Research Methodology

Chapter wise Classification which provide the structure of the study regarding the contents of each chapter is as follows.

Chapter – I   Historical Perspective of Human Right.
Chapter –II  International covenants of Human Right.
Chapter –III Major Criminal Laws in India (related to Criminal Laws with Human Right)
Chapter-IV  What changes brought under Criminal Law in the Light of Human Right Concept.
Chapter-V   Judicial Pronouncement.

CONCEPT OF HUMAN RIGHTS – A STUDY WITH SPECIAL REFERENCE TO AMENDMENTS MADE INTO INDIAN CRIMINAL LAW

INTRODUCTION

There is a long mental distance between “May be True” and “Must be True”. The entire quest of criminal jurisprudence travels through this distance vis-à-vis preserving human rights. It is necessary to preserve “Human Rights” therein for the reason that, entire cobweb of Indian Criminal Jurisprudence runs through a single golden thread that “no matter ninety-nine culprits may escape but one innocent should not be implicated.” In 1960 when the Indian Penal Code was enacted, the Human Rights were there in existence but lacked their recognition as such. In other words, it can be said that they were at a pregnant stage then and in the light of changing circumstances emerged as an important pillar in any known system of jurisprudence. Current scenario is that hardly any known system of jurisprudence fails to reflect the presence of provisions which engraft and preserve Human Rights. The present research paper attempts to demystify the concept of Human Rights with respect to the Indian Criminal Law more particularly amendments thereto in the light of evolution of Human Rights.

CHAPTER – I :  HISTORICAL PERSPECTIVE OF HUMAN RIGHTS
1.1. What are Human Rights?

Human rights denote all those rights which are inherent in our nature and without which we cannot live as human beings.¹ Human rights are the rights which are possessed by every human being, irrespective of his or her nationality, race, religion, sex etc. simply because he or she is a human being.² In other words, the only qualification for possessing human rights is being human. Human rights are available to every human notwithstanding the fact that the same are provided to him/her by their municipal/national law. Basically Human Rights are a progeny of International Law. Human Rights found their existence on the International Statute Book for the first time in a grand manner in the Universal Declaration of Human Rights, 1948.³

However, with the passage of time, considering the mankind’s increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection⁴, human rights started leaving imprints on the municipal law as well. In municipal/national laws, the Human Rights came to recognized as fundamental rights, basic rights, natural rights, common rights etc.,

1.2. Conventions on Human Rights

The Conventions on Human Rights are popularly known as “International Bill of Human Rights” which comprises of the following:-

a. The Universal Declaration of Human Rights, 1948 [UDHR]

²Dr. S.K. Kapoor, (2005), Human Rights under International Law & Indian Law, Central Law Agency, Page No. 1, Para 2
⁴Supra Note No.2
b. The International Covenant on Civil and Political Rights, 1966 [ICCPR]

c. The International Covenant on Economic, Social and Cultural Rights, 1966 [ICESCR]

d. The optional Protocol to the International Covenant on Civil and Political Rights, 1966

Although the United Nations had in tacit terms indicated people’s determination to reaffirm their faith in fundamental human rights, the same per se was not sufficient as it lacked clarity in what human rights are as they were undefined. Therefore, for this reason a categorical statement defining all human rights was required at the international level. Consequently, the Universal Declaration of Human Rights came to be enacted.

It is regretfully submitted that, mere declaration of Human Rights also was not sufficient and this came to be realized for the next 2 decades. In the circumstances, the International Covenants on Civil and Political Rights and the International Covenants on Economic, Social and Cultural Rights came to be enacted in the year 1966. The reason for the advent of these Covenants was that where there is a right, there is a remedy i.e. *Ubi Jus Ibi Remedium*, but UDHR only spelt rights not remedies. It was realized that a right without remedy is no right in practicality. The beauty of ICCPR & ICESCR was that it bound the States party to it to implement the covenants. These covenants have achieved immense success at international level qua almost the entire globe is signatory to it. As many as 167 nations across the globe are parties to the ICCPR and as many as 7 nations have signed it but not ratified it. There are 18 nations which haven’t signed the ICCPR. India has not only signed but also ratified the ICCPR. Likewise, ICESCR is signed and ratified by 160 nations barring 25 and 7 who have signed it but not ratified it.

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5 Charter of the United Nations (1945), 2nd Preambular Paragraph
6 On 10th April, 1979
7 Who have neither signed it nor ratified it
The enactment of two different covenants in 1966 marks the era of water-tight compartmentalization of rights viz., Civil & Political Rights on one hand and Economic, Social and Cultural Rights on the other hand. It appears that this is a welcome step in the further progress of civilization in the 20th Century by engulfing finer graces of human civilization.

1.3. Human Rights and Laws relating to Criminals, Prisoners, Juvenile, Female Prisoners, Refugees etc.

1.3.1. CH R I M I N A L S -

Crime is an act of commission or omission, contrary to the municipal laws, tending to the prejudice of the community, for which the punishment can be inflicted as a result of judicial proceedings taken in the name of the state. Crime serves to wound the collective sentiments of the society and punishment serves to heal them.

However, I positively believe that persons are not criminals inherently. In fact, it is the state of happenings that make a person criminal. In the circumstances, we must target not the criminals but the situations which make persons criminal. Here steps the concept of Human Rights in the flux of criminal law. Certain rights must also be blessed on the Criminals for the reason that even criminals are a part and parcel of our society. It cannot be forgotten that crime is inevitable for any healthy society.

In today’s scenario, following rights are conferred on the Criminals in India which can be termed as Human Rights :-

**INDIAN PENAL CODE & CRIMINAL PROCEDURE CODE**

a. Right of private defense\(^9\)

b. Right to know grounds of arrest\(^10\)

\(^8\) Ratanlal & Dhirajlal, The Indian Penal Code (2006), Wadhwa & Company, Nagpur

\(^9\) Sections 96 to 106 of INDIAN PENAL CODE
c. Right to bail

d. Right to information about arrest to a nominated person

e. Right to decent search of female accused

f. Right to medical examination

CONSTITUTION OF INDIA

• Right to life, liberty and security of person

• Right to Equality before law

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10 Section 50(1) of CRPC – Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

11 Section 50(2) of CRPC – Where a police officer arrests without warrant any person other than a person accused of 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.

12 Section 50-A of CRPC – 1] Every police officer or other person making any arrest under this code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

2] The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

3] An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

4] It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

13 Section 51(2) of CRPC – 1] Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

14 Section 54 of CRPC – When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

2] Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the registered medical practitioner to the arrested person or the person nominated by such arrested person.
- Right to effective remedy
- Right against arbitrary arrest
- Right against ex-post facto laws
- Right against solitary confinement
- Right against bar fetters
- Right against handcuffing
- Right against delayed execution
- Right against custodial violence
- Right against public hanging
- Right against cruel and inhuman punishment
- Right to fair trial
- Right to speedy trial
- Right to legal assistance
- Right not to be imprisoned for inability to fulfill a contractual obligation
- Right to human dignity

Bare perusal of the aforesaid list and a careful look at the provisions of the laws in India imbibing Human Rights shall reveal that the even the criminals in India are treated with due respect to human dignity. A criminal in India is never met with retributive theory of punishment. Per contra, the criminals in India are met with reformative theory of punishment. It is believed in Indian Criminal Jurisprudence that the criminals must always be given chance to reform. Perhaps this approach is inspired by Barrister M.K. Gandhi’s birth in India. Mahatma Gandhi stated that Crime is a Disease, Criminal is a Patient and Punishment is a
Medicine. If that be so, the Indian Criminal Jurisprudence is good enough to give every chance even to hardcore criminals to reform. The Probation of offenders Act, 1958 is a glaring example of a law giving chance of reformation to first offenders. Also, the juveniles in India are given the chance to reform vide Juvenile Justice Care and Protection of Children Act, 2000.

1.3.2. PRISONERS - As stated above the prisoners in India are met with due respect to their Human Rights. First of all it is relevant to mention here the list of laws engrafted for the prisoners in India :

- Exchange of Prisoners Act, 1948
- Identification of Prisoners Act, 1920
- Prisoners Act, 1900
- Prisoners (Attendance in Courts) Act, 1955
- Prisons Act, 1894
- Repatriation of Prisoners Act, 2003
- Transfer of Prisoners Act, 1950

Besides the aforesaid laws enacted by the Parliament of India there are certain laws on the Statute Book of the States in India there are Jail Manuals of the respective states regulating the relation and conduct of the jail authorities with the prisoners and vice-versa. Chapter V of the Prisons Act, 1894 deals with the discipline of the prisoners. Sections 27 to 30 thereof provide for separation and association of the prisoners and their solitary confinement as also provide for keeping the prisoners sentenced to death separately. Chapter VI thereof deals with food, clothing and bedding of civil and un-convicted criminal prisoners. Chapter VII thereof deals with employment of prisoners. If the Court has ordered a prisoner simple imprisonment doing work in the Jail is optional for a prisoner whereas if rigorous imprisonment is ordered the same becomes mandatory. Chapter VIII deals with the Health of Prisoners. Chapter IX deals with the visits
being paid to the prisoners. Chapter X stipulates for offences committed in prisons and punishments therefor.

Be that as it may, one of the State Law regulating the prisoners is the Prison (Bombay Furlough and Parole) Rules, 1959. Under the said rules, Furlough is to be granted periodically for no particular reason whereas; Parole is to be granted only on a sufficient cause, such as cases of sever illness or death of any member of the prisoner’s family.

A mere glance and glimpse of the aforesaid Paras shall reveal that there are enough laws in India to guard the Human Rights of the prisoners.

1.3.3. J U V E N I L E – Care and protection of the juveniles is done in India vide the Juvenile Justice (Care and Protection) Act, 2000. The preamble to the said Act unequivocally declares the said object therefor. The said Act ably provides for constitution of Juvenile Justice Board which has exclusive powers to deal with all the proceedings under this Act relating to juvenile in conflict with law. Establishment of Special homes and observation homes is also postulated under the said Act for betterment of the juveniles and to reform them. A good thing about the phraseology of the Act is that, the word juvenile offenders/delinquents is not used rather the expression “juvenile in conflict with law” is used. This ipso facto demonstrates the idea behind the Act. Very minute features of the Act are found in Section 12 of the Act which provides for grant of Bail to the juveniles

15 An act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interests of children and for their ultimate rehabilitation and for matters connected therewith and incidental thereto.

16 BAIL OF JUVENILE – 1] When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit institution or fit person but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

2] When such person having been arrested is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.
as a rule unless the contingencies stipulated occur in which event the juvenile may be disentitled to bail. Not only this but also, the juvenile is never to be sent to prison rather be sent to observation home or place of safety as defined under the Act. Section 15 of the Act prescribes the orders that may be passed regarding juvenile. Section 16\textsuperscript{17} prescribes the orders that may not be passed against juvenile. Act also postulates for formation of a Child Welfare Committee. Further vide Chapter IV Rehabilitation and Reintegration measures are carved out for the juveniles.

Realizing the need to attack the situations which make or compel the juveniles to become criminal, the Government of India framed a NATIONAL CHARTER FOR CHILDREN, 2003.\textsuperscript{18} These Act and Charter ipso-jure would make it apparent that the Indian laws have the tools to mend the juvenile’s conflict with law. In the circumstances, the juveniles human rights tried to be protected as far as possible vide laws, charters etc. stated hereinabove.

1.3.4. \textbf{FEMALE PRISONERS} – Majority of the laws framed for the prisoners by and large apply equally to the male and female prisoners. However, female prisoners require more protection than men in certain contingencies. Like for e.g. pregnant female prisoners would require more nourished quality of food. Also, it is necessary to have different cells and barracks for the female prisoners. Every possible attempt is made under the laws stated hereinabove read with the relevant and applicable Jail Manuals to guard the decency requirements of the female prisoners.

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\textsuperscript{3} When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

\textsuperscript{17} \textbf{ORDER THAT MAY NOT BE PASSED AGAINST JUVENILE} - Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death, imprisonment for any term which may extend to imprisonment for life, or committed to prison in default of payment of fine or default of furnishing security:

\textsuperscript{18} Published in the Gazette of India, Extraordinary, No. F. 6-15/98-CW, Pt. 1, date 9.2.2004
Also, care is taken under the aforesaid cluster of laws so engrafted for prisoners as not to provide works/employments of heavy and risky nature to female prisoners considering their different standards of health and immunity requirements. Nowhere the laws suggest that the women in India are weak and that for this reason alone they require such a treatment. Per contra, to protect the Human Rights of the female prisoners it is necessary to understand what rights they require and act accordingly. Therefore, the laws in India are sufficient in this regard at least in this respect. However, it is desired that they must be implemented in their true letter and spirit.

1.3.5. **REFUGEES** - The refugees are persons deprived of the protection of the country of their nationality or, where they have no nationality, of the protection of the country of their former habitual residence.\(^{19}\) The term “Refugee” is defined U/A. 1 of the *Convention Relating to the Status of Refugees* of 28th July, 1951. A protocol relating to the Status of Refugees came to be added to this Convention on 31.1.1967.

In order to be recognized as a Refugee a person should fulfill following conditions :-

i. He must be outside the country of his nationality or if he does not possess the nationality of any country, he must be outside the country of his former residence

ii. He must be outside the country of his nationality or of his habitual residence owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and

iii. He is unable or owing to such fear, is unwilling to avail himself of the protection of the country of his nationality or of the country of his former habitual residence

**LEGAL STATUTS OF REFUGEES IN INDIA** - In India, there is no national legislation concerning refugees, their legal status and rights. They are treated as aliens and their problems are dealt with on an adhoc basis. The refugees in India are governed under the Registration of Foreigners Act, 1939, dealing with all the foreigners and the Foreigners Act, 1946 empowering

\(^{19}\) Dr. U.N. Chandra – Human Rights 2005, Allahabad Law Agency Publications
the State to regulate the entry, presence and departure of aliens in India. The Passport Act, 1920 and the Passport Act, 1967 govern the entry and departure of persons, are also made applicable to the refugees. Moreover certain provisions of the Indian Constitution like Article 14, 21 and 25 also apply to refugees by virtue of their being applicable to citizens and non-citizens alike.\textsuperscript{20}

1.4. Position of Human Rights :- The concept of Human Rights as it is understood today has evolved over the centuries. Though the expression Human Rights seems to have a modern face, human rights are as old as human civilization. Human rights have existed, in however, nascent a form, ever since man, as a gregarious animal, has lived in communities, families, clan, tribe, village, town or nation and now in an independent world community. Looking at the concept of Human Rights from a historical perspective, it would be seen that it is neither entirely western in origin nor so modern. It is the crystallization of values that are common heritage of mankind.\textsuperscript{21} Hence the position of human rights evolution is attempted to be studied under following heads :-

1.4.1. Ancient India Period - The concept of Human Rights is as old as the ancient concept of natural rights based on natural law. The expression Human Rights is of recent origin emanating from International Charters and Conventions especially in the Post Second World War Period. But these rights had been recognized and respected by all religions in ancient India. It could be found that the Rig Veda cites three basic rights as basic human rights namely Body, Dwelling Place and Life. The Maha Bharta speaks about the importance of freedoms of individuals in a state. It also sanctions revolt against the king who is oppressive and fails to perform his functions of protection. In Manu Sanghita, Manu developed three notions of Civil, Legal and Economic rights. Buddhism and Jainism emphasized the principles of equality and non-violence. Even Muslim rulers even formulated rules for protection of women and children during war. Emperor Akbar took certain measures for the protection of rights of the citizens.\textsuperscript{22}

\textsuperscript{20} Ibid
\textsuperscript{21} GENESIS OF HUMAN RIGHTS IN INDIA, SUNIL DESHTA AND LALIT DADWAL
\textsuperscript{22} www.wbhrc.nic.in/genesis.htm last visited on 5.8.2012
1.4.2. Medieval Period :- Human Rights in Medieval India can be traced back to Muslim era. During Muslim era in India, especially in the Pre-Mughal Period, there were series of cultural, social and political stressed and strain on the style and way of life of Hindus. The Muslim Rulers in India were fundamentalist and despotic who forced upon the Hindus their own laws, customs and religious practices. It was however at a later stage that muslim State in India became considerably modified in its form. Some of the Mughal Rulers especially Akbar, the great, brought about a basic change in the style of Mughal administration. He adopted a policy of tolerance and non-discrimination towards Hindus and saw that no injustice is committed in his realm. Hence, it is not wrong to say that, with Akbar a new era began in Mughal History of India in the field of Human Rights with his policy of universal reconciliation and tolerance. His policy of tolerance and non-discrimination towards Hindus was followed by his son Jahangir too. During the reign of Aurangzeb, the concept of justice was made less intricate and more expeditious than in the former reigns. Corruption in judiciary was made a crime for the first time. If delay in justice resulted in loss to a party, the aggrieved party could be compensated by the judge himself.

The right of an accused to be released on bail did exist during Mughal Rule in India. Similarly the right to benefit of doubt was known to muslim jurisprudence in the administration of criminal justice. The benefit of doubt was known as “Shuba” (doubt) which entitled an accused to be acquitted. 23

1.4.3. Modern Time :- The evolution of Human Rights in modern times can be categorized as under viz., as in the Pre and Post Independence Period. This helps us to note the genesis of the Human Rights in the right chronology.

1.4.3.1. Pre-Independence Period -

1.4.3.2. Post-Independence Period - Though UN Charter had been adopted at San Francisco on June 25, 1945, the term "Human Rights" does not
find place in the Indian Constitution. Be that as it may, India was a signatory to the UN Charter and had ratified the same. This is surprising indeed. However, Under Article 51 of the Constitution of India it edicts to "foster respect for international law and treaty obligations in the dealings of organized people with one another and encourage settlement of international disputes by arbitration. It is worthwhile to mention here that, India being an original member of the UN and a member state which voted for the adoption of the Universal Declaration of Human Rights on 10.12.1948, has imbibed almost each and every fabric of human rights into the entire length and breadth of its Constitution. Therefore, though the words Human Rights do not find mention in the constitution of India, they are very much a part of it.

In order to appreciate the concept of human rights under the Indian Constitution, it is necessary to advert attention to the rights whether fundamental, constitutional or legal conferred upon the humans on the territory of India. A bare look at the aforesaid comparative analysis vis-à-vis Constitution of India and the International Bill of Human Rights makes it amply clear that the provisions of Human Rights are very well reflected in the Indian Constitution also. In the Post Independence period, a new law came to be enacted i.e. the Protection of Human Rights Act, 1993. The preamble to the Act reveals that it provides for constitution of a National Human Rights Commission, State Human Rights Commission and Human Rights for better protection of Human Rights and for matters connected therewith and incidental thereto. The functions of the commission are delineated in the

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Functions of the Commission.- The Commission shall perform all or any of the following functions, namely:-
(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of-
(i) violation of human rights or abetment thereof; or
(ii) negligence in the prevention of such violation, by a public servant;
(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
(c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where Demons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

CHAPTER – II: INTERNATIONAL COVENANTS OF HUMAN RIGHTS

This chapter attempts to unpack the inter-relation inter-se the International Covenants on Human Rights vis-à-vis the Constitution of India. Their co-relation shall reveal that not only do they overlap each other in certain aspects but also provide a fresh lease of life for the advent of many more new human rights in the light of changing circumstances. Sketch- wise description of these International Covenants and the Constitution of India would look like an emblem of Olympic Games.

CONSTITUTION OF INDIA

UNIVERSAL DECLARATION OF HUMAN RIGHTS [UDHR] & THE CONSTITUTION OF INDIA

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<th>RIGHTS</th>
<th>UDHR</th>
<th>CONSTITUTION OF INDIA</th>
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<td>CIVIL AND POLITICAL RIGHTS</td>
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<td>Right to life, liberty and security of person</td>
<td>Art. 3</td>
<td>Art. 21</td>
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<tr>
<td>Prohibition of slavery, slavery trade etc.</td>
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<td>Equality before law and non-discrimination</td>
<td>Art. 7</td>
<td>Art.14 &amp; 15(1)</td>
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<tr>
<td>Right to effective remedy</td>
<td>Art. 8</td>
<td>Art.32</td>
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(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
(g) undertake and promote research in the field of human rights;
(h) spread human rights literacy among various sections, of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;
(j) such other functions as it may consider necessary for the promotion of human rights.
<table>
<thead>
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<th>Right against arbitrary arrest</th>
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<td>Right against ex-post facto laws</td>
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<td>Right to freedom of movement</td>
<td>Art.13(1)</td>
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<td>Right to own property and not to be deprived of property</td>
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<td>Art.20(1)</td>
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<td>Right to social service</td>
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<td>Right to form and to join trade unions</td>
<td>Art.23(4)</td>
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**ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

<table>
<thead>
<tr>
<th>Rights to work, to free choice of employment, to just and favourable conditions of work etc.</th>
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<tr>
<td>Right to equal pay for equal work</td>
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<td>Right to rest and leisure</td>
<td>Art.24</td>
<td>Art.43</td>
</tr>
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<td>Right of everyone to a standard of living adequate for him and his family</td>
<td>Art.25</td>
<td>Art.39(a) &amp; 47</td>
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<td>Right to education and free education in the elementary and fundamental stages</td>
<td>Art.26(1)</td>
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</tr>
<tr>
<td>Right to a proper social order</td>
<td>Art.28</td>
<td>Art. 38</td>
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Certain rights enumerated in UDHR are not specifically found in the Constitution of India are as under :-

a. Rights not to be subjected to torture, or to cruel, inhuman treatment or punishment Art. 5

b. Right to recognition everywhere as a person before law Art. 6

c. Right to full equality to a fair and public hearing by an independent and impartial tribunal Art.10

d. Right to be presumed innocent until found guilty according to law in public trial Art. 11

e. Right to privacy Art. 12

f. Right to leave any country, including his own, and to return to this country Art. 13(2)

g. Right to nationality Art. 15(1)

h. Right to marry and found a family Art. 16(1)

i. Right to take part in the government of his country Art.21(1)

j. Right to special care and assistance to mothers and children and same social protection for all children, whether born in or out of wedlock Art. 25(2)

k. Right of parents to choose the kind of education for their children Art. 26(3)

l. Right of everyone to freely participate in the cultural life of the community to enjoy arts and to share in scientific advancement and its benefits Art. 27(1)
m. Right of everyone to the protection of morale and material interests resulting from any scientific, literary or artistic production of which he is the author Art. 27(2)

Despite the fact that the aforesaid rights are not specifically enumerated in the Constitution of India they are carved by way of judicial pronouncements as an emanation of Article 21 thereof:

✓ Right against solitary confinement

✓ Right against bar fitters

✓ Right against handcuffing

✓ Right against delayed execution

✓ Right against custodial violence

✓ Right against public hanging

✓ Right to health care or doctors assistance

✓ Right to Shelter

✓ Right to release and rehabilitation of bonded labour

✓ Right of inmates of protective homes

✓ Right against cruel and inhuman punishment

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25 Sunil Batra Vs. Delhi Administration 1978 (4) SCC 494
26 Charles Gurumukh Sobhraj Vs. Delhi Administration AIR 1978 SC 1514
27 Prem Shankar Shukla Vs. Delhi Administration AIR 1980 SC 1535
28 T.V. Vatheeswaran Vs. Stat of Tamil Nadu AIR 1983 SC 361
29 Sheela Borse Vs. State of Maharashtra AIR 1983 SC 378
30 Attorney-General of India Vs. Lachma Devi AIR 1986 SC 467
31 Pt. Parmanant Katara Vs. Union of India AIR 1989 SC 2039
32 M/s. Shantistar Builders Vs. Narayan Khimalal Totame AIR 1990 SC 630
33 Neerja Choudhary Vs. Stat of MP AIR 1984 SC 1099
34 Upendra Baxi Vs. State of UP 1983(2)SCC 308
35 Supra Note 12
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS [ICCPR] & THE
CONSTITUTION OF INDIA

Certain rights enshrined in ICCPR are specifically enumerated in the Constitution of India while certain few of them are not. Following tabular list would make it aptly clear:

<table>
<thead>
<tr>
<th>RIGHTS</th>
<th>ICCPR</th>
<th>CONSTITUTION OF INDIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to life and personal liberty</td>
<td>Art. 6(1) &amp; 9(1)</td>
<td>Art. 21</td>
</tr>
<tr>
<td>Prohibition of traffic in human beings and forced labour</td>
<td>Art. 8(3)</td>
<td>Art. 23</td>
</tr>
<tr>
<td>Protection against arrest detention in certain cases</td>
<td>Art. 9(2) &amp; (3)</td>
<td>Art. 22</td>
</tr>
<tr>
<td></td>
<td>&amp; (4)</td>
<td></td>
</tr>
<tr>
<td>Right to movement</td>
<td>Art. 12(1)</td>
<td>Art. 19(1)(d)</td>
</tr>
<tr>
<td>Right to equality</td>
<td>Art. 14(1)</td>
<td>Art. 14</td>
</tr>
<tr>
<td>Protection against self-incrimination</td>
<td>Art. 14(3)(g)</td>
<td>Art. 20(3)</td>
</tr>
<tr>
<td>Protection against double-jeopardy</td>
<td>Art. 14(7)</td>
<td>Art. 20(2)</td>
</tr>
<tr>
<td>Protection against ex-post facto law</td>
<td>Art. 15(1)</td>
<td>Art. 20(1)</td>
</tr>
<tr>
<td>Freedom of conscience and free profession, practice and propagation of religion</td>
<td>Art. 18(1)</td>
<td>Art. 25</td>
</tr>
<tr>
<td>Right to freedom of speech and expression</td>
<td>Art. 19(1) &amp; (2)</td>
<td>Art. 19(1)(a)</td>
</tr>
<tr>
<td>Right to assemble peaceably and without arms</td>
<td>Art. 21</td>
<td>Art. 19(1)(b)</td>
</tr>
<tr>
<td>Right to form associations or unions</td>
<td>Art. 22(1)</td>
<td>Art. 19(1)(c)</td>
</tr>
<tr>
<td>Right to equality of opportunity in matters of public employment</td>
<td>Art. 25(c)</td>
<td>Art. 16(1)</td>
</tr>
<tr>
<td>Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth</td>
<td>Art. 26</td>
<td>Art. 14 &amp; 15(1)</td>
</tr>
<tr>
<td>Protection of interests of minorities and right of minorities to establish and administer educational institutions</td>
<td>Art. 27</td>
<td>Art. 29 &amp; 30</td>
</tr>
</tbody>
</table>

JUDICIAL PRONOUNCEMENTS & ICCPR
Certain rights which are though not specifically enumerated in PART III of the Constitution of India are still fundamental rights of the Constitution by way of judicial pronouncements. Notably, some of these creatures of statutory interpretation are also reflected in the ICCPR.

a. Right to travel abroad\(^{36}\) U/A. 21 to COI – Article 12(2) of ICCPR

b. Right to Privacy\(^{37}\) U/A. 21 to COI – Article 17(1) of ICCPR

c. Right to fair trial\(^{38}\) U/A. 21 to COI – Not specifically found in ICCPR

d. Right to speedy trial\(^{39}\) U/A. 21 to COI – Article 9(3) of ICCPR

e. Right to legal assistance\(^{40}\) U/A. 21 to COI

f. Right not to be imprisoned for inability to fulfill a contractual obligation\(^{41}\) U/A. 14, 19 & 21 – Art. 11 of ICCPR

g. Right to compensation of unlawful arrest and detention\(^{42}\) U/A. 21 to COI – Art. 9(5) of ICCPR

h. Right to human dignity\(^{43}\) U/A. 21 to COI – Art. 10(1) ICCPR

i. Right to information\(^{44}\)

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\(^{36}\) Satwant Singh Sawhney Vs. D. Ramrathnam A.P.O., Govt. of India, New Delhi AIR 1967 SC 1836, see also Maneka Gandhi Vs. Union of India AIR 1978 SC 597


\(^{38}\) Police Commissioner, Delhi Vs. Registrar, Delhi High Court, AIR 1997 SC 95


\(^{40}\) M.H. Hoskot Vs. State of Maharashtra (1978) 3 SCC 544, Hussainara Khatoon (IV) Vs. Home Secretary, State of Bihar, 1980(1) SCC 84

\(^{41}\) Jolly George Varghese Vs. The Bank of Cochin AIR 1980 SC 470


\(^{43}\) Jolly George Varghese Vs. The Bank of Cochin AIR 1980 SC 470
j. Right to Education\textsuperscript{45}

k. Right to National Flag Hoisting\textsuperscript{46}

INTERNATIONAL COVENANTS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND CONSTITUTION OF INDIA

<table>
<thead>
<tr>
<th>RIGHTS</th>
<th>ICESCR</th>
<th>CONSTITUTION OF INDIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to equal pay for equal work</td>
<td>Art. 7(a)(i)</td>
<td>Art. 39(d)</td>
</tr>
<tr>
<td>Right to opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment for children</td>
<td>Art. 10(3)</td>
<td>Art. 39(f)</td>
</tr>
<tr>
<td>Right to work, to education and to public assistance in certain cases</td>
<td>Art. 6(1)</td>
<td>Art. 41</td>
</tr>
<tr>
<td>Right to just and humane conditions of work and maternity relief</td>
<td>Art.7(b) &amp; 10(2)</td>
<td>Art. 42</td>
</tr>
<tr>
<td>Right to living wage etc. for workers</td>
<td>Art.7(a)(ii) &amp; (d)</td>
<td>Art. 43</td>
</tr>
<tr>
<td>Right to early childhood care and education to children below the age of 6 years</td>
<td>Art. 13(2)(a)</td>
<td>Art. 45</td>
</tr>
<tr>
<td>Right to raised level of nutrition and standard of living and improved public</td>
<td>Art. 11</td>
<td>Art. 47</td>
</tr>
</tbody>
</table>

\textsuperscript{44} State Vs. Raj Narain AIR 1975 SC 865  
\textsuperscript{45} J.P. Vs. State of A.P. AIR 1993 SC 2178  
\textsuperscript{46} Union of India Vs. Navin Jindal AIR 2004 SC 1559
CHAPTER – III: MAJOR CRIMINAL LAWS IN INDIA

Indian criminal laws can be broadly divided into two wings viz. Major Criminal Acts and Minor Criminal Acts.\textsuperscript{47}

MAJOR CRIMINAL ACTS :-

1. Criminal Procedure Code 1973
2. Indian Penal Code, 1860
3. Indian Evidence Act, 1872

MINOR CRIMINAL LAWS

A. Anti-Corruption Laws (Amendment) Act, 1967
B. Anti-Hijacking Act, 1982
C. Arms Act, 1959
D. Assam Criminal Law Amendment (Supplementary) Act, 1934
E. Bengal Suppression of Terrorist Outrages (Supplementary) Act, 1932
F. Central Reserve Police Force Act, 1949
H. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
I. Criminal Law Amendment Act, 1932

\textsuperscript{47} Please note here that though I have attempted to cover as many Acts as possible it may not be construed that this research paper is exhaustive qua the Criminal Acts/Laws in India are concerned. The list delineated hereinabove is illustrative only.
J. Criminal Law Amendment Act, 1938
K. Criminal Law Amendment Act, 1961
L. Delhi Police Act, 1978
M. Delhi Special Police Establishment Act, 1946
N. Dowry Prohibition Act, 1961
O. Economic Offences (Inapplicability of Limitation) Act, 1974
P. Essential Commodities Act, 1955
Q. Exchange of Prisoners Act, 1948
R. Explosive Substances Act, 1908
S. Foreign Exchange Management Act, 1999
T. Identification of Prisoners Act, 1920
U. Immoral Traffic (Prevention) Act, 1956
V. Indecent Representation of Women (Prohibition) Act, 1986
W. Indo-Tibetian Border Police Force Act, 1992
X. Information Technology Act, 2000
Y. Juvenile Justice (Care and Protection of Children) Act, 2000
Z. Medical Termination of Pregnancy Act, 1971
AA. Narcotic Drugs and Psychotropic Substances Act, 1985
BB. National Security Act, 1980
CC. Police (Incitement to Disaffection) Act, 1922
DD. Police Act, 1888

EE. Police Act, 1949

FF. Police Forces (Restriction of Rights) Act, 1966

GG. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

II. Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980

JJ. Prevention of Cruelty to Animals Act, 1960

KK. Prevention of Damage to Public Property Act, 1984

LL. Prevention of Food Adulteration Act, 1954

MM. Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

NN. Prevention of Insults to National Honour Act, 1971


PP. Prevention of Seditious Meetings Act, 1911

QQ. Prevention of Terrorism (Repeal) Act, 2004

RR. Prisoners (Attendance in Courts) Act, 1955

SS. Prize Chits and Money Circulation Scheme (Banning) Act, 1978

TT. Probation of Offenders Act, 1958

UU. Protection of Civil Rights, 1955
VV. Protection of Human Rights, 1993

WW. Protection of women from Domestic Violence Act, 2005

XX. Public Gambling Act, 1867

YY. Repatriation of Prisoners Act, 2003

ZZ. Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989

AAA. Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

BBB. Special Court (Trial of offences relating to securities) Act, 1992

CCC. Special Criminal Courts (Jurisdiction) Act, 1950

DDD. Suppression of Unlawful Acts against safety of Civil Aviation Act, 1982


FFF. Telegraph Wires (Unlawful Possession) Act, 1950

GGG. Terrorist Affected Areas (Special Courts) Act, 1984

HHH. Transfer of Prisoners Act, 1950

III. Unlawful Activities (Prevention) Act, 1967

Over and above these central criminal laws there are criminal laws enacted by the respective State Governments in India. Some of them are

a. Bombay Abkari Act, 1878

b. Civil Jails Act, 1874

c. Bombay District Police Act, 1867
d. Bombay Police Act, 1951

e. Bombay Prevention of Begging Act, 1960

f. Bombay Prevention of Gambling Act, 1887

g. Maharashtra Prevention of Communal Anti-social and other Dangerous activities Act, 1981

h. Maharashtra Prevention of Dangerous Activities of Slum-lords, Bottlegars and Drug Offenders Act, 1981

i. Maharashtra Prevention of Defacement of Property Act, 1995

j. Maharashtra Preventive Detention Act, 1970

k. Bombay Prohibition Act, 1949

l. Maharashtra Prohibition of Ragging Act, 1999

While writing my research paper I shall attempt to demystify the variegated aspects of these variegated laws in the light of the concept of Human Rights.

CHAPTER – IV: WHAT CHANGES WERE BROUGHT UNDER CRIMINAL LAW IN THE LIGHT OF HUMAN RIGHTS CONCEPT

The protection of human rights through the criminal justice delivery system is an indispensable feature of any system governed by the rule of law. The protection of human rights have been acknowledged to varying extents across time, but since the second world war, the universality of human rights has been recognized by the United Nations as inherent in the very nature of human beings – a reflection of their common humanity.48

It must, however, 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. In fact it can very rightly

48 Human Rights and Practice, Lord Lested and David Pannick eds. Buttersworths, 1999 page No.1
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.\textsuperscript{49}

Detailed provision/section-wise study of the amending acts vis-à-vis the human rights would be made exhaustively in the research paper.

CHAPTER – V: JUDICIAL PRONOUNCEMENTS

The Supreme Court of India displayed remarkable craftsmanship to promote and protect human rights. Through, what Justice Krishna Iyer termed “judiatrics”, the Apex Court has succeeded in incorporating some of the Directive Principles of State Policy into Part III of the Constitution – a judicial creativity commended even by the highest courts of other jurisdictions. For instance, Justice Albert Sachs of the South African Constitutional Court once had occasion to comment that, “the Supreme Court of India smuggled the rights from Part IV to Part III of the Constitution.”\textsuperscript{50}

The present paper attempts to demystify the topic further vide amendments to criminal laws in force in India in the light of development of the concept of Human Rights.

\textsuperscript{49} Ibid
\textsuperscript{50} Ibid