

# **CRIMINAL JUSTICE ADMINISTRATION AND HUMAN RIGHTS**

**Justice Ved Prakash  
Former Judge  
High Court of Madhya pradesh**

# Take a human rights stand:

- ❑ Refusing to cooperate with police is a suspicious behaviour; innocent people have nothing to hide.
- ❑ Get to the crime through the criminal or get to the criminal through the crime.
- ❑ Police is not required to disclose exculpatory evidence.
- ❑ To get information from hardcore criminals, sometimes one needs to apply a degree of pressure or even torture.
- ❑ Confession is the most reliable form of evidence.
- ❑ A police officer who strikes a suspect should be dismissed from the service.

# Rule of Law, Human Rights & Constitutional Democracy

**In a constitutional democracy there are three elements of rule of law : freedom, justice and peace.**

- “There can be no peace without justice, -- no justice without freedom -- no freedom without human rights.”
- The extent to which human rights are respected and protected in a **Criminal Justice Administration** is an important measure of society's civilization.

# Human Rights: The Origin: Cyrus Cylinder- World's First Charter of Human Rights

- In 539 B.C., the armies of **Cyrus the Great**, the first king of **ancient Persia** ( today's Iran ), conquered the city of Babylon. After his victory he freed the slaves, declared that all people had the right to choose their own religion, and established racial equality.
- These and other decrees were recorded on a **baked-clay cylinder**. Known as the **Cyrus Cylinder**. This ancient record has now been recognized as **the world's first charter of human rights**. It is translated into all six official languages of the United Nations and its provisions parallel the **first four Articles of the Universal Declaration of Human Rights, 1948**.

# Concept of Human Rights-A

## Universal Concept:

- The **Magna Carta of 1215**, accepted by **King John of England**, is considered by many experts as the document that marks the recognition of **human rights in modern democracy**.
- **First formal use in U.N. Charter of 1945**
- Two most imp. Covenants :
  - **Universal Declaration of Human Rights ,1948**
  - **International Covenant on Civil and Political Rights,1966**
- **Articles 9 to 12 of UDHR** and **Article 10 of the ICCPR** lay down a **basic minimum standard of treatment to which criminal justice system** of a country must confirm.

# The Criminal Justice Administration ?

- **The Components-** Courts, Police, Prosecution, Defence, Prisons
- **Three Stages-----**Pre-Trial----Trial-----Post Trial
- **The stake holders??.-** Accused-Victim-Society-State
- **The duty holders??.** –Police--- Prosecution --Prison officials - Court
- **How each has performed ?**
- **Areas of Concern?**
- **The way ahead?**

# Bangladesh-The Constitutional Framework: The Goal---The Resolve– The Scheme

## □ Constitutional Framework:

- **The Goal----Preamble---Secure Fundamental Human rights—Justice- to all citizens**
- **The Resolve- Human Rights and respect for the dignity and worth of the human person are protected -Art-11**
- **The Scheme- Part III Art. 26 to 47-A**

# Human Rights Protection – Constitutional Safeguards

- **Art. 27.** All citizens are **equal before law** and are entitled to **equal protection of laws.** ( **Art.14 Indian Constitution**)
- **Art 31 .** Right to **protection of laws** -No action detrimental to the life, liberty, body, reputation or property of any person shall be taken **except in accordance with law.**
- **Art. 32.** Protection of right to life and personal liberty. ( **Art.21 Indian Constitution**) No person shall be deprived of life or personal liberty save in accordance with law.
- **Art. 33.** Safeguards as to **arrest and detention.**(**Art.22 Indian Constitution**)
- **Art.35.** **Protection in respect of trial and punishment.** ( **Art.20 Indian Constitution**) and not to be subjected to **torture** or cruel or inhuman, *or degrading punishment or treatment.*
- **Art. 43.** Protection of home and correspondence.



# TWO FACETS OF THE PICTURE: RHETORICAL AND REAL.

- **The rhetorical part entails:**
- International Instruments like **UDHR, 1948 , ICCPR, 1966 & United Nations Convention against Torture, 1984.**
- Enumeration of **constitutional goal & resolve** having imprints of human rights.
- Reiteration of the provisions in **substantive and procedural laws ; Cr. P.C. & Torture and Custodial Death (Prevention) Act, 2013.**
- **Judicial pronouncements** on matters concerning jurisprudence of human rights and the infringement of human rights.

# Real Part: Human Rights & Police

- Point of **first contact**--Reg. Of FIR, Arrest & Investigation
- The institutional framework - **Inherited from the British.**
- **Police matters** are governed by the **Police Act of 1861, Evidence Act of 1872** and **Cr.P.C. Of 1898.**
- No significant changes to initiate police reforms, - **police principally an instrument of coercive state power.**
- Complaints re. unfair treatment, Illegal arrest and detentions, Custodial violence , torture to extract confessions and lock up deaths despite legislation like **Torture and Custodial Death (Prevention) Act, 2013.**

# Real Part: Human Rights & Police

- **ARBITRARY ARREST AND DETENTION:**
- **Section 54 (Akin to S.41 of Cr.P.C. India ) and 167** of the Code of Criminal Procedure, 1898 confer wide powers upon police to arrest a person without warrant on **reasonable suspicion**.
- **The allegation** is that **Section 54 and 167 of the Code** are the main legal provisions, which are prone to misuse .
- In **D.K. Basu v. State of West Bengal (1997) 1 SCC 416** The S.C. of India laid down 11 guidelines to be followed by police.
- In **Rudul Shah v. State of Bihar, (1983) 4 SCC 141**, the Supreme Court ruled that the victims of unlawful or **illegal arrest were entitled to compensation for violation of their fundamental rights** under Part III of the Indian Constitution.

# Real Part: Human Rights & Police

- **TORTURE:** Police and other enforcement agencies still consider torture **as an essential investigative tool**, rather than **unscientific or crude**.
- The Parliament of Bangladesh has enacted **‘Torture and Custodial Death (Prevention) Act, 2013**.
- **Section 3** of this Act prescribes **that this law will prevail upon any other existing law**.
- **Still the allegation is that torture is practiced as a routine and accepted means of investigation.**

# Human Rights & Police: Extra Judicial Killings

- Reportedly, there have been many incidents of extra-judicial killing by law-enforcing agencies.
- To combat this problem, a PIL was filed by NGO **BLAST**. The petitioners referred to incidents of gross abuse of power, including allegations of custodial death, torture and inhuman treatment, especially the killing of a young student, **Shamim Reaz Rubel (1998)**, in police custody.
- The High Court vide **judgment dated 3<sup>rd</sup> April, 2003**, laid down a comprehensive set of recommendations regarding necessary amendments to both sections of the Cr.P.C., along with the Police Act, The Penal Code and the Evidence Act, and directed that these should be acted upon within six months.  
***(BLAST and Others v. Bangladesh and Others (1998)[28])***

# Real Part: Human Rights & Prosecution

- The allegation is that many a times the material which is **consistent with the innocence** of the accused is not placed before the court while the prosecution has the **obligation of fair disclosure** which means the prosecution should place before the court all material including that which is favourable to accused.
- Recently, a 3 Judge Bench of the S.C. of India in **Manoj vs State of Madhya Pradesh, 2022 LiveLaw (SC) 510-** has **held- that** *The role of the public prosecutor is intrinsically dedicated to conducting a fair trial.* the prosecution in all criminal cases shall furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer.

# Human Rights & Prisons

- **PRISONS-- CONDITIONS: Complaints regarding-**
  - Overcrowding,
  - prolonged detention of under-trial prisoners,
  - unsatisfactory living conditions - food supply inadequate and sub-standard ,
  - lack of medical treatment facilities,
  - allegations of inhuman approach of prison staff, and
  - reports of prisoner's deaths due to sickness, torture, suicide and other reasons.

# Human Rights & Courts: Mechanical Remand:

**Courts:** Considered to be watchdog of human rights still-

- The **criticism** is that they hardly check the police diary of the arrested person(s ) nor record the reasons for granting remand.
- **Mechanical Remand:. Section 167 Cr.P.C.- Magistrates are legally bound to examine reasonable grounds before granting remand.**
- ***In Arnesh Kumar v State of Bihar (2014):. The S.C. Of India held -“Before a Magistrate authorises detention under S.167 Cr.P.C. , he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied.... The magistrate’s “solemn function” helps safeguard the most vital of constitutional rights – the right to life and liberty.”***



# Human Rights & Courts: Recording Confession u/s 164 Cr. P. C.

- The criticism is that legal requirements such as :
- informing **the accused that he is not bound to make a confession,**
- that **what he says could be used as evidence against him,**
- ensuring that **the police were not present in the court room,**
- giving the **accused time to reflect before he makes his statement**
- and making sure that the confession is voluntarily given : **are often disregarded by the Magistrates.**

# Human Rights & Courts: Access to Justice

- **Access To Justice- 3 Major Obstacles:**
  - ▣ **Lack of awareness about rights**
  - ▣ **Prohibitive cost of litigation**
  - ▣ **Delay in Dispensation of Justice**
- The government of BD enacted the **Legal Aid Services Act, 2000** which aims at **legal aid to the poor litigants**. But the allegation is that this Act remains largely unimplemented due to **lack of awareness** about the law and **lack of institutional capacity** to deliver the services.
- The national legal aid fund has remained largely unutilized due to **lack of awareness of the law**.

# Human Rights & Courts: Delay a Major Hurdle in Access to Justice

- Delay in dispensation of justice continues to be a major problem in criminal justice administration in India as well as Bangladesh.
- **Delay in dispensation of justice is not only violative of fair trial principle but also denial of justice.**
- Judiciary is required to look into this problem.

# EXTRA JUDICIAL PUNISHMENT -FATWA:

- Repeated complaints of **fatwa-induced violence** primarily against poor and vulnerable persons in rural areas across the country who are subjected to **whipping, lashing and beating** in imposition and execution of certain penalties, by private individuals acting without any authority of law.
- In a PIL case of ***Bangladesh Legal Aid & Services Trust vs. Govt. of Bangladesh, DLR (HCD) (2010)*** the Court declared that the imposition of extra-judicial punishment in the name of ***Sharia /Fatwa*** is illegal and without lawful authority.

# Right to fair trial- A Basic Human Right

- **Right to fair trial:** - Denial of a fair trial is as much injustice to the **accused as is to the victim and the society.**
- Fair trial obviously would mean:
  - ▣ A trial before an **impartial Judge**, a **fair prosecutor** and atmosphere of **judicial calm.**
  - ▣ **Bias or prejudice** for or against the accused, **the witnesses, or the cause** which is being tried is eliminated.
  - ▣ If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. (***Zahira Habibullah Sheikh and ors v. State of Gujarat and ors. (2006) 3 SCC 374***)

# Fair Trial- A Broader Concept

- **Fali S. Nariman, a renowned Indian jurist,** writes that Scottish criminal law where the concept of a fair trial is not solely a question for the accused – **“fairness to the public is also a legitimate consideration”** (Lord Wheatley in- *Miln v Cullen* 1967 JC 21)
- In the case of *Tayazuddin and another v Bangladesh, 21BLD (HCD)2001*, the Apex court of Bangladesh held that -**“The Government is responsible for ensuring a free and fair trial not only to the accused but also to the victim of a crime.** In essence, the fair trial of the accused also implied that the victim must be able to give evidence without fear and insecurity.
- Identical view expressed by S.C. of India in *Zahira Habibullah Sheikh and ors v. State of Gujarat and ors. (2006) 3 SCC 374* wherein it was held that **Over-emphasis on the protection of one interest** is bound to have an adverse impact on the other and, therefore, **an even balance** has to be struck between the two interests.

# Role of the Courts: The Five Essentials

- Right to **Presumption of Innocence.**
- Proof **beyond reasonable doubt.**
- The **Prohibition on Self-incrimination.**
- The **Prohibition on Retroactive Application of Criminal Laws**
- The Prohibition on **Double Jeopardy.**
- **Scrupulous observance of the constitutional and procedural safeguards.**

# POST-TRIAL RIGHTS

---

- The Right to Appeal.
- The Right to Compensation for Miscarriage of Justice.
- Right to be treated in prison in a humane manner .



# Role of the Courts: Transforming the Jurisprudence of Human Rights into Reality

**In the words of Justice V.R. Krishna Iyer-**

**"Rights, however, solemnly proclaimed and entrenched in great instruments are but printed futility unless a puissant judiciary armed with legal authority, remedial process and jurisdiction, operational and pragmatic, transforms the jurisprudence of human rights into public law of enforceable justice."**



**Thanks**