

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOL-1, ISSUE-4
ISSN-2583-8725

LEX SCRIPTA MAGAZINE OF LAW AND POLICY
ISSN- 2583-8725

VOLUME-1 ISSUE-4
YEAR: 2023

EDITED BY:
LEX SCRIPTA MAGAZINE OF LAW AND
POLICY

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOLUME-1: ISSUE-4

[COPYRIGHT © 2023 LEX SCRIPTA MAGAZINE OF LAW AND POLICY]

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Scripta Magazine of Law and Policy), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non- commercial uses permitted by copyright law.

The Editorial Team of Lex Scripta Magazine of Law and Policy Issues holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Scripta Magazine of Law and Policy.

[© Lex Scripta Magazine of Law and Policy. Any unauthorized use, circulation or reproduction shall attract suitable action under application law.]

HUMAN RIGHTS AND INDIAN CRIMINAL PROCEDURAL LAW: CAN THEY BE CONGRUENT?

Author : Madhav Sharma

(LLM., Rashtriya Raksha University)

Co – Author :Shivam Kumar Pandey

(Research Scholar, Rashtriya Raksha University)

Abstract

*Human Rights and procedural laws of any country must be in close consonance with each other because these laws are formulated for better governance. These laws help in the enforcement of the rights of the people; however, it is pertinent to note that not all countries follow a particular parameter to ensure that the human rights are in consonance with the procedural laws. **The** judiciary is duty bound to keep a check and balance on the same and ensure minimal instances of violations of human rights. It is duty of the judiciary to uphold the constitutional dogmas and ensure that the human rights are not violated and enforced in the way they are supposed to be. In the recent era, the development of victimological jurisprudence has gained importance and the human rights need to be ensured not just for the victims of the crime but also the accused because at times the perpetrators of the offence may just be a scapegoat for the others. The paper focusses on how the various provisions of the code has helped towards the development of human rights jurisprudence and also catered to the creation of an amicable society which shall be beneficial in upholding the constitutional dogmas in consonance with the human rights of the citizens.*

Keywords: Human Rights, Violations, Procedure, Victims, Perpetrators

Introduction:

The positive aftermath of the global human rights movement subsequent to the era of international instruments is evident in the heightened worldwide endeavor by nation states to identify and adopt optimal human rights practices and standards, necessitating a realignment of their institutions and functions. Human rights have, in a sense, become a contemporary benchmark of civilization. However, it is imperative to enhance societal comprehension of human rights to effectively establish norms and reorient institutions. Given the significant role played by public officials in human rights implementation, specialized emphasis on human rights education and awareness programs for this demographic is of paramount importance.

(Website-lexscriptamagazine.com) 3 (Email-riday.riday.r662@gmail.com)

Each individual should be acknowledged primarily as a human being, irrespective of whether they are under arrest or facing charges. In criminal trials, the presumption of innocence prevails until the accused is proven guilty beyond a reasonable doubt. Regardless of the individual's background, statutory rights safeguard their right to liberty, ensuring that no one is unlawfully detained in our democratic nation. Article 21 of the Indian Constitution expressly asserts that the deprivation of an individual's life or personal liberty is impermissible unless carried out in accordance with prescribed legal procedures. Contemporary law enforcement operations witness various instances of corruption and malpractices. To prevent wrongful detention, all accused or detained individuals are afforded numerous fundamental rights and other protections delineated by criminal procedure.

Importance of Human Rights:

The Indian Constitution incorporates various provisions aimed at safeguarding the rights of the accused in all situations. Article 14 guarantees both equality before the law and equal protection of the laws., while Article 21 specifies that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” Article 22 of the Constitution establishes protections against arrest and detention in specific situations. It mandates that any arrested person must promptly be informed of the grounds for their arrest and ensures that they are not deprived of the right to consult with and be defended by a legal practitioner of their choice.¹ At the heart of human rights lie the essential principles of life, liberty, and personal dignity, crucial elements without which human existence could become more wretched than that of animals. Legislative and procedural frameworks should align with constitutional principles and human rights to ensure the fair administration of justice. The participants in the criminal justice system, including judicial officers, law enforcement personnel, prosecutors, advocates, and litigants, collectively contribute to its functioning. While numerous penal and procedural laws regulate case proceedings, the true essence of justice in democratic nations governed by a constitution lies in their strict implementation, safeguarding the rights of both the accused and the victims. The necessity for heightened sensitivity toward human rights becomes particularly pronounced when handling cases that

¹ ‘Home: National Human Rights Commission India’ (*Home / National Human Rights Commission India*) <<https://nhrc.nic.in/>> accessed 13 November 2023

involve women, children, and other vulnerable and marginalized segments of society.² Justice J. S. Verma, in addressing the necessity for fostering improved comprehension and awareness regarding human rights, expressed the following sentiment: "While human rights awareness and sensitivity has grown by leaps and bounds over the last few decades, their actual application and realization at the ground level has been rather modest. The gap between growing awareness and sensitivity via-a-vis practical application has therefore been recognised as the central obstacle in the substantive realization of human rights. A very important link in this process is equipping the grass-root level judiciary." The above underscores the essential need to foster understanding and sensitivity toward human rights, not only among those engaged in investigation and prosecution but also within the core judiciary. Given the interlinked responsibilities across various agencies in the criminal justice system, this compilation aims to comprehensively cover these aspects, with a primary focus on the judiciary.

Criminal Procedure and Human Rights Protection:

The Code of Criminal Procedure, 1973 demonstrates prudence by explicitly integrating the rights of the accused individual and instituting diverse measures to implement these rights. These have been analysed below.

- a. **Separation of Executive from Judiciary:** The code has ensured separation of judiciary and executive by requiring the judicial magistrates to be under the direct supervision of the High Courts. This measure ensures that neither a judge nor a judicial magistrate is directly subordinate to anyone involved in prosecution. Moreover, since state is a party in criminal proceeding, the separation is more needed so that there is no influence in judgment.
- b. **Open Courts:** A public trial conducted in open courts serves as a deterrent against judicial arbitrariness. It functions as a potent tool for instilling public confidence in the fairness, objectivity, and impartiality of the criminal justice system. As per the Code, the venue of court proceedings must be accessible to the general public, subject to reasonable restrictions.
- c. **A person cannot preside over a matter in which they are directly involved:** No judge or magistrate is allowed to adjudicate a case in which they have a personal interest, and

² S. K. Kapoor, International Law and Human Rights (Allahabad Law Agency, 7th reprint ed, 2020).

without the permission of the higher appellate court, no judge or magistrate should undertake such a trial. Additionally, a judge or magistrate is prohibited from presiding over an appeal arising from a judgment or order that they themselves have issued. The provisions are incorporated u/s 479.

- d. **Transfer of Cases for Impartial Trial:** Sec. 190(1)(c) “Magistrate is empowered to take cognizance of any offence.” However, according to Sec. 191 “accused must be told that he is entitled to have the case tried by another Magistrate”. Furthermore, if it is ever evident that a subordinate court cannot conduct an impartial trial, Section 407 empowers it to make an order. It allows for the inquiry or trial of any offense to be transferred to another competent court. Specific cases or categories of cases may be moved from a criminal court under its jurisdiction to another criminal court with equal or higher authority.
- e. **Parties to be Represented by Competent Lawyers:** The essential requirement for an adversarial system is that both parties must have representation not only from capable judges but also from competent lawyers effectively advocating for their respective interests. Moreover, since crime is an offence against the state, the state becomes a party to any criminal trial and therefore, Public Prosecutor must represent the state. In any case if any party is unable to represent his claim with the help of a lawyer, the court must ensure that the person is represented by a lawyer, as enshrined under Art. 39A of the Constitution of India.
- f. **Presumption of Innocence & Burden of Proof:** It's crucial to recognize that in India, adhering to the adversarial system, the responsibility of establishing guilt consistently rests on the accused. An individual is presumed innocent unless proven guilty. In the case of *Talab Haji Hussain v. Madhurkar Purshottam Mondkar*³, It was affirmed that at the initiation of every criminal trial, the presumption of innocence in favor of the accused is foundational, and the Code mandates that the criminal proceedings should start and consistently uphold this fundamental presumption.
- g. **Expeditious Trial:** In each trial, the proceedings should be conducted with the utmost promptness. Furthermore, once the testimony of witnesses has commenced, it is to be carried on until all witnesses have been examined. [S.309(1)] “Criminal trial dragging for unreasonably long time is not a fair trial”. “Speedy trial is an essential ingredient of fair, reasonable, and just procedure guaranteed by Art. 21”.

³ Talab Haji Hussain v. Madhurkar Purshottam Mondkar AIR [1958] SC 376.

h. **Legal Aid and Assistance:** Ensures that individuals, regardless of financial means, have access to legal aid and assistance to guarantee effective participation in their defense.

I. **Non-Discrimination:** Prohibits discrimination on various grounds, including race, gender, religion, or social status, ensuring that all individuals are treated equally before the law. "Criminal Procedure and Human Rights Protection" refers to the legal framework and practices involved in the investigation, prosecution, and adjudication of criminal cases, emphasizing the preservation and respect for fundamental human rights. This intersection underscores the importance of balancing the interests of justice with the protection of individual liberties.

Arrest and Human Rights under Criminal Procedure:

Arrest is deemed necessary under the circumstances outlined below:

- To ensure the presence of the accused during trial: When an individual is facing charges for a criminal offense, it becomes essential to effect an arrest to secure their attendance at the trial.
- As a preventive or precautionary measure: When there is an imminent risk of the commission of a cognizable offense.
- For obtaining correct name and address: Sometimes, people refuse to give correct name and address. (Sec. 42)
- To eliminate obstruction to law enforcement: In cases where an individual obstructs a police officer in the execution of their duties.
- For retaking a person escaped from custody.
- Special attention must be given to the rights of vulnerable groups, such as minors, women, or persons with disabilities, to ensure their specific needs and rights are respected during arrest and detention.
- Arrested persons have the right to a prompt and fair judicial review of the lawfulness of their detention. This ensures that individuals are not held without sufficient legal justification.
- Individuals have the right to remain silent during arrest and interrogation. No one should be compelled to incriminate themselves, and the right to silence is a crucial protection against self-incrimination.
- Individuals have the right to remain silent during arrest and interrogation. No one should be compelled to incriminate themselves, and the right to silence is a crucial protection against self-incrimination.

In *D.K Basu v. State of West Bengal*⁴, The Supreme Court declared that an individual under arrest might be allowed to consult with their lawyer during interrogation, albeit not continuously throughout the entire process. Additional provisions concerning this right are outlined in Section 303 of the code.

In the case of *Udaybhan Shuki v. State of U.P.*⁵, It was determined that the right to be informed about the reasons for arrest is a valuable entitlement as it enables the individual to seek redress before the appropriate court.

In the case of *Harikishan v. State of Maharashtra*⁶, It was ruled that informing the person of the grounds of arrest in a language they comprehend is imperative, as failure to do so constitutes a violation of fundamental rights.

In the case of *Khatri (II) v. State of Bihar*⁷, The Supreme Court has emphasized the constitutional and legal obligation of presenting the arrested individual before a judicial magistrate within 24 hours. This provision serves as a beneficial measure, enabling the magistrate to oversee police investigations. It is imperative that magistrates diligently uphold this requirement, and in cases of non-compliance, they should take stringent actions against the police.

In the case of *State of Punjab v. Ajaib Singh*⁸, The decision was rendered that the provisions apply only to arrest without warrant as the judicial mind had already been applied in cases of arrest with warrant. However, this decision has been widely criticised, and it is deemed to apply on all cases, i.e. With or without warrant.

Leading Cases Fostering Human Rights in Accordance with Criminal Procedure:

With respect to *Sukanraj v. State of Rajasthan*⁹, In this case, it was established that a criminal trial that denies the accused the opportunity to cross-examine prosecution witnesses cannot be considered a fair trial.

⁴ D.K Basu v. State of West Bengal [1997] 1 SCC 416.

⁵ Udaybhan Shuki v. State of U.P [1999] Cr. L. J. 274

⁶ Harikishan v. State of Maharashtra [1962] 64 Bom LR 522.

⁷ Khatri (II) v. State of Bihar [1981] 1 SCC 627.

⁸ Ajaib Singh v. State of Punjab [1965] AIR SC 1619.

⁹ Sukanraj v. State of Rajasthan [1967] AIR Raj 267.

Regarding the instance of *Mukhtiar Singh v. State of Punjab*¹⁰, As per the ruling, the essential requirement of fair trial is to discuss and consider the various evidence and arguments addressed at the bar.

As an instance of *Ishwarbhai Fuljibai Patel v. State of Gujarat*¹¹, it was held in this case that the essential requirement of fair trial is to discuss and consider the various evidence and arguments addressed at the bar is also applicable for District Courts.

With respect to *Hussainara Khatoon (IV) v. State of Bihar*¹², It was established that a prompt trial is a fundamental necessity for a reasonable, fair, and just procedure, as guaranteed by Article 21 of the Constitution. It also represents a constitutional obligation of the state.

When it comes to *Moti Bai v. State*¹³, It was determined that the right to seek legal counsel for defense commences at the moment of the accused person's arrest and even prior to the formal initiation of the trial.

With respect to *Hussainara Khatoon (IV) v. State of Bihar*¹⁴, It was established that the right to receive free legal aid and services is a crucial component of a reasonable, fair, and just procedure and must be adhered to.

Conclusion & Authors suggestion

Some critics have expressed dissatisfaction with the Supreme Court's interpretation and development of legislation aimed at protecting human rights. However, these criticisms lack substantial evidence. The underlying assumption is that providing protection to a suspect or accused individual might compromise societal interests by encouraging criminal behavior and

¹⁰ Mukhtiar Singh v. State of Punjab [1995]1SCC 760.

¹¹Ishwarbhai Fuljibai Patel v. State of Gujarat [1995]1 SCC 178.

¹² Hussainara Khatoon (IV) v. State of Bihar [1980]1 SCC 98.

¹³ Moti Bai v State [1954] AIR Raj 241

¹⁴ Hussainara Khatoon (IV) v. State of Bihar [1980]1 SCC 98.

making it challenging, if not impossible, to uncover such activities. Unfortunately, there is a dearth of socio-legal or empirical research in our country, particularly in criminology.

Critiques of the law, as interpreted and developed by the courts, often lack a basis in sociological or factual data and instead rely on deeply held beliefs and misconceptions. To aid the courts in the challenging task of enacting legislation that effectively serves societal interests while safeguarding the rights of the innocent, socio-legal research should be conducted across various criminal law topics.

If the National Human Rights Commission dedicates itself to detecting human rights violations in crime control activities and takes proactive measures for correction and remedy, it can contribute significantly, rather than merely serving as a face-saving mechanism in response to international criticism of human rights conditions.

A path to reconciliation involves enhancing the internal culture of rights, which, in turn, can positively impact our global image. Consequently, it can be inferred that to protect the human rights and fundamental freedoms of the accused, there is a need to enhance public awareness of human rights. Otherwise, the concept of human rights risks experiencing setbacks, taking one step forward and two steps back.

The presumption that everyone possesses knowledge of the law is a fallacy that results in unnecessary suffering, particularly for the illiterate population in India. Lack of awareness about laws and the rights guaranteed by them allows for the unchecked misuse of authority by law enforcement officials, whose responsibility is to safeguard people's rights. Mere establishment of provisions for human rights protection, without empowering individuals through education on human rights and how to ensure compliance, holds no meaningful value. For the rule of law to be effective, it must be accompanied by legal awareness. While it is essential for police officers to understand the limits and nature of their authority, citizens should also be knowledgeable about their rights, even when they are subject to the law. Striking a proper balance between individual rights and public interest is crucial through the mechanism of the rule of law, which forms the essence of human rights law and is the stated purpose of this compilation. The legal pronouncements by the Supreme Court are binding and applicable to everyone. The decisions in this compilation from the Supreme Court pertain to matters that

impact the fundamental human rights of individuals, specifically the rights to life and liberty, which are considered sacred. The NHRC guidelines aim to educate both citizens and the police about their rights and duties, empowering individuals to protect themselves through this knowledge, and providing guidance to the police to ensure their actions are lawful, emphasizing that any infringement would be illegal. The paper's researcher endeavors to establish a correlation between the rights of individuals accused and detained within the criminal procedure. Additionally, the paper addresses the vital aspect of implementing these rights, serving a crucial purpose in its overall objective. The paper has highlighted the instances where the code despite provisions has only been able to give due protection to the detenu on the judicial intervention which cats an important question are the rights truly congruent?