Page 1988 - 2004 **DOI:** *https://doij.org/10.10000/IJLMH.112743*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

Integration of Accused and Convicts in Society: A Study of Indian Criminal Justice Administration

ROHIT RANJAN[1]

ABSTRACT

"Let hundred guilty be acquitted, but one innocent must not be punished" is the prime perspective of the Indian criminal justice system to achieve a status of a fair trial. Such an immense motive requires due care and caution that stretches the procedure long enough.

A fair trial needs some passage of time to discover facts. People ask for quick proceedings, fast track courts ignoring negative effects, but we do not find a way to abstain from the primitive legal procedure. The problem lies in the ignorance of the gap between the common man and our sacred legal system. A person is believed to be a criminal as soon as he is arrested, or just allegations are made to him. In the meanwhile, the case acquires great publicity, and the unfavourable judgments lead to agitation. These are the prejudiced beliefs that force us to act upon inappropriate behaviour. Also, the lack of coordination among the four limbs of criminology; Police, Prosecution, Judiciary, Prison, quashes the interest of justice. That is why people never confront the procedure, always try to find lacuna. This happens where we have best of all implemented legal systems, procedural and substantial.

This is a serious matter to look upon that law is clear and absolute; it cannot be altered, but the facts can be. In the era of corruption, Social Support can be seen as the fifth pillar of the Criminal Justice System. There is an intense need to check upon access to justice, its craters, and efficiencies, to explain the theories of criminology and to track the legislative legitimacy of principles of the Criminal Justice System, which cannot be done without social support.

Keywords: *Rights of accused, Criminal Justice Administration, Social Support, Integration, Insanity*

I. INTRODUCTION

The rule of law is a prominent mode of social control but cannot be imagined without the belief and support of society itself. Social altruism has emerged as a distinct pillar of law. In any setup

[1] Author is an Assistant Professor at School of Law, Alliance University, Bangalore, India.

 [ISSN 2581-5369]

of modern society, criminal activities cannot be ignored; that is why theories of criminology have developed their nature so far. The future of criminology depends upon strong features of its procedure in reality; hence access to justice cannot be achieved by ignoring social altruism.

Social altruism defines itself as possibilities of aiding and caring for each other. Belief in the rule of law binds people to proceed in a settled lane. Criminologists to date have not reached a common point on the question of 'why crime happens?' The answer to this question is multifaceted; there is a spectrum of factors that shapes the intent and action of an individual. These factors are both internal and external, affecting the various impression points in life on a macro as well as micro-level. Thus, it is pretty hard to identify the true rationale and causation regarding the commission of a crime. The impression points in an individual's life play a pivotal role as these points determine the behaviour and give the inference concerning the development of nature of an individual concerning the commission of a crime. These behaviours may be a result of conditions of life experienced by an individual like bad parenting, child abuse, a life of poverty, lack of self-control, to consider a few.

The efficacy of the criminal justice mechanism is dependent on the efficient functioning of the allied units of social control. The notion among the masses is that the criminal justice administration is deteriorating with each day passing, and the common public of this nation is losing faith in the administration. The main reason attributed to this deterioration and lack of faith among the masses is the lack of coordination amongst the law enforcement agencies, including the police, judiciary, magistracy, and correctional institution and particularly the police and the prosecution.

In the abstract sense, the State power must respect the individual's liberty and freedom, but State's concern for safeguarding human rights cannot be more than conditional as the State is more motivated by interest than the protection of the human rights of the individual. The social support to the individual committing crime has emerged as a central theme in criminology, but its wider acceptance is due to be acknowledged, and its competency as an organizing theory is questioned. This terminology, in a rudimentary way, establishes its importance as a mechanism to study crime and control in society. The establishment of this mechanism in the society and providing this support through agencies of social upliftment and development may be fruitful in creating a society with fewer criminal acts and act as a basis for a conducive society with a support system that may not condemn the individual to oblivion but integrate it to the mainstream.

 [ISSN 2581-5369]

II. MASS ATTITUDE AND LACK OF COORDINATION

Through the medium of this paper, in upcoming topics, it would be deliberated that how a series of crimes and its check by the system is governed by a simple day to day life of an individual, how the people have an attitude towards ignoring our responsibility and playing the game to blame everything on the system, on the government or any other event than taking the obligation The government is held responsible for every action, every offence, for every ill-mannered barbaric person roaming along the streets. The common mistake is to blame the system at every instance, but at this very point, a question arises what exactly the system is? The system is a body of control formed by us to set up a mechanism of which individuals are not a part, or individuals of the society are the part of the system, or if the individuals have created this system to govern the society and they are an inalienable part of it. The answer is the latter which cannot be forcefully instilled in the minds but have to be accepted. Then, on whom truly the blame lies? There is a concept in psychology popularly known as the ego defence mechanism. It postulates that every individual has a typical habit of defending the ego, and in the process of doing so, every possible argument is put forth which would satisfy the needs of the ego. It can be inferred that the individual sews a net of false facts and fantasies to try and escape reality.

Let us take an example A had a fight with B in which A thrashed B. the fault was of A, to which B resisted. A informed his father about his fight and the reason. A's father thrashed him.

Now, what kind of action was this? Was A's father justified? Whether A's actions could have been tackled in any other manner? The fact is that A's father has sown the seeds of a criminal mind, of a socially isolated being. The real criminal minds are developed from the very onset as a result of actions and reactions at home. The action taken by A's father was not affirmative. The real solution to the problem would have been if the reason behind A's action was investigated and solved through social altruism.

To understand the above-mentioned argument, a study was conducted with the patients claiming insanity as a defence in a criminal ward of a neuro-psychiatry institution. This study was conducted on a total of 17 patients admitted to the ward.

III. RESEARCH TOOL

The interview schedule and Participant observation method were used as tools of research. The interview schedule contains *Rosenberg's* self-esteem questionnaire, Hamilton's depression assessment questionnaire and a questionnaire to record general socio-demographic details.

 [ISSN 2581-5369]

DATA

(TABLE-01) *

S. No.	Age	Criminal Charges	Married/ unmarried	Substance History	Family Support	Legal assistance	Psychiatric Diagnosis
1	23	S.304B/34 I.P.C.	Married	No	Yes	Yes	Unspecified Non-Organic Psychosis, moderate level of Depression
2	30	S.300/302 IPC	Married	Tobacco	No	Yes	Unspecified organic or symptomatic mental disorder
3	35	S.300/302 IPC	Married	No	No	No	Unspecified Schizophrenia
4	53	S.300/302 IPC	Married	Tobacco	No	No	Schizophrenia
5	36	S.395,397 IPC, 26,35 Arms Act	Married	Drugs	No	No	Undifferentiated Schizophrenia-gained insight
6	31	S.302 IPC	Unmarried	Marijuana	Yes	Yes	Psychosis NOS
7	28	S300/302IPC	Married	Tobacco, Alcohol	Yes	Yes	Schizophrenia
8	45	S302/34 ,498-A IPC	Married	Alcohol	No	No	Unspecified Non-Organic Psychosis
9	16	S.302 IPC	Unmarried	No	Yes	Yes	Auditory Hallucination
10	38	S.302,307,464 IPC	Married	Alcohol, Tobacco	No	No	Schizophrenia
11	30	S.	Married	No	No	No	Unspecified Non-

 [ISSN 2581-5369]

		341,323,307,379,304-B IPC					Organic Psychosis
12	30	S. 302 IPC	Married	No	No	Yes	N.O.S.Psychosis
13	45	S.147,148,149,353,307 IPC, 27 Arms Act, 17 CLA Act, 13 UAP Act	Married	Drugs	No	No	N.O.S.Psychosis
14	40	S. 378 IPC	Married	No	Yes	Yes	Psychosis
15	21	S.379,411/34	Unmarried	Opium, Tobacco	Yes	No	Schizophrenia
16	18	S.378 IPC	Married	Opium, Heroin	No	No	Opioid Dependence Syndrome, (Multiple Substance Abuse)
17	40	S.302	Unmarried	Alcohol	No	No	Undifferentiated Schizophrenia

***Socio-demographic-cum-psychological details of the patient**

(TABLE-02) *

PATIENT CODE	SELF ESTEEM LEVEL
62521	0
66745	0
23121	1
30420	0
43775	1
74965	1
90200	0
77215	1
87994	0

 [ISSN 2581-5369]

IS-11	0
89079	1
88148	1
89208	1
IS-12	0
89648	0
89417	1
82280	0

***Self-esteem level of mentally ill criminals (**0= low self-esteem, 1= normal self-esteem)

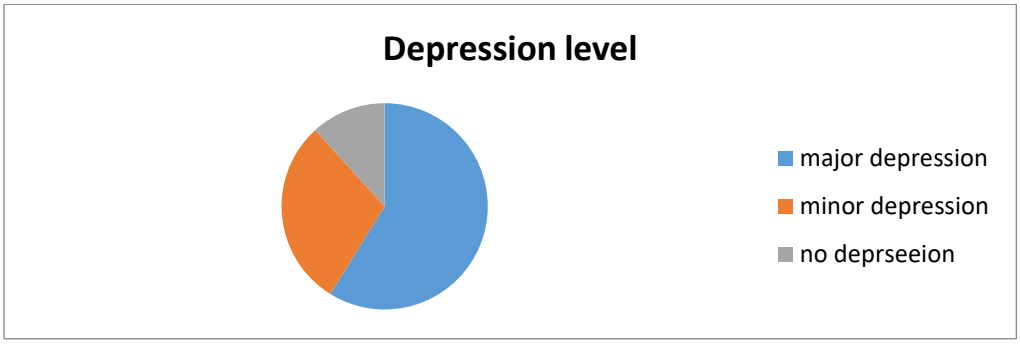
(Table-03) *

PATIENT CODE	DEPRESSION LEVEL
62521	1
66745	1
23121	0
30420	1
43775	0
74965	X
90200	1
77215	1
87994	1
IS-11	X
89079	1
88148	1

 [ISSN 2581-5369]

89208	1
IS-12	0
89648	1
89417	0
82280	0

*** Depression level of mentally ill criminals** (1=major depression, 0=minor depression, X= no depression)



IV. FINDINGS

The persons who were mentally disabled and trapped in complex criminal issues lack family support. This vulnerable class of people, who should get the maximum amount of support and sympathy from the family members as they must revive from two classes only 35% of patients/accused got support from their families.

23% of the patients/ accused were unmarried, although a common notion in society holds that the unmarried ones are more involved in the heinous crime. On the contrary, more young people were mentally ill criminals. 9 patients are less than or equal to 30 years of age out of a total of 17 people interviewed by the researchers.

The 64.7% of patients were indulged in some or other form of substance abuse. There can be two possible hypotheses for the same; either substance use was the factor because of which they lost control over their brain and commits a crime or to fulfil their necessity of substance they were compelled to do various kinds of crimes and get money to fulfil their needs. Many times, it was found that substance-dependent people are not getting any support from their families. The family also thinks that they should be left in isolation for recovering from this dependence. But it brings repercussions to these people, and recovery becomes more

 [ISSN 2581-5369]

complicated. But contrary to this, we saw that 63% of patients indulged in substance abuse (64.7% of total) got legal assistance, 64% of patients were charged with any form of culpable homicide. Out of these 11 patients charged with culpable homicide, only 36% got a family to support, and 54% got legal assistance. 45% of them were suffering from different forms of schizophrenia. More than 63% of them were indulged in some or other form of substance abuse 9 out of 17 patients were of low self-esteem. Interestingly out of 11 patients who were charged for murder, 7 were of low self-esteem. 2 patients left out of this were booked under theft. Rest 8 patients were of normal self-esteem.

2 patients (89079 & 89208) were suspected of organized extremist groups. They were found of normal self-esteem. During the study, it was found that they were neither getting any family support nor any legal assistance. Their diagnosis was also not clear

60% of the mentally ill patients were suffering from major depression, only 11% of the patients were not depressed, and 29% of the patients were suffering from minor depression. Thus, to summarize, It can be said that depression is prevalent in mentally ill criminals, and as much as 90% of the mentally ill criminals were depressed as per the study.

Almost all the majorly depressed persons had a family. Thus, it can be deduced that criminals, especially those that are too confined to mentally ill ones, feel pessimistic and want to escape from this terrible situation and go back to their social life. During the interviews, researchers observed that most of them were talking about restarting their lives. Interviewees were tired of what they did in life and wanted an opportunity to begin again.

V. LEGISLATIVE LEGITIMACY AND NEO INTERPRETATION

Indian laws, which trace their genesis from the British era, encompasses the provision to protect the rights of an accused but the real recognition of human rights principle in India was only after the enactment of the Indian Constitution and Code of Criminal Procedure, 1973 and Protection of Human Rights Act, 1993. The Indian constitution has guaranteed certain Fundamental rights in part III of the constitution.[2] Part III of the constitution protects substantive as well as procedural rights.[3]These fundamental rights are Human rights measures under the Indian constitution.[4] As per the Indian Constitution, the rights are as follows:

a) The right to equality is enshrined in Article 14.[5]

[2] M.P. Jain, *Indian ConstitutionalLaw* 901 (2010)
[3]*Pratap Singh v. State of Jharkhand,* AIR 2005 SC 273
[4]M.P. Jain, *Indian ConstitutionalLaw* 901 (2010)
[5]*Ibid.*

 [ISSN 2581-5369]

b) Rights to freedom of expression and speech in article 19.[6]

c) Protection of accused against ex-post-facto law, double jeopardy and self-incrimination under article 20.

d) Right to Life and Personal Liberty in Article 21.

e) Protection against arrest and detention.

f) Rights to seek remedies before the Supreme if there is any violation of any of the fundamental rights. (Article 32)[7]

The criminal procedure in policy and practice, after the Indian independence, was and is influenced by human rights principles and philosophies.[8] This influence was reflected in the Code of Criminal Procedure, 1973, under which three human rights principles were enshrined.

i) Speedy disposal of consideration, ii) Due process, iii) Fair treatment to poor consideration. These considerations resulted in recognition of new rights of the accused under S.50, 54, 56, 57, 303 and 304 of the Cr. P.C, 1973.[9] Sections 167, 309, 320 and 321 guarantee the speedy disposal of cases. The basic rationale behind all these new measures is to evolve a humane and efficient criminal procedure that is in contract with constitutional guarantees and human rights directives.[10]

Human Rights enshrined in the criminal justice administration of India provides a spectrum of legislative measures, but it has been observed that the judiciary is playing an important role in enforcing human rights principles and giving it neo-interpretation to widen its ambit. It has also been observed that this is a post-emergency[11] trend particularly exhibited by the Apex Court.

(A) Limitations on Power of Arrest

Sections 41, 42 and 151 of the code of Criminal Procedure, 1973 guarantee an extensive power of arrest to the police. The scope of the sections is so wide that it often leads to abuse of the power conferred, curtailing the guaranteed liberty of the citizens. The right is also infringed when there is no actual arrest, but the victims are deprived of their liberties in the name of interrogation by the officers. [12]In the case of *Joginder Kumar v. State of U.P.*[13]Supreme Court

[6]*Ibid.*
[7]*Ibid.*
[8]*Ibid.*
[9]*Ibid.*
[10]*Ibid.*
[11] National Emergency, 1975
[12]*Ibid.*
[13] (1994) 4 SCC 260

 [ISSN 2581-5369]

gave the nod to the misuse of the power to arrest by the police. The apex court observed that:

"*The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two? A realistic approach must be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other."*[14]

Thus, the court, in its order, held that:

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another. No arrest should be made without a reasonable satisfaction reached after the investigation about the genuineness and bona fides of a complaint and reasonable belief both as to the person's complicity and even to the need to effect an arrest. Denying a person his liberty is a serious matter."[15]

Therefore, the Court concluded that the right against indiscriminate arrest is part of Article 21 and 22(1) of the Constitution, and for effective enforcement, these are laid down in a following prescribed manner:

a) Information to relatives, friends or any other person who is known to the person arrested is to be conveyed reasonably.

b) This right must be informed to the person arrested by the police officer at the time of the arrest.[16]

c) The entry in the diary must be made regarding the information made to the kin of the accused regarding the arrest.

The magistrate owes a duty to satisfy himself when the arrested person is produced in front of him that these rights have been informed to the person arrested.

(B) Human Rights during Investigation

The notion of the police in the minds of the common mass is that they are the violators of human rights, and this violation becomes the ground reality when the process of investigation kick starts. It has been found that the violation of human rights to its maximum occurs in the

[14] *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260 at 263
[15] *Ibid.*
[16] *Ibid.*

 [ISSN 2581-5369]

course of investigating as, during this period, police are under immense pressure to collect evidence and connect the links which would help in framing the facts of the case. During investigation and collection of pieces of evidence, police often resort to methods of torture, resulting in a rise in cases of custodial death.[17]

In the case of *Gauri Shankar Sharma v. State,*[18]it was revealed that three members of police took the custody of the deceased without recording the arrest in the general diary, and it was shown that the injuries were pre-arrest injuries but to this Supreme Court in a well-graphed judgement did not restore the conviction under section 304, I.P.C, 1860.

Thus, it has evolved as a judicial strategy to punish heavily whosoever abuses its power, but that alone cannot curb the situation and does not provide adequate relief to the victim. The Apex court took cognizance of this situation and has evolved the constitutional right of compensation in the cases of abuse of power violating fundamental rights. In this context, there are numerous judgements such as *PUCL v. State of U.P.*[19]*; Inder Singh v. State*[20]*; NilabatiBehera v. the State of Orissa*[21]*; State of M.P. v ShyamsunderTrivedi.*[22]

By these steps, there has been an initiative by the judiciary to compensate in Monterey terms to the victims of this grave human rights violation.

(C) Prosecution and Fabrication of Evidence

The investigation is different from prosecution on many grounds, but they have similar traits and find a line of commonality of interest, i.e., the higher rate of convictions, and for this purpose, they sometimes take help forge and fabricate pieces of evidence. In *Dilawar Hussain v. the State of Gujrat*[23], communal violence broke out in Gujrat, in which 8 members of a community were killed. Police arrested 2000 members of the mob. Reacting to this, Justice R.M. Sahai observed that:

"Still sadder was the manner in which the machinery of law moved. From accusation in the charge-sheet that the accused were part of the unlawful assembly of 1500-2000, the number came down to 150-200 in evidence, and the charge was framed against 63 under the Terrorist, and Disruptive Activities (Prevention) Act, 1985 and various offences including Section 302

[17]*Ibid.*
[18] 1991 SCC (Cri) 67
[19] WP No. 1118/91 decided on 22/11/94. Unreported
[20] (1995) 4 SCC 702
[21] (1993) 2 SCC 746
[22] (1995) 4 SCC 602
[23] (1991) 1 SCC 253

 [ISSN 2581-5369]

I.P.C and even from that 56 were acquitted due to lack of evidence.[24]*"*

Justice R.M. Sahai commented on the criminal justice administration, stating that the administration caused a grave violation of fundamental rights and the right of personal dignity. The freedom of the individuals was compromised without being at fault. It endangered the life of many and led to the death of one.

In the case of *Kishore Chand v., the State of H.P.*[25], Justice Ramaswamy, highlighting the zealousness of investigation agencies and its dangers for human liberty, said that:

"It is necessary to state that from the facts and circumstances of the case it would appear that the investigating officer has taken the appellant for a ride and tramped upon their fundamental personal liberty and lugged them in the capital punishment under section 302, I.P.C., by freely fabrication the evidence against the innocent."[26]

This nature of cooking up of evidence by the investigating agencies has made the court to be extremely cautious while admitting any evidence. In *Shivappa v. the State of Karnataka*[27], Justice Dr A.S. Anand identified with the relevant facts that there was undue influence of police over the magistrate as a result of which the confession under section 164 of the code of criminal procedure becomes void. There was no evidence to the contrary to indicate that the confession was made voluntarily.[28]

(D) Right to Bail

The right to bail is a right vested in an accused at the time of its arrest. It guarantees the personal liberty of the accused, but there are certain laws under which, as a rule of caution judiciary denies bail Example of such offences is ST/SC's atrocities, sexual crime against women, 498A I.P.C. etc. This makes the bail not as a matter of complete right but as a matter of judicial discretion. In *Hitendra Vishnu Thakur v. the State of Maharashtra*[29] , The Supreme Court, in the light of Section 167 Cr. P.C, 1973, held that:

"With the amendment of clause (b) of sub-section (4) of S.20 of the TADA read with the proviso to sub-section (2) of S. 167 Cr. P.C, 1973, and indefeasible right to be enlarged on bail accrues in favour of the accused if the police fail to complete the investigation and put up a challan against him in accordance with law under section 173, Cr. P.C"[30]

[24]*Ibid.*
[25] (1991) 1 SCC 286
[26]*Ibid.*
[27] (1995) 2 SCC 76
[28]*Ibid.*
[29] (1994) 4 SCC 602
[30]*Id. at 626*

 [ISSN 2581-5369]

Therefore, in these cases, the request of the police to enhance the remand period has to be declined, and no formal extension is granted. And the accused is informed regarding his right to bail and enable him to apply on his behalf, but the decision of the apex court in the case of *Sanjay Dutt v. State through C.B.I.*[31]has limited the import of *Hitendra Vishnu Thakur* case to the 'indefeasible right' only. Thus, no written notice must be given to the accused for extending the remand period under section 20(4) (bb) of TADA, 1985, mere production at the time of fresh remand and information to him regarding the proposal of extension is enough.

(E) Limiting Police Remand

Most cases of grave human rights violations occur in the police remand. Courts have been ultra-sensitive in granting police remands. In the case of *C.B.I. v. Anupam J. Kulkarni*,[32] the Supreme court denied the request of police remand after his initial judicial custody. The specific reason provided by the court in this regard was that:

"There cannot be any detention in police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage."[33]

Supreme in the case of *Union of India v. Thamisarasi*[34]disfavored the continued remand detention beyond the period of 90 days even the arrest under NDPS act, 1985. The court observed and ruled that the limitation in S. 37 (1) (b) of the Act applied only in case of bail on merits but not in the cases of bail on default in filing a complaint within the period specified in Section 167 (2) of the Cr. P.C, 1973.

Thus, it can be observed that the courts are taking all the precautionary measures they can take to stop the violation of law as well as human rights in the administration of criminal justice. Once we are through with the judicial interpretation of human rights principles enshrined in the laws, we need to now look upon those Craters in the Criminal Justice Administration, which in itself is a grave violator of human rights.

VI. PROCEDURE TO ACCESS JUSTICE

The Criminal Justice Administration in India follows the Anglo-Saxon-adversarial pattern, which includes its four limbs, namely, the police, prosecution, judiciary, and correctional institutions (popularly known as prison). The success or failure of the criminal justice

[31] (1993) 5 SCC 410
[32] (1992) 3 SCC 141
[33] *Id.*at 158
[34] (1995) 4 SCC 190

 [ISSN 2581-5369]

mechanism depends upon the efficient functioning of these allied units.[35] The notion among the masses is that the criminal justice administration is deteriorating with each day passing, and the common public of this nation is losing faith in the administration. The main reason attributed to this deterioration and lack of faith among the masses is the lack of coordination amongst the law enforcement agencies, including the police, judiciary, magistracy and correctional institution and particularly the police and the prosecution.[36]

(A) Role of Police and Prosecution in Criminal Justice System

Police is the first institution in the criminal justice administration, and they have the Atlas's responsibility to do justice with the causes of common mass. The police are responsible for registering F.I.R under section 154 of Cr. P.C, 1973 and have a primary responsibility to investigate the matter and seek the truth, but the institution has been corrupted due to certain extrinsic factors. Also, the widening gap between the police and the prosecution has led to the frustration of the basic agenda of the two institutions.[37]

Section 154, Cr.P.C. speaks about the information made to an officer-in-charge of a police station in cognizable offence cases. It is not necessary that the informer must be an eyewitness to the incident. Anyone can file an F.I.R.[38]the officer-in-charge of the police station is legally bound to register an F.I.R. Under section 154, but at the same time, the officer-in-charge has the right to make a preliminary enquiry as to whether the first information is to be lodged had any substance or not.[39] An officer-in-charge is expected to reach the place of occurrence as early as possible after receiving the information. And it is the duty of the State to protect life and liberty. It is on the part of the responsible police officer to reach the place of occurrence as this is his implicit duty and responsibility.[40] But the functioning of the police is in question when there is a delay in registering F.I.R or non-performance of some necessary duties by the police officers. But mere delay in registering F.I.R. itself is not fatal to the case of the prosecution.[41] The only reason for lodging F.I.R at the very first instant is to get early information regarding the circumstances in which the crime has been committed and to retrieve other relevant information.[42]

The police have a very vital role in marshalling the facts, and the effective presentation of such

[35]*Ibid.*
[36]*Ibid.*
[37]*Ibid.*
[38]*Hallu and others* v. *State of Madhya Pradesh* , AIR 1974 SC 1936
[39]*Rajinder Singh Katoch* v. *Chandigarh Administration*, 2008 Cri. L.J. 356 (S.C.)
[40]*AnimirreddyVenkataRamana v. Public Prosecutor, H.C. of A.P.*, 2008 Cri. L.J. 2038 (S.C.)
[41]*Balwant Singh v.The State of Punjab*, 1978 Cri. L.J. (NOC) 281, Punj. and Haryana, 1413
[42]*Ramesh BaburaoDevaskar v. State of Maharashtra*, 2008 Cri. L.J. 372 (S.C.)

 [ISSN 2581-5369]

facts depends upon the prosecution.[43] The National Police Commission has observed, in its fourth report that, *"the ultimate success of the investigations depends upon the efficiency of the prosecuting agencies in presenting the evidence in courts in a convincing and effective manner and this can only be done through cooperation and interaction between the investigating officers and the prosecutors."*[44] The proper coordination between the prosecution and the police are lacking due to their irresponsible, clumsy and casual approach in investigating and handling the cases. This clumsiness helps the defence to take advantage of the loopholes, and this is one of the major reasons for the low conviction rate.

(B) Non-Registration of Cases

Non-registration of cases by the police is the most serious form of violation of Human Rights.[45] As per National Police Commission, 1976, the most important factor responsible for the non-registration of cases is to keep the crime figures low for claiming that the crime rate has reduced due to the effective functioning of the police.[46] The most famous excuse given for non-registering the case is that they don't have any jurisdiction over the matter but under 154 Cr. P.C officer-in-charge has to register the F.I.R. of a cognizable offence as soon as the complainant asks for it. The jurisdictional controversy is no bar in registering F.I.R.[47]

(C) Arbitrary Arrest

The word "arrest" finds its roots in the French word 'arrester'. It means to 'stop' or 'stay' and signifies a restraint of the person—section 41 to 60 of the Cr. P.C, 1973, talks about the police and magistrate's power to arrest any person and arrest by the common man and for that, there are certain guidelines as mentioned in S.46 of the code[48] , but the power to arrest is being grossly abused, and human rights are neglected by the police. The National Police Commission has expressed its opinion upon the abuse of this power and analyzed that nearly 60 per cent of the arrest were unjustified and were not at all necessary. It was estimated that 43.25 per cent expenditure in jails was over such prisoners whose arrests were not at all necessary and were unwarranted. The Supreme Court in J*oginder Kumar v. the State of U.P.*[49] has made it crystal clear that there are certain restrictions on the police power to make an arbitrary arrest. One of the relatives must be informed and inform the arrested person of his right. In *D.K. Basu v. State*

[43]B.V. Trivedi, "Human Rights and Criminal Justice System in India: A Reflection on their Mutual Contextual Nexus", in K.I. Vibhute (ed), *Criminal Justice*, 141 (2004)
[44]*Ibid.*at 144
[45]*Ibid.*
[46]*Ibid.*
[47]*Ibid.*
[48]*Ibid.*
[49] (1994) 4 SCC 260

of West Bengal,[50]the procedure related to how to arrest was laid down. These rights are a subset of article 21 and article 22(1) of the Indian constitution and must be enforced strictly.

(D) Delay in Disposal of Cases

Right to Speedy trial comes under the ambit of Article 21 of the Indian Constitution. The Supreme Court in *Hussainara Khatoon (I) v. Home secy, State of Bihar*,[51]laid down that a procedure that keeps such a large number of people in jails without trial cannot be regarded as reasonable, just or fair in conformity with the requirement of art.21 of the constitution. In *Raj Deo Sharma v. the State of Bihar*[52], it was held that in cases where the accused has been in jail for a period not less than half of the maximum period of punishment prescribed under the codes, the court should release the accused on bail forthwith on such condition as it deems fit. Overcrowding in Jails is a common phenomenon these days. Thus, there is an instant need to devise an effective and efficient mechanism to dispose of cases in the courts at a speedier rate as one of the constitutional obligations as per article 21 of the Indian Constitution. Therefore, it can be said that Human Rights has been an integral part of the Criminal Justice administration of the country. The institution is there to protect it but as any proposed mechanism for the prevention of Human rights of the person who come in conflict with the law needs to look at their basic needs and to strive to revive human beings from within human beings in both police as well as judicial custody. The growing awareness of human rights among the people has raised their expectation from the law to maintain it. It should be the foremost priority agenda in this new era to make the criminal justice administration more effective and humane, and in the process of making our criminal justice system such, we have now arrived at the second chapter of the project, which will deal with this matter only that how laws in India have legitimized and gave sanctions to Human rights.

VII. PROPOSED SOLUTION

Human rights are universal in nature despite the fact that the perspective of each society concerning them may differ. During the colonial era, India had experienced the lack of recognition of negative obligations of the State and reliance of the State on the privileged section of the society, but the concept of human rights has been an integral part of our society. The institution of criminal justice has evolved to protect human rights and to restore the human dignity of those who have gone out of the social order. The Apex court has said time after time that after committing an offence, a person does not become a non-person and he continues to

[50] (1998) 6 SCC 380
[51] (1980) 1 SCC 81
[52] (1998) 7 SCC 507

 [ISSN 2581-5369]

be entitled to all human rights in a restrictive legal framework, but at times it has been felt that the lower rungs of the criminal justice administration have to remain unperturbed and unmoved by human rights ideologies and is more tuned to the crude and coercive mechanics that are supposed to produce best crime control result. The lack of human rights culture and education is responsible for the present sorry State of affairs. The policemen focus on the concrete reality of the lawless behaviour of possessing criminal threats to the peace of the society, and the same is with the lower strata criminal underlies the uncaring and callous attitude of the police and prison official towards them. In the case of the first category, one can argue on the Hobbesian philosophy of a 'nasty, dwarf, and brutish' man. But in the second category, one hardly disputes the desirability of judicial individualism. In the abstract sense, the State power must respect the individual's liberty and freedom, but State's concern for safeguarding human rights cannot be more than conditional as the State is more motivated by interest than the protection of the human rights of the individual. Also, it is true that Human rights as a tool for struggle has limited potential. It can act as a nuclear weapon in case of arbitrary exercise of power in a few cases but, it does not make much difference as the basic developmental needs of the majority in the population is not attained to date. Thus, the principle has to be rationalized and can be summed up on the agreement that though India has not incorporated the human rights friendly provisions as per international standards in totality, it can safely be asserted that the segments of that are present in our criminal justice administration and in particular, the judiciary is playing a magnificent role in interpreting the provisions from human rights angle and has responded to this new situation pretty well. Thus, it is hoped that in the long run, the Indian Criminal Justice administration will adopt and adapt as per the international standards of human rights. It should be at the top of the priority list of agendas in the new millennium to make the administration of criminal justice more effective, humane, fair, just, and speedy and thereby to meet the minimum expectations of the common mass.

*****

 [ISSN 2581-5369]