

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Violation of Human Rights in the Criminal Justice System

V. KALAIMAGAL¹ AND VIGNESH R.²

ABSTRACT

This paper in detail discusses the violation of human rights in the criminal justice system with law related to it in Indian and International cases and the Provisions stated in UDHR. Construction of India, 1950 and Criminal Procedure Code, 1973. This paper attempts to research human rights in the criminal justice system and how human rights are violated by the departments of the Criminal Justice System. The Criminal system Justice system consists of three departments i.e., Police, Judiciary, and correctional services. This paper discussed these three parts in detail with related case laws for a better understanding of the concept. I have detailed the negligence of police and misusing of powers vested with them and delay in judicial proceedings by the department of Judiciary. In the three organs of Government, the judiciary has to turn out to be a leading edge of human rights in India. It plays this feature especially through revolutionary interpretation and inserts in the human rights provisions of the Constitution. Although the significance of human rights is universally commonplace and relatively recognized, implementation degrees range from jurisdiction to jurisdiction. In India, notwithstanding massive expansions throughout the spectrum of human rights, implementation has now no longer been that satisfactory. Recently, the International Commission of Jurists, Geneva had warned that in India those very human rights stand threatened. This Paper additionally has stated some steps to bring out better reforms in Criminal Justice Systems.

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

I. INTRODUCTION

Throughout the world, criminal justice systems are primary reasserts of grave human rights violations, together with extrajudicial executions, torture, arbitrary detention, and discrimination.³

¹ Author is a Guest Faculty at Dr. Ambedkar Law University (School of Excellence In Law), Perungudi Campus, Chennai, India.

² Author is a LL.M. (Hons) Student in India.

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

In a country like India, we encounter diverse instances in which the individual is threatened with the opportunity of violation of his human rights in every aspect of his life. They are based on mankind's demand for a life in which the inherent dignity of human beings will receive respect and consideration. The Universal Declaration of Human Rights clearly states that respect for human rights and human dignity is "the foundation of freedom, peace, and justice in the world."⁴ After the first and second world wars, the UN concern for Human Rights has also become an important issue on the 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 one of the important aspects in rendering social justice in the country.

II. HUMAN RIGHTS IN THE CRIMINAL JUSTICE SYSTEM

Criminal Justice is one of the critical areas of human rights where it is tested continuously for the preservation of peace and security in society on the one hand, and prevention of human dignity of both victims of crime and persons accused of it, on the other. The rights intended to be cared for and protection of an accused of following various measures and judicial approach towards the sentencing of the convicts is mainly focused on human rights. The Criminal Justice System of any country is the premise of organizing peace and tranquility. The Criminal Justice System which includes Police, Judiciary, and Correctional. Institutions plays a chief function in imposing human rights and thereby protests and safeguards the human rights of the citizens of a country. The Criminal Justice System has the power to control crime, prevent crime and punish criminals. Under the Criminal Procedure Code 1973, the pre-trial process includes arrest and investigation. The Criminal Justice System has composed mainly three crucial organs, particularly (i) Judiciary (ii) the Prison, and (iii) the Police in India, human rights are recognized as fundamental rights and are given a special status. It is considered as inherent for every citizen and thus, Articles 32 and Article 226 of the Indian Constitution deals with the right to move to the Supreme Court and High Court respectively for their violation of rights.

III. THE POLICE

Justice A.N.Mulia has already made a statement. I tell it with all seriousness that there isn't a single lawless gang in the country with a criminal record that compares to that of the organized force known as the Indian Police Force. They have gained negative publicity for their lawlessness. Today, custodial deaths, rapes, and tortures have drawn the attention of the media

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

and the legislature. The Human rights department is doing a great job in preventing such violations of human rights and steps are being taken to avoid the future occurrence of such unfortunate incidents.

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 the public and state legislature. This type of statistical approach of the political executive is largely responsible for understanding the crime figures in the state. 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 discusses the equality of all before the law and everyone's 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 public. 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.

The Supreme Court in *Joginder Kumar v. the State of U.P.*⁵ states the power of the police to arrest an accused. The police officer cannot arrest if he feels reasonable to do so. The presence of the power to arrest is one thing. The justification for that is quite another. The justification for the arrest is to be given by the police officer also the power is being vested. If the arrest is unreasonable, the victim's self-esteem and reputation will be in question it may lead to the suicide of victims. The police officer must arrest the accused after the proper investigation because it shows the genuineness and bonafide intent of the complaint.

⁵ 1994 AIR 1349, 1994 SCC (4) 260

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 behavior and is likely to commit further offense 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 classifying 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 a Habeas corpus or he can make sufficient arrangements for his defense. 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 a police officer is required to inform a person arrested that he is entitled to be released on bail. On the 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 WBs*⁶

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.
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."⁷

"Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law"⁸. 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 Bihar case⁹ shocked 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 in the affirmative that if it were not so Article 21 of the Constitution would be reduced to a zero.

From ***Rudal Sah v. the State of Bihar 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.

⁷ 1997 1, SCC 416,⁷ Article 10 of UDHR

⁸ <https://advocatetonomy.com/2018/03/12/law-of-custodial-death-and-violence-in-india/>

⁹ 1981 SCR (2) 408, 1981 SCC (1) 627.

¹⁰ 1983 AIR 1086, 1983 SCR (3) 508

¹¹ AIR 1982 SC 1477

¹² 1990 AIR 513; 1989 SCR 488 1990 SCC (1) 422; JT 1989 (4) 553 1989 SCALE (2) 1315

In a landmark case *Jam et al. v. International Finance Corp*¹³ in which a group of India 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 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 neighborhood 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 whether the local authority had failed to fulfill a common law duty to protect two children named Colin and Graham from the harm inflicted by their neighbors. 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 local authorities to be held liable for a failure to exercise their duty of care concerning the

¹³ AIR 1933 SC 1960.

¹⁴ (2019) UKSC 25

¹⁵ (1995) 2 AC 633.

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 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 behavior even after almost six decades of independence.

IV. 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" say 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 defense," 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 inconvenienced 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 life; 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 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

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 IT 1986 136, 1986 SCALE (2) 230.

¹⁹ AIR 1986 S.C.494. 21 AIR 1950 SC 27

²⁰ 1963 AIR 1295, 1964 SCR (1) 332

²¹ AIR 1950 SC 27

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.

V. CORRECTIONAL SERVICES

The criminologists maintain that Indian jails have grown into new crime factories, producing hardened criminals. The documentation can be made up by 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 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

²² 1980 AIR 1535, 1980 SCR (3) 855.

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.

VI. PROTECTION OF HUMAN RIGHTS AND SUGGESTION FOR IMPROVING THE CRIMINAL JUSTICE SYSTEM

Crimes are committed in a well-organized manner and due to technological advancements, the evidence may easily be erased. So to tackle these crimes there is the need for advancement in investigating agencies, innovative electronic means, and experts.

It is suggested that a uniform policy must be made to avoid violations of human rights.

The improvement in the criminal justice system is done by a speedy trial process. It is recognized as a fundamental right under Article 21 of the Constitution of India. There is a prescribed time duration for each process.

The time duration should not be unreasonable and rigid because it is considered that "Justice delayed is justice denied".

The police play an important role in improving the criminal justice system and law enforcement. The police should be more responsible and should abide by the law.

The protection of human rights at regional, national, and international levels must be strengthened.

VII. CONCLUSION

This article emphasizes that the Indian criminal justice system along with human rights law have become intrinsically intermingled with each other. In turn, human rights law has challenged criminal justice systems with a need for improvement of restraint, truthfulness, fairness, and even effectiveness in increasingly complex societies.

However, difficult and fundamental questions about the relationship between criminal law and human rights, as well as the rationale and scope of human rights protection within the criminal justice system, continue to plague all systems.
