

HUMAN RIGHTS & INDIAN CRIMINAL SYSTEM: CRITICAL ANALYSIS

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Abstract

Human Rights have become the socio-political normative language of the new era. Human Rights are those minimal rights, which every individual must have by virtue of his being a member of human family, irrespective of any other consideration. They are based on mankind's demand for a life in which the inherent dignity of human being will receive respect and consideration. The Universal Declaration of Human Rights clearly states that respect to Human Rights and human dignity is "the foundation of freedom, peace and Justice in the world." Indeed, denial of Human Rights and Fundamental Freedom is not only an individual and personal tragedy, but also creates conditions of chaos in the society. The Criminal Justice System consisting of Police, Judiciary and Correctional Institutions play a major role in implementing Human Rights and thereby protect and safeguard the Rights of the citizens of a country. The extent to which Human Rights are respected and protected within the context of its Criminal proceedings is an important measure of society's civilization. What are the Human Rights which are to be protected within our Criminal procedure, And more importantly, to what extent should the Human Rights of the suspect and the accused be protected when other important interests of society are under attack and in possible conflict with the interest of the accused? These are difficult questions to answer, because there is a perpetual conflict between the interest of the accused and the fundamental interest of the society.

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INTRODUCTION

We now live in a world which thinks through the legislative implications of Criminal Justice with one eye on Human Rights. The Administration of Justice is a broad term that includes the norms, institutions, and frameworks by which States seek to achieve fairness and efficiency in dispensing Justice: Criminal, Administrative, and Civil. The rules applicable to the Administration of Justice are extensive and refer to, inter alia, fair trial, presumption of innocence, independence and impartiality of the tribunal, and the right to a remedy. The integrity with which the State conducts criminal investigation, arrest, pre-trial detention, trial proceedings, and sentencing all fall within the domain of Administration of Justice. Consequently, various actors, such as judges, Lawyers, court clerks, police, penitentiary officials, and policy makers play various roles in achieving fairness in the Administration of Justice.¹

International protections of Human Rights have increased dramatically in the last century,² due in part to the increased recognition that a number of nations share many fundamental legal values and expectations.³ One crucial commonality is the acknowledgement that individuals must be protected from certain depredations against their person, and that international Laws are needed to protect people from policies which ultimately affect the global community.³

Human Rights are those rights which every human being possesses by virtue of his birth. These are inherent and inalienable. In a country like India, we come across various instances in which the individual is threatened with the possibility of violation of his Human Rights in every walk of life. These are based on mankind's demand for a life in which the inherent dignity of human being will receive respect and consideration. The Universal Declaration of Human Rights clearly states that respect to Human Rights and human dignity is "the foundation of freedom, peace, and Justice in the world".⁴ After the two World Wars, the

¹ The Administration of Justice and Human Rights, David Weissbrodt, (2009) 1 City University of Hong Kong Law Review 23-47.

² Karen Parker & Lyn B. Neylonjus Cogens: Compelling the Law of Human Rights, 12 HASTINGS INT'L & COMP. L. Rev. 411, 414-16 (1989).

³ LUNG-CHU CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW 204-05 (1989)

⁴ "Universal Declaration of Human Rights" United Nations, United Nations, Available at: www.un.org/en/universal-declaration-human-rights/

UN's concern for Human Rights has also become a major issue of International agenda. This evoked response for International Law and the concept of "International Human Rights Law" has also developed. Human Rights not only stand for individuals' rights rather they are a backbone for providing social Justice in a country. India is a signatory to the Universal Declaration of Human Rights and thus, has adopted similar provisions and framework to protect these Rights. The extent to which the Human Rights are respected and protected within the context of its criminal proceedings is an important measure of society's civilization.⁵

Criminal Justice System of any country is the basis of establishing, Peace and tranquillity, includes not only the judicial system but investigating machinery also. To tame the over flooding of crimes, a strong criminal Justice system is required. Administration of Justice, through the instrumentality of Law, is an essential component of governance. Rule of Law is the bedrock of democracy, which is acknowledged as the best system of governance to ensure respect for Human Rights. The dignity and worth of an individual being at the core of a democracy, constitutional governance in a democratic set up is the safest guarantee for the protection of Human Rights and assurance of human resource development. Equal respect for the rights of all sections of the society is necessary to obtain full human resource development, respecting the basic Human Right of non-discrimination.⁶

The impact of the Administration of Justice within a State has practical significance on the affairs of ordinary individuals and groups. First, the fair Administration of Justice is important for the Rule of Law, in that, it ensures State practice and policies protect against the 'infringement of the fundamental Human Rights to life, liberty, personal security and physical integrity of the person.'⁷

HISTORICAL BACKGROUND

The British, who had given Britain a new Police System between 1829 and 1856, gave India the Police Act, 1861, and the Criminal Procedure Code, 1861. The Indian Evidence Act came

⁵ P.N. Bhagwati, "*Human Rights in Criminal Justice System*" in Noorjahan Bava, ed, Human Rights and Criminal Justice Administration in India, Uppal Publishing House New Delhi, 2000, p11

⁶ Essay Sauce, CRIMINAL JUSTICE SYSTEM AND HUMAN RIGHTS. Available at: <https://www.essaysauce.com/law-essays/criminal-justice-system-and-human-rights/>; (Accessed on: 20.02.2020)

⁷ C Bassiouni (ed), The Protection of Human Rights in the Administration of Criminal Justice: A Compendium of United Nations Norms and Standards.

a little later. These three Acts gave India the present police system. Efforts were made later at the provincial level to review and reform the system. A major effort was, however, made at the central level to reform the system when Lord Curzon appointed the Police Commission, 1920. The Commission studied the work of police stations and said; There can be no doubt that the police force throughout the country is in a most unsatisfactory condition, that abuses are common everywhere, that this involves great injury to the people and discredit to the government and that radical reforms are necessary.⁸

Articles 9 to 12 of Universal Declaration of Human Rights and Article 10 of the International Covenant on Civil and Political Rights⁹ lay down a basic minimum standard of treatment to which system of criminal justice of every country must conform. From these provisions, the following conclusions emerge:

1. Everybody who is deprived of his liberty should be treated with humanity, i.e. with respect for the inherent dignity of human person. Article 21 of Indian Constitution of guarantees Right to Life and Personal Liberty. Supreme Court of India has held repeatedly that 'life' in Article 21 means life with human dignity,¹⁰
2. No one should be subjected to arbitrary arrest, detention or exile. Article 21 of the Constitution of India provides that no person shall be deprived of life and personal liberty except according to procedure prescribed by Law. Since the decision of the Supreme Court in case *Maneka Gandhi v. Union of India*¹¹ it is mandated that the procedure under Article 21 must be fair, just and reasonable and cannot be arbitrary, unfair or unreasonable,
3. Everyone charged with a penal offence has a right to be presumed innocent until proved guilty in a public trial at which he has had all the guarantees necessary for his defence. Indian criminal jurisprudence is based on this cardinal principle,¹²

⁸ Essay Sauce, CRIMINAL JUSTICE SYSTEM AND HUMAN RIGHTS. Available at: <https://www.essaysauce.com/law-essays/criminal-justice-system-and-human-rights/>; (Accessed 20.02.2020)

⁹ Art. 10: All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person: (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

¹⁰ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC

¹¹ AIR 1978 SC 597

¹² Section 101, Indian Evidence Act

4. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute penal offence at the time, when it was committed. Indian Constitution also provides that no person shall be convicted of any offence except for violation of Law in force at the time of the commission of the act charged as an offence nor be subjected to a penalty greater than that which might have been inflicted under the Law in force at the time of the commission of the offence,¹³
5. No one should be subjected to arbitrary interference with his privacy, family, home or correspondence. Such a right was recognized by the Supreme Court under Article 21 of the Constitution in *Kharak Singh v. State of U.P.*¹⁴ and after Maneka Gandhi's case it is firmly established that procedure must be fair and reasonable which by implication prohibits such arbitrary interference,
6. Accused person, save in exceptional circumstances, be segregated from those who have been convicted and be treated separately. Similarly, juvenile persons should be separated from adults and accorded treatment appropriate to their age and status. In *Sunil Batra v. Delhi Administration*¹⁵, the Supreme Court held that keeping of under trial prisoners, who are presumed to be innocent, with convicts offends test of reasonableness under Article 19 or fairness under Article 21. In *Sheela Barse v. Union of India*,¹⁶ Supreme Court emphasized that children should not be confined to jails because it has dehumanizing effect and is harmful to growth and development of children. The Court also ordered that where a complaint is filed or a First Information Report is lodged against a child below the age of 16 years for an offence punishable with imprisonment of not more than 7, years the investigation should be completed within 3 months and if that does not happen, the case against the child should be treated as closed,
7. The aim of Penitentiary System is primarily reformation and rehabilitation of Criminals. In recent years, efforts have been made in this direction also. However, still much needs to be done in this regard,

¹³ Article 20(1) of Indian Constitution

¹⁴ AIR 1963 SC 1295

¹⁵ AIR 1980 SC 1579

¹⁶ AIR 1986 SC 1773

Thus, Indian Constitution as illustrated by a number of decisions of the Supreme Court, provides for protection of Human Rights in conformity with the international standards.¹⁷ The Human Rights Commission Act, 1993 provides for constitution of National and State Human Rights Commissions to enquire into complaints of violations of Human Rights and inefficiency on the part of the Government machinery in preventing such violations and to suggest measures for effective implementation of guarantees provided by the Constitution and various Laws of the country.¹⁸

INDIAN CONSTITUTIONAL FRAMEWORK AND HUMAN RIGHTS

Through the Preamble of our Constitution of India the people of India have resolved to secure to all citizens the following four objectives:¹⁹ Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity and to promote among them all and Fraternity assuring the dignity of the individual and the unity and the integrity of the nation. Indian Criminal Justice System has two primary responsibilities i.e., prevention and control of crime and the protection of rights. The most important factor in preventing and determining crime is the certainty of punishment; the efficiency with which who commits crime is arrested, prosecuted, convicted and punished. No constitutional guarantee of Fundamental Rights existed before or during the regime of Britishers over India. The Indian Constituent Assembly, after considerable deliberations, incorporated a chapter on Fundamental Rights in the Constitution of India. The Supreme Court of India has interpreted that the Indian Constitution guarantees Fundamental Rights expansively.²⁰ The Constitution protects 'equality before the Law' and 'equal protection of the Laws' under provisions which embody a broad guarantee against arbitrary or irrational State action more generally. Indian citizens are guaranteed the rights to speech and expression, peaceable assembly, association, free movement, and residence, although Parliament may legislate 'reasonable restrictions' on some of these rights in the interests of the 'sovereignty and integrity of India,' 'security of the state,' or 'public order.' The Constitution also authorizes suspension of judicial enforcement of these rights during

¹⁷ *Saheli Women's Resource Centre v. Commissioner of Police, Delhi*, AIR 1990 SC 513; *Nilbati Behera v. State of Orissa* (1993) 2 SCC 746.

¹⁸ *Tukaram v. State of Maharashtra*, AIR 1979 SC 185 which led to amendments of Criminal Procedure Code, 1973, Indian Penal Code, 1860 and Evidence Act, 1972.

¹⁹ Available at: <https://www.constitution.org/cons/india/preamble.html>.

²⁰ *Pathumma v. State of Kerala*, A.I.R. 1978 S.C. 771

emergency. In the criminal Justice context, the Constitution prohibits ex post facto Laws, double jeopardy, and compelled self-incrimination. Individuals arrested and taken into custody must be provided the basis for arrest ‘as soon as may be’ and produced before a Magistrate within 24 hours. In its landmark case of *D.K. Basu v. State of West Bengal*²¹, the Supreme Court extended the Constitution’s procedural guarantees further by requiring the police to follow detailed guidelines for arrest and interrogation.²² The Constitution also guarantees the right to Counsel of the Defendant’s choice, and the Supreme Court has held that legal assistance must be provided to indigent Defendants at Government expense, a right that attaches at the first appearance before a Magistrate. These guarantees do not apply to Laws authorizing preventive detention, which, as discussed below, the Constitution subjects to a more limited set of protection. While the Constitution does not explicitly protect ‘due process of Law,’ it does prohibit deprivation of life or personal liberty from any person except according to ‘procedure established by Law,’ and the Supreme Court has broadly interpreted this guarantee to encompass a range of procedural and substantive rights that approximate the concept of ‘due process.’²³ Procedures must be ‘right, just and fair,’ and not arbitrary, fanciful or oppressive.²⁴ The Court has held, based on its broad understanding of the right to life and liberty, that the Constitution guarantees the right to privacy²⁵ and freedom from torture or cruel, inhuman, or degrading treatment.²⁶ The Court also has recognized a Constitutional Right to a fair criminal trial, including among other elements the presumption of innocence; independence, impartiality, and competence of the judge; adjudication at a convenient and non-prejudicial venue; knowledge by the accused of the accusations; trial of the accused and taking of evidence in his or her presence; cross-examination of Prosecution Witnesses; and presentation of evidence in defence.²⁷ The Constitution also requires a speedy trial, extending from the outset of an investigation through all stages of the Criminal process.²⁸

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²¹ (1997) 1 SCC 416

²² Available at: <http://nhrc.nic.in/Documents/sec-3.pdf>.

²³ *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597

²⁴ *Kartar Singh v. State of Punjab*, (1994) 2 S.C.R. 375, 1994, Indlaw SC 525, para. 216

²⁵ *Kharak Singh v. State of Uttar Pradesh*, A.I.R. 1963 S.C. 898

²⁶ *Francis Coralie Mullin v. Union Territory of Delhi*, A.I.R. 1981 S.C. 746.

²⁷ *State of Punjab v. Baldev Singh*, A.I.R. 1999 S.C. 2378

²⁸ *Antulay v. R.S. Naik*, A.I.R. 1992 S.C. 1701

The Judiciary has been assigned supervisory role it but cannot take over the investigation process. The Constitution of India, Criminal Procedure Code, Indian Penal Code, Indian Evidence Act and the Police Acts are Important Statues for Criminal Justice System. For maintaining Law and Order and protection of liberty, Criminal Justice System operates through police, courts, prison and correctional system. Illegal detentions, Custodial violence, torture, lock up deaths being Human Rights violations are matters of concern. Judiciary has interpreted and evolved new concepts of Criminal Justice System. A fair Criminal trial protects accuser's right along with social security, human dignity and personal liberty. It is necessary to publicise through vernacular languages, print and electronic media, NGO's political parties, Academicians, judiciary, Human Rights Organizations etc., to increase awareness of the Human Rights. Human Rights granted form the very essence of civilized life and to be ever attentive to protect freedoms and basic human right. Indian Constitution and other international documents, Universal Declaration of Human Rights (UDHR) 1948 says, 'Everyone is entitled in full equality to a fair and public hearing by any independent and impartial tribunal in the determination of his rights and obligations. The right to life and personal liberty enshrined in Article 21 of the Constitution is of widest amplitude and several un-enumerated rights fall within this Article.

The Supreme Court of India has itself recognised this expanded conception of Access to Justice.²⁹ It has also recognised that securing Access to Justice is not limited to removing barriers to accessing courts, though of course, this is an important element.³⁰ However, as I argue below, the focus of Access to Justice Measures has largely been on access to courts. Within this framework, barriers to Access to Justice are viewed as a problem of lack of resources which causes a mismatch between demand and supply - there is too much demand for judicial services, but its supply is limited. The solution is to provide the resources to resolve the mismatch by constricting demand, or by increasing supply. I will argue that not only is this approach partial and incomplete, but also it can often be counter-productive to the broader vision of Access to Justice set out above.

Courts are not only spaces where rights are protected or enforced but as institutions of the State charged with coercive power, they may also be spaces where rights are violated. Access to Justice, therefore, cannot be limited to access to the courts themselves, in the sense of

²⁹ *Bihar Legal Support Society v. Chief Justice of India*, (1986) 4 SCC 767

³⁰ *Imtiyaz Ahmad v. State of U.P.*, (2012) 2 SCC 688

being able to enter court to air and resolve grievances, but should also be understood as including access to just treatment in courts, and access to just outcomes from courts.³¹ As such, the common tendency to conflate Access to Justice with access to courts, is misplaced. Access to Justice requires, first and foremost, the creation of substantive rights, and second, all that is required to effectively remedy any violation of the right in a manner that is itself just. Access to *courts* is an essential but not the only component of Access to *Justice*.

Rights and entitlements not only help in securing basic needs, but can also signal to society as a whole, what is acceptable behaviour and what behaviour is subject of legitimate criticism.³² Take, for example, the *Vishaka case*.³³ This decision did not end the practice of sexual harassment. But, by understanding sexual harassment as a violation of the right to life with dignity, it served the expressive function of de-normalising and de-legitimizing sexual harassment, and provided women, individually and collectively, with a powerful vocabulary to understand and challenge the status quo in public discourse. Further, it enabled women who face sexual harassment to call upon the state to recognize such behaviour as wrong and remedy the same.³⁴

CONCLUSION

The Administration of Justice Standards relates to civil rights and obligations as well as criminal charges. The standards deal with the right to be informed promptly of charges, trial within a reasonable time, the right to counsel, adequate facilities for the defense, the right to an interpreter, the independence and impartiality of the decision maker, the right to hear witnesses, the right not to incriminate oneself, the presumption of innocence, the public and fair hearing, and public pronouncement of the judgment. The international, regional, and national jurisprudence of the Administration of Justice is remarkably consistent and has gradually created a unified worldwide definition of procedural fairness.

The Human Rights guarantee investigated in this Article were derived by the concordance of protected rights in national constitutions and international instruments, which is a valid

³¹ UNDP. 2004. *Access to Justice Practice Note*, p. 6.

³² Cass R. Sunstein. 1996. 'On the Expressive Function of Law', *University of Pennsylvania Law Review*, 144: 2021-2053

³³ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241

³⁴ *Apparel Export Promotion Council v. A.K. Chopra* (1999) 1 SCC 759; *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297; (2012) 9 SCR 895

method of demonstrating the existence of ‘general principles of Law’ in International Law. National Laws and Codes of Criminal Procedure, as well as court decisions, further expand upon these rights. There are, however, divergences between the enunciation of principles and their application. Nonetheless, the principle purpose of this Article is to establish the existence of certain general principles of Human Rights protection for persons in national Criminal Justice processes. Human Rights activists should not shrink from asserting Fundamental Human Rights protection as “general principles of Law,” and should carry out further inductive investigations of national Law to strengthen the validity of this contention.

All Criminal Justice Systems in Democratic World have three separately organized parts; The Police as Law enforcement agency; The Courts; which, serve to establish the guilt or innocence of the apprehended person and, if his guilt is established, pass sentence upon him as provided by the sanctity of the code violated; and The prison and correctional system. Each one of the components of the Criminal Justice System shares certain common goals. They collectively exist to protect society, maintain Law and Order and protect crime. The Indian Criminal Justice System has incorporated Human Rights friendly provisions of the international instruments, particularly the judiciary have responded to the new situation in a positive manner and sincerely hoped that in the long run we will have international standards enforced in the Criminal Justice Administration in India, Malimath Committee recommendations are implemented immediately.

The challenge before India is to develop Human Rights in its domestic Criminal Administration by upgrading its Law-enforcement machinery, and on the other hand not to be swayed away at the cost of social development and nation’s unity. The establishment of National Human Rights Commission can contribute if, instead of becoming a face-saving device against international criticism of Human Rights conditions, it dedicates itself sincerely to the detection of Human Rights violations in crime control activity and activates itself towards corrective and remedial steps. Reconciliation lies in improving the domestic culture of Human Rights which in turn will replenish our image in the international platform also. Thus, it can be concluded that in order to protect Human Rights and fundamental freedoms of accused, we must generate awareness for Human Rights in people’s mind, otherwise, the concept of Human Right will zigzag one step forward, and two steps back.