An Analytical Study on the Human Rights Concerns Raised by Amendments Made to Criminal Law and Procedure in India

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Abstract

The amendments carried out by our Central Government and State Government are related to International Covenants of Human Rights. The changes brought by way amendments were not existing previously in Indian Laws. The increase in crimes is also one of main factor for amendments and enact new laws. These crimes includes against Body, property and presently cyber crimes. The suitable amendments are carried out and new Acts are enacted to meet the needs of time. These amendments are in Criminal Procedure Code, 1973 , Indian Evidence Act 1872. Indian Penal Code, 1860 and Amendment to the Protection of Children from Sexual Offences Act 2012. In this thesis I have postulated the History of Human Rights in Ancient Medieval and Modern period. There is classification position and logic behind of Human Rights. I tried to explain the Human Rights.

Human Rights are rights inherent to all the human beings on the ground of nationality, place of birth, residence, sex, ethnic origin, colour, religion, language or any other status all are equally entitled to human right without any kind of discrimination. The International Covenant on Human Right which involves evolution concept and in brief UDHR norms, scope of
NHRC. The major and minor laws in India are also studied whatever changes brought under Criminal Law and the light of Human Rights concept are also mentioned.

**Key Words:** Amendment, UDHR, ICCPR, criminal procedure, IPC.
1. **Introduction**

In this topic the society in which the every individual who is entitled for the fundamental and basic right, Human Right are those right which every individual must have against the state or other public authority by his member of human family irrespective of any other consideration rights of accused are sacrosanct. The introduction about the research has been mention. How the rule of law concept is applicable even landmark even in the evaluation of safeguards to individual was through action or the international organization was also mentioned. The important role of United Purpose as to the need to preserve global peace and security which guarantees human right world wide. So it is so worthwhile inquiring into the vintage ideas and ideology and genetics of human right parenthetically and historically but briefly before examining the structure and anatomy of United Nations and its Organisation. The United Nation ashes of league of Nations League’s failure to avert the war and promote the cause of peace conviction of people all over the world. The President Roosevelt was found the name of United Nations during the war when representatives of 16 nations pledged their government to fighting together against axis powers. In this topic the objective of the United Nation which is related to present study as these objectives which reflected in preamble to the charter as to promote social progress and better standard of life in large freedom and idea behind the U.N. is better and peaceful life to the people of the world through practicing tolerance and living together with harmony and peace with each other all these objective have mentioned by research scholar. The problem of research is also defined by scholar why the need of the present topic is relevant because the primary duty of each state to protect its citizen and maintain peace in society who disturb the society or who are the law breakers punishing them for disturbing and violation of rights of the citizen for this law because law is an important instrument to treat them properly to maintain peace and order in society. If the laws are amended as per the need of the society, if the law will stringent, strict then the problem of various crime will not arise in the society at large the ratio of crime and criminality in society will be reduce. Amendment in Criminal Law is necessary to reduce these criminality, and crime rate in society to enjoy others or society as peaceful society. Aim and objectives are also mention the duty cast upon the public servant and on the police right of the victim of rape also focused by the researcher the study is to de jure and de-facto rights and the enjoyment of victim as per human right concept also mention even the comparative study of the Indian Law as Constitution Of India and other major Criminal Laws with International Law mentioned by the researcher and to study scientifically the subject “concept of Human Right”. A study with special reference to Amendments made into Indian Criminal Law to prevent the rights of the layman and also to find out the reason for failure of miscarriage of justice. Hypothesis behind the study is for the need of substantial overhaul in the policies and practices in favour of right of victim focus on Human right to study up to date amendment.
Indian Constitution is one of the most progressive Constitutions the world which guarantees equal rights for men and women and which also guarantees to the protection of social, economical and political justice to all citizens. Indian population which is more than 1 million which need to control and maintain peace and security in the society for this purpose the rights of criminals, victims juvenile which described by the human right as basic right of human being. These criminal law should be amended as per the Human Right to protect the rights of human being as per article 368 of the Indian Constitution. This is the primary duty of every state to protect its citizen and maintain peace in society who disturb the society or who are the Law breakers punishing them for disturbing and violation of rights of the citizen for this Law is an important instrument to treat them property and maintaining peace and order in society.

If the law is amended as per need of the society, if the law will stringent, strict then the problem of various crime will not arise in society at large the ratio of crime and criminality in society will be reduce. Amendment in criminal law is necessary to reduce these criminality, crime in society and to enjoy others or society as peaceful society.

2. Review of Literature

The researcher has make study on the topic of “concept of Human Right- A Study with Special Reference. To Amendments Made Into Indian Criminal Law “ And also focus on the offences its critical examination nature scope of the offences such as Rape, Sexual Assault under I.P.C and criminal Law with special reference to criminal Law Amendment Act 2013. The researcher has reviewed the books of eminent author related to the topic. In addition to this researcher has also reviewed the various case-Laws, various judicial decision of the court in case Laws. The researcher has visited the websites for reviewing the literature highlighting the problem. Researcher has become able to understood exact nature of problem for the fulfillment of research. The researcher has gone through articles, report, document, Acts, enactments, PDF-files, Law journal, Articles published on news papers case-laws and existing material available on internet.

The Researcher has reviewed the book of eminent author related to the topic in addition to this researcher who also referred the different journals for the case study and also the different authors book for the purpose of comparative study. The authors such as Gaur K.D, Kaparia, Paranjape, Siddique Ahmed, M.P. Jain, Pandy J.M, Myneni Will Kison & Bhandarkar, Lloyds Kapoor's book on Human Right Johary book on political theory and also refer and review the other authors book. The criminal manual also review by the researcher, Criminal Major Act with Bare Acts given by the legislature and also review commentary on the laws for the research purpose.

The paper is divided into three major parts:
3. Objectives of the Study

1. To study the de-jure and de-facto rights and enjoyment of victim, accused as per Human Right concept.
2. To study the various rights in general and also fundamental freedom.
3. To study the concept of amendment under article 368 of the Indian Constitutional law.
4. To study Indian major criminal Laws and amendments made under these Laws.

Hypothesis

There is a pressing need to have a well structured legislation and judiciary including Criminal Procedural Laws in case there is a need of substantial overhaul in the policies and practices favour of vacations of the various crimes.

4. Research Methodology

The research methodology adopted by the researcher is a doctrinal research. However the researcher with a view to compliment and substantiate this research paper corroborated the study with other forms of legal research such as comparative legal research, case studies and also critical analysis. It also throws light on the list of study materials and data and their sources, procured by the researcher as the instrument to conduct the research. The major advantage of this method is to verify the hypothesis by a firsthand study of authoritative source. The advantage of this method is to verify the hypothesis by a firsthand study of authoritative source. This method is to used in present study because this method contains a lot of information which helps the researcher in gaining knowledge.

International Covenants on Human Rights

This chapter attempts to unpack the inter relation with the International Covenant on Human Right vis-à-vis the Constitution of India. Their Co-relation shall reveal that not only do they overlap each other in certain aspects but also provide a fresh lease of life for the advert of many more new human rights in the light of changing circumstances.(DiGiacomo 2016)

The purpose of securing human rights as such are to provide protection to these rights against the abuse of power committed by the organs of State to establish institutions for the promotion of living condition of human being and for the
Karel Vasak has aptly remarked that the human rights, which are essentially individual in character, for they are essential individual in character, for they are meant to be enjoyed by the individuals constitute a social phenomenon by virtue of those for whom they are intended. (DiGiacomo 2016; Galliher 1989)

**Conventions on Human Rights**

The conventions on Human Rights are popularly known as “International Bill of Human Rights” The UDHR was adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948. The commission on Human Rights at its second session From 2 to 17 December 1947 established three working groups. First on the declaration, Second on the covenant and third on the implementation (Ruggeri 2015). The Universal Declaration consists of Preamble as noted above and 30 Articles covering both civil and political rights and economic, social and cultural rights. In the preamble which refers to the faith in fundamental human right in dignity and worth of the human person and the equal rights of men and women because they considered, and rightly too, it to be the “foundation of freedom, justice and peace in the world”. (Emmerson, Ashworth, and Macdonald 2012)

The rights proclaimed in the universal declaration of human right may be classified into four category. This “International bill of human rights” which comprises of the following :-

2. The international covenant on civil and political rights, 1966 (ICCPR).
3. The international covenant on economic, social and cultural rights, 1966 (ICESCR). (South Asia Human Rights 2014)
4. The optional protocol to the international covenant on civil and political right, 1966.

These covenant which U.N. affirmed in the charter of U.N. and their determination 6 to promote social progress and better standards of life in larger freedom; it also refers to the pledge taken by the member state to achieve, in co-operation with the United Nations the promotion of universal respect for the observance of human rights and fundamental freedom. Through this U.D.H.R. it achieves standard of common for all peoples and all nation every individual and every organ of the society not only to national but also international security universal and effective recognition and observance, both among the people of member and their jurisdiction. Although the United Nations had in tacit terms indicated people’s determination to reaffirm their faith in fundamental human rights. The same per se was not sufficient as it lacked clarity in what human rights are as they were undefined. Therefore, for this reason a categorical statement during all human rights was required at international level. Consequently, the Universal Declaration of Human Rights to be enacted.
It is regretfully submitted that, mere declaration of human rights also was not sufficient and this came to be realized for the next two decades. In the circumstance, the ICCPR and the ICESCR, came to be enacted in the year 1966. The reason for the advert of these covenants was that where there is a right, there is a remedy that is ‘ubi jus ibi remedium,’ but UDHR only spelt right not spelled rights not remedies. (Green 2017) It was realized that a right without remedy is no right in practicality. The beauty of ICCPR & ICESCR was that it bound the states party to it to implement the covenants. These covenants have achieved immense success at international level qua almost the entire globe is signatory to it. As many as 167 nations across the globe are to the ICCPR and as many as 7 nations have signed it but not ratified it but not ratified it. There are 18 nations which haven’t signed the ICCPR. India has not only signed but also ratified. The ICCPR likewise, ICESCR is signed and ratified by 160 nations barring 25 who have neither signed it nor ratified it and 7 who have signed it but not ratified it.

**The Foundation of International Human Rights Law**

The Universal Declaration of Human Rights is agreed to be the foundation of internationally recognized rights. It is recognized by member Nations of United Nations organizations under several treaties.

The core principles of rights of civilians first set out in the UDHR which involves universal value, as universality interdependence and indivisibility, equality and non-discrimination UDHR 1948 (Ssenyonjo and Baderin 2013) which also represents the universal recognition that the basic rights and fundamental freedom are inherent to all human beings, inalienable and equal applicable to everyone, and that every one of us is born with freedom equa right and decent life. On the ground of nationality, place of residence, gender national or ethnic origin, color, religion, Language or any other status on 10 December 1948 international community made commitment uphold dignity and justice for all. (Rubenstein and London 1998)

**Constitutional Provisions**

As compare to Universal Declaration of Human Rights Article 1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. This Article 1 of UDHR 1948 which is similar to Preamble of Indian Constitution We The People Of India having solemnly resolve 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.)

Article 7 of UDHR All are equal before the Law are entitled without any discrimination to equal protection of the Law. All are entitled to equal protection against any in incitement in such discrimination. As compare with Article 14 of Indian Constitution Equality before Law and Equal protection of Law- The State shall not deny to any person equality before the Law or the
equal protection of Law within the territory of India. (Chatterjee 2011)

**Major Criminal Laws in India - Indian Penal Code 1860**

To study the “Concept of Human Right- A study with special reference to Amendments made into Indian Criminal Law”. It is very important to study the major criminal Laws in India and also give focus on the minor criminal Laws. These major criminal laws which are of substantive and procedure law which defines procedure of the law in India to be followed by the court and the police to maintained peace and security in the society.(Amanwinata 2000)

Since from ancient time the laws are in every society. If we talk about the Indian Society from different religious aspect such as Hindu Dharma the Manu, Kautilya Yajnavalka, Narad, Vyas, Brahspati and Katyayana who gave detailed information and study on law of wrongs both in civil and criminal side. In Muslim period punishments which were classified according to five major heads such Qias, Diya, Hadd, Tazir, Siyasat. In British Period the Lord Macauly, Stephen who also give participation to make Indian Penal Code and Indian Evidence Act and the draft were also prepared for the code.(Sun 2018)

The position of Criminal Law and morality concept of morality to appreciate the effect of obscenity moral turpitude on today’s society. The law and Courts must take cognizance of the changing moral standards. In this chapter the elements of crime also define by the researcher such as human being act must be committed by human being , Actus Reus it means act or omission it also means overt act or illegal commission must take in pursuance of the guilty intention. The Indian Evidence Act also define its historical background of the Act and the cardinal rule of Evidence and the code of criminal procedure its history. This chapter which also gives the information related to minor Criminal Laws such as NDPS Act, SC/ST Atrocities Act protection of Civil Right Act, Prevention of Corruption Act, Juvenile Justice Act. The immoral Traffic (Prevention Act) Prenatal Dignosis Act which also studied by the researcher in this topic.(Sun 2018; Hannum 1998)

**Criminal Law and Morality**

The morality is always been at the centre of attention or centre of attraction of the greatest thinker of the society. The moral principles are necessary for any progressive society for a recognized government. By using the instrument of law the society can preserve morality is essential to its existence. Indian courts be sensitive to the changing perspective and concept of morality to appreciate the effect of obscenity, moral turpitude on today’s society in the light of its present standard as per the changing public opinion. While convicting and prosecuting a person summarily and imposing small amount of fine, the future career of convict must be kept in view. The law and Courts must take cognizance of the changing moral standard.(Gostomzyk and von Mittelstaedt 2016).There are many exceptional cases where mens rea is not required in criminal law.
1. Where a statute imposes liability, the presence of absence of a guilty mind is irrelevant. Many laws passed in the interest of public safety and social welfare imposes absolute liability. This is so in matters concerning public health, food, drugs, etc. There is absolute liability in the licensing of shops, hotels, restaurants and chemists; establishments. The same is true of cases under the Motor Vehicles Act and the Arms Act. (Morsink 1999)

2. Another exception is where it is difficult to prove mens rea and penalties are petty fines. In such a petty cases, speedy disposal of cases is necessary and the proving of mens rea is not easy. An accused may be fined even without any proof of mens rea. (Morsink 1999; Hannum 1998)

3. Another exception to the doctrine of mens rea is in cases of public nuisance. In the rea is in cases of public nuisance. In the interest of public safety, strict liability must be imposed. Whether a person causes public nuisance with a guilty mind or without guilty mind, he must be punishable. (Morsink 1999; Hannum 1998; Ssenyonjo and Baderin 2013)

4. Another exception to the doctrine of mens rea is related to the maxim ‘ignorance of the law is no excuse’. If a person violates a law without the knowledge of the law, it cannot be said that he has committed an act which is prohibited by law. In such cases, the fact that he was not aware of the rule of law and hence did not intend to violate it, is no defense and he would be liable as if he was aware of the law. “Mens Rea” says Beg in Girja Nath Vs State mens rea is a loose term of elastic signification and covers a wide range of mental status and conditions the existence of which give rise to criminal hue to actus reus. In this the consequence of the act and other times to act irrespectively this is mental condition of a weaker shade such as indicated by words like knowledge belief, criminal negligence or ever rashness in disregard of consequences. (Morsink 1999; Hannum 1998; Ssenyonjo and Baderin 2013; Merali and Oosterveld 2011)

It indicate a colorless consciousness of the act itself irrespective of consequence of the act or words and bare capacity to know what one is doing as contrasted.

Changes and Amendments brought Under Criminal Law in Light of Human Rights

“If the law fails to respond the need of changing society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth law must therefore constantly be on the move adopting itself to the fast changing society and not lag behind- Justice Bhagawati” (Roberts 2006)

For the social control and prevention and control of crime there is need to change Criminal justice system as per the need of the society the law is an instrument through which it could possible to amend the law and to protect
rights of the people as protection of Human Right concept. (Roberts 2006; Peters and Wolper 2018)

It we see there are several causes for crime in society but main important causes are social causes which occupy the primary position. It is true that the Criminal is not born, if a child is born he or she is not criminal by birth but is made up by social and environmental factors are responsible to made he or she as a criminal even the criminality also take birth into the person's mind. There are several factors causing criminal behavior and enhancing crime rates year by year. According to Lombrosian anthropologists through their biological and anthropological researches succeeded in establishing a connection between heredity of the criminal and his criminogenic tendency. The important thing is the behavior of the offender is very important for the cause of crime. (Roberts 2006; Peters and Wolper 2018; White and Marsella 2007)

The Criminal Law (Amendment Ordinance, 2013)

From this an ordinance new offences the Act has recognized certain act as offences which are dealt with Law the offences which are added and inserted in this ordinance offences like, offences against the women including acid attack etc. (Peetush 2015)

As if we see this ordinance there was no specific reference or the word ‘rape’ was in it but in the Bill as per this the Act which was pass the word ‘rape’ “has been inserted. Earlier in this ordinance 2013 the sexual assault word was used. (Samaddar, n.d.)

1. If we see this ordinance under section 326-A which is about Acid Attack the imprisonment which is not less than ten years but which may here the discretion of the court given this imprisonment which may extend to imprisonment for life and fine. If fine is impose it be just and reasonable. The fine amount be used or given to the victim for her medical expenses. (Peetush 2015; Ray 2003)

2. Sec. 326 B is pertaining to voluntarily throwing or attempts to throw acid on any person or makes an attempt to administer acid with intent to causing permanent or partial damage etc shall be punished with imprisonment which may extent to seven years and also fine

3. Section 354-A pertains to sexual harassment and for punishment of the same if a man commits any of the following.
   a. If any physical contact and advances in the opening negotiations sexual overtures or
   b. If demand or request for sexual favors or making sexually colored remarks
   c. Showing pornography to woman against her will.
   d. Making sexual colored remark. (Peetush 2015; Ray 2003; Oestreich 2017)

These point (i) to (iv) in which in earlier Indian Penal code there was no offences related to pornography as per the change and other crime rate
increasing there is stressing need to insert it the provision for the punishment. The punishment extents to rigorous imprisonment for the period of one years to three year or with fine or with both or with both.

Indian Penal Code was drafted in 1860 but at the present need is to change the Law because various kinds of offences are introduced in these days but there was not Law for prohibiting and preventing these offence so to prevent these kinds of offences there is need to insert new section because on the head of these sections the imposing punishment is easy to make it possible to deliver Criminal justice for proper administration as per this amendment the change in U/Sec. 100 of the Indian Penal code is about right of private defense if any person causing death in this section there was only six clause was exit which are as first if any assault and causes the apprehension that death will occur secondly apprehension about grievous hurt thirdly assault with intention to committing rape fourthly gratifying unnatural lust fifthly an offences kidnaping or abduction sixthly wrongful confinement but after the this Amendment the one more important clause was inserted as related to acid attack or attempt to throw or administer acid and apprehension that grievous hurt will cause In Wassan Sing Vs. State of Punjab,(Sehgal 1995)

5. Conclusion

To conclude all the chapters contain in the thesis as ‘Concept of Human Rights- A study with special Reference To Amendments Made Into Indian Criminal Law which clear the Human Right position in ancient period, era of Islamic caliphate, position of Magna carta. Movement of the Human Right in modern period evens the philosophy behind the Concept of Human Right, classification of Human Right.

If the position of Human Right in Indian the concept of natural Law and rule of Law was in existence the detailed study of ancient Indian history which reveals the position. The detailed study of ancient Indian history which reveals that Indians and the kings in India was not in harsh in nature to give imprisonment to the accused though there was the concept of human right which was already exists in Indian culture and scriptures. Amongst the whole world if we see Indian peoples the culture to give good treatment not only to Indian but also the foreigners. They always donate Food to the beggar or any poor people in society. The harsh punishment likes to cut limb of an accused theory not applied in those days. (Nirmal 2002)

The Manu who define as the King to uphold the laws & much subjected to law as other person. The king Asoka tenure the torture and in human treatment were prohibited. In ancient days king personally administer their Kingdom. Even the same condition was exist in medieval and modern period now in Indian Constitution which guarantees privileges in all spheres-social, economic and political to women of India. The Constitution of Indian which guarantees the rights of the citizen and the article like 20 which also protect the right of
accused person. It may be stated that the crime ratio cannot be eradicated completely but if the state department of Family planning be assigned the additional responsibility of warning the public about the evil consequences & consequences of illicit sex-indulgence of mobilizes public opinion against the menace propaganda. In this the role of law enforcement agencies such as police, the lawyers the magistracy, the rehabilitation centres as also the voluntary social organization in combating criminality hardly needs to be emphasized. The law in only the instrument through which crime can be prevented provided the law enforcement machinery implements the provisions of law efficiently. This is possible only with the active co-operation support of concerned agencies. Unfortunately, general lack of understanding and co-ordination among the police, the prosecutor and other agencies and a tendency to criticize each other’s performance is hampering the suppression of the crimes and conviction of offenders.(Nirmal 2002; South Asia Human Rights 2014)

The emerging human right jurisprudence at home and abroad requires all public authorities to act not merely corruptible with the global perception of the right to live with human dignity but resort to all possible means and strategies to strengthen and ensure the Fundamental right to life and liberty of a woman who is victim of crime. In the case state of Maharashtra vs. Madhukar Narayan. The supreme court, without referring to Article 21, has held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy means no person shall disturb her peace as and when likes.(Krishnan 2004)

From above it is clear that this study of human right from the point of view the rights of victims, prisoners, juvenile and its effect and protection given under Indian criminal law and the necessity for the amendment has defined which is very important for progressive society and Amendment as per article 368 of the Indian Constitutional Law is needed for the progressive society.

References


Law, and Crime.


