CHAPTER-I

INTRODUCTION

A human being is a living creature and in the same manner, humanity is a living and ever evolving concept. Both are united from within and cannot be separated. Universal application and requirement of human rights makes them a common concept for all mankind. No excuse or explanation can satisfy people if they are denied the basic right of a decent life.

These are the rights of a man which are not given to him like a subsidy and which can be taken away. These rights are inherent. Every human being, whether rich or poor, healthy or sick, able or disabled, belonging to this or that state, has a right to live under the shadow of human rights.

Human beings, by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. Human rights are a 20th century name for what has been traditionally known as natural rights or in a more exhilarating phrase, the rights of a man. They may be termed as moral right which every human being, everywhere, at all times, ought to have simply because of the fact that he is a rational and moral entity. They are derived from the inherent dignity and worth of human being.

These rights are essential for all individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. Because of their immense significance to human beings, human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. In the absence of these rights men would be enslaved and subjected to torture at the hands of the State. The democracy envisages concept of human rights as one of the basic tenets for individual’s growth in the society.

The concept of human rights was originally evolved in England when religious and organized church exercised considerable influence on the evolution of human rights in the days of the Magna Carta which King John accepted stating that the grant was made “through the inspiration of God, for the honour of God and the exaltation of

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1See, Dr. H.O. Agarwal, Human Rights, 2002, p.2
3See S.K Singh, Human Rights CULR, 1986, p.441
4See, Dr. H.O. Agarwal, Human Rights, 2002, p.4
the Holy Church.” The overreaching theme of Magna Carta was protection against arbitrary action by the King. The Magna Carta also introduced the concept of jury trial in clause 39, which protects against arbitrary arrest and imprisonment. The Magna Carta was followed by the petition of Rights (1627) and the bill of Rights (1689). In the American continent the Charter of New Plymouth of 1620 expressed the principles of Human Rights. The State of Virginia proclaimed the first declaration of rights in 1776 followed by other States. The Declaration of Independence of America contains the affirmation of some essential rights. Then we have the famous declaration of the rights of man and the citizen of France in 1789 which had much impact on the rest of the World. This was followed by the Bill of Rights in America and incorporation of the French declaration in the Constitution, both in the year 1791.

The roots for the protection of rights of man may be traced as far back as in the Babylonian laws, Hittiti laws and in the Dharma of the Vedic period in India. World’s all major religions have a humanist perspective that supports human rights despite the differences in the contents. Human rights are also rooted in ancient thought and in the Philosophical concepts of ‘natural law’ and ‘natural rights’. The origins of the concept of human rights are usually agreed to be found in the Greeco-Roman natural law Doctrines of Stoicism (the school of philosophy funded by Zeno and Citium) which held that a universal force pervades all creation and that human conduct should therefore be judged according to the law of nature.

The concept of Human Rights is not entirely western in origin nor is it a very modern concept. It is a crystallization of values which are the common heritage of mankind. In India, references occur as early as in The Rig Veda to the three civil liberties of Tana (body), Skridhi (dwelling house) and Jibasi (life). Ancient Indian society was a highly structured and well organized affair with fundamental rights and duties not only of individuals but also of classes, communities and castes clearly laid down. The concept of Dharma was precisely that of rule of law along with the

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6 See, Z. Chafe, Documents on Fundamental Human Rights, 1951, p.239
7 See, Dr. H.O. Agarwal, Human Rights, 2002, p.8
8 See, Justice David Anousamy, Human Rights and Indian Psyche, published in the T.S.N. Shastri, India and Human Rights Reflections, 2005, p.58
9 See, Dr. H.O. Agarwal, Human Rights, 2002, p.7
10 Ibid, p.8
supremacy of law. Long before the 2nd century B.C, we find mention of the law of nature, which even Kings had to obey. Also Kings were required to take a pledge never to be arbitrary and always to act according to “whatever law there is and whatever is dictated by ethics and not opposed to politics.” Kautilya, the author of the celebrated political treatise Arthashastra, not only affirmed and elaborated the civil and legal rights, first formulated by Manu, but also added a number of economic rights. The Arthashastra in Book IV relating to suppression of criminals prescribes, of course, harsh measures. But there is side by side insistence on human considerations, concern for man, for weaker sections and care for fair play and due process.12

Looking back over the years that have rolled, one is apt to question and doubt, whether we have progressed well on the path of democracy and evolved smooth and successful working arrangements for the purposeful functioning of the three important wings of the society of the democratic system i.e. legislature, executive and judiciary. While steering the country towards the promised objective of the secular, socialist and welfare state for its hundreds of millions of people, the government had to regulate in an increasing degree the conduct and business of different sections of people through present criminal justice system. This resulted in increasing exercise of the power by the government through its widely spread apparatus of the court and the police in several matters affecting the daily life of the people.

In every civilized society, the prime role of a criminal justice administration is to protect the members of that society. In this respect, it is a formal instrumentality authorized by the people of a nation to protect both their individual and collective rights. Another major duty of any system of administration of criminal justice is maintenance of law and order. Since crime and disorder disrupt stability in the society, we have vested authority in the criminal justice administration so that the existing order is maintained.

In addition to these major roles and duties, there are a number of important functions of criminal justice administration. The prevention of crime, suppression of criminal conduct by apprehending offenders for whom prevention is ineffective, to review the legality of our preventive and suppressive measures, the judicial

12 See, Justice David Annousamy, Human Rights and Indian Psyche, published in the T.S.N.Shastri,
determination of guilt or innocence of those apprehended, the proper disposition of those who have been legally found guilty and the correction by socially approved means of the behaviour of those who violate the criminal law are some of them.13

Modern society has reached at its highest point after centuries of social interaction, attempts to understand individual and collective behaviour, and efforts to find adequate means of social control. This social control begins with the family and kinship ties, ethical system and religious controls and eventually the criminal law and criminal justice administration of the modern state. In present context the crime is defined by legislative action and government decree, law enforcement agencies identify the suspected offenders, the courts convict those legally found guilty, and correctional systems attempt to rehabilitate offender.14 The nature and extent of crime in society provides some index show to where social problems lie in that society and number of people involved.

The concept of crime therefore, involves the idea of a public wrong as opposed to a private wrong, with the consequent intervention between the criminal and the injured party by an agency representing the community or public as a whole. In this view, the crime is intentional commission of an act or omission deemed socially harmful or dangerous and specifically defined, prohibited and punishable under the criminal laws, which shall be in force for the time being. Difficulty arises from this definition because of the practical problem involved in determining whether or to what degree an act is intentional, because some offences known as ‘strict liability offences’ are punished as crime even though they may be unintentional. Legislatures are sometimes influenced by powerful vocal minorities to enact legislation which benefits only a certain group or which reflects only its view of what is right and wrong. Such law may be contrary to general good and opposed to the moral conviction of the general public.15

In modern civilized societies only violation of rules, promulgated and enforced by agencies of the government, technically, are crimes. Although crime is sometimes viewed in a very broad way as the violation of any important group standard of the equivalent of antisocial, immoral and sinful behaviour. Much of the immoral behaviour is not covered by the criminal law and violation of some laws

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14 See, Vernon B. Fox, *Introduction to Criminology*, 1976, p.17

included in the criminal code are not regarded as immoral or even antisocial, or are so regarded only by a small portion of the population. Labour union professional organization and many other groups within a society established rules for their members and provide penalties for infractions but such rules are not part of criminal law. No matter how immoral, disgusting or harmful an act may be, it is not legally a crime unless it is covered by a law which prohibits it and prescribes punishment for it.  

The concept of justice was developed in ancient Greece along with the concept of democracy in the fifth century B.C. It had its origin in the ideas of vengeance of primitive and ancient man and is of old testament. The concept was to protect the weak from the strong to keep the strong from using a wrong as license to overreact. Justice involves the infusion of morality into law. Plato held that justice was a rational principle at the root of moral distinctions that covers in each individual to make a rational society. A rational society was one in which the principle of justice had power as well as it manifested authority.

Justice is basically the protection of the weak from the strong and the mitigation of strength with wisdom. While law is generally aimed at the preservation of the status-quo, whether the ancient feudal system, the Church, the State, the Monarchy or an economic system, it changes slowly in the direction of morality, wisdom and the protection of the weak from the strong, justice was originally based on the need of the individual for protection.

The criminal justice administration exists because society has deemed it appropriate to enforce the standards of human conduct so necessary for protecting individuals and the community. It seeks to fulfill the goal of protection through enforcement by reducing the risk of crime and apprehending, prosecuting, convicting and sentencing those individuals who violate the rules and laws promulgated by the society. The offender finds that the criminal justice administration shall punish him for his violation by removing him from society and simultaneously will try to dissuade him from repeating a criminal act through rehabilitation.

15 See, Encyclopedia Britannica Vol.VI, 1996, p.754  
16 Ibid  
17 See, Vernon B. Fox, Introduction to Criminology, 1976, p.16  
18 See, Chamelin C.Neil, Introduction to Criminal Justice, 1975, p.5
Basically the criminal justice administration is comprised of police, courts and correctional machinery. Each contains varying divisions. The police is responsible for controlling crime and maintaining law and order. The courts are prosecuting and punishing agency in criminal justice administration. Finally, the aim of the correction is institutionalizing the activities of the offender and rehabilitating him to full and useful participation in the society.

The role of police in the administration of criminal justice is clearly defined. The legislators enact the law; the police enforce them and lawyers, magistrates and judges conduct the trial with the active participation of the public. The penologists and their associates in the field of extra institutional correction have the responsibility of the treatment and the ultimate disposition of convicted offenders. All the legislators, the police, the prosecutors, the judiciary, the public and the penologist are the part of a team. The attitude and posture of any single member of this team has a direct effect on every other member.19

Criminal justice system operates in accordance with specific criminal statutes. The penal statutes prescribe the acts of commission or omission and make them punishable. The implicit purpose is to define a crime and its constituent’s elements, so that a prosecution can be based on it and the violator may be brought under the statutes. Legislators in democratic societies all over the world have a tendency to overreact to crime. But their over enthusiasm to stricter enforcement of criminal law is frequently counterproductive. Strict punishment against aggressive and anti-social offences is what people will normally welcome but offences designed to produce social conformity or to legislate morality will always create problems in the realms of criminal law making and its enforcement. The non-enforceability of these laws ultimately poses a serious threat to the integrity of the entire criminal justice system.20

The criminal justice administration is devoted to reduction in imprisonment rates by increasing reliance on fines and community based programme as alternatives. The correctional institution concentrates on those convicted offenders, who are imprisoned and calls for fundamental changes in the organizational features and supporting ideology of the correctional institutions.

Society has a real interest in the release of prisoners, since these individuals have been committed for definite terms by the court, in the form of parole, probation etc. Individuals in the general public are frequently skeptical of probation and parole. These persons sometimes assert that both parole and probation are based on compassion for the offender. They point out that in the real world punishment is the fact of life.

Under our criminal justice system, fear of punishment alone prevents the bulk of people from violating the law. Probation and parole seems to be somewhat at variance with these ideas. It should be remembered, though that rehabilitation is as important to society as to the criminals.

In modern times it is popularly assumed that the criminal law need not be applied as a retributive measure nor be applied to procure absolutely deterrent effect nor to achieve retributive values but these laws ought to be applied to correct the offenders with a view to improve the conduct of offenders who are capable of recovery and have a mind capable of receiving guidance for good behaviour. The criminal laws should aim to seek, not just a change in behaviour but a change of hearts that may ultimately lead to the change in behaviour. Rehabilitation is a complex process. It starts from proclamation of offenders by courts, it works through acclamation of offenders in custody and ends with reclamation of offenders in society. As soon as an offender is proclaimed as an offender on conviction, the process of rehabilitation starts.

With the development of human behavioural and social sciences, the faith in the rehabilitation has been further consolidated in the present century. But the views that the rehabilitative process should strive to reform, re-socialize, modify or re-make the criminal so that they will refrain from further law breaking are not new. The sociologists and criminologists have often been in the forefront of the rehabilitation movement, agitating for more professional treatment of convicts, expansion of correctional services and improvement in the treatment theory on which correctional ventures are based.

All the criminologists and sociologists through various theories of reformation tried to establish that as the ultimate object of the administration of

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22 See, M.A.Ansari, *Tribals and Corrective Justice*, 1988, p.32
criminal justice is to reduce or prevent crime and as there is no other better way of controlling offenders other than by incarceration, so as to prevent recidivism one should evolve principles and process for reformation of prisoners.

The wars, urbanization, industrialization and the migration of masses from the villages to the urban slum settlements has been a cause of the magnitude and kinds of problems relating to juvenile. These factors have not only resulted in creation of juvenile delinquents but has also resulted in the problems of poverty, destitution, prostitution and various forms of social and economic exploitation directly affecting the children in our society. The children needs to be provided with care, protection, maintenance, education, training etc., all with the aim of their rehabilitation in the society. The children being an important asset, every effort should be made to provide them equal opportunities for development so that they become robust citizens physically fit, mentally alert and morally healthy endowed with the skills and motivations needed by a healthy society.

All criminal justice systems in the world have three separately organized parts—the police, the courts and the prison or correction homes. Each agency has its distinct task to perform. However, these tasks are by no means independent of each other. What each one does and how it does, materially affect the quality of work done by other agencies in the criminal justice system. The courts can deal only with those whom the police arrests. The job of correction can be done only with those who are delivered to the agency by the orders of the courts. Moreover, the method by which the criminal justice system deals with individual cases represents a continuum. These are not random actions but proceed with an orderly progress of events, some of which like arrest and trial may be visible, but some others of even greater importance may occur outside the public view.

The administration of criminal justice and the conditions prevailing in prisons have long been extremely deplorable. Every day one hears news of police brutality, prison mal-administration and inordinately long delay in trial of criminal cases resulting in gross miscarriage of justice. In spite of the emphasis on socio-economic justice in the Constitution precious little has been done so far to improve matters in the area of criminal justice. Even after 61 years of the adoption of

Constitution, we find crores of cases rotting in courts in India, some of which are pending for several years/decades. With explosion of population, expanding business activities, sagging moral values, culture of demanding only rights and tardy disposal of cases by our courts, the arrears in courts are mounting up day by day, and thousands of under-trials languish and die in jails without conviction. A legal and judicial system which allows incarceration of men and women for long periods of time without trial must be deemed to be denying human rights to such under trials.

The extent to which human rights are respected and protected within the context of its criminal proceedings is an important measure of society’s civilization. But, it is one of those statements which leave a number of other questions unanswered. What are the human rights which are important to protect within our criminal procedure? And more important again perhaps, to what extent should the human rights of the suspect and the accused be protected when other important interests of society are under attack and in case of possible conflict with the interest of the accused? These are difficult questions to answer, because there is a perpetual conflict between the interest of the accused and the fundamental interest of the society. Over-emphasis on the protection of one interest is bound to have an adverse impact on the other and, therefore balance has to be struck between the two interests. The problem has been focused sharply by Lewis Meyers: “To strike the balance between the law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law enforcement machinery on the other is a perennial problem of statecraft.”

The present work is an attempt to analyze protection of a human being under the Criminal Justice Administration of India. The precious little has been done by the legislator in this direction but the judiciary has really made some remarkable efforts to break the path but could not make much headway because of the restrictions and the strains in view of absence of any legislation granting speedy trial.

A) **Issue in the present study**

Indian Criminal Justice System has two primary responsibilities i.e. prevention and control of crime and the protection of rights. The most important
factor in preventing and determining crime is the certainty of punishment, the
efficiency with which who commits crime is arrested, prosecuted, convicted and
punished. Efforts should be made to improve the management of prosecution in
order to increase the certainty of conviction and punishment for most serious
offenders and repeaters. For better administration of criminal justice, recidivists,
carrier criminals and violent offenders need to be prosecuted expeditiously in a
selective manner, because these offenders pose a serious threat to the society.

In India the police, the courts and other correctional agencies tend to be
isolated from each as well as from other communities, groups, welfare agencies and
human rights institutions. It appears that the administrators of police, courts prisons
and probation services tend to maintain their status-quo. As agents and organs of the
government, police and courts confirm to traditional practices and often have
relatively little latitude in which and how to operate. The primary goal of criminal
justice system can best be secured only through proper co-ordination between the
different wings of criminal justice agencies.

B) Objectives

- To analyse the role of human rights to improve the criminal justice system in
  India
- To find out the actual position of human rights in criminal justice system of
  India.
- To find out various practical problems regarding the implementation of
  human rights in criminal justice system of India.
- A positive analysis of various enactments passed by Indian legislator, to
  achieve the goal of safeguarding human rights.
- To find out the working, influence and outcome of the various institutions
  for the betterment of human rights in criminal justice system of India.
- To stress the need to liberalize the law relating to bails which operates rather
  harshly against the poor who are either unable to furnish the monetary bail
  because of their poverty or ignorance and also stress the need for effective
  implementation of Legal Aid to the indigent accused to give them equality of
  opportunity.

26 See, P.N.Bhagwati, Human Rights in Criminal Justice System. published in ILI Vol.27(Jan-
Mar), 1985, p.1
To highlight the necessity of expedition of trials even when an accused is granted bail since accusation per se is cause for concern and an accused may lose his social status, his job and all that he cherishes because of pendency of criminal proceeding against him.

To appreciate the role of the judiciary as the sentinel on the qui vive with regard to safeguarding the right of the accused to speedy trial in spite of the constraints on the judiciary because of the absence of any legislation in this regard.

To impress upon the powers that it is high time that legislation is made which guarantees speedy trial of offences because delay in disposal of cases hampers the cause of justice.

C) Scope of Study

The extent to which the human rights are respected and protected within the context of its criminal proceeding is an important measure of a society’s civilization. In earlier times, a person accused of an offence was condemned with all possible brutalities. Every mature legal system of this world accords certain basic protections to persons who may be deprived of their personal liberty. These principles of criminal justice as known in jurisprudence have been expressed in different terms i.e. safeguard of individual liberty, basic protection of fundamental rights.

Prior to 26-01-1950, when the present constitution of India came into force, an individual accused of an offence was tried in accordance with rules of the Code of Criminal Procedure, 1898 and the Indian Evidence Act 1872. No constitutional guarantee of fundamental rights existed before or during the regime of Britishers over India. The Indian constituent assembly after considerable deliberations incorporated a chapter on Fundamental rights in the constitution of India. The mechanism of government power based on checks and balances under the Indian Constitution has assigned different functions and responsibilities to the three different and independent organs i.e. the legislative, the executive and the Judiciary. It is purposed to analyse, elucidate and examine the human rights under the criminal justice in India. The criminal jurisprudence of India has by now grown and assimilates integrally the concept of human rights for all. Taking in account the existing situation, the theme of study is of much importance in view of the
enthusiasm of power of the state to put an end to the crime on one hand and the humanistic treatment of the accused based of recognized human and constitutional rights available to them on the other hand.

D) Methodology adopted for this work

It is a doctrinal and analytical research based on the study of Books, Reports, Journals, Magazines, Legislative and Judicial pronouncements, declarations, conventions, treaties and information available on internet etc. For this I visited libraries of various institutions, to consult the journal and books of learned authors. I also consulted articles published in various newspapers and magazines related to the matter.

E) Plan of the work

The present work is organized into 8 chapters including the present chapter. In chapter 2nd an effort has been made to trace out the historical development of human rights and origin of international institutes and agencies working in the field of human rights and further the effort was made to find out the nexus of human rights between the Indian Constitution and criminal jurisprudence and this chapter has been subdivided in the main headings “Meaning of Human Rights, Source of International Human Right Law, Evolution of the Human Rights, Development of concept of Human Rights in India, Universal Declaration of Human Rights in India and Human Rights under the Indian Constitution.” This chapter has very important role in this study because many articles of the universal declaration have been adopted in the Indian Constitution in the shape of fundamental rights and whole legal system is governed by the Constitution.

Chapter 3rd deals with establishment of National Human Rights Commission and its role in protecting the human rights after going through the whole discussion in this chapter. We find that the structure of the Commission shows that it is a fully independent body and based on two conceptual pillars, i.e. autonomy and transparency. From the establishment of the NHRC, it played very important role to protect the Human Rights in the functions of Criminal Administration of Justice. After thorough study of the cases decided by the NHRC mentioned in this chapter we find that the Commission many times has taken action on the various complaints by the affected person, on the information received through the states mechanism, on the demand of NGO’s, conducted investigation on the directions of the hon’ble
Supreme Court and many a times took suo motu action on the basis of News published in various Newspapers. Therefore we can say that the National Human Rights Commission has played very important role to protect the Human Rights in India.

In chapter 4th an attempt has been made to trace out the origin and development of criminal justice administration in India and the chapter focuses on protection of human rights during the investigation and many provisions of the criminal law have been discussed which are provided as safeguard for a person. This chapter is very effective for this study because the investigating agency is the first pillar of the criminal justice administration. The investigation stage is a stage where there are more chances of infringement of human rights. In India many incidents of police atrocities have been proved dangerous to human dignity. The investigating agencies are bound by the law provided in the criminal law by the legislators.

Chapter 5th is related to the protection during the judicial proceedings. In the criminal justice system, the court is the final arbiter and the front line defender of democracy, personal freedom, human dignity and public protection. It is the only institution capable of identifying and maintaining the proper balance between the competing rights of individual and those of the State or Society. It has the responsibility of enforcing the criminal law against the defendants who commit crimes and at the same time protecting the same defendants from the violation of their rights by criminal agents. It is to the courts that every one turns to see that justice is done. Thus the function of the court is responsible supervision. The court has high duty and solemn responsibility to overview the work of the police, the prosecutor, and defence or opposing counsel. Therefore this chapter is also very important in this study.

The 6th chapter is devoted to the discussion of protection of human right in the correctional institutions. Correction institution is the 3rd and final phase of the criminal justice process. Beginning with law enforcement is the crime reporting and investigation phase, the courts determine by trial under due process of law regarding the culpability of those put on trial and correction institution attempts to rehabilitate the neutralized and deviant behaviour of adult criminals and juvenile delinquents. Over the centuries, corrections and punishments have been synonymous. Even today, this attitude is held by a sizeable segment in society particularly in cases that involves serious crimes although basic attitude toward punishment have not
significantly changed. Today, through more humane techniques, society acts as the agent of punishment on behalf of the victim rather than permitting the private settling of feudes. In some cases, punishment has been defended as permitting the offender the feeling of having atoned for his/her anti-social action while reaffirming the appropriateness of non-criminal behaviour among the law abiding members of society. Hence this chapter has very significant role in the study of protection of human right under the criminal justice system of India.

In chapter 7th a sincere attempt has been made to throw light on the role played by Indian judiciary to strengthen the criminal justice system in India. Many important decisions of hon’ble Supreme Court and High Courts have been discussed which have had far reaching effect on the present criminal justice system. Cases in which directions or guidelines have been made by the Apex Court particularly in case of investigation, FIR, police custody, charge, bail, parole, and probation have been discussed and presented at respective places. In nutshell, a close scrutiny of the role played by Indian Judiciary has critically been analysed and properly quoted.

Finally chapter 8th is devoted to the conclusion and suggestion, an appraisal of the discussion made in the previous chapters is made and some suggestions are given for effective implementation of the right to speedy trial. Keeping in view the existing situations, the theme of the study is of much importance in view of our enthusiasm of the organized power of the state to put an end to the crime on one hand and protection of accused on recognized human and constitutional rights available to them, on the other.