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## INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND ITS RELATION WITH CRIMINAL JUSTICE SYSTEM

Sakshi Jain<sup>1</sup> & Kartik Malvia<sup>2</sup>

### INTRODUCTION

Human rights are a set of protections that each person is guaranteed under current international law.

Human rights are a set of standards that determine how individuals and communities are treated by states and non-state actors based on moral precepts pertaining to what society views as essential to leading a respectable life. To guarantee that everyone has the same possibilities to fulfil their lives to the fullest, these standards were set. These concepts are incorporated into national and international legal systems, which create protocols and processes to compensate alleged victims of violations of human rights and hold duty-bearers accountable for their actions.<sup>3</sup>

In nation such as India, it is quite common to come across too many situations in which an individual is put in danger of having his rights breached in a variety of different aspects of his life. They originate from the need for all people to live in an environment where they are treated with the respect, they deserve for being human. Human rights and dignity are recognised as “*the cornerstone of freedom, peace, and justice in the world*” in the “*Universal Declaration of Human Rights*”<sup>4</sup>. Human rights are the set of liberties and protections that every human being requires to live a dignified life. All individuals, regardless of gender,

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<sup>3</sup> Stephen P. Marks, “*Human Rights: A Brief Introduction*”, *Working paper, Harvard School of Public Health*. 1, 1-2 (2016).

<sup>4</sup> “*Universal Declaration of Human Rights, United Nations*”, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Feb 2, 2023).

race, nationality or religion, are born with the same basic set of human rights. All people have certain rights just by virtue of their humanity.

Human rights are a collection of internationally accepted values or standards defining proper conduct for people, also referred to as fundamental human freedoms. Usually, both national and international laws guarantee these rights. In common parlance, these are the “*inherent in all humans*” no matter their language, ethnicity, location, position or religion, and “*to which a person is naturally entitled simply because she or he is a human being.*”<sup>5</sup> They are impartial in the notion that everyone is held to the same standards, and they are universal in the sense that they apply everywhere and at any time. An obligation to abide by the human rights of others is imposed, together with the need for empathy and adherence to the rule of law. They have a right to be protected against arbitrary detention, torture, and death, and they should never be taken away without a fair trial.

Human rights protection under the United Nations has risen to prominence since the two world wars. This caused international law to adapt, and the idea of “*International Human Rights Law*” also grew out of this. Human rights aren’t just about individual rights; they’re also an important part of making sure that everyone in a country is treated fairly. India is one of the countries that signed the UDHR. As a result, it has put in place similar laws and rules to protect human rights. One important way to judge how civilized a society is by how well human rights are treated with respect and secured during criminal cases.<sup>6</sup>

## **HISTORIC BENCHMARKS**

Human rights history can be understood from many different angles. But here are some of the major historic events that brought human

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<sup>5</sup> The National, <https://www.thenational.com.pg/change-women%E2%80%99s-role-says-kidu/> (last visited Feb 2, 2023).

<sup>6</sup> P.N. Bhagwati, “HUMAN RIGHTS IN THE CRIMINAL JUSTICE SYSTEM”, Volume. 27, No. 1, Journal of the Indian Law Institute, 1, 10-11 (1985).

rights into existence. It can be traced back from the widespread recognition of *“The Cyrus Cylinder”* from Babylon (539 B.C.) to the present Human Rights laws and Acts.

1. In 539 B.C., *‘the first king of ancient Persia’, “Cyrus the Great”*, sent his army to capture over the city of Babylon. However, it was his subsequent efforts that truly advanced humankind. He set up racial equality and freed the slaves. He also said that everyone had the *“Right to choose their own religion”*.

This old record, which is now called the *‘Cyrus Cylinder’*, is now thought to be the world’s first list of Human Rights. It’s available in the same six UN languages as the UDHR first four Articles, and it contains similar protections.

2. Advancement of Human Rights over the time- The concept of human rights started to spread from Babylon to India, Greece, and thereafter Rome. Roman law was based on ideas that were logical and came from the essence of things, and it was in this context that the concept of “natural law” emerged as a result of seeing how people followed certain unwritten norms in ordinary life.
3. *“The Magna Carta in 1215”* then *“the Petition of Right in 1628”*, *“the United States Constitution in 1787”* afterwards *“the French Declaration of the Rights of Man and of the Citizen in 1789”* and *“the United States Bill of Rights in 1791”* all served as written originators to modern human rights declarations.

## **HUMAN RIGHTS AND CRIMINAL JUSTICE DELIVERY SYSTEM (CJDS)**

The extent to which a society upholds and defends human rights in the context of criminal proceedings is a key metric of that country’s level of civilization.

The interests of the accused and the basic interests of society will always be at odds with one another. The protection of one interest at the expense of the other is not sustainable, so a middle ground must be found. In a democracy in which the rule of law prevails, this responsibility is given to the judicial branch, and it is the judicial branch that is tasked with determining where the line should be drawn in order to strike a balance between the two competing interests without giving undue weight to either of them.<sup>7</sup> In order to achieve complete development of human resources that takes into account the fundamental human right against discrimination, it is vital to respect the rights of all segments of society on an equal basis. The Police, Judiciary, and Correctional Institutions, which are all part of the Criminal Justice System, play a big part in enforcing human rights and protecting the rights of the people who live in a country. The Criminal Justice System can control crime and punish criminals.

The Criminal Procedure Code of 1973 says that arrest and investigation are part of the pre-trial process. The CJDS is mostly made up of three important parts: *'the police, the courts, and prisons.'* Human rights have been called "fundamental rights" in India, which gives them a special place in the country. Basic rights are significant because it is believed that every citizen is entitled to them. According to Articles 32 and 226 of the Indian Constitution, respectively, citizens have "the right to move" to the Supreme Court and the High Courts if their fundamental rights are violated.<sup>8</sup>

The Indian Judiciary, one of the three branches of government, has emerged as a leader in the protection of human rights in the country. It serves this job primarily through progressive application and interpretation of the human rights principles enshrined under the

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<sup>7</sup> Ibid.

<sup>8</sup> Shruti Chaudhary, "Indian Criminal Justice System and Human Rights", Vol. 3, Issue 1, International Journal of Advance Research and Development, 271, 271-272 (2018).

Constitution of India. Even if human rights are widely acknowledged and respected, the extent to which they are actually implemented varies considerably from country to country. Human rights have not been upheld to the level that would be regarded as sufficient in India, notwithstanding notable improvements across the board. Furthermore, whenever these fundamental standards of a fair trial are disregarded by the various state agencies, according to international human rights abuse watchdogs, this is a breach of human rights.

The ruling by the Supreme Court in the historic case of “*Rudul Shah v. State of Bihar*”, which determined that people who had been wrongfully detained were entitled to compensation for the violation of their “*Fundamental rights under Part III of the Constitution of India*”, can also be used as a gauge of how far human rights protection has come.

It is crucial to remember that protecting human rights within the framework of the delivery of criminal justice cannot be restricted to merely protecting individuals who are accused, in custody, or convicted.

In *Moti Lal v. State of U.P.*<sup>9</sup>, The Supreme Court established the Fundamental Rights as Natural Rights. One of the most fundamental human rights in any system of criminal justice is the right to access the courts.

As shown by a number of Supreme Court decisions, the Constitution of India ensures the safeguarding of human rights in accordance with international norms. Human Rights Commissions at both the state and national levels are mandated by the ‘*Human Rights Commission Act of 1993*’. Their mandate is to look into claims of government inaction and violations of human rights and to offer solutions for ensuring that protections afforded by the Constitution and other laws are effectively put into practice.

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<sup>9</sup> *Moti Lal & Ors. vs. State of U.P.*, AIR 1951 All 257.

In the case *Ajay Hasia v. Khalid Mujib*<sup>10</sup>, the Supreme Court stated that it had a unique duty “to broaden the range and meaning of the? Fundamental rights and to enhance the human rights jurisprudence.”

There is an increasing crime rate as a result of interconnected economic, political, and social variables. The growth of the population, the hike in the unemployment rate, and the exclusion of some groups of people from opportunities are some of the reasons why the rate is increasing.

The incidence of organized crime has grown. When criminal organizations possess such power over material resources, means of protection, and lines of communication, they pose a grave threat to law enforcement and, by extension, to the very fabric of civilized society. Typically, organized crime diminishes the social, economic, and political structures of society. It is disturbing to see the level of fear that organized gangs have reached in today's society.

Moreover, there are some actors who play crucial role in Criminal Justice Delivery System, namely,

- a. Victim
- b. Accused
- c. Police
- d. Court
- e. Prosecutor
- f. Prisoners
- g. State, etc.

Policing in a democracy protects constitutional and legal rights and upholds individual dignity. Democracy is under risk when police disregard legal, constitutional rights, and due process. Police brutality allegations come from across the nation. It is well known that police

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<sup>10</sup> *Ajay Hasia v. Khalid Mujib Sehravardi & Ors.*, 1981 AIR 487, 1981 SCR (2) 79.

stations handle common crime complainants harshly, indifferently, and indignantly. Police fetishes usually target the poor and defenceless. Police violate suspects human rights in the name of fighting crime.<sup>11</sup>

The common law criminal justice system is founded on the presumption of innocence and the need to prove a crime beyond reasonable doubt and principals of penal policy.<sup>12</sup> A further flaw is the prosecution. Merit-based appointment of the prosecutor is rare. Appoint competent, political-neutral prosecutors. The prosecution must disclose all relevant evidence, including favourable to the accused.

Human rights breaches are committed in prisons just as often as by police. There are numerous instances of injustice within prisons, and the penal system has not altered significantly despite the publication of twenty reports on various aspects of jail reform, including the Mulla Committee report<sup>13</sup>.

Human rights in this country appear to be most severely violated by the state, which is supposed to defend them. The State's coercive procedures weaken the fundamentals of human rights. It has grown disturbing that executive power is becoming increasingly concentrated.<sup>14</sup>

## **INTERNATIONAL BILL OF RIGHTS**

International Bill of Rights is constituted of declaration and covenants adopted by the General Assembly, namely,

- A. *Universal Declaration of Human Rights* [1948]
- B. *International covenant on Civil and Political Rights* [ICCPR]
  - a. *First Optional Protocol of ICCPR*.

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<sup>11</sup> Supra 6.

<sup>12</sup> *State of Maharashtra v. Vasudeo Ramchandra Kaidalwar*, 1981 (3 SCC 199).

<sup>13</sup> Mukherjee, S., "Human Rights of Prisoners - India and The World", *Jadavpur Journal of International Relations*, 8(1), 99-121 (2004).

<sup>14</sup> Supra 6.

- b. *Second Optional Protocol of ICCPR aiming at Abolition of Death Penalty.*
- C. *“International Covenant on Economic, Social and Cultural Rights”.*  
*[ICESCR]*
  - a. *Optional Protocol of ICESCR.* (Complaints may be submitted by the group victim’s or individual of infringement of rights of ICESCR.)

International law’s UDHR is a landmark. The “path-finding” instrument lists inalienable rights and has had a significant impact on international and domestic developments. The UDHR has greatly affected human rights norms despite not being a legal document. The UDHR has 30 articles and a preamble. The first 21 articles include civil and political rights, and the next six [Arts. 22-27] economic, social, and cultural rights. The latter three [Arts. 28-30] apply to the whole Declaration.

Moreover, the UDHR suggests some limitations or restriction on the rights and freedom given in the UDHR same as the reasonable restrictions given under the Article 19 (2) to (6) of the Constitution of India.

The Covenant on Economic, Social, and Cultural Rights has a preamble, 31 articles, and five parts. It grants everyone self-determination. They can select their political status and develop economically, socially, and culturally. By law and other means, States Parties must execute the covenant. States Parties to the Covenant on ECOSOC and Cultural Rights are parties to the Protocol. The Optional Protocol of the ICESCR authorizes the committee to receive and review communications. Victims of International Covenant on Economic, Social, and Cultural Rights violations can file complaints. The committee will not accept complaints unless all domestic remedies have been exhausted. Anonymous or unwritten complaints are not accepted. The committee will help parties reach a covenant-based settlement. The

committee should not mistreat complainants.<sup>15</sup>

The preamble and 53 articles are divided into six parts, with an optional Protocol with 14 articles adopted in 1996. The Human Rights Committee can receive human rights complaints under the First Protocol of 1966. After reviewing the State's complaint and response, the committee makes its own conclusions and recommendations and informs the State Party and individual complainant.

The Second Protocol was agreed by the General Assembly on Dec. 1989 to abolish the death penalty. Article I forbid prosecution and requires Protocol states to abolish the death penalty. Accepted States are bound by this Protocol. India still uses the death sentence in "rarest of rare" cases<sup>16</sup>.

<b>Sr. No.</b>	<b>Name of Bill</b>	<b>Date of Adoption</b>	<b>Date of Enforcement</b>	<b>Ratification date for India</b>
<b>1.</b>	UDHR	10 Dec 1948	-	Indian Constitution is greatly influenced by the UDHR.
<b>2.</b>	ICCPR	16 Dec 1966	23 March 1976	10 April 1979
<b>3.</b>	First Optional Protocol of ICCPR	16 Dec 1966	23 March 1976	10 April 1979
<b>4.</b>	Second Optional Protocol of ICCPR	15 Dec 1989	11 July 1991	-
<b>5.</b>	ICESCR	16 Dec 1966	3 January 1976	10 April 1979
<b>6.</b>	Optional Protocol of ICESCR	10 Dec 2008	5 May 2013	-

<sup>15</sup> International Covenants on Human Rights, Ch. 38, 509, (511-513).

<sup>16</sup> *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

Furthermore, here is the table of comparison between the similar rights provided under the “UDHR (1948), ICCPR (1966), ICESCR (1966) and the Constitution of India (1950)” which gives a clear understanding about the Human rights which were initially there in UDHR and then ultimately, India also adopted these rights enshrined under the Constitution of India 1950.

The rights mentioned in this table are limited only to the rights of prisoners in the criminal justice delivery system.

Sr. No.	Name of Rights	UDHR (1948)	ICCPR (1966)	ICESCR (1966)	Constitution of India (1950)
1.	Right to live in Dignity.	Article 1	Article 10	-	Article 21 Maneka Gandhi v. UOI 1978 AIR 597
2.	Right to Life and personal liberty.	Article 3	Article 6(1) & 9(1)	-	Article 21
3.	Freedom from torture, cruel and inhuman treatment.	Article 5	Article 7	-	Judicially recognised under Article 21.
4.	Equality before law and Equal protection of laws.	Article 7	Article 26	-	Article 14
5.	Remedies for violation of Fundamental Rights.	Article 8	-	-	Article 32
6.	Right to fair trial.	Article 10	Article 14	-	Article 14, 21 & 39-A Zahira Habibullah sheikh v. State of Gujarat.
7.	Right to be presumed innocent until proven guilty.	Article 11	Article 14(2)	-	Article 21
8.	Protection in respect for conviction of offences/ Protection against ex-post facto law.	Article 11(2)	Article 15(1)	-	Article 20(1)
9.	Protection against detention in certain cases.	Article 9	Article 9(2), (3) & (4)	-	Article 22
10.	Right not to be compelled to be a witness against own	-	Article 14(3)(g)	-	Article 20(3)

	self.				
11.	Protection against double jeopardy.	-	Article 14(7)	-	Article 20(2)

Fig. 1 Provisions related to Human Rights in Criminal Justice System

As it can be observed from the fig.1 that our Constitution makers had given a huge importance to the Human rights while drafting the Constitution. The Universal declaration was adopted in December 1948 and after approximately one year our Constitution came into force and some of the human rights of UDHR were adopted subsequently. Furthermore, it can be observed that most of the Articles are commonly enshrined under the UDHR, ICCPR and the Constitution of India and some of the Articles are not common between four of them. Also, in ICESCR no common rights can be ensured because it only deals with the Economic, Social and Cultural aspect which cannot be considered in the Prisoner's rights.

## CONCLUSION

Human rights, which are based on moral principles about what society considers necessary for a decent life, control how states and non-state institutions treat individuals and communities. In this paper human rights and criminal justice system are dealt and a relation which is there between them is also look upon. Moreover, the rights of prisoners embodied under the International Bill of Rights have been highlighted thereof.