

Constitutional Safeguards Vis-À-Vis Criminal Justice System in India: An Analysis in the Light of Precedents

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Abstract: The association of criminal justice system and the constitution is one which cannot be ignored. Where the constitution plays the role of being the grundnorm for a country and grants several rights to its citizens, the criminal justice system plays the role of guardian of those rights by protecting them and punishing the wrongdoers. The criminal justice system of a country is highly dependent upon the constitution as it aspires for regular support from it to maintain law and order in the territory. The author in this research paper discusses in length the support granted to criminal justice system by the constitution through citing revolutionary changes brought in Indian Scenario by various landmark rulings. The author has also tried to throw ample amount of light and briefly elaborate the inter linkage between the provisions of the criminal legislations and the Constitution of India.

Keywords: Criminal justice system, constitutional support, fundamental rights, offences.

1. Introduction

“Law is a system of social control, when we are concerned with it, we are concerned with the question of how much liberty is the most appropriate.....”¹ With the advancement of times, the law prevailing in the nation has broadened its dimensions and given a new perspective to the dispensation of justice in criminal offences. The constructive interpretation of the rights provided in the Indian Constitution has given a new direction to the legislations governing the criminal law of the country. Through the years, enormous litigation has been brought in to validate or invalidate various laws introduced by the legislature and the hon’ble Supreme Court of India while judiciously using its powers has provided the support to the provisions. The basic purpose of law is to maintain peace and order in society. The law of crimes penalizes the wrong doers so that such an activity is not repeated and the conduct of the offender is improved. The criminal law of a country is regarded as one of the most visible manifestation of a state’s connection with its people. Above everything, what matters the most is the human rights granted to the citizens. These are the rights that a human possesses due

to the virtue of his birth and guaranteed by the Fundamental Rights of the Constitution. These rights are considered fundamental because they are necessary for an individual’s entire intellectual, moral, and spiritual development.² The denial of these rights will stifle one’s moral and spiritual growth, as well as his potential.³ In a parliamentary system, where those who govern the country are representatives of the majority party in the legislature and can get bills passed according to their preferences, the risk of invasion on citizens’ liberties is particularly high. The proponents of including these rights in the Indian Constitution contend that enshrining them in the constitution gives them a sacred status that legislators will not readily violate. The paper discusses the inter linkage of various parts of the constitution to different areas of criminal law.

2. Constitutional Validity of Various Provisions of Criminal Law

With advent of criminal jurisprudence and studies all over the world, the law focuses more on going to the roots of the reasons for committing a crime rather than punishing a person for a crime without scrapping the layers and finding the reasons for the commitment of such an offence. It has been well understood with the growing criminal jurisprudence that reformative theory punishment is more encouraged compared to the classical retributive theory. The law emphasizes more on improving its citizens rather than executing them or giving them harsher punishments. While upholding the constitutional validity of death sentence in *Bachan Singh v. State of Punjab*⁴, the apex court also supplemented with some illustrative ‘aggravating and mitigating circumstances’ that could be presumed as indicators in determining or granting death sentence. The court stated that if a murder was committed with pre-mediation and extreme cruelty, involves extraordinary degeneracy or if the murder is committed against a member of any of the armed forces or is a public servant, the sentencing court can penalize with death sentence in its full discretion. The constitution of the country thus supports the concept of capital

¹ Wills, *Constitutional Law and the United States*, 477-82

² Dr. J. N. Pandey, *Constitutional Law of India* 55 (Central law agency, Allahabad, 53rd edn., 2016)

³ *ibid*

⁴ AIR 1980 SC 898

punishment in rarest of rare cases that too especially on special grounds and is a mandate to be treated as an exceptional punishment.

The constitution regulates somewhat of the procedure in granting of capital punishment in certain offences. Every death penalty has to be confirmed by the High Court. There also exists a right to appeal for the sentenced person. The person who has been granted with a death sentence with due regard to the Section 379 of criminal procedure code and Article 136 of the constitution which provides for appeal by special leave to the hon'ble Supreme Court. Apart from the provision of appeal, the constitution of India also provides for mercy petitions. Article 72 provides that any individual convicted of any offence by court martial, including an offence against any law relating to a matter to which the executive power of the Union extends, or in all cases in which the sentence is death may be granted pardons, respites, or remissions of punishment, or their sentence may be suspended, remitted, or commuted by the president of the country.⁵The governor of the state also holds the same power due to the virtue of Article 161. It is not a matter of grace or entitlement, but rather a vital constitutional obligation to be carried out by the highest authority while bearing in mind the greater public interest and wellbeing of the society.⁶Thus, it can be seen how the constitution provides constant support towards the deliverance of justice in criminal proceedings where the accused are sentenced with death penalty.

The nexus between the constitution and the criminal law is closely knitted. The apex court has held any that the constitutional validity of any law which is alleged to be depriving a person of his personal liberty can be checked through whether it stands the test of Article 21, 14 as well as 19 of the constitution often referred as invoking of Golden Triangle.⁷The fundamental rights are not considered mutually exclusive but are treated as a single scheme in the constitution. The court with respect to the Article 19, 21 & 14 also stated- "Their waters must mix in order to form the great river of unhindered and impartial justice. It is neither realistic nor beneficial to attempt to separate various aspects of human freedom from the purposes of their protection., and in fact would work against the very objectives of such protection, as previously stated."⁸

The same principle was reaffirmed in *Joseph Shine v. Union of India*⁹, wherein the apex court through the construction of basic fundamental rights held 150 years old law relating to adultery unconstitutional and arbitrary. Along with section 497 of Indian Penal Code, the court also declared Section 198 of Cr.P.C which prescribes for procedure for filing a complaint regarding adultery as unconstitutional. The court held that the provisions are liable to be struck down as they infringe on the substantive notion of equality and is thus violative of Article 14 of the constitution of India. Criminalizing the act of adultery makes it impossible for the law to suffice the criteria set by

article 21 as the same equates a woman's value to that of chattel and gives legislature's approbation to a male's control over the sexuality of his partner. The concept of law and society are dynamic and it has been held numerous times that it's not necessary that each fundamental right has to be included instead the law provides room for purposive and constructive interpretation. The Part-III of the Indian constitution is itself a mine of rights and its successful interpretation makes it easy to comprehend modern day problems in the dispensation of criminal justice.

Article 21 of being the umbrella of various fundamental rights has been interpreted and used by the courts to uphold the constitutional validity of various provisions of Indian Penal Code. This was the case in where the apex court held that the right to life guaranteed under constitution, it is clear that Article 21 does not include the right to die, which provides direct justification for Sections 306 and 309 of the Indian Penal Code, which impose severe penalties for abetment of suicide and attempt to commit suicide, respectively.¹⁰The nature of the fundamental rights granted to the citizens is not absolute. There are certain reasonable restrictions which can be imposed and laws can be exercised keeping these reasonable restrictions in mind. In *Navtej Singh Johar v. Union of India*¹¹, the court held that criminalization of consensual acts between same gender couples by Section 377 of Indian penal Code amounts to be an unreasonable restriction, public decency and morality cannot be exaggerated beyond a logically coherent level, and they cannot be acknowledged as valid grounds for restricting the LGBT community's fundamental rights to freedom of expression and choice.

3. Trial Conduction and Constitutional Support

The three basic considerations that have been kept in mind in while drafting the criminal procedure code are fair trial, avoidance of delay in investigation/trial and fair deal to the poorer section. The constitution through its articles also supplements to the same causes. Article 20 of the constitution provides protection in the event of a conviction for a criminal offence. Clause (1) of Article 20 serves as a safeguard against ex post facto law, which means that no one can be convicted of any crime other than a violation of the 'law in force' at the time of the offense's commission, as long as the law was in force at the time of the offense's commission. It imposes a limitation upon the powers of the legislature to make retrospective criminal laws. Clause (2) imbibes the common law principle of *nemo debet vix vexari*. This means that no one should be placed in jeopardy more than once for the same offence. According to the primary principle of criminal law, which serves as the foundation of English jurisprudence, a defendant is presumed innocent until proven guilty.¹² Article 20(3) resonate this principle as well as fifth amendment of the American Constitution that no person can be forced to be a witness against

⁵ The Constitution of India, art. 72

⁶ *Devender Pal Singh Bhullar & Anr v. State of NCT of Delhi*, AIR 2013 SC 1975

⁷ *Maneka Gandhi v. Union of India*, AIR 1978

⁸ *ibid*

⁹ (2018)2 SCC18

¹⁰ *Gian Kaur v. State of Punjab*, AIR 1996 SC 1257

¹¹ 2018 (10) Scale 386: LNIND 2018 SC 451

¹² Dr. J. N. Pandey, *Constitutional Law of India* 247 (Central law agency, Allahabad, 53rd edn., 2016)

himself and prohibits all kinds of compulsions to do so¹³. This protection is available both at the investigation stage and to the witnesses. In the case of *Selvi v. State of Karnataka*, the Hon'ble Supreme Court significantly broadened the scope of Article 20 when it had to deal with the question of the validity of certain scientific techniques such as narcoanalysis, polygraphy, and brain finger printing tests.¹⁴ The court unanimously decided that the tests complained of are means of testimonial compulsions and are violative of article 20(3)¹⁵.

It is also beneficial to the criminal justice system in India because Article 22 of the Indian Constitution establishes procedural requirements that must be adopted and incorporated into any procedure enacted by the legislature. Non-compliance with these procedural requirements may result in the deprivation of personal liberty, which is protected under Article 21 of the Constitution. People who have been arrested under the ordinary law of crimes, as well as those who have been detained under preventive detention laws, have rights under this article. When someone is arrested for an offence committed under any ordinary law, that person has the right to be informed of the grounds of his or her arrest at the earliest opportunity,¹⁶ to consult and to be represented by a lawyer of his own choice¹⁷, to be produced before the magistrate within 24 hours¹⁸ and right of no detention beyond twenty-four hours except by order of the magistrate.¹⁹ Further the article provides for safeguards guaranteed to a person arrested under preventive detention laws which include review by advisory board²⁰, communication of detention grounds to the detenu²¹ and detenu's right of representation²².

It is entirely dependent on striking a balance between protecting an individual's personal liberty and ensuring an exhaustive investigation of the crime in order to uphold the concept of justice that a relationship between bail and an individual's personal liberty can be established. In order to uphold the concept of justice, this balance must be struck in order to protect an individual's personal liberty. The right to life of a person who has been granted bail is protected until that person is found guilty by a court of law. When an investigation is not concluded within twenty-four hours, the matter is referred to the magistrate, according to the provisions of Section 57 of the Code of Criminal Procedure. The magistrate has the power under Section 167(2) of the Court of Criminal Procedure to confine the accused for a total of not more than fifteen days. However, as stated in article 21, the accused's personal liberty must be safeguarded because he is a citizen of the country; hence, the magistrate cannot order the accused to be held for more than 90 days in the case of a serious offence and 60 days in the case of a less serious crime. When this timeframe has elapsed, the offender must be granted bail by the court.

4. Prisoner Rights and Constitutional Support

The Supreme Court of India has significantly broadened the scope of Article 21 by ruling that it will be available to defend prisoners' fundamental rights as well as to implement prison reforms in the future. Convicts are also human beings, and they have the right to live in prison as human beings rather than as slaves until they are executed by hanging until they are executed by hanging. The Constitution forbids the inhumane and brutal treatment of prisoners, among other things. As a result, it has been determined that solitary confinement, handcuffing, severe labour, demeaning tasks, and prison sentences without judicial sanction violate Article 21 of the Constitution.²³

The Supreme Court of India, in the case of *D.K. Basu v. State of West Bengal*, took the issue of police lock-up brutality and death very seriously. It is possible to protect oneself against police abuse by ensuring that public activity is transparent and accountable. The Supreme Court issued recommendations (as precautions) to be observed in all cases of arrest or imprisonment until legislative action is adopted. Custodial violence has been identified as a major source of concern. It is a violation of Article 21, as well as basic human rights, and a blow to the rule of law. It is made worse by the fact that it is performed by people who are supposed to be citizens' guardians, within the four walls of a police station or a jail, with the victim completely defenseless.²⁴ Convicts, those awaiting trial, detainees, and other people in custody cannot be denied their precious right guaranteed by Article 21 unless and until they follow the legal procedure. A citizen's right to life cannot be put in jeopardy as a result of his arrest.²⁵ It has also been held that use of any form of torture during interrogation is neither right nor just. The judgment provided for provisions of Inspection memo, police control room, medical examination which have been further turned into provisions of criminal procedure code.

5. Conclusion

The principles of equality, liberty, and dignity of the individual were the cornerstone while creating the Constitution, as evidenced by the preceding study of constitutional provisions. Justice was a primary issue for the framers. They included various provisions in the Constitution for criminal justice and its administration. While acknowledging people's rights, the commitments of public security, unity, and integrity were always taken into account. In certain instances, the Constitution enables the State, which includes the police and the judiciary, to place reasonable restrictions on some of the people's Fundamental Rights in order to maintain order, decency, morality, and so on. As a result, the Constitution has necessary measures for the administration of criminal justice in

¹³ *ibid*

¹⁴ AIR 2010 SC 1974

¹⁵ *Selvi v. State of Karnataka*, AIR 2010 SC 1974

¹⁶ The Constitution of India, art. 22(1)

¹⁷ The Constitution of India, art. 22(1)

¹⁸ The Constitution of India, art. 22(2)

¹⁹ The Constitution of India, art. 22(2)

²⁰ The Constitution of India, art. 22(4)

²¹ The Constitution of India, art. 22(5)

²² The Constitution of India, art. 22(5)

²³ Dr. J.N.Pandey, *Constitutional Law of India* 57 (Central law agency, Allahabad, 53rd edn., 2016)

²⁴ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610

²⁵ *ibid*.

a fair and impartial manner. However, in order to achieve the intended effects, the laws must be rigorously followed, not simply the text of the law.

References

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- [5] *Devender Pal Singh Bhullar & Anr v. State of NCT of Delhi*, AIR 2013 SC 1975.
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