminent journalist and president of 'Citizens for Democracy' - wrote to the Supreme Court that he saw seven TADA detainees⁴³ handcuffed and tied to a hospital bed in Guwahati. He said that this was done despite the fact that the room in which they were being held, had iron bars, was locked and was guarded by a posse of armed policemen.

Nayar wrote that he failed to understand how the Assam Government could treat people in this manner despite court directives to the contrary. The government in its defence said that the detainees were hardcore terrorists belonging to the United Liberation Front of Assam [ULFA] and many dreaded members of this organisation had previously escaped from custody.

Supreme Court Observations

Reiterating the principle in Premshankar Shukla's case,⁴⁴ the Supreme Court said that indiscriminate use of handcuffs is inhuman, unreasonable and arbitrary.

Relevant considerations for putting a prisoner in chains are □ character, antecedents and propensities □ Peculiar and special characteristics of each individual have to be taken into consideration. Laying down the law on use of handcuffs, the Court said that the □ nature and length of sentence; or number of convictions; or gruesome character of the crime are not by themselves relevant consideration □

The Supreme Court said it understood that the police and jail authorities have a public duty to ensure safe custody of prisoners and must prevent them from escaping. However, prisoners' rights guaranteed by the Constitution cannot be trampled upon. While suitable measures can be taken to reduce the likelihood of detainees' escaping, use of fetters or chains □ purely at the whims or subjective discretion of authorities is not permissible □

As a rule, handcuffs or fetters must not be used on an undertrial or on a convicted prisoner whether in jail or when being taken to court, without authorisation of a magistrate. This authorisation may be given in cases where the police or jail authorities have a □ well grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of custody □

Supreme Court Directives

1. It is necessary to take the magistrate's permission before handcuffing a person who has been remanded to judicial or police custody.
2. A person arrested in the execution of an arrest warrant [issued by a magistrate] must not be handcuffed unless prior permission has been taken from the magistrate.

⁴³ Terrorist and Disruptive Activities (Prevention) Act, 1987, which was specially designed to control insurgency/militant activities.

⁴⁴ Prem Shankar Shukla v Delhi Administration 1980 SCC 526

3. In an arrest without warrant, the police is only allowed to handcuff on the basis of concrete proof that the person is prone to violence; has a tendency to escape; or is so dangerous and desperate that there is no other practical way to restrain her/his movement. Even then the officer may use handcuffs only till the time the person is taken to the police station and thereafter to the magistrate's court.
4. Violation of the Court's directives by a police officer of whatever rank or any member of the jail establishment is punishable summarily under Contempt of Courts Act, 1971 in addition to other provisions of the law.

Handcuffing without a magistrate's approval is not permitted, save in rare instances. In such instances, the burden of proving that the use of handcuffs was warranted lies on the police. If the detaining authority or escort party fail to satisfy the court about the genuineness of the danger or threat posed by the person who was handcuffed, they will be liable under law.⁴⁵

⁴⁵ Sunil Batra v Delhi Administration 1978 SCC 494

Bail and Bonds

HUSSAINARA KHATOON AND OTHERS V HOME SECRETARY STATE OF BIHAR AIR 1979 SC 1360

The Supreme Court admitted a writ petition to look into the administration of justice in Bihar after the Indian Express published a series of news items about appalling conditions in Bihar jails. The paper reported that a large number of people, including women and children had been in prison for years without trial. Even though some of them were charged with minor offences carrying punishment for a few months or couple of years at best, these people had been in jail awaiting trial for periods ranging from three to ten years.

Supreme Court Observations

Article 21 of the Constitution lays down that no one shall be deprived of their life or personal liberty "except according to the procedure established by law" The procedure should be "reasonable, fair and just"⁴⁶ otherwise such deprivation would be illegal.

The Supreme Court said that it is a "travesty of justice" that certain persons end up spending extended time in custody, not because they are guilty but because the courts are too busy to try them, and they as the accused are too poor to afford bail. Poor people find it difficult to arrange for bail, because quite often the bail amount fixed by the magistrate or the police is "unrealistically excessive" This happens due to bail being given using a property-oriented approach. Such an approach is based on the wrong assumption that risk of monetary loss is the only deterrent that prevents a person from fleeing the judicial process.

The Supreme Court said that it was saddened that even after re-enactment in 1974,⁴⁷ the Code of Criminal Procedure, 1973 [CrPC] continues to require people to be released on a personal bond that pledges a certain amount of money. While they expressed the hope that the Parliament would bring about suitable amendments in the law, the Court asserted that even "under the law as it stands today, courts must abandon the antiquated concept under which pre-trial release is ordered only against bail with sureties" They affirmed that what they have said in relation to the courts also applies to the police.

Supreme Court Directives

1. If the accused have roots in the community that would deter them from fleeing, they may be released on bail by furnishing a personal bond without sureties. The following facts may be taken into account in this regard:

⁴⁶ Maneka Gandhi v Union of India 1978 SCC 248

⁴⁷ From the old Code of Criminal Procedure, 1898, which was enacted by the British. Though this Code did get amended many times, most notably in 1923 and 1955, many of its provisions remained unchanged till the Code of Criminal Procedure, 1973 [CrPC] was enacted on January 25, 1974.

- i. the length of residence of the accused in the community
 - ii. the employment status and history of the accused
 - iii. family ties and relationships of the accused
 - iv. the reputation, character and monetary condition of the accused
 - v. any prior criminal record including record of prior release on bail
 - vi. the existence of responsible persons in the community who can vouch for the reliability of the accused
 - vii. the nature of the offence that the accused is charged with; probability of conviction; and likely sentence insofar as these are relevant to risk of non-appearance of the accused
2. The bond amount should not be based merely on the nature of the charge but should be fixed keeping in mind the individual financial circumstances of the accused.

If the offence is bailable,⁴⁸ the police is duty bound to release the arrested person if s/he is willing to give bail.⁴⁹ In addition, the amount of bail should be decided keeping in mind the paying capacity of the accused.⁵⁰ Far too many people spend time in prison simply because the bail amount is fixed too high, and they are unable to arrange for the money. Police officers and magistrates have a duty to see that bail conditions are not so harsh, that the very purpose behind giving bail is defeated. The High Court and the Sessions Court are empowered to reduce the bail amount fixed by the police or the magistrate.⁵¹

⁴⁸ Bailable offences are laid out in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC]. Bail may be claimed as a matter of right in bailable offences.

⁴⁹ Section 436 (1) Code of Criminal Procedure, 1973 [CrPC]

⁵⁰ Section 440 (1) CrPC lays down that the amount of bail bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.

⁵¹ Section 440 (2) CrPC

MOTIRAM AND OTHERS V STATE OF M.P AIR 1978 SC 1594

Motiram, a mason appealed to the Supreme Court that despite being granted bail by the Court, he was unable to secure his release because the Chief Judicial Magistrate fixed an exorbitant sum of Rs 10,000, as the surety amount. Motiram said that the magistrate rejected the suretyship offered by his brother simply because his brother resided in another district and his assets were located there. Motiram wanted the Supreme Court to either reduce the surety amount or order his release on a personal bond.

The Court had to decide: (i) whether a person can be released on bail under the Code of Criminal Procedure, 1973 [CrPC] on a personal bond, without having to get people to stand as surety for her/him (ii) the criteria for fixing the bail amount (iii) whether a surety offered by a person can be rejected because s/he resides in a different district or state or because her/his property is situated in a different district or state.

Supreme Court Observations

Article 14 [Equality before Law] of the Constitution protects all citizens within the territory of India, the Supreme Court asserted. Many a poor person is forced into [cellular servitude for little offences because trials never conclude] and bail amounts are fixed [beyond their meagre means]

The Court observed that the [poor were being priced out of their liberty in the justice market] Whenever, excessive amounts are fixed as surety for bail, the victims invariably happen to be from disadvantaged sections of society; belong to linguistic or other minorities; or are from far corners of the country.

(i) Bail provisions contained in Chapter XXXIII⁵² of the CrPC must be liberally interpreted in the interest of social justice, individual freedom and indigent persons' rights⁵³ to enable release of poor and impoverished people on a personal bond without having to arrange for surety.

(ii) Bail amounts should be fixed after ascertaining the paying capacity and monetary condition of the accused. The Court said that [it shocks one's conscience] to ask a mason to furnish a sum as high as Rs 10,000 for release on bail.

(iii) There is no sanction in any law to make geographical discriminations such as not accepting sureties from another part of the country or not accepting an affirmation in a language other than the one spoken in the region. [India is one and not a conglomeration of districts untouchably apart] A person accused of a crime in a place distant from her/his native residence cannot be expected to produce sureties who own property in the same district as the trial court. The Supreme Court asserted that provincial or linguistic divergence cannot be allowed to obstruct the course of justice.

⁵² Sections 436-450 of the Code of Criminal Procedure, 1973 [CrPC] deal with bail and bonds.

⁵³ Referring to bail related provisions of the CrPC, the Court said that [the truth perhaps, is that indecisive and imprecise language is unwittingly used, not knowing the draftsman's golden rule] *In drafting it is not enough to gain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible, a degree of precision which a person reading in bad faith cannot misunderstand*".

Supreme Court Directives

1. Bail should be given liberally to poor people simply on a personal bond, if reasonable⁵⁴ conditions are satisfied.
2. The bail amount should be fixed keeping in mind the financial condition of the accused.
3. The accused person should not be required to produce a surety from the same district especially when s/he is a native of some other place.

The Supreme Court has strongly condemned the practice of asking migrants or tourists to arrange for financially sound sureties from the same district to stand bail for them. It is unreasonable and leads to unnecessary and undue harassment. Many a time, poor people go to jail despite being granted bail because no one comes forward to stand as surety for them. If it can be found out that the accused is connected to the community through family or other emotional ties, which will prevent her/him from fleeing, bail should be given simply on a personal undertaking to abide by bail conditions.⁵⁵

⁵⁴ Hussainara Khatoon and Others v Home Secretary, State of Bihar (1) AIR 1979 SC 1360 lays down that the length of residence of the accused in the community; the employment status and history of the accused; family ties and relationships of the accused; the reputation, character and monetary condition of the accused; any prior criminal record including record of prior release on bail; the existence of responsible persons in the community who can vouch for the reliability of the accused; the nature of the offence that the accused is charged with; probability of conviction; and likely sentence insofar as these are relevant to risk of non-appearance of the accused should be taken into account while determining bail conditions.

⁵⁵ In addition, the proviso to Section 436 (1) CrPC states that if the police officer or court thinks fit, an arrested person who is accused of a bailable offence may be discharged on executing a bond for appearance without sureties in lieu of bail.

NILABATI BEHERA V STATE OF ORISSA 1993 SCC 746

Nilabati Behera, a distressed mother, wrote a letter to the Supreme Court asking that she be monetarily compensated for the death of her 22 year old son in police custody. She said that her son, Suman Behera was beaten to death at a police post after being detained in connection with a theft.

The Supreme Court immediately admitted a writ petition on her behalf and took up the case. Rejecting the police version that Suman Behera was killed by a running train after he escaped from police custody, the Court asserted that the post-mortem report clearly showed that he died as a result of being beaten up. The question before the Court was whether Nilabati Behera had a right to claim compensation for the wrongful acts of the policemen who caused her son's death.

Supreme Court Observations

Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 lays down that 'anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation'. This Covenant has been ratified by India,⁵⁶ which means that the State has undertaken to abide by its terms.

The Supreme Court asserted that 'convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 [Right to Life and Personal Liberty] of the Constitution and there is a corresponding responsibility on the police and prison authorities to make sure that persons in custody are not deprived of the Right to Life.

The State has a 'duty of care' to ensure that the guarantee of Article 21 is not denied to anyone. This 'duty of care' is strict and admits no exceptions the Court said. The State must take responsibility by paying compensation to the near and dear ones of a person, who has been deprived of her/ his life by the wrongful acts of its agents. However, the Court affirmed that the State has a right to recover the compensation amount from the wrongdoers.

They said that the purpose of law is not only to civilize public power but also to assure people that they live under a legal system which protects their interests and preserves their rights. Therefore the High Courts and the Supreme Court as protectors of civil liberties not only have the power and jurisdiction but also the obligation to repair the damage caused by officers of the State to fundamental rights of citizens.

⁵⁶ Though India had expressed reservations to this particular article at the time of ratification, the reservations have ceased to have meaning as an enforceable right to be compensation has come to be accepted as a part of international customary law. Also the Supreme Court in various judgements even before Nilabati Behera's case has upheld the right to be compensated for wrongful acts of State agents. See Rudul Sah (1983) 4 SCC 141; Sebastian M. Hongray (1984) 1 SCC 339; Sebastian M. Hongray (II) (1984) 3 SCC 82; Bhim Singh (1985) 4 SCC 677; Ravikant S. Patil (1991) 2 SCC 373.

Supreme Court Directives

1. The State has an obligation to give compensation to a victim or to the heirs of a victim whose fundamental rights have been violated by its agents.⁵⁷
2. The State has a right to recover the compensation amount from the guilty officials after appropriate proceedings or inquiry.
3. An order of compensation by the State in a criminal case⁵⁸ does not prevent the victims or their heirs from claiming further compensation in a civil case [for loss of earning capacity].

While it is mandatory to conduct a magisterial inquiry into every case of custodial death,⁵⁹ the State also has a duty not only to register criminal cases, but also to pay monetary compensation where human rights are violated by its officers.⁶⁰ Courts and human rights commissions regularly give directions to the government to monetarily compensate victims or their families for incidents of custodial death, rape, violence or assaults on dignity. In the majority of these cases, compensation amounts are recovered from the salaries and other benefits of the guilty officials.

⁵⁷ This principle has been reaffirmed in *D.K Basu v State of West Bengal* AIR 1997 SC 610.

⁵⁸ Section 357 (1) (b) of the Code of Criminal Procedure, 1973 [CrPC] also empowers criminal courts, at the time of sentencing, to make the perpetrator pay a fine which may in whole or in part be paid to the victim for any loss or injury caused by the offence committed.

⁵⁹ Section 176 CrPC

⁶⁰ In *State of Maharashtra v Ravikant S. Patil* 1991 SCC 373, the Supreme Court upheld the award of compensation by the High Court for violation of the fundamental right to Life and Personal Liberty [Article 21 of the Constitution] of an undertrial prisoner, who was handcuffed and taken through the streets in a procession by the police.

Encounter Deaths

**NATIONAL HUMAN RIGHTS COMMISSION [NHRC] GUIDELINES ON
ENCOUNTER DEATHS March 29, 1997 and REVISED GUIDELINES
December 2, 2003**

The Andhra Pradesh Civil Liberties Committee [APCLC] complained to the NHRC that the police was killing people whom they suspected to be members of the People's War Group, a militant organisation, in fake encounters. The police said that the deaths took place when armed militants resisted arrest but the Andhra Pradesh Civil Liberties Committee insisted that these were extra-judicial killings amounting to unjustified and unprovoked murders. They gave details of 285 such incidents. The NHRC was unable to take up all the cases because many of them had occurred prior to one year, which is the limitation⁶¹ period for taking up complaints by human rights commissions. Ultimately six cases involving the death of seven people were taken up by the NHRC and guidelines detailing the procedure in respect of encounter deaths were issued in 1997.

However, in 2003, the NHRC noting that matters in respect of encounter deaths were not encouraging - as the guidelines were not being followed in their true spirit - made some additions to its existing guidelines. The Commission also expressed concern that all states were not sending information about deaths in encounters and asserted that availability of proper statistics was necessary for the effective protection of human rights and discharge of the NHRC's duties.

Under the law, no one including the police has an unqualified right to take the life of another person. Death of a person by a police officer amounts to culpable homicide not amounting to murder, unless it is established that the causing of death is not an offence in law. If a police officer kills someone in an encounter, s/he must prove that the death was caused either in the legitimate exercise of the right of private defence⁶² or in the use of force, proportional to the resistance offered, while arresting a person accused of an offence punishable with death or life imprisonment.⁶³ This can only be ascertained by a proper investigation and not otherwise.

First Information Reports [FIR] recorded at police stations invariably say that, on sighting the police, the other party opened fire with a view to kill. They give the impression that the concerned officers are justified in causing death, exercising their right of self-defence. So, no attempts are made by the police to find out whether officers who fire the bullets are justified in law to do so.

⁶¹ Section 36 (2) of the Protection of Human Rights Act, 1993 lays down that human rights commissions cannot take up a fresh complaint if more than one year has elapsed since the human rights violation was committed.

⁶² Under Sections 96-106 of the Indian Penal Code, 1860 [Private Defences]

⁶³ Section 46 (1) of the Code of Criminal Procedure, 1973 [CrPC] empowers a police officer to "touch or confine" the body of a person being arrested if s/he does not submit to the officer's custody by "word or action" (2) empowers a police officer to use "all means necessary" to effect an arrest if the person being arrested "forcibly resists the endeavour to arrest him" (3) includes a rider that "nothing in this section gives a right to cause death of a person who is not accused of an offence punishable with death or with imprisonment for life"

Responding to public concerns that in reported encounters, sufficient efforts are not made to ascertain the cause of death and whether the deceased have committed any offences, the National Human Rights Commission has directed all states and union territories to ensure adherence to proper police procedure and conduct of impartial investigations.

NHRC Guidelines

1. As soon as information about death being caused in a police encounter is received, the officer in-charge of a police station must record it in the appropriate register.
2. It is desirable that the investigation should be handed over to an independent investigation agency such as the Criminal Investigation Department [CID], if members of the encounter party belong to the same police station.
3. Whenever a specific complaint is made against the police for committing a criminal act that amounts to culpable homicide, an FIR should be registered under appropriate sections of the Indian Penal Code and investigation should invariably be handed over to the CID.
4. A magisterial inquiry must invariably be held in all cases where death has occurred in the course of police action. The next of kin of the dead person must invariably be associated with the inquiry.
5. Prompt prosecution and disciplinary action must be initiated against the officers found guilty in the magisterial inquiry/ police investigation.
6. The question of compensation being given to the dependents of the dead person will depend on the facts and circumstances of each case.
7. No out of turn promotion or instant gallantry rewards will be given to the concerned officers soon after the occurrence. It must be ensured □[at all costs]□ that they are given only after the gallantry of the officer concerned is proven beyond doubt.
8. A six monthly statement of all cases of deaths in police action in the state shall be sent by the Director General of Police to the NHRC by January 15 and July 15 every year. The statement may be sent in the following format along-with post-mortem reports and inquest reports □[wherever available]□ and also the inquiry reports:
 - (i) Date and place of occurrence
 - (ii) Police station and district
 - (iii) Circumstances leading to death:
 - (a) self defence in encounter
 - (b) in the course of dispersal of unlawful assembly
 - (c) in the course of effecting arrest
 - (iv) Brief facts of the incident
 - (v) Criminal case number
 - (vi) Investigating agency
 - (vii) Finding of the magisterial inquiry/ inquiry by senior officers:

- (a) disclosing in particular names and designations of police officials, if found responsible for the deaths; and
- (b) whether use of force was justified and action taken was lawful.

Eliminating suspected members of outlaw or militant organisations by staging fake encounters amounts to murder. Article 21 of the Constitution lays down that no one shall be deprived of life or personal liberty, except according to the procedure established by law. The Supreme Court has said that “even a person under death sentence has human rights which are non-negotiable and even a dangerous prisoner, standing trial has basic liberties which cannot be bartered away...”⁶⁴

⁶⁴ Sunil Batra v Delhi Administration 1978 SCC 494

Lie Detector Tests

**NATIONAL HUMAN RIGHTS COMMISSION [NHRC] GUIDELINES ON
POLYGRAPH [LIE DETECTOR] TESTS January 11, 2000**

Complaints came to the NHRC that the police, without explaining to people, the full implications of a lie detector test - which requires prior injection a drug - was making them take it, in violation of their fundamental right against self-incrimination. Since lie detector or polygraph tests are not regulated by any particular law as such, the NHRC has laid down guidelines for the conduct of these tests. While issuing these guidelines, the NHRC followed the principle: "in the absence of a specific 'law', any intrusion into fundamental rights must be struck down as constitutionally invidious [violative]".⁶⁵

Lie detector tests can become an instrument to compel the accused to be a witness against her/himself, in violation of Article 20 (3) of the Constitution [Right against Self-Incrimination].

The NHRC said that it was aware that lie detector tests have been held consistent with due process of law by courts in the United States, on grounds that they are a part of everyday life.⁶⁶ However, in India's context the immunity from invasiveness [as an aspect of Article 21- Right to Life and Personal Liberty] and from self-incrimination must be read together□

General powers of the State cannot intrude upon the liberty or constitutional rights of a person. The invasiveness of a lie detector test overrules the argument of the police that the authority to use lie detector tests comes from their powers under the Code of Criminal Procedure [CrPC]⁶⁷ to question and interrogate suspects.

Holding of such tests is the prerogative of the individual and not an empowerment of the police.....it must perforce be regarded as illegal and unconstitutional unless it is voluntarily undertaken under non-coercive circumstances□

NHRC Guidelines

1. Lie detector tests must not be carried out without the consent of the accused.
2. If the accused volunteers to take a lie detector test, s/he must be given access to a lawyer to explain the physical, emotional and legal implications of the test. The implications must also be explained by the police.
3. Consent to take a lie detector test must be recorded before a Judicial Magistrate.
4. The magistrate must take into account, the time the accused has been in detention and the nature of her/his interrogation. This should be done to find out whether the accused is being coerced into giving consent.
5. At the time of recording consent, the accused must be represented by a lawyer. The lawyer will explain that the statement [given during the test] does not have

⁶⁵ Ram Jawaya Kapur (1955) 2 SCR 225; Kharak Singh (1964) 1 SCR 332; Benett Coleman (1972) 2 SCR 288; Thakur Bharat Singh (1967) 2 SCR 454; Bishamber Dayal (1982) 1 SCC 39; Naraindass (1974) 3 SCR; Satwant (1967) 3 SCR 525

⁶⁶ Breithbaught v Abram (1957) 352 US 432

⁶⁷ Sections 160-167 CrPC

- the status of a confessional statement given to a magistrate.⁶⁸ It will have the status of a statement made to the police.⁶⁹
6. The actual recording of the lie detector test should be done by/in an independent agency [such as a hospital] and in the presence of a lawyer.
 7. A full medical and factual narration of the manner in which information is received must be taken on record.

Forcing a person to take a lie-detector test is illegal. Consent must be taken before subjecting a person to a lie-detector test. Also, there is no scientific evidence to prove that results obtained from polygraph tests are conclusive. Failing a lie-detector test does not mean that the person is guilty. Polygraph tests measure responses on the premise, that a person is being untruthful, if there are sudden changes in her/his breathing, heart and blood pressure rates. A truthful person can fail the test if s/he is nervous, has health problems or is just surprised by the question.

⁶⁸ Under Section 164 CrPC, this statement is admissible as evidence in a court of law

⁶⁹ Under Section 161 CrPC, this statement is not admissible as evidence in a court of law

Police-Public Relations

**NATIONAL HUMAN RIGHTS COMMISSION [NHRC] GUIDELINES ON
POLICE – PUBLIC RELATIONS December 22,1999**

National Human Rights Commission guidelines on police-public relations are of particular relevance to officers at the cutting edge level, i.e those who are posted at police stations. These guidelines have been communicated to all chief secretaries and police chiefs. They are in an invaluable aid for police officers to perform their duties in a manner compatible with prevailing human rights standards.

Toll free telephone number for the public to convey crime information to the public

Police services of all states should set up a toll free telephone number for the public's convenience. In Kerala, this number is 1090. The National Human Rights Commission has recommended that for the purpose of uniformity, all states should have the same number i.e 1090. They have advocated that:

- The number should be dedicated to public use and installed in the Police Control Room/Police Station/ Sub-Divisional Office.
- The number should be toll free within the state, enabling people from remote parts or interiors of districts to access it.
- Callers should not be compelled to reveal their identity. They may be given a code number to identify themselves to know the result of the investigation.
- Callers should be rewarded for their public-spirited service by issuing commendation certificates if the information results in detection of crimes.

Registration of offences and information about progress in investigation

Transparency in the investigation process must be maintained. The Commission has stressed that complainants must have access to information about their cases. They have said that:

- A First Information Report [FIR] should be registered promptly on receiving a complaint about a cognizable offence.⁷⁰
- A copy of the FIR should be given to the complainant and an entry about this should be made in the First Case Diary.⁷¹
- If the complaint does not make out a cognizable offence, the police should explain to the complainant, the reasons why the complaint cannot be registered.
- If investigation is not completed within three months of the FIR being registered, the complainant should be informed in writing giving specific reasons for the delay.

⁷⁰ State of Haryana v Bhajan Lal AIR 1992 SC 604

⁷¹ Section 154 (2) CrPC lays down that a copy of the FIR shall be given free of cost to the complainant

- Proof of having informed the complainant [postal acknowledgement or written acknowledgement] about reasons for the delay in investigation should be kept on the Case Diary file.
- If investigation is not completed within six months of registering the FIR, the complainant should be informed again in writing about the reasons for non-completion of investigation, and the acknowledgement should be kept on the Case Diary file.
- If the investigation is not completed within one year, a more detailed "intimation" [memo] should be prepared by the investigating officer giving reasons for the delay to the complainant. The "intimation" should be endorsed by a gazetted officer who directly supervises the work of the investigating officer. The gazetted officer should personally verify the reasons for delay given by the investigating officer. A record of the "intimation" and its acknowledgement by the complainant should be kept on the Case Diary file.
- The complainant should be informed once the investigation is completed and a charge-sheet is filed before the court. A copy of the charge-sheet should be given to the complainant by the police. In case the complainant is not available for some reason, her/his family should be informed.

Meeting of Station House Officers with the Public

In order to strengthen police-public relations, Station House Officers [SHO] must hold regular monthly meetings in areas falling under their jurisdiction. This will enable people to voice their grievances to the SHO. It will also give the police an opportunity to inform people about law and order issues and enlist their cooperation in maintaining peace and preventing crime. The Commission has advocated that senior officers should also take part in these meetings along-with Station House Officers.

In a democratic nation, people's participation in governance is of utmost importance. As a vital component of the governmental machinery, the police too, are under an obligation to take into account community aspirations and tailor policing to serve the community's needs best. Transparency and openness in functioning are excellent ways to break barriers and engage in people-oriented policing.

**NATIONAL HUMAN RIGHTS COMMISSION [NHRC] GUIDELINES ON
ARREST November 22,1999**

Concerned with the large number of complaints about abuse of police powers, particularly in relation to arrest and detention, the National Human Rights Commission has drawn up a set of guidelines. They are based on constitutional provisions, existing laws, Supreme Court decisions and National Police Commission recommendations. The Commission has said that these guidelines should be translated into regional languages and made available in all police stations throughout the country. They have also said that the police must set up a complaints redressal mechanism to promptly and effectively investigate complaints regarding violation of NHRC guidelines.

Procedure to be followed prior to arrest

The Supreme Court has laid down in Joginder Kumar's case⁷² that arrest without warrant should be carried out only after 'reasonable satisfaction' is reached about the genuineness of a complaint; a person's complicity in the offence; and the need to make an arrest.

The National Human Rights Commission on its part has asserted that arrests in bailable offences must be avoided unless there is a strong possibility that the person will run away. A police officer must be able to justify an arrest. An arrest without warrant can be justified only in the following circumstances:

- i. Where the case involves a grave offence such as murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent her/him from escaping or evading the process of law; and/or
- ii. Where the suspect is given to violent behaviour and likely to commit more offences; and/or
- iii. Where the suspect needs to be prevented from destroying evidence; interfering with witnesses; or warning other suspects who have not yet been arrested; and/or
- iv. The suspect is a habitual offender, who unless arrested is likely to commit similar or further offences. [3rd Report of the National Police Commission]⁷³

Procedure to be followed at the time of arrest

Human dignity must be upheld and minimal force should be used while arresting and searching suspects.

- As a rule, use of force should be avoided while making an arrest.
- In case the person being arrested offers resistance, minimum force should be used and care should be taken to see that injuries are avoided.

⁷² Joginder Kumar v State of U.P 1994 SCC 260

⁷³ Government of India, 1980

- Dignity of the arrested person should be protected. Public display or parading of the arrested person is not permitted.⁷⁴
- Search of the arrested person should be carried out with due respect for her/his dignity and privacy. Searches of women should only be done by women, with strict regard to decency.⁷⁵
- Women should not be arrested between sunset and sunrise. As far as practicable, women police officers should be associated when the person being arrested is a woman.
- Force should never be used while arresting children or juveniles. Police officers should take the help of respectable citizens to ensure children and juveniles are not terrorised, and the need to use coercive force does not arise.⁷⁶
- The arrested person should be immediately informed about the grounds of arrest in a language s/he understands.⁷⁷
- In case a person is arrested for a bailable offence, s/he must be informed about her/his right to be released on bail.⁷⁸
- Information regarding arrest and detention should be communicated without delay to the police control room and to the district and state headquarters. A round-the-clock monitoring mechanism should be put in place in this regard.⁷⁹

Procedure to be followed after arrest

Constitutional and legal provisions requiring an arrested person to be informed about the grounds of arrest, her/his right to be represented by a lawyer and to be promptly produced before a court must be strictly followed.

Article 22 (1) of the Constitution lays down that an arrested person must be informed as soon as possible about the grounds of arrest; s/he must not be denied the right to consult and be defended by legal counsel of her/his choice. Section 50 (1) of the CrPC requires a police officer to communicate to the arrested person, grounds of the arrest and full particulars of the offence under which s/he is being arrested.

Article 22 (2) requires an arrested person to be produced before the nearest magistrate within 24 hours. Section 57 of the CrPC says that an arrested person cannot be in kept in custody for more than 24 hours without the order of a magistrate.

⁷⁴ State of Maharashtra v Ravikant S. Patil 1991 SCC 373

⁷⁵ Section 51 (2) CrPC

⁷⁶ Section 10 (1) of The Juvenile Justice (Care and Protection of Children) Act, 2000 lays down that as soon as a juvenile in conflict with the law is apprehended by the police, s/he should be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Juvenile Justice Board.

⁷⁷ Sheela Barse v State of Maharashtra 1983 SCC 96

⁷⁸ Section 50 (2) CrPC. Section 436 (1) CrPC lays down that when a person is arrested for a bailable offence, s/he has a right to be released on bail upon arrest.

⁷⁹ D.K Basu v State of West Bengal AIR 1997 SC 610

Procedure in respect of interrogation

Methods of interrogation must be consistent with individual rights relating to life, liberty and dignity.

- Torture and degrading treatment of suspects is prohibited.⁸⁰
- Interrogation of an arrested person should be conducted in a clearly identifiable place, which has been notified for the purpose by the government.
- The place of interrogation must be accessible. Relatives or a friend of the arrested person must be informed where s/he is being interrogated.
- An arrested person should be permitted to meet a lawyer at any time during the interrogation.

NHRC Directions on Mandatory Reporting of Custodial Death/ Rape and Video-Filming of Post Mortem Examinations

All cases of custodial death and custodial rape whether in police lock-up or in jail must be reported to the NHRC within 24 hours of occurrence by the concerned District Magistrate or Superintendent of Police. Failure to report promptly will give rise to the presumption that there is an attempt to suppress the incident.⁸¹

All post-mortem examinations in respect of custodial deaths should be video-filmed and a copy of the recording should be sent to the NHRC along-with the post mortem report.⁸²

Autopsy Report forms prescribed by the NHRC should be used to record the findings of the post-mortem examination.⁸³

⁸⁰ Article 21 of the Constitution lays down that "No person shall be deprived of his [her] life or personal liberty except according to procedure established by law" When constitutional rights of a person are invaded, the court has the jurisdiction to compensate the victim by awarding monetary compensation. Bhim Singh 1986 Cri L.J 192 (SC); Nilabati Behera 1993 SCC 746; D.K Basu AIR 1997 SC 610; PUCL AIR 1997 SC 568.

⁸¹ This was communicated by the Commission to Chief Secretaries of all states and union territories in its letter dated December 14, 1993.

⁸² The Commission in its letter dated August 10, 1995 to Chief Ministers of all states has recognised that video- filming involves extra cost. But human life is more valuable than the cost of video-filming and incidents when video-filming is warranted are limited.

⁸³ These forms have been developed by the NHRC after obtaining views of experts. The Commission has written to Chief Ministers/ Administrators of all states and union territories in its letter dated March 27, 1997 to prescribe its model autopsy form and inquest procedure.

Afterword

Good policing involves respecting human rights and upholding the *Rule of Law*. This has been strongly emphasised by the Supreme Court and the National Human Rights Commission. As protectors of people's rights, police officers are expected to display integrity, transparency, accountability and most of all respect for human dignity. *Rule of Law* requires that the police – an integral part of the criminal justice system – must respect and uphold the rights and liberty of individuals.

Sadly, despite democracy and freedom for over fifty years now, there still is a lot of distrust between the public and the police. People see the police as an authoritarian organisation, removed from society, with little or no respect for the rights of the ordinary person. However, today we live in a democratic country and the police as a vital component of the State must operate according to democratic norms. Individual rights occupy a pride of place in our constitutional culture. Any encroachment upon them, whether it is non-registration of a First Information Report [FIR]; launching a malicious investigation; illegally detaining suspected persons or their families; carrying out an improper arrest; using excessive force; or torturing suspects to extract confessions goes against the basic principles of democratic policing.

Sharing information with the public, securing their cooperation in policing, and acknowledging that individuals have a right to privacy and security of their person are essential elements of democratic policing- the furtherance of which, is the aim of this compilation.

□ In a democratic society, the police serve to protect, rather than impede, freedoms. The very purpose of the police is to provide a safe, orderly environment in which these freedoms can be exercised. A democratic police force is not concerned with people's beliefs or associates, their movements or conformity to state ideology. It is not even primarily concerned with the enforcement of regulations or bureaucratic regimens. Instead, the police force of a democracy is concerned strictly with the preservation of safe communities and the application of criminal law equally to all people, without fear or favour □

(United Nations International Police Task Force, 1986)

Code of Conduct for the Police in India*

1. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.
2. The police should not question the propriety or necessity of any law duly enacted. They should enforce the law firmly and impartially, without fear or favour, malice or vindictiveness.
3. The police should recognise and respect the limitations of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgement on cases to avenge individuals and punish the guilty.
4. In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used.
5. The prime duty of the police is to prevent crime and disorder and the police must recognise that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.
6. The police must recognise that they are members of the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties which are normally incumbent on every citizen to perform.
7. The police should realise that the efficient performance of their duties will be dependent on the extent of ready cooperation that they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and confidence.
8. The police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth and / or social standing.
9. The police should always place duty before self, should maintain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.
10. The police should always be courteous and well-mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people.

* Issued by the Ministry of Home Affairs and communicated to Chief Secretaries of all States/ Union Territories and Heads of Central Police Organisations on July 4, 1985

11. Integrity of the highest order is the fundamental basis of the prestige of the police. Recognising this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.
12. The police should recognise that their full utility to the State is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force and by keeping themselves in the state of constant training and preparedness.
13. As members of a secular, democratic state, the police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic or sectional diversities and to renounce practices derogatory to the dignity of women and disadvantaged sections of society.

United Nations Code of Conduct for Law Enforcement Officials*

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7

* Adopted by General Assembly resolution 34/169 of 17 December 1979

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

INDEX

- Arrest**
general 15-21, 43- 45
preventive 24,25
- Bail** 30-33
- Commission of Inquiry** 7, 8
- Compensation** 17, 34, 35, 37
- Contempt of Court** 19, 29
- Custodial Death** 17, 34, 35, 45
- Custodial Rape** 21, 45
- Detention**
general 17- 21, 44-45
preventive 21, 23
- Encounters** 36, 37
- First Information Report (FIR)** 3-8, 41, 42
- Handcuffing** 26-29
- Illegal Detention** 15-16
- Interrogation** 9, 10, 17- 20, 39, 40, 44, 45
- Investigation (general)** 3-12, 41, 42
- Juveniles** 44
- Legal Aid** 20, 21, 25
- Lie Detector Test** 39, 40
- Magisterial Inquiry** 35, 37, 38
- Medical Examination** 18, 21
- Police- Public meetings** 42
- Rape** 13, 14
- Search** 21, 44
- Self Incrimination** 9, 10, 39, 40
- Telephone Tapping** 11, 12
- Toll free Telephone (crime information)** 41
- Torture** 9, 10, 17- 21, 45
- Women** 13, 14, 20, 21, 44
-

Description of Terms *

Bailable Offence ** - An offence in which, a person may claim bail as a matter of right, on arrest. Bailable offences are laid out in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC].

Code of Criminal Procedure, 1973 [CrPC] *** – This Code contains the procedure for registering and investigating offences; carrying out searches and arrests; bail and bonds; and trial of criminal cases among other things.

Cognizable Offence **** - An offence in which, a police officer can register a case and start an investigation without a magistrate’s order, and carry out an arrest without a magistrate’s warrant. Cognizable offences are laid out in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC].

First Information Report [FIR] - This is the first information about a cognizable offence that is recorded in a police station. It sets the ball of the criminal justice process rolling.

Indian Penal Code, 1860 [IPC] – This Code contains an exhaustive list of criminal acts along-with punishments.

Non-bailable Offence ***** - An offence in which, a person cannot claim bail as a matter of right. Bail is given at the discretion of the police/magistrate in such cases. Non- bailable offences are laid out in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC].

Non- cognizable Offence ***** - An offence in which, a police officer cannot register a case or start an investigation without a magistrate’s order. Non- cognizable offences are laid out in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC].

* Descriptions are based on common understanding and accepted practice.

** Section 2 (a) of the Code of Criminal Procedure, 1973 [CrPC] defines bailable offence as [an offence, which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being in force]

*** Many state legislatures have amended certain provisions of the CrPC for application within their jurisdictions.

**** Section 2 (c) CrPC defines cognizable offence as [an offence for which, and [cognizable case’, means a case for which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant]

***** Section 2 (a) CrPC defines a non-bailable offence as [any other offence] other than a bailable offence.

***** Section 2 (l) CrPC defines non-cognizable offence as [an offence for which, and [non-cognizable’ case means a case in which, a police officer has no authority to arrest without a warrant]