



Violation of Human Rights in the Administration of Criminal Justice

KEYWORDS

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INTRODUCTION:

International protection of human rights has increased dramatically in the last century, due to the increased recognition that a number of nations share many fundamental legal values and expectations.¹ One crucial commonality is the acknowledgement that individuals must be protected from certain depredations against their person, and that international laws are needed to protect people from policies which ultimately affect the global community. This article will focus on the protections afforded persons in the context of the administration of criminal justice. These safeguards are important protection against abuses of power which affects the life, liberty, and physical integrity of individuals. Without these protections and limitations on the potential abusive exercise of power by states, democracy could not exist. Thus, there is an inseparable link between the protection of individual and collective human rights and democracy. The field of battle in which democracy of criminal justice, which encompasses all processes and practices by which a state affects, or removes basic rights²

The Second half of the 20th Century was remarkable for the development of international human rights law and the recognition of and growing respect for, international criminal justice. It is frequently forgotten that prior to world war II, individuals had no standing at all in international law and apart from in significant exceptions, humanitarian law had never been enforced.

There were dramatic changes as a consequence of the Nuremberg Trials of major Nazi war criminals and the ratification of the Charter of the United Nations, the Universal Declaration of Human Rights, the four Geneva Conventions of 1949 and the international human rights conventions of the 1960s. Perhaps most importantly, these developments begin to gradually penetrate the strict theories and applications of national sovereignty.

In many legal systems a vigilant, independent judiciary serves as a vital safeguard for preventing human rights abuses that would otherwise occur, and for redressing them when they do take place. When you deal with the criminal justice system whether as a victim of crime, a witness in a court case or some one charged with an offence you have the right to be treated fairly and without discrimination. This section tells you about the rights you have and what the legal responsibilities are for organizations that are part of the criminal justice system. This section does not tell you how to take some one to court for discrimination or exercise your rights through the legal system.

The criminal justice system plays important role in talking discrimination. The Courts, Police, probation and prison services are all part of this system. The courts also have

a central role in hearing discrimination claims and deciding on remedies when claims are successful.

Crime control and Administration of justice is one of the major functions of a state even during ancient time. Off course, in the primitive society administration of justice was not divided into two branches i.e., Administration of Civil Justice and Administration of Criminal Justice as is being done in modern times. However, ancient Hindu law broadly distinguished between civil and criminal branches of law but did not strictly adhere to the distinction between crimes and civil wrongs so far as the procedure and remedy were concerned. With the passage of time, recurring incidence of deviant behavior and its impact on the society warranted a strict enforcement of law and order to keep a vigil on the protection of person and property, a rudimentary form of criminal justice came into existence.

It is the duty of the state to protect the person and property of the citizens as fundamental rights. The state has constituted the criminal justice system to protect the rights of the innocent and punish the guilty. The system devised more than a century back, has become ineffective. The very purpose of administration of criminal justice is that an accused person should get a fair trial in accordance with the accepted principles of natural justice; every effort should be made to avoid delay in investigation and trial. Fair trial has two objects in view: it must be fair to the accused and must be fair to the prosecution.

Forensic Science developed in the last two centuries has become a very important tool for the investigating agencies in particular and judiciary in general. Forensic Medicine is the most useful tool in recent times in the administration of criminal justice.

Rights come under Criminal Justice System

Several rights are particularly relevant for the Criminal Justice System;

The right to liberty and Security,

Freedom from torture and degrading treatment,

The right to a fair trial,

The right not to be punished for something that wasn't a crime when you

did it the right to respect for private and family life.

If any of these rights or freedoms is infringed we have the right to an effective resolution in law, even if the infringement was by someone in authority such as a police officer.

In many cases, the Human Rights Act also protects against unfair treatment on grounds including but not limited to, those of sex, race, disability, sexual orientation, religion or belief and age.

In addition to the legal protection offered by human rights legislation, the criminal justice system is also subject to anti-discrimination legislation that prevents it from discriminating unlawfully against anyone on the grounds of sex, race, disability religion or belief age or sexual orientation.

As public authorities, criminal justice institutions, such as the prison service, police forces, the National probation service and the crown prosecution service are also subject to certain legal duties, which require them to positively promote equality.

Justice Delayed is Justice Denied

'Justice to Common men' is the primary objective of the legal mechanism of the country. But in the present situation the common men have no hope of getting justice. In the judicial mechanism there are three players, i.e., judge, lawyers and the common men, among which the common men are at the receiving end everywhere. The unspoken law of delays in Indian Courts is the main roadblock in the way of distributive justice. There are more than 3 crore cases pending in different parts of the country, and it will take near about three hundred years to disperse these cases if our courts continue the same speed they are moving on now.³

We can take the famous case of **Shibu Soren**, where the warrants were not being served for some thirty years. In between these thirty years several of the accused as well as complainants are dead and still the case is pending. Now if also the verdict comes it will be of little use.

Appeals, Adjournments and stay orders, these are certain complex areas in the subordinate judiciary which must be addressed in order to have a free, fair and timely process of justice. There is a direction from the Supreme Court that the cases involving older persons are to be dispersed early, but none has ever bothered to comply with the direction.

Parallel System of Judiciary

Justice Venkatchaliah, the former Chief Justice of India, said that because of the failure of normal judicial system there is an increase of Jan Adalats all over the country. Its fact over the years the court procedures have become so costly and time taking that the poor ignorant rural majority of this country are afraid of going to the courts. It is a fact that so many families in rural India have committed suicide after becoming bankrupt fighting the court cases. It is in these circumstances, people from the naxalite affected regions and in most part of North Eastern India have started depositing their faiths on the Jan Adalats held by different extremist groups. It is for these reasons there has been a considerable drop in court cases in the naxal infested regions of Jharkand, Orissa, Bihar, Andra Pradesh and others. This is a serious problem and this can't be allowed to go on.

The Universal Declaration of Human Rights

The General Assembly of the United Nations adopted the Universal Declaration of Human Rights on December 10, 1948. The adoption of the declaration attempts of fulfill much of the promise of Article 1 of the United Nations Charter to "Promote and encourage respect for human

rights and fundamental freedoms for all without distinction as to race, Sex, language or religion".⁴ Its expanding moral and political authority, surpassed only by the charter itself, places the Declaration among the most important contemporary international human rights instruments.⁵

The Declaration's influence is reflected in National Constitutions, domestic courts, and international Courts. The instrument serves as the ideological foundation of the whole United Nations human rights implementation system. The Declaration supplies the international community with a basic point of reference to conform its conduct to broadly accepted parameters of fundamental freedoms and socio-economic well being. Article 1 states "all human beings are born free and equal in dignity and rights". This broad language clearly makes no distinctions based on national borders. Moreover, the Declaration repeatedly uses terms such as 'everyone' to express the affirmative grant of a right and "no one" to state the prohibition of a particular deprivation in subsequent articles.

The Universal Declaration and the Administration of Criminal Justice

Human Rights play a central role in the field of criminal justice. Simply because of the nature of the criminal process, the state represents the biggest threat to the human rights of the individual.⁶ The protection of life, liberty, personal security, and physical integrity of individuals in the context of criminal procedure is within the scope of the Declaration. Protection during the pretrial detention stage and the actual trial are both contemplated by the Declaration.

The general provisions previously discussed provided a philosophical framework in the area of criminal justice. Article 3 of the Declaration guarantees the right to life, liberty and security of person.⁷ Article 5 mandates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment of any kind.⁸ Article 6 established the right to the recognition of legal personality every where.⁹ Assuring equality and non discrimination in the exercise of these rights, Article 7 proclaims " All are equal before the Law and are entitled without any discrimination to equal protection of the Law".¹⁰ At the same time, this article secures equal protection against any discrimination in violation of the declaration. These provisions set the stage for more specific protections in the area of criminal procedures provided in subsequent articles of the instrument.

Article 9 provides " No one shall be subjected to arbitrary arrest, detention or exile".¹¹ The key element in Article 9 is the interpretation of the term "arbitrary" According to the United Nations Commission on Human Rights the notion of "arbitrary includes both procedural and substantive components". Thus a United Nation study in 1965 defined an arbitrary arrest or detention as (a) on grounds or in accordance with procedures other than those established by law, or (b) under the provisions of a law the purpose of which is compatible with respect for the right to liberty and security of person".

The protection provided by this article is critical in terms of consular protection. It gives the consul a point of reference to evaluate the lawfulness of the detention of a consular. It also provides a legal basis, other than consular conventions and customary international law, for the consul to make objections. If the deprivation of liberty does not meet the standard established by this provision, the consul

should be entitled to obtain the liberty of his co-national through the means established in domestic legislation or, if inappropriate or unavailable, through protest before the authorities of the receiving state.

Article 10 of the Declaration states: "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 of any criminal charge against him".¹² The right to a fair trial is an essential, if not imperative, element to the establishment and effective implementation of a criminal justice system based on the rule of law.¹³ As embodied in this Article, the right to a fair trial covers the procedural aspect ("fair and public hearing") and the institutional aspect ("independent and impartial tribunal") of a criminal trial. The scope of this right is so broad that "the right to a fair trial stands out as perhaps the one most inventively elaborated as well as most dynamically interpreted by the organs set up for the international protection of human rights".

Article 11 of the Declaration reads: "Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence". Article 11 recognizes the crucial concepts of presumption of innocence until proven guilty, the right to a public hearing, the right to an effective defense, and the non retroactivity of the laws. Consuls may further the goals of Article 11 by aiding a detained national in securing legal assistance. "Legal representation is regarded as the best means of legal defense against infringements of human rights and fundamental freedoms".

Conclusion

The Human Rights guarantees investigated were derived by the concordance of protected rights in national constitutions and international instruments, which is a valid method of demonstrating the existence of "general principles of law" in international law. Human Rights activists should not shrink from asserting fundamental human rights protection as "General principles of law" and should carry out further inductive investigations of national law to strengthen the validity of this contention.

In particular, responsibility for the initial and usually most important, phase of investigation lies with the public ministry, which compiles the written record that frames the rest of the criminal process. In consequence, many judges not only fail to question, but also rely upon questionable evidence, such as coerced confessions. Even where judges do have authority, moreover, they frequently fail to exercise it. Especially troubling in this regard is judicial absenteeism, itself a result of overly heavy caseloads, unclear procedural codes, and the systems heavy reliance on the written record. In addition to these problems, judicial independence presents another concern. In general, the executive and legislative branches wield considerable power in judicial selection, oversight, and given lack of sufficient tenure, re-appointment. Executive threat of prosecution, along with failure to protect judges from outside threats constitute still further factors undermining vigorous judicial enforcement of fundamental rights.

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