

Faculty of Law
University of Delhi
LLM/MCL Course Material

CRIMINAL JUSTICE AND HUMAN RIGHTS

LL. M. 2YLM 113/3 YLM113
(2021– 22)

Course Objective

Crime is a normal phenomenon, said Emile Durkheim, and hence, will be found in all societies. It impacts the lives of the offenders as well as the victims for life in different ways. The victims demand justice from the State for the wrong done to them. As the primary responsibility of the State is to protect its citizens and persons and maintain law and order, Criminal justice involves balancing the rights and duties of the criminal, the victim, the State and the society at large. When the State declares certain actions as crimes in a given society, it also acquires the powers to investigate, arrest, prosecute, and punish the offenders. The accused persons will be very vulnerable before the powers and might of the State unless certain checks are provided by law to ensure that nobody is subjected to arbitrary arrests, prosecution and punishment. Victims should be at the centre stage of the criminal justice system but it is only now that some recognition of this aspect is being included in the laws. This paper critically examines the relationship and tensions among the key players in criminal justice – the criminal laws, State, accused, suspects, offenders, victims and society at large. This paper critically assesses the capacity of criminal justice systems to ensure the protection of human rights of different stakeholders. The suggested readings and cases are not exhaustive.

- I. Fact Sheet relating to Crime in India:** Profile of Crimes in India: Rate of crime; proportion of different crimes; age, sex, education, economic status of offenders; trends in crime; conviction rate (1 day) **Readings:**

1. Crime in India 2019 available at

<https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>

2. REPORT OF MALIMATH COMMITTEE ON REFORM OF CRIMINAL JUSTICE SYSTEM, Vol 1 pp. 3-22 (March 2003) available at http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf
3. Vijay Nagaraj and Bikram Jeet Batra, "Criminal Justice System 'Reforms', Part I and II available at <http://indiatogether.org/malimath-human-rights> and <http://indiatogether.org/2malimath-human-rights>
4. V.R. Krishna Iyer, "Social Justice and the Handicapped Humans" in K.D. Gaur, CRIMINAL LAW AND CRIMINOLOGY, pp. 495-527 (2002)
5. K.D. Gaur, "Criminal Justice System and Social Defence" in K.D. Gaur, CRIMINAL LAW AND CRIMINOLOGY, pp. 584-592 (2002)

II. Introduction to Criminal Justice: What is crime; who is a criminal; Why people commit crimes; aims and objectives of criminal justice, components of criminal justice system; administration of criminal justice; adversarial and inquisitorial systems of criminal justice (2 days)

Readings:

1. *N.V. Paranjape, CRIMINOLOGY PENOLOGY WITH VICTIMOLOGY, pp. 3-19, 60-77, 83-100, 112-123 (2014)
2. * Henry M. Hart, Jr., "The Aims of Criminal Law" in 23 LAW AND CONTEMPORARY PROBLEMS, 401 (1958).
3. Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, available at https://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador_Declaration/Salvador_Declaration_E.pdf
4. M. Cheif Bassiouni, "Human Rights in The Context Of Criminal Justice: Identifying International Procedural Protections And Equivalent Protections In National Constitutions", 3 (235) DUKE JOURNAL OF COMPARATIVE AND INTERNATIONAL LAW, 235 (1993), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1328&context=djil>
5. Neglected Needs: Girls in the Criminal Justice System, available at www.penalreform.org/wp-content/uploads/2014/.../girls-crim-just-v4.pdf
6. REPORT OF MALIMATH COMMITTEE ON REFORM OF CRIMINAL JUSTICE SYSTEM, Vol 1 pp. 25-58 (March 2003)
7. P.N. Bhagwati, "Human Rights in Criminal Justice System" in K.D. Gaur, CRIMINAL

LAW AND CRIMINOLOGY, pp. 302-320 (2002)

8. Madhav Godbole “Criminal Justice System in India- Bane of Human Rights”; B.B. Pande “Human Rights and Criminal Justice Administration in India; and Ravi Nair “The Malimath Committees Proposals for Reforms in Criminal Justice Systems in India: A Human Rights Reflection” in K. I. Vibhute, CRIMINAL JUSTICE A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA (2004) Eastern Book Company

III. International Framework of Human Rights in Criminal Justice: Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World; United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); UN Standard minimum rules for treatment of prisoners; Rome Statute of International Criminal Court (1 day) **Readings:**

1. Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, available at https://www.unodc.org/documents/crime-congress/12th-CrimeCongress/Documents/Salvador_Declaration/Salvador_Declaration_E.pdf
2. UN Standard Minimum Rules for Treatment of Prisoners, available at <http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>
3. Rome Statute of International Criminal Court, available at http://www.icccpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf
4. UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary, available at https://www.unodc.org/documents/justice-and-prisonreform/Bangkok_Rules_ENG_22032015.pdf
5. Chapter 6 “Protection of Human Rights” in Dr. Ashutosh, RIGHTS OF ACCUSED, pp 292400 (2009) Universal Law Publishing
6. Edel Hughes, The International Human-Rights Law Framework as a Tool for Promoting Peace and Preventing Conflict: Progress and Challenges , Irish Studies in International Affairs , 2011, Vol. 22 (2011), pp. 25-36

IV. Protection of Human Rights in Central Laws relating to Criminal Justice: Articles 2022 of the Constitution; Human Rights Issues in the IPC, the CrPC, the Indian Evidence Act; the Protection of Human Rights Act 1993 (4 days) **Readings:**

1. Ved Kumari, "Gender Analyses of Indian Penal Code" in A. Dhanda and A. Parashar (eds), *ENGENDERING LAW ESSAYS IN HONOUR OF PROFESSOR LOTIKA SARKAR*, 139160 (1999) Eastern Book Company, India.
2. "Sexual Offences" in N.V. Paranjape, *CRIMINOLOGY PENOLOGY WITH VICTIMOLOGY*, pp. 192-237 (2014)
3. Law Commission of India Report No. 154 Vol 1 on Code of Criminal Procedure (1996) available at <http://lawcommissionofindia.nic.in/>
4. Law Commission of India Report No. 177 on Law relating to Arrest (2001) available at <http://lawcommissionofindia.nic.in/>
5. Law Commission of India Report No. 185 on Evidence Act (2003) available at <http://lawcommissionofindia.nic.in/>
6. Law Commission of India Report No. 226 on Acid Attack Victims (2008) available at <http://lawcommissionofindia.nic.in/>

V. Human Right Issues under Special Laws: Terrorism, NDPS, human trafficking, offences against women, protection of children against sexual offences (3 days)

Readings:

1. Anil Kalhan, "Colonial Continuities: Human Rights, Terrorism, and Security Law in India" 20 *Columbia Journal of Asian Law* p.93 (2003) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=970503
2. Criminal Justice Response to Support Victims of Acts of Terrorism, available at http://www.un.org/en/terrorism/ctitf/pdfs/victims_rights_e-book_en.pdf
3. Janie A. Chuang, "Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy" 158 *University of Pennsylvania Law Review* (2010) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1669973
4. Anne T. Gallagher, "Using International Human Rights Law to Better Protect Victims of Trafficking: The Prohibitions on Slavery, Servitude, Forced Labour and Debt Bondage", in *THE THEORY AND PRACTICE OF INTERNATIONAL CRIMINAL LAW: ESSAYS IN HONOUR OF M. CHERIF BASSIOUNI*, L. N. Sadat and M. P. Scarf, eds., pp. 397-430, (2008)
5. Status of Implementation of POCSO Act in Delhi, Report of DCPCR, July 2015, available at delhi.gov.in/wps/wcm/connect/DOIT_DCPCR/dcpcr/publication/status+of+implementation+of+pocso+act,+21012+in+delhi

6. Law Commission of India Report No. 203 on Dowry Death, available at <http://lawcommissionofindia.nic.in/>
7. Chauntelle R. Wood, "Romeo and Juliet: The 21st Century Juvenile Sex Offenders" *Southern University Law Review* (2012) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2021262
8. Kaur, Harleen (2019). Women and Law child rape laws in India and the Complexities involved in the criminal Justice System. In P. Arvind Bhanu (ed.), *Women and Law*. p169-178. Satyam Law International, New Delhi, India

VI. Access to Justice Issues during Investigation: Arrest, police and judicial custody; Grant of bail and under-trial prisoners; Torture during Interrogation; Use of forensic and scientific investigation techniques (2 days)

Readings:

1. K. I. Vibhute "Abuse of investigatory powers: 'Policing' the police in India in pursuit of safeguarding human rights of accused in the criminal process" K. I. Vibhute, *CRIMINAL JUSTICE A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA* (2004) Eastern Book Company
2. *Moti Ram v. State*, AIR 1978 SC 1594
3. *Sushila Aggarwal vs State (Nct of Delhi)* on 29 January, 2020
4. *Rakesh Kumar Paul vs State of Assam* on 16 August, 2017
5. Shobha Agarwal, "Revisiting Krishna Iyer's Treatise on Bail in the Context of Tejpal's Case" available at <http://www.sacw.net/article8657.html>
6. Report of Malimath Committee on Reform of Criminal Justice System, Vol 1 pp. 59-74 (March 2003)
7. Parmanand Singh "Protection of Human Rights through Public Interest Litigation in India" K. I. Vibhute, *CRIMINAL JUSTICE A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA* (2004) Eastern Book Company
8. Law Commission of India Report No.185 Part II on Review of Indian Evidence Act 1872 (2003) available at <http://lawcommissionofindia.nic.in/>
9. Law Commission of India Report No.239, *EXPEDITIOUS INVESTIGATION AND TRIAL IN CRIMINAL CASES AGAINST INFLUENTIAL PUBLIC PERSONALITIES* (2012) available at <http://lawcommissionofindia.nic.in/>
10. DNA Profiling Bill 2019, available at <https://prsindia.org/billtrack/the-dna-technologyuse-and-application-regulation-bill-2019>

VII. Human Rights Issues in Trial: Role and Responsibilities of Prosecutor; Speedy and Fair

Trial; Quality Legal Aid; Witness and Victim Protection; Role and Rights of Victims; Plea Bargaining; Compensation to Victims (3 days) **Readings:**

1. Report of Malimath Committee on Reform of Criminal Justice System, Vol 1 pp. 75-84 (March 2003)
2. “Judicial Activism in Relation to Rights of Accused” in Dr. Ashutosh, RIGHTS OF ACCUSED, pp 199-291 (2009) Universal Law Publishing
3. A. Ramesh and Anirudh Krishnan, “Compensation for Victims: The Need of the Hour” in P. Madhava Soma Sundaram *et al*, CRIME VICTIMS AND JUSTICE: AN INTRODUCTION TO RESTORATIVE PRINCIPLES, pp. 136-146 (2008) Serials Publications
4. Ashish Goel and Shilpa Goel, “Compensation to Victims of Crime in India: Legislative Framework and Judicial Precedents in the Backdrop of International Norms and Standards” 2 (1-2) CRIME PUNISHMENT AND LAW – AN INTERNATIONAL JOURNAL – 1730 (2009)
5. R. Sreekumar, “Restitutive Justice and Victims: Right to Compensation” in P. Madhava Soma Sundaram *et al*, CRIME VICTIMS AND JUSTICE: AN INTRODUCTION TO RESTORATIVE PRINCIPLES, pp. 44-55 (2008) Serials Publications
6. Kristin Henning, “What’s Wrong with Victims’ Rights in Juvenile Court?: Retributive versus Rehabilitative System of Justice”, 97 California Law Review 1107 (2009)
7. V.R. Krishna Iyer, “Social Justice and the Handicapped Humans” in K.D. Gaur, CRIMINAL LAW AND CRIMINOLOGY, pp. 495-527 (2002)
8. K. I. Vibhute “Justice to Victims of crimes: emerging trends and legislative models in India” K. I. Vibhute, CRIMINAL JUSTICE A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA (2004) Eastern Book Company
9. Law Commission of India Report No. 154 on Code of Criminal Procedure 1973 Vol.1, pp. 51-54, 57-65 (1997) available at <http://lawcommissionofindia.nic.in/>
10. Witness Protection Scheme 2018 available at https://www.mha.gov.in/sites/default/files/Documents_PolNGuide_finalWPS_08072019.pdf
11. NALSA victim compensation scheme 2018 for WOMEN/VICTIMS survivors of sexual offences
12. Mahender Singh Chawla v. Union of India 2018 SCC Online SC 2678
13. Nipun Saxena v. Union of India, 2018 SCC OnLine SC 2772 14. Anokhi Lal v. State of Madhya Pradesh AIR 2020 SC 232

VIII. Human Rights Perspectives to State's Response to Crime: Meaning and Concept of Punishment; Death penalty: Retention or abolition debate and Legal and Constitutional issues; Imprisonment and Prisoners' rights; Non-custodial punishments of release after due admonition, probation, fine, forfeiture of property; public censor (4 days)

Readings:

1. Law Commission of India Report No. 42 on INDIAN PENAL CODE, pp.44-81 (1971) available at <http://lawcommissionofindia.nic.in/>
2. Law Commission of India Report No. 156 INDIAN PENAL CODE pp. 15-61 (1997) available at <http://lawcommissionofindia.nic.in/>
3. Law Commission of India Report No. 262 on DEATH PENALTY (2015) available at <http://lawcommissionofindia.nic.in/>
4. Gabriel J. Chin "The New Civil Death: Rethinking Punishment in the Era of Mass Convictions" UC Davis Legal Studies Research Paper Series Research Paper No. 308 August 2012, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2072736
5. Cecelia M. Klingele, "Rethinking the Use of Community Supervision" Univ. of Wisconsin Legal Studies Research Paper No. 1220 in 103 (4) JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY (2013) , available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2232078

IX. Diversion from Criminal Justice: Lok Adalats and mediation; Restorative Justice (1 day) **Readings:**

1. Carrie Menkel-Meadow, "Restorative Justice: What is it and Does it Work?" Georgetown Public Law Research Paper No. 1005485 Annual Review (2007) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005485
2. Maggie T. Grace, "Criminal Alternative Dispute Resolution: Restorative Justice, Respecting Responsibility, and Reviewing Public Norms", 34 VERMONT LAW REVIEW (2010) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1524762
3. Chapter 2 "Need and Importance of Restitutive Justice" in P. Madhava Soma Sundaram *et al*, CRIME VICTIMS AND JUSTICE: AN INTRODUCTION TO RESTORATIVE PRINCIPLES, pp. 13-43 (2008) Serials Publications
4. Paul H. Robinson, "The Virtues of Restorative Processes, the Vices of Restorative Justice" in Utah Law Review pp. 275-388 (2003), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=661123
5. S. Maheshwari and Bhavya Sriram, "Victim Offender Mediation and Criminal Justice" in P. Madhava Soma Sundaram *et al*, CRIME VICTIMS AND JUSTICE: AN INTRODUCTION TO RESTORATIVE PRINCIPLES, pp. 125-135 (2008) Serials Publications

6. Kathleen Daly and Julie Stubbs, "Feminist Engagements with Restorative Justice", 10 (1) THEORETICAL CRIMINOLOGY pp 9-28 (2006) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=699841

X. HR Initiatives in Prisons: Prison Reforms, Reformation Initiatives in Prisons; Open Prisons (2 days) **Readings:**

1. Vivien Stern "Prison as Punishment- Time for a new approach?" K. I. Vibhute, CRIMINAL JUSTICE A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA (2004) Eastern Book Company
2. Vijay Raghvan, "Prison Reforms: Historical and Contemporary Perspectives" in Jaishankar, et al (Eds.), INDIAN PRISONS: TOWARDS REFORMATION, REHABILITATION AND RESOCIALISATION, pp. 38-63 (2014) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2624530
3. "National Policy on Prison Reforms and Correctional Administration", Bureau of Police Research & Development Ministry of Home Affairs, Government of India New Delhi (2007) available at <http://bprd.nic.in/writereaddata/linkimages/5261991522-Part%20I.pdf>
4. "An Overview of Prisons in India", available at <http://www.rajprisons.nic.in/Training/Overview%20of%20prisons%20in%20India.pdf>
5. "Minutes & Recommendations of The National Seminar On 'Prison Reforms'" Held at India Habitat Centre, New Delhi On 15th April, 2011 available at <http://nhrc.nic.in/Documents/Minutes%20&%20Reco%20Prison%20Reform.pdf>
6. PRISON STATISTICS 2020 available at <https://ncrb.gov.in/en/prison-statistics-india2020>
7. DNA profiling bill 2017
8. MODEL PRISON MANUAL 2003 available at <http://bprd.nic.in/writereaddata/linkimages/1445424768content%20%20chapters.pdf>
9. Brenda Smith, "The Prison Rape Elimination Act: Implementation and Unresolved Issues" American University, WCL Research paper No. 2008-49 (2008) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1129810