

POLICE INTERROGATION: WHY IS IT ALWAYS SEEN AS A HUMAN RIGHTS VIOLATION?

Shivesh Jha *

ABSTRACT

Police or its interrogation procedure never comes into the picture unless there is a crime or a tort. If a criminal or suspect is with the police, then it's normal to assume that he will have to go through a tough time, and it will not be easy to extract the truth in any case. Let us assume that a Criminal Mr. Crime Master Gogogets arrested after committing several murders and rape. Now in police custody, the officer offers him a Hot cup of coffee and asks about a crime that everyone knows he did. Will Mr, Gogo co-operates with the police and confess everything? Will give a complete itinerary about the heinous acts he did, and the police will thank him for the time he spend with them, and the human rights activists will be clapping from the fences. Am I right? Forget it!

Unfortunately, instances of human rights violations during police interrogation have been reported in many countries. It is important for law enforcement agencies to ensure that the human and legal rights of individuals are not violated during the interrogation process. Any act of torture, inhumane treatment, or coercion is strictly prohibited and can result in legal action against the officers responsible. The accused has the right to a fair and impartial trial, and it is the duty of the police to ensure that this right is protected.

Believe it or not, strict police mean lesser crimes, and lenient police means higher atrocities on human beings. If you do not believe you can compare the incidents and crime chart of Punjab and Uttar Pradesh in recent years. In Punjab, Police stations are set ablaze, and the police are running for its life. In Uttar Pradesh criminals are surrendering themselves so that they don't get encountered.

Keywords: Police, Interrogation, Custody, Arrest, Human Rights, IPC, CrPC, confession, cross-examination, crime, torture, handcuffs, restrain.

*LLB, SECOND YEAR, LLB, SWAMI VIVEKANAND LAW COLLEGE, MEERUT.

WHAT ARE POLICE?

In India, the term police have not been defined anywhere. Neither the Criminal Procedure Code¹ nor “The Police Act, 1881²” or any other statute of state mentions a clear or vivid definition for this term. The Police Act also only discusses the structure and organization of the police force in a particular state. Moreover, it also sheds light on its functions and behaviours rather than defining the concept.

According to the definition provided in Black's Law Dictionary, "police" refers to a government department responsible for maintaining public safety, order, and controlling crime. In simpler terms, any person or group authorized by the state to enforce the law, investigate, and prevent crime can be considered as police.

The idea of the police as an organized force originated in England during the 1800s with the formation of the first municipal force in London under the direction of *Sir Robert Peel*³. Prior to this, policing was an informal arrangement where individuals would voluntarily patrol the streets on a periodic basis.

POLICE-HUMAN RIGHT RELATIONSHIP

The police are responsible for maintaining law and order, investigating, and preventing crime, and protecting people's basic rights. Unfortunately, instances of police abuse of power and disregard for civil and human rights during cross-examination of the accused are not uncommon. In response to this issue, various principles of police interrogation have been developed to ensure that police conduct authorized acts without violating the basic human rights of individuals. These principles aim to protect and promote fundamental human rights that cannot be deprived by the state. As a result, when the police detain someone for cross-examination, the accused is entitled to certain rights.

HUMAN RIGHTS VIOLATION DURING POLICE INTERROGATION

The concept of human rights indicates that all individuals are entitled to these rights in their daily lives. These basic rights used to include necessities like food, shelter, and clothing, but society has progressed, and people's needs have expanded. Nowadays, the right to live

¹ THE CODE OF CRIMINAL PROCEDURE, 1973

² THE POLICE ACT, 1888

³Sir Robert Peel, Prime Minister of UK, https://en.wikipedia.org/wiki/Robert_Peel

peacefully with freedom and dignity is a crucial human right for all. Domestic laws, such as *India's Constitution*⁴, are established to protect and defend these rights. The article named "Right to Life, Personal Freedom" (Article 21)⁵ particularly covers the basic human rights that people have throughout their lifetime, and nobody can deprive them of these rights.

Despite laws that prohibit such practices, police use various techniques during interrogation that violate the human rights of individuals. We are familiar with the reality that police use torture and behave inhumanely during interrogations. In the following discussion, we will delve deeper into the methods used by the police for interrogation.

HOW POLICE INTERROGATION WORKS?

There is no set of fixed principles for Police Interrogation. However, based on various international conventions, there are some underlying principles that the Police must adhere to during an interrogation. The rationale behind these principles is that even though the Police are carrying out a lawful state action, it should not violate the basic human and fundamental rights of the individual being interrogated. These principles aim to promote human rights and fundamental freedoms, which cannot be compromised even under the guise of state action.

Questioning suspects in police custody is an integral component of police investigations. Whenever a suspect is detained by the police for either a *cognizable offense*⁶ or a *non-cognizable offense*⁷, the police have the authority to interrogate them. This questioning aids the police in obtaining critical information and uncovering the truth about the incident, which can aid in the swift resolution of the case.

2.1 BASIC RIGHT TO LIFE, LIBERTY, AND SECURITY

During police interrogation, every individual has the fundamental human right to life, bodily security, and freedom. This right, granted by *Articles 20*⁸ and *Article 21*⁹ of the Indian

⁴<<https://www.india.gov.in/my-government/constitution-india>>

⁵ Article 21 in The Constitution Of India 1949

⁶ Section 437 in The Code Of Criminal Procedure, 1973

⁷ Section 116 in The Indian Penal Code

⁸ Article 20 in The Constitution Of India 1949

⁹[n5]

Constitution and *Article 3 of the Universal Declaration of Human Rights*¹⁰, cannot be infringed upon by the police.

2.2 AGAINST INHUMAN TREATMENT AND TORTURE

It is imperative that no accused individual who is being interrogated by the police is subjected to any form of torture or inhumane treatment that would strip them of their fundamental human rights, such as their right to dignity, respect, and independence.

2.3 RIGHT TO EQUITY

It is important that every accused person who is being interrogated by the police should be given equal treatment and protection under the law. This right is guaranteed under *Article 14*¹¹ of the Indian Constitution, and it cannot be denied by any authority, including the state, during the process of police interrogation.

2.4 INTERROGATION ACCORDING TO THE PROTECTION OF THE LAW

During police interrogation, it is necessary for the police to adhere to the due process of law and refrain from subjecting the accused to any form of torture or inhumane treatment.

TECHNIQUES OF INTERROGATION

1. **SUGGESTIBILITY:** The use of suggestibility during interrogation is viewed as a violation of human rights and can even be considered a form of extreme torture in some parts of the world. Techniques such as sleep deprivation and drug exposure can have a detrimental effect on the accuracy and truthfulness of the information provided by the person being interrogated.
2. **DECEPTION:** Deception is a common technique used during interrogation where the interrogator tries to mislead the suspect by providing false information. For instance, they may lie about being present at the crime scene with someone else and use these lies to coax the accused into admitting to their crime. One way this technique is used is by falsely claiming that a co-defendant has already confessed and implicated the suspect in the crime, which can create a sense of urgency to confess. However, this method is not

¹⁰Article 3 of the Universal Declaration of Human Rights, <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>

¹¹ Article 14 in The Constitution Of India 1949

prohibited by Indian law, despite its potential to damage the reputation and dignity of the accused and is often used by police to put mental pressure on suspects, which violates human rights.

3. **CLUE GAME:** The linguistic and non-verbal clues technique involves the interrogator trying to confuse the suspect by engaging them in lengthy debates, to play mind games with them. The purpose of this technique is to detect any potential lies by the accused. If the suspect is lying, they may feel guilty and be more likely to change their story throughout the interrogation.
4. **EGO CLASH:** The Pride and Ego technique involves two different approaches: one that elevates the suspect's pride and ego, and the other that lowers it. In the first approach, the interrogator flatters and compliments the suspect, and provides them with positive information. Conversely, the second approach seeks to humiliate and degrade the accused through derogatory language, gestures, and personal attacks, to emotionally manipulate them into confessing. This technique violates human rights by attacking the dignity and self-esteem of the defendant.
5. **GOOD COP V/S BAD COP:** The Good Cop Bad Cop technique involves two police officers playing opposing roles of being either a good cop or a bad cop when interrogating the suspect. The good cop is friendly and understanding, while the bad cop is harsh and confrontational. This technique creates an illusion in the suspect's mind that they can trust the good cop and confess to the truth while feeling pressured by the bad cop.
6. **HALLUCINATION DRUGS:** This technique is seldom employed, but some officers use drugs to alter the mindset of the suspect. This technique is illegal and a violation of basic human rights, like drug testing. However, there are legal ways to conduct drug testing, such as with the approval of a medical officer and court authorization. The use of drugs during interrogation is never acceptable and highly ineffective.
7. **TORTURE:** To summarize, police often use various interrogation techniques during cross-examination, including torture, deception, linguistic and non-verbal clues, and playing on pride and ego. However, these methods are against basic human rights and can violate an individual's dignity and self-esteem. In India, deaths during detention are a common occurrence, with both police detention and judicial detention experiencing

widespread violence. Between 2001 & 2018, a total of **1,731 people died in detention in India**¹², with most deaths due to suspected torture or wrongdoing. But only 26 Policemen were convicted so far. This shows just how careless the department is for grave crimes in police stations by police officials.

1. ARREST

In the legal sense, an **arrest**¹³ is an act of taking a person into custody for the purpose of charging him/her with a criminal offense or to prevent the commission of a crime. Arrests can only be made by law enforcement officials who are authorized by law to do so, such as police officers or other designated officials. The process of arrest involves the use of physical restraint, such as **handcuffs or other restraints**¹⁴, and the person being arrested is typically taken into police custody for processing and questioning. The legal procedures for arrest vary depending on the country and its legal system.

Types of Arrest:

1. With an arrest warrant issued by a **magistrate**¹⁵
2. Without any warrant with some legal provision permitting such an arrest

2. SPECIAL PROVISION FOR WOMEN

- a. **Section 46 of the Code of Criminal Procedure**¹⁶ provides that "No woman shall be arrested after sunset and before sunrise, and where such woman is arrested, she shall be kept in the custody of a woman police officer." The provision does not require the presence of a lady constable during the arrest but rather provides for the custody of the arrested woman to be handed over to a woman police officer. This provision was added by the Code of Criminal Procedure (Amendment) Act, 2008.
- b. As for your current question, there is no specific provision in the Code of Criminal Procedure that requires a *woman police officer* to obtain prior permission from a **Judicial Magistrate First Class**¹⁷ before making an arrest of a female after sunset.

¹²IAS Baba, <https://iasbaba.com/2022/07/babas-explainer-custodial-deaths/> Accessed on 17th April 2023

¹³ Criminal Procedural Code 1973, Section 41 to 60

¹⁴ S.9(2) (e) of the Prisoners (Attendance in [Courts](#)) Act, 1955

¹⁵<https://en.wikipedia.org/wiki/Magistrate> Accessed on 17th April 2023

¹⁶ Section 46 in The Code Of Criminal Procedure, 1973

¹⁷https://en.wikipedia.org/wiki/Courts_of_Judicial_Magistrate_of_First_Class Accessed on 17th April 2023

However, the *Supreme Court of India*¹⁸ has emphasized the need for sensitivity and caution in arresting women and has recommended the presence of a woman police officer or a female relative of the accused during the arrest.

- c. It is also important to note that arrests should be made in accordance with the provisions of the law and should be necessary and proportionate to the crime committed. Arbitrary arrests and detention without proper justification can be challenged in a court of law.
- d. The law mandates that separate lock-up facilities be provided for female prisoners. Additionally, as per *section 53(2)*¹⁹, medical examinations of female prisoners must be carried out by female medical professionals exclusively.

WHAT ARE YOUR RIGHTS DURING POLICE INTERROGATION?

- a. *Section 161(1)*²⁰ of the Code of Criminal Procedure advises you not to make any statement or respond to any questions that could be used to prove your guilt in the crime you're accused of.
- b. It is not within the rights of the police to coerce you into making a statement that could be used as evidence in the future and it's also mentioned in *Section 24*²¹ of the Indian Evidence Act and *Section 316*²² of the Code of Criminal Procedure specify that the police are not permitted to use threats or coercion to compel you to confess to a crime for which you're accused.
- c. According to *Section 330*²³ and *Section 331*²⁴ of the Indian Penal Code, if a police officer causes you any injury during police interrogation, the officer can be held accountable and punished under the law. It is illegal for a police officer to engage in torture, mistreatment, or abuse of the accused during the process of interrogation or questioning.

¹⁸ <https://main.sci.gov.in/> Accessed on 17th April 2023

¹⁹ Section 53(2) in The Code Of Criminal Procedure, 1973, <<https://indiankanoon.org/doc/1469009/>>

²⁰ Section 161(1) in The Code Of Criminal Procedure, 1973, <<https://indiankanoon.org/doc/184733/>>

²¹ Section 24 in The Indian Evidence Act, 1872, <<https://indiankanoon.org/doc/967059/>>

²² Section 316 in The Code Of Criminal Procedure, 1973, <<https://indiankanoon.org/doc/730593/>>

²³ Section 330 in The Indian Penal Code, <<https://indiankanoon.org/doc/2858386/>>

²⁴ Section 331 in The Indian Penal Code, <<https://indiankanoon.org/doc/1135572/>>

- d. In case you have any grievances or complaints concerning the interrogation process, you have the right to file a complaint with the *Superintendent of Police (S.P.)*²⁵ or the *Deputy Inspector General of Police (D.I.G.)*²⁶ or the *Inspector General of Police (I.G.)*²⁷ or can even file a complaint with the magistrate in a court having jurisdiction and if they find the complaint to be valid, they may investigate the matter themselves or order an investigation to be conducted.
- e. If the law enforcement authorities conduct the interrogation in a corrupt manner or if the police are not involved in the investigation, then you can also complain regarding police interrogation with the SHRC (State Human Rights Commission) or the *NHRC (National Human Rights Commission)*²⁸.

WHAT ARE YOUR DUTIES DURING POLICE INTERROGATION?

- During police interrogation, you have a duty to provide truthful and accurate information to the best of your knowledge. According to *Section 162(1)*²⁹ of the Code of Criminal Procedure, it is not necessary for you to sign any statement provided during the interrogation process. *Section 26*³⁰ of the Indian Evidence Act states that any statement given by you to the police cannot be used against you unless it is made before a magistrate³¹.
- If you wish to confess to a crime, you should do so in the presence of a magistrate³² where his duty is to inform you that you should not confess under any pressure. If you confess voluntarily, the confession can be used as evidence against you. However, if the magistrate³³ is not convinced that the confession is voluntary, they will not record the statement.
- It is advisable for you to avoid making vague or unclear statements during the interrogation process. You should disclose only the facts and incidents that they are aware of, without exaggeration.

²⁵[https://en.wikipedia.org/wiki/Superintendent_of_police_\(India\)](https://en.wikipedia.org/wiki/Superintendent_of_police_(India))

²⁶https://en.wikipedia.org/wiki/Deputy_inspector_general_of_police

²⁷https://www.indiacode.nic.in/show-data?actid=AC_JK_69_638_00008_00008_1613711843525&orderno=7

²⁸<https://nhrc.nic.in/>

²⁹ Section 162(1) in The Code Of Criminal Procedure, 1973, <<https://indiankanoon.org/doc/1153129/>>

³⁰ Section 26 in The Indian Evidence Act, 1872, <<https://indiankanoon.org/doc/387768/>>

³¹[n15]

³²[n15]

³³[n15]

I CONFESSED TO THE POLICE EVERYTHING THEY ASKED FOR. WHAT TO DO NOW?

The term "confession" was initially included in *Section 24*³⁴ of the Indian Evidence Act, which is a part of the main heading "admission". Therefore, it is considered that confessions are a type of admission. However, the Act does not provide a specific definition for the term "confession". As per the law of Evidence and the digest of *Justice Stephen*³⁵, a confession is an admission made by a person who has been charged with a crime, indicating, or suggesting that they have committed the said crime. For a confession to be admissible as evidence, it is crucial to understand the various forms of confession.

There are two types of confession:

- JUDICIAL CONFESSION;
- EXTRA-JUDICIAL CONFESSION.

Differentiate between Judicial Confession and Extra-Judicial Confession

If a person is acting as a secret agent of the Police and is specifically deployed to receive a confession, then any confession made to such a person will be considered as a confession made to the Police and hence will not be admissible as evidence in the court of law. However, if the Police officer is simply present in a casual capacity while the confession is being made to someone else, and overhears the confession, it will not invalidate the voluntary nature of the confession and can be considered as evidence in the court.

In cases where the accused has left a recording of their confession near the dead body of the victim and the recording is discovered by the Police, the Supreme Court³⁶ has held the recording to be relevant as there was no Police officer present during the confession. The court decided that the confession was made by the accused on their own and not under any pressure or duress from the Police.

ARREST AND QUESTIONING IN UK:

There are three ways in which a person may be brought before a criminal court. The three ways are:

³⁴ Section 24 in The Indian Evidence Act, 1872, <<https://indiankanoon.org/doc/967059/>>

³⁵ James Fitzjames Stephen, English Lawyer, Judge https://en.wikipedia.org/wiki/James_Fitzjames_Stephen

³⁶[n18]

*a. by summons*³⁷

*b. by arrest on warrant*³⁸

*c. by arrest without a warrant*³⁹

According to the common law, the power to arrest for many offenses was granted to any person. However, with the advent of statute law, the powers of arrest for certain offenses were mostly replaced by statutory powers of arrest. Statutory powers of arrest are those given in an Act of Parliament. *The Police and Criminal Evidence Act 1984*⁴⁰ provides both the police and any other person with the power to arrest. These powers are divided into two categories:

a. Indictable offences:

under the Police and Criminal Evidence Act (PACE) 1984⁴¹ (triable at Crown Court).

b. Powers contained in other Acts:

The powers of arrest which were contained in numerous Acts have mostly been abolished, although they will still specify that it is an offence under that Act. These are preserved powers of arrest, and they are mostly contained within Schedule 2 of PACE 1984.

According to the Act, a constable has the authority to arrest without a warrant in the following circumstances:

1. If someone is about to commit an offence.
2. If someone is currently committing an offence.
3. If there are reasonable grounds to suspect that someone is about to commit an offence.

³⁷ UK Legislation, Criminal Procedure (Attendance of Witnesses) Act 1965
<<https://www.legislation.gov.uk/ukpga/1965/69/body/enacted>> Accessed on 17th April 2023

³⁸ UK Legislation,
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/119419/fact-sheet-arrest-warrants.pdf> Accessed on 17th April 2023

³⁹ UK Legislation, Criminal Law Act 1967,
<<https://www.legislation.gov.uk/ukpga/1967/58/section/2?view=plain>> Accessed on 17th April 2023

⁴⁰ Police and Criminal Evidence Act 1984, <<https://www.legislation.gov.uk/ukpga/1984/60/contents>> Accessed on 17th April 2023

⁴¹[n40]

4. If there are reasonable grounds to suspect that someone is currently committing an offence.

If a constable has reasonable grounds to suspect that an offence has been committed, they can arrest anyone they have reasonable grounds to believe is guilty of the offence, without a warrant.

Furthermore, if an offence has been committed, a constable can arrest without a warrant anyone who is guilty of the offence or anyone whom they have reasonable grounds to suspect is guilty of it. *Section 24(5)(a)*⁴² and *24(5)(b)*⁴³ of PACE 1984 allows a constable to arrest a person if they believe it is necessary to ascertain the person's name and address or to prevent the person from causing physical injury to themselves or others, or from suffering physical injury. This is like *Section 42*⁴⁴ of the Criminal Procedure Code in India.

c. Information about Arrest

When a person is arrested, they must be informed of their arrest, the grounds for the arrest (i.e., the offence for which they are being arrested), and the reasons why the arrest is necessary. This is a fundamental right of the arrested person, and failure to inform them of these details may be a violation of their rights. The right to be informed of the reasons for arrest is also enshrined in various international human rights instruments, including *Article 9 of the Universal Declaration of Human Rights*⁴⁵ and *Article 14(3) of the International Covenant on Civil and Political Rights*⁴⁶.

d. Arrest on Warrant:

If a warrant to arrest a person is issued by the court, the constable does not necessarily need to have the warrant in hand when making the arrest if the warrant exists and is valid. However, if the constable has the warrant with them, they should inform the accused person of the fact that they are being arrested, the grounds for the arrest, and the contents of the

⁴² Section 24(5)(a) of Police and Criminal Evidence Act 1984, <<https://www.legislation.gov.uk/ukpga/1984/60/section/24>> Accessed on 17th April 2023

⁴³ Section 24(5)(b) of Police and Criminal Evidence Act 1984, <<https://www.legislation.gov.uk/ukpga/1984/60/section/24>> Accessed on 17th April 2023

⁴⁴ Section 42 in The Code Of Criminal Procedure, 1973, <<https://indiankanoon.org/doc/631265/>> Accessed on 17th April 2023

⁴⁵ Article 9 of [Universal Declaration of Human Rights \(UDHR\)](https://www.un.org/en/about-us/universal-declaration-of-human-rights) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> Accessed on 17th April 2023

⁴⁶ Article 14, International Covenant on Civil and Political Rights, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> Accessed on 17th April 2023

warrant, so that the accused fully understands the reasons for their arrest. This is to ensure that the arrest is lawful and justified.

ARREST IN USA

Yes, while there may be some differences in the specifics of the laws governing arrest in India, UK, and USA, the general principles and procedures are similar. In all three countries, a person can be *arrested without a warrant*⁴⁷ if the arresting officer has reasonable grounds to suspect that the person has committed an offence, is about to commit an offence, or is in the process of committing an offence. The person being arrested must be informed of the reasons for their arrest and their rights, and excessive force cannot be used. Additionally, in all three countries, if a statement made by the detainee during questioning is to be used as evidence in court, they must first be informed of their rights.

CONCLUSION

To address the issue of torture and deaths in custody, it is crucial to educate people about their rights. Although there are laws, reports from committees such as the Human Rights Commission, and clear guidelines from the Supreme Court, they are often not followed. Many cases are reported where the accused is not brought before a judge within 48 hours unless a bribe is paid. It is important for the authorities to follow the laws and respect people's basic human rights and take strict measures to prevent violations. Corruption must be eliminated, and individuals must take responsibility to ensure that no one is deprived of their basic rights during the judicial process. Awareness is key in ensuring that human rights are respected and protected. On the other hand, it's fear of police that helps them to function properly. Criminals are afraid of the police, and that keeps their actions in check. Removing the shackles of political supremacy and bureaucracy can save the police force from these unwarranted and unjustified acts. If the Police get too weak then *Ajnala Police station*⁴⁸ like incidents takes place. And if police become too powerful then *Vikas Dubey*⁴⁹ kind of incidents takes place. This shows a strong relationship between law and order and efficient

⁴⁷ Chapter 9: Arrest and Detention, Part 1: Arrest, Article 169: The Right to Presumption of Liberty and Freedom from Arbitrary Arrest or Detention, <<https://www.usip.org/sites/default/files/MC2/MC2-15-Ch9.pdf>> Accessed on 17th April 2023

⁴⁸ Manjeet Sehgal, Chandigarh, INDIA TODAY, <<https://www.indiatoday.in/india/story/ajnala-police-station-attack-incident-row-7-days-no-fir-against-amritpal-singh-supporters-2341607-2023-03-02>> Accessed on 17th April 2023

⁴⁹ Talibuddin Khan, Jagran, <<https://english.jagran.com/india/up-encounter-who-is-vikas-dubey-the-kanpurbased-historysheeter-wanted-in-60-cases-who-also-murdered-a-minister-10013485>> Accessed on 17th April 2023

police. The crime rate of any province is inversely proportionate to the strength of the police of that area, for example, If the police force is weak and at the mercy of politicians and bureaucrats then incidents like Ajnala Police stations take place and the police run for its own life. Just imagine a situation where police must run from anti-social elements, how will that police save the common citizen then? On the other hand, if you have a free hand of action and the political and bureaucratic hurdles are removed then you know the *crime rate*⁵⁰ comes to an all-time low of four decades in the largest and most violent state of India, Uttar Pradesh.



⁵⁰TNN, The Times of India, <<https://timesofindia.indiatimes.com/city/lucknow/crime-rate-in-uttar-pradesh-lowest-since-2013-ncrb-data/articleshow/86249864.cms>> Accessed on 17th April