

PROTECTION OF HUMAN RIGHTS VIS-À-VIS CRIMINAL JUSTICE SYSTEM IN INDIA: AN ANALYSIS

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Abstract

Human Rights, which are considered to be universal, inalienable, interrelated, indivisible, fundamental and interdependent, are available to all human beings only due to being member of human family. Though, the term is of new origin but the essence of human rights is old as human civilization. Now-a-days, the term 'human rights' is used frequently by many scholars and educated people but there is less awareness and knowledge to common people in respect of human rights for common people, what are the human rights? What will be mechanism to protect our human rights? What is the relationship of human rights with criminal justice system in India? How human rights of accused, prisoner are protected under our criminal justice system? What are the deficiencies under our criminal justice administration system with regard to protection of human rights? These are some specific and important questions which require response for the stakeholders of the society. The present article mainly focuses on the abovementioned issues with regard to human rights. The author has made an attempt to highlight some of the leading cases where directions for protection of rights of the persons who are in police as well as in judicial custody and concept of fair trial has been emphasized by the Hon'ble Court with special reference to protection of human rights. The author has suggested some of the measures to be taken for strengthening and streamlining the criminal justice administration system in India.

Keywords: Human rights, Fundamental, Criminal Justice, Fair trial, Protection etc.

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INTRODUCTION

Human Rights may be regarded as those fundamental and inalienable rights which are essential for life as human being. Human rights are the basic norms of democracy and democratic values. So, in a democratic society, the state is having the responsibility to protect and promote such rights. All states' agencies wither the police department or any other organization should strive to prevent human rights violations and take necessary steps for the promotion of human rights of citizens. In this respect, the role of the police is significant because the police are entrusted with the responsibility of maintaining order and enforcing laws. But, most of the time, while discharging this duty, police actions conflict with human rights. It means those who have been given the responsibility of protection of human rights are often found to be the violators. In recent year's incidents of human rights violations by the police-the use of third degree methods to extract confessions and lock up deaths-often finds mention in the press and in public fora.¹

The Apex Court points out in the case² which is as follows:

"Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees, under-trial prisoners or suspects tarnishes the image of any civilized nation and encourages the men in Khaki to consider themselves to be above the law and to sometimes become the law up to themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization would itself risk the consequences of heading towards perishing."

CONCEPTUAL ANALYSIS

Human Rights, it is said, are those rights which inhere in every human being simply by virtue of being a "member of human family". Chastened by the horrors of two World wars, mankind aspired for a decent civilized life in which the inherent dignity of each human being is well respected and protected. Human Rights are fundamental to our existence as human beings. They are universal and cut across all national boundaries and political frontiers. Indeed, the Universal Declaration of Human Rights (UDHR) , 1948 has been hailed as the 'common standard of achievement for all peoples and nations'. In my view, every aspect or attribute of human dignity is a human right.

The Preamble to the Universal Declaration of Human Rights proclaims:

".....it is essential if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression , that human rights should be protected by the rule of law."

¹ See U.K.Chowdhury, Cop with Hardship, The Tlegraph, 6th December 1995 (Wednesday) at p. 8. Also see Dr. Manoj Kumar Sadual, "Custodial Violence: Human Rights Perspective" in HUMAN RIGHTS edited by Dr. P.K.Pandey, 2012 at p. 292.

² State of M.P V. Shyamsundar Trivedi, (1995) 4 SCC 262

Article 3 of the UDHR further provides that:

“Everyone has a right to life, liberty and security of person”.

Prof. Louis explained human rights as:

‘.....claims which every individual has, or should have, upon the society in which she or he lives. To call them Human Rights suggests that they are universal; they are the due of every human being in every society. They do not differ with geography or history, culture or ideology, political or economic system or stage of development. They do not depend upon gender, or race, class or status. To call them ‘rights’ implies that they are claims ‘as of right’ not merely appeals to grace, or charity or brotherhood or love; they need not be earned or deserved. They are more than aspirations or assertions of ‘the good’ but claims of entitlement and corresponding obligation in some political order under some applicable law, if only in a moral order under a moral law. When used carefully, ‘human rights’ are not some abstract, inchoate ‘good’. The rights are particular, defined, and familiar, reflecting respect for individual dignity and a substantial measure of individual autonomy, as well as a common sense of justice and injustice”

LAW AND LEGISLATIVE FRAMEWORK

There are also substantial and procedural laws which lay stress on strict observance of human rights in criminal justice administration. Section 220 of the Indian Penal Code punishes illegal confinement by a police official. The two specific provisions of the Indian Penal Code, 1860 namely, ‘hurt’³ and ‘grievous hurt’⁴ protects suspects from third degree method by the police to extort confession. It also makes it an offence to wrongfully confine a person to extorting confession or to compel restoration of property.⁵ The guilty policemen may also be booked under the other provisions of this statute like murder, giving false evidence or fabricating false evidence to procure conviction.

The Code of Criminal Procedure, 1973 which is the leading statute amongst criminal laws provides the legal framework intended to effectuate the above noted constitutional guarantees. Police officers are empowered to make arrest, but this power is not absolute or arbitrary. They have the authority to arrest without warrant, but the circumstances in which this can be done are provided in Section 41 of the Cr. P.C. Section 49 of the Cr. P.C ensures that a person after his arrest shall not be subjected to more restraint than is necessary to prevent his escape. Similarly, under Section 50, the person arrested has to be informed of the grounds of his arrest and of his right to bail in non-bailable cases. Further, the right against arbitrary and unreasonable searches and seizures is safeguarded through provisions contained in Sections 47, 51 and 100. There are also provisions against the use of third degree methods. Section 54 confers the right upon the arrested person to get him medically examined. Sections 161 and 162 deal with the procedure for examination of witnesses by the Police,

³ Section 330, I.P.C

⁴ Section 331, I.P.C

⁵ Section 248, I.P.C

recording of their statements and the use of such statements in subsequent trial. The recent amendment in Section 176 of the Cr. P.C to provide that in the case of death or disappearance of a person or rape of a woman while in the custody of the police, there shall be a mandatory judicial inquiry and in case of death, examination of the dead body shall be conducted within twenty four hours of death and this will go a long way to ameliorate the situation in the cases of custodial justice.

The Indian Evidence Act, 1872 prohibits use of confession made before the police officer and the one obtained through inducement, threat or promise in criminal trials.⁶ Also, it prevents the use of confession made by any accused person while he is in custody of police officer.⁷

In addition to the above, Section 7 of the Police Act, 1861 empowers the higher police officers to 'dismiss, suspend or reduce any officer of the subordinate ranks whom they will think remiss or negligent in discharge of his duty or unfit for the same. Section 29, further, provides that any police officer who shall offer any unwarrantable personal violence to any person in his custody shall be punished with three months rigorous imprisonment.

Judicial Approach

It is pertinent to mention here that the judgment in *Joginder Kumar's* case⁸ rewrites the law of arrest and detention in police custody in the newly developed human rights perspective and is pride of our system. The Supreme Court also has made it clear in *Citizen for Democracy v. The State of Assam*⁹ that in all the cases where a person arrested by police, is produced before the Magistrate and remand-judicial or non-judicial –is given by the Magistrate, the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

The Apex Court hopes that recommendation of the Government and Legislature would give serious thought to the recommendation of the Law Commission¹⁰ and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished.

In *D. K. Basu v. State of West Bengal*¹¹, the Supreme Court laid down an arrest and detention code requiring the police to carry identification, prepare a memo of arrest with full details arrested by a third party, notify a friend or relative of the accused of arrest, inform the

⁶ Section 24 and 25 of Indian Evidence Act.

⁷ Section 26

⁸ *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260

⁹ JT 1995 (4) SC 474

¹⁰ Recommendation of the Law Commission refers to its 113th Report which recommended amendments to the Indian Evidence Act so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless, the police officer proves to the contrary.

¹¹ 1997 Cr. L.J 743 (SC)

arrestee of the grounds of arrest, make an entry into a police diary, record an inspection memo on search and seizure, provide for medical examination within 24 hours, transmit all arrest documents to the District Magistrate, enable the accused an oversight by a police control room within 12 hours of arrest in each district. Failure to follow these instructions would result in departmental investigation and contempt of court proceedings. This judgment rewrites the law of torture for the benefit of arrestees and provides the human right basis to Articles 21 and 22 of the Constitution. Extension of 'compensatory jurisprudence' to cases of misuse of police powers makes this law justice oriented and a landmark in our human rights jurisprudence.

In *M.S.Gautam v. State of M.P.*¹², Arijit Pasayat, J. on behalf of C.K. Thakkar, J. and himself observed that custodial violence, torture and abuse of police power are not peculiar to India. In this context, he asserted that the courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilized society governed by the rule of law and poses a serious threat to an orderly civilized society.

Despite the evolution of a plethora of international covenants, conventions, guidelines, principles etc., and despite the constitutional guarantees, it is our experience that human rights violations continue to abound. A number of them can be sourced to the far-from satisfactory criminal justice system.

The Criminal Justice Administration in India has deficiencies, both substantive and procedural. The National Human Rights Commission is deeply concerned over the phenomena of a docket-clogging, inefficient, unscientific police investigations; the innate vulnerability of prosecutions which depend mainly on fragile oral evidence, inept discharge of prosecutorial functions performed by prosecutors not adequately trained and certain other systematic and logistic inadequacies that characterise the present scenario.

Some amongst the more serious manifestations of these deficiencies are reflected in a distorted proportion between the numbers of convicted persons and under trial prisoners in the break-up of the prisoner population.

Right to Fair Trial

The right to fair trial which includes the right to a speedy trial is a part of our international obligations. So is our duty to organise our legal system and courts to comport with the mandate of Article 9(3) and Article 14(1) of ICCPR. This is also the content of Section 309 (1) of the Code of Criminal Procedure. Criminal cases require greater urgency in their settlement. A more rigorous time frame is needed where the accused person is in detention pending the outcome of the case. In such a case, a combination of obligations both for speedy trial and special diligence converge. Indeed, this right to a speedy trial is part of our

¹² 2005 (9) SCC 631

fundamental laws and Article 21 of the Constitution is so recognised by the Supreme Court of India in the Case of *A.R.Antulay v. R.S.Nayak*,¹³ the Court observed:

“...In other words, such laws should provide a procedure which is fair, reasonable and just. Then alone, would it be in consonance with the command of Article 21. Indeed, wherever necessary, such fairness must be read into such law. Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination of guilt or innocence must be arrived at with reasonable dispatch- reasonable in all the circumstances of the case”.

There is an immediate need for massive de-criminalisation for auxiliary adjudicative services and a systematic assurance against the violation of human rights in the investigation of crimes. The affront to human dignity in the process has been enormous thus alienating the citizenry. Incivility and insolence of power towards law-abiding citizens has seriously affected the confidence of people in the system. Despite all the harshness of the prosecutions for heinous offences succeed. There needs to be an increasing dependence on scientific evidence through modern forensic science techniques the creation of modern forensic facilities, intensive training for investigators, prosecutors and judicial personnel is absolutely necessary.¹⁴

The three segments of the criminal justice system viz., the police, the judiciary and the correctional institutions ought to function in a harmonious and cohesive manner. But in practice, one often finds that it is not the case. The police, instead of protecting and promoting human rights, are often found to violate them. The National Human Rights Commission in one of its reports pointed out that:

“Nearly 60% of the arrests were unnecessary, and as such, unjustified. The Commission estimated that 43.25% expenditure in the connected jails was over such prisoners who in the ultimate analysis need not have been arrested at all”.

The need for systematic reform of the police has been a consistent theme of the National Human Rights Commission for the past five years. The Commission has highlighted the need for the insulation of the police from extraneous pressures, setting up of State Security Commissions, fixity of tenure for the Directors General of Police etc. Many of the ills afflicting the police can only be cured through these structural changes, through better training and modernisation of the force. The punishment of the delinquent officers, however important in individual cases, is simply inadequate to the needs of the situation.

When we turn our attention to the present penal system, it appears as if it believes in the philosophy that the efficacy of penal sanctions lies in their severity. It is apparent that it

¹³ 1992 (1) SCC 225

¹⁴ J.S.Verma, “The New Universe of Human Rights” 2004 Reprint 2006 at p. 128.

endorses the 'repressive' rather than the 'restitutive' course. There are the problems of overcrowding, the needs of special groups such as the under trials, women, first-offenders, juveniles, foreigners, etc. Observers feel that the "punishment paradigm" is slow in absorbing the reformatory mood of humanism that should prevail penal policy.

The prison administrators need to acquire greater professional management skills. The conditions of incarceration in Indian prisons generally fall far short of the Human Rights standards. The National Human Rights Commission has been highlighting areas in prison administration that need immediate attention if the prisoner are to shed the stigma of being human 'warehouses' and 'penal dustbins'. Prison health services need to be streamlined. There is a spread of serious infectious such as Tuberculosis, Malaria, Hepatitis and HIV in the present prison conditions. At the instance of the Commission, an initiative was recently undertaken by the Rotarians to provide comprehensive medical examination of over 20,000 prisoners in various prisons in the country. The Commission has proposed comprehensive measures including the deployment of the commission's visitors and investigators constantly to monitor the protection of Human Rights of prisoners.¹⁵

Suggestions and conclusion

I now wish to offer some suggestions for improving criminal justice system:

- The enormous burden on the criminal courts should be reduced by adopting a system of Honorary Judicial Magistrates on the lines of the Institution of "Recorders" and "Assistant Recorders" in the United Kingdom where trained and experienced lawyers would work part-time, on a specific number of days in a year, to deal with and dispose of a large number of cases involving minor offences. This system of dealing with minor offences and ensuring their speedy disposal can be strengthened by introducing, in a judicious and measured manner, the system of "plea-bargaining" (*Nolo-Contendere* as it is known in some jurisdiction)
- There is a need for a massive decriminalisation so that many of the wrongs which are now given the undeserved status of 'crimes' are dealt with as compoundable civil-wrongs.
- There is also need for a system of compensation for various crime on the analogy of the "Criminal Injuries Compensation" regime operating under statutory disciplines in many countries.
- It is important to promote NGOs for "Victim Assistance and Service" and for the protection of witnesses in collaboration with the police system.
- There is a need for appropriate training programmes for the members of magistracy in Human Rights jurisprudence and the National Judicial Academy of India has an important role to play in this regard.

The NHRC has recommended that these important and timely reforms in the system of administration of criminal justice be initiated. The Law Commission to draw the

¹⁵ J.S.Verma, "The New Universe of Human Rights" 2004 Reprint 2006 at p. 130.

Government's attention to the deficiencies in this behalf and made some valuable recommendations. It is important that these reforms be initiated without any delay, as otherwise there is the danger of our sliding into a far worse position than we are in now.

The importance of an efficient system of criminal justice system stems from the following:

- Sustainable development can neither be possible or enduring without the recognition of inter-institutional complementarities.
- A sound social infrastructure, the NHRC believes, is as indispensable for economic development as economic infrastructure.
- Efficient administration of order in society and the protection of human rights, as for economic development. The sound administration of justice, both civil and criminal, is indispensable foundation for the economic activity.

Last but not the least; delayed justice is also a major concern in the present day context. Major factors are responsible for the delayed justice in criminal cases. There may be also some other factors including lack of effective management, and lack of infrastructural support which can be remedied by imparting managerial skills and upgrading infrastructure of the Court. Lack of requisite sensitivity of the part of the Judge handling the case may also sometimes result in neglect of the case contributing to delay. A mind set necessary to deal with something of utmost importance to the system of administration of justice as well as society is always needed coupled with a determination to proceed in the right direction.