

Human Rights and Criminal Law

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Abstract

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life.

They can never be taken away, although they can sometimes be restricted – for example if a person breaks the law, or in the interests of national security. These basic rights are based on shared values like dignity, fairness, equality, respect and independence. These values are defined and protected by law. In Britain our human rights are protected by the Human Rights Act, 1998.

Criminal Law is the Law related to Crime. Hence, it is also called the Law of Crimes. Other terms related to Criminal Law are Criminology - the systematic study of criminals and Penology - the study of punishments in relation to the crime and the management of prisons. Criminal Law is concerned with wrongs committed against the public as a whole. The significance of fundamental individual rights to substantive criminal law, criminal procedure law and sentencing law is undeniable for anyone who is familiar with the criminal justice system.

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The Principal Sectors of Human Rights Abuses in the Criminal Justice System

1. Crime
2. Police
3. Courts
4. Prisons
5. State
6. Others

Suggestions for Improving the System of Criminal Justice

1. Responsible Police.
2. Check and Balances.
3. Speedy Process.
4. Uniform policies by the Government.
5. Scientific Investigation.
6. Protection Mechanism.

The importance of the right of access to justice for those interacting with the criminal justice system as complainants, suspects, status offenders or prisoners cannot be over-emphasised. As already stated, it is perhaps the most essential of all human rights in the criminal justice system. 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.

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.

Human Rights and Criminal Law

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted—for example if a person breaks the law, or in the interests of national security. These basic rights are based on shared values like dignity, fairness, equality, respect and

independence. These values are defined and protected by law. In Britain human rights are protected by the Human Rights Act 1998.

Meaning of Human Rights

Human Rights are those rights which every human being possesses by virtue of his birth. Human beings are rational beings. They are inherent and inalienable rights which are commonly known as Human rights. 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. 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". After the two world wars, the UN 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 human 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.

The atrocities of the Second World War made the protection of human rights an international priority. The United Nations was founded in 1945. It allowed more than 50 Member States to contribute to the Universal Declaration of Human Rights, adopted in 1948. This was the first attempt to set out at a global level the fundamental rights and freedoms shared by all human beings.

The Declaration formed the basis for the European Convention on Human Rights, adopted in 1950. British lawyers played a key role in drafting the Convention, with Winston Churchill heavily involved. It protects the human rights of people in countries that belong to the Council of Europe, including the UK. The Human Rights Act 1998 made these rights part of our domestic law. The Act means that courts in the United Kingdom can hear human rights cases. Before it was passed, people had to take their complaints to the European Court of Human Rights in Strasbourg, France.

Legal Effect of The Declaration (Magna Carta)

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The Universal Declaration, the Magna Carta of the rights was one of the first major achievements of the United Nations in the field of human rights. The declaration set for the international community a common standard of achievement. It recognised the inherent dignity and the equal and inalienable rights of all people in our nations. The human rights in the form of norms mentioned in the declaration are the fundamental in the moral sense and are universal, individual, interdependent and interrelated. It is the duty of states regardless of their social, political and economic system to promote and protect human rights. It did not play its states under an immediate binding obligation to protect them. Further, the declaration is an authoritative statement of the meaning of Article 55 of the UN charter, which is law: thus, the member states of the United Nations did reach agreement on a meaning of Article 55 that was relatively more specific.

Lauterpacht while examining the legal force of the universal declaration observed that: not being a legal instrument, the declaration would appear to be outside international law and its provisions cannot form the subject matter of a legal interpretation.

The declaration is deficient in three aspects, firstly, it is not binding on states as law rather an UN recommendation on states. Secondly, some of its provisions are as general as that of Article 55 of the UN charter. For instance, Article 3 stated that “Everyone has the right to life, liberty and security of person”, and thirdly, the declaration offered no means of implementation other than state goodwill.⁴ Theoretically, suggestions may be given for making amendments in the universal declaration as human concepts of rights do change and there is no reason to believe that the present nations and norms shall be identical to those of the 20th century that is at the time the declaration was adopted. However, the declaration completed the transformation of the substantive norms of human rights from national to international laws. It would not be inappropriate to state that the universal declaration of human rights is the corner stone of all UN activities relating to human rights.

Criminal Justice System of any country is the basis of establishing peace and tranquillity. It includes not only the judicial system but the investigating machinery as well. Criminal Justice is one of the critical areas of human rights where the legal system is tested on a continuous basis for preservation of peace and security in society on the one hand, and prevention of human dignity of both victims of crime and person accused of it, on the other. 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 the individual are 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

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the rights of all sections of the society is necessary to obtain full human resource development respecting the basic human right of non-discrimination. The concept of inclusive democracy recognizes this aspect. The Criminal Justice System consisting of Police, Judiciary and Correctional Institutions play a major role in implementing humanrights and thereby protect and safeguard the human rights of the citizens of a country.

Name Of The Rights	Universal Declaration	Indian Constitution
Equality Before Law	Article 7	Article 14
Prohibition Of Discrimination	Article 7	Article 15 (1)
Equality Of Opportunity	Article 21 (2)	Article 16 (1)
Freedom Of Speech And Expression	Article 19	Article 19 (1) (a)
Freedom Of Peaceful Assembly	Article 20 (1)	Article 19 (1) (b)
Right To Form Associations Or Unions	Article 23 (4)	Article 19 (1) (c)
Freedom Of Movement Within The Border	Article 13 (1)	Article 19 (1) (d)
Protection IN Respect Of Conviction For Offences	Article 11 (2)	Article 20 (1)
Freedom Of Conscience And Religion	Article 18	Article 25 (1)
Remedy For Enforcement Of Rights	Article 8	Article 32
Protection Of Slavery And Forced Labour	Article 4	Article 23
Protection Of Life And Personal Liberty	Article 3	Article 21

India And The Universal Declaration

A number of fundamental rights were guaranteed to individuals in Part III of the Indian Constitution which were similar to provisions of the Declarations is clear from the above chart.

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The Criminal Justice System has the power to control crime, prevent crime and punish the criminals. The pre-trial procedure involves arrest and Investigation under the Criminal Procedure Code 1973. Criminal Justice System has composed mainly three vital organs, namely (i) Police, (ii) Judiciary and (iii) Prison. In India, the human rights have been characterised as fundamental rights and are given a special status. Fundamental Rights are important for the fact that they are considered inherent for every citizen and thus, their violation gives the citizens, the right to move to the Supreme Court and the High Courts under Article 32 and Article 226 of the Indian Constitution respectively.

Of the three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the Constitution. Although the importance of human rights is universally accepted and highly recognised, implementation levels vary from jurisdiction to jurisdiction. In India, in spite of vast expansions across the spectrum of human rights, implementation has not been that satisfactory. Recently, the International Commission of Jurists, Geneva had warned that in India these very human rights stand threatened. In addition, global human rights abuse watchers argue that if such fundamental principles of a fair trial are disregarded by the various agencies of the state.

Measure of the advances achieved in the protection of human rights, one may also turn the pages of the landmark judgement in *Rudul Shah v. State of Bihar*,⁴ where the Supreme Court ruled that the victims of unlawful or illegal arrest were entitled to compensation for violation of their fundamental rights under Part III of the Indian Constitution. It must be borne in mind that ensuring human rights within the framework of the criminal justice delivery system cannot be narrowly construed to mean merely the protection of the rights of the under-trials, or detainees, or convicts. The Supreme Court of India has recognized the Fundamental Rights as Natural Rights in *Moti Lal v. State of UP*.⁵ In fact, it can rightly be contended that the most essential of all human rights in a criminal justice delivery system, is the right of access to courts of law.

It is based on Article 10 of Universal Declaration Human Rights (UDHR) which provides that:

“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 and of any criminal charge against him.”

⁴(1983) 4 SCC 141.

⁵ ILR 1951, Allahabad, p. 369.

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The importance of the right of access to justice for those interacting with the criminal justice system as complainants, suspects, status offenders or prisoners cannot be over-emphasised. As already stated, it is perhaps the most essential of all human rights in the criminal justice system. 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. By and large, the Supreme Court has, through progressive and humanistic interpretation, enlarged the rights of the suspect and the accused with a view to protecting the interest of the innocent and preventing abused or misuse of police powers. Of course, the development of law by the Supreme Court in this direction has evoked criticism from certain quarters but this criticism is not based on any empirical research. It proceeds on a pre-conceived notion that any protection given to a suspect or accused is bound to injure the interest of the society by encouraging crime and making its detection difficult, if not possible. Unfortunately, in our country, there is not much of socio-legal or empirical research particularly in the field of criminology, with the result that our criticism of the law as interpreted and evolved by the courts is often not founded on factual or sociological data but is based only on certain ingrained attitudes and misconceptions. It is necessary that there should be socio-legal research in various areas of criminal law so as to afford guidance to the courts in their not-too easy task of laying down the law which best would serve the interest of the society, without sacrificing the interest of the innocent.

Indian Constitution as illustrated by a number of decisions of the Supreme Court provides for the protection of human rights in conformity with the international standards.⁶

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.⁷

The Supreme Court of India has in the case *Ajay Hasia v. Khalid Mujib*⁸ declared that it has a special responsibility, "to enlarge the range and meaning of the Fundamental rights and to advance the human rights jurisprudence."

There are umpteen numbers of reports on chilling human rights abuses of the pre-emergency era and emergency era, which have emanated from indigenous sources. Why then blame

⁶Saheli Women's Resource Centre v. Commissioner of Police, Delhi, AIR 1990 SC 513; Nilbati Behera v. State of Orissa (1993) 2 SCC 746.

⁷Tukaram v. State of Maharashtra, AIR 1979 SC 185.

⁸ AIR 1981 SC 487 at p. 493.

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international sources like London based Amnesty International and Washington based World Watch Institute in particular. The successive inflow of these reports describes continuing patterns of abuse in the administration of criminal justice in the country. The reports mainly focus on torture, including rape and deaths in custody. The reports criticize practices that are blatantly unconstitutional. The country confronts an embarrassing situation, both within and outside because human rights abuses have become commonplace and a sense of hopelessness marks our thought and reaction. Justice Krishna Iyer describes our human rights record as "testing illusion and promise of unreality". The Supreme Court, the sentinel of human rights, has been able to bring out only cosmetic changes since its directives to police, prisons and other institutions and more honoured in the breach than in the observance. For indigent and illiterate victims of human rights abuses, the Writ Courts are too remote and too expensive to be of any avail. The rights now granted by the courts are of illusory in absence of implementation and enforcement.

Justice Krishna Iyer wrote more an anger than in anguish: "Rights, however, solemnly proclaimed and entrenched in great instruments are but printed futility unless a puissant judiciary armed with legal authority. Remedial process and jurisdiction, operational and pragmatic, transforms the jurisprudence of human rights into public law of enforceable justice."

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Crime

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

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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.

Police

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.

Courts

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.

Prisons

Prisons have existed in most societies for many centuries. Usually they have been places where individuals were detained until they underwent some legal process. They might be waiting to go on trial, or for execution or exile, or until a ransom, a fine or a debt is paid. Occasionally, individuals who posed a particular threat to the local ruler or state might be deprived of their liberty for a long period. Prisons, like police, are no less guilty of human rights violations. The reality can be gauged only by visiting prisons. Instances of prison

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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 *HussainaraKhotoon's case*,⁹ 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

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.

Suggestions for Improving the System of Criminal Justice

Responsible Police

The police, the Government and the society each have a role to play in improving the law enforcement situation and in developing pro-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.

Scientific Investigation

⁹AIR 1979 SC 1360.

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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.

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 *SheelaBarse v. Union of India*,¹⁰ Of course, the time limit should not be unreasonable or rigid because justice delayed is justice denied so also justice buried is justice hurried. A balance between the two extremes is advisable.

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.

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. The reconciliation lies in improving the

¹⁰AIR 1983 SC 1773.

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

Improving the Performance of the Criminal Justice System

The government has launched a programme aimed at making the criminal justice system more effective by improving the processes involved in investigating, prosecuting and trying offenders.

Improvements to the criminal justice system are needed to remedy the following problems.

1. Sometimes defendants have to spend too long awaiting trial.
2. It is not always clear whether a decision not to prosecute is justified.
3. Sometimes after judgment has been given in a case the sentence is carried out at a much later date or not at all, for example because the offender cannot be found.
4. Criminal cases could be handled more quickly.

These are some of the important conclusions set out in the audit report published by the Netherlands Court of Audit in 2012 (Performance of the Criminal Justice System).

The Government's Goals for Improving the Criminal Justice System

The government has set the following goals aimed at increasing the effectiveness of the criminal justice system:

1. More criminal cases must be completed successfully. The police and the Public Prosecution Service must make clear agreements about which cases deserve extra attention.
2. Convicted offenders must actually serve their sentence: 92% of custodial sentences must be carried out within a year.
3. Suspects must be brought to trial sooner. Two-thirds of simple criminal cases must be processed within a month.
4. Procedural documents must wherever possible be made available in digital form to lawyers and the public.
5. The procedure for lodging a criminal complaint must be made simpler, with more consideration for victims. For example, victims should be personally informed about how their complaint was handled.