



# Ethos of Fundamental Right at the Core of Criminal Justice

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## Abstract

Justice is the idea that all people, everywhere in the world, have the right to a dignified life. This means a life free from poverty, violence, discrimination or human rights violations. The right to access justice is one of the fundamental rights of the entire criminal justice system. The protection of fundamental rights through the criminal justice system is an essential element of any legal system.

The basic rights of defendants and victims are at the heart of the criminal justice system enshrined in section III of the Indian Constitution. These rights place an obligation on the government to enforce them. There are cases where the rights of the defendant and the abuser are in conflict but the need for the moment requires a measurement approach that must be accepted by the judges.

A paradigm shift in India's Criminal Justice system has been a matter of time. The focus should be shifted from criminal justice to justice but should be seen as consistent with non-violent justice.

**Key Words:** Criminal Justice System, punishment, rights of defendants, Preventive detention and Victims of crime.

## Introduction

Today at every stage of life each person is threatened with violation of basic human rights not only by other people but also by various social organizations established to protect such rights. The protection of

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fundamental rights through the criminal justice system is an essential element of any legal system. Fundamental human rights such as the presumption of innocence, the right to peace and the burden of evidence are all important pillars on which the criminal justice system stands. The right to access justice is one of the fundamental rights of the entire criminal justice system. Access to justice also requires effective access to resolving victims' grievances.

The role of the abuser must still receive the necessary attention from policy makers in the current criminal justice system. In addition to the victims' co-operation in reporting crime, giving evidence, identifying the offender and being a witness in court, many cases will remain unreported and unpunished.

According to various studies the current criminal system has failed to provide immediate and immediate justice to citizens. There are a number of cases pending in the courts over the years. The various sub-systems of the criminal justice system namely the police, prosecution, law enforcement, and correctional institutions also cannot meet their objectives leading to the loss of public religion.

### **Criminal justice system - a brief description.**

Criminal justice can be defined as an institutional and governmental mechanism aimed at maintaining public order, preventing and reducing crime and punishing offenders through punitive and punitive attempts. In general, the criminal justice system consists of three key components (1) the legislature and the legislature; (2) litigation: courts and (3) correction (prisons, trials, prisons, and parole).

The main objectives of the criminal justice system can be categorized as follows:

- Preventing crime.
- To punish offenders and criminals.
- Restoring the morals of offenders and criminals.
- Compensate the victims as much as possible.
- Maintaining law and order in the community.
- Preventing criminals from committing any criminal activity in the future.<sup>6</sup>

### **The basic rights of defendants under the Constitution of India**

#### **1. Protection from Ex-post Facto law**

The former post facto law is a law that sets out penalties for retaliation i.e. for actions committed prior to the passing of the current law. Article 20 (1) of the Constitution of India provides that no one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. the one that may have been committed

<sup>6</sup> Rahul Kumar Singh, Objective Of Criminal Justice System, Legal Service India, (Jan 29, 2017, 19:41PM), <http://www.legalserviceindia.com/articles/op.htm>

under the law that was in force at the time of the crime. Article 11 Article 2 of the Universal Declaration of Human Rights 1948 provides for the liberation of former post facto laws.<sup>7</sup>

## 2. Right against self-blame

Article 20 (3) of the Indian constitution states that no accused person may be compelled to testify against a person in any case. This article provides protection against litigation the defendant may need to provide for his or her criminal record. It is the duty of prosecutors to prove a case. Defendant shall not be compelled to make any statement of his own free will.

## 3. The right to peace

The right to peace is a matter of common law which means that the courts should not conclude that the defendant is guilty simply because he has refused to answer questions asked by the opposing attorney or the court. Prohibition of medical or scientific testing without free consent is one of the rights of defendants.<sup>8</sup>

## 4. The detainee's right to be informed of the reason for the arrest

Article 22 of the constitution of India provides that a person convicted of a crime under any common law is immediately notified of the reasons for his or her crime. In addition section 50 of the Criminal Procedure Code provides the same. These reasons for arrest should be communicated to the respondent in a language that he or she understands that inconsistencies may lead to a violation of constitutional requirements.

## 5. The right to protection by an attorney

It is one of the fundamental rights enshrined in Section 22 (1) of the Constitution of India which provides that no arbitrarily deprived person may be denied the right to consult and be protected by a lawyer of his or her choice. This is also an important aspect of the right approach. This right is important as the average person does not have enough legal knowledge to defend themselves in court.

## 6. The arrested person must be released before a magistrate

Section 22 (2) provides that an arrested person must be brought before a magistrate within 24 hours of detention. The same provision is also included under CrPC section 56. It is the duty of a police officer when he arrests without permission to present a person before a competent magistrate without unnecessary delays and in conjunction with bail provisions.

## 7. Right on the fast track

Since justice is often delayed and justice is denied, it is the basic right of the accused that the trial should proceed as soon as possible. In *Hussainara Khatoon (IV) V. State of Bihar*<sup>9</sup>, the Supreme Court declared that a speedy trial is an important ingredient in the 'reasonable, just and fair' procedure guaranteed by Article

<sup>7</sup> Article 15 of International Covenant on Civil and Political Rights, 1966.

<sup>8</sup> Article 7 of the International Covenant on Civil and Political Rights, 1966.

<sup>9</sup> AIR 1995 SC 366

21 and that it is a national constitutional obligation. to establish such a procedure which will ensure the speedy trial of the respondent. It is also the constitutional duty of the court, as the custodian of basic human rights, as the custodian of such cases, to enforce the defendant's basic right to a prompt trial by providing the necessary instructions to the State.<sup>10</sup>

## 8. The right to free legal aid

It is a basic right for the respondent to be protected by a lawyer in a court of law but if he or she is unable to do so due to poor financial conditions it is the duty of the state to provide free legal aid to the respondent. In *Hussainara Khatoon (IV) v. Secretary of the Interior, Bihar Region*<sup>11</sup>, Supreme Court after promulgation of Article 39-A of the Constitution and after a positive reference to the introductory interpretation of Article 21 of the constitution as stated at the outset. a lengthy decision in the case of *Maneka Gandhi v. The Union of India*<sup>12</sup>, has noted: The right to free legal services, therefore, is clearly an essential ingredient in the 'reasonable, fair and just' process of a defendant and must be kept free from the violation of Article 21.<sup>13</sup>

## 9. Preventive Detention - a violation of fundamental rights

Security laws were enacted to curb various forms of terrorism and counter-terrorism operations to ensure security. Terrorism can be controlled through the application of a restrictive theory of criminal justice in the judiciary but for India to become a democratic state does not follow this ideology but instead embraces the theory of transformation in which one can learn to change at any stage of one's life. Based on this view it is believed that terrorists can also be transformed by social change in his area. Section 22(3) of the constitution of India provides that if a person is detained or detained under a restrictive law then protection from detention and detention under Section 22(1) and 22(2) will not be available. Preventive detention is a precautionary measure to prevent future offenses. It is an expected and unrelated act while a trial is a punishment for a crime committed by a person.<sup>14</sup> The purpose of the Prevention of Detention is not to punish but to prevent in order to prevent Detune from doing something that is offensive to the Government. The satisfaction of the official concerned is a self-satisfied satisfaction that way.<sup>15</sup> It can therefore be assumed that those who are qualified for national security or to maintain public order should be the sole judges of the requirements of the National Security Service or the Community. It should be the responsibility of the acting officer to detain the person for the purpose of preventing him or her from doing things that are detrimental to the maintenance of public order. It has always been the court's view that arbitrary arrests are in direct conflict with the fundamental principles of our Government and the Judiciary. Anti-social activities will never provide a sufficient reason to attack the personal freedoms of citizens unless

<sup>10</sup> *S. Guin v. Grindlays Bank Ltd.*, 1986 SCC(Cri) 64: (1986) 1 SCC 654: 1986 Cri LJ 255; *Madheshwardhari Singh v. State of Bihar*, 1986 Cri LJ 1771 (Pat), *Mihir Kumar Ghosh v. State of West Bengal*, 1990 Cri LJ 26 (Cal).

<sup>11</sup> (1980) 1 SCC 98: 1980 SCC (Cri) 40, 47: 1979 Cri LJ 1045.

<sup>12</sup> (1978) 1 SCC 248: AIR 1978 SC 597

<sup>13</sup> *Hussainara Khatoon (IV) v. Home Secy.*, State of Bihar, (1980) 1 SCC 98, 105: 1980 SCC (Cri) 40, 45: 1979 Cri LJ 1045; *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544, 557: 1978 SCC (Cri) 468, 481: 1978 Cri LJ 1678.

<sup>14</sup> *Alijan Mja V. District Magistrate, Dhanbad* AIR 1983, SC 1130

<sup>15</sup> *Ankul Chandra Pradhan Vs. Union of India*, AIR 1997, SC 2814

in accordance with the need and the need to meet the requirements of the legal process taking into account the magnitude of the crime and no injustice done.<sup>16</sup>

## 10. Victims of crime are subject to the Constitution.

The Constitution of India contains various provisions that mandate the principle of compensation for victims. Article 41, which focuses on victim relief in a broad way, mandates, among other things, that the state will make effective provision of social assistance in the event of a disability and in other circumstances where a person is in need. Article 51-A makes it an important duty of every Indian citizen to protect and enhance the natural environment... and to compare living organisms and to develop humanity. With a sympathetic and extended interpretation, one can find here the basic principles of victimology in the view of Krishna Iyer.<sup>17</sup> In addition, the guarantee against unjustified deprivation of life and freedom (Article 21) contains provisions for the State to compensate victims of criminal violence, as stated by D.D. Basu<sup>18</sup>. Matters relating to the rights of the defendants are usually motivated by the people but issues of the rights of the victims are passed on to the top and are forgotten. There are very few legal provisions in Indian criminal law that favor victims but lawmakers have provided their examples in expanding the scope of these existing provisions.

The concept of compensation for the victim was changed by the Supreme Court on the grounds that it is the duty of the socialist state to protect the fundamental rights of the citizen against the actions of its organizations and the victims' humanitarian origins and social obligations. In the case of Rudal Sah v. State of Bihar,<sup>19</sup> the Supreme Court for the first time made it clear that the high court had the power to compensate for a violation of fundamental rights by exercising a constitutional right and reversing the principle of compensatory justice. in the legal texts of human rights.

## 11. The role of justice in overcoming poverty

Justice is the idea that all people, everywhere in the world, have the right to a dignified life. This means a life free from poverty, violence, discrimination or human rights violations. A world in which justice prevails is a world in which all people are united in society and all people can claim their rights to education, housing, and health care no matter how poor or rich they may be.

Poor people in developing countries tolerate such gross injustices that it adversely affects their ability to move forward. It undermines much of what they are trying to achieve. Cruel cycles occur periodically from generation to generation.<sup>20</sup>

<sup>16</sup> Rudrasin, preventive detention and constitution of India- Effect on human rights, legal services India, (Jan 29, 2016, 18:15 PM) <http://www.legalservicesindia.com/article/article/preventive-detention-and-constitution-of-india-effect-on-human-rights-1891-1.html>

<sup>17</sup> V.R.Krishna Iyer, *A Burgeoning Global Jurisprudence of Victimology and some compassionate Dimensions of India Justice to victims of crime*, 1999

<sup>18</sup> D.D.Basu, *Constitutional Law of India*, 223, (Wadhwa & Co., Nagpur, 2003).

<sup>19</sup> AIR 1983 SC 1086

<sup>20</sup> What does justice have to do with overcoming poverty?, Operation Uganda, (Jan 31, 2017, 20:17 PM) <http://operationuganda.org/blog/what-does-justice-have-do-overcoming-poverty>.

Today the link between poverty and crime is equally strong, with estimates of the number of poor people in the criminal justice system from two-thirds to eighty percent. So most of the people the system deals with are mostly poor. After two years of extensive discussions and discussions, UN members have agreed on a framework for global development efforts called the 2030 Agenda for Sustainable Development. According to former UN Secretary-General Ban Ki Moon it stands for "a human agenda, a program to eradicate poverty in all its forms, inevitably, everywhere, and leaving no one behind." Importantly, for the first time, this global vision includes the goal-setting of justice and governance, building on the limited focus of the Millennium Development Goals (MDGs), a set of agreed 2000 goals that provided the world with its first set of critical development priorities. Aims that include "access to justice" and ensuring universal access to legal IDs, such as birth registration, by 2030 are included in Goal 16 of the 17 Sustainable Development Goals that form part of Agenda 30.<sup>21</sup>

The basic premise for sustainable economic development is the rule of law. In communities with a weak legal system those without resources or access to justice are often denied the protection of their basic rights. It is estimated that some four billion people worldwide do not enjoy the protection that laws provide.

## 12. Vision of the Future Criminal Justice System

The mission of the state is to provide basic human rights, including the pursuit of life, freedom and peace. The status of these rights serves as a barometer to measure how effective the criminal justice system has been. Criminal proceedings must be organized and organized in order to effectively investigate the truth. Procedure should not act as a barrier to the search for truth. Similar to the natural powers of the Supreme Court under section 482 of the CrPC, other criminal courts must also be empowered to issue any order to ensure fair judicial decisions.

The need is to make the police a 'service' in a real sense, to meet the expectations of a democratic India. Therefore, the police should be made 'focused on activities'. In a democratic politics, such as in India, 'resource-oriented' and 'community-based' police can better serve the people and in this case " performance 'and' community policing 'should be accepted as appropriate. The 'democratic policing', in which public participation in policing and community policing is encouraged, can even help the police to defeat the people and face the threat of terrorism and sedition with their help.<sup>22</sup>

The Weakest Link to the Criminal Justice System Choosing prosecutions, service conditions, training, and directing prosecutors need immediate attention to enhance the quality of prosecutions and to achieve co-operation between investigations and prosecutions necessary for the administration of Criminal Justice. An independent judicial prosecution unit needs to be established, under the auspices of the proposed Criminal Justice Board, which has a well-trained, well-paid prosecution service to deliver high quality justice. The Criminal Justice System requires great expertise and accountability of the participants. A modern Criminal Court complex with single-window services should appear at least at regional headquarters. It will have a

<sup>21</sup> What Does Justice Have to Do with Overcoming Poverty? open society foundation, (Jan 31, 2017, 19:43PM) <https://www.opensocietyfoundations.org/explainers/what-does-justice-have-do-overcoming-poverty> .

<sup>22</sup> Shodhganga,chapter-6. Conclusion and Suggestions, (Jan30, 2017, 7:15AM) [http://shodhganga.inflibnet.ac.in/bitstream/10603/23693/10/10\\_chapter-6.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/23693/10/10_chapter-6.pdf).

police station and a ground interrogation room; police detention / small prison, and magistrates' courts on the first floor; prosecutors' offices, legal aid services, witness rooms etc on the second floor; court times on the third floor and administrative office on the fourth floor.<sup>23</sup>

## Conclusion

The current criminal justice system has not been able to achieve the goal of protecting health and property. It does not deter criminals because of the delays and uncertainties involved in the justice system. It provides a broader perspective on the police which puts the system at risk of fraud and corruption which threatens the fundamental rights of citizens.

During his keynote address at the national conference, Mr. Malimath said more than 80% of reported cases had not been punished due to gaps in the current criminal justice system as there was an urgent need to review the system by taking corrective action. at the right time.

A paradigm shift in India's Criminal Justice system has been a matter of time. the focus should be shifted from criminal justice to victim justice but should be regarded as consistent with non-violent justice.



<sup>23</sup> Ibid