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HUMAN RIGHTS AND CRIMINAL JUSTICE IN INDIA: A CRITICAL EXAMINATION OF INSTITUTIONAL RESPONSIBILITY

AUTHORED BY - DINESHKUMAR T¹ & KALAIMAGAL V²

ABSTRACT

The UDHR, the Indian Constitution of 1950, the Criminal Procedure Code of 1973, and legislation pertaining to human rights violations in Indian and international cases are all covered in length in this article. This essay aims to investigate human rights in the criminal justice system and the ways in which its departments violate human rights. The police, judiciary, and correctional services agencies make up the criminal justice system. For a deeper comprehension of the idea, this study thoroughly examined these three components together with relevant case laws. I've gone into great length on the police's carelessness, abuse of their authority, and the judiciary department's hold-up of court cases. The judiciary must emerge as one of the three branches of government that is at the forefront of human rights in India. It particularly uses revolutionary interpretation and inserts into the Constitution's human rights clauses to play this aspect. The extent to which human rights are implemented varies from jurisdiction to jurisdiction, despite the fact that their importance is widely acknowledged. Despite significant advancements throughout the human rights spectrum, India's implementation of these rights has become unsatisfactory. The International Commission of Jurists in Geneva has issued a warning that those fundamental human rights are in danger in India. Additionally, certain ways to improve criminal justice system improvements have been outlined in this paper.

Keywords: *Human rights, violation, negligence, Criminal Justice System, Judiciary, Reforms.*

¹ Assistant Professor, School of Law, VISTAS, Chennai.

² Assistant Professor, Bharath Institute of Law, BIHER, Chennai.

INTRODUCTION

Across the world, criminal justice systems are frequently associated with serious human rights violations such as arbitrary detention, torture, discrimination, and extrajudicial killings. In India, individuals often face the possibility of violations of their basic rights at different stages of life. Human rights are founded upon the principle that every individual deserves dignity, equality, and respect. The Universal Declaration of Human Rights (UDHR) recognizes human dignity and respect for rights as the cornerstone of justice, peace, and freedom throughout the world.³

Following the devastation caused by the First and Second World Wars, the protection of human rights emerged as a major concern of the international community, leading to the development of International Human Rights Law. Human rights are not confined to individual liberties alone; they also play a crucial role in promoting social justice and ensuring fairness within society.⁴

HUMAN RIGHTS IN THE CRIMINAL JUSTICE SYSTEM:

The criminal justice system is one of the most important areas where the protection of human rights is constantly tested. On one side, the system must maintain peace, law, and order, while on the other, it must preserve the dignity and rights of victims as well as accused persons. Human rights principles mainly focus on ensuring fair treatment of accused individuals and adopting just methods of punishment.

The criminal justice system of a nation is essential for maintaining social order and harmony. It comprises institutions such as the police, judiciary, and correctional services, all of which play a significant role in safeguarding the rights of citizens. The system has the authority to investigate crimes, prevent unlawful activities, and punish offenders. Under the Code of Criminal Procedure, 1973, the pre-trial process involves arrest and investigation.

In India, human rights are recognized as fundamental rights guaranteed under the Constitution. Articles 32 and 226 empower individuals to approach the Supreme Court and High Courts when their rights are violated.

³ <http://hrp.law.harvard.edu/areas-of-focus/previous-areas-of-focus/criminal-justice/>.

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

THE POLICE

As Justice A.N. Mulla has already stated, "I tell it with all seriousness that there is not a single lawless gang in the country with a criminal record that compares to the organized force known as the Indian Police Force." Because of their lawlessness, they have received bad press. The media and the legislators are now paying attention to rapes, torture, and fatalities that occur in detention. The human rights department is doing a fantastic job of stopping these kinds of human rights violations, and measures are being made to make sure that such regrettable instances don't happen again.

In my opinion, the non-registration of cases by the police constitutes one of the most serious forms of violation of human rights. According to the National Police Commission (1978), the reason for the non-recording of the cases is due to the political executive in the state Governments to show the low crime status in front of public and state legislature. This type of statistical approach of the political executive is largely responsible for understating the crime figures in states. Again, it is noticed that subordinate officers try to avoid the registration of cases by pointing out that the offense occurred in the jurisdiction of another police station. So, the complainant has to go to another jurisdiction to file a case which is a burden for him. In case of cognizable offense, the officer-in-charge has to file an FIR as soon as the complainant complains regardless of jurisdiction this is dealt with under section 154 of Cr PC.

This will lead to violation of fundamental rights under Article 7 and 8 as it discussed the equality of all before the law and everyone right to an effective remedy by a competent tribunal.

The National Police Commission in its third report referring to the quality of arrests in India mentioned the power to arrest by the police in India as one of the chief sources of corruption in the police. The statistics say that most of the arrests are unwanted and unjustifiable, and such police action accounted for 43.2 % of the expenditure of the jails. UDHR says, "Everyone has a right to life, liberty and the security of person." Under Article 3. According to Article 9, "no one should be subjected to arbitrary arrest, imprisonment, or expulsion."

The police violate these provisions knowingly. In *Joginder Kumar v. the State of U.P.*, the Supreme Court affirmed the police's authority to make an arrest. If a police officer believes it is appropriate to make an arrest, he cannot do so. It is one thing to have the authority to make an arrest. The rationale behind it is very different. The police officer must provide the reason for the arrest in addition to using their authority. The victim's reputation and self-worth will be

questioned if the arrest is irrational, which could result in the victim taking their own life. After conducting a thorough investigation, the police officer must make an arrest of the accused since it demonstrates the veracity and sincerity of the allegation. regrettable events.

Highlighting the imperatives of necessity principle, the Third Report of National Police Commission has suggested:

In one or more of the following conditions, an arrest during the investigation of a cognizable case may be justified:

1. It includes grave offenses like murder, dacoity, robbery, rape, etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.
2. If there is an apprehension that the accused may abscond and evade the process of law.
3. The accused is given to violent behaviour and is likely to commit further offenses unless his movements are brought under restraint.
4. The accused is a habitual offender and unless kept in custody he is likely to commit a similar offense again.

It would be wise to insist through departmental instructions that a police officer making an arrest it also should be recorded in the diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines."

The right to be informed of the grounds of arrest is a precious right of the accused. If the rights are explained it will be easy for the accused to move to court for or a Habeas corpus or he can make sufficient arrangements for his defence. Hence, a duty is cast upon a police officer, arresting a person without a warrant, to forthwith communicate to him full particulars of the offense and other grounds for such arrest. In bailable offenses police officer is required to inform a person arrested that he is entitled to be released on bail. On contrary, it violates Article 9 of UDHR and it is to be declared that 'arbitrary arrests are not made.

The Supreme Court has further laid down the procedure for arrest in *D K Basu v. the State of WB*⁵

The right to be brought before a Magistrate within not more than twenty-four hours of arrest has been created with a view:

1. To prevent arrest and detention to attract confession or a means of compelling people to give information.

⁵ 1997 1 SCC 416.

2. To prevent police stations from being used as though they were the prisons-a purpose for which they are unsuitable.
3. To afford an early recourse to a judicial officer unbiased of police on all questions of bail and discharge.

A police officer often ends up violating this requirement and hence violates Article 10, which says, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and any criminal charge against him."⁶

"Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law"⁷. Custodial death as a result of police atrocities is the extreme form of police cruelty and as such is a blatant violation of human rights. Article 5 of UDHR states, "No one shall be subjected to torture or cruel, inhuman treatment or punishment."

Khatri v. State of Bihar⁸ case shooked the entire nation. This explains the extremity of police officers on accused in lockups. In this case, the Supreme Court considered the question of granting compensation to the victims of police atrocities and answered it in the affirmative that if it were not so Article 21 of the Constitution would be reduced to a zero.

From ***Rudul Sah v. the State of Bihar***⁹ to ***PUDR v. State of Bihar***¹⁰ the apex court has brought about a revolutionary breakthrough in the "human rights jurisprudence" and emerged the principle that the victims of police atrocities should be compensated.

In ***SAHELI v. Commissioner of Police***¹¹, Delhi a child of nine years died because of being battered by a police officer. The Supreme held that the mother of the victim has to be awarded 75,000 as compensation from the state funds as a result of police atrocities. ***Nilabati Behera v. the State of Orissa***¹² is yet another case of custodial death where the deceased was taken in police custody and the next day his body was found on a railway track with multiple injuries. The Supreme Court held that in case of violation of fundamental rights by state instrumentalities or servants, the court can direct the state to pay compensation to the victim or his/her heir or legal representative. The principle of 'sovereign immunity shall be inapplicable in such cases. Having regard to the age and income of the deceased, in this case, the state was ordered to pay Rs. 1,50,000 in compensation to the deceased's mother.

⁶ Article 10 of UDHR

⁷ <https://advocatetanjay.com/2018/03/12/law-of-custodial-death-and-violence-in-india/>

⁸ 1981 SCR (2) 408, 1981 SCC (1) 627.

⁹ 1983 AIR 1086, 1983 SCR (3) 508.

¹⁰ AIR 1982 SC 1473.

¹¹ 1990 AIR 513; 1989 SCR 488 1990 SCC (1) 422; JT 1989 (4) 553 1989 SCALE (2)1315.

¹² AIR 1993 SC 1960.

In a landmark case *Jam et al v. International Finance Corp*¹³ in which a group of Indian farmers and fishing communities sued the International Finance Corporation with pollution from a coal-fired power plant financed by them, the Supreme Court of United States held that international organizations that have a sufficient nexus to the United States, such as the food and agriculture organization and world bank, no longer enjoy full immunity from suit. Jam is a watershed decision because it opens the door to communities being damaged by projects backed by foreign financial institutions being able to hold them legally responsible. This could be a crucial choice for projects financed in nations where communities find it difficult to sue the firm directly accountable for the harms they have endured. The decision also encourages to undertake more careful due diligence before financing projects which may have high human rights or environmental risks.

Human rights are being abused and taken for granted as a result of the increasing number of crimes, violations, frauds, and scandals, and conditions in India have gotten worse in recent years. Violence against women is increasing at an alarming rate and they are at a high risk of sexual harassment, trafficking, and forced labor including violations of equal participation in political, economic, and social life. The latest molestation case in Uttar Pradesh (Unnao case) shocked and outraged our whole community. Such a horrifying incident took place in 2017 where an MLA was accused of raping a minor girl 2017 at his house in Unnao's Makhi village itself. The victim resided in the same neighbourhood as a key BJP MLA. According to the victim's complaints, she was raped by him again on June 4, 2017, and he allegedly threatened the girl. the minor girl was abducted and taken to the MLA's house again and was gang-raped by some people. No actions were taken due to the influence of MLA. The girl's father was thrashed by MLA supporters, while police officers stood by and watched.

The UK Supreme Court in the case of *Poole Borough council v. G N and another*¹⁴ examined that whether the local authority had failed to fulfil a common law duty to protect two children named Colin and Graham from the harm inflicted by their neighbours. Drawing on the facts of the case, the court held that the council was not liable for negligently failing to exercise its social services functions as there was no recognizable basis for a cause of action. While the court denied the appeal, the Poole judgment left open the prospect of a duty of care if an assumption of responsibility may be proved. The significance of Poole is that it overturned the decision in *X (minors) v. Bedfordshire county council*¹⁵ which was opening the gateway for

¹³ 860 F. 3d 703, reversed and remanded.

¹⁴ [2019] UKSC 25.

¹⁵ [1995] 2 AC 633.

local authorities to be held liable for a failure to exercise their duty of care concerning the performance of their social services activities. While the Poole judgment gives some direction and clarity as to the extent to which local authorities are responsible for failing to remove children from harm's way, the ramifications of Poole for local governments and the evolution of negligence law are still being debated.

In the Criminal Justice Administration police through their restrictive and their coercive authority arrest, interrogates, searches, seizes and detains people before trial. All these actions affect an individual's liberty and when done arbitrarily, an individual's dignity. India follows the accusatorial model of criminal justice, which is different from the inquisitorial model. The accusatorial model presumes the accused to be innocent until proved guilty. Despite India's endorsement of human rights concepts, police are accused of failing to understand that they are responsible to the people for human rights breaches. There is no substantial change in police behaviour even after almost six decades of independence.

THE JUDICIARY

The delay in the disposition of cases and the detention of the impoverished accused before trial is one of the most overlooked areas of the criminal justice system. Procrastination of trials can lead to unfairness because, as a result of the lengthy procedure, much of the material evidence may disappear, such as when a witness dies or when circumstances change.

Long-term detention without charge or trial is not only against the Constitution but also against India's commitment to the Universal Declaration of Human Rights. Article 3 of the declaration reads, "Everyone has a right to life, liberty, and security of a person." Article 5 provides, "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment." "Everyone has a right to an adequate remedy by the appropriate national tribunal for acts infringing the fundamental rights provided to him by the constitution or the law," according to Article 8. Article 9 says, "No one shall be subjected to arbitrary arrest, detention or exile." "The right to a fair and public hearing by an independent and impartial tribunal is for every citizen in the determination of his rights and obligations, as well as any criminal charge against him," says Article 10. "Everyone charged with a penal violation has the right to be deemed innocent unless proven guilty according to the law in a public trial in which he has had all the safeguards required for his defence," according to Article 11(1).

Thus the letter of law recognizes the right of an accused to a speedy trial, but the problem is

how to make it a reality. The mere passing of the law is not enough. While deciding on the bail petition, Justice Krishna Iyer in *Babu Singh v. the State of UP*¹⁶, remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned with the offender being treated with dignity and finally punished in a reasonable amount of time, and the innocent being spared the pain of criminal proceedings." Justice Bhagwati in *Hussainara Khatoon v. Home Secretary*¹⁷, State of Bihar declared that the right to a speedy trial is an essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. In *Sheela Barse v. Union of India*¹⁸, "**The right to a timely trial is a basic right implied in Article 21 of the Constitution,**" the court stated again and the result of a violation of the fundamental right to a quick trial would be that the prosecution itself could be dismissed based on a violation of the fundamental right."

An important reason for the reluctance of the public to cooperate with the criminal justice system is the reason that they feel harassed and inconvenient by attending Court. In *Bhim Singh v. the State of J&K*,¹⁹ the Supreme Court deprecated the manner of passing remand order by the Judicial Magistrate without physical production of the accused person. The arrested accused has a right to medical examination during his detention in custody. In Sheela Barse's Case, the Supreme Court has made it mandatory on the part of the magistrate to ask the detained individual whether he has any complaint of torture or maltreatment in police custody and to advise him that he has a right to be medically checked.

The right to privacy has been recognized as both a fundamental right and a right guaranteed under the UDHR. According to Article 12 of the UDHR, "no one should be subjected to arbitrary interference with his private; everyone has a right to legal protection against such interference or attacks." The Supreme Court has accepted it as a fundamental right for the first time in *Kharak Singh's case*²⁰ where the UP Police rule permitting monitoring by domiciliary visit and secret picketing was found unconstitutional. In *Raja Gopala's case*,²¹ the supreme court has addressed that the citizen has the right to protect their right to privacy of his own, his family, marriage procreation, motherhood, child-bearing, and education among other matters, because the right to privacy implicit in the right to life and liberty guaranteed to the citizen of

¹⁶ [1978] INSC 18; Air 1978 Sc 527; 1978 (2) SCR 777; 1978 (1) SCC 579 (31 January 1978).

¹⁷ 1979 AIR 1369, 1979 SCR (3) 532.

¹⁸ JT 1986 136, 1986 SCALE (2)230.

¹⁹ AIR 1986 S.C. 494.

²⁰ 1963 AIR 1295, 1964 SCR (1) 332.

²¹ AIR 1950 SC 27.

this country under Article 21 of the Constitution. The privacy of a rape victim is violated during a criminal case. Taking advantage of the lacunae in legal procedure the shrewd defense lawyer will invariably encroach upon the privacy of the prosecutrix. It is time we ponder over this problem faced by the victims of rape during court trials and make in-camera trial mandatory for all rape cases. To protect the privacy of the rape victims, the identity of the victims must not be published in any manner by any agency at any time.

To fulfill the constitutional obligations, the apex court must evolve a policy of giving mandatory instructions to the lower judiciary to abide by the principles enshrined in UDHR namely the right to a speedy trial, right to a fair trial, and the right of defense.

CORRECTIONAL SERVICES

The criminologists maintain that Indian jails have grown into new crime factories, producing hardened criminals. The documentation can be made by the scary stories from the prison management.

In *Prem Shankar Shukla v. Delhi Administration*,²² the Supreme Court gave some directions intending to reform and humanize the jail administration. Unfortunately, for a variety of reasons, the directions of the Supreme Court are not being followed properly in most of the jails in the country. Similarly, in the case of Sheela Barse, the Court dealt with the detailed procedures for improving the lockups and safety in lockups, especially for women prisoners. According to the Justice A N Mulla Committee on Jail Reforms, "most of these lock-ups even lack basic facilities, and sanitary conditions are at their worst." The very first encounter of a person with the criminal justice system thus invokes in him a reaction of abhorrence for and distrust in the criminal justice system. There is an urgent need for the improvement of the lockups." He has further added that " the conditions of living in sub jails are worse than any other jails because the buildings are old and not maintained properly. There is an acute paucity of funds and facilities; and the management is left to the care of ill-paid, low-level staff with remote or indifferent supervision. There are no proper arrangements in prison for preparing the food and low-quality foods are supplied from outside by contractors.

The presence of a large number of under-trial and unconnected prisoners has continued to be a scandal for a long. The state of under-trials and the victims of procrastination in trials cannot be avoided without mentioning. The Mulla Committee again observed that the presence of an excessive number of under-trials, remand, and other unconvicted prisoners has created, and

²² 1980 AIR 1535, 1980 SCR (3) 855.

not wrongly, increasing public and professional concern about the non-observance of human rights, as guaranteed in the UDHR, in these institutions. The plight of Dhananjay Chatterjee who suffered in Alipore Jail awaiting his execution for 14 yrs. due to delay in the litigation process.

When Justice Krishna Iyer states, "These institutions, not the inmates, are criminals," he is correct.

SUGGESTIONS FOR IMPROVING THE CRIMINAL JUSTICE SYSTEM:

- **Strengthening Police Accountability**

Independent complaint authorities should be established at the state and district levels to investigate allegations of custodial torture, fake encounters, illegal detention, and police misconduct. Strict disciplinary and criminal action must be taken against officers involved in human rights violations.

- **Mandatory Human Rights Training**

Police officers, prison officials, and judicial officers should receive regular training on constitutional values, human rights principles, and ethical conduct. Awareness programs can help officials understand the importance of protecting individual dignity during criminal proceedings.

- **Implementation of Supreme Court Guidelines**

The guidelines laid down in cases such as D.K. Basu v. State of West Bengal and Joginder Kumar v. State of Uttar Pradesh should be strictly enforced in every police station and detention center.

- **Speedy Trial Mechanism**

Special fast-track courts should be established to reduce delays in criminal trials and prevent unnecessary detention of undertrial prisoners. Increasing the number of judges and improving judicial infrastructure can also help in reducing pendency of cases.

- **Use of Technology in Criminal Investigation**

Advanced forensic technology, CCTV surveillance in police stations, digital evidence management, and body cameras for police personnel should be introduced to ensure

transparency and prevent custodial violence.

- **Prison Reforms and Better Correctional Facilities**

Indian prisons require urgent reforms to improve sanitation, healthcare, food quality, and living conditions. Rehabilitation programs, vocational training, educational facilities, and psychological counselling should be provided to prisoners for their social reintegration.

- **Protection of Women and Vulnerable Groups**

Stronger mechanisms must be adopted to protect women, children, minorities, and marginalized communities from abuse within the criminal justice system. Separate cells, female officers, and victim support services should be made available.

- **Legal Aid and Access to Justice**

Free legal aid should be effectively provided to economically weaker sections to ensure equal access to justice. Legal awareness camps must be conducted to educate citizens about their rights and remedies.

- **Protection Against Arbitrary Arrests**

Arrests should only be made when genuinely necessary. Police officers must record valid reasons for arrest and immediately inform the accused about their legal rights, including the right to bail and legal representation.

- **Strengthening Human Rights Institutions**

Bodies such as the National Human Rights Commission and State Human Rights Commissions should be given greater powers, resources, and independence to effectively monitor violations and recommend corrective action.

- **Victim Compensation and Rehabilitation**

Victims of custodial violence, illegal detention, and police atrocities should receive timely compensation, rehabilitation, and psychological support. The state must ensure accountability and restorative justice for victims.

- **Public Awareness and Community Participation**

Human rights education should be included in school and college curricula. Civil society organizations, media, and citizens should actively participate in monitoring the functioning of the criminal justice system and promoting accountability.

- **Strict Monitoring of Custodial Institutions**

Regular inspections of prisons, juvenile homes, and police lock-ups should be conducted by judicial officers and independent committees to prevent torture and inhuman treatment.

- **Ensuring Privacy and Dignity of Victims**

In cases involving sexual offenses, in-camera trials should be mandatory, and the identity of victims must be strictly protected to preserve their dignity and privacy.

- **Comprehensive Criminal Justice Reforms**

The government should undertake comprehensive reforms in policing, judicial administration, and correctional services to align the criminal justice system with constitutional values and international human rights standards.

CONCLUSION

This article highlights how human rights law and the Indian criminal justice system have become inextricably linked. Human rights law, in turn, has put criminal justice systems under pressure to become more restrained, truthful, equitable, and even successful in societies that are becoming more complicated.

All systems are nevertheless beset by challenging and basic issues regarding the connection between criminal law and human rights, as well as the justification and extent of human rights protection within the criminal justice system.