

Indian Criminal Justice System and Human Rights – Contemporary Issues, Challenges and Safeguards

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ABSTRACT

This research paper investigates the pervasive issue of human rights violations within the Indian criminal justice system, focusing on the examination of existing legal gaps. This examines the protection and enforcement of human rights within the Indian criminal justice system, with a focus on constitutional provisions and international human rights standards. Criminal Justice can be defined as a system of institutions and governing bodies that are set up to maintain law and order in the country along with punishing the perpetrators. Human Rights and procedural laws of any country must be in close consonance with each other because these laws are formulated for better governance. Respect for human rights is vital to the welfare of humanity as well as to its advancement and development. Humans become paralyzed and cognitively deteriorate when they fail to observe. Human pleasure and personality development depend on respect for human rights. Preserving liberty and human dignity as the priceless legacy of humanity is the fundamental idea behind human rights. The paper focuses on how the various provisions of the code has helped towards the development of human rights jurisprudence. Ultimately, this research serves as a catalyst for dialogue and action, advocating for a more just and rights-respecting criminal justice system in India. Through an analysis of key issues such as the right to a fair trial, the presumption of innocence, protection against torture, and the rights of victims, this paper examines the ongoing efforts to harmonize justice and liberty.

Keywords: Criminal Justice System, Human Rights, Law Enforcement, Offender-Victim-Witness and Human Rights, Correctional System, Judiciary, Law and Human Rights in India

1. INTRODUCTION

“Custodial Death is perhaps one of the Worst Crimes in a Civilized Society Governed by rule of law” - **V R Krishna Iyer**

“Human Rights are not a privilege conferred by government. They are every human being’s entitlement by virtue of his humanity.” - **Mother Teresa**

“In a constitutional democracy there are three elements of rule of law : freedom, justice and peace”. - **Justice Ved Prakash, Former Judge**

“There can be no peace without justice, - no justice, without freedom - no freedom without human rights.”

1.1 Human Rights:

“**Human Rights** are which every human being possesses by virtue of his birth. They are inherent and inalienable.”

“**Human rights** are the basic rights and freedoms that belong to every person in the world, from birth until death.”

"Human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution.

Human rights are a set of principles concerned with **equality and fairness**. They recognise our freedom to make choices about our lives and to develop our potential as human beings. They are about living a life free from fear, harassment or discrimination.

Every person has **dignity and value**. One of the ways that we recognise the fundamental worth of every person is by acknowledging and respecting their human rights.

The Universal Declaration of Human Rights (UDHR) 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 suggested response for international law and by this the concept of "International Human Rights Law" has also developed. Human rights not only stand for individual's right rather they are a backbone for providing social justice in a country.

(UDHR) emphasizes that the recognition of human dignity and equal rights is fundamental to freedom and justice in the world. India, being a signatory to the UDHR, has incorporated many of its principles into the Indian Constitution and in its legal system. Every person is born with some inherent rights known as rights of people.

That is to say, Human Rights are the very minimum of protections that every self-determining Indian citizen is entitled to under Indian law, regardless of their background or beliefs. These privileges cannot be given or taken away from an individual.

1.2 Criminal Justice System:

The Criminal Justice System is the network of government and private agencies. Purpose of Criminal Justice System are: Doing Justice, Controlling Crime and Preventing Crime.

According to Cambridge dictionary: Criminal Justice System means –The system in a society by which people who are accused of crimes are judged in the court.

Criminal Justice System involves:

- I. Maintaining the rule of law in the country.
 - II. Preventing crime.
 - III. Adjudicating crime and criminals.
 - IV. Compensating and rehabilitating victims.
 - V. Deterring offenders from committing any crime in the future.
- Criminal Justice Functionaries are –

- I. Police
- II. Prosecutor / Defence Lawyer
- III. Magistrates / Courts and
- IV. Corrections / Prison Administration

It was noted by the United Nations that :

"A fair, effective and efficient criminal justice system is a system that respects the fundamental rights of victims as well as those of suspects and offenders. It focuses on the need to prevent victimization, to protect and assist victims, and to treat them with compassion and respect for their dignity. Victims should also have access to judicial and other mechanisms to seek remedy for the harm they suffered and obtain prompt redress."

1.3 Objective of Study:

- I. The objective of this research paper is to critically analyze the current state of safeguarding the rights of the accused in the criminal justice system in India.
- II. By examining the constitutional and legal framework, as well as the practical aspects of the system, the paper aims to identify the challenges and gaps that exist in protecting the rights of the accused.
- III. To make an enquiry in regards to basic violations of human rights of victim and its concern in present criminal justice system.
- IV. To suggest remedies on the basis of research which would make the existing criminal justice system more effective.

2. REVIEW OF LITERATURE

I.K. D. Gaur in his essay, "Justice to Victims of Crime: A Human Rights Approach", discusses about compensatory schemes for victims of crime and suggest measures to make them more comprehensive.

II.N. R. Madhav Menon in "Victim Compensation Law and Criminal Justice System: A Plea for a Victim-Oriented in Criminal Justice" advocates for victim-oriented criminal justice system with greater respect for victims of crime, then come back to the 'Victim Compensation Scheme' as a recognition of victims' rights in Criminal Justice System.

III. Kode, Nagnath Shankarappa (2016) in his research “The critical study of criminal laws and powers of police in India with special reference to functioning of police in Nanded range” he stated -Consequently, the present system of Police has not helped the authorities in achieving the desired results. Hence, it may be affirmed over again that neither the incidence of crime has reduced nor the individual victims have been able to reap the benefits of criminal justice system. So much so that there is need for reform with regard to the nature and extent of the powers of police and their duties and responsibilities.

IV. Jayasimha B (2016) in his research “Protection of Victims Rights in Criminal Justice System a critical study” he described that The primary function of the Constitution and the laws is to fulfil the aspirations of the common man. Criminal justice system is that instrumentality which is looked at by the people to redress the harm done against them and seek justice to improve the quality of their life.

The world is full of crime and criminals, tragedy and violence. Crime is a social phenomenon. No society primitive or modern, no country whether under developed or developing or developed is free from its clutches. It is obvious that under these circumstances, the by-product of the crime i.e. victim is bound to emerge. However, the focus is mainly and always has been on criminal and crime, none on victim. Therefore, the victim is virtually a ‘forgotten man’ in the criminal justice system. While studying the role of victim, one has to accept the fact that the victim is the important person in the criminal justice system and without his cooperation the system collapses.

The methodology adopted for this research is a combination of doctrinal and empirical studies. It involves the content analysis of various legal provisions, articles and literature. There are 9 Chapters in this research work.

3. DISCUSSION

Any society's support structure is its criminal justice system, which ensures the preservation of law and order, the defence of individual rights, and the administration of justice.

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. In a modern welfare state, the purpose of criminal justice system is to protect the rights of individuals and punish the wrongdoer for the violation of basic norms of society.

Criminal Justice System in India comprises all the machinery established by the government to ensure Law and Order in the country. It involves crime prevention, adjudication of crime and criminals, compensation and rehabilitation of victims, maintenance of the rule of law in the country, and deterrence of offenders from committing any crime in the future. The main aim of the Criminal Justice System is to prevail Justice in the country.

Criminal justice is a system of policies and organizations used by national and local governments to maintain social control, prevent and regulate crime, and penalize those who break the law. Law enforcement like police and prosecutors, courts, defense attorneys, and local jails and prisons are the central agencies charged with these duties, which oversee the procedures for arrest, charging, adjudication, and punishment of those found guilty.

The need for criminal justice administration arose from the state's decision to impose the high standard of human conduct required to protect people and communities. It seeks to fulfill its protection goal through enforcement by reducing crime risk and apprehending, prosecuting, convicting, and sentencing those who violate rules and laws promulgated by society.

The purposeful administration of criminal justice cannot be effectively implemented without proper orientation at all levels and the coordinated functioning of all three agencies involved in this process, i.e., the police, the criminal courts and the correctional administration consisting of the prison service, the probation service and the correctional agencies.

3.1 Crime & Victim:

Crime:

“A crime is an unlawful act punishable by a state or other authority.”

Crime in Indian context "Crime is a activity that involves breaking the law and enforcements.”

According to Cross and Jones, “Crime is a legal wrong the remedy for which is punishment of the offender at the instance of the state”.

According to William Blackstone, in his Commentaries on the laws of England, has defined crime as “an act committed or omitted in violation of a public law either forbidding or commanding it”.

Stages of Crime:

- I.Intent
- II.Preparation
- III.Attempt
- IV.Completion

Victim:As per Macmillan dictionary victim “Someone who has been harmed injured or killed as the result of a crime”.

As per Collins English Dictionary: “Victim means a person or thing that suffers harm, death etc. from another or from some adverse act, circumstance etc.”

Classification of Crime Victims:

- I.Innocent Victim
- II.Depressive Victim
- III.Greedy Victim
- IV.Wanton Type Victim
- V.Tormentor Victim

Victims: Need Special Attention:

- I.Elderly Victim
- II.Child Victim
- III.Sex offences Victim
- IV.Female Victim
- V.Minority group and weaker section Victim

3.2 Criminal Justice System divided into three parts:

- I.Law enforcement or Police Force.
- II.Adjudication (Courts)
- III.Corrections (jail, Prisons,)

The Indian Constitution contains several provision with respect to the protection of human rights in the criminal justice system. Article 246 of the Constitution establishes three lists: Union, State, and Concurrent.

According to Schedule VII of the Constitution, "Police" is a "State subject." It is thus the responsibility of the state to maintain its own police force in order to maintain peace and security.

3.2.1 Police:

As rightly observed by D. H. Bailey, –The Indian police system which is developed on the basis of **The Police Act 1861**, has three basic characteristics: -

- I.The police force is organized, maintained and directed by the several states of Indian Union;
- II.The Indian police system is horizontally stratified like military forces organized into different cadres; and
- III.The police in each state are divided vertically into armed and unarmed branches.

Accountability of Police: According to the Commonwealth Human Rights Initiative (CHRI) Report, there are primarily four types of accountability or oversight over police services. These are listed below:

- i.Governmental Accountability:** - Legislative, judiciary, executive- the three branches of the governance provides the basic architecture for police accountability. The police are likely to be held accountable to all three pillars of states in a thriving democracy.
- ii.Independent External Accountability:** - Due to the complexity of policing and the importance of police organisations to governments, more regulations are implemented. Authorities that can monitor the police and prevent police abuse of power include national human rights commissions, state human rights commissions, and public complaints authorities. Any democracy must have at least one such impartial, civil organisation.
- iii.Social Accountability:** - It is regarded as a growing tool for external responsibility in contemporary democratic societies in addition to those already mentioned. In a democracy, citizens have the right to hold police accountable, in addition to official institutions that serve as the people's representatives. For improved performance, the media, community organisations, NGOs, and individuals all keep an eye on and comment on police actions.
- iv.Internal Accountability:** - Internal mechanisms, processes, and procedures form the foundation of every effective accountability system. The necessary mechanism to hold policing to high standards is created by effective disciplinary processes, adequate levels of training and supervision, and mechanisms for monitoring, assessing, and documenting performance and crime data.

3.2.2 Adjudication (Courts):

This is second component of this system. It includes prosecution and defence lawyers, judges and juries. When any accused appears before it, Court considers his case. If prima facie it seems that he has no committed any

crime. Court discharged the accused. In India, court procedure is divided into many parts according to offence. If a court thinks that prima facie he has committed the crime, court gives opportunity to plead the guilty. Accused plead guilty then court gives punishment and declare he is the accused. If he does not guilty then hear the arguments of both (prosecution and defense lawyer). After hearing the arguments he may convict or acquit the accused.

3.2.3 Corrections (jail, Prisons, probation and parole):

The last and final component of the Criminal Justice System is Corrections. It includes jails, prisons, probation and parole officers and borstal institution. After conviction of the accused, the sends to these institutions. In this accused totally lose his liberty. These institution help in the rehabilitation of the accused in the society again.

3.3 Criminal Justice Process: Case Flow/Steps

- I.Registration of the FIR
- II.Investigation: Interrogation, Examination, Arrest and Detention
- III.Final Report
- IV.Charge Sheet
- V.Trial
- VI.Correction: Bail/Jail/Fine etc.

3.4 Human Rights and Law Enforcement:

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.

The way we handle crime cases now is often criticized when human rights concerns are discussed at national and international forums because it is antiquated, outdated, and repressive.

Human rights occupy a predominant role in every corner of the society. Violation of human rights leads to endangering very human being. Human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution.

Human rights in criminal justice system are the central pillar of administration of criminal justice. Criminal justice is the beacon of the light. Therefore human rights is the sovereignty of man, peaceful co-existence in the family, society, nation and international context need human rights. Human rights have to be followed in letter and spirit. It is the reservoir of life. Liberty equality and dignity of the individual. It is precious beyond all prices.

Human rights are the very wheels of justice in criminal administration. In criminal Justice System Police is first law enforcement agency which has to mind well human rights in context of offender, victim or witness.

Points to Mind and Efforts for Betterment:

- I.The Rights of Prisoners and Custodial Violence
- II.Right against torture
- III.Double Jeopardy
- IV.Plea Bargaining
- V.Speedy Trial
- VI.Right to fair trial
- VII.Right to Legal Aid
- VIII.Right to Compensation
- IX.Rights to Bail
- X.Arrest and Detention Power
- XI.Protection against Arbitrary Arrest
- XII.Privacy Rights in the Context of Search and Seizure
- XIII.Prison Overcrowding and Trial Delays
- XIV.Deaths in Custody and Extrajudicial Contacts
- XV.Pressure from the State and Society in High-Profile Cases

3.5 National Human Rights Commission, India

The NHRC is the National Human Rights Commission of India. The National Human Rights Commission (NHRC) of India was established on 12 October, 1993. The statute under which it is established is the Protection of Human Rights Act (PHRA), 1993 as amended by the Protection of Human Rights (Amendment) Act, 2006. It is in conformity with the Paris Principles, adopted at the first international workshop on national institutions for the promotion and protection of human rights held in Paris in October 1991, and endorsed by the General Assembly of the United Nations by its Regulations 48/134 of 20 December, 1993. The NHRC is an embodiment of India's concern for the promotion and protection of human rights. Section 2(1)(d) of the PHRA defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

3.6 The Protection of Human Rights Act, 1993

Human rights are standard that allow all people to live with dignity, freedom, equality, justice and peace. Every person has these rights simply because they are human beings. They are guaranteed to everyone without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Human rights are essential to the full development of individuals and communities. There are 43 sections in this act. Human rights reflect the minimum standards necessary for people to live with dignity. Human rights give people the freedom to choose how they live, how they express themselves and what kind of government they want to support, among many other things. Human rights also guarantee people the means necessary to satisfy their basic needs, such as food, housing and education. So they can take full advantage of all opportunities.

3.7 Justice Verma Committee Report

Justice Verma Committee was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The Committee submitted its report on January 23, 2013.

On December 23, 2012 a three member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The other members on the Committee were Justice Leila Seth, former judge of the High Court and Gopal Subramaniam, former Solicitor General of India. The Committee submitted its report on January 23, 2013. It made recommendations on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms.

3.8 Time to time there were various steps had been taken for reforms in Police Administration. These are:

- I. Gore Committee On Police Training (1971-1973)
- II. Ribeiro Committee on Police Refoms 1998
- III. Padmanabhaiah Committee on Police Reforms 2000
- IV. Malimath Committee on Reforms of Criminal Justice System (2001-2003)
- V. Police Act Drafting Committee (PADC) (2005)
- VI. Supreme Court Directives on Police Reforms (2006)
- VII. Madhav Menon Committee on Criminal Justice Reforms (Report Submitted 2007)
- VIII. Justice Verma Committee on Criminal Justice System (2012)

3.9 There is need to pay attention fully, till now as we are not able to get purpose of following :

- I. Universal Declaration of Human Rights 1948
- II. International Covenant on Economic, Social and Cultural Rights, 1966
- III. International Covenant on Civil and Political Rights 1966
- IV. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- V. The Protection of Human Right Act 1993
- VI. The National Human Rights Commission (Procedure) Regulation 1994

4. CONCLUSION

Every mother land has a constitution in which fundamental right play a vital role and it is the diadem of the people. A constitution without remedy is a body without head. A law without remedy is a tyrant. A remedy is the heart and soul of jurisprudence. And therefore it is a necessary concomitant of human rights.

Though there are remedies constitutional, criminal and international law but cases are not disposed of quickly. Remedies should be available to the needy people forth with so that they can realise the fruits of the order.

A fair, democratic, and civilized society is built on the protection and advancement of human rights. Since the criminal justice system is the protector of society and eradicating possibilities for human rights violations. The criminal justice system is a fundamental pillar of any democratic society, serving to uphold the rule of law, maintain social order, and protect the rights of all individuals.

The challenge before India is to develop human rights in its domestic caminal 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 advancement of human rights within the criminal justice framework must remain an ongoing priority. It is not only a measure of a society's commitment to justice but also a reflection of its moral and constitutional values. Only through a balanced and rights-based approach can the criminal justice system truly serve the ends of justice without compromising the dignity and liberty of individuals.

Thus it can be concluded that in order to protect human rights and fundamental freedoms of accused, we must generate an awareness for human rights in people's mind, otherwise, the concept of human right will zigzag one step forward, and two steps back. So,

- I.Strengthening Investigation and Forensic Capabilities
- II.Timely and Efficient Justice Delivery
- III.Police Reforms
- IV.Fair Procedures and Right of Appeal
- V.Prison Reforms
- VI.Access to Legal Aid and Legal Awareness
- VII.Victim Support and Rehabilitation
- VIII.Juvenile Justice
- IX.Legislative Reforms
- X.Rehabilitation of Prisoners
- XI.Various Compensations (Illegal detention and Torture)
- XII.Compensation to the victim of custodial death, custodial violence, for honour killing, for rape victim etc.
- XIII.Administrative Grievanance Committee
- XIV.Strict guidelines for Arresting and Detention
- XV.Soft Corner for child, woman, old, handicapped and disabled

One can be in category of Accused, Victim, Witness or relevant from society. So there is need to focus on this point that there should be justice fair and easy with everyone and real concept of Human Rights must be followed all the way. Then only we can get true development of Self, Society and Nation.

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