

## **AN EXAMINATION OF INDIA'S CRIMINAL LAW AMENDMENTS**

**Dr. Harish Kumar Sharma, Associate Professor, Deptt. Of Law, D. S. College, Aligarh**

**Email Id- harishdcollege@gmail.com**

### **ABSTRACT**

Our central government and state governments have made revisions to the International Covenants on Human Rights. The modifications brought about changes that were not previously present in Indian law. One of the key reasons for amending and enacting new laws is the rise in crime. These crimes include assaults on the person, property, and, more recently, cybercrime. To fulfill the demands of the period, appropriate adjustments are made and new Acts are adopted. These changes were made to the Criminal Procedure Code of 1973 and the Indian Evidence Act of 1872. Amendment to the Protection of Children from Sexual Offenses Act 2012 and the Indian Penal Code, 1860 I have proposed a history of human rights in the ancient, mediaeval, and modern periods in my thesis.

Behind Human Rights, there is a classifying viewpoint and rationale. I attempted to explain the concept of human rights. Human rights are intrinsic rights that all human beings have regardless of nationality, place of birth, residency, sex, ethnic origin, color, religion, language, or any other status. The International Covenant on Human Rights, which includes the notion of evolution and, in a nutshell, the UDHR principles, as well as the NHRC's jurisdiction.

**KEYWORDS:** *Amendments, UDHR, NHRC*

### **1. INTRODUCTION**

In this study, the society in which every individual is entitled to the fundamental and basic right, Human Rights are those rights that every individual must have against the state or other public authority by his member of the human family, regardless of any other consideration. The research's introduction has been mentioned. It was also highlighted how the rule of law notion is applicable even landmark in the examination of individual safeguards through action or the international organization.

The importance of United Purpose in preserving global peace and security, which ensures human rights all throughout the world. So, before delving into the structure and anatomy of the United Nations and its Organization, it's worth pausing to consider the classic ideals, ideology, and genetics of human rights, both parenthetically and historically. The United Nations arose from the ashes of the

League of Nations' failure to prevent war and promote the belief in peace held by people all across the world.

During World War II, President Franklin D. Roosevelt coined the term "United Nations" after representatives from 16 countries vowed to fight the axis forces together. In this topic, the research scholar has mentioned the objectives of the United Nations which are related to the current study as these objectives which are reflected in the preamble to the charter as to promote social progress and a higher standard of living in large freedom and the idea behind the U.N. is to provide a better and peaceful life to the people of the world by practicing tolerance and living together in harmony and peace with one another.

Scholars also define why the current topic is important because it is the primary duty of each state to protect its citizens and maintain peace in society by punishing those who disturb the society or who violate citizens' rights for breaking the law because law is an important instrument to treat them properly in order to maintain peace and order in society. If laws are changed to meet the needs of society, if laws are made more harsh and strict, the problem of various crimes will not occur in society as a whole, and the ratio of crime and criminality will be reduced. It is required to amend the criminal law in order to minimize criminality and crime rates in society in order to enjoy the company of people or to live in a peaceful society.

Aims and objectives are also highlighted, as well as the duty imposed on public servants and police officers, and the researcher's attention on the rights of rape victims. The study focuses on de jure and de facto rights, as well as the enjoyment of victims under the human right concept. It also includes a comparison of Indian law, such as the Constitution of India and other major criminal laws, with international law, as mentioned by the researcher, and a scientific study of the subject "concept of Human Right." A research with a focus on amendments to Indian criminal law made to protect the rights of the common man and to determine why miscarriages of justice occur. The study's hypothesis is that there is a need for a significant overhaul in laws and procedures in favor of victim rights, with an emphasis on human rights to study up to current amendment.

The Indian Constitution is one of the world's most progressive constitutions, ensuring equal rights for men and women as well as the protection of social, economic, and political justice for all citizens. The rights of offenders, victims, and juveniles, which are recognized by the human right as basic rights of human beings, are needed to manage and preserve peace and security in the Indian society, which has a population of over one billion people. These criminal laws should be modified in accordance with Article 368 of the Indian Constitution, which protects human rights. Every state's primary responsibility is to protect its citizens and maintain peace in society.

Those who disrupt society or break the law are punished for disrupting and violating citizens' rights,

and the law is an important tool for treating them as property and maintaining peace and order in society. If the law is changed to meet the needs of society, if the law is made more harsh and strict, the problem of numerous crimes will not arise in society as a whole, and the ratio of crime and criminality will decrease. To lessen criminality and crime in society and to enjoy others or a peaceful society, changes in criminal law are required.

## **2. OBJECTIVES OF THE STUDY**

- To investigate the victims and accused's de jure and de facto rights and enjoyments under the Human Rights Act. Concept
- To research many human rights in general, as well as fundamental freedom.
- The purpose of this project is to investigate the concept of amendment as defined under Article 368 of the Indian Constitution.
- To research India's major criminal laws and the revisions made to them.

### **Hypothesis of the study**

There is a compelling need for well-structured legislation and the judiciary, including Criminal Procedural Laws, in the event that rules and procedures in favor of vacations of various offences require a significant revision.

## **3. METHODOLOGY OF THE RESEARCH**

The researcher used a doctrinal research approach in his research. However, in order to complement and justify this research report, the researcher used other types of legal research such as comparative legal research, case studies, and critical analysis to back up the findings. It also sheds light on the list of study materials and data, as well as their sources, that the researcher purchased as the research instrument. The main benefit of this strategy is that it allows you to test your theory by looking at reputable sources personally. The benefit of this strategy is that it allows you to test your theory by looking at reputable sources firsthand. This strategy will be used in the current study because it contains a lot of information that will aid the researcher in learning.

### **3.1 Human Rights Conventions**

Human rights conventions are commonly referred to as the "International Bill of Human Rights." On December 10, 1948, the United Nations General Assembly adopted and proclaimed the Universal Declaration of Human Rights. At its second session, the Human Rights Commission Three working groups were formed from the 2nd to the 17th of December 1947. The declaration comes first, followed by the covenant, and last, the implementation (Ruggeri 2015). The Universal Declaration of Human Rights consists of a Preamble and 30 Articles that encompass civil and political rights as well

as economic, social, and cultural rights. The confidence in fundamental human rights in dignity and worth of the human person, as well as equal rights for men and women, is mentioned in the preamble because it is deemed, properly so, to be the "basis of freedom, justice, and peace in the world." Emmerson, Ashworth, and Macdonald (Emmerson, Ashworth, and Macdonald, 2012) There are four categories of rights recognized in the Universal Declaration of Human Rights. This "International Bill of Human Rights" consists of the following: 1. The Universal Declaration of Human Rights, 1948; 2. The Universal Declaration of Human Rights, 1948; 3. The Universal Declaration of Human Rights, 1948; 4. The Universal Declaration of Human Rights, 1948; 5. (UDHR). (Doak 2008; South Asia Human Rights 2014)

2. The International Covenant on Civil and Political Rights (ICCPR), which was signed in 1966. (ICCPR).

3. The International Covenant on Economic, Social, and Cultural Rights (International Covenant on Economic, Social, and Cultural Rights), 1966 (ICESCR). (Human Rights in South Asia, 2014)

4. The Optional Protocol to the International Covenant on Civil and Political Rights, which was adopted in 1966.

These covenants, which the United Nations affirmed in their charter and determination 6 to promote social progress and better standards of living in greater freedom; it also refers to the pledge taken by member states to promote universal respect for the observance of human rights and fundamental freedom in cooperation with the United Nations. This U.D.H.R. establishes a universal and effective recognition and observance of a common norm for all peoples and all nations, every individual and every organ of society, not only to national but also to international security, both among the people of member countries and their jurisdiction.

Despite the fact that the United Nations had implied in hushed tones that people were determined to reassert their trust in fundamental human rights. The same was insufficient in and of itself because there was no definition of what human rights were. As a result, at the international level, a definitive statement on all human rights was required. As a result, the Universal Declaration of Human Rights will be put into effect.

### **3.2 CONSTITUTIONAL PROVISIONS**

The Universal Declaration of Human Rights' Article 1 states that all human beings are born free and equal in dignity and rights, as defined by the Declaration. As rational and conscientious individuals, they have a responsibility to act towards one another in a spirit of brotherhood. This Article 1 of the Universal Declaration of Human Rights (UDHR) 1948, which is similar to the Preamble of the Indian Constitution, states that "We the People of India have solemnly resolved to constitute India into a Sovereign, socialist, secular Democratic Republic and to secure to all its citizens: Justice,

Liberty, Equality, and Fraternity." (Ssenyonjo and Baderin 2013, "UDHR Rights and Duties: Contrasted and Critiqued," n.d.; "UDHR Rights and Duties: Contrasted and Critiqued," n.d.) Article 7 of the Universal Declaration of Human Rights states that all people are equal before the law and are entitled to equal protection of the law without discrimination. Everyone has the right to equal protection against any instigation to such discrimination by anyone. If we look at Article 14 of the Indian Constitution, which states that "No person should be denied equality before the law or equal protection of the law within the territory of India," we see that "No person shall be denied equality before the law or equal protection of the law."

### **3.3 MAJOR CRIMINAL LAWS IN INDIA-INDIAN PENAL CODE 1860**

Every community has had rules from ancient times. If we look at Indian society from a religious perspective, we may find Manu, Kautilya Yajnavalka, Narad, Vyas, Brahspati, and Katyayana, all of whom provided thorough knowledge and studies on the law of wrongs, both civil and criminal. During the Muslim period, punishments were divided into five categories: Qias, Diya, Hadd, Tazir, and Siyasat. During the British period, Lord Macaulay, Stephen, who also contributed to the creation of the Indian Penal Code and the Indian Evidence Act, as well as the draught for the code. The role of criminal law and morality in understanding the impact of obscenity and moral turpitude in today's society. The law and the courts must be aware of shifting moral standards. The factors of crime are also defined by the researcher in this chapter, such as human being act must be performed by human being, Actus Reus, which means act or omission, and overt act or illegal commission must take place in pursuit of the guilty intention. The Indian Evidence Act also explains the Act's history, as well as the cardinal rule of evidence and the code of criminal procedure. This chapter also covers minor criminal laws such as the NDPS Act, the SC/ST Atrocities Act, the Protection of Civil Rights Act, the Prevention of Corruption Act, and the Juvenile Justice Act. The researcher in this area also looked into the immoral Traffic (Prevention Act) Prenatal Dignosis Act.

### **3.4 CRIMINAL LAW AND MORALITY**

The best thinkers of the civilization have always placed morality at the centre of their attention or appeal. Moral values are required for a recognised government in any progressive society. Morality is crucial to society's survival, and it can be preserved through the use of the legal tool. Indian courts must be sensitive to shifting moral perspectives and concepts in order to understand the impact of obscenity and moral turpitude on today's society in light of current standards and public opinion. While summarily convicting and prosecuting a person and imposing a small fine, the convict's future career must be considered. The law and the courts must be aware of shifting moral standards. There are many exceptional cases where mens are not at all required in criminal law.

1. The presence or absence of a guilty thought is irrelevant where a statute imposes culpability. Many laws enacted for the sake of public safety and welfare entail absolute accountability. This is true in concerns of public health, food, medications, and so on. Licensing of establishments such as shops, hotels, restaurants, and pharmacies carries ultimate liability. Cases under the Motor Vehicles Act and the Arms Act are similar. Morsink (Morsink, 1999)
2. Another exemption is when proving mens rea is difficult and the penalties are minor fines. In such minor matters, proceedings must be resolved quickly, and showing mens rea is difficult. Even if there is no proof of mens rea, a defendant might be penalised. (Hannum 1998; Morrisink 1999)
3. In circumstances of public disturbance, the notion of mens rea is also suspended. When there is a public disturbance, the rea is used. Strict liability must be imposed in the interest of public safety. A person who produces public annoyance, whether with or without a guilty mind, shall be punished. Ssenyonjo and Baderin (2013) (Morsink 1999; Hannum 1998; Ssenyonjo and Baderin 2013).

### **3.5 THE CRIMINAL LAW (AMENDMENT ORDINANCE, 2013)**

The Act has recognised specific acts as offences that are dealt with by law the offences that are included and placed in these ordinance offences such as offences against women, including acid attacks, and so on. Peetush (Peetush, 2015) As far as we can tell, there was no particular reference to rape in this ordinance, but the word "rape" was incorporated in the Bill as part of the Act that was passed. The term "sexual assault" was used earlier in this ordinance from 2013. (Samaddar, n.d.)

1. If we look at this ordinance under section 326-A, which is concerning Acid Attack, we can see that it stipulates a minimum sentence of 10 years in jail, but that this sentence can be extended to life imprisonment and a fine at the discretion of the court. If a penalty is imposed, it must be fair and reasonable. The fine money will be utilised or donated to the victim to help with her medical bills. Peetush (2015) and Ray (2003) are two examples of this.

2. Voluntarily throwing or attempting to throw acid on any person or administering acid with the aim to cause permanent or partial damage shall be punished by imprisonment for up to seven years and a fine.

3. Section 354-A deals with sexual harassment and the penalties that apply if a man engages in any of the following behaviours.

- a. If there is any physical contact or advances in the initial negotiations, such as sexual overtures, or
- b. If there is a demand or request for sexual favours, or if sexually coloured remarks are made.
- c. Forcefully showing pornography to a woman.

Making a sexually suggestive statement. (Peetush 2015; Ray 2003; Oestreich 2016) These points I to

(iv) show that while there were no offences linked to pornography in the earlier Indian Penal Code, as the rate of other crimes has increased, there is a pressing need to include it as a provision for punishment. The penalty ranges from one to three years of solitary confinement, as well as a fine, or a combination of the two. The Indian Penal Code was drafted in 1860, but it is now necessary to change the law because various types of offences are being introduced these days, but there is no law prohibiting or preventing these offences. To prevent these types of offences, new sections must be inserted, because imposing punishment on the head of these sections is simple, making it possible to deliver Criminal justice for proper administration as per this amendment. second, worry of suffering severe harm thirdly, assault with the goal of rape fourth, fulfilling lust that isn't natural Kidnapping or abduction is the fifth offence. sixth, unjust detention, but after this Amendment, a new provision was added that dealt with acid assault or attempt to throw or administer acid, as well as anxiety that grievous harm would result. In the case of *Wassan Sing vs. Punjab State*.

#### **4. CONCLUSION**

To summarize the thesis's chapters on the „Concept of Human Rights A study of the human rights position in ancient times, the Islamic caliphate, and Magna Carta. Modern Human Right Movement evens the concept underpinning the Human Right Concept, categorization. A comprehensive examination of ancient Indian history demonstrates the position of Human Right in India. The concept of human rights was previously present in Indian culture and texts. The Indian people have the culture of treating both Indians and outsiders well. They always feed the beggars and the impoverished. The harsh punishment likes to cut limb of an accused theory.

Global perception of the right to live with dignity needs all public authorities to act not only corruptible with all conceivable means and methods to strengthen and secure a woman's fundamental right to life and liberty. In the matter of *Madhukar Narayan v. Maharashtra*. The Supreme Court ruled that even a woman of easy virtue had a right to privacy, and that no one can breach her calm without her consent. Above it is obvious that this research of human rights has defined the importance of amending article 368 of the Indian Constitution for a progressive society.

#### **REFERENCES**

- Amanwinata, Rukmana. 2000. “Kekuatan Mengikat UDHR 1948 Terhadap Negara Anggota PBB, Khususnya Indonesia.” *Jurnal Hukum IUS QUIA IUSTUM* 7 (14): 31–45.
- Chatterjee, Deen K. 2011. “UDHR.” In *Encyclopedia of Global Justice*, 1102–1102.
- Doak, Jonathan. 2008. *Victims’ Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties*. Bloomsbury Publishing.

- Emmerson, Ben, Andrew Ashworth, and Alison Macdonald. 2012. *Human Rights and Criminal Justice*. Sweet & Maxwell.
- Gostomzyk, J. G., and G. von Mittelstaedt. 2016. “[Salomon Neumann (1819-1908) and the Right to Health].” *Gesundheitswesen* 78 (12): 804–7.
- Hannum, H. 1998. “The UDHR in National and International Law.” *Health and Human Rights* 3 (2): 144–58.
- Krishnan, Jayanth. 2004. “Journal of the National Human Rights Commission, India (review).” *Human Rights Quarterly* 26 (2): 542–47.
- Merali, Isfahan, and Valerie Oosterveld. 2011. *Giving Meaning to Economic, Social, and Cultural Rights*. University of Pennsylvania Press.
- Morsink, Johannes. 1999. *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*. University of Pennsylvania Press.
- Nirmal, C. J. 2002. *Human Rights in India: Historical, Social, and Political Perspectives*. Oxford University Press, USA.