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Indian Criminal Justice System and Human Rights

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Human Rights are those rights which every human being possesses by virtue of his birth. They are inherent and inalienable. In a country like India, we come across various instances in which the individual is threatened with the possibility of violation of his human rights in every walk of life. 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"¹. 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.²

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 is at the core of a democracy, constitutional governance in a democratic set up is the safest guarantee for the protection of human rights and assurance of human resource development. Equal respect for the rights of all sections of the society is necessary to obtain full human resource development respecting the basic human right of non-discrimination. 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 human rights and thereby protect and safeguard the human rights of the citizens of a country. 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. As a

¹ "Universal Declaration of Human Rights." United Nations, United Nations, www.un.org/en/universal-declaration-human-rights/.

² P.N. Bhagwati, "Human Rights in Criminal Justice System" in Noorjahan Bava, ed, *Human Rights and Criminal Justice Administration in India*, Uppal Publishing House New Delhi, 2000, p11.

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*³, 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*⁴. 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 (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.”

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.⁵ 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.⁶ The Supreme Court of India has in the case *Ajay Hasia v. Khalid Mujib*⁷ 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 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. Human rights regime leaves a wide gap between normative claims and

³ (1983) 4 SCC 141.

⁴ ILR 1951, Allahabad, p. 369.

⁵ *Saheli Women's Resource Centre v. Commissioner of Police, Delhi*, AIR 1990 SC 513; *Nilbati Behera v. State of Orissa* (1993) 2 SCC 746.

⁶ *Tukaram v. State of Maharashtra*, AIR 1979 SC 185 which led to amendments of Criminal Procedure Code, 1973, Indian Penal Code, 1860 and Evidence Act, 1972.

⁷ AIR 1981 SC 487 at 493.

implementation capabilities. The result is that large-scale breaches of civil and political rights, as well as economic, social and cultural rights, mark the scenario".

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.

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.⁸ 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 say⁹, "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."

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 Khotoon's case¹⁰, 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.

⁸ 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.

⁹ In: *THE CHALLENGE OF LAW REFORMS* [Princeton University Press, 1955], pp.4-5.

¹⁰ AIR 1979 SC 1360.

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.

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 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.

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 buried is justice hurried. 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.

¹¹ AIR 1983 SC 1773.