

CRIMINAL JUSTICE SYSTEM AND PROTECTION OF HUMAN RIGHTS : AN ASSESSMENT IN INDIAN CONTEXT

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ABSTRACT

The criminal justice system is the network of government and private agencies intended to manage accused and convicted criminals. The criminal justice system is comprised of multiple interrelated pillars, consisting of academia, law enforcement, forensic services, the judiciary, and corrections. These pillars are fashioned to support the ideals of legal justice. Legal justice is the result of forging the rights of individuals with the government's corresponding duty to ensure and protect those rights – referred to as due process. These constitutional entitlements cannot be given and protected without the abiding commitments of those professionals working in the criminal justice system. Consequently, such professionals must submit themselves to the ethical principles of the criminal justice system and evidence persistent integrity in their character. This is accomplished with the help of a worthy code of professional ethics that signals competence, reliability, accountability, and overall trustworthiness – when properly administered.

KEYWORDS: Criminal, system, justice, law, legal

1. INTRODUCTION

Human rights are those liberties that each person has by virtue of their birth. They are inalienable and intrinsic. In a nation like India, we see several occasions where the person is put in danger of having his human rights violated in every aspect of life. They are founded on humanity's need for a life that respects and takes into account the inherent dignity of every human being. Respect for human rights and dignity is categorically stated to be "the foundation of freedom, peace, and justice in the world" in the Universal Declaration of Human Rights. The UN's concern for human rights has elevated itself to the top of the international agenda in the wake of the two world wars. International law was prompted by this, and the idea of "International Human Rights Law" also emerged. Human rights are the foundation for achieving social justice in a nation and not simply for the rights of the person. India has established identical clauses and a framework to defend human rights because it has ratified the Universal Declaration of Human Rights. An important indicator of a society's level of civilization is how well its criminal justice system upholds and protects human rights.

Any nation's criminal justice system is its cornerstone for establishing peace and tranquilly. It also comprises the investigative apparatus in addition to the judicial system. One of the most important areas of human rights is criminal justice, where the legal system is constantly put to the test in order to maintain social order and safety on the one hand, and to protect the human dignity of both crime victims and those who are accused of committing it on the other. Democracy, which is considered as the ideal form of government to ensure respect for human rights, is based on the rule of law. A democracy is fundamentally based on the dignity and value of each individual, and constitutional governance in a democratic system is the most secure assurance of the protection of human rights and the advancement of human resources. To achieve full human resource

development that upholds the fundamental human right of non-discrimination, equal regard for the rights of all segments of society is required. This feature is acknowledged by the inclusive democracy concept. The Criminal Justice System, which is made up of the Police, Judiciary, and Correctional Institutions, plays a significant part in putting human rights into practise and consequently defending and preserving the human rights of a nation's residents. The Criminal Justice System has the authority to manage crime, stop crime from happening, and punish criminals. Arrests and investigations are part of the pre-trial process under the 1973 Criminal Procedure Code. The three primary components of the criminal justice system are the police, the judiciary, and the prison. Human rights are regarded as fundamental rights in India and are accorded a particular position. Fundamental rights are significant because they are thought to be inherent to every citizen. As a result, when they are violated, citizens have the right to file complaints with the Supreme Court and High Courts under Articles 32 and 226 of the Indian Constitution, respectively.¹

The court, one of the three branches of government, has emerged as an advocate for human rights in India. It carries out this responsibility primarily by creatively interpreting and applying the Constitution's human rights provisions. Although the value of human rights is widely acknowledged, different jurisdictions have different levels of implementation. Despite significant advancements across the human rights spectrum, implementation has not been particularly effective in India. The International Commission of Jurists in Geneva has issued a warning that these same fundamental rights are in danger in India. Global human rights experts also contend that the state's various authorities should not neglect such basic standards of a fair trial. The Supreme Court's landmark decision in *Rudul Shah v. State of Bihar*², which determined that those who were unlawfully or illegally arrested were entitled to compensation for the violation of their fundamental rights under Part III of the Indian Constitution, can be used as an example of the progress made in the defence of human rights. It is important to keep in mind that upholding human rights within the framework of the delivery of criminal justice cannot be interpreted narrowly to mean solely upholding the rights of those who are incarcerated, detained, or on trial. In *Moti Lal v. State of UP*, the Supreme Court of India declared the Fundamental Rights to be Natural Rights. In fact, it is legitimate to argue that the right to access courts of law is the most important human right in a system for delivering criminal justice.

According to Article 10 of the Universal Declaration of Human Rights (UDHR), "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, and the determination of his rights and obligations, as well as of any criminal charge against him."

It is crucial for those who contact with the criminal justice system as complainants, suspects, status offenders, or convicts to have access to justice. It is arguably the most important human right in the criminal justice system, as was already mentioned. An important indicator of a society's civilised level is the degree to which human rights are recognised and protected in the context of its criminal proceedings. Generally speaking, the Supreme Court has expanded the rights of the suspect and the accused through progressive and humane interpretation in an effort to safeguard the interests of the innocent and avoid abuse or misuse of police authority. The Supreme Court's evolution of the law in this manner has undoubtedly drawn criticism from some places, but this critique is not supported by any empirical evidence. It is based on the presumption that providing protection to a suspect or accused will harm society's interests by inciting crime and making it more difficult, if not impossible, to catch the perpetrators³.

¹ P.N. Bhagwati, "Human Rights in Criminal Justice System" in Noorjahan Bava, ed, *Human Rights and Criminal Justice Administration in India*, Upal Publishing House New Delhi, 2000, p11.

² (1983) 4 SCC 141.

. Unfortunately, there isn't a lot of socio-legal or empirical research done in our country, especially in the area of criminology. As a result, our criticism of the law as it has been interpreted and developed by the courts frequently isn't based on factual or sociological data but instead is based only on some deeply held beliefs and misconceptions. It is essential that socio-legal research be conducted in a variety of criminal law-related areas in order to provide the courts with assistance as they attempt to craft laws that will promote society's interests while protecting the rights of the innocent.

The Indian Constitution guarantees the protection of human rights in accordance with international norms, as evidenced by a number of Supreme Court judgements. In accordance with the Human Rights Commission Act of 1993, State and National Human Rights Commissions may be established to investigate complaints of human rights abuses, assess the effectiveness of the government apparatus in preventing such abuses, and make recommendations for effective implementation of the protections guaranteed by the Constitution and other laws of the nation. In the case *Ajay Hasia v. Khalid Mujib*⁴, the Supreme Court of India stated that it had a specific obligation "to enlarge the range and meaning of the Fundamental rights and to advance the human rights jurisprudence."

Numerous accounts on shocking human rights violations committed during the pre-emergency and emergency periods have come from indigenous sources. Why therefore assign blame to foreign organisations, in particular Amnesty International in London and the World Watch Institute in Washington? These investigations have been coming out in waves, each one describing new patterns of abuse in the nation's criminal justice system. The papers mostly highlight acts of torture, such as rape and deaths while in jail. The reports condemn actions that are flagrantly against the law. Because violations of human rights have become regular and a sense of pessimism permeates our thoughts and actions, the nation finds itself in a humiliating situation, both internally and externally. Our record on human rights is "testing illusion and promise of unreality," according to Justice Krishna Iyer. The Supreme Court, the watchdog of human rights, has only been able to enact cosmetic reforms since issuing orders to the police, prisons, and other institutions, and these directives are more often than not more faithfully followed in violation. The Writ Courts are too far away and too expensive for them to be of any service to the poor and illiterate victims of violations of human rights. In the lack of application and enforcement, the rights currently recognised by the courts are illusory. "Rights, however, solemnly proclaimed and enshrined in great instruments are but printed futility unless a powerful judiciary armed with legal authority," Justice Krishna Iyer remarked, more in rage than in pain. The jurisprudence of human rights is transformed into a public law of enforced justice through remedial process and jurisdiction, which are practical and operational. The gap between normative claims and implementation capabilities in the human rights framework is very large. Large-scale violations of economic, social, and cultural rights, as well as of civil and political rights, are the outcome.⁵

³ *ILR 1951, Allahabad, p. 369.*

⁴ *Saheli Women's Resource Centre v. Commissioner of Police, Delhi, AIR 1990 SC 513; Nilbati Behera v. State of Orissa(1993) 2SCC 746.*

THE PRINCIPAL SECTORS OF HUMAN RIGHTS ABUSES IN THE CRIMINAL JUSTICE SYSTEM:

- Crime
- Police
- Courts
- Prisons
- State
- Others

Crimes have increased day-by-day because of the combined contribution of socio-politico-economic factors. Some reasons, which can be said, increase in population, increase in the unemployment and denial of opportunities to a certain section of people. Organized crimes have increased. Organized gangs have such control on finances, weapons, and communication; such crimes have emerged as a serious challenge not only to the police but also to the existence of civilized society itself. In general, organized crime corrodes the social, economic and political fabric of the society. The extent of terror, which the organized gangs inflict on the society, is alarming. These gangs are also responsible for large-scale corruption in social and economic institutions.⁶

Policing in a democratic society is seen as upholding the dignity of the individual by safeguarding the constitutional and legal rights. Democracy gets threatened when the police cease to respect the legal and constitutional rights of the citizens and persistently disregard the due process of law. Allegations of the police violence and brutality are being constantly received from different parts of the country. It is a known fact that a common complainant of crime is rudely received in the police stations and is treated with discourtesy, indifference, and indignity. The victims of police perversions are almost always the disadvantaged sections of society who are incapable of legitimate self-defence. In the garb of combating criminality, the police take the law into their hands and trample upon the basic human rights of the crime-suspects. The abominable records of police deviance are reflected in the encounter deaths and the rapes and deaths in the police custody. These no doubt, are the cruellest forms of human rights violations.

The Criminal Judicial System in the common law tradition is based on the twin principals of penal policy, the presumption of innocence and the requirement that the criminal charge needs to be proved beyond reasonable doubt. There is need to improve the quality of forensic expertise and make it truly a system for promotion of justice. Another weakness is the prosecution. The Prosecutor should be appointed on merit; which often does not happen. Competent prosecutors who are again politically neutral should be appointed. The prosecution has the obligation of fair disclosure which means the prosecution should place before the court all factors even including that which is in favour of the accused. As Justice Arthus .V and erbilt would say, "If they (the common citizens) have respect for the work of the courts, their respect for law will survive the shortcomings of every other branch of Government; but if they lose their respect for the work of the courts, their respect for law and order will vanish with it to the great detriment of society."

⁵ "Universal Declaration of Human Rights." United Nations, United Nations, www.un.org/en/universal-declaration-human-rights/.

⁶ Shankar Sen, "Human Rights in Criminal Justice System", in Vijay K. Gupta, ed., *Perspective on Human Rights*, Vikas Publishing House Pvt. Ltd., New Delhi, 1996, p.221.

Prisons, like police, are no less any less guilty of human rights violations. The reality can be gauged only by visiting prisons. Instances of prison injustice abound and the penal regime has not changed much despite two-dozen reports on prison reform, such as the Mulla Committee report. Also, in the Hussainara Khatoon's case⁷, the Supreme Court observed: "It is a crying shame on the judicial system which permits incarceration of men and women for long period of time. We are shouting from housetops about the protection and enforcement of human rights. We are talking passionately and eloquently about the maintenance and preservation of basic freedoms. But are we not denying the right to these nameless persons who are languishing in jails for years for offences which perhaps they might ultimately be found not to have committed? Are we not withholding basic freedom from these neglected and helpless human for years? Are expeditions trail and freedom from detention not part of the human right and basic freedoms".

State, the so-called protector of human rights in the country appears to be the biggest violator. The coercive processes of the State machinery corrode the foundations of human rights. Increasing concentration of power in the hands of the executive has become alarming. We are witnessing the might and the dominance of the State in its myriad forms. Many human rights activists and civil liberty organizations have condemned the Central and State Government for their deplorable disregard of fundamental freedoms and human dignity. The despotic proclivity of the authorities has rendered the State as an oppressor of the

poor. The worst part is that State terrorism is taken as an answer for private terrorism.

The only ray of hope in the dark clouds of distress and disappointment is the institution of judiciary, i.e., Supreme Court.

SUGGESTIONS FOR IMPROVING THE SYSTEM OF CRIMINAL JUSTICE

a) Scientific Investigation

Crimes are often committed secretly in a well-planned manner so that there may not be any direct evidence against the offender. Under these circumstances, it is imperative to have strong and intelligent investigating agency capable of using modern tools. Various techniques, such as physical examination of the accused, medical examination of the victim, and comparison of finger prints, foot prints, photographs and writing, use of tape records, forensic ballistics, wiretapping and other means of electronic surveillance, lie detectors, and truth serums are used. The investigator must be equipped with the necessary apparatus and technical knowledge to use these means.

⁷ In: *THE CHALLENGE OF LAW REFORMS* [Princeton University Press, 1955], pp.4-5.

b) Responsible Police

The police, the Government and the society each have a role to play in improving the law enforcement situation and in developing citizens police in the country. Organizational behaviour is largely the outcome of training and continuing education. Police training is archaic in content and methods. All sections of society, and more particularly the media, can help improve the status and efficiency of the police force. At least, they can afford not to disparage the police without rhyme or reason. If they can extend co-operation in law enforcement, there is bound to be a welcome response from the other side, which eventually will result in greater social defence and better law and order situation.

c) Speedy Process

Though speedy trial has been recognized as a fundamental right because it is a requirement of a fair procedure under Article 21, yet the delay in administration of criminal justice is a common affair. Delay is both at the stage of investigation and prosecution as well as in the trial. There is the necessity of prescribing some time limit for each process as Supreme Court has done in *Sheela Barse V. Union of India*¹¹. Of course, the time limit should not be unreasonable or rigid because justice delayed is justice denied so also justice hurried is justice denied. A balance between the two extremes is advisable.

d) Uniform Policy by the Government

To prevent human rights violations, it is suggested that an official declaration of uniform policy by the governments that violations of Human Rights of accused by law enforcement be formulated. Governments should also enact a strict law to punish the perpetrators of human rights violations. Governments should also take prompt corrective action in case of human rights violations.

e) Protection Mechanism

The mechanism for protecting human right of accused at the International, national and regional levels must be strengthened, States should not shield themselves from International Scrutiny on the issue of human rights. The State should provide an effective framework of remedies for the redressal of human rights violations. Investigating agencies, prosecuting agencies, judiciary and legal profession should make efforts to prevent the human rights violations of accused by giving him proper and appropriate legal aid.

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. A reconciliation lies in improving the domestic culture of human rights which in turn will replenish our image in the international platform also.

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