

Criminal Justice and Human Rights: A Discussion of Custodial Violence, Pretrial Detention and Capital punishment

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ABSTRACT

The interaction between criminal justice systems and basic human rights poses one of the greatest challenges in modern legal approach, especially with regards to safeguarding human dignity into the punitive means. This paper looks at three critical areas in which the working realities of criminal justice often collide with accepted human rights standards: custodial violence/abuses of dignity, prolonged pre-trial detentions and unreasonable delays in the administration of justice, and the death penalty in the context of the right to life. Custodial violence constitutes a serious attack on the inherent dignity of the individuals within criminal justice system. However, cases of torture and physical and psychological intimidation continue to be recorded in prisons across the world despite constitutional protection or other international principles relating to human rights. This tendency erodes the point that human dignity can never be used to remove any human being no matter whether the criminal allegations against them or the fact that they are criminally convicted. The discussion shows that not only does custodial violence denies individual rights, but it alienates the population and undermines the status of the judicial institutions and suffers an institutional brutality syndrome. Another substantial human rights concern is the problem of under trial prisoners and lengthy delays of receiving justice cooked. Unreasonably lengthy pre-trial detention impairs the presumption of guilt and the right to timely trial of a case, presenting the paradox where a person is punished before his or her guilt is proved. Data shows that in most courts, the number of under sentenced suspects is higher than the convicted offenders bringing into perspective the inefficiencies of the system that converts detention into effective punishment. The delays will have a disproportionate impact on disadvantaged groups who cannot provide themselves with decent legal assistance, which further aggravates social inequalities in the justice system. Capital

punishment is perhaps one of the most controversial combinations of criminal justice and the rights theme, and questions directly the right to life. The following debates focus on whether the issue of state-sanctioned killing can ever align with human rights, especially with the concerted number of wrongful convictions being recorded as well as the irreversibility of capital punishment execution. The discussion focuses on developing international norms, the elements of arbitrariness in working with death penalty, and the increasing world consensus about abolition. It adopts a multidisciplinary approach in combining a legal analysis, human rights jurisdiction and the empirical data whether these criminal justice practices suit the international human rights norms or not. Findings show that structural reforms towards bringing criminal justice systems in line with human rights obligations need to be put in place, which include more rigour in oversight mechanisms, judicial transformation to speed-up trials and comprehensive back-up to capital punishment.

This study finds that sustainable reform of criminal justice must recognize the conflict that exists between these aims of punitive goals and human rights protections. There is a need to deal with the causes of the problems, not with mere incidents, a focus should be put on rehabilitation instead of focusing on retribution, and at the same time, not compromise safety for the population. Representing a growing body of evidence about criminal justice reform, the findings can serve as policy guidance to achieve human rights-conforming criminal justice systems.

KEYWORDS: Criminal justice, human rights, custodial violence, police brutality, undertrial prisoners.

Introduction

Criminal justice administration is one of the most inherent parts of any structured society, as it is the main process by which social order is established, and individual rights are safeguarded. Nevertheless, the quest for justice in the form of state-sanctioned mechanisms puts a certain conflict between the communal need of security and the personal right of freedom, dignity and life itself. This strain is especially intense when one considers three key dimensions of the modern criminal justice system and how this interplay in the context of high incidences of custodial

violence, the high utilization of extended periods of pretrial detention, and the continued existence of the death penalty in most jurisdictions.

Criminal justice and human rights have come to meet in a much more complex way since the implementation of the Universal Declaration of Human Rights in 1948, but still the distance between theory and practice in the field is frighteningly large. In custody suites all over the world, people are put through physical and psychological violence that denies them their inherent dignity in the name of confessions or just as a form of state power. At the same time, millions of people remain in pretrial detention, occasionally over years, even though the presumption of innocence is the foundation of democratic systems of law. In the meantime, the death penalty remains executed in manners that demonstrate extreme injustices in terms of race, class, and geography providing fundamental questions concerning the state right to take away life.

Such practices are not in isolation but aspects of joined-up failures in criminal justice institutions. They are the indicators of more profound issues of institutional culture, resource distribution, and training deficits, and lack of accountability that is widespread in most criminal justice systems. Additionally, they are evenly distributed among the most disadvantaged members of society - the poor, racial minorities, the mentally ill and those marginalized by politics, further reinforcing larger trends of social inequality and exclusion.

This study is important not only in terms of academic research but also arrives at the very roots of the theory of social contract and democratic governance. When the state, through its criminal justice systematically infringes rights that it is supposed to defend, it sabotages its legitimacy and negatively impacts the confidence of people in the law. The price of failure of that kind is not just in personal losses, but also in social disintegration, the decline of adherence to law, and undermining of democratic norms, which rely on people believing in fair and just treatment by the law.

This paper aims to give a thorough analysis of these interrelated problems, including their specific features, and their mutual relations. This research, through its reliance on legal scholarship, empirical studies and comparative studies of various jurisdictions, will seek to add to the current

debate regarding criminal justice reform in addition to offering practical suggestions to policy makers, legal practitioners and human rights advocates.

OBJECTIVE OF THE PAPER

This research has triple objectives. First, in order to perform a thorough analysis of the connection between modern criminal justice practices and the norms of human rights, regarding the interactions between custodial violence, pretrial detention, capital punishment, and basic rights to life and dignity. Second, in order to establish and examine the structural dynamics that support human rights abuses in criminal justice systems, such as institutional cultures, resource limitations, any shortcomings in training, and accountability measures. Third, to prepare evidence-based recommendations regarding the possible reform that could address the protection of human rights and also ensure an effective implementation of law and order.

RESEARCH PROBLEM

The research problem which the present study aims to discuss is the systematic abuse of human rights in the criminal justice system even in the presence of legal safeguards and international norms. In particular, the study addresses the functioning of three major practices, namely custodial violence, extended pretrial detention, and capital punishment as systems that defy the basic human rights principles and pose a legitimate crisis to democratic legal institutions. This issue is exacerbated by the inter-dependence of these abuses and their disproportionate effect on the vulnerable groups indicating systematic and not isolated failures.

HYPOTHESIS

The study is guided by the general assumption that modern criminal justice regimes are structured and culturally based in such a way that they systematically abuse human rights and that such abuse is not an anomaly but rather a predictable effect of in-house design, resource distribution, and cultural priorities that put premiums on punishment and control and place less emphasis on rights protection and the promotion of rehabilitation. Moreover, the research conjectures that a wholesome reform of these systemic problems can both substantially enhance human rights protection and at the same time not impinge on public safety or lawfulness.

RESEARCH QUESTION

1. In what ways do existing forms of custodial violence infringe upon the basic right to human dignity and what are the systemic determinants of the continuation of custodial violence in detention centers and in police custody?
2. How does a long period in pretrial detention compromise the presumption of innocence and the right to receive a speedy trial and how can socioeconomic factors play in the granting of bail as well as the use of pretrial release determinations?
3. What makes the ongoing use of capital punishment inconsistent with the progression in human rights in terms of the right to life and what is the evidence about its efficacy as a deterrent against the effects on human rights and social justice?

RESEARCH METHODOLOGY

This research involves a mixed-method approach, which integrates doctrinal legal analysis of the constitutional provisions, statutory provisions and legal precedents with empirical analysis of government data on custodial violence, pretrial detention rates and capital punishment statistics in various jurisdictions. It will combine case study analysis of significant Supreme Court decisions with constitutional analysis and review of human rights organizations reports to cover the research

questions as comprehensively as possible and also triangulate the results obtained using various data sources and philosophies.

LITERATURE REVIEW

1. "How Punitive is Pretrial? Measuring the Relative Pains of Pretrial Detention"

This radical empirical investigation offers a systematic method to address the traditional assumptions on pretrial detention implying that the pains of imprisonment were measured systematically between the pretrial detainees and the sentenced prisoners. In a thorough survey and interviews with over 1,200 people in various detention centers, Anderson, Cochran, and Montes evaluated how pretrial and post-conviction confinement are relatively severe. They find that pretrial detainees are far more exposed to uncertainty, anxiety, and social disruption than sentenced inmates are, although the law assumes that pretrial detention is not punitive but administrative. The analysis indicates that pretrial detainees indicate more disorderly prison environments, increased fear of personal safety and an increased stress on case outcomes and family separation. Notably, the study indicates that the mental effects of pretrial arrest are usually more severe than post-conviction arrest meaning that the system has generated punishment before conviction. The authors suggest that the implications of such findings have significant consequences in the constitutional analysis of pretrial detention procedures, and that existing systems bear the systematic breach of the protection of due process, applying punishments prior to the decision regarding guilt.

2. "The Pretrial Detention Penalty: A Systematic Review and Meta-Analysis of Pretrial Detention and Case Outcomes"

It is the most exhaustive meta-analysis of the literature associated with the relationship between pretrial detention and case outcomes that presents the most systematic evidence to date on the case

associated with the so-called detention penalty. In their study, St. Louis used more than 200,000 criminal cases in more than 50 jurisdictions to evaluate the impact of pretrial detention status on plea bargaining, conviction rates, and sentencing outcomes. The analysis shows a steady and meaningful pretrial detention penalty with those detained being much more likely to plead guilty (OR = 2.14), convicted at trial (OR = 1.87), and sentenced to longer sentences (average increase of 8.2 months) than those in a similar situation but obtained pretrial release. The research balances the severity of offenses, previous criminal records and other factors that are legally significant and shows that it is the status of detention, and not the nature of the case, which drives these differences. The study has been very convincing that pretrial detention essentially jeopardizes the adversarial system by coercing guilty pleas and restricting the capacity of the defendants to prepare their own effective defenses. The conclusions are of great concern to the study of the constitution, as they indicate that the existing pretrial detention policies are unconstitutional based on the due process of the law as well as equal protection provisions that are currently in place, which form systemic biases against detaining defendants irrespective of their guilt or innocence.

3. "Custodial Sanctions and Reoffending: A Meta-Analytic Review"

This is a landmark meta-analysis which is the most extensive exploration of the effectiveness of custodial sanctions in the prevention of recidivism, including the analysis of 116 high-quality studies that involve more than 400,000 individuals in various countries and systems of justice. Nagin, Cullen, and Jonson used strong statistical techniques to compare the rate of recidivism among people sentenced to custodial and non-custodial punishments, adjusting for selection bias and methodological differences in the studies. Their results radically conflict with the beliefs regarding the need and efficacy of incarceration as they show that the custodial sanctions are ineffective regarding reoffending and minimally effective in comparison to non-custodial options, including probation, community service, and electronic monitoring. The research shows that the findings are consistent across the offense type, demographic samples and the justice systems and the effect sizes do not change based on the method of study or jurisdiction. The analysis shows that criminogenic or null impact of incarceration exists during short and long-term follow-up

period, which may indicate that the custody itself, but not the quality of programs or factors of its implementation, explain the results. The authors find various ways in which incarceration can contribute to recidivism, such as disruption of social networks, employment problems, housing, and mental trauma due to being confined. The implications of these findings in terms of criminal justice policy are far-reaching because it appears that putting in such a large portion of incarceration efforts and resources not only do not improve the safety of the populace, but also harm it and, furthermore, violates human rights by placing people behind bars unnecessarily.

DISCUSSION AND ANALYSIS

In what ways do existing forms of custodial violence infringe upon the basic right to human dignity and what are the systemic determinants of the continuation of custodial violence in detention centers and in police custody?

- The interaction of the force of the state and individual dignity creates a juncture situation that is the most critical when it takes place in the premises of police stations, jails, and other detention centers. This is the most direct and immediate expression of the coercive power of the state, so here human dignity is best challenged and most often violated. Custodial violence is not an isolated case of abuse but is an organized diminution of the very essence of the idea that human dignity is sacred and must be honored even in the criminal justice process. This violence is multifaceted, every form of it being a separate violation of human dignity but they are found in interdependence with one another, forming complete systems of abuse. Physical violence involves direct assault, torture in interrogation, sexual abuse, denial of basic physiological needs, like food, water, medical care, and sanitation. Psychological violence includes threats, intimidation, humiliation, long-term isolation and creating environments aimed at penetrating the mental resistance of the detainees. Institutional violence is achieved by employing the systematic denial of legal rights, such as the denial of access to counsel, family visits, judicial review over the conditions of detention.

The area of custodial violence goes well beyond one episode to include the systematic patterns of abuse that impact thousands of people every year in the various jurisdictions. Statistical examination shows that custodial death is an alarmingly frequent occurrence, and non-fatal violence affects even a larger number of people the atrocities of which are frequently unreported and uncompensated. The actual level of custodial violence is hard to measure, with institutional secrecy, fear of the victim, and poor reporting systems all contributing to its underreporting, but the evidence available indicates that is an issue both prevalent and long lasting. prohibiting state actions that result in unnecessary loss of life, including deaths in custody resulting from violence or neglect.

Courts have changed their position regarding custodial violence considerably over the years and in this case, the courts have become more aware of the gravity of the challenge and the necessity of systematic solutions. *D.K. Basu v. state of west Bengal* in the landmark case. It was the Indian Supreme Court that came up with detailed principles of arrest and detention in *State of West Bengal (1997)*, acknowledging that custodial violence was so widespread that it needed to be addressed systematically by the judicial system. The Court noted that custody violence and power abuse are issues that the Court was concerned about and put up elaborate criteria on how police should conduct their arrest and detention. Just so the *Nilabati Behera v. The case of State of Orissa (1993)* has set the crucial precedents of compensating the custodial deaths since it was judged that the state has the special duty of ensuring the safety and well-being of those under its responsibility. The international jurisprudence has not been left behind, and the European Court of Human Rights has played a major role particularly in cases like *Tomasi v. France (1992)* that the ban on torture and inhuman treatment is absolute.

The fact that custodial violence has continued in spite of legal restrictions and judicial interventions indicates the workings of systemic factors that establish circumstances that promote abuse. Policing culture and prison culture tend to accept violence as a valid or even required instrument to keep order and extract information which is supported by customs that protect those officers who use violence and discourage abuse reporting among their colleagues. Impunity is not a case of isolated institutions, but it is actually a bigger problem of lack of accountability systems where investigations tend to be carried out by

the same agencies that committed the abuse and hence create conflict of interest. Poor training is also an essential aspect, with numerous law enforcement officials having a limited amount of training on the principles of human rights or how to conduct an interrogation.

How does a long period in pretrial detention compromise the presumption of innocence and the right to receive a speedy trial and how can socioeconomic factors play in the granting of bail as well as the use of pretrial release determinations?

- The presumption of innocence is one of the most basic principles of a democratic legal system that embodies the idea that individuals are treated as innocent until proven guilty in a process of law. This implies far reaching consequences in the treatment of those who are accused of crime by society, including their detention pending trial. But modern day criminal justice systems knowingly and willingly do not adhere to this principle, engaging in practices of prolonged pretrial detention which practically punish individuals not yet convicted of any offense. The presumption goes beyond procedural prerequisites and is seen as a broader philosophy regarding the relationship between the individual and the state, in which it is recognized that the deprivation of liberty is so serious that it should not be accomplished without the state having proven beyond reasonable doubt through trial processes that the individual has indeed committed an offense.

Despite the law, pretrial detention has become a common practice in most criminal justice systems and large segments of prison populations comprise individuals who have not been found guilty of any offense. Statistical analysis demonstrates that in most jurisdictions, undertrial prisoners are 30-70% of total prison populations, which means that millions of people worldwide have been detained without a trial and either incarcerated in pretrial detention longer than they would have served had they been found guilty and sentenced of an alleged offense. The pretrial jail settings frequently replicate or surpass those of the convicted inmates, although by law pretrial jail custody should be administrative and not punitive.

Every constitutional system that regulates pretrial detention is generally provided with a few essential safeguards aimed at maintaining the presumption of innocence and permitting the required detention in the right situations. Many constitutional systems include in the right to bail or pretrial release a right against arbitrary detention, although this right is often made subject to exceptions in serious crimes or in cases of flight risk. The right to speedy trial gives an extra layer of protection by ensuring that cases are resolved within reasonable time without the accused being held indefinitely until they are prosecuted. Due process requirements stipulate that decisions made on pretrial detention should be made through fair processes that take into consideration pertinent factors and give chances to review and allow an appeal.

The interpretation of the rights of pretrial detention by the courts has changed fundamentally, whereby more courts have understood that there is tension between the issue of the safety of the people and personal rights. In *Hussainara Khatoon v. The Indian Supreme Court*, which in this case, acted as the Home Secretary, State of Bihar, grappled with the issue of increased pretrial detention especially among the poor defendants who cannot afford bail. The Court noted that it was travesty of justice to detain poor people in jail years without trial, and ordered the release of under trial detainees, who had been held longer than the maximum period of their alleged crimes. The ruling land case in *Maneka Gandhi v. Union of India* introduced significant guidelines on the understanding of personal liberty as such restrictions should be reasonable, fair and just and this has been applied to the pretrial detention whereby such detention should have strong reasons and be executed by fair procedures that address individual conditions.

Through the operation of the bail systems, it is evident that the presumption of innocence is systematically undercut by the presence of disparate treatment under the guise of wealth and inconsistency with the justice system as the poor defendants are left in custody due to the same crime under the same conditions as their wealthy counterparts. Given that risk assessment predicts detention behavior, statistical analysis proves significant relationships between economic status and pretrial detention, with poor defendants being much more likely to stay in custody pending trial despite controlling risk assessment variables including the severity of the offense, criminal history, and other variables of legal

importance. The impacts of financially dependent detention go well beyond the loss of freedom, the loss of work, housing, family ties, and even education opportunities, and their long-term effects that can still exist long after a case has been decided, and disproportionately impacting poor defendants and their families, results in poverty and disadvantage cycles.

The evidence on plea bargaining indicates that pretrial detention places the innocent defendants under pressure to accept plea bargains because of the lack of access to effective counsel representation, inability to investigate the charges, and inability to continue working, which is needed to afford someone to represent them in court, not to mention that defendants subjected to pretrial detention are far more likely to accept plea bargains than defendants in similar situations who receive pretrial release and are therefore able to hire a competent defense counsel and conduct an investigation of the case prior to trial. Studies show that imprisoned defendants are sentenced to longer periods than defendants who attain pretrial release under similar circumstances even after factoring in the nature of the crime committed and any criminal record, a phenomenon known as the detention penalty that implies that pretrial status has not only an effect on the trial outcome but also on the final punishment.

Empirical evidence of the disparities between jurisdiction in the practice and results of different modes of pretrial detention shows that practices and results differ considerably among jurisdictions, with certain countries seeming to have radically replaced monetary bail with risk assessment instruments, based on objective factors, and no longer depending on financial means. Electronic monitoring and other forms of supervision offer alternatives to detention which can both satisfy reasonable public safety interests as well as maintaining freedom, and research has shown that such programs can effectively serve to guarantee court attendance and community safety as well as to reduce the incidence of pretrial detention. To resolve the crisis of pretrial detention, systematic changes, such as the abolition of monetary bail in most criminal cases in favor of risk assessment tools and judicial training with an emphasis on the presumption of innocence, case processing reforms to minimize delays, and special legal representation of the indigent defendant to guarantee meaningful access to pretrial release, are essential.

What makes the ongoing use of capital punishment inconsistent with the progression in human rights in terms of the right to life and what is the evidence about its efficacy as a deterrent against the effects on human rights and social justice?

- The death penalty is the extreme form of state authority over an individual life and therefore raises some basic questions of interactions between collective security and individual rights, deterrence and human dignity, finality and fallibility that are the staple of criminal justice and human rights debates. The right to life has been the most basic of all human rights and has provided the basis on which all other rights are based, yet the unanimity that has been realized in the works of interpreting and applying this right is that the right to life is not only the right to safe keeping against unjustified killing but also involves greater responsibilities of protection and preservation of human life. The international human rights law has gradually shifted to the position of capital punishment being incompatible with human rights, but this has been progressively changing, with documents like the International Covenant on Civil and Political Rights permitting capital punishment but providing strict restrictions and promoting abolition.

Historical use of the death penalty demonstrates discrimination and arbitrariness patterns that never faded even despite the changes offered by the law in order to make the procedure fair and consistent. Whether in public execution methods to showcase state authority or modern incidences of lethal injection methods that are seemingly more humane, capital punishment has always been reflective of more general societal attitudes towards race, class, and social status, and statistical analysis shows that there are clear patterns of racial discrimination, with poor defendants being much more likely to face death sentences than their rich counterparts who can afford professional representation. Geographical differences in the application of capital punishment also bring up additional concerns regarding equal treatment under the law since even within countries where capital punishment remains in place there exist substantial disparities among regions, with some

regions contributing disproportionately to the overall number of death sentences and executions that cannot be attributed to differences in crime rates or seriousness of offense. Whether capital punishment is more effective than other forms of punishment in deterring crime has been empirically investigated and overwhelming evidence indicates that the death sentence does not have any novel deterrent effect on homicide in comparison to life imprisonment. This body of scientific knowledge disputes one of the main arguments supporting the death penalty, that it can reduce, increase, or have no impact on crime rates in the homicide rate. Empirical studies have backed the brutalization hypothesis that state executions can in fact raise homicide rates by making killing a solution to social problems, and studies of homicide rates post-execution have found short-term elevations in homicide rates, especially in localities near execution locations.

The circumstances of death row confinement have been seen by international human rights organizations as psychological torture that abuses human dignity by the so-called death row phenomenon of long bouts of uncertainty, isolation and anticipated execution, which renders the death row prisoners to extreme psychological trauma and mental destabilization. Such a long period of isolation, coupled with a continuous fear of being killed, results in circumstances that the European Court of Human Rights discovered in *Soering v. United Kingdom* (1989) to constitute inhuman and degrading treatment, and concluded that extradition of a person to face capital punishment would be a breach of the prohibition of torture because the effects of the death row phenomenon are high levels of mental illness and suicide attempts, and extraditing an individual to face capital punishment would result in these undesirable effects. The studies show that the effects of the death row phenomenon are high rates of mental illness, suicide attempts and deterioration indicating that extraditing a person to capital punishment would have the same undesirable effects.

Life imprisonment without possibility of release offers another option, which fulfills the same protective roles and at the same time, it maintains the likelihood of correcting miscarriage of justice, in order to eliminate the dangerous persons forever in society without causing irreversible effects. The restorative justice practices offer more alternatives that are more focused on healing victims and communities, as opposed to retribution, and the programs that involve the family of victims and the offenders show promise in

providing them with closure without causing further trauma as is the rule with capital punishment cases, as well as the practices have been clearly shown to be not accompanied by high rates of serious crime, and other countries are moving in the right direction of abolition of the death penalty. Execution is irreversible and there is mental torture of death row so the conditions are not what most international bodies would now regard as being inconsistent with human dignity.

CONCLUSION

The overlap between criminal justice and human rights highlights a key conflict between the state and the maintenance of individual dignity and freedom. Custodial violence remains indefatigable in its undermining of trust in the legal institution and dehumanization of the people who are under state custody despite its constitutional protection and judicial interventions. The extended pretrial detention also undermines the presumption of innocence, but it disproportionately affects the poor and the marginalized and turns pretrial detention into pre-conviction punishment. The most extreme form of state power, capital punishment, is incompatible with the world trend to acknowledge the right to life, since it is arbitrary, discriminatory, and has no deterrent effect.

Collectively, these problems present systemic rather than isolated problems. They point to the fact that structural weaknesses, including the absence of accountability, the normalization of violence in the culture, and excessiveness in the use of retribution, destroy human rights and justice at the same time. A complete overhaul of the system needs a paradigm shift where punitive models are not trusted, but rather rehabilitative and restorative methods, which focus on human dignity. Faster trials, alternative to detention, greater control mechanisms, and progressive elimination of the death penalty are important steps to making criminal justice systems responsive to the norms of democracy and human rights. It is only such systemic changes that can restore justice to a legitimate state, bring fairness, and help strengthen the principle upon which all people are granted the right to dignity, freedom, and the right to life through the rule of law.

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