

**HUMAN RIGHTS AND CRIMINAL JUSTICE SYSTEM IN INDIA: A  
REPLICATION OF THEIR MUTUAL RELATIVE NEXUS****\*\*Kamlendra Pratap & Shivangi Gaur<sup>1</sup>****INTRODUCTION**

The idea of human rights is an ancient, universal and intrinsic phenomenon and is as old as humanity in the Indian society. There are certain rights which are fundamental to the human existence. These are neither privileges nor gifts given at the whim of a ruler or government. They can't be taken away or denied or forfeited by any arbitrary powers. They occupy prominent status in numerous international covenants in vogue aiming at the promotion and protection of a wide variety of human rights in the administration of criminal justice. The definition of the human right as enumerated in the protection of human rights act, 1993 says , the right relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India. Some of them are constitutionally recognised in India. The British Indian legislative measures such as Indian Penal Code, 1860(IPC), The Criminal Procedure Code, 1861 and 1898, and the Indian Evidence Act,1872 did contain some sporadic provisions that envisaged to protect certain interests of the accused. But the real recognition to the basic human rights principles came out only after the enactment of the constitution of India and subsequent legislative trends reflected in the Code of Criminal Procedure,1973(CrPC) and protection of Human Rights Act, 1993(POHRA).

- **GENESIS OF HUMAN RIGHT**

While it may be true that the modern conception of human rights owes its origin and growth to the west, the roots of the human rights may be traced to the most ancient civilizations throughout the world. Human rights are thus innate to all people everywhere on the earth tracing the evolution of human rights from earliest times, Paul Lauren says: “all the major religion of the world seeks in one way or another to speak of the issue of human responsibility to the others.”<sup>2</sup> Michael perry says that the idea of Human Rights consists of two limbs: firstly, all human beings are equal and end in themselves and secondly, the state

---

<sup>1</sup> 4<sup>th</sup> Semester, Institute of Law, Nirma University, Ahmadabad, Gujarat

<sup>2</sup> Lauren, Paul G: The evolution of International Human Rights, 5 (1999).

should not do certain things and do certain other things to individual. He says the first idea can exclusively based on religion.<sup>3</sup> Not everyone entirely agrees with Perry and may argue as, Rolf Kuennemann does, and that Human Rights do not necessarily involves moral or ethical questions.<sup>4</sup> But even if we accept the dominant thinking that Human Rights are rooted in religion, India, and for that matter any society, has enough Bases for them in its religious traditions from the earliest times to the present. The first documentary use of expression 'Human Rights' could be seen in the charter of the United Nations adopted on 25<sup>th</sup> June, 1945. It perceives fundamental human rights as one of its objectives. Article 1 of the charter states that united nations should seek to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without any discrimination premised on race , sex, language or religion. However the charter does not define the contents of human rights. This leaves it to the organisation itself.<sup>5</sup> After signing the universal declaration of human rights, the promulgation of the constitution of India in 1950 is a watershed in the history of development in the concept of human rights in India under which the preamble, fundamental rights<sup>6</sup> and directive principles of state policy<sup>7</sup> provide the basic human rights along with the fundamental duties of the people of India<sup>8</sup>. Therefore so many central legislations are enacted to promote and protect human rights all citizens of India. In addition to this, a large number of judicial pronouncements of the Supreme Court and different state courts have also recognised and added further dimensions to the protection of human rights for effective administration of criminal justice.

- **CRIMINAL JUSTICE SYSTEM IN INDIA**

In India, the administration of criminal justice system follows the Anglo-Saxon adversarial pattern. It has four vital units, namely, the police, prosecution, judiciary and correctional institutions. These components are supposed to work in a harmonious and cohesive manner with close coordination and cooperation in order to produce desired results more effectively, fairly and quickly. Moreover, the success or failure of the administration of criminal justice depends upon the efficacy of these allied units.

---

<sup>3</sup> Perry, Michael: The idea of Human Rights.

<sup>4</sup> Kunnemann, Rolf: food and freedom, 27 (1999)

<sup>5</sup> The universal declaration of human rights(1948)

<sup>6</sup> Part III

<sup>7</sup> Part IV

<sup>8</sup> Articles 51-A, Part IV-A

However, it is common perception that administration of criminal justice in our country is deteriorating day by day and laymen are losing faith in the entire system due to obvious reasons. It is therefore repeatedly felt that there is an urgent need to overview the entire criminal justice system, especially investigation crime by police and prosecuting machinery due to which conviction rates are declining at a very rapid pace. This has also been attributed to the lack of continuous and effective coordination amongst the law enforcement agencies, i.e. the police, magistracy, judiciary and correctional administration in general and police and prosecuting agencies in particular.

### **(1) Police and Prosecution**

Police being the front line segment of the criminal justice system, have a very vital role to play in providing justice to needy persons. They are the ones who arrest the culprits and assist courts in discharging their judicial functions effectively. The police have to facilitate the courts for conviction of the real culprits in order to maintain and enhance the faith of the people in the administration of criminal justice system.

It has been observed that the Code of Criminal Procedure, overhauled in 1973, has widened the gap between two vital units namely the police and the prosecution at the operational as well as organisational levels. This has led to a state of frustration and ambiguity. It has also been considered a sorry state of affairs in the sense that the police and the prosecution are two sides of the same coin as police functioning has a direct bearing on the success or failure in the same prosecution of criminal cases in courts. The police have a very vital role in the marshalling facts, while the prosecution has a crucial role in the effective presentation of facts before the courts during trial proceedings.

The national police commission, in its fourth report, has also observed that the ultimate success of police investigations depends upon the efficiency of the prosecuting agencies in presenting the evidence in courts in a very convincing manner. It calls for a good measure of cooperation and interaction between the investigating officers and prosecutors.

It has observed that in most of the states, police are facing serious problems of proper coordination and cooperation with the prosecution due to their casual approach in dealing with the cases in the courts, want of adequate follow up action of cases on their part and also due to lack proper legal advice available to the investigating officers on complicated legal matters which come up during the investigation. The prosecuting officers are not properly

scrutinising charge sheeted cases before putting them in courts for trial. Consequently, defence in such cases take advantage of negligence on the part of the prosecuting agencies in securing acquittals despite the fact on record indicating prima facie guilt. This is evident from the official data which reveals that the conviction rate has been constantly declining. The Law Commission of India in its 14<sup>th</sup> Report<sup>9</sup> has also pointed out that defective investigation and lack of assistance at the investigation stages often result in acquittal. The existing arrangement under which legal guidance is sought at the time of filing the charge sheets are not satisfactory. In this connection National Police Commission is also of the view that the prosecuting staff should be made responsible for not only for conducting prosecution, in courts but also for giving legal advice to the police in any matter arising from the investigation and the trial. The role of prosecution staff should be that of a legal adviser.

### **(2) Non-Registration of the Cases**

Non-registration of the cases by the police constitutes one of the most serious forms of violation of human rights. According to the National Police Commission (1976), the most important factor responsible for non-registration of complaints is the anxiety of the political executive in the state governments to keep the recorded crime figures low so that they can claim that crime has been controlled and is going down because of the efficient and effective police administration.

Again, it is noticed that subordinate officers avoid registration of cases on the plea that the offence in question occurred in the jurisdiction of another police station. As a result, a complainant is made to run from the pillar to post to locate a particular police station and get the case registered. Under section 154 of the CrPC the officer in charge of a police station has to register a case and draw up a First Information Report (FIR) as soon as a complaint of a cognisable offence is laid at the police station. There is no scope for non-registration of cases under the pretext of jurisdictional controversy.

### **(3) Arbitrary Arrest**

The power of the police to arrest is also very grossly abused. The National Police Commission, in its report, has adversely commented upon the abuse of power by police and perceived it as one of the prominent sources of corruption in the police. The report pointed out that nearly sixty percent of the arrests were unnecessary and unjustified. The Commission

---

<sup>9</sup> Law Commission of India: Fourteenth report: Reform of judicial administration (Government of India, New Delhi, (1958).

estimated that 43.25 percent expenditure in the jail was over such prisoners, whose detention, in ultimate analysis, was unwarranted and uncalled for.

The Supreme Court in *Joginder Kumar vs. State of U.P.*<sup>10</sup> has put clear restrictions on the powers of the police to make arbitrary arrests. The Court has laid down that the police need to contact one of friends or relatives of an arrestee or one likely to take interest in his welfare and also to inform the arrested person of his right. The Apex court in *D.K Basu v. State of W.B.*<sup>11</sup>, further streamlined the procedure relating to arrests. These protections according to the court of law, flow from article 21 and 22(1) of the constitution and are to be enforced strictly.

#### **(4) Custodial Crime**

It is noticed that persons belonging to backward and disadvantaged groups are the principal victims of torture and violence. The National Police Commission recommended that judicial inquiries in all cases of custodial deaths be made mandatory. Such a judicial inquiry, according to it should be conducted by an Additional sessions Judge be nominated for the purpose and designated as District Enquiry Authority. He should be assisted by an assessor who can be an additional superintendent of police. This is undoubtedly, a very pragmatic recommendation of the National Police Commission. But unfortunately, it has not been implemented yet.

The Supreme Court in June 1985, in its pronouncement dealing with the custodial death of one Brij lal, farmer in U.P, observed:

“We would like to impress upon the Government the need to amend the law appropriately so those policemen who commit atrocities on persons in their custody are not allowed to escape due to paucity or absence of evidence. The police officers alone and none others can give evidence as regards the circumstances in which a person in their custody comes to receive injuries. Bound by their ties of brotherhood, they often prefer to remain silent, and when they choose to speak they put their own gloss upon facts and upon the truth. The law on the burden of proof is such that it should be re-examined.”

---

<sup>10</sup> (1994) 4 SCC 260; 1994 SCC (Cri)1172

<sup>11</sup> (1998) 6 SCC 380.

The law commission of India has recommended that a provision (section 114-B) be inserted in the Indian Evidence Act, 1872, as a rebuttable presumption that injuries sustained by person in police custody are presumed to have been caused by police officers.<sup>12</sup> This would shift the burden of proof on the police officers. It is believed that this kind of amendment will have restraining effect on the officers indulging in custodial violence and torture. The police has been trying to build up an image as ruthless, oppressive machinery to create terror and thus to prevent crime.

### **(5) Prison**

The working of prison in India has been more complex in the fast changing social order of our democratic polity where a series of socio economic transformations leading to social maladjustment have taken place. Awareness has considerably increased among the people about their fundamental rights along with their enormous amount of expectations from the law enforcement machinery including the prison administration. Consequently new aspirations and values have emerged in the society. It has been observed that the prison administration in India is encountered with the manifold problems in the changing scenarios and has been considered as a most neglected and disgruntled lot on the part of state governments despite the fact that our jails have enormous potential to produce excellent goods and respond positively to the correctional philosophy. In *Gopal Vinayak Godse v. state of Maharashtra*<sup>13</sup> the Supreme Court decided that prison Act does not confer on any authority a power to commute or remit sentences, it provides only for regulation of prison and for the treatment of prisoners confined therein. In *Sunil Batra v. Delhi Administration*<sup>14</sup> the Supreme Court was of the view that prisoners are peculiarly and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and like. Secondly the prison house is a walled –off world which incommunicado for human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. It is not the secret that our existing prisons are overcrowded and prison population is dominated by a large chunk of under trails. And the prominent factors associated with the overcrowding are: an unpredictable number of under trails; sudden influx of the prisoners in petty offences; lack of perspective prison planning; imbalance in the functional aspect of the

---

<sup>12</sup> Law Commission of India: one hundred and thirteenth report: Injuries in police custody suggested section 114-B, Evidence Act (Government of India, New Delhi, 1985).

<sup>13</sup> AIR 1961 SC 600

<sup>14</sup> AIR 1980 SC 1579

bail system; lack of special action in dealing with offenders involved in petty offences and shortcomings of our premature release mechanisms (probation and parole).

#### **(6) Delay in Disposal of Cases**

Article 21 of the constitution of India, as interpreted by higher judiciary, incorporates in its ambit the right to speedy trial. The supreme court of India has repeatedly emphasised that the right to speedy trial even though it is not expressly indicated as a fundamental right in the constitution, is implicit in the spectrum of article 21. The apex court in Hussainara Khatoon (I) V. Home secretary, state of Bihar<sup>15</sup> held that a procedure which keeps such a large number people behind bars without trial for so long cannot possibly be regarded as reasonable, just or fair as to be in conformity with requirement of article 21. In Raj Deo Sharma vs. State of Bihar<sup>16</sup>, it is held that in cases where the accused has been in jail for a long period of not less than half of the maximum period of punishment prescribed for offences, the trial court shall release the accused on bail forth on such condition as it deems fit. In view of this contention, there is an immediate need to devise an effective mechanism to accelerate the disposal of cases in courts as one of the constitutional obligation in the spirit of Article 21 of the constitution.

- **Modern Correctional Beliefs**

- A. Prison is no more considered as a house of captives but a correctional institution.
- B. Prison regimes help prisoners to lead law abiding, self supporting reformed and socially rehabilitated life.
- C. A person coming to prison does not become a non-person.
- D. Prisoners have all constitutional rights except those limited by imprisonment.
- E. Human rights are basic element of correctional justice assumptions that hate the crime not criminal.
- F. A prisoner should have human rights in order to learn to respect the human rights of others after release.
- G. Debarring a prisoner from human rights would pose a direct threat to our own humanity and civilization.
- H. A prisoner is sent to prison as a punishment, but not for the punishment.

---

<sup>15</sup> (1980) 1 SCC 81.

<sup>16</sup> 1998 7 SCC 507: 1998 (Cri) 1692

- I. Implementation of human rights initiatives in prisons as enumerated by Justice V.R Krishna Iyer in *Sunil Batra v Delhi Administration*<sup>17</sup> are based on three principles namely maintaining human dignity.

### **Human Rights Initiatives in Prison**

There has been a remarkable change in the basic concept of Indian prisons. Such changes can be enumerated in the form of following propositions;

- 1) Earlier prison was considered as house of captives dominated by punitive justice. Now, it is perceived as a correctional institution employing all possible means premised on the idea that hate the crime, not the criminal and the assumption that a prisoner is sent to prison as a punishment, but not for the punishment, to retransform and re-socialise prisoners to enable them to lead, after their release, law-abiding, self-supporting and socially approved life.
- 2) Human rights initiatives in our prisons have improved considerably with the implementation of the above-stated three principles, i.e. maintaining human dignity, rights of the prisoners, and needs of special categories of prisoners (like women, juveniles, under trials, including detainee).
- 3) Remarkable changes in the overall functioning of our prisons, especially human rights initiatives in prisons, have taken place both qualitatively as well as quantitatively in the light of recommendations made by various committees, commissions and special study groups.
- 4) The Government of India, recalling the board principles and the need for achieving a basic minimum standard as recommended by the all India Committee on jail reforms, headed by Justice A.N Mulla has also worked out the estimated financial outlays for improvement in certain important areas of prison management.
- 5) The Ministry of Home Affairs has started a modernisation scheme for prison management on a sharing basis. In addition to it, the Finance Commission also provides financial assistance to states for repairing and renovating prison buildings and for providing medical facilities in jails.
- 6) There is a considerable amount for improvement in maintaining the health rights of prisoners. Vocational training programmes, along with other treatment

---

<sup>17</sup> (1978) 4 SCC 494; 1979 SCC (Cri) 155

programmes, in prisons have a positive impact on the reformation and rehabilitation of prisoner.<sup>18</sup>

- 7) The Ministry of Home Affairs , in recognition of prison services at the National level awards on Republic day and Independence day every year the President's correctional services medals for distinguished service and the correctional services medals for meritorious services to prison personnel of states and union territories. Recently prison wage structure was rationalised in order to encourage and attract prisoners to take part in work programmes in jails.
- 8) The issue relating to the formulation of a central law on prisons has been under active consideration of the Ministry of Home Affairs for quite some time. It is being done in the light of recommendations made by the all India committee on jail reforms. Recently the supreme court of India in Rama Murthy v. State of Karnataka<sup>19</sup> has also expressed an urgent need to bring about basic uniformity in prison administration and prison laws operative in various states and union territories by replacing the prison Act, 1894 by a new one.

## CONCLUSION

Though the concept of human rights has been integral part of our social values, tradition and ethos, the contemporary changes in socio-cultural and economic life have made it imperative to have a fresh look at the human rights. The institution of criminal justice has evolved not only to protect human rights of those endangered by antisocial elements but also to restore the human dignity of those who have gone out of the prescribed social order. The Apex court of our country has fully established that a person who violates law does not become non-person and he continues to be entitled to all human rights within the limitation legal provision. Indeed, India is second to none in terms of thinking in this regard as manifested repeatedly by Supreme Court but there still remains a wide gap, as identified in proceeding paras, between expectations and reality which needs to be bridged at the earliest. Obviously, any proposed mechanism for the preservation of human rights of persons who come in conflict with the law needs to look into their basic needs and strive to revive human

---

<sup>18</sup> It is quite evident from the fact that more than 90 per cent of our prison population consists of first offenders and hardly 10 percent of repeaters, while in UK, 70.7 percent of prison population consists of recidivists. It means that the rate of relapse to crime in our country is much less than that of the UK due to the effective treatment programmes in our prisons.

<sup>19</sup> (1997) 2 SCC 642

beings from within human beings in both police as well as judicial custody. The primary task of any government is to protect the personal rights of the people. Security of the person and property of the people is an essential requisite of good governance and this can be achieved by criminal justice system. There is now an increasing awareness all over the country that the objective of reinstating human rights of the persons who come in conflicts with law cannot be achieved without protecting the human rights of those who manage them .

It need not be said that the enjoyment of human rights by prisoners, as they are legitimately entitled to, cannot be divorced from their duties towards the prison administration and society at large. From this point of view, prison programmes are in dire need for a through reorganisation in all aspects concerning institutional treatment including attention, vocational training, self improvement and the like. Education in prison has yet to become an integral part of institutional programmes.

Effective, efficient and just criminal system of a nation is the backbone of its very foundation. An effective system not only delivers Justice but also deliver in time. On the whole, it may be said that with the growing awareness of human rights among people, the expectation of the people from law enforcement agencies has increased considerably. With the result, the working of law enforcement agencies has come under the close scrutiny of human rights organisations as well as of the judiciary. Activism is always used as an instrument to bring reforms provided it is used constructively while reviewing the system. There is an immediate need to evolve a modality for ensuring coordination and cooperation between all the components of criminal justice system in order to accelerate the implementation of human rights initiative in criminal justice system. It should be the foremost priority agenda 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 people of India.