

# **A COMPARATIVE STUDY OF HUMAN RIGHTS AND CRIMINAL JUSTICE: EXPLORING INDIA AND UK PERSPECTIVES**

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**A Dissertation to be Submitted in Partial Fulfilment of the  
Requirement for the Award of Degree of Master of Laws**

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## CERTIFICATE

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## **LIST OF ABBREVIATION**

### **India:**

1. CJI - Chief Justice of India
2. SC - Supreme Court
3. HC - High Court
4. IPC - Indian Penal Code
5. CRPC - Code of Criminal Procedure
6. NHRC - National Human Rights Commission
7. NALSA - National Legal Services Authority
8. CBI - Central Bureau of Investigation
9. AIIMS - All India Institute of Medical Sciences (Often involved in forensic investigations)
10. NCRB - National Crime Records Bureau
11. NIA - National Investigation Agency
12. SIT - Special Investigation Team
13. NCPCR - National Commission for Protection of Child Rights
14. BPRD - Bureau of Police Research and Development
15. SLSA - State Legal Services Authority

### **UK:**

1. CPS - Crown Prosecution Service
2. MoJ - Ministry of Justice

3. HMP - Her Majesty's Prison
4. PACE - Police and Criminal Evidence Act
5. ECHR - European Convention on Human Rights (Although the UK has left the EU, it is still a signatory to the ECHR)
6. IPCC - Independent Police Complaints Commission
7. HMCTS - Her Majesty's Courts and Tribunals Service
8. IOPC - Independent Office for Police Conduct
9. NCA - National Crime Agency
10. UKHRC - UK Human Rights Commission
11. MOD - Ministry of Defence
12. SFO - Serious Fraud Office
13. CPSU - Crime Prosecution Service Unit
14. YOT - Youth Offending Team
15. HMICFRS - Her Majesty's Inspectorate of Constabulary and Fire & Rescue Service

**CHAPTER 1**

**INTRODUCTION**

## 1. INTRODUCTION

Human Rights are those rights which every human being possesses by virtue of his birth. They are inherent and inalienable. In a country like India, we come across various instances in which the individual is threatened with the possibility of violation of his human rights in every walk of life. They are based on mankind's demand for a life in which the inherent dignity of human being will receive respect and consideration. The Universal Declaration of Human Rights clearly states that respect to human rights and human dignity is "the foundation of freedom, peace, and justice in the world"<sup>1</sup>. After the two world wars, the UN concern for Human Rights has also become a major issue of International agenda. This evoked response for International law and the concept of "International Human Rights Law" has also developed. Human rights not only stand for individuals' rights rather they are a backbone for providing social justice in a country. India is a signatory to the Universal Declaration of Human Rights and thus, has adopted similar provisions and framework to protect human rights. The extent to which the human rights are respected and protected within the context of its criminal proceedings is an important measure of society's civilization.<sup>2</sup>

Criminal Justice System of any country is the basis of establishing peace and tranquillity. It includes not only the judicial system but the investigating machinery as well. Criminal Justice is one of the critical areas of human rights where the legal system is tested on a continuous basis for preservation of peace and security in society on the one hand, and prevention of human dignity of both victims of crime and person accused of it, on the other. Rule of law is the bedrock of democracy, which is acknowledged as the best system of governance to ensure respect for human rights. The dignity and worth of the individual is at the core of a democracy, constitutional governance in a democratic set up is the safest guarantee for the protection of human rights and assurance of human resource development. Equal respect for the rights of all sections of the society is necessary to obtain full human resource development respecting the basic human right of non-discrimination. The concept of inclusive democracy recognizes this aspect.

<sup>1</sup>"Universal Declaration of Human Rights." United Nations, United Nations, [www.un.org/en/universal-declaration-human-rights/](http://www.un.org/en/universal-declaration-human-rights/).

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

The Criminal Justice System consisting of Police, Judiciary and Correctional Institutions play a major role in implementing human rights and thereby protect and safeguard the human rights of the citizens of a country. The Criminal Justice System has the power to control crime, prevent crime and punish the criminals. The pre-trial procedure involves arrest and Investigation under the Criminal Procedure Code 1973. Criminal Justice System has composed mainly three vital organs, namely (i) Police, (ii) Judiciary and (iii) Prison. In India, the human rights have been characterised as fundamental rights and are given a special status. Fundamental Rights are important for the fact that they are considered inherent for every citizen and thus, their violation gives the citizens, the right to move to the Supreme Court and the High Courts under Article 32 and Article 226 of the Indian Constitution respectively.

Of the three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the Constitution. Although the importance of human rights is universally accepted and highly recognised, implementation levels vary from jurisdiction to jurisdiction. In India, in spite of vast expansions across the spectrum of human rights, implementation has not been that satisfactory. Recently, the International Commission of Jurists, Geneva had warned that in India these very human rights stand threatened. In addition, global human rights abuse watchers argue that if such fundamental principles of a fair trial are disregarded by the various agencies of the state. As a measure of the advances achieved in the protection of human rights, one may also turn the pages of the landmark judgement in *Rudul Shah v. State of Bihar*<sup>3</sup>, where the Supreme Court ruled that the victims of unlawful or illegal arrest were entitled to compensation for violation of their fundamental rights under Part III of the Indian Constitution. It must be borne in mind that ensuring human rights within the framework of the criminal justice delivery system cannot be narrowly construed to mean merely the protection of the rights of the under-trials, or detainees, or convicts. The Supreme Court of India has recognized the Fundamental Rights as Natural Rights in *Moti Lal v. State of UP*<sup>4</sup>. In fact, it can rightly be contended that the most essential of all human rights in a criminal justice delivery system, is the right of access to courts of law.

<sup>3</sup> (1983) 4 SCC 141.

<sup>4</sup> ILR 1951, Allahabad, p. 369.

It is based on Article 10 of Universal Declaration (UDHR) which provides that:

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, and the determination of his rights and obligations and of any criminal charge against him.”

The importance of the right of access to justice for those interacting with the criminal justice system as complainants, suspects, status offenders or prisoners cannot be over-emphasised. As already stated, it is perhaps the most essential of all human rights in the criminal justice system. The extent to which human rights are respected and protected within the context of its criminal proceedings is an important measure of society's civilization. By and large, the Supreme Court has, through progressive and humanistic interpretation, enlarged the rights of the suspect and the accused with a view to protecting the interest of the innocent and preventing abused or misuse of police powers. Of course, the development of law by the Supreme Court in this direction has evoked criticism from certain quarters but this criticism is not based on any empirical research. It proceeds on a pre-conceived notion that any protection given to a suspect or accused is bound to injure the interest of the society by encouraging crime and making its detection difficult, if not possible. Unfortunately, in our country, there is not much of socio-legal or empirical research particularly in the field of criminology, with the result that our criticism of the law as interpreted and evolved by the courts is often not founded on factual or sociological data but is based only on certain ingrained attitudes and misconceptions. It is necessary that there should be socio-legal research in various areas of criminal law so as to afford guidance to the courts in their not-too easy task of laying down the law which best would serve the interest of the society, without sacrificing the interest of the innocent.

Indian Constitution as illustrated by a number of decisions of the Supreme Court provides for the protection of human rights in conformity with the international standards.<sup>5</sup>

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

The Human Rights Commission Act, 1993 provides for constitution of National and State Human Rights Commissions to enquire into complaints of violations of human rights and inefficiency on the part of the Government machinery in preventing such violations and to suggest measures for effective implementation of guarantees provided by the Constitution and various laws of the country.<sup>6</sup>

The Supreme Court of India has in the case *Ajay Hasia v. Khalid Mujib*<sup>7</sup> declared that it has a special responsibility, "to enlarge the range and meaning of the Fundamental rights and to advance the human rights jurisprudence."

There are umpteen numbers of reports on chilling human rights abuses of the pre-emergency era and emergency era, which have emanated from indigenous sources. Why then blame international sources like London based Amnesty International and Washington based World Watch Institute in particular? The successive inflow of these reports describes continuing patterns of abuse in the administration of criminal justice in the country. The reports mainly focus on torture, including rape and deaths in custody. The reports criticize practices that are blatantly unconstitutional. The country confronts an embarrassing situation, both within and outside because human rights abuses have become commonplace and a sense of hopelessness marks our thought and reaction. Justice Krishna Iyer describes our human rights record as "testing illusion and promise of unreality". The Supreme Court, the sentinel of human rights, has been able to bring out only cosmetic changes since its directives to police, prisons and other institutions and more honoured in the breach than in the observance. For indigent and illiterate victims of human rights abuses, the Writ Courts are too remote and too expensive to be of any avail. The rights now granted by the courts are of illusory in absence of implementation and enforcement. Justice Krishna Iyer wrote more an anger than in anguish:

"Rights, however, solemnly proclaimed and entrenched in great instruments are but printed futility unless a puissant judiciary armed with legal authority.

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

<sup>7</sup>AIR 1981 SC 487 at 493.



Remedial process and jurisdiction, operational and pragmatic, transforms the jurisprudence of human rights into public law of enforceable justice. Human rights regime leaves a wide gap between normative claims and implementation capabilities. The result is that large- scale breaches of civil and political rights, as well as economic, social and cultural rights, mark the scenario".

## **1.1 Human Rights in India and UK: A Comparative**

### **Analysis Introduction**

Human rights are fundamental rights and freedoms that every individual is entitled to, regardless of their nationality, ethnicity, gender, or any other characteristic. These rights serve as the bedrock of a just and equitable society, ensuring that every person is treated with dignity and respect. In this article, we will delve into the topic of human rights in India and the United Kingdom (UK), exploring the similarities, differences, challenges, and progress made in safeguarding these rights in both countries.

## **1.2 Human Rights in India and UK: A Historical Perspective**

Understanding the evolution of human rights in India and the UK requires a glimpse into their historical contexts. Each country has a unique trajectory that has shaped its approach to human rights protection. Let's explore their respective journeys.

## **1.3 Human Rights in India: A Legacy of Struggle and Progress**

India, a country known for its rich cultural heritage, has witnessed significant struggles and milestones in its quest for human rights. The Indian independence movement, led by visionaries like Mahatma Gandhi, played a crucial role in shaping the discourse on human rights. The movement aimed not only for political freedom but also for social and economic rights for all citizens.

During the drafting of the Indian Constitution, which came into effect in 1950, considerable emphasis was placed on protecting human rights. The Constitution guarantees fundamental rights to all individuals, including the right to equality, freedom of speech and expression, and protection against discrimination.

#### **1.4 Human Rights in the UK: Pioneering Legal Frameworks**

The United Kingdom has been at the forefront of human rights protection, thanks to its rich legal tradition. The Magna Carta, signed in 1215, is often regarded as a landmark document in the history of human rights<sup>8</sup>. It laid the foundation for principles such as the rule of law and the right to a fair trial.

In subsequent centuries, the UK continued to develop its legal frameworks for human rights. The European Convention on Human Rights (ECHR), adopted in 1950, played a pivotal role in this regard. The ECHR enshrines fundamental rights and freedoms and establishes the European Court of Human Rights (ECtHR) to ensure their protection.

#### **1.5 The Legal Frameworks: A Comparative Analysis**

To gain a comprehensive understanding of human rights in India and the UK, it is essential to analyze the legal frameworks established to protect these rights. Let's explore the key legislative and judicial instruments in both countries.

#### **1.6 Constitutional Guarantees: A Pillar of Human Rights Protection**

In India, the Constitution is the supreme law of the land and serves as the primary source of human rights protection. Part III of the Constitution, often referred to as the "fundamental rights chapter," enumerates a range of rights and freedoms. These include the right to equality, the right to freedom of religion, the right to life and personal liberty, and the right to education.

The UK, on the other hand, does not have a single written constitution. However, human rights protection is ensured through various legal instruments. The Human Rights Act 1998 incorporates the ECHR into UK law, making it directly enforceable by domestic courts. This Act plays a crucial role in safeguarding human rights in the UK.

<sup>8</sup>Magna Carta 1215

## **1.7 Judicial Mechanisms: Guardians of Human Rights**

In both India and the UK, the judiciary plays a significant role in upholding human rights and ensuring their enforcement. The courts act as custodians of justice and interpret the laws in light of human rights principles. Let's delve into the judicial mechanisms that exist in both countries.

In India, the Supreme Court holds the highest authority when it comes to protecting human rights. It has the power of judicial review and can strike down laws or actions that violate the fundamental rights enshrined in the Constitution.

In India, the Supreme Court holds the highest authority when it comes to protecting human rights. It has the power of judicial review and can strike down laws or actions that violate the fundamental rights enshrined in the Constitution. The court has played a crucial role in landmark cases that have shaped human rights jurisprudence in the country. For instance, in the case of *Maneka Gandhi v. Union of India*, the Supreme Court expanded the interpretation of the right to life and personal liberty, ensuring its broader scope and application.

Similarly, in the UK, the judiciary plays a vital role in safeguarding human rights. The UK is a signatory to the ECHR<sup>9</sup>, and individuals can approach the domestic courts to seek redress for human rights violations. The UK's highest court, the Supreme Court, has the authority to interpret and apply the Human Rights Act 1998, ensuring compliance with the ECHR. The court's decisions have been instrumental in shaping human rights protection in the UK.

## **1.8 Human Rights Institutions and Organizations**

Apart from the judiciary, both India and the UK have established specialized institutions and organizations to promote and protect human rights. These bodies play a crucial role in raising awareness, conducting investigations, and ensuring accountability.

In India, the National Human Rights Commission (NHRC) is the primary statutory body responsible for the protection and promotion of human rights. It investigates complaints of human rights violations and recommends remedial measures. The NHRC acts as a watchdog, monitoring the government's adherence to human rights standards.

<sup>9</sup>European Convention on Human Rights

Similarly, in the UK, the Equality and Human Rights Commission (EHRC) is an independent statutory body that promotes and enforces equality and human rights laws. It has the power to conduct inquiries, take legal action, and provide advice and guidance on human rights issues. The EHRC works towards eliminating discrimination, advancing equality, and protecting human rights in various spheres of life.<sup>10</sup>

## **1.9 Key Challenges and Human Rights Concerns**

Despite significant progress in both India and the UK, there are still challenges and concerns regarding the protection and promotion of human rights. Let's explore some of the key issues faced by both countries.

### **1.10 Human Rights Challenges in India**

India, with its diverse population and complex social fabric, faces several human rights challenges. One of the primary concerns is the persistence of discrimination based on caste, religion, and gender. Marginalized communities, such as Dalits and tribal groups, often face systemic discrimination and limited access to basic rights and opportunities.

Freedom of expression and press freedom also remain areas of concern in India. While the Constitution guarantees freedom of speech and expression, there have been instances of restrictions on dissenting voices and curtailment of media freedom. Balancing national security and individual rights continues to be a delicate task for the Indian government.

Furthermore, access to justice and the efficiency of the judicial system pose challenges in ensuring effective human rights protection. Backlogs in courts, delays in trials, and limited legal aid services hinder timely justice delivery, particularly for marginalized communities.

### **1.11 Human Rights Concerns in the UK**

In the UK, despite its robust legal framework for human rights, certain issues persist. One of the ongoing concerns is the treatment of migrants and refugees. The immigration system has faced criticism for its impact on human rights, particularly regarding detention practices and the right to seek asylum. Ensuring the fair and humane treatment of migrants remains a pressing challenge.

<sup>10</sup>The Equality And Human Rights Commission (EHRC)

Another area of focus is the right to privacy in the digital age. Technological advancements and surveillance practices raise concerns about the protection of personal data and individual privacy rights. Striking a balance between national security measures and privacy rights poses significant challenges.

Moreover, issues related to discrimination and inequality persist in the UK. Racial disparities, gender inequality, and Certainly! Apologies for the interruption. Let's continue discussing the human rights concerns in the UK.

Moreover, issues related to discrimination and inequality persist in the UK. Racial disparities, gender inequality, and socioeconomic gaps are areas that require continuous attention. Despite legal protections, marginalized groups still face barriers to equal opportunities and face higher levels of discrimination in various aspects of life, including employment, housing, and education.

### **1.12 Human Rights in India and UK: International Obligations**

Both India and the UK are signatories to various international human rights treaties and conventions. These commitments reflect their dedication to upholding human rights standards on the global stage. Let's delve into some of the key international obligations of both countries.

In India, the country is a signatory to significant human rights<sup>11</sup> treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). By ratifying these treaties, India has committed to protecting and promoting civil, political, economic, social, and cultural rights for its citizens.

Similarly, the UK is bound by the ECHR, which forms a cornerstone of its human rights obligations. The ECHR sets out fundamental rights and freedoms that the UK is obliged to respect and protect. It also establishes the ECHR as the final authority on human rights matters within the jurisdiction of the signatory states.

<sup>11</sup>International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)

## **1.13 FAQs about Human Rights in India and UK**

### **1. India has specific laws that protect women's rights.**

India has specific laws to protect women's rights, including the Protection of Women from Domestic Violence Act, 2005, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. These laws aim to address issues such as domestic violence and workplace harassment and provide legal remedies for women facing such violations.

### **2. UK address hate crimes and discrimination.**

The UK has robust legislation to address hate crimes and discrimination. The Equality Act 2010 prohibits discrimination based on protected characteristics such as race, religion, sexual orientation, and disability. The act provides a legal framework to tackle hate crimes and promotes equality in various spheres of life

### **3. Capital punishment still practiced in India and the UK.**

In India, capital punishment is legal but is only awarded in rarest of rare cases. The UK, on the other hand, abolished the death penalty for all crimes in 1998, except for certain military offenses committed during wartime.

### **4. Key challenges faced by human rights defenders in India and the UK.**

Human rights defenders face various challenges in both countries. In India, they often encounter threats, harassment, and intimidation, particularly when working on issues related to marginalized communities and land rights. In the UK, challenges include restrictions on protest rights and challenges to the independence of civil society organizations.

### **5. India and the UK address child rights.**

Both countries have enacted legislation to protect child rights. In India, the Protection of Children from Sexual Offences (POCSO) Act, 2012, addresses child sexual abuse, while the Right to Education Act<sup>12</sup>, 2009, ensures free and compulsory education for children. In the UK, the Children Act<sup>13</sup> 1989 sets out the rights and welfare principles concerning children, including their protection and well-being.

<sup>12</sup> Right to Education Act, 2009,

<sup>13</sup>Children Act 1989

## **6. India and the UK have mechanisms to address police brutality and misconduct.**

Yes, both countries have mechanisms to address police brutality and misconduct. In India, the National Human Rights Commission investigates complaints against police officers. In the UK, the Independent Office for Police Conduct (IOPC) is responsible for overseeing the police complaints system and ensuring public confidence in the police service

## **2. REVIEW OF LITERATURE**

*"Ashworth, Andrew. "Principles of Criminal Law and the Human Rights Act."* submitted that criminal law has always been a great source for the enlargement of human rights in India.

*Malik, Monica. "Human Rights and Criminal Justice System in India."* submitted that subject to the fact that room for improvement is always there, the criminal justice system in India is one of the best in the world. He argued that law in relation to investigation of offences and rights of an accused, in India, have developed with the passage of time. Power is vested in the investigating officer to conduct the investigation freely and transparently.

The Indian Penal Code, the Code of Criminal Procedure 1973, along with parts of the Indian Evidence Act 1872, constitute the essence of Indian criminal law<sup>14</sup>. A large number of special and local laws take care of various other antisocial activities. Members of the armed forces face trial for offences by a Court Martial under special Acts owing to their special requirements.

Singh, Nishtha. "Human Rights Protection in the UK Criminal Justice System." submitted that As far as Indian legal system is concerned, the international promise of fair trial is very much reflected in its constitutional scheme as well as its procedural law.

<sup>14</sup>Indian Evidence Act 1872

### **3. STATEMENT OF THE PROBLEM**

This dissertation examines the human rights challenges within the criminal justice systems of India and the United Kingdom. The problems addressed are as follows:

1. **Human Rights Violations in India:** This problem focuses on investigating instances of human rights violations, such as extrajudicial killings, custodial torture, and arbitrary arrests, within India's criminal justice system.

2. **Human Rights Concerns in the United Kingdom:** This problem explores human rights issues in the criminal justice system of the United Kingdom, including the disproportionate use of force by law enforcement, treatment of detainees in police custody, and the impact of counter-terrorism measures on human rights. It seeks to evaluate existing oversight mechanisms and the role of courts in safeguarding human rights.

3. **Comparative Analysis of Human Rights Approaches:** This problem involves a comparative analysis of human rights approaches in the criminal justice systems of India and the United Kingdom. By addressing these problems, this dissertation contributes to a deeper understanding of the human rights challenges and potential solutions within the criminal justice systems of India and the United Kingdom.

#### **4. AIMS AND OBJECTIVES:**

1. To analyze the human rights framework within the criminal justice systems of India and the United Kingdom.

2. To identify and analyze human rights challenges in the criminal justice system of India.

3. To explore human rights issues and developments in the criminal justice system of the United Kingdom. –

4. To compare and contrast the approaches to human rights in the criminal justice systems of India and the United Kingdom.



## **5. HYPOTHESIS:**

1)The human rights protection framework in the UK is more comprehensive and effective compared to India, resulting in better outcomes in terms of promoting and safeguarding individual rights within the criminal justice system.

2)The criminal justice system in India exhibits greater challenges in terms of ensuring access to justice, fair trials, and due process compared to the UK, leading to a higher likelihood of human rights violations.

3) The recent legal reforms in both India and the UK have positively contributed to strengthening human rights protection and improving the administration of criminal justice, albeit to varying extents.

## **6. RESEARCH METHODOLOGY**

The research will largely be based on doctrinal research methodology which will be carried out in a law library to locate authoritative decisions pertaining human rights in criminal justice delivery, applicable legislations and any other relevant secondary discussion on the subject the study results which provides a systematic exposition of the rules governing human rights in the administration of criminal justice in India and UK with reference to the United Nations Conventions on Human Rights, analyses the relationship between the rules, explains areas of difficulty and, perhaps, predicts future developments. The research will ultimately concentrate on legislative policies on criminal justice system in India and UK, laws related to human rights and more importantly

## **7. RESEARCH QUESTION**

1. How do human rights principles shape the criminal justice systems in the United Kingdom and India?
2. What are the key similarities and differences between the human rights frameworks of the United Kingdom and India within their respective criminal justice systems?

3. How do the legal frameworks and institutional structures in the United Kingdom and India protect and promote human rights within the criminal justice context?
4. What are the major challenges and limitations in safeguarding human rights in the criminal justice systems of the United Kingdom and India?
5. How do the United Kingdom and India address issues of fair trial rights, due process, and access to justice within their criminal justice systems from a human rights perspective?

**CHAPTER 2**

**CRIMINAL JUSTICE IN INDIA AND UK**

## **2.1 CRIMINAL JUSTICE SYSTEM IN INDIA AND UK**

### **Introduction**

The criminal justice system plays a crucial role in maintaining law and order in any society. It encompasses a set of institutions, policies, and practices designed to uphold justice, punish offenders, and protect the rights of individuals. The criminal justice systems in different countries vary in their structure, procedures, and legal frameworks. In this article, we will delve into the criminal justice systems of India and the United Kingdom, exploring their similarities, differences, and the challenges they face. By analyzing these two systems, we can gain a deeper understanding of how countries approach the administration of justice.

### **1. CRIMINAL JUSTICE SYSTEM IN INDIA AND UK: An Overview**

The criminal justice systems in both India and the United Kingdom aim to maintain law and order, prevent crime, and ensure justice for victims and offenders. However, they differ significantly in terms of their legal frameworks, procedures, and the roles of various institutions involved in the process.

#### **1.1 Legal Framework in India**

In India, the criminal justice system is primarily governed by the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC). The IPC defines various criminal offenses and their corresponding punishments, while the CrPC outlines the procedures to be followed during the investigation, trial, and sentencing of criminal cases. Additionally, there are specialized laws such as the Narcotic Drugs and Psychotropic Substances Act and the Prevention of Corruption Act that deal with specific offenses.<sup>15</sup>

#### **1.2 Legal Framework in the United Kingdom**

In the United Kingdom, the criminal justice system is primarily based on common law principles and statutes. The main legislative framework includes the Theft Act, the Sexual Offenses Act, and the Criminal Justice Act. These statutes define criminal offenses and provide guidelines for the investigation, prosecution, and sentencing of offenders.

<sup>15</sup>The Indian Penal Code (IPC) And The Code Of Criminal Procedure (Crpc)

## **2. INVESTIGATION AND POLICING:**

### **2.1 Investigation Process in India**

In India, the investigation of criminal cases is primarily conducted by the police. The police have the authority to register First Information Reports (FIRs), collect evidence, and interrogate suspects. The investigating officer prepares a case diary that records the progress of the investigation. However, the effectiveness of investigations in India has been a subject of debate, with concerns raised about the quality of evidence collection and the handling of cases.

### **2.2 Investigation Process in the United Kingdom**

In the United Kingdom, the investigation of criminal cases is carried out by various law enforcement agencies, including the police and specialized units such as the Serious Fraud Office and the National Crime Agency. The police have powers to arrest suspects, search premises, and gather evidence. The investigation process in the UK is known for its thoroughness and emphasis on professional standards.

## **3. ADJUDICATION: TRIAL AND SENTENCING**

### **3.1 Trial Process in India**

In India, the trial process involves several stages, starting with the framing of charges against the accused. The trial is conducted by a judge, and in serious offenses, a jury may be involved. The prosecution presents its case, followed by the defense presenting its arguments and evidence. The judge or jury then deliberates on the evidence presented and delivers a verdict. If the accused is found guilty, the court proceeds to determine an appropriate sentence.

### **3.2 Trial Process in the United Kingdom**

In the United Kingdom, the trial process also involves the presentation of evidence by the prosecution and defense. However, there are notable differences, such as the use of juries in most serious criminal cases. The jury consists of laypersons who assess the evidence and deliver a verdict. The judge presides over the trial and provides guidance on matters of law. In cases where the defendant is found guilty

## **2.2 THE PRINCIPAL SECTORS OF HUMAN RIGHTS ABUSES IN THE CRIMINAL JUSTICE SYSTEM:**

- Crime
- Police
- Courts
- Prisons
- State
- Others

Crimes have increased day-by-day because of the combined contribution of socio-political-economic factors. Some reasons, which can be said, increase in population, increase in the unemployment and denial of opportunities to a certain section of people. Organized crimes have increased. Organized gangs have such control on finances, weapons, and communication; such crimes have emerged as a serious challenge not only to the police but also to the existence of civilized society itself. In general, organized crime corrodes the social, economic and political fabric of the society. The extent of terror, which the organized gangs inflict on the society, is alarming. These gangs are also responsible for large-scale corruption in social and economic institutions.

Policing in a democratic society is seen as upholding the dignity of the individual by safeguarding the constitutional and legal rights. Democracy gets threatened when the police cease to respect the legal and constitutional rights of the citizens and persistently disregard the due process of law. Allegations of the police violence and brutality are being constantly received from different parts of the country.<sup>16</sup> It is a known fact that a common complainant of crime is rudely received in the police stations and is treated with discourtesy, indifference, and indignity.

<sup>16</sup>Shankar Sen, "Human Rights in Criminal Justice System", in Vijay K. Gupta, ed., *Perspective on Human Rights*, VikasPublishing House Pvt. Ltd., New Delhi, 1996, p.221.

The victims of police perversions are almost always the disadvantaged sections of society who are incapable of legitimate self-defence. In the garb of combating criminality, the police take the law into their hands and trample upon the basic human rights of the crime-suspects. The abominable records of police deviance are reflected in the encounter deaths and the rapes and deaths in the police custody. These no doubt, are the cruellest forms of human rights violations.

The Criminal Judicial System in the common law tradition is based on the twin principals of penal policy, the presumption of innocence and the requirement that the criminal charge needs to be proved beyond reasonable doubt. There is need to improve the quality of forensic expertise and make it truly a system for promotion of justice. Another weakness is the prosecution. The Prosecutor should be appointed on merit; which often does not happen. Competent prosecutors who are again politically neutral should be appointed. The prosecution has the obligation of fair disclosure which means the prosecution should place before the court all factors even including that which is in favour of the accused. As Justice Arthus .V and erbilt would say<sup>17</sup>, “If they (the common citizens) have respect for the work of the courts, their respect for law will survive the shortcomings of every other branch of Government; but if they lose their respect for the work of the courts, their respect for law and order will vanish with it to the great detriment of society.”

Prisons, like police, are no less any less guilty of human rights violations. The reality can be gauged only by visiting prisons. Instances of prison injustice abound and the penal regime has not changed much despite two-dozen reports on prison reform, such as the Mulla Committee report. Also, in the Hussainara Khotoon's case<sup>18</sup>, the Supreme Court observed: "It is a crying shame on the judicial system which permits incarceration of men and women for long period of time. We are shouting from housetops about the protection and enforcement of human rights. We are talking passionately and eloquently about the maintenance and preservation of basic freedoms. But are we not denying the right to these nameless persons who are languishing in jails for years for offences which perhaps they might ultimately be found not to have committed?"

<sup>17</sup>In: THE CHALLENGE OF LAW REFORMS [Princeton University Press, 1955], pp.4-5.

<sup>18</sup>AIR 1979 SC 1360.

Are we not withholding basic freedom from these neglected and helpless human for years? Are expeditions trail and freedom from detention not part of the human right and basic freedoms".

State, the so-called protector of human rights in the country appears to be the biggest violator.

The coercive processes of the State machinery corrode the foundations of human rights. Increasing concentration of power in the hands of the executive has become alarming. We are witnessing the might and the dominance of the State in its myriad forms. Many human rights activists and civil liberty organizations have condemned the Central and State Government for their deplorable disregard of fundamental freedoms and human dignity. The despotic proclivity of the authorities has rendered the State as an oppressor of the poor. The worst part is that State terrorism is taken as an answer for private terrorism.

Human beings are rational beings . They by virtue of their being human possess certain basics and inalienable rights which are commonly known as human rights. since these rights belong to them because of their very existence ,they become operative with their birth. human rights ,beingyhr birth right ,are ,therefore, inherent in all the individuals irrespective of their caste, creed ,religion ,sex, and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social, and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings; human rights are also sometimes referred to as fundamental rights, basic rights , inherent rights, natural rights and birth rights.<sup>19</sup>

*Human rights* are commonly understood as "inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being." Human rights are thus conceived as universal and egalitarian. These rights may exist as natural rights or as legal rights, in both national and international law. The idea of human rights states, "if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights." Despite this, the strong claims made by the doctrine of human rights continue to provoke considerable skepticism and debates about the content, nature and

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<sup>19</sup> (Dr.H.O. Aggarwal, 'international law & human rights, 16<sup>th</sup> edition,p.730



justifications of human rights to this day. Indeed, the question of what is meant by a "right" is itself controversial and the subject of continued philosophical debate.

Modern human rights law developed out of customs and theories that established the rights of the individual in relation to the state. These rights<sup>20</sup> were expressed in legal terms in documents such as the English Bill of Rights of 1689, the U.S. Declaration of Independence of 1776, the U.S. Bill of Rights added to the U.S. Constitution in 1789, and the French Declaration of the Rights of Man and the Citizen added to the French Constitution in 1791.

### **2.3 PROTECTION OF HUMAN RIGHTS<sup>21</sup>**

To protect human rights and advance both the rule of law and long- term security, we urge the Indian government to maintain and build upon these recent positive steps. Part of these efforts may require the central government to develop mechanisms that provide for greater administrative and judicial oversight of investigative and prosecutorial decision- making, and transparency in that decision-making, to ensure nationwide uniformity and adherence to fundamental rights. Mechanisms for citizens to seek redress and hold government officials accountable for abuses should be improved. While broader efforts to reform the police and judiciary have proven elusive, such reforms will be essential in seeking to eliminate the human rights concerns that arise under antiterrorism laws and, indeed, in many instances under India's ordinary criminal laws. Finally, as we have also urged the U.S. government with respect to its antiterrorism laws and policies since 2001, we urge the Indian government to take a number of steps to cooperate more fully with international institutions responsible for monitoring and implementing compliance with human rights standards. Protection of human rights – including freedom from arbitrary arrest and detention, freedom from torture or cruel, inhuman, or degrading treatment, freedom of religion, freedom of speech and association, and the right to a fair criminal trial – certainly constitutes a moral and legal imperative.

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<sup>20</sup>The Bill Of Rights 1689

<sup>21</sup> 'Human rights , terrorism, & security laws' , *Columbia journal of asian laws* , 20:1, p.99-100

In the words of the Supreme Court of India, “ the law enforcing authority becomes a law breaker, it breeds contempt for law, it invites every man to become a law unto himself and ultimately it invites anarchy.” In the United States, the September 11 Commission has echoed this concern, noting that “if our liberties are curtailed, we lose the values that and detention, freedom from torture or cruel, inhuman, or degrading treatment, freedom of religion, freedom of speech and association, and the right to a fair criminal trial – certainly constitutes a moral and legal imperative. In the words of the Supreme Court of India, “ the law enforcing authority becomes a law breaker, it breeds contempt for law, it invites every man to become a law unto himself” .

## **2.4 HUMAN RIGHTS IN U.K.**

Human rights in the United Kingdom are set out in common law, with its strongest roots being in the *English Bill of Rights 1689*, as well as the European legislation. In recent years, however, British human rights legislation has been criticised by conservatives for excessive attention to the human rights<sup>22</sup> of offenders at the expense of those of victims; sparking rightwing calls for the review of the *Human Rights Act 1998* and other legislation.

## **2.5 HUMAN RIGHTS IN INDIA**

In the Indian social and philosophical thought, all rights were treated as part of *Dharma*-an omnibus concept with multiple shades of meaning. *Dharma* is said to be the nature of things and the law of their being and relationships, a cosmic order permeating the universe, rules of social and individual conduct, moral righteousness and religious duty. It stood for religious observance, justice in the societal living, righteousness in one’s conception and perception of things and ideals, conformity to law, obedience to the present social order, maintaining the dignity of human life, sense of duty in human beings etc. and, hence, this concept has not only a religious and moral standing in the average Indians but it has an ethical and legal significance in the cultural sensitivity of this country.

<sup>22</sup>The Human Rights Act 1998

Accordingly, all human values, norms, duties and rights, both individual and social, were explained by referring them back to this concept. The concept of *Dharma*, the central concept of this culture, is not that of something commanded by a God, but that of an order in the very nature of things, the nature of things being an expression of ultimate reality rather than the arbitrary creation of an all powerful will of a God. Since Dharma emphasized “individual duties”, ordinary citizens benefited from the protection this system provided. It became the best safeguard against those who were potential violators of “individual rights”. In other words, when everyone acts according to Dharma, the individual rights of everyone are naturally protected.

Moving to the present situation, in terms of *Section 2(d) of the Protection of Human Rights Act, 1993*, "human rights" means rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the International Covenants and enforceable by courts in India. "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966.

The Indian constitution bears a strong impact of Universal Declaration of Human Rights. It incorporates the human right provisions in following ways<sup>23</sup>:

- *Specifically enumerated rights*: By specifically enumerated rights it is meant human rights which find mention in the international instruments and are also enumerated in the Indian constitution either as Fundamental rights or Directive Principles.
- *Rights not specifically enumerated*: ‘Other rights’ are those rights which have not been specifically enumerated but they have been recognized by the Supreme Court as part of the existing fundamental rights such as interpretations to Article 14, 19 and 21.

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<sup>23</sup> Dr. S.K. Kapoor, *International Law and Human Rights* 73 (Central Law Agency, Allahabad, 14th Edn., 2008)

- *Unenumerated rights*: this category consists of those human rights which are enumerated in the international covenants but are neither enumerated in the constitution as fundamental rights nor recognized as an interpretation to them. However, it has been consistently recognized by the Supreme court that the help of international covenants and conventions ratified by India can be taken in interpreting the constitutional provisions relating to human rights<sup>24</sup>.

## **2.6 FUNDAMENTAL RIGHTS AND CRIMINAL PROCEDURE**

India is bound by legal obligations that protect fundamental rights under its own Constitution and statutes and under international treaties to which it is a party.

## **2.7 INDIAN CONSTITUTION**

The Supreme Court of India has interpreted the Indian Constitution's Specifically in the criminal justice context, the Constitution prohibits Ex post facto laws, double jeopardy, and compelled self-incrimination. Individuals arrested and taken into custody must be provided the basis for arrest "as soon as may be" and produced before a magistrate within 24hrs.

In D.K.BASU case, Supreme Court extended the Constitution's procedural guarantees further by requiring the police to follow detailed guidelines for arrest and interrogation. The Constitution also guarantees the right to counsel of the defendant's choice, and the Supreme Court has held that legal assistance must be provided to indigent defendants at government expense, a right that attaches at the first appearance before a magistrate. These guarantees do not apply to laws authorizing preventive detention, which, as discussed .While the Constitution does not explicitly protect "due process of law," it does prohibit deprivation of life or personal liberty from any person except according to "procedure established by law," and the Supreme Court has broadly interpreted this guarantee

<sup>24</sup>*Vishakha v State of Rajasthan* AIR 1997 SC 625

to encompass a range of procedural and substantive rights that approximate the concept of “due process.” Procedures must be “right, just and fair,” and not arbitrary, fanciful or oppressive. The Court has held, based on its broad understanding of the right to life and liberty, that the Constitution guarantees the right to privacy and freedom from torture or cruel, inhuman, or degrading treatment. The Court also has recognized a constitutional right to a fair criminal trial, including among other elements the presumption of innocence; independence, impartiality, and competence of the judge; adjudication at a convenient and non-prejudicial venue; knowledge by the accused of the accusations; trial of the accused and taking of evidence in his or her presence; cross-examination of prosecution witnesses; and presentation of evidence in defense. The Constitution also requires a speedy trial, extending from the outset of an investigation through all stages of the criminal process. and a number of statutory provisions implement this principle.

## **2.8 STATUTES AND PROCEDURAL RULES**

Under the Code of Criminal Procedure, detention in police custody beyond the constitutional limit of 24 hours must be authorized by a magistrate. When the accused is initially produced before the magistrate, the magistrate must release the accused on bail unless it “appears that the investigation cannot be completed” within 24 hours and the accusation is well-founded – in which case the accused may be remanded to police custody for up to 15 days, although in principle remand is disfavored. Bail is meant to be the rule and continued detention the exception. For minor, so-called “bailable” offenses, release on bail is available as of right, while for most serious or “non-bailable” offenses, the accused may be released on bail at the discretion of the court. Before ordering remand to police custody, the magistrate must record the reasons for continued detention. Upon finding “adequate grounds” to do so, the magistrate may order detention beyond the fifteen day period for up to 60 days, or in a case involving a potential prison sentence of at least 10 years or the death penalty, for up to 90 days. This extended period of detention, however, must take place in judicial custody, rather than police custody. The police must file with the magistrate a “charge sheet” setting forth the particulars of their allegations “without unnecessary delay.” If the charge sheet is not filed upon expiration of the 60- or 90-day extended detention period, the individual must be released on bail, regardless of the seriousness of the offense alleged. However, if the charge sheet is filed before that period expires, and the magistrate decides to charge the accused, the decision to grant bail must be determined based on the contents of the charge sheet. Indian law sharply limits the use of statements given to the police or while in police custody. Under the Indian

Evidence Act, confessions made to police officers are inadmissible as substantive evidence against the accused, and confessions made to others while in police custody must be made in the immediate presence of a magistrate to be admissible. More generally, the Code of Criminal Procedure<sup>25</sup> prohibits statements made to the police in the course of an investigation by any person, if reduced to writing, to be signed by the individual or used for any purpose during proceedings concerning the offense under investigation, except to impeach that person's subsequent testimony. These rules, which date to the colonial period, are intended to reduce the incentive for police to engage in torture and other coercive interrogation practices, in recognition that torture by the Indian police has been a longstanding problem. However, these limitations are not unqualified. If part of a confession or other statement given to the police leads to the discovery of admissible evidence, that portion of the statement may be admitted as corroborative evidence.

## **2.9 HUMAN RIGHTS IN INTERNATIONAL SCENARIO**

The damage done by world wars had necessitated the creation of more strong humanitarian laws for the protection of lives of human kind. Hence, to develop the U.N. Charter into an international code of human rights law, the international community created a number of multilateral human rights treaties. One of the most significant of these is the International Covenant on Civil and Political Rights. These treaties forbid discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

The Covenant on Civil and Political Rights includes protections for the right to life, except after conviction for serious crime (art. 6); freedom from torture and other cruel and inhumane punishment (art. 7); freedom from slavery and prohibition from slave trade (art. 8); freedom from arbitrary arrest or detention (art. 9); humane treatment of prisoners (art. 10); freedom of movement and choice of residence (art. 12); legal standards, including equality before the law, fair hearings before an impartial tribunal, Presumption of Innocence, a prompt and fair trial, the Right to Counsel, and the right to review by a higher court; freedom of thought, conscience, and religion (art. 18); and freedom of association, including association in trade unions (art. 22).

<sup>25</sup>The Code Of Criminal Procedure, 1973

The international community has also adopted many other human rights treaties. These include the Convention on the Prevention and Punishment of the Crime of Genocide (1948); the Convention on the Political Rights of Women (1953); the Convention to Suppress the Slave Trade and Slavery (revised 1953); the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment (1987); the Convention on the Rights of the Child (1990); and the Convention on Protection of the Rights of Migrant Workers (2003).

In addition to worldwide human rights agreements, countries have also established regional conventions. These include the European Convention for the Protection of Human Rights<sup>26</sup> and Fundamental Freedoms, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights.

India is a party or signatory to several international instruments protecting individuals from arbitrary or improper treatment under anti-terrorism and other security laws, including the International Covenant on Civil and Political Rights, the International Convention on the Prevention and Punishment of the Crime of Genocide, and the International Convention on the Elimination of All Forms of Racial Discrimination, and the four Geneva Conventions. As a U.N. member state, India is bound by the U.N. Charter, which pledges member states to “promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion,” and by the Universal Declaration of Human Rights, which protects the rights to liberty, freedom of expression and opinion, peaceful assembly, an effective remedy for acts violating fundamental rights, and a “fair and public hearing by an independent and impartial tribunal.”

<sup>26</sup>The European Convention On Human Rights 1950

Several non-binding sources of law further clarify the principles underlying these binding international obligations.

The ICCPR<sup>27</sup> protects the rights to life, liberty and security of the person, and freedom from arbitrary arrest or detention. To ensure freedom from arbitrary detention, the ICCPR guarantees the right of any arrested or detained individual to have a court promptly decide the lawfulness of detention and to be released if detention is not lawful. Individuals charged with criminal offenses must be presumed innocent until proven guilty, tried without undue delay, and not compelled to confess their guilt. Criminal offenses must be defined with sufficient precision to prevent arbitrary enforcement, and no one may be criminally punished for conduct not proscribed at the time committed. The ICCPR also protects freedom of opinion, expression, peaceful assembly, and association. Finally, when rights are violated, the ICCPR requires the availability of effective remedies, regardless of whether the individuals who committed the violations acted in an official capacity. “Effective” remedies may require more than just monetary compensation, but instead might also need to involve restoration of residence, property, family life and employment; physical and psychological rehabilitation; prosecution of those responsible; official acknowledgement and apology; and guarantees of non-repetition. States may derogate from some human rights guarantees under limited circumstances, and the threat of terrorism may, potentially, constitute a “public emergency” authorizing derogation. However, derogation must be “strictly required by the exigencies of the situation,” not “inconsistent with other obligations under international law,” and not discriminatory on the basis of race, color, sex, language, religion or social origin. Derogation also must be tailored to the particular circumstances and limited in duration. Procedurally, a state party must “immediately” notify other state parties through the U.N. Secretary General of the specific provisions from which it has derogated and the reasons for derogation. India has never purported to derogate from any of the ICCPR’s provisions, and many of the ICCPR’s provisions are nonderogable under any circumstances. The ICCPR explicitly provides that the rights to life, freedom from torture or cruel, inhuman, or degrading treatment, freedom from prosecution under retroactive legislation, and freedom of thought, conscience, and religion are nonderogable.

<sup>27</sup>The International Covenant On Civil And Political Rights



In addition, the Human Rights Committee has identified other nonderogable standards. Under the Committee's guidelines, all persons deprived of liberty must be treated with respect for their dignity; hostage-taking, abduction, and unacknowledged detention are prohibited; persons belonging to minority groups must be protected; and "no declaration of a state of emergency may be invoked as justification for a State party to engage itself . . . in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence."

India has not signed the Optional Protocol to the ICCPR, which permits individuals to bring complaints of violations before the Human Rights Committee. While India signed the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997, it has not ratified CAT<sup>28</sup> or taken steps to ensure that its domestic legislation complies with CAT's requirements. However, the prohibition against torture and cruel, inhuman, or degrading treatment also is found in the ICCPR and is widely regarded as a customary international law norm and a jus cogens norm from which no derogation is permitted.

<sup>28</sup>The U.N. Convention Against Torture

**CHAPTER 3**

**INTERSECTION OF HUMAN  
RIGHTS AND CRIMINAL JUSTICE  
SYSTEM IN INDIA AND UK**

## **3.1 INTERSECTION OF HUMAN RIGHTS AND CRIMINAL JUSTICE SYSTEM IN INDIA AND UK**

### **3.1.1. Understanding Human Rights in the Criminal Justice Context**

#### **a. What are Human Rights?**

Human rights are fundamental rights and freedoms that every individual is entitled to, regardless of their nationality, race, gender, or any other status. These rights are protected by international and domestic laws to ensure the dignity, equality, and fair treatment of all individuals.

#### **b. The Significance of Human Rights in the Criminal Justice System**

The criminal justice system operates within the framework of human rights to ensure that individuals accused of crimes are treated fairly and their rights are respected throughout the process. Human rights provide a necessary check on state power and protect individuals from arbitrary arrests, unlawful detention, torture, and other forms of mistreatment.

### **3.1.2 Human Rights in the Criminal Justice Systems of India and UK**

#### **a. Human Rights Protection in India's Criminal Justice System**

India has a robust legal framework that recognizes and protects human rights within its criminal justice system. The Constitution of India guarantees several fundamental rights, including the right to life, liberty, and equality before the law. Additionally, India is a signatory to various international human rights conventions, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

#### **b. Human Rights Protection in the Criminal Justice System of the United Kingdom**

The United Kingdom has a long history of upholding human rights within its criminal justice system. The Human Rights Act 1998 incorporates the European Convention on Human Rights<sup>29</sup> into UK law, ensuring that individuals have access to their rights within the domestic legal framework. The UK is also bound by international human rights obligations, which are enforced by the European Court of Human Rights.

<sup>29</sup>The Human Rights Act 1998

### **3.1.3 Challenges and Issues at the Intersection of Human Rights and Criminal Justice**

#### **a. Ensuring the Right to a Fair Trial**

One of the key challenges in both India and the UK is ensuring the right to a fair trial for all individuals accused of crimes. This includes the right to legal representation, access to evidence, and the presumption of innocence until proven guilty. In some cases, delays in the judicial process can lead to a violation of these rights.

#### **b. Overcrowding and Prison Conditions**

Both India and the UK face challenges related to prison overcrowding and the conditions within correctional facilities. Overcrowding can lead to issues such as inadequate healthcare, lack of hygiene, and increased risk of violence. Ensuring that prisoners' rights are protected and that they are treated with dignity is essential.

#### **c. Police Accountability and Abuse of Power**

Instances of police misconduct, including extrajudicial killings, torture, and arbitrary arrests, pose a significant challenge to human rights in both India and the UK. Upholding the principles of accountability, transparency, and proper training of law enforcement officials is crucial to address these issues and prevent human rights violations.

#### **d. Protecting Vulnerable Populations**

Certain groups, such as women, children, and marginalized communities, are particularly vulnerable to human rights abuses within the criminal justice system. Ensuring their protection and addressing systemic biases and discrimination is essential for a just and equitable system.

#### **e. Balancing National Security and Human Rights**

In the face of security threats, both India and the UK grapple with the challenge of balancing national security concerns with the protection of human rights. Striking a balance that safeguards individual freedoms while addressing security concerns is a complex task.

## **f. Restorative Justice and Rehabilitation**

The promotion of restorative justice practices and rehabilitation is another critical aspect of human rights in the criminal justice system. Focusing on the reintegration of offenders into society and addressing the root causes of criminal behavior can contribute to reducing recidivism rates and promoting a more humane approach to justice.

The intersection of human rights and the criminal justice system in India and the UK highlights the importance of ensuring fair and just treatment of individuals within the legal framework. While both countries have made significant progress in protecting human rights, challenges persist, such as ensuring a fair trial, addressing prison conditions, promoting police accountability, protecting vulnerable populations, balancing national security, and focusing on restorative justice and rehabilitation. By addressing these challenges, India and the UK can further strengthen their criminal justice systems and uphold the principles of human rights for all.

### **3.2 EFFECTIVENESS AND PROFESSIONAL CAPACITY OF THE CRIMINAL JUSTICE SYSTEM**

Structural reform efforts also must seek to upgrade the overall capacity of the criminal justice system. Conviction rates for individuals arrested by the state police forces have been consistently and dramatically falling since independence. While the conviction rate in ordinary cases under the Indian Penal Code was 64.8 percent in 1961, it has subsequently fallen to 62.0 percent in 1971, 52.5 percent in 1981, 47.8 percent in 1991, and 42.5 percent in 2004.<sup>459</sup> Certainly, reforms should seek to improve these conviction rates, since the government should not prosecute individuals without sufficient evidence to support a conviction. At the same time, simply increasing conviction rates will not ensure the overall effectiveness of reform. Rather, reformers must also seek to improve the reliability of the criminal process, so that the public may be confident that individuals who are investigated, prosecuted, and convicted are, in fact, guilty of the offenses with which they have been charged.

As the NHRC and others frequently have noted, improving the overall effectiveness of the criminal justice system to prosecute terrorism and other serious crimes requires attention to all three stages of the criminal justice process: investigation, prosecution, and adjudication. First, improving the effectiveness of police investigation requires a serious investment and

commitment to strengthen their overall professionalism and capacity to do their jobs. Especially when fighting serious crime, the police endure tremendous burdens and serious dangers in their work, and are not particularly well compensated. At the same time, as discussed above, the police are frequently hindered in their work by political interference. As a result, morale among the police is low, and this low morale is exacerbated by the wide mistrust of the police within the Indian public at large. Investigative procedures and mechanisms under Indian law have not significantly changed since the 19th century. With limited ability to collect, preserve, and analyze physical evidence, investigations proceed very slowly. The police rely disproportionately on witness statements, which increases the incentive to engage in coercive interrogation practices. As Indian observers have noted, attention needs to be devoted to training, the development of advanced forensic skills and facilities, and the separation within the police of responsibility for conducting investigations from the day-day responsibilities for maintaining law and order. Second, the quality and independence of the prosecution needs to be enhanced. The NHRC has expressed concern that for terrorism cases, in particular, more experienced prosecutors need to be appointed in order to ensure that cases are prosecuted more effectively, and the quality of the prosecution may indeed be one factor contributing to the failure to successfully obtain convictions in many cases. There also are indications that the numbers of prosecutors are insufficient to handle the large volume of pending cases. But the need to reform the prosecution extends much further, requiring more effective guarantees of prosecutorial independence from the police and politicians in all criminal cases. During the colonial period and for many years after independence, criminal cases generally were prosecuted by the police, not an independent cadre of lawyers. As Arvind Verma, a professor and former IPS officer, has noted, this lack of prosecutorial independence is itself a vestige of colonialism, under which most prosecuting attorneys, who were Indian, were subordinate to senior police officers, who were British. Since independence, the Law Commission and Supreme Court have repeatedly emphasized the importance of ensuring prosecutorial independence from the police. However, in many states this separation does not exist, at least in practice if not formally. Recent amendments to the Code of Criminal Procedure now formally authorize the states to establish separate Directorates of Prosecution within their home departments.

However, the states are not required to do so, and the new provisions do not specify any guidelines to ensure the independence of these directorates. Indeed, some Indian observers have raised concerns that by placing the prosecution under the aegis of the home departments, the amendments might further compromise, rather than enhance, prosecutorial

independence from the police. Especially given the vital potential role that prosecutors can play in either resisting or exacerbating police abuses, further reforms likely will be necessary to ensure both meaningful independence and accountability for prosecutors. Finally, reform efforts must seek to improve the capacity of the Indian judiciary itself. Without question, the Indian judiciary has played a critical role since independence in advancing and defending India's commitment to the rule of law and its constitutional values. However, it has done so under tremendous pressures and resource constraints, particularly at the subordinate court levels. 470 In 1986, Justice P.N. Bhagwati of the Supreme Court of India declared that the Indian judiciary was "on the verge of collapse," crushed by a backlog of cases that was undermining the legitimacy of the justice system. Twenty years later, the situation has only become more severe.

One dimension of the problem involves basic numbers. The Indian judiciary has only 10.5 judges per million citizens, compared to 41.6 per million in Australia, 50.9 per million in the United Kingdom, 75.2 per million in Canada, and 107.0 per million in the United States. Caseload statistics reflect these disparities. At the end of 2005, the subordinate courts had over 25 million pending cases, of which approximately 18 million were criminal cases. Large backlogs contribute to extensive delays in adjudication, increases in litigation costs, loss or diminished reliability of evidence by the time of trial, unevenness and inconsistency in the verdicts that ultimately are reached at trial, and an attendant reduction of faith in the justice system among members of the public. The consequences are particularly severe for the large numbers of "undertrials" who languish in prolonged periods of detention while awaiting trial – in some cases, even beyond the maximum periods to which they could be sentenced if convicted. Perhaps to an even greater extent than with police reform, both the government and the Supreme Court have been very active in recent years in raising the profile of judicial reform as an issue. Meaningful reform will require significant investments to increase the numbers of judges, upgrade and expand courtrooms and other facilities, and implement methods to improve judicial efficiency and productivity through, for example, increased recent technology. Recent legislation has provided for the potential release of thousands of individuals who have subject to prolonged detention pending trial and, for the first time, has introduced the concept of plea bargaining into the Indian criminal justice system for certain offenses carrying maximum potential sentences of less than seven years. Other proposals would expand the use of "fast track" courts and alternative tribunals for certain offenses, hire ad hoc judges and establish "double shifts" for sitting judges, and implement various procedural mechanisms to reduce delays, such as limits on interlocutory appeals and

the use of pretrial hearings to narrow issues to be litigated. Senior government officials and members of the higher judiciary also have recognized the need to address the problem of corruption and to improve training for judges and judicial staff and the quality of adjudication, particularly in the subordinate courts – in part by considering the establishment of an all-India judicial service to staff the subordinate courts. These efforts to find ways to promote greater efficiency in context of the Justice Department’s recent efforts to clear heavy backlogs in administrative adjudication of immigration cases, streamlined justice can compromise the quality of adjudication and create opportunities for improper political influence – indeed, one prominent federal judge has criticized the quality of adjudication as having “fallen below the minimum standards of legal justice.” Similar risks appear present in India’s initiatives to streamline the administration of justice. While plea bargaining can help to reduce delays by facilitating earlier disposition of criminal cases in which the defendants do not contest their guilt and, in some instances, cooperation against more culpable defendants, it is important that any system of plea bargaining be regulated and subject to procedural safeguards.<sup>480</sup> Past efforts to use alternative or informal adjudication in India also have not been entirely successful either in ensuring efficiency or fully protecting the legal rights of Indian citizens, and it will be important to understand the limitations of those efforts when more broadly seeking to rely upon institutions such as “fast track” courts to adjudicate criminal cases. While some prominent proposals – most notably those suggested by the government committee chaired by Justice V.S. Malimath – would seek to streamline the administration of criminal justice simply by making it easier for the police and prosecution to obtain convictions, such an approach would be mistaken. It fails to recognize that the limitations in the current system stem from a comprehensive set of challenges involving the very capacity of India’s institutions to investigate, prosecute and adjudicate criminal cases effectively. As such, real progress likely will come not through procedural “short cuts” designed to help the police obtain more convictions in the short term, but rather through a comprehensive approach to institutional capacity-building. While this approach may take an extended period of time to realize, it is an approach to which many Indian officials and other citizens appear sincerely committed.

All the above discussed chapters show a collective concern of all the countries towards the preservation of humanitarian laws because after all it is the human life which is the reason for existence of a state and consequently the entire legal system. The legal system devised by him ought to provide him safeguards against arbitrary violations and deprivations otherwise its existence would be futile.



Whereas the right to bail reflects the respect for individual liberty, rights such as legal aid and speedy trial stress the idea of impartial justice. Rights such as protection against double jeopardy and self-incrimination aim to protect the human life.

All these rights which appear to be human rights on account of being available to all the individuals universally, irrespective of any differences are actually more than mere human rights. The common notion of weak enforceability which is generally attached to the humanitarian laws is not there in laws just mentioned in the above chapters as they have been given the status of basic law in every country by constitutional enactments. And it is for this constitutional backing, they can be truly termed as the *Fundamental Human Rights*.

**CHAPTER 4**

**COMPARATIVE STUDY OF INDIA**

**AND UK**

#### 4.1 INTERNATIONAL HUMAN RIGHTS NORMS AND INDIAN DOMESTIC LAW

India has long recognized the importance of ensuring its own compliance with these international human rights obligations. While international treaties do not automatically become part of domestic law upon ratification, the Constitution provides, as a Directive Principle of State Policy, that the government “shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another,”<sup>30</sup> and also authorizes the central government to enact legislation implementing its international law obligations without regard to incitement to discrimination, hostility or violence.”

India has not signed the Optional Protocol to the ICCPR, which permits individuals to bring complaints of violations before the Human Rights Committee. While India signed the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997, it has not ratified CAT or taken steps to ensure that its domestic legislation complies with CAT’s requirements. In 1993, India established the National Human Rights Commission, an independent government commission whose mandate is to protect and promote international human rights norms. The NHRC is empowered to receive and investigate individual complaints of human rights violations, initiate such investigations on its own, monitor and make non-binding recommendations to the government on domestic implementation of international human rights norms, and promote public awareness of human rights standards. To conduct these activities, the NHRC has the powers of a civil court, including the ability to compel appearance of witnesses, examine witnesses under oath, compel discovery and production of documents, and order production of records from courts and government agencies. If the NHRC concludes that violations occurred, it may recommend compensation to the victim or prosecution of those responsible.

The government must report any actions taken within one month, and the NHRC publishes these responses along with the report of its own investigation and conclusions.

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<sup>30</sup> ‘human rights, terrorism & security laws’ ,*Columbia journal of asian law*, 20:1, p.123

The NHRC only may investigate alleged violations within the previous year and may not investigate allegations against the armed forces.

## 4.2 FUNDAMENTAL RIGHTS

Fundamental rights are a generally regarded set of entitlements in the context of a legal system, wherein such system is itself said to be based upon this same set of *basic, fundamental, or inalienable* entitlements or "rights." Such rights thus belong without presumption or cost of privilege to all human beings under such jurisdiction. The concept of human rights has been promoted as a legal concept in large part owing to the idea that human beings have such "fundamental" rights, such that transcend all jurisdictions, but are typically reinforced in different ways and with different emphasis within different legal systems.

In India the *Fundamental Rights* can be defined as the *basic human rights* of all citizens. These rights, defined in Part III of the Constitution, apply irrespective of race, place of birth, religion, caste, creed or sex. They are enforceable by the courts, subject to specific restrictions.

The Fundamental Rights represent the basic values enriched by the people of this country. It is to preserve and protect certain basic human rights against interference by the state. The inclusion of a Chapter in Constitution is in accordance with the trends of modern democratic thought. The object is to ensure the inviolability of certain essential rights against political vicissitudes.<sup>31</sup>

Similarly the fundamental rights in U.S.A. are adopted through various constitutional amendments, some of them being one of its kind. England having an unwritten constitution functions through adopting various conventions and setting judicial precedents. It is also a reservoir of different rights of individual.

Almost all the fundamental rights are also more widely considered to be human rights with of course slight variations according to the circumstances of each country.

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<sup>31</sup> *Siddharam Satlingappa Mhetre v State Of Maharashtra And Ors.*, AIR 2011 SC 312

### 4.3 FUNDAMENTAL HUMAN RIGHTS

The term fundamental human rights has not been defined anywhere. However a collective perusal of the above explanations of fundamental and human rights gives us an idea as to what probably could be termed as the fundamental human rights. In simple words fundamental human rights could be those inalienable rights available to every individual by virtue of birth or being a human being as well as those which have gained so much importance so as to find recognition in different constitutions of the world as fundamental rights with slight variations depending upon the circumstances of each country.

There have been a few noteworthy references to the term fundamental human rights in the international scenario which need a special mention.

The preamble to *Universal Declaration of Human Rights* 1948 reads as “Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in ***fundamental human rights***, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom”

Also article 5(2) of *International Covenant on Civil and Political Rights* 1966 makes a reference to the term Fundamental Human Rights. The Article reads as under:

*“There shall be no restriction upon or derogation from any of the ***fundamental human rights*** recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent”.*

The provisions of the *United Nations Charter* 1945 provided a basis for the development of international human rights protection. The preamble of the charter provides that the members "reaffirm faith in ***fundamental human rights***, in the equal rights of men and women" and Article 1(3) of the United Nations charter states that one of the purposes of the UN is: "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for ***human rights*** and for ***fundamental freedoms*** for all without distinction as to race, sex, language, or religion".

In the light of international covenants and humanitarian laws, the following chapters reveal how each country particularly India, U.S.A and England have formulated their fundamental rights.

## **1. RIGHT TO LIFE, LIBERTY AND HUMAN DIGNITY**

All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why liberty; is called the very quintessence of a civilized existence .<sup>32</sup>

Right to life is a phrase that describes the belief that a human being has an essential right to live, particularly that a human being has the right not to be killed by another human being or by any arbitrary action of state. The right to life is the fundamental right, of which all other rights are corollaries.

The *Universal Declaration of Human Rights 1948* declares in Article 3 that “everyone has the right to life, liberty and security of person”.

The *United States Declaration of Independence 1776*, declares that all men are endowed with certain inalienable rights, and that "among these are life, liberty, and the pursuit of happiness".

Article 6(1) of *International Covenant on Civil and Political Rights 1966* states every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

As evident, the *American Declaration of Independence, 1776* and the *French Declaration of the Rights of Man and the Citizen, 1789*, spoke of liberty being one of the natural and inalienable rights of man. The *Universal Declaration of Human Rights* adopted by the general assembly on United Nations on December 10, 1948 contains several articles designed to protect and promote the liberty of individual. So does the international covenant on civil and political rights, 1996.

<sup>32</sup>Ibid

The *European Convention on Human Rights* 1950, declares a protected human right to life in Article 2.<sup>33</sup> There are exceptions for lawful executions and self-defense, arresting a fleeing suspect, and suppressing riots and insurrections. Since then Protocol 6 of the Convention has called for nations to outlaw capital punishment except in time of war or national emergency, and at present this pertains in all countries of the Council. Protocol 13 provides for the total abolition of capital punishment, and has been implemented in most member countries of the Council.

## **A. INDIA**

In every civilized democratic country, liberty is considered to be the most precious human right of every person. The Law Commission of India in its 177th Report under the heading `Introduction to the doctrine of arrest; has described as follows: Liberty is the most precious of all the human rights. It has been the founding faith of the human race for more than 200 years. Article 21 of the Constitution of India proclaims that no one shall be deprived of his right to personal liberty except in accordance with the procedure prescribed by law. Even Article 20(1) & (2) and Article 22 are born out of a concern for human liberty. As it is often said; one realizes the value of liberty only when he is deprived of it. Liberty, along with equality is the most fundamental of human rights and the fundamental freedoms guaranteed by the Constitution. Of equal importance is the maintenance of peace, law and order in the society. Unless, there is peace, no real progress is possible. Societal peace lends stability and security to the polity. It provides the necessary conditions for growth, whether it is in the economic sphere or in the scientific and technological spheres.

Apart from the constitutional provisions there are various statutory provisions also which ensure the right to life, liberty and dignity.

<sup>33</sup>*European Convention on Human Rights 1950*

*Section 25 of the Indian Evidence Act* states that no confession made to police officer<sup>34</sup> shall be proved as against a person accused of any offence. Any confessional statement given by accused before police is inadmissible in evidence and cannot be brought on record by the prosecution and is insufficient to convict the accused<sup>8</sup>. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by section 25.<sup>35</sup> This provision has been enacted so as to prevent the torturous and cruel punishment a person is subjected to while being lodged in jail because no matter a person is accused of a crime, he does not cease to be a human being and shall not be deprived of any right until he is pronounced guilty.

Since the modern concept of Human rights has developed a new approach which is more inclined towards the rules of criminal justice administration, particularly the rights of accused, most of the fundamental rights have an inclination towards equitable dispensation of justice which is reflected from the provisions of the *Code of Criminal Procedure, 1973*. A thorough analysis has been made of the relevant sections, particularly the rights of accused to know the influence of human rights.

### **RIGHTS OF ARRESTED PERSON**

Arrest and detention in police lock-up of a person can cause in calculable harm to the reputation and self-esteem of a person.<sup>36</sup> No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter and hence the Code has made ample safeguards for the accused:

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<sup>34</sup>*Ram Singh v. State of Maharashtra* 1999 Cr LJ 3763 (Bom)

<sup>35</sup>*Aghnu Nagesia v. State of Bihar*, AIR 1966 SC 119

<sup>36</sup>*D.K. Basu v. State of West Bengal* AIR 1997 SC 610



☐ **Right to meet advocate and inform family members:** Section 41-D gives the statutory right to arrested person to meet an advocate of his choice during interrogation. When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, although not throughout interrogation.

Section 41-B makes it mandatory that the police officer has to inform the person arrested that he has a right to have a relative or a friend named by him to be informed of his arrest unless the memorandum is attested by a member of his family.<sup>37</sup>

- **Rights of a Woman:**The Code provides that where a woman is to be arrested; her submission to custody on an oral intimation of arrest shall be presumed unless the circumstances indicate to the contrary. The police officer shall not touch the woman for making her arrest unless the police officer is a female (Sec 46, proviso). Moreover, save in exceptional circumstances no woman shall be arrested before sunrise and after sunset [Sec 46(4)].
- **No detention beyond 24 hours:** Sec 57 provides that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court.
- **Right to know the accusation:** In order to enable the accused to make preparations for his defence, it is essential that he be informed of the accusations against him. Sec 50(1) provides that right.

<sup>37</sup>Section 41-B

Besides, there are some more rights which can be summed up as :<sup>38</sup>

- The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- An entry must be made in the diary at the place of detention regarding the arrest of the person.
- The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time.
- The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors.

Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

## **B. UK**

Life and personal liberty has been given prime importance in the United Kingdom. It was in 1215 that the people of England revolted against King John and enforced their rights, first time the King had acknowledged that there were certain rights of the subject could be called *Magna Carta 1215*. In 1628 the petition of rights<sup>39</sup> was presented to King Charles-I which was the 1st step in the transfer of Sovereignty from the King to Parliament. It was passed as the Bill of Rights 1689.

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<sup>38</sup>Supra note 7

<sup>39</sup>The Bill Of Rights 1689.

In the *Magna Carta*, it is stated “no free man shall be taken, or imprisoned or seized or outlawed or banished or any ways destroyed, nor will the King pass upon him or commit him to prison, unless by the judgment of his peers or the law of the land”.

Right to life is the most fundamental of all human rights and any decision affecting human right or which may put an individual's life at risk must call for the most anxious scrutiny<sup>40</sup>. The sanctity of human life is probably the most fundamental of the human social values. It is recognized in all civilized societies and their legal system and by the internationally recognized statements of human rights<sup>41</sup>.

The relevance of the European Convention to the interpretation and application of Codes of Criminal Procedure and comparable or related legislation arises both from provisions in the former that explicitly set out requirements with respect to the operation of the criminal justice system and from many others that give rise to a range of implicit requirements that will also need to be taken into account.

The explicit requirements come primarily from the right to liberty and security in Article 5 and the right to a fair hearing in the determination of a criminal charge in Article 6; but also from the right of appeal in criminal matters, the right to compensation for wrongful conviction and the right not to be tried or punished twice in Articles 2, 3 and 4 of Protocol No. 7 respectively.

The implicit requirements in the European Convention stem particularly from the right to life in Article 2 and the prohibition on torture and inhuman treatment and punishment in Article 3 (which are of significance for matters such as the use of force in law enforcement action, the investigation of alleged offences and the conduct of interrogation), from the right to respect

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<sup>40</sup>*Bugdaycay v. Secretary of State for the Home Department* (1987) 1 All ER 940

<sup>41</sup>*Pretty v. Director of Public Prosecutions* (2002) 1 All ER 1

for private and family life, home and correspondence in Article 8 (which not only sets important limitations on the way in which offences can be investigated and evidence gathered but which is also relevant to the restrictions imposed on persons arrested and remanded in custody and to the publicity that can be given to certain aspects of criminal proceedings), the right to freedom of expression in Article 10 (which is not only relevant to the reporting of criminal proceedings but also to the limits that can be imposed on criticism of the criminal justice system, especially as regards its operation in a given case), the right to the peaceful enjoyment of possessions in Article 1 of Protocol No. 1 (which must be respected in the course of law enforcement action and may also be relevant to measures taken to secure either evidence of the commission of an offence or the proceeds derived from this) and the right to freedom of movement in Article 2 of Protocol No. 4 (which can affect limitations imposed on suspected offenders in the course of an investigation of an offence or pending its trial).the rights of accused person may be summed up in brief as follows:

- **Arrest only on reasonable suspicion:** *Fox Campbell and Hartley v. the United Kingdom*<sup>42</sup>. having a “reasonable suspicion” presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as “reasonable” will however depend upon the circumstances but arrest shall not be made without reasonable suspicion.
- **No use of more than necessary force**<sup>43</sup>: It has been held that the any resort to potentially lethal force cannot be considered as “absolutely necessary” in circumstances where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence was prohibited by Article 2 of the Convention. Handcuffs usually are not used. Europe generally views the use of handcuffs and manacles as barbaric and utterly unnecessary in the vast majority of arrests. The accused usually is simply told he or she is under arrest and is directed to enter the police car.

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<sup>42</sup> (1990) 13 EHRR 157

<sup>43</sup> *John Murray v. the United Kingdom*, (1996) 22 EHRR 29

- **Duty to account for custody:** It must also be stressed that the authors of the Convention reinforced the individual's protection against arbitrary deprivation of his or her liberty by guaranteeing a corpus of substantive rights which are intended to minimize the risks of arbitrariness by allowing the act of deprivation of liberty to be amenable to independent judicial scrutiny and by securing the accountability of the authorities for that act. What is at stake is both the protection of the physical liberty of individuals as well as their personal security in a context which, in the absence of safeguards, could result in a subversion of the rule of law and place detainees beyond the reach of the most rudimentary forms of legal protection. For this reason, Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since.
- **Right to remain silent:** At the time of arrest, the police may not interview or interrogate the arrestee except at the police station<sup>44</sup>. In *John Murray v. the United Kingdom*<sup>45</sup>, it was stated that at the beginning of police interrogation, an accused is confronted with a fundamental dilemma relating to his defence. If the accused opts to break his silence during the course of interrogation, he runs the risk of prejudicing his defence without necessarily removing the possibility of inferences being drawn against him. Under such conditions the concept of fairness enshrined in Article 6 requires that the accused has the benefit of the assistance of a lawyer already at the initial stages of police interrogation<sup>46</sup>. To deny access to a lawyer for the first 48 hours of police questioning, in a situation where the rights of the defence may well be irretrievably prejudiced, is whatever the justification for such denial, incompatible with the rights of the accused under Article 6.

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<sup>44</sup> Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C), 11 (a)(11.1)  
<sup>45</sup>Ibid. 32

<sup>46</sup> A. R. Mowbray, Alastair R. Cases, Materials, and Commentary on the European Convention on Human Rights et.al., (Oxford University Press, U.K., 3<sup>rd</sup> Edn. 2012)

- **Legal Advice:** The *Police and Criminal Evidence Act 1984* says that the arrestee must also be informed of his right to independent legal advice free of charge. The suspect must once again be reminded of his right to free legal advice during interrogation, whether under arrest or voluntarily present at the police station. The custody officer must specifically "tell him clearly of the following rights and of the fact that they are continuing rights which may be exercised at any stage during the period in custody to have someone informed of his arrest (sec 5) and to consult privately with a solicitor (sec 6).
- **Release:** If the custody officer determines that he does not have sufficient evidence to charge that person before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.
- **Not to be detained beyond 24 hours:** Sec 42(1) of *Police and Criminal Evidence Act*<sup>46</sup> states that a person shall not be detained in custody beyond 24 hours or in exceptional cases 36 hours.

## C. INTERNATIONAL SCENARIO

*Article 14 (3) of ICCPR* lays down the following rights of an accused person<sup>47</sup> :

- To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

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<sup>46</sup> Sec 42

<sup>47</sup>The International Covenant on Civil and Political Rights 1966, available at: [http://www.jsijournal.ie/html/volume%204%20no.%202/4%5B2%5D\\_mahoney\\_right%20to%20a%20fair%20trial%20in%20criminal%20matters.pdf](http://www.jsijournal.ie/html/volume%204%20no.%202/4%5B2%5D_mahoney_right%20to%20a%20fair%20trial%20in%20criminal%20matters.pdf) (Visited on October 2, 2012)

- To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- To be tried without undue delay;
- To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- Not to be compelled to testify against himself or to confess guilt.

## **2. RIGHT TO DUE PROCESS**

Due process is the legal requirement that the state must respect all of the legal rights that are owed to a person. The definition of due process is not given anywhere but simply meaning it can be explained as a ‘procedure which is fair’, though the interpretation of the term may vary from place to place. Due process balances the power of law of the land and protects the individual person from it. When a government harms a person without following the exact course of the law, this constitutes a due-process violation, which offends against the rule of law. Due process has also been frequently interpreted as limiting laws and legal proceedings, so that judges, instead of legislators, may define and guarantee fundamental fairness, justice, and liberty. This interpretation has proven controversial, and is analogous to the concepts of natural justice, and procedural justice used in various other jurisdictions. This interpretation of due process is sometimes expressed as a command that the government must not be unfair to the people or abuse them physically.

The *French Declaration 1789* makes an indirect reference to due process with its Article 7 reading as: “*No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law*”.

## A. INDIA

For the discussion of the ‘due process’ clause a mention of Article 21 of the Indian constitution is mandatory. It reads as under:

*“No person shall be deprived of his life or personal liberty except according to procedure established by law”*

The words ‘procedure established by law’ gave way to a huge debate about its meaning being synonymous to the ‘due process’ clause in the American Constitution. The first case in India discussing the doctrine of due process was *A.K. Gopalan v. State of Madras*<sup>48</sup>. The arguments in this case was that the expression “except according to procedure established by law” in Article 21 should not be read literally in the sense that the Court only has to ascertain whether there is a procedure and it is established bylaw but procedural due process and the principles of natural justice should be read into it. The majority of the Supreme Court in *Gopalan* did not accept this argument and held that “procedure established by a law” means procedure established by law made by the State; that is to say, the Union Parliament or the legislatures of the State, and refused to infuse the procedure with the principles of natural justice.

It was after 28 years, that the Supreme Court differed from *Gopalan* as to its interpretation of Article 21 and ruled in *Maneka Gandhi’s case*<sup>49</sup> that the expression in Article 21 “except according to procedure established by law” means a procedure which is just fair and reasonable and would include the principles of natural justice.

In *Sunil Batra v Delhi administration*<sup>50</sup> also the Krishna Iyer .J made a very important remark which needs a mention:

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<sup>48</sup>*AIR 1950 SC 27*

<sup>49</sup>*Maneka Gandhi v Union of India AIR 1978 SC 595*

<sup>50</sup> *AIR 1978 SC 1675*



*“Truly our constitution has no ‘Due Process’ clause as the 8<sup>th</sup> amendment of the U.S. constitution but in this branch of law after Maneka Gandhi<sup>51</sup> and R.C. Cooper case<sup>52</sup>, the consequences are the same”.*

## **B.UK**

Due process is not used in contemporary English law, though two similar concepts are natural justice and the British constitutional concept of the rule of law as articulated by A.V. Dicey and others. However, neither concept lines up perfectly with the American theory of due process, which, as explained below, presently contains many implied rights not found in the ancient or modern concepts of due process in England.

Due process developed from clause 39 of the Magna Carta in England. When English and American law gradually diverged, due process was not upheld in England, but did become incorporated in the Constitution of the United States.

In clause 39 of the Magna Carta, John of England promised that no free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

Magna Carta itself immediately became part of the "law of the land", and established the rule of law in England by not only requiring the monarchy to obey the law of the land, but also limiting how the monarchy could change the law of the land. It should be noted, however, that in the thirteenth century these provisions may have been referring only to the rights of landowners, and not to ordinary peasantry or villagers.

The actual phrase due process of law first appeared in a statutory rendition of Magna Carta in A.D. 1354 during the reign of Edward III of England, as follows: "No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law."

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<sup>51</sup>Ibid. 38

<sup>52</sup>*R.C. Cooper v Union of India* AIR 1970 AIR 564

Both the clause in Magna Carta and the later statute of 1354 were again explained in 1704 by the Queen's Bench in the case of *Regina v. Paty*<sup>53</sup>. In that case, the House of Commons had deprived John Paty and certain other citizens of the right to vote in an election, and had committed them to Newgate Prison merely for the offense of pursuing a legal action in the courts. The meaning of 'due process of law' was explained as follows:

It is objected, that by Magna Carta, no man ought to be taken or imprisoned, but by the law of the land. But to this it is answered, that *lex terrae* is not confined to the common law, but takes in all the other laws, which are in force in this realm; as the civil and canon law. The words *lex terrae*, which are used, are explained by the words, due process of law; and the meaning of the statute is, that all commitments must be by a legal authority.

As far as the current situation is concerned, we may have a look to the *European Convention on Human Rights*. According to Article 6(2) of the Convention, "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". However, unlike Indian scenario, in *Philips v United Kingdom*<sup>54</sup>, the Court declared that whilst it is clear that Article 6(2) governs criminal proceedings in their entirety, and not solely the examination of the merits of charge, the right to be presumed innocent under Article 6(2) arises only in connection with the particular offence 'charged'. The right to be presumed innocent until proven guilty has been considered to be one of the essentials of the due process clause.

### **C. INTERNATIONAL SCENARIO**

Just like Article 6(2) of the *European Convention on Human Rights*, the UDHR also lays down the principle of presumption of innocence. Article 11 reads as 'everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence'.

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<sup>53</sup>92 Eng. Rep. 232

<sup>54</sup>[2001] ECHR 437

### 3. RIGHT TO LEGAL AID

Legal aid is an essential part of the Administration of Justice. “Access to Justice for all” is the motto of the Authority. The goal is to secure justice to the weaker sections of the society, particularly to the poor, downtrodden, socially backward, women, children, handicapped etc. but steps are needed to be taken to ensure that nobody is deprived of an opportunity to seek justice merely for want of funds or lack of knowledge. Legal aid plays a vital role in criminal proceedings as a person arrested needs a lawyer at the stage of his first production before the magistrate, to resist remand to police or jail custody and to apply for bail. He would need a lawyer when the charge sheet is submitted and the magistrate applies his mind to the charge sheet with a view to determining the future course of proceedings. He would need a lawyer at the stage of framing of charges against him and he would, of course, need a lawyer to defend him in trial <sup>55</sup>.

#### A.INDIA

Right to legal aid holds a very important place in the criminal justice system in India. As the Indian justice system works on the principles of Due Process, the accused is presumed innocent until proven guilty. The right to free legal aid is a guaranteed fundamental right under Art. 21 and 39-A. it stands for justice according to law.

The Supreme Court held in *M.H. Hoskot v. State of Maharashtra* <sup>56</sup> and *Hussainara Khatoon's case* <sup>57</sup> that a procedure which does not make legal services available to an accused person who is too poor to afford a lawyer and who would, therefore go through the trial without legal assistance cannot be regarded as reasonable, fair and just.

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<sup>55</sup>J. VENKATESAN, “Magistrate must provide legal aid to accused, if he has no counsel: Bench, The Hindu”, Aug .31, 2012

<sup>56</sup>1978 AIR 1548

<sup>57</sup>HUSSAINARA KHATOON &Ors VS HOME SECRETARY, State Of Bihar 1979 AIR 1369

The right to be defended by a legal practitioner, has further been fortified by the introduction of the Directive Principles of State Policy embodied in Article 39 A of the Constitution by the 42nd Amendment Act of 1976 and enactment of sub-section 1 of Section 304 of the Code of Criminal Procedure. Legal assistance to a poor person facing trial whose life and personal liberty is in jeopardy is mandated not only by the Constitution and the Code of Criminal Procedure but also by International Covenants and Human Rights Declarations. If an accused too poor to afford a lawyer is to go through the trial without legal assistance, such a trial cannot be regarded as reasonable, fair and just<sup>58</sup>.

After a lot of cases Article 39-A was added to the constitution of India which made it imperative on the part of state to provide legal aid. The article states that The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

In *Md. Sukur Ali v. State of Assam*<sup>59</sup> it was reiterated that in the absence of a counsel, for whatever reasons, the case should not be decided forthwith against the accused but in such a situation the Court should appoint a counsel who is practising on the criminal side as amicus curiae and decide the case after fixing another date and hearing him

In *A.S. Mohammed Rafi v. State of Tamil Nadu*<sup>60</sup> the court held that a fair hearing has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. The court went on to say that it is the duty of a lawyer to defend no matter what the consequences, and a lawyer who refuses to do so is not following the message of the Gita.

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<sup>58</sup>*Mohd. Hussain @ Julfikar Ali vs The State (Govt. Of Nct) Delhi* 2012 Cr LJ 1069 (SC)

<sup>59</sup>AIR 2011 SC 1222

<sup>60</sup>AIR 2011 SC 308

In *Himanshu Singh Sabharwal v. State of M.P.*<sup>61</sup>, court held that the principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation - peculiar at times and related to the nature of crime, persons involved - directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.

However a very important and noteworthy remark made in this case was:

*There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial. However, it will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelson's eyes to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm.*

Some of the features of a fair trial in India can be listed as under:

- **Venue of trial:** the provisions regarding venue or place of trial are contained in Sec 177-189. If the place of trial is highly inconvenient to the accused person and causes various impediments in the preparation of his defence, the trial at such a place cannot be considered as fair trial.

**Transfer of cases:** transfer of cases in order to ensure an undisturbed proceeding has been held to be a vital feature of fair trial. There can be various reasons for shifting the venue of trial, out of which violence and influencing the witnesses are prime. Mob action may throw out of gear the wheels of the judicial process. Physical violence to a party, actual or imminent, is reprehensible when he seeks justice before a tribunal. Manageable solutions must not sweep this Court off its feet into granting an easy transfer but uncontrollable or perilous deterioration will surely persuade us to shift the venue<sup>62</sup>.

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<sup>61</sup>2008 (4) SCR 783

The various provisions as to transfer of cases have been enumerated under Sec 191(1), 406, 407 and 408 of the Code of Criminal Procedure.

☐ **Presumption of innocence:** The Adversary system of trial that we have adopted is based on the accusatorial method and the burden of proving the guilt of the accused is on the prosecution and unless it relieves itself from that burden, the court cannot record a finding of the guilt of the accused<sup>63</sup>. Every criminal trial begins with the presumption of innocence in favour of the accused and the provisions of the code are so framed that a criminal trial should begin with and be throughout governed by this presumption<sup>64</sup>

## **B.UK**

*Article 6 of the European Convention on Human Rights* is a provision of the European Convention which protects the right to a fair trial. In criminal law cases and cases to determine civil rights it protects the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, and other minimum rights for those charged in a criminal case (adequate time and facilities to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter).

Article 6 reads as follows:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

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<sup>62</sup> Ibid

<sup>63</sup> *Kali Ram v State of H.P.*, (1973) 2 SCC 808

<sup>64</sup> *Talab Haji Hussain v Madhukar Purushottam Mondkar*, AIR 1958 SC 376

1. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

2. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and the facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

### **C. INTERNATIONAL SCENARIO**

*Article 14(1) of ICCPR* provides that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing.

Also *Article 10 of the UDHR* states that everyone is entitled in full equality to a fair hearing in the determination of his rights and obligations and of any criminal charge against him.

### 3. RIGHT TO EXPEDITIOUS TRIAL

The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimize anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge.

#### A.INDIA

The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a threefold purpose. Firstly, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or memories dimmed by the passage of time, thus, impairing the ability of the accused to defend him or herself. Stated another way, the purpose of both the criminal procedure rules governing speedy trials and the constitutional provisions, in particular, Article 21, is to relieve an accused of the anxiety associated with a suspended prosecution and provide reasonably prompt administration of justice.

In *Hussainara Khatoon v Home Secretary, State of Bihar*<sup>65</sup> while dealing with Article 21 of the Constitution of India has observed thus:

“No procedure which does not ensure a reasonably quick trial can be regarded as ‘reasonable, fair or just’ and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.

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<sup>65</sup> Supra note 51



Would he be entitled to be released unconditionally freed from the charge leveled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21.”

In *Ranjan Dwivedi v C.B.I Tr. Director General*<sup>66</sup> it was held that right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. The concerns underlying the right to speedy trial from the point of view of the accused are:

- (a) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
- (b) The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
- (c) Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise

The court further laid:

*An accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused.*

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<sup>66</sup>AIR 2012 SC 2573

Besides Article 21 of the constitution Section 309 (1) of CrP.C. also deals with expeditious trial. The section states as under:

*In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.*

In *Kartar Singh v. State of Punjab*<sup>67</sup> another Constitution Bench considered the right to speedy trial and opined that the delay is dependent on the circumstances of each case, because reasons for delay will vary. This Court held:

The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

In *P. Ramachandra Rao v. State of Karnataka*<sup>68</sup> it was held:

*Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and re-trial in short everything commencing with an accusation and expiring with the final verdict the two being respectively the terminus a quo and terminus ad quem of the journey which an accused must necessarily undertake once faced with an implication.*

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<sup>67</sup>1986 Cri LJ 1757

<sup>68</sup>(2002) 4 SCC 578

Apart from the constitution and the Cr.P.C., a brief discussion on the following topics would throw more light on the speedy trial mechanism in India:

☐ **Plea Bargaining in India:** The Law Commission (under the Chairmanship of Justice M P Thakkar) in its 142 Report considered the concept of plea bargain to overcome the problem of mounting arrears of criminal cases<sup>69</sup>. It adduced five reasons in support of this provision:-

- Most people arrested, are guilty anyway; why bother with a trial;
- Why waste public money;
- 'Plea bargaining' is a compromise; both sides give a little and gain a little;
- Trials consume time and cost; and
- It is best (for both sides) to avail of.

Subsequently the 154th Report of the Law Commission also recommended 'plea bargaining' as an alternative method to deal with huge arrears and backlogs of criminal cases. The recommendation of the Law Committees finally found support in Malimath Committee Report. In its report, the Malimath Committee recommended that a system of plea bargaining be introduced in the criminal justice system to facilitate the earlier disposal of criminal cases<sup>70</sup>

However in India, the concept of plea bargaining though effective in covering up the inadequacies of the courts in dealing with each and every case that comes before them, it also carries within it certain limitations which create a suspicion in its working. It has been criticised on several grounds:

- The provisions of the Act provides that plea bargaining would be entertained only if the accused opts for it voluntarily, but it has no provision for the courts to reject the settlement arrived at if in an adversarial set-up the opposing parties reach a settlement which is contrary to law.
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<sup>69</sup>Ms. C Harini, 'A Unique Remedy To Reduce Backlog In Indian Courts', Manupatra

<sup>70</sup> Committee on Reforms of Criminal Justice System, available at: [http://mha.nic.in/pdfs/criminal\\_justice\\_system.pdf](http://mha.nic.in/pdfs/criminal_justice_system.pdf) (Visited on September 30, 2012)

- Involving police in plea bargaining is also subject to criticism. India, which is well known for custodial torture and pressures exerted by police, there is every possibility of innocent defendants pleading guilty to escape from police torture and harassments in prison.
  - The role of victims in plea bargaining process is also not held as a welcome change. It is apprehended that involving victims in plea bargaining would invite corruption.
  - The failure to provide for an independent judicial authority for evaluating plea-bargaining applications is held as a glaring error. The courts' examination of the accused in camera, as opposed to in open court, may lead to public cynicism and distrust for the plea-bargaining system. The failure to make confidential any order passed by the court rejecting an application could also create prejudice against the accused.
  - The reasons cited for the introduction of plea-bargaining which include the tremendous overcrowding of jails, high rates of acquittal, torture undergone by under trial prisoners, etc can all be traced back to one major factor, and that is delay in the trial process. In India, the reason behind delay in trials can be traced to the operation of the investigative agencies as well as the judiciary. Therefore, what is actually needed is not a substitute for trial but an overhaul of the system, in terms of structure, composition and its work culture to ensure reasonably swift trials.
- ☐ **The Gram Nyayalaya Act:** The Gram Nyayalaya Act coming into force in 2009 follows summary trial procedure in criminal cases. Section 20 provides that any person accused of an offence may file an application for plea-bargaining in the gram nyayalaya in which such offence is pending trial and the gram nyayalaya shall dispose of the case in accordance with the provisions of the CrPC. This provision for plea-bargaining must be read in the context of Section 33(2) (a) which provides that no appeal shall lie where an accused person has pleaded guilty and has been convicted on such plea. Though these provisions are meant to accelerate the justice procedure yet it is questionable how far it would be helpful.
- ☐ **Lok Adalats:** Lok Adalat is another alternative to Judicial Justice. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of settling disputes, which are pending in Courts and also those, which have not yet reached Courts by negotiation, conciliation and by adopting persuasive, common sense and human approach to the problems of the disputants, with the assistance of specially trained and experienced Members of a Team of Conciliators.

The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws like Civil Procedure Code and Evidence Act while assessing the claim by Lok Adalat.

The award by the Lok Adalat is binding on the parties and it has the status of a decree of a Civil Court and it is non-appealable which does not cause the delay in the settlement of disputes finally. Hence it can be said that Lok Adalats are a boon to the litigating public as they can get their disputes settled fast and free of cost amicably.

These provisions make it clear how expeditious trial is emphasized in India. However in recent developments the Supreme Court has held that Delay in deciding criminal cases cannot be a ground for quashing them, upholding the life sentence of a man, convicted 25 years after he killed five persons. The court further held: "In the case on hand, merely because the high court had taken nearly 25 years to dispose of the appeal, the present appellant cannot be exonerated on the ground of delay"<sup>71</sup>

## **B.UK**

The *Magna Carta 1215* states "To no one will we sell, to no one will we refuse or delay, right or justice", which makes it clear that unnecessary delay in granting justice is unacceptable and justice should be done as speedily as possible.

Besides the Magna Carta, clause 3 and 4 of the *European Convention on Human Rights* also talk about speedy trial. Both clauses are reproduced hereunder:

Clause 3 "*Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial*".

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<sup>71</sup>Criminal cases can't be quashed on delay in court proceeding: SC', *The Indian Express*, Sept. 9. 2012

Clause 4 “*Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful*”.

The right to a speedy trial is a derivation from a provision of Magna Carta. This principle has also been incorporated into the *Virginia Declaration of Rights of 1776* and from there into the Sixth Amendment of the Constitution of United States of America which reads, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial”. It may be pointed out, in this connection, that there is a Federal Act of 1974 called ‘*Speedy Trial Act*’ establishing a set of time-limits for carrying out the major events, e.g., information, indictment, arraignment, in the prosecution of criminal cases<sup>72</sup>

As regards the concept of plea bargaining, in countries such as England and Wales, Victoria and Australia, 'plea bargaining' is allowed only to the extent that the prosecutors and defence can agree that the defendant will plead to some charges and the prosecutor shall drop the remainder. The European countries are also slowly legitimizing the concept of plea bargaining, though the Scandinavian countries largely maintain prohibition against the practice.

## **C. INTERNATIONAL SCENARIO**

Article 9(3) of International Covenant on Civil and Political Rights provides as under:

*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.*

## **4. PROTECTION AGAINST DOUBLE JEOPARDY**

### **A. INDIA**

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<sup>72</sup>Black's Law Dictionary, 6th Edn. page 1400

Article 20(2) of the constitution of India says that “no person shall be prosecuted and punished for the same offence more than once”. This clause embodies the common rule of *nemo debet vis vexari* which means that no man should be put twice in peril for the same offence. If he is prosecuted for the same offence for which he has already been prosecuted he can take complete defence of his former conviction or acquittal.

However the protection under Article 20(2) is narrower than that given under the American and British constitution as the protection against double punishment is given only when the accused has not only been ‘prosecuted’ but also ‘punished’, and is sought to be prosecuted second time for the same offence. Whereas, the protection in U.S.A. and England is available for the second prosecution for the same offence irrespective of whether an accused was acquitted or convicted in the first trial. The use of word ‘prosecution’ thus limits the scope of protection under Article 20<sup>73</sup>

In *A.A. Mulla And Others v State Of Maharashtra And Anr*<sup>74</sup> the appellants were charged under Sec 409 I.P.C. and Sec 5 of the Prevention of Corruption Act for making false punchnama disclosing the recovery of 90 gold biscuits although according to the prosecution case, the appellant had recovered 99 gold biscuits. They were tried for retaining 9 gold biscuits and were acquitted. On the ground that the prosecution had failed to prove misappropriation the appellants were tried under the Customs Act and the Foreign Exchange Regulation Act. The appellants challenged the validity of their second trial on the ground that it was violative of Article 20(2). It was held that the second trial was not barred not only the ingredients of offence in the previous and second trial are different, the factual foundation of first trial and such foundation for the second trial is also not indented.

The court, in *Sangeetaben Mahendrabhai Patel vs State Of Gujarat & Anr*<sup>75</sup> held that the fundamental right which is guaranteed under Article 20 (2) enunciates the principle of “autrefois convict or double jeopardy i.e. a person must not be put in peril twice for the same offence.

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<sup>73</sup> J.N. Pandey, *The Constitutional Law of India* 219, (Central Law Agency Allahabad, 45th Edn. 2008)

<sup>74</sup> AIR 1997 SC 1441

<sup>75</sup>(2012) 7 SCC 621

The doctrine is based on the ancient maxim *nemo debet bis punire pro uno delicto*, that is to say that no one ought to be twice punished for one offence. The plea of “autrefois convict” or *autrefois acquit* avers that the person has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned. The test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient to justify a conviction of the other and not that the facts relied on by the prosecution are the same in the two trials. A plea of *autrefois acquit* is not proved unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter.

## **B.UK**

Article 4 of 7<sup>th</sup> protocol of ECHR embodies the principle that a person shall not be tried or punished again in criminal proceedings under the jurisdiction of the same state for an offence which he has already been acquitted or convicted of.

The words “under the jurisdiction of the same state”, limits the application of the article to the national level. Article 4 already contains the term “in criminal proceedings” and “penal procedure” which renders unnecessary any further specification in the text of article itself.

The principle established in this provision only after the person has been finally convicted or acquitted in accordance with the law and penal procedure of the state concerned. This means that there must have been a final decision. A case may however be reopened in accordance with the law if the state concerned if there is evidence of new or newly discovered facts, or if it appears that there has been a fundamental defect in the proceedings, which could affect the outcome of the case either in favour of the person or to his detriment.

The term “new or newly discovered facts” includes new means of proof relating to previously existing facts. Furthermore, this article does not prevent a reopening of the proceedings in favour of the convicted person and any other changing of the judgment to the benefit of the convicted person.



Article 4, since it only applies to trial and conviction of a person in criminal proceedings, does not prevent him from being made subject to the same act, to action of a different character as well as to criminal proceedings.

### **C. INTERNATIONAL SCENARIO**

Article 14 (7) of ICCPR 1 reads as under:

*“No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”.*

The article provides protection against trial and punishment awarded after final conviction or acquittal in relation to a particular offence.

## **5. RIGHT TO PUBLIC TRIAL AND IMPARTIAL**

### **JURY A.INDIA**

Public trial in open court acts as a check against judicial caprice or vagaries and serves as powerful instrument for creating confidence in public fairness, objectivity and impartiality of the administration of criminal justice.

#### **☐ Public Trial**

Section 327 of the Code of Criminal Procedure makes provision for open courts for public hearing but it also gives discretion to the presiding judge or magistrate that if he thinks fit, he can deny the access of the public generally or any particular person to the court. The provisions regarding the venue or place of inquiry or trial are contained in sections 177 to 189 of the Code. It is general rule that every offence is to be inquired into or tried by a court within whose local jurisdiction it was committed. Trial at any other distant place would generally mean hardship to the parties in the production of evidence and it would also adversely affect the defence preparation. In the case of *Naresh Sridhar Mirajkar v. State of Maharashtra*<sup>76</sup> the apex court observed that the public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial tribunals, courts must generally hear causes in

open court and must permit public admission to the court.

**Exception: In camera trial:** Sub-section (2) of Section 327 provides the cases (mostly sexual offences) in which the trial shall be conducted '*in camera*'. The 2008 Act added a proviso to this sub-section which provides that '*in camera*' trial shall be conducted as far as practicable by a woman Judge or Magistrate. A proviso is also added to sub-section (3) which states that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.

### ☐ **Impartial Jury**

Section 479 CrP.C. provides that no Judge or Magistrate shall, except with the permission of the court to which an appeal lies from his court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

In Latin, rule against bias is also known as *nemo judex in causa sua* or *nemo debet esse judex in propria causa* which means someone who has a stake in a case that he handled. Therefore he cannot judge the case. A decision shall be free from bias and prejudice. Bias and prejudice may occur for two reasons, namely:

- ☐ because the parties have an interest, or
- ☐ Decision-makers (i.e. those who judge the case) represent the specific objectives of the institution that wanted no communication / some connection, and the like.

This section is also based on the same principle which means that 'no man shall be a judge in his own cause'. The principle constitutes one of the basic elements of a fair hearing, having its roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. No man ought to be a judge in his own cause, because he cannot act as Judge and at the same time be a party<sup>77</sup>

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<sup>76</sup> AIR 1967 SC 1

<sup>77</sup> *M/S J.T. (India) Exports And v Union Of India And Another* 94 (2001) DLT

## **B.UK**

*Article 6 of the European Convention on Human Rights* is a provision of the European Convention which protects the right to a fair trial. In criminal law cases and cases to determine civil rights it protects the right to a *public hearing* before an independent and *impartial tribunal*.

Moreover *Article 40* requires that all the hearings shall be in public unless otherwise decided by the court in exceptional circumstances. What would be considered ‘exceptional’ would vary according to each case.

In *Van de Hurk Vs. Netherlands*<sup>78</sup>, the Court held that there cannot be a fair criminal or civil trial before a court which is, or appears to be, biased against the defendant or litigant, and the fair trial guarantees are meaningless should the tribunal’s decision be liable to be overturned by some other authority which does not offer such guarantees.

## **6. RIGHT AGAINST SELF-INCRIMINATION**

It is against the principles of fair trial to make a person admit something which is prejudicial to his own interest, against his free will, with the exception being Sec 179 of Indian Penal Code which states that whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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<sup>78</sup>(1994) 18 EHRR 481

## A.INDIA

Clause (3) of Article 20 provides that no person accused of any offence shall be compelled to be a witness against himself. Thus Article 20(3) embodies the general principle of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime. The cardinal principle of criminal law which is the bedrock of English jurisprudence is that an accused must be presumed to be innocent till the contrary is proved. It is the duty of the prosecution to prove the offence. The accused need not make any admission or statement against his own free will. The guarantee under Article 20(3) extends to any person accused of an offence and prohibits all kinds of compulsions to make him a witness against himself. Explaining the scope of this clause in *M.P. Sharma v Satish Chandra*<sup>79</sup> the following essentials were considered to be embodied in the right:

1. It is a right pertaining to a person who is “accused of an offence”.
2. It is a protection against “compulsion to be a witness”.
3. It is a protection against such compulsion relating to giving evidence “against himself”.

In *Nandini Satpathy v P.L. Dani*<sup>80</sup> the Supreme Court has considerably widened the scope of clause (3). The court has held that the prohibitive scope of the Article goes back to the stage of police interrogation not commencing in court only. It extends to, and protects the accused in regard to other offences- pending or imminent- which may deter him from voluntary disclosure. The phrase “compelled testimony” must be read as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogatives, proximity, over bearing and intimidatory methods and like.

Section 161(2) CrPC states that a witness shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

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<sup>79</sup>1954 AIR 300

<sup>80</sup>(1978) 2 SCC 424

In *Selvi v. State of Karnataka*<sup>81</sup> the court held that since the extension of the 'right against self-incrimination' to suspects and witnesses has its basis in Section 161(2), CrPC it is not readily available to persons who are examined during proceedings that are not governed by the code.

In *Shaukat Hussain Guru Vs. N.C.T. of Delhi*<sup>82</sup> the court held that the accused must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a Court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

## **B.ENGLAND**

The right against self-incrimination originated in England and Wales. In countries deriving their laws as an extension of the history of English Common Law, a body of law has grown around the concept of providing individuals with the means to protect themselves from self-incrimination.

Like the Right to silence, the privilege against self-incrimination is one of the most fundamental of principles in English criminal law; it has been in effect since the 17th Century, if not earlier. It applies during the investigation of a criminal offence, and at trial. In court, a witness may refuse to answer questions on the grounds that the answer would be liable to incriminate him in a criminal offence other than the current one. The qualification of the privilege to apply only to matters other than the current trial prevents the defendant from using the privilege to avoid answering difficult questions from the prosecution.

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<sup>81</sup>2010 (7) SCC 263

<sup>82</sup>(2008) 6 SCC 776

Despite its long history, the privilege against self-incrimination is not absolute. For example, there are many statutes that require a person to be compelled to provide certain information, with penalties for non-compliance. Many of these statutes provide that information so obtained cannot be used in subsequent proceedings, which mostly leaves the privilege against self-incrimination intact. For example, s.21 of the *1968* makes it an offence to refuse to answer questions that are necessary for the recovery of stolen property. However, such information may not be used in evidence in subsequent proceedings

Even if the privilege against self-incrimination has not be overridden by statute, it can only be invoked in limited circumstances. The risk must be that the disclosure would lead to criminal charges; a disclosure that would be detrimental in a civil action is not protected. The risk must be real and substantial, not notional. The criminal act must be something that is justiciable in England and Wales

Applying to England Wales, the *Criminal Justice and Public Order Act 1994* amended the right to silence<sup>83</sup> by allowing inferences to be drawn by the jury in cases where a suspect refuses to explain something, and then later produces an explanation (in other words the jury is entitled to infer that the accused fabricated the explanation at a later date, as he or she refused to provide the explanation during the time of the Police questioning. The jury is also free not to make such an inference.

The Court has time and again stated that the scope of right against self-incrimination is not limited to cases where duress has been used against the accused or where the will of the accused has been directly overborne in some way. It also underlined that the right to silence is part of a fair procedure, and serves to protect the liberty of a suspected individual to choose whether he speaks or remains silent during the police questioning .<sup>84</sup>

<sup>83</sup>The *Criminal Justice And Public Order Act 1994*

<sup>84</sup>Supra note 67, at 108

## 8. RIGHT TO BAIL

The release on bail is crucial to the accused as the consequences of pre-trial detention are grave. If release on bail is denied, it would mean that though he is presumed to be innocent until proven guilty, he would be subjected to the psychological and physical deprivations of the jail life<sup>55</sup>. The arrest of a person has a stigma attached to it. It ruins a person's image in the society. It is a violation of both: liberty and dignity of a person. The right to bail is a concomitant of the accusatorial system which favours a bail system that ordinarily enables a person to stay out of jail until a trial has established him/her guilty of the alleged offence. The idea behind such practice is the famous notion of presumption of innocence until proven guilty so as to give full preservation of the human rights of the accused person. It is precisely this much needed jurisprudence of bail which is discussed in the course of this paper in the light of the personal liberty of a person and the value of that personal liberty under our constitutional system.

### A.INDIA

*Krishna Iyer. J aptly remarked that "the issue of bail is one of liberty, justice, public safety and burden of public treasury all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process".*

Maintaining that bail is the rule and jail an exception<sup>85</sup> the Supreme Court has time and again said, stating that both seriousness of the charge and severity of punishment should be taken into account while determining bail. "Deprivation of liberty must be considered a punishment<sup>86</sup>

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<sup>85</sup>GUDIKANTI NARASIMHULU v.Public Prosecutor, (1978) 1 SCC 240

<sup>86</sup>Bhadra Sinha, "Bail is the rule, jail an exception, observes SC" Hindustan Times, Nov.23, 2011

The right to bail is inextricably linked to Article 22(1) of the Constitution which provides that no person who is arrested shall be denied the right to consult, and to be defended by a legal practitioner of his/her choice.

There is no definition of bail in the Criminal Procedure Code, although the terms 'bailable offence' and 'non-bailable offence' have been defined in section 2(a) Cr.P.C. Bail has been defined in the law lexicon as security for the appearance of the accused person on giving which he is released pending trial or investigation. What is contemplated by bail is to "procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court.

Article 21 of the Constitution is said to enshrine the most important human rights in criminal jurisprudence. The Supreme Court had for almost 27 years after the enactment of the Constitution taken the view that this Article merely embodied a facet of the Diceyan concept of the rule of law that no one can be deprived of his life and personal liberty by the executive action unsupported by law.

In *Hussainara Khatoon v State of Bihar*<sup>58</sup>, Justice Bhagwati found that the unfortunate under trials languished in prisons not because they were guilty but because they were too poor to afford bail. Following *Maneka Gandhi v. Union of India*, he read into fair procedure envisaged by Article 21 the right to speedy trial and sublimated the bail process to the problems of the destitute. He thus ordered the release of persons whose period of imprisonment had exceeded the period of imprisonment for their offences. He brought into focus the failure of the Magistrates to respect section 167(2) of the Criminal procedure Code which entitles an under trial to be released from prison on the expiry of 60 days or 90 days as the case may be.

In *Sant Bir v. State of Bihar*<sup>59</sup>, the Court recognised the inequitable operation of the law and condemned it - "The rule of law does not exist merely for those who have the means to fight for their right and very often for perpetuation of status quo but it exists also for the poor and the down trodden and it is the solemn duty of the Court to protect and uphold the basic human rights

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<sup>87</sup>Supra note 51

<sup>88</sup>AIR 1982 SC 1470



of the weaker sections of society. Thus having discussed the various hardships of pre-trial detention caused, due to unaffordability of bail and unawareness of their right to bail, to Undertrials and as such 'the violation of their right to personal liberty and speedy trial under Article 21.

In *Mantoo Majumdar v. State of Bihar*<sup>89</sup> the Apex Court once again upheld the under trials right to personal liberty and ordered the release of the petitioners on their own bond and without sureties as they had spent six years awaiting their trial, in prison. The court deplored the delay in police investigation and the mechanical operation of the remand process by the magistrates insensitive to the personal liberty of the under trials, remanded by them to prison. The Court deplored the delay in police investigation and the mechanical operation of the remand process by the magistrates insensitive to the personal liberty of under trials, and the magistrate failure to monitor the detention of the under trials remanded by them to prison.

Besides the constitutional provisions, the provisions of Cr.P.C. also need to be discussed for a better understanding of the bail provisions which are as under:

☐ **Regular Bail:** Section 50(2) states that where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

Section 436(1) affirms the right of a person accused of a bailable-offence to be released on bail. The section makes it clear that when any person accused of a bailable offence is arrested or detained without warrant, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail; such person shall be released on bail. The use of word 'shall be released on bail' makes it clear that bail in this section is available as a matter of right to the person.

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<sup>89</sup>1980 AIR847

In *Sushil Suri vs State And Anr.*,<sup>90</sup> it was observed that the words used are such person 'shall be released on bail' thereby denoting that it is mandatory on the Magistrate to admit him in that behalf. The Magistrate would have no discretion to impose any conditions, the only discretion that is left in him being only as to the amount of the bond or whether the bail could be on his bond or with sureties.

Besides that the proviso to section 436(1) makes provision for the bail of an indigent person stating that if such person is indigent and is unable to furnish surety, instead of taking bail from such person he may, and shall be discharged on his executing a bond without sureties for his appearance. Moreover for the definition of the term 'indigent' the explanation provides that where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.

☐ **Bail in non-bailable cases:** Bail, in non-bailable offences, is not a matter of right of the accused person. Section 437 of the Code of Criminal Procedure envisages the provision as regards bail in case of non-bailable offences, which may or may not be granted depending on the discretion of the court<sup>91</sup> Section 437 envisages, inter alia, that the Magistrate may release an accused on bail, if such accused appears before the Magistrate. There cannot be any doubt that such appearance before the Magistrate must be physical appearance and the consequential surrender to the jurisdiction of the Court of the Magistrate<sup>92</sup>

The proviso provides for some special considerations while granting bail in such cases like:

- If such person is under the age of sixteen years or;
- Is a woman or is sick or;
- An infirm

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<sup>90</sup>2011 SC 1713

<sup>91</sup>The Code of Criminal Procedure 1973, India, available at: <http://legaljunction.blogspot.in/2011/11/proviso-to-section-4371-of-crpc-is-bail.html> (Last Modified November 6, 2012)

<sup>92</sup>*Nirmal Jeet Kaur v The State of Madhya Pradesh and Anr.* AIR 1996 SC 1042

The Supreme Court, while dealing with Section 437 of CrPC, is of the view that though this Section gives special consideration to a woman, it cannot be considered to be a mandatory provision<sup>93</sup>

- **Bail on Default:** With the incorporation of section 167(2) Cr.P.C. the investigating agency is required to complete the job of investigation and file the charge-sheet within the time limit of either 60 or 90 days as the case may be. In case the above is not completed within the definite period a most valuable right accrues to the accused. The accused is, in that eventuality, entitled to be released on bail.

It would be seen that the whole object of providing for a prescribed time limit under section 167(2) Cr.P.C. to the investigation agency to complete the investigation was that the accused should receive expeditious treatments at the hands of the criminal justice system, as it is implicit in Article 21 that every accused has right to an expeditious disposal of his case. If an accused charged with any kind of offence becomes entitled to be released on bail under proviso (a) to Section 167(2), that statutory right should not be defeated by keeping the applications pending till the charge-sheets are submitted so that the right which had accrued is extinguished and defeated<sup>94</sup> "

## **B.UK**

The idea behind the 'no excessive bail' clause is to secure impartial release of arrested person from the custody irrespective of his/her economic status.

In England, sheriffs originally determined whether to grant bail to criminal suspects. Since they tended to abuse their power, Parliament passed a statute in 1275 whereby bailable and non-bailable offenses were defined. The King's judges often subverted the provisions of the law. It was held that an individual may be held without bail upon the Sovereign's command. Eventually,

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<sup>93</sup>*Gurubaksh Singh Sibba v. State of Punjab* AIR 1980 SC 1632

<sup>94</sup>*Uday Mohanlal Acharya v. State of Maharashtra* 2001 5 SCC 453

the Petition of Right of 1628 argued that the King did not have such authority. Later, technicalities in the law were exploited to keep the accused imprisoned without bail even where the offenses were bailable; such loopholes were for the most part closed by the *Habeas Corpus Act 1679*. Thereafter, judges were compelled to set bail, but they often required impracticable amounts. Finally, the *English Bill of Rights 1689* held that "excessive bail ought not to be required."

In *Letellier v. France*<sup>95</sup>; it was held that When the only remaining reason for continued detention is the fear that the accused will abscond and thereby subsequently avoid appearing for trial, he must be released if he is in a position to provide adequate guarantees to ensure that he will so appear, for example by lodging a security.

## **9. RIGHT TO JUST COMPENSATION**

### **A.INDIA**

The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are well- established<sup>96</sup>

In *Nilabati Behara v. State of Orissa*<sup>97</sup>, J.S. Verma .J stressing the right to remedy in gross violation of fundamental rights and referring to Article 9(5) of the ICCPR held that anyone who has been victim of an unlawful detention or arrest shall have an enforceable right to compensation.

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<sup>95</sup>(1992) 14 EHRR 83

<sup>96</sup>*Raghuvansh Dewanchand Bhasin vs State Of Maharashtra &Anr.* 2008 CrLJ 2127

<sup>97</sup>1993 AIR SC 1960

In *Bhim Singh, MLA v State of J & K & Ors.*<sup>98</sup>, the court held that holding illegal detention in police custody of the petitioner Bhim Singh is violative of his rights under Articles 21 and 22(2) of the Constitution, and in exercise of its power to award compensation under Article 32, directed the State to pay monetary compensation.

In *Rudal Shah*<sup>99</sup> it was held that a claim for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim is based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right.

Section 358(1) CrP.C. provides that Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom case is heard that there was no sufficient ground of causing such arrest, the Magistrate may award such compensation, not exceeding one thousand rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses the matter, as the Magistrate thinks fit. Clause (3) to the section further provides that in case the fine cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs unless such sum is sooner paid.

The Supreme Court has held that it is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental rights under Article 21 of the constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities

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<sup>98</sup>AIR 1986 SC 494

<sup>99</sup> Rudal Shah v State of Bihar 1983 AIR 1086

. The Court awarded a compensation of Rs. 5 lakh as compensation for mistreatment in the police custody<sup>100</sup>

## **B.UK**

*Article 5(5) of ECHR* provides that everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation. A person shall have an enforceable right to compensation if he is arrested in situations except mentioned hereunder:

- The lawful detention of a person after conviction by a competent court;
- The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- The lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

*Article 3 of 7<sup>th</sup> Protocol on the European Convention of Human Rights* also states that when a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person

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<sup>100</sup>*Mehmood Nayyar Azam v State of Chhattisgarh*, 2012 (7) SCALE 104 SC

Who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

## **C.INTERNATIONAL SCENARIO**

*Article 5 of ICCPR* says that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Moreover, *Article 14 (6)* provides that “When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be *compensated* according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him”.

## **10.Right to equality**

### **A. INDIA**

Equal protection means that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them<sup>101</sup> " Article 14 of the Constitution was also incidentally referred to. This article embodies the principle of *equality before the law*(English origin), which is a part of the rule of law as enunciated by Professor Dicey & the rule of *equal protection of the laws* contained in the Fourteenth Amendment to the Constitution of the United States of America. The clause in the Fourteenth Amendment to the United States

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<sup>101</sup>*State of Madras v Champakam Dorairajan* AIR 1951 SC 226

Constitution which provides for the equal protection of the laws has been always interpreted as a provision for preventing the enforcement of discriminatory measures.

### **C.INTERNATIONAL SCENARIO**

*Article 14* of the ICCPR lays down the principle that all the persons shall be equal before the courts and tribunals. It confers the right of equality before courts.

Also *Article 26* states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*Article 7* of the UDHR also recognizes the right to equality by stating:

*All are equal before the law and are entitled without any discrimination to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.* Besides *Article 7*, *Article 6* also states that everyone has the right to recognition everywhere as a person before the law.



# **CHAPTER 5**

## **CASE STUDY**

## **5.1. HUMAN RIGHTS IN INDIA**

### **1.1 Concerns raised by international community**

In recent years, reports produced by foreign governments and non-governmental organisations have alleged that many types of human rights abuse have taken place in India. For example, the US state department's 2021 country report on human rights practices in India said that there had been credible reports of "significant human rights issues" in the country. This included extrajudicial killings or arbitrary arrests and detention by the government or its agents, as well as other forms of alleged abuse.

The human rights organisation Amnesty International produced a country profile of India for 2021 which also reported various human rights abuses. It said that violations had included: the use of "repressive laws to silence critics"; intimidation and harassment of human rights defenders; the use of excessive force against protestors; and undermining the right to a fair trial. In addition, Human Rights Watch has highlighted possible violations in its report 'India: Events of 2021'. For example, it said that the Indian government had engaged in the politically motivated harassment of critics and shut down human rights groups using foreign funding regulations or allegations of financial irregularities.

Many of the allegations against the Indian government in recent years have focused on concerns about the treatment of religious minorities. Human Rights Watch argued that the Indian government has adopted laws and policies that have discriminated against religious minorities, especially Muslims. In addition, the non-governmental watchdog organisation Freedom House argued that Indian President Narendra Modi and his Hindu nationalist Bharatiya Janata Party had "presided over discriminatory policies and a rise in persecution affecting the Muslim population".

In April 2021, the US Commission on International Freedom's annual report asked the US State Department to name India as a "country of particular concern" because of "attacks on religious minorities". The commission argued that the Indian government had "promoted Hindu nationalist policies resulting in systematic, ongoing, and egregious violations of religious freedom".

## **1.2 Response by Indian government**

The Indian government has disputed allegations of human rights abuse. In July 2022, it took part in the 10th EU-India dialogue on human rights. In a press release following the meeting, both parties said that they had reiterated their commitment to protecting and promoting all human rights. The release also reported that:

India and the EU exchanged views and concerns on civil and political rights, the rights of persons belonging to minorities and vulnerable groups, freedom of religion or belief, freedom of expression and opinion online and offline, women empowerment, children's rights, LGBTQI+ rights, the rights of migrants, the use of technology in the area of democracy and human rights, issues of security and human rights, business and human rights, co-operation in public health, and humanitarian assistance and disaster relief.

They both concurred on the importance of safeguarding the freedom, independence and diversity of civil society actors, including human rights defenders and journalists, and respecting freedom of association and peaceful assembly. The EU reiterated its opposition to capital punishment in all cases and without exception. India reiterated its stand on recognition of the right to development as a distinct, universal, inalienable and fundamental human right that is applicable to all people in all countries.

## **2. Jammu and Kashmir**

### **2.1 Revocation of article 370**

The region of Kashmir has been the subject of a dispute between India and Pakistan since British colonial rule ended in 1947. Although both countries have claimed Kashmir in full, they each only control part of it. An agreed ceasefire line, known as the 'line of control', has been in place since 1972. China also controls part of the region.

The Indian-controlled area is known as the state of Jammu and Kashmir. Discontent with India among people in Jammu and Kashmir was widespread by the late 1980s. Anti-India and Islamist militants carried out acts of violence against Indian politicians, including assassinations. Hindus living in the region were also targeted and many moved elsewhere. In response, the Indian state armed and trained local auxiliary forces to assist in counterinsurgency operations. These forces were accused of serious human rights violations.

The conflict had mostly died down by the mid-1990s, but violence has continued to take place, with tensions periodically flaring. In February 2019, in the deadliest attack in three decades, a suicide bomber associated with a militant separatist group killed 40 members of India's central reserve police force. This led to India sending fighter jets across the line of control for the first time in five decades. Pakistan retaliated to this, but analysts believed both countries wanted to avoid an escalation.

Jammu and Kashmir had been partially autonomous, with its own constitution, flag, and freedom to make its own laws. However, in August 2019, Prime Minister Modi revoked article 370 of the Indian constitution. This removed the constitutional autonomy of the state, a predominantly Muslim region, and nullified its constitution, penal code and flag. It also split the state into two federal territories and made it subject to the same central laws as other Indian territories.

Prior to the removal of article 370, the state was placed "under lockdown", with mobile phone networks, landlines and the internet shut down and regional political leaders placed under house arrest. It was also reported that additional Indian troops were deployed to the region, that schools and colleges were shut, and tourists were told to leave. Following the revocation of article 370, there was unrest in Jammu and Kashmir, as well as protests in other parts of India, including the capital, Delhi.

Revoking article 370 had been part of the Indian government's 2019 election manifesto. It had argued that it was needed to integrate Kashmir and would help bring development to the region. It had also argued that the changes would end militancy in the area.

However, the decision has been controversial. Critics have argued that the Indian government wanted to change the demographics in the Muslim-majority region by enabling non-Kashmiris to buy land there.

In February 2022, the Middle East Institute, a Washington-based thinktank said that Kashmir is experiencing a period of relative stability and peace. However, it also argued that a series of attacks has shown that a new phase of militancy is emerging in the region, which is more 'home-grown'. Ajai Sahni, the executive director of the Delhi-based think tank, the Institute for Conflict Management, has agreed. Mr Sahni told BBC News that local participation in militancy has increased, but that the "overall trend" of militancy has been on the decline.

## 2.2 Recent developments

Since 2019, various organisations have continued to raise concerns about human rights in Kashmir, particularly focusing on press freedoms, arbitrary detentions, and communications blackouts.

Human Rights Watch said that journalists in Kashmir faced increased harassment by authorities in 2021. The organisation noted that in June 2021, the UN special rapporteur on freedom of expression and the working group on arbitrary detention had expressed concerns over “alleged arbitrary detention and intimidation of journalists covering the situation in Jammu and Kashmir”.

Amnesty international also raised concerns over human rights in Kashmir. It said that residents of the region had experienced a government-mandated internet shutdown from 4 August 2019 to 5 February 2021. It said that this had caused economic loss, adversely impacted education and other service provision, and put “human rights defenders at heightened risk of surveillance by government agencies”. Amnesty also reported concerns about caste-based discrimination, hate crimes, and impunity, saying that the Indian government had failed to address the human rights and safety concerns of people in Kashmir and Jammu.

Freedom House has rated Indian Kashmir as ‘not free’ and said that residents have been “stripped of many of their previous political rights”. It also said that “civil liberties have been curtailed to quell public opposition” and that although Indian security forces are regularly accused of human rights violations, few are punished. In addition, Freedom House noted that separatist and jihadist militants have continued to “wage a protracted insurgency” in the region.

In its ‘Human rights and democracy report 2019’, the Foreign, Commonwealth and Development Office (FCDO) said that the Indian government had detained political leaders and also restricted protest and telephone and internet services in Kashmir. The FCDO’s 2020 report did not mention the region. Following a debate on “the political situation in Kashmir” in the House of Commons in January 2021, the Indian government criticised some of the content of the debate and the matters raised. The English language newspaper, the Hindu, reported that the Indian High Commission in London had said that parliamentarians had relied on “false assertions”. The commission also said that “India stands ready to engage with Pakistan on all outstanding issues” and claimed that:

Since the administrative reorganisation of Jammu and Kashmir in August 2019, it is well on the path of good governance and accelerated development. All administrative measures taken by the Government of India in Jammu and Kashmir are entirely an internal matter of India.

### **3. UK government response**

#### **3.1 India's record on human rights**

The UK is currently negotiating a free trade agreement with India. In October 2022, Anum Qaisar, SNP MP for Airdrie and Shotts, asked the government what representations it had made on India's human rights record during negotiations. Minister for Trade Policy Greg Hands said that the UK government is committed to the promotion of universal human rights and that, when there are concerns, they are raised directly with partner governments, including at ministerial level. He explained that these discussions take place separately to negotiations, but said that "they are part of building open and trusting relationships with important partners".

Addressing a similar question about freedom of religion in the country, Lord Ahmad of Wimbledon, minister of state for the Middle East and UN, said in October 2022 that the government raises human rights issues directly with the Indian government, "where we have them". Commenting further, he said:

The UK government is committed to defending freedom of religion or belief for all and promoting respect and understanding between different religious and non-religious communities. We condemn any instances of discrimination because of religion or belief, regardless of the country or faith involved. Any reports of discrimination against religious minorities are a matter for the Indian police and legal system. The British High Commission in New Delhi and our deputy high commissions across India regularly meet with religious representatives and official figures.

#### **3.2 Comments on Kashmir**

Barry Sheerman, Labour MP for Huddersfield, recently asked the UK government what assessment it had made on the human rights situation in Kashmir and what steps it was taking to ensure all international agreements are upheld by India and Pakistan. Responding on 2 November 2022, Leo Docherty, parliamentary under secretary of state (Europe), said:

We recognise that there are issues with human rights in both India-administered Kashmir and Pakistan-administered Kashmir. Any allegation of human rights violations or abuse must be investigated thoroughly and transparently. We have raised these matters with both the governments of India and Pakistan.

Responding to a February 2022 question about press freedoms in the region, the then minister for Asia, Amanda Milling, said that the government was closely monitoring reports from Kashmir, including on the arrests of journalists. She said the UK remains committed to media freedom and to “championing democracy and human rights around the world”. Ms Milling also noted that the government works closely with the Indian media, including by funding an annual South Asia journalism fellowship programme under the Chevening brand.

## 5.2 Case Study: Human Rights and Criminal Justice System in India

### A. Case: Maneka Gandhi v. Union of India

#### (1978) Overview:

Maneka Gandhi v. Union of India is a landmark case in India that significantly impacted the understanding and protection of human rights within the criminal justice system<sup>102</sup>. The case involved Maneka Gandhi, an Indian citizen whose passport was impounded by the Indian government. She challenged the action, asserting that her right to travel abroad, a fundamental right under Article 21 of the Indian Constitution, was violated. The case raised important questions about the scope and interpretation of fundamental rights and their applicability in the criminal justice context.

#### Key Issues:

1. Right to Personal Liberty: The primary issue in the case was whether the right to personal liberty, enshrined under Article 21 of the Indian Constitution, encompassed the right to travel abroad. Maneka Gandhi argued that her right to travel was an integral part of personal liberty and therefore protected under Article 21.
2. Procedural Due Process: The case also highlighted the importance of procedural due process. Maneka Gandhi argued that her passport was impounded without providing her with a fair opportunity to be heard and without disclosing any reasons for the action. She contended that the impounding of her passport violated the principles of natural justice.

#### Key Rulings and Significance:

The Supreme Court of India, in its judgment, expanded the understanding of personal liberty and outlined the principles of procedural due process. The court held that the right to travel abroad was encompassed within the right to personal liberty under Article 21. It emphasized that personal liberty was not limited to mere physical restraint but included various other aspects essential for the meaningful exercise of freedom.

<sup>102</sup>Maneka Gandhi v. Union of India (1978)



The court also recognized that the procedure established by law, as mentioned in Article 21, must be fair, just, and reasonable. It held that the state must follow the principles of natural justice and provide a reasonable opportunity to be heard before taking any action that affects an individual's rights. The court stated that the right to travel could be restricted only by a law that is reasonable, fair, and just.

The Maneka Gandhi case had far-reaching implications for human rights and the criminal justice system in India. It expanded the interpretation of fundamental rights and emphasized the importance of due process safeguards. The judgment reaffirmed the commitment of the Indian judiciary to protect individual liberties and laid down a precedent for future cases related to personal freedom and procedural fairness.

The case set an important precedent in the development of human rights jurisprudence in India and highlighted the judiciary's role in safeguarding fundamental rights within the criminal justice system. It reinforced the principle that any infringement on personal liberty must be justifiable, reasonable, and in accordance with fair and transparent procedures.

## **B. People's Union for Civil Liberties (PUCL) v. State of Maharashtra (2014)<sup>103</sup>**

### **Background:**

The case of People's Union for Civil Liberties (PUCL) v. State of Maharashtra revolves around the violation of human rights and the functioning of the criminal justice system in India. It highlights the issue of custodial violence and the urgent need for police reforms to protect the rights of individuals in police custody.

### **Facts of the Case:**

In 1997, a young man named Khwaja Yunus was arrested by the Mumbai Police in connection with a bomb blast case. While in police custody, Yunus died under suspicious circumstances. The police claimed that Yunus had escaped, but his family alleged that he had been subjected to custodial torture and was killed by the police.

<sup>103</sup>People's Union for Civil Liberties (PUCL) v. State of Maharashtra (2014)

The case was initially investigated by the Central Bureau of Investigation (CBI), which filed a closure report stating that there was no evidence of custodial death or any police wrongdoing. Dissatisfied with the investigation, the PUCL filed a petition in the Bombay High Court seeking an independent investigation and action against the police officers involved.

### **Legal Proceedings and Court's Ruling:**

The case reached the Bombay High Court, which ordered a reinvestigation by the CBI. However, the CBI once again submitted a closure report, reiterating its previous findings. The matter was then taken to the Supreme Court of India.

In 2014, the Supreme Court heard the case and observed serious lapses in the investigation conducted by the CBI. The court expressed its concern over custodial violence and emphasized the importance of protecting the fundamental rights of individuals in police custody. It held that custodial violence was a violation of human rights and a matter of utmost importance that needed to be addressed effectively.

The court further highlighted the need for police reforms, including the installation of CCTV cameras in police stations, compulsory registration of FIRs for custodial deaths, and the establishment of an independent complaint mechanism to address cases of police misconduct. The court also stressed the importance of training programs for police personnel to sensitize them about human rights and their responsibilities.

### **Implications and Significance:**

The PUCL v. State of Maharashtra case serves as a significant milestone in addressing custodial violence and advocating for police reforms in India. It highlights the need to protect the human rights of individuals in police custody and ensure accountability for police officers involved in human rights violations.

The case underscores the importance of an independent and impartial investigation process to bring justice to victims of custodial violence. It also emphasizes the role of the judiciary in safeguarding human rights and holding the state accountable for its actions.

Furthermore, the Supreme Court's directives regarding police reforms in this case have had a far-reaching impact on the criminal justice system in India. It has prompted the government and law enforcement agencies to take measures to prevent custodial violence, improve police accountability, and protect the rights of individuals in custody.

Overall, the PUCL v. State of Maharashtra case serves as a significant judicial precedent in India, shedding light on the violation of human rights within the criminal justice system and calling for reforms to ensure justice, fairness, and the protection of individual liberties.

### **C. Case: Nirbhaya Gang Rape Case**

#### **(2012) Background:**

The Nirbhaya gang rape case, also known as the Delhi gang rape case, occurred in December 2012 in Delhi, India. A 23-year-old female physiotherapy intern, referred to as Nirbhaya (meaning "fearless" in Hindi) to protect her identity, was brutally gang-raped and assaulted by six men inside a private bus. The incident sparked widespread outrage and protests across the country, highlighting the issues of gender-based violence, women's safety, and the functioning of the criminal justice system.<sup>104</sup>

#### **Key Events and Legal Proceedings:**

- 1. Incident and Arrests:** On December 16, 2012, Nirbhaya and her male friend boarded a private bus where they were attacked by the six perpetrators. They were brutally assaulted, and Nirbhaya was gang-raped. The victims were then thrown out of the moving bus. Nirbhaya succumbed to her injuries in a Singapore hospital on December 29, 2012. The perpetrators were arrested soon after the incident.
- 2. Public Outrage and Protests:** The Nirbhaya case triggered massive protests and outrage across India, demanding justice for the victim and stricter laws against sexual offenses. People took to the streets to express their anger and frustration over the pervasive issue of violence against women.

<sup>104</sup>Nirbhaya Gang Rape Case (2012)

**3. Trial and Conviction:** The case was fast-tracked by the judiciary due to public pressure. The trial proceedings began in January 2013. All six accused were charged with multiple offenses, including rape, murder, and kidnapping. The trial court pronounced its judgment on September 10, 2013, convicting all the accused. Four of the perpetrators were sentenced to death, one committed suicide in jail, and one, who was a juvenile at the time of the crime, was given a three-year sentence in a reform facility.

**4. Appeals and Final Verdict:** The convicts filed appeals against the trial court's judgment in the higher courts. The case went through several rounds of appeals and hearings. The Supreme Court of India upheld the death penalty for the four adult convicts in May 2017. The remaining legal options, including review petitions and mercy pleas, were exhausted. Finally, on March 20, 2020, all four adult convicts were executed.

#### **Impact and Significance:**

The Nirbhaya gang rape case had a profound impact on India's criminal justice system and raised crucial issues concerning human rights and women's safety. The case highlighted the urgent need for legal reforms, swift justice, and better protection of women's rights. The incident led to significant changes in legislation and policy, including:

**1. Criminal Law Amendment Act, 2013:** The government enacted amendments to the Indian Penal Code (IPC), Criminal Procedure Code (CrPC), and the Evidence Act to broaden the definition of sexual offenses, introduce stricter punishments, and improve the legal process for survivors.

**2. Setting Up of Fast-Track Courts:** In response to the case, fast-track courts were established to expedite trials in cases of sexual offenses. These courts aimed to ensure speedy justice and enhance the effectiveness of the criminal justice system.

**3. Strengthening Legal Protection:** The case prompted discussions on the need for better legal protection and support systems for survivors of sexual assault. It led to the establishment of dedicated helplines, women's support centers, and enhanced victim/witness protection mechanisms.

**4. Public Awareness and Activism:** The case galvanized public awareness and activism against gender-based violence. It brought the issue of women's safety into the mainstream discourse and encouraged conversations about the importance of consent, gender equality,

and changing societal attitudes.

### **5.3 Human Rights and the Criminal Justice System in the UK: A Case**

#### **Study Introduction:**

The United Kingdom (UK) has a robust legal framework and a long-standing commitment to human rights. This case study examines the relationship between human rights and the criminal justice system in the UK. It explores key aspects such as the legal framework, the protection of human rights, challenges, and notable cases that have influenced the intersection of human rights and the criminal justice system in the UK.

#### **Legal Framework:**

The Human Rights Act 1998 is a crucial piece of legislation that incorporates the European Convention on Human Rights (ECHR) into UK law. This Act guarantees the protection of fundamental human rights, including the right to life, liberty, and a fair trial, among others. It establishes the principle that all public authorities, including the criminal justice system, must act in compliance with the ECHR.

#### **Protection of Human Rights:**

The UK places significant importance on the protection of human rights within the criminal justice system. Some key principles and mechanisms that safeguard human rights include:

- 1. Right to a Fair Trial:** The UK criminal justice system upholds the principle of a fair trial, ensuring defendants have the right to legal representation, access to evidence, and the opportunity to challenge the case against them.
- 2. Prohibition of Torture and Inhuman Treatment:** The UK is committed to preventing torture and inhuman treatment within the criminal justice system, with legislation in place to prosecute and punish those responsible for such acts.
- 3. Right to Privacy:** The right to privacy is protected in criminal justice proceedings, including restrictions on media reporting and limitations on public disclosure of personal information.
- 4. Human Rights Act 1998:** This legislation incorporates the European Convention on Human Rights (ECHR) into UK law, allowing individuals to seek remedies for human rights

violations within domestic courts.

5. **European Convention on Human Rights (ECHR):** The UK is a signatory to the ECHR, which sets out a range of fundamental rights and freedoms, including the right to a fair trial, the prohibition of torture, and the right to liberty and security.

6. **Human Rights Institutions:** The Equality and Human Rights Commission (EHRC) and the Independent Office for Police Conduct (IOPC) play crucial roles in upholding human rights and monitoring the actions of the criminal justice system.

### **Challenges:**

While the UK's legal framework provides robust protection for human rights, there are challenges that affect the criminal justice system's implementation. Some notable challenges include:

1. **Counterterrorism Measures:** The UK's response to terrorism has prompted debates regarding the balance between security measures and human rights. Critics argue that some counterterrorism measures have encroached upon civil liberties.

2. **Prison Conditions:** Overcrowding, lack of resources, and concerns over the treatment of prisoners have raised questions about the adequacy of prison conditions and their compliance with human rights standards.

### 3. **Notable Cases:**

1. **R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs:** This case involved allegations of UK involvement in the extraordinary rendition and torture of Binyam Mohamed. The court ruled that evidence suggesting UK complicity in torture should be made public, highlighting the importance of upholding human rights obligations.<sup>105</sup>

2. **R v Jogee:** This case addressed the law of joint enterprise in relation to homicide convictions. The Supreme Court clarified the law, emphasizing that it had been incorrectly interpreted for over 30 years. This decision aimed to prevent wrongful convictions and ensure fairness within the criminal justice system.

3. **R (on the application of Nicklinson and Lamb) v Ministry of Justice (2014):** This case dealt with the right to die and the legal framework surrounding assisted suicide, highlighting the complex intersection of human rights, criminal law, and individual autonomy.

4. *R (on the application of M) v Secretary of State for the Home Department* (2018): This case concerned the detention of individuals with mental health conditions in immigration removal centers, emphasizing the need for adequate safeguards and treatment for vulnerable detainees.

5. *DSD and NBV v Commissioner of Police for the Metropolis* (2018): This case focused on the duty of the police to investigate and prevent serious crimes, particularly sexual offenses, highlighting the importance of human rights in the criminal justice response to such offenses.

The UK's commitment to human rights is reflected in its legal framework and the role of human rights institutions. However, challenges persist in ensuring the full realization of human rights within the criminal justice system. Ongoing efforts are required to address these challenges, promote fairness, prevent discrimination, and strike a balance between security and individual liberties. By learning from notable cases and engaging in critical discussions, the UK can continue to strengthen its criminal justice system while upholding human rights standards.

<sup>105</sup>*R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* The United Kingdom has a well-established legal system and a commitment to upholding human rights. However, like any country, it has faced criticism and has had cases that have raised concerns regarding human rights and the criminal justice system. Here are a few notable cases and issues in recent years:

1. **Detention without trial:** The UK has faced criticism for its use of detention without trial under the Terrorism Act 2000. The case of Babar Ahmad and others highlighted concerns about the prolonged detention of individuals without charge or trial, leading to changes in the law to limit the use of such powers.

2. **Extradition cases:** Several high-profile extradition cases have raised questions about human rights and the UK's criminal justice system. Notably, the cases of Julian Assange, founder of WikiLeaks, and Gary McKinnon, a hacker accused of breaking into US military computers, highlighted concerns about the fairness and potential impact on human rights in these extradition processes.<sup>106</sup>

3. **Treatment of detainees:** There have been instances of mistreatment and abuse of detainees in the UK. The case of Baha Mousa, an Iraqi hotel receptionist who died in British Army custody in 2003, exposed allegations of systemic abuse and led to inquiries and reforms within the military.

4. **Prison conditions:** Overcrowding, violence, and inadequate healthcare in prisons have been ongoing issues in the UK. The state of prisons has been a subject of concern, with reports of high levels of self-harm, suicide, and violence among inmates.

5. **Racial disparities:** There have been concerns about racial disparities within the criminal justice system. Studies have shown that individuals from ethnic minority backgrounds are disproportionately represented at various stages, including arrests, prosecutions, and sentencing. This has raised questions about systemic biases and discrimination within the system.

<sup>106</sup>The Cases Of Julian Assange, Founder Of Wikileaks, And Gary Mckinnon,



**6. Surveillance and privacy:** The UK has been criticized for its extensive surveillance measures, such as the Investigatory Powers Act 2016, which grants broad surveillance powers to intelligence agencies. These measures have raised concerns about privacy rights<sup>107</sup> and potential abuses of power.

It's important to note that the UK has taken steps to address some of these issues through legal reforms, inquiries, and policy changes. Human rights organizations and advocacy groups continue to monitor and push for improvements in the country's criminal justice system to ensure the protection of individual rights and fair treatment for all.

<sup>107</sup>The Investigatory Powers Act 2016,

**CHAPTER 5**

**RECOMMENDATION AND**

**CONCLUSION**

## CONCLUSION

The human rights and criminal justice systems in India and the UK have both made significant strides in protecting and promoting human rights. However, there are also areas that require further attention and improvement.

In India, the Constitution guarantees fundamental rights to its citizens, including the right to life, liberty, and equality. The country has established various institutions and legal frameworks to uphold these rights, such as the National Human Rights Commission (NHRC) and the judiciary. However, India faces challenges in effectively implementing these rights throughout the country. Issues like overcrowded prisons, delays in trials, and allegations of police brutality remain areas of concern. Additionally, marginalized communities, including women, religious minorities, and the LGBTQ+ community, continue to face discrimination and unequal treatment within the criminal justice system.

Similarly, the UK has a robust legal framework and a long-standing tradition of protecting human rights. The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law, ensuring fundamental rights and freedoms for its citizens. The country also maintains an independent judiciary that safeguards the rule of law. However, there have been debates and concerns about the UK's approach to counterterrorism measures, including surveillance and detention policies. The treatment of immigrants and asylum seekers, particularly in immigration detention centers, has also been a subject of criticism.

Both India and the UK face common challenges related to their criminal justice systems. These include the need for improved access to justice, timely trials, and reducing the burden on overcrowded prisons. There is a growing recognition in both countries that criminal justice should focus on rehabilitation and restorative justice, rather than solely punitive measures.

In conclusion, while India and the UK have made important strides in safeguarding human rights within their criminal justice systems, there is still work to be done. Continued efforts to address the systemic challenges, enhance access to justice, and ensure equality before the law are crucial to further improve the human rights landscape in both countries. The ongoing commitment to upholding human rights principles is essential for fostering a just and inclusive society in both India and the UK.

## **SUGGESTIONS FOR IMPROVING THE SYSTEM OF CRIMINAL JUSTICE**

### **A) SCIENTIFIC INVESTIGATION**

Crimes are often committed secretly in a well-planned manner so that there may not be any direct evidence against the offender. Under these circumstances, it is imperative to have strong and intelligent investigating agency capable of using modern tools. Various techniques, such as physical examination of the accused, medical examination of the victim, and comparison of finger prints, foot prints, photographs and writing, use of tape records, forensic ballistics, wiretapping and other means of electronic surveillance, lie detectors, and truth serums are used. The investigator must be equipped with the necessary apparatus and technical knowledge to use these means.

### **B) RESPONSIBLE POLICE**

The police, the Government and the society each have a role to play in improving the law enforcement situation and in developing pro-citizens police in the country. Organizational behaviour is largely the outcome of training and continuing education. Police training is archaic in content and methods. All sections of society, and more particularly the media, can help improve the status and efficiency of the police force. At least, they can afford not to disparage the police without rhyme or reason. If they can extend co-operation in law enforcement, there is bound to be a welcome response from the other side, which eventually will result in greater social defence and better law and order situation.

### **C) SPEEDY PROCESS**

Though speedy trial has been recognized as a fundamental right because it is a requirement of a fair procedure under Article 21, yet the delay in administration of criminal justice is a common affair. Delay is both at the stage of investigation and prosecution as well as in the trial. There is the necessity of prescribing some time limit for each process as Supreme Court has done in *Sheela Barse V. Union of India*<sup>11</sup>, Of course, the time limit should not be unreasonable or rigid because justice delayed is justice denied so also justice buried is

justice hurried. A balance between the two extremes is advisable.

#### ***D)* UNIFORM POLICY BY THE GOVERNMENT**

To prevent human rights violations, it is suggested that an official declaration of uniform policy by the governments that violations of Human Rights of accused by law enforcement be formulated. Governments should also enact a strict law to punish the perpetrators of human rights violations. Governments should also take prompt corrective action in case of human rights violations.

#### ***E)* PROTECTION MECHANISM**

The mechanism for protecting human right of accused at the International, national and regional levels must be strengthened, States should not shield themselves from International Scrutiny on the issue of human rights. The State should provide an effective framework of remedies for the redressal of human rights violations. Investigating agencies, prosecuting agencies, judiciary and legal profession should make efforts to prevent the human rights violations of accused by giving him proper and appropriate legal aid.

The challenge before India is to develop human rights in its domestic criminal administration by upgrading its law-enforcement machinery, and on the other hand not to be swayed away at the cost of social development and nation's unity. A reconciliation lies in improving the domestic culture of human rights which in turn will replenish our image in the international platform also.

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