Impact of Constitutional Interpretation on the Indian Criminal Justice System

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This article follows the impact of Constitutional Interpretation as evolved by the Supreme Court of India and the impact of the same on the Indian Criminal Justice System. The attempt will be to note the periodic change in the court's attitude towards interpreting the various provisions of the constitution related to criminal law and procedure by analysing the various judgements which have shaped the Indian Criminal Justice System. A study of this nature which intends to understand and report on the relationship between issues of Constitutional Law and Criminal Justice would traditionally follow an analysis of the Fundamental Rights as the points of intersection between constitutional issues and criminal justice; an analysis of the rights considered essential in securing criminal justice. Although any such analysis would successfully provide clarity of purpose and efficient reasoning towards securing an understanding of seminal concepts, the ideas that come through are rudimentary and superficial, as they do not account for the subtle changes in the underlying institutional and systemic framework. We therefore seek to undertake a different approach and focus our attempt towards examining and identifying the approach of the constitutional courts in interpreting such constitutional provisions and principles with a view to assess their impact on the development of our criminal justice system.

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The Evolving Perception of Criminal Justice Under the Indian Constitution.

Our experiences with the various aspects of governance, law and politics have resulted in the establishment of a complex constitutional system[1] that enables a rights-based approach[2] to the administration of justice under modern constitutional systems. This has drawn an increased attention to criminal justice as the same deals directly with the protection and deprivation of individual rights. Apart from the many evolved processes, there have been many influences on the development and evolution of these modern constitutional systems. Chief amongst these have been the emergence of a constitutional dialogue[3] and the need for an efficient means of ensuring realization of justice.

The Indian legal system, prior to codification consisted of plentiful laws including Charters, East India Regulations, Hindu -Muslim Customary laws and so on and so forth. The system, as felt by the English, was a set of laws made out of the whims and caprice of the then rulers. Hence, in desperation when the law was codified the English jurists felt that if the system was to be modernised then individual rights and freedoms along with the principle of rule of law was to be embedded[4]. This was the aim of the codifiers when they planned the same for Criminal laws[5]. However, many of the codified statutes

[1] See generally, Sreenidhi K. R. & Chanjana Elsa Philip, *Exploring Constitutional Complexity*, 3 CMR UNIV. J. CONTEMP. LEGAL AFF. 151 (2021).
[2] See generally, Hirsch, M., Kotwal, A. and Ramaswami, B. eds., 2019. *A Human Rights Based Approach to Development in India*. UBC Press.
[3] Jackson, V.C., 2004. Constitutional Dialogue and Human Dignity: states and transnational constitutional discourse. *Mont. L. Rev.*, *65*, p.15.; see also, Biswas, S.K., 2017. Development Dialogue in Globalised India: Role of the Judiciary. *Indian JL & Just.*, *8*, p.35.
[4] Kolsky, E., 2005. Codification and the rule of colonial difference: Criminal procedure in British India. *Law and History Review*, *23*(3), pp.631-683.; see also, Wright, B., 2016. *Codification, Macaulay and the Indian Penal Code: the legacies and modern challenges of criminal law reform*. Routledge.
[5] *Id.*

had no provisions which specifically upheld rights, liberty and freedoms of the citizens in particular the Criminal laws[6]. Later on through various decisions, the courts have tried to interpret the statutory provisions to bring out the real intention of the makers, who were in fact maintaining a policy of non-interference in order to ensure diminished costs[7]. However, whether these interpretations resulted in upholding the basic criminal law principles, human rights and freedom remains a mooted question. But after India attained its independence and decided for a written Constitution for herself the existing criminal laws started getting formulated and tailored to suit the then existing modern concepts and principles[8].

At the outset, we have to concede that there existed a deep commitment to securing criminal justice that is deeply rooted within the Constitution of India[9]. The assembly ensured that the prevailing global vision in securing human rights and dignity be incorporated within the very text of the Constitution[10]. 'Justice' itself was included in the preamble as one of the noble objectives and supreme values of the Constitution, its importance manifest in the text of its various provisions[11]. The attempt was to ensure that legislation does not abrogate or take away any of the immutable principles of criminal justice like for example- *the presumption of innocence* through the action of

[6] Brown, M., 2017. Postcolonial penality: Liberty and repression in the shadow of independence, India c. 1947. *Theoretical Criminology*, *21*(2), pp.186-208.
[7] Raman, K.K., 1994. Utilitarianism and the Criminal Law in Colonial India: A Study of the Practical Limits of Utilitarian Jurisprudence. *Modern Asian Studies*, *28*(4), pp.739-791.
[8] Sahgal, R., 2023. Decolonizing criminal law in India. *The Routledge International Handbook on Decolonizing Justice*.
[9] Sahgal, R., 2023. Decolonizing criminal law in India. *The Routledge International Handbook on Decolonizing Justice*.
[10] *Id.*
[11] Rathore, A.S., 2020. *Ambedkar's Preamble: A Secret History of the Constitution of India*. Penguin Random House India Private Limited.

law[12]. It is primarily for this reason alone that the makers reinforced safeguards already available under the Cr.P.C, with constitutional protection as well[13]. However, we are also compelled to notice that the Constitution of India, through its extensive yet exquisitely drafted provisions, addresses these issues in a rather delicate manner.

The challenge was to ensure that the provisions of Part III of the Constitution be drafted in such a way that they offer adequate protection to the accused keeping in mind the societal interests; to secure these rights in such a way that they do not either become barriers in alleviating crime or prevent their detection thereof. To a large extent the makers proved adept at walking the tightrope. Looking back, it is sometimes argued that the balance did indeed tilt in favour of convenience, however this was undoubtedly with good reasons. At the time of the making of the Constitution of India, we must concede that the situation was rather unique. We inherited a great nation which aspired to adopt the value system of a modern constitutional democracy while still implementing the draconian laws made for it by the colonial overlords[14].

One year into its making we were already debating whether our rights prevented the state from making a law that restricted our liberty or whether such law would prevail as long as it prescribed a procedure for the purpose. The task of achieving or rather restoring the balance therefore landed in the domain of the judiciary which took up the responsibility with great

[12] Bhagwati, P.N., 1985. Human Rights in the Criminal Justice System. *Journal of the Indian law Institute*, *27*(1), pp.1-22.
[13] *Id.*
[14] See generally, Harshita Khaund & Akanksha Singh, *The Shadow of the Colonial Empire: Colonial Empire: Colonial Legalities and the Need for Further Decolonization*, 30 Supremo Amicus [114] (2022).

enthusiasm. In the very beginning though, the court was quite literal in its approach to constitutional interpretation and refused to move beyond the black letter of the law. In A.K.Gopalan v. State of Madras[15], an ardent attempt was made by the counsel to convince the court, that regarding detention, some minimum requirements or standards must indeed be read into the concept of procedure as mentioned in Article 21[16] which must be construed as being more than a mere rule of positive law. The court refused to seek new meaning where a simple reading of the provision was abundantly clear. It was also noted that protection from arrest was already guaranteed under Article 22[17], which exhibits the true intention of the makers that no implication either regarding the word *procedure* or the word *law*, was intended under Article 21[18]. With a slight thawing of its stance in a precious few case notwithstanding, the court continued to stand by this approach to constitutional interpretation for some time to come.

In the area of criminal justice too, a similar approach was pursued by the court in the initial years until the Supreme Court considered the expressions *life & personal liberty* at length in the case of Kharak Singh V. State of Uttar Pradesh[19]. Much importance was given to the opinion of Justice Field in Munn v. Illinois[20]. The court went on to ask whether the existence of personal liberty should extend to the exclusion of the police from invading the privacy of someone's home as discussed by the great Justice Frankfurter in Wolf v. Colorado[21]. The court referred to the preamble wherein the concept of

[15] 1950 AIR 27
[16] INDIA CONST. art. 21.
[17] INDIA CONST. art. 22.
[18] *Id.*
[19] 1963 AIR 1295
[20] 94 US 113
[21] [1949] 238 US 25

dignity[22] finds a place as the one of cherished values of the Constitution and must be considered while construing the terms *liberty* or *life.* This ensured due consideration to the concept of reasonableness becoming an important element while assessing the concepts of *personal* liberty and *life*.

Although R.C.Cooper v. Union of India[23], was unrelated to criminal justice the court did discuss the issue of freedoms at length and offered a different interpretation of relevant constitutional provisions declaring that the concept of liberty had multiple dimensions. However, it was only after the expansion of these concepts from the perspective of due process under article 21 post Maneka Gandhi v. Union of India[24], a clear impact of the same on criminal justice became apparent. In this case primarily the court discussed the question of deprivation of liberty in light of procedure or the lack of one thereof[25]. However, the complexity of the reasoning undertaken by the court brought several issues to the forefront. Amongst a host of other things the court referred to "unoccupied portions of the vast sphere of personal liberty"[26] and in doing so enabled the expansion of the right into those unoccupied portions. Furthermore, the court expanded the concept of life and linked the concept of procedural safeguards to dignity and worth of an individual. This was taken further by the court in Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others[27], wherein they opined that all the necessities of life like *"adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human*

[22] INDIA CONST. Preamble.
[23] 1970 AIR 564
[24] 1978 AIR 597
[25] *Id.*
[26] *Id.* at 606
[27] AIR 1981 SUPREME COURT 746

beings"[28] are implicit in the true meaning of the term. In Olga Tellis and others v. Bombay Municipal Corporation and others[29] the idea was expanded to include the concept of "livelihood" and in P. Rathinam/Nagbhusan Patnaik v. Union of India and another[30] the Supreme Court recognised "fine graces of civilization that make life worth living"[31].

Indeed with Francis Coralie Mullin[32], the discussion on preventive detention came full circle with the court clearly enunciating that such detention must pass the test of not only Art 22 but also that of art 21. The court also drew a clear distinction between the concepts of "preventive detention" and "punitive detention" and laid down that due to this difference, the restrictions on a person detained preventively must be minimal[33]. These cases cumulatively and Maneka Gandhi in particular made way for the emergence of both procedural as well as substantive due process, eventually leading to a paradigm shift in our approach to Criminal Justice.

Moving forward D.K. Basu v. State of West Bengal[34] and Hussainara Khatoon v. State of Bihar[35] stand out, highlighting another instance of the court moving away from adopting a common law approach to Constitutional Interpretation, moving away from strictly adhering to the principle of *locus standi* in interpreting Article 32 and allowing for the emergence of Public Interest Litigation[36]. While in the former case, a letter was accepted as a

[28] *Id.* at 747
[29] AIR 1986 SUPREME COURT 180
[30] AIR 1994 SUPREME COURT 1844
[31] *Id.* para 27
[32] *Supra note 27*
[33] *Id.* at 747
[34] AIR 1997 SC 610
[35] AIR 1979 SC 1377
[36] P. N. Bhagwati, *Judicial Activism and Public Interest Litigation*, 23 COLUM. J. Transnat'l L. 561 (1985).

petition by the Supreme Court, the latter expanded the rights of undertrial prisoners to include the rights to a speedy trial and the right to free legal aid. These cases along with many others[37] pioneered the paradigmatic change with respect to access to justice, under the Indian Criminal Justice System; a move from rule of law to rule of justice[38].

The aforementioned cases do indeed indicate that judge made law has in the case of the Indian Criminal Justice system, been "one of the existing realities of life"[39]. However, careful observation of the cases discussed thus far indicates a gradual move away from the initial textualism towards, what in most instances, has been perceived as purposive[40]. A move, manifest in the reasoning of the many opinions drafted by the majority judges in Kesavananda Bharathi v. Union of India[41]. The judgment does indeed exemplify the idea of purposive interpretation[42] as the judgment contemplates a near perfect union of the subjective intent and objective intent as envisioned by Justice Aharon Barak[43]. The decision examines the original purpose of the Constitution and ensures that the nexus is established with the perceived objectives while engaging in constitutional change. Although indirect, the impact of this interpretation on subsequent cases as examined above shaped the future of our criminal justice system. However, the actual impact of these

[37] See, Minerva Mills v. Union of India (AIR 1980 SC 1789), Fertilizer Corporation Kamgar Union v. Union of India (AIR 1981 SC 344), Bandhua Mukti Morcha v. Union of India (AIR 1984 SC 802), Rural Litigation and Entitlement Kendra v. State of U.P (AIR 1988 SC 2187), Vishakha v. State of Rajasthan(AIR 1997 SC 3011)
[38] Singh, R. (2017). THE MARCH OF LAW IN INDIA-THE LONG ROAD FROM OPPRESSION TO JUSTICE. Journal of the Indian Law Institute, 59(3), 288–301.
[39] Cardozo, B.N. and Kaufman, A.L., 2010. *The nature of the judicial process*. Quid Pro Books.
[40] Arvind P. Datar & Rahul Unnikrishnan, *Interpretation of Constitutions: A Doctrinal Study*, 29 NAT'l L. Sch. INDIA REV. 136 (2017).
[41] AIR 1973 SUPREME COURT 1461
[42] Shalev, G., 2002. Interpretation in Law: Chief Justice Barak's Theory. Israel Law Review, 36(2), pp.123-147.
[43] Barak, A., 2005. Purposive interpretation in law. Princeton University Press.

changes on various specific issues is best appreciated by examining the interpretive process in a select few cases which will be our humble attempt in the next part.

Interpreting Constitutional provisions towards ensuring Criminal Justice: Principles, Doctrines & Concepts

In this part our attempt is to focus, not on the existing law and procedure dealing with crimes and criminals, but to rather concentrate on the judicial process through which the courts have succeeded in laying down a clear foundation in building a strong criminal justice system with an attempt to provide justice and equality to the victims without compromising protection for the rights of the accused as well.

"How well does a criminal system work" is the common question that arises whenever questions regarding administration of justice are raised. No doubt, governments have fumbled in attempting to answer the same. However, there can be no justification for inaction and this more than anything else has paved the way for the judiciary to remove stumbling blocks along the way in its continuous pursuit to achieve justice[44]. The case laws discussed herein are a reflection of how the Courts have attempted to implement the underlying principles of criminal justice through the lens of constitutional interpretation.

The interpretation of the provisions of the criminal laws by the High Courts and the Apex Court from a human rights perspective has encouraged in expanding the scope of understanding the rights of not only the victims but also offenders and suspects and how they have been protected[45]. Most of the

[44] *Supra note 36*
[45] *Supra note 12*

times, the Courts while interpreting the provisions of specific statutes have attempted to include many rights which have been internationally accepted as human rights to be a part of our justice delivery system[46]. It may be observed here that in the course of this interpretive process the courts have at times taken a ***common law*** approach in interpreting statutory provisions even when specific statutes are applicable in a given situation[47]. At the time of codification of criminal laws and thereafter until the Supreme Court started expanding the dimensions of Art.21 passively, human rights were not regarded to be part of criminal justice system[48].

The British, in an attempt to give good governance through the yardstick of rule of law decided to codify the laws in India[49]. It was well accepted too because of the diversification in the local laws and administration that existed at that point of time. However, the understanding of good governance has undergone a transition with the incorporation of various rights and duties embedded along with good administration[50]. The task of incorporating these and reading them into the statutory provisions have been taken up by the Constitutional Courts attempting to ensure full and final justice which have been a kind unknown in the interpretation of ordinary statutes. The winds of liberalism started blowing in India with the reformation of the Criminal Justice Administration through judicial interference.

[46] Rao, P.P., 2001. The human face of criminal justice in India. *Peace Research*, *33*(2), pp.51-55.
[47] Green, A.J. and Yoon, A., 2016. Triaging the law: Developing the common law on the Indian Supreme Court. Available at SSRN 2816666.
[48] Pachauri, S.K., 1994, January. History of prison administration in India in the 19th century: Human rights in retrospect. In *Proceedings of the Indian history congress* (Vol. 55, pp. 492-498). Indian History Congress at pg. 497.
[49] Kolsky, E., supra note 6
[50] Singh, B.P., 2008. The challenge of good governance in India. Social Change, 38(1), pp.84-109.

To begin with, the Court in the landmark judgment of State of Maharashtra v. M.H. George[51] took up the issue of whether mens rea is to be read in statutory offences. The honourable apex court relied on a catena of privy Council decisions and other foreign judgements to come to the conclusion that unless and until the statute specifically mentioned to exclude mens rea, it has to be read as an ingredient to prove the offence. A general overview of the judgement would reflect the fact that the honourable bench had kept the principle of rule of law and public interest at large to interpret provisions of the impugned statute. The court placed reliance on the cases of Bread v. Wood[52] and Srinivas Mall Bairoliva v. King-Emperor[53] to uphold that:

"It is of the utmost importance for ***the protection of the liberty of the subject*** *that a Court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, the Court should not find a man guilty of an offence against the criminal law unless he has a guilty mind."*

The offence in spite of being strict by nature, the Court felt that a loose interpretation of the same would be violative of due process thereby violating the liberty of a person. It is felt that this decision stands good even today only because the highest constitutional court of the county while interpreting criminal provisions kept in mind not just the basic principles of criminal law but rather respected the liberty of an individual as guaranteed under the Indian Constitution.

[51] 1965 AIR 722
[52] (1946) 62 T.L.R. 462
[53] (1947) I.L.R. 26 Pat. 460

Another landmark judgment that needs a mention at this juncture is the case of Nandini Satpathy vs Dani (P.L.) And Anr[54]. The court in this case took up the task of unraveling the sense and sensibility, the breadth and depth, of the principle against self-incrimination enshrined in Article 20(3) of our Constitution and embraced with specificity by Section 161(2) of the Cr. P. Code[55]. The Court was very keen in acknowledging the fact that humanism was the highest law enlivening the printed legislative text with the life-breath of civilized values[56]. The foregoing analysis stands testament to the balance of constitutional rights and statutory duties that the courts have tried to maintain through the weapon of interpretation.

The bone of contention that was raised in this case among others was whether the protection granted under Art. 20(3) can be extended to a person in police custody too. Sec 161(2) of the Cr.P.C protects a person from ***exposing himself to a criminal charge.*** These words mean and include not only situations of the present but future cases also where the person can get exposed to a criminal charge. However, on a plain reading of the constitutional provisions the protection under Art. 20(3), gives protection only to statements made by a person in present cases and does not apply to future cases. However, the court leaped forward to uphold the objective and strike a balance between Art. 20(3) read along with the sec 161(2) of the Cr.P.C. It was understood by the court that if the purpose of Sec 161(2) is to be complied with by protecting a person even at the investigative stage, the same protection should be extended to his fundamental right guaranteed under Art. 20(3). Hence, a case which would have remained to be merely one of statutory interpretation became much more vibrant, cautioning the executive against any kind of harassment or compulsion against witnesses in criminal cases. The Court, while

[54] 1978 AIR 1025
[55] *id.* para 2
[56] *ibid.*

interpreting the provisions, addressed the rule applied in this case as an offshoot of Heydon's case doctrine(Mischief rule)[57].

The Court held that: "The first obligation of the criminal justice system is to secure justice by seeking and substantiating truth through proof. Of course, the means must be as good as the ends and the dignity of the individual and the freedom of the human person cannot be sacrificed by resort to improper means, however worthy the ends[58]." The Court in this case has tried to discuss the responsibility of the police in recording statements under Sec 161 of the Cr P.C by discussing the scope and purpose of Art. 20(3) thereby trying to cure the mischief that sec 161 of CrPC could have caused through interpretation, thereby drawing out the concept of 'compelled testimony' through the purposive interpretation of Article 20(3).

In continuing the discussion of the above observation by the court regarding the obligation of the criminal justice system, it is apposite to have a discussion on a plethora of decisions dealing with the punishment of death penalty and its execution. Though the constitutionality of death sentence had been previously upheld (Jag mohan's case)[59], the Supreme Court realising the absence of a proper sentencing mechanism in the procedural code leaped forward to create a yardstick designated as the ***rarest of rare cases*** to overcome the difficulty faced by trial courts in granting death penalty. The court in Bachan Singh v. State Of Punjab[60] upheld the importance of procedure established by the Code and observed that "the language of Article 21 is perfectly general and covers deprivation of personal liberty or incarceration, both for punitive and preventive reasons.[61]" Another hurdle

[57] *ibid, at Para 55.*
[58] *ibid,* at Para 33
[59] Jagmohan Singh vs The State Of U.P., 1973 AIR 947
[60] 1982 AIR 1325
[61] *id.*

faced by the administrative agency for execution of death sentencing has been the delay faced in bringing into effect the execution. In almost all cases the convicts would apply for a mercy petition before the President or Governor as the case may be. The court in the landmark judgment of Shatrughan Chauhan & Anr vs Union Of India & Ors[62], upheld that inordinate delay by the President while rejecting mercy petitions under Art.72 of the Constitution causes a lot of misery and torture to the convict thereby violating the very essence of Art.21 of the Constitution which can even be a ground for commutation in appropriate cases[63]. These observations discussed herein regarding death penalty makes it very clear that the scope and extent of constitutional rights cannot just be limited to the Part -III but it is so extensive that even the power exercised by the head of the executive under Art.72 can fall within the scope of procedure for an interpretation by the courts.

The outcome of these few decisions itself reflect the extent of reformation that the courts have attempted to bring in the administrative system by upholding the purposive facet of a provision within a statute.

Yet another case which needs mention here is the famous case of Rudul Shah[64] the facts of which reflect the maladministration of the prison authorities and the lack of efficiency in the criminal justice system in India. A case where the state authorities were asked for an explanation to learn why the petitioner in the instant case was undergoing illegal detention in spite of being acquitted 14 years ago. The court, amidst a shocking set of facts, passed orders to the prison administration in Bihar to take steps in improving the situation of jails and reduce the grave injustice caused to helpless people. Although this is not completely within the scope of our current discussion, the case also focussed on another issue of great importance, wherein one of

[62] (2014) 3 SCC 1
[63] *id.*
[64] Rudal Shah Vs State of Bihar, 1983 AIR 1086.

the issues raised by the petitioner was a claim of compensation for the 14 years of illegal detention undergone by him. Under the usual circumstances a normal judicial response would have been to advise the petitioner to claim damages under the existing civil or criminal laws. But the court went ahead to expand the scope of Article 21 to include ***granting of compensation to victims*** in cases where their fundamental rights were violated. A discussion of this case would become incomplete without the following pronouncement made by the honorable court.

"It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficiently through the ordinary processes of Courts, Civil and Criminal… Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield."[65]

The outcome of this case could have resulted in a situation where the court rejected the petition for want of jurisdiction. But the court interpreted the right to compensation under article 21 in a matter which reflected the irresponsibility and callousness of the state machinery exercised in utter disregard to the fundamental rights of the victim.

[65] *id.* at Para 9 and 10

In focussing upon the initiatives taken by the Supreme Court in improvising the criminal justice system in the country through the exercise of its power under Article 32, a special mention needs to be made about the case of Delhi Domestic Working Women's Forum v. Union of India and Others[66]. The court in this case expressed dismay about the increase in the offence of rape against Women and discussed the problems arising from rape and the issues that demanded attention under the criminal justice system with respect to this heinous offence. The process followed in filing complaints, the traumatising questions and the procedure followed during trial were pointed out by the courts as having a long-term effect both physically and mentally on the victim. In an earnest attempting in resolving these issues, a few guidelines were laid down to assist rape victims. The court realising the fact that the state agencies failed in their rehabilitative programmes and compensatory schemes which are part and parcel of the criminal justice administration towards the victims had to step forward in accepting the writ petition and take the necessary steps towards enforcing the rights of rape victims under Part-III of the Constitution.

At this juncture it is pertinent to quote the case of Bodhisattwa Gautam v. Subhra Chakraborty[67]- a case which stands as an example of unprecedented outcome as result of interpretation by the Constitutional court of an act defined as an offence under the criminal law. The petition filed under Art. 136 of the Constitution by the accused for quashing a petition under Sec. 482 of the Cr.P.C. was rejected. The court, moreover took suo moto cognisance of the case under article 32 and, went forward to uphold the violation of

[66] 1995 (1) SCC 14
[67] 1996 AIR 922

personhood of a woman through the offence of rape as violation of her personal liberty under Art.21of the Constitution.

The Court observed:

"Rape …is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt…It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21**"**.[68]

The initiative taken by the honourable apex court in improving the criminal justice system is seen in all these cases discussed herein. Yet another case which opened the floor for criticism was the case of Chandrima Das[69] where the court held the state agency vicariously liable for an individual offence like rape committed by its employees. It is well known that offences like rape are those which hold the perpetrator of the crime individually responsible. However, in this case an appeal was filed by the railways against the order of the High Court ordering them to pay compensation of ten lakhs to the foreign lawyer from Bangladesh who was raped in the Yatri Nivas run by the railways. One of the major arguments put forth by the Appellant was that an individual offence cannot make the Railways or Union of India vicariously liable. Moreover, it was also argued that a claim for damages cannot come under the scope of Art.226 of the Constitution. However, the court was very clear in rejecting arguments of immunity of sovereign power and observed that the claim does not stand any more in a welfare state.[70] The Court gave a

[68] *ibid* at para 10
[69] Chairman, Railway Board v. Chandrima Das, (2002) 2 SCC 465
[70] See also Kasturi Lal v. State, 1987 AIR 27

new definition to the sovereign power of the state. It expanded the scope of the meaning of 'Life' to be at par with the' life' under Art.3 of the UDHR and hence obligated the State to protect the life of not only its citizens but also equated the same level of protection to be provided to a non-citizen under Art. 21.

It observed:
"The theory of Sovereign power…has yielded to new theories and is no longer available in a welfare State. It may be pointed out that functions of the Govt. in a welfare State are manifold…The functions of the State not only relate to the defence of the country or the administration of Justice, but they extend to many other spheres.
The employees of the Union of India who are deputed to run the Railways and to manage the establishment, including the Railway Stations and Yatri Niwas, are essential components of the Govt. machinery which carries on commercial activity. If any of such employees commits an act of tort, the Union Govt…of which they are the employees, can, subject to other legal requirements being satisfied, be held vicariously liable in damages to the person wronged by those employees."[71]

Having discussed how the courts interpreted the laws relating to criminal justice to include substantive rights of persons as per Constitutional law, it is also pertinent to understand how the Courts actively participated in interpreting the long-standing provisions of Criminal procedural law to make it purposeful. Two such cases which need mention are the cases of Kirti Vashisht v. State[72] and Others and that of Lalitha Kumari v. Govt. of U.P and

[71] Supra note 71 at Para 43
[72] AIR 2019 Del. 1940

Others[73]. The former case has discussed the suggestions put forth by the Justice Verma Committee Report about a 'Zero FIR'; A concept of filing an FIR in any of the police stations irrespective of the victim's residence or place of occurrence[74].

The latter case stands as a good example for showing how Courts can interpret procedural laws by exercising its jurisdiction under Art. 32 of the Constitution thereby reflecting the importance of following the procedures not literally but purposefully. This decision also sorted out a long-standing debate among Courts regarding the procedure to be followed before registering an FIR which is a mandate in criminal cases.

Sec 154 under Chapter XII of the Criminal Procedure Code dealing with investigations was what came under the scanner of the Apex Court for interpretation. One of the purposes or intentions of this chapter has been to have fair investigative procedures and bring in safeguards to ensure and assure that the executive does not misuse the power granted to them under the chapter. However, there has been disparity in decisions passed by the Courts regarding the stage of conducting preliminary investigations as regards filing of FIR. Many courts have concluded that a preliminary investigation is needed to confirm whether the offence is cognisable or not before filing the FIR. However, some others have concluded that the FIR needs to be recorded first before investigation starts. This confusion regarding stages of investigation in a criminal case was settled by the court by upholding the fact that ***the purpose of a FIR will suit the definition of 'procedure established by law' under Art. 21 only if it is filed in the first instance even before investigations start.***[75] The court observed that only this procedure if

[73] (2014) 2 SCC 1

[74] Report of the Committee on Amendments to Criminal Law, January 23, 2013.

[75] *Ibid at para 100*

followed would protect an accused of his rights guaranteed under Art. 21 of the Constitution. Furthermore, the Court exercised its power under Art. 145 gave eight directions to be followed while registering an FIR which has to be followed mandatorily by the executive.

Thus, the procedure mentioned under Sec.154 of the Cr P.C. was interpreted so as to suit the requirement as put forth in our constitution by the judges through interpretive methods. Another leap towards improving the Criminal justice system which includes Prison administration also was the case of the State of Gujarat and Ors. v. Hon'ble High Court of Gujarat[76]. The Court in this case succeeded in bringing within the purview of 'forced labour' as enumerated under Art. 23 of the Constitution, the wages paid to prisoners for the work done in prisons while undergoing punishment. The Court went ahead to interpret that if a prisoner is not paid his wages as per the Minimum Wages Act, then it would violate his fundamental right guaranteed under Art. 23 of the Constitution. The Court blatantly rejected the claim that in the case of prisoners' the minimum wage requirement need not be complied with. The Court reiterated the decision in People's Union for Democratic Rights[77] where forced labour was defined as - "*where a person provides labour or service to another or remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23."*[78]

The Court furthermore, to keep up with the purpose of Art. 23 and 24 gave direction to the State government to form a wage fixation committee to decide wages for prisoners.

[76] (1998) 7 SCC 392
[77] People's Union for Democratic Rights Vs Union of India AIR 1982 SC 1473
[78] *id.*

Conclusion

The cases referred here can be considered as a few of the breakthrough cases which help us understand the infusion of humanism into the criminal justice system with constitutional interpretation as the catalyst. No doubt, most of such cases owe their aura to Art.21. But not to forget, the intention of this article has been to look back to the pathway taken by the Supreme Court while imbibing the criminal justice system with the new thought of liberalism and freedom open not only to victims but also to accused.

The existence of a written constitution or codified set of laws have not kept the judiciary away from its role as interpreter. However, it has to be admitted that there has been no uniformity in the pattern followed by the Apex Court when it comes to interpreting criminal law provisions to alter it to suit the existing Constitutional scheme. There is indeed no doubt that our courts have been influenced by the decisions of the US Supreme Court while interpreting provisions of criminal laws with respect to their constitutional validity. But it is not to be forgotten that American judges too in the guise of Constitutional provisions have tried to uphold the common law principles; A distinct feature of the English legal System which has descended into the American legal system and has been their province always. As put forth by David Strauss in his article titled 'Common Law Constitutional Interpretation' said that,

"the common law approach captures the central features of our practices as a descriptive matter. At the same time, it justifies our current practices, in reflective equilibrium, to anyone who considers our current practices to be generally acceptable either as an original matter or because they are the best practices that can be achieved for now in our society."[79]

[79] Strauss, D.A., 1996. Common law constitutional interpretation. *The University of Chicago Law Review*, *63*(3), pp.877-935.