

Role of Right to Privacy in the Criminal Justice System

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Abstract

The right to privacy is a fundamental human right that is enshrined in various legal frameworks around the world. Within the criminal justice system, this right plays a crucial role in safeguarding individuals' personal information, ensuring fair trials, and protecting against unwarranted intrusions by law enforcement authorities. This paper explores the significance of the right to privacy in the criminal justice system, examining its implications, challenges, and potential solutions. In the context of the criminal justice system, the right to privacy is essential for upholding the presumption of innocence and ensuring due process. Privacy protections shield individuals from unjustified surveillance, unwarranted searches, and arbitrary use of personal data by law enforcement agencies. Moreover, privacy rights are closely linked to broader principles of human dignity, autonomy, and freedom from arbitrary interference. For example, consider a scenario where law enforcement officers conduct intrusive surveillance on a suspect without proper legal authorization. This violation of privacy not only undermines the individual's rights but also jeopardizes the integrity of the criminal investigation and potential trial proceedings. Protecting privacy in such situations is critical for upholding the rule of law and preventing abuses of power within the criminal justice system. Despite its importance, the right to privacy in the criminal justice system faces several challenges in practice. One of the key challenges is balancing privacy interests with the need for effective law enforcement and public safety measures. In cases involving national security or serious crimes, authorities may

seek to expand surveillance powers, collect extensive data, or conduct intrusive investigations in the name of public interest. Additionally, advancements in technology pose new challenges to privacy rights within the criminal justice system. The proliferation of digital surveillance tools, biometric data collection techniques, and data mining algorithms has enabled law enforcement agencies to gather unprecedented amounts of personal information. The use of predictive analytics and artificial intelligence in criminal investigations raises concerns about the potential erosion of privacy and civil liberties. To address these challenges and protect the right to privacy in the criminal justice system, several strategies and recommendations can be considered. One approach is to strengthen legal frameworks and oversight mechanisms governing data collection, retention, and sharing practices by law enforcement agencies. Clear guidelines on when and how personal information can be accessed, used, and disclosed are essential to prevent abuse and ensure transparency. Furthermore, promoting privacy-enhancing technologies and practices within the criminal justice system can help mitigate privacy risks associated with digital surveillance and data processing. Implementing robust encryption protocols, anonymization techniques, and data minimization strategies can enhance the security and confidentiality of personal information collected during criminal investigations.

Keywords: Criminal, Foundational, Investigation, Mechanism, Privacy.

Introduction:

Privacy is a foundational human right that serves as a cornerstone of individual autonomy, dignity, and freedom from unwarranted interference. Within the context of the criminal justice system, the right to privacy takes on added significance as it intersects with principles of due process, fair trial, and protection against arbitrary state action. This introduction delves into the importance of safeguarding the right to privacy in the criminal justice system, exploring its implications, challenges, and potential solutions. The right to privacy, often described as the right to be let alone, is a fundamental aspect of human rights law and is enshrined in international treaties, national constitutions, and legal frameworks worldwide. In the realm of criminal justice, privacy protections play a pivotal role in ensuring that individuals are shielded from unwarranted intrusions into their personal lives, communications, and information. At its core, the right to privacy safeguards individuals' autonomy and integrity by limiting the state's ability to pry into their private affairs without just cause. This protection is particularly crucial in the criminal justice context, where individuals may be subject to surveillance, searches, and data collection by law enforcement authorities during investigations and legal proceedings. Upholding privacy rights in these circumstances is essential for maintaining the balance of power between the state and the individual, preventing abuses of authority, and preserving the rule of law. In the realm of criminal investigations, privacy considerations arise at various stages, from initial suspicion to arrest, trial, and beyond. For instance, when law enforcement officers conduct searches of individuals' homes, electronic devices, or financial records, they must adhere to legal standards that respect the right to privacy. Similarly, the collection and use of personal data, such as biometric information, DNA samples, and communication records, raise complex privacy issues that require careful oversight and accountability. Moreover, privacy rights intersect with other fundamental rights in the criminal justice system, such as the presumption of innocence, the right to a fair trial, and protection against self-incrimination. In order to uphold these rights, it is essential to ensure that privacy is safeguarded throughout the investigative and judicial processes, preventing undue influence, coercion, or manipulation of evidence that could jeopardize the integrity of legal proceedings. Despite the importance of protecting privacy in the criminal justice system, several challenges and controversies persist in practice. One of the primary challenges is the tension between privacy rights and the need for effective law enforcement measures. In cases involving serious crimes, national security threats, or public safety concerns, authorities may seek to expand surveillance powers, gather extensive data, or conduct intrusive investigations that encroach on individuals' privacy. Additionally, the rapid advancement of technology has introduced new complexities and risks to privacy within the criminal justice system. Digital surveillance tools, facial recognition systems, social media monitoring, and data analytics pose significant threats to individuals' privacy rights, raising concerns about mass surveillance, profiling, and discriminatory practices. To address these challenges and controversies and safeguard the right to privacy in the criminal justice system, a multifaceted approach is needed. Strengthening legal safeguards, enhancing transparency and accountability mechanisms, and promoting privacy-enhancing technologies are key strategies for protecting privacy rights while ensuring effective law enforcement practices. In the subsequent sections of this discussion, we will delve deeper into the legal frameworks governing privacy in the criminal justice system, explore case studies that illuminate the implications of privacy violations, analyze emerging technologies and their impact on privacy rights, and propose recommendations for balancing privacy protection with law enforcement imperatives. By examining these issues in depth, we

aim to shed light on the complexities of upholding privacy in the criminal justice system and offer insights into how stakeholders can navigate these challenges while respecting individuals' rights and freedoms.

Literature review:

Daniel Marshall & Terry Thomas, PRIVACY AND CRIMINAL JUSTICE:

This book offers a comparison of the differences between the 'public' and 'private' spheres, and questions the need for law enforcement to intrude upon both. Beginning with the origins of the concept of privacy, before addressing more current thinking, the authors examine the notion of privacy and policing, using both direct (e.g. 'stop and search' methods) and technological interventions (e.g. telephone interceptions and Automatic Number Plate Recognition cameras), privacy in the space of the court, looking at what restrictions are placed on press reporting, as well as considering whether the open court ensures fair trials. Particular forms of offending and privacy are also considered: anonymity for sexual offence defendants, for example, or weighing the terrorist's right to privacy against the safety and security of the general public. A timely discussion into the right to privacy in prison and during community sentences is also included, and Marshall and Thomas offer convincing analysis on the importance of rehabilitation, giving consideration to police registers and the storage and maintenance of criminal records by the police and their possible future use. A diverse investigation into the many facets of privacy, this volume will hold broad appeal for scholars and students of terrorism, security, and human rights. "A thorough examination of the interaction between the criminal justice system and privacy. The well-organised account provides a timely body of information for students of the police, the courts, prisons and state surveillance practices."

Ellen Alderman & Caroline Kennedy, THE RIGHT TO PRIVACY:

"The Right to Privacy" by Ellen Alderman and Caroline Kennedy explores the intricacies of privacy rights in the modern age, examining how individuals' personal information is protected (or not) in various contexts, from the digital realm to the criminal justice system. The book delves into the historical development of privacy rights, highlighting landmark court cases and legal precedents that have shaped the current understanding of privacy as a fundamental human right. Alderman and Kennedy investigate the tension between privacy and surveillance in a world where technology has blurred the boundaries between public and private life. They discuss key issues such as data privacy, government surveillance, corporate data collection, and the challenges posed by social media platforms in safeguarding individuals' personal information. Through a series of real-life examples and case studies, the authors illustrate how privacy concerns impact individuals' daily lives and societal norms. The book also explores the intersection of privacy rights with other fundamental freedoms, such as freedom of speech, freedom of the press, and the right to a fair trial. By analyzing the implications of privacy violations in contexts ranging from healthcare to law enforcement, Alderman and Kennedy underscore the importance of protecting privacy as a means of preserving individual autonomy, dignity, and security. Throughout the book, the authors advocate for a nuanced approach to privacy that balances the need for transparency, accountability, and data protection with the imperative of ensuring national security, public safety, and law enforcement effectiveness. They call for robust legal safeguards, ethical guidelines, and technological innovations that empower individuals to control their personal information and mitigate the risks of privacy infringement in an increasingly interconnected world. "The Right to Privacy" offers a comprehensive exploration of the complexities and challenges surrounding privacy rights in contemporary society. By shedding light on the evolving nature of privacy, the authors invite readers to reflect on the implications of digital surveillance, data breaches, and information sharing practices on individual freedoms and democratic values. The book

serves as a call to action for policymakers, legal experts, technologists, and citizens alike to uphold and defend the right to privacy as a fundamental human right in the face of evolving threats and opportunities in the digital age.

Samuel D. Warren & Louis D. Brandeis, THE RIGHT TO PRIVACY:

In their 1890 article "The Right to Privacy," Samuel D. Warren and Louis D. Brandeis argue that individuals have a right to privacy that is protected by the law. They define privacy as the right to be left alone and not have one's personal information or private affairs made public without consent. The authors note that technological advancements, such as photography and the telegraph, have made it easier to violate privacy. They also criticize the press for intruding into people's lives and publishing personal information without regard for privacy. Warren and Brandeis argue that the right to privacy should be recognized by the law, and that individuals should have the ability to obtain legal remedies for breaches of privacy. They conclude that privacy is essential to individual freedom and must be protected.

Larry J. Siegel & John L. Worrall, INTRODUCTION TO CRIMINAL JUSTICE:

Larry J. Siegel and John L. Worrall's "Introduction to Criminal Justice" is a comprehensive overview of the history, processes, and system of criminal justice in the United States. They begin by examining the sources of criminal law, including common law and statutory law, and the various roles of law enforcement, such as local police, state troopers, and federal law enforcement agencies. The authors then discuss the criminal justice process, including pretrial procedures, plea bargaining, trials, and appeals. They also examine the different types of punishment, including incarceration, probation, and community corrections. Siegel and Worrall analyze the different types of crimes, including violent crimes, property crimes, and white-collar crimes, as well as the causes of crime, such as poverty, inequality, and drug addiction. The book also explores the relationship between law enforcement and the community, with a focus on community-oriented policing and the need for effective communication and engagement between the police and citizens. The authors conclude by discussing the challenges facing the criminal justice system, such as racial disparities, overcrowding in prisons, and the difficult task of balancing public safety with individual liberties. Overall, "Introduction to Criminal Justice" provides a comprehensive understanding of the complex system of criminal justice in the United States.

Research Gap:

Although many authors have done research on this topic but they just found what is Right to Privacy and separately what is Criminal Justice System and how these systems work but they did not study that what is the role of Right to Privacy in Criminal Justice System and what else we can do to protect Human Rights during Criminal trial. So here is an attempt made to do a whole study at one place for all role of Right to Privacy in Criminal Justice System (CJS).

Research Objective:

To identify the basic Human Rights during criminal trial.

To identify the role of Right to Privacy in CJS.

To analyse the study of Human Rights and CJS.

How society deals with Criminals?

Research Methodology:

In the present paper Doctrinal Methodology has been adopted by the researcher through the primary and

secondary sources and by studying books, articles and other relevant materials in different libraries and through Internet. The present study is based on both primary and secondary sources. The primary sources are collected from substantive as well as procedural pieces of legislation such as Indian Penal Code 1860, Code of Criminal Procedure 1973, The Criminal Law (Amendment) Act 2013, The Constitution of India, 1949, etc. The Secondary Sources include crime reports, journals, books, case laws, and Internet Surveys, etc.

Privacy rights constitute a fundamental aspect of individual freedoms and civil liberties within the criminal justice system. The notion of privacy rights refers to the inherent entitlement of individuals to maintain control over their personal information, spaces, and activities without unwarranted intrusion from external entities, particularly the government. Acknowledging the importance of preserving these rights is paramount for safeguarding democratic principles and upholding the dignity of citizens. Within the specific purview of criminal investigations, privacy rights take on heightened significance as law enforcement activities inherently involve intrusion into personal spaces and data collection. This overview aims to provide a nuanced understanding of the dynamic interplay between privacy rights and criminal investigations, delving into legal foundations, technological advancements, and societal implications. The overarching problem addressed in this article revolves around the delicate balance required to protect individual privacy while ensuring effective law enforcement practices. The tension between these two imperatives raises ethical, legal, and social dilemmas that necessitate careful examination and consideration. The purpose of this article is to critically analyze the evolution, challenges, and current state of privacy rights in the context of criminal investigations, offering a comprehensive examination that navigates historical perspectives, contemporary issues, and future considerations. The thesis of this article contends that while advancements in technology and changes in societal norms continually reshape the landscape of privacy rights, a judicious approach is imperative to reconcile the demands of effective criminal investigations with the preservation of individual privacy, thus fostering a justice system that is both robust and respectful of civil liberties.

Historical Development of Privacy Rights

The genesis of privacy rights in the United States can be traced to the Fourth Amendment of the Constitution, a cornerstone in protecting individuals from unwarranted governmental intrusion. 1. Enshrined in the Bill of Rights, the Fourth Amendment articulates the right of citizens to be secure in their persons, houses, papers, and effects, safeguarding them against unreasonable searches and seizures. This foundational principle has played a pivotal role in shaping the legal framework surrounding privacy rights. 2. Landmark cases, such as *Katz v. United States* (1967), have significantly influenced the interpretation of privacy rights. *Katz*, a watershed moment, expanded the scope of the Fourth Amendment by recognizing the right to privacy in public spaces. The decision underscored that privacy extends beyond physical spaces, establishing a precedent that has implications for contemporary debates on digital privacy and surveillance.

The historical trajectory of privacy rights intertwines with the relentless evolution of surveillance technologies.

1. The advent of electronic communication and surveillance technologies has ushered in a new era of challenges to privacy. From wiretapping to closed-circuit television (CCTV), the landscape has witnessed a proliferation of tools that enable unprecedented levels of scrutiny. This evolution has

prompted legal scholars and policymakers to grapple with the implications of these technologies on constitutional rights.

2. The impact on privacy rights is profound, as technological advancements empower law enforcement but also pose risks of abuse and overreach. The widespread adoption of surveillance cameras, facial recognition software, and data mining techniques raises concerns about mass surveillance and the erosion of personal privacy. The legal system is faced with the intricate task of adapting age-old principles to the digital age, balancing the need for effective crime prevention with the imperative of protecting individual liberties.

In summary, the historical development of privacy rights in the United States reflects a continuous interplay between legal principles and technological progress. The early legal perspectives, rooted in the Fourth Amendment, laid the foundation for constitutional protections against unwarranted intrusion. Landmark cases, like *Katz v. United States*, expanded these rights to encompass evolving societal norms. However, the rise of surveillance technologies presents a contemporary challenge, demanding a thoughtful reassessment of the delicate equilibrium between law enforcement imperatives and individual privacy rights.

Privacy Rights and Law Enforcement Practices

Privacy rights intersect prominently with law enforcement practices, particularly in the realm of search and seizure. The Fourth Amendment establishes the foundational requirement of warrants and probable cause for searches and seizures. Warrants, issued by a neutral magistrate, are contingent upon a showing of probable cause, ensuring a reasonable belief that evidence of a crime will be found in the targeted location. This constitutional safeguard aims to prevent arbitrary intrusions into individuals' privacy. Despite the warrant requirement, exceptions exist, allowing law enforcement to bypass the need for a warrant in certain circumstances. Examples of exceptions include exigent circumstances, consent searches, and the plain view doctrine. While these exceptions facilitate efficient law enforcement, they also raise concerns about potential abuses and the erosion of privacy safeguards.

The advent of electronic communication has introduced new dimensions to privacy rights and law enforcement practices. Wiretapping and eavesdropping represent electronic surveillance techniques that have undergone legal scrutiny. The use of wiretaps to intercept oral and electronic communications requires judicial authorization through a warrant, balancing investigative needs with privacy protections. The implementation of such measures is subject to strict legal standards to prevent unwarranted intrusions. Similarly, the use of GPS tracking devices to monitor the movements of individuals also requires careful consideration of privacy rights. The utilization of GPS tracking in law enforcement raises questions about the reasonable expectation of privacy in public spaces and the potential for continuous surveillance. Courts have grappled with defining the parameters of such surveillance, seeking to strike a balance between investigative needs and individual privacy rights.

The digital age has ushered in a new frontier of challenges in preserving privacy rights amidst law enforcement practices. Social media and online activity have become rich sources of information for investigators. The intersection of investigative needs and digital footprints necessitates an examination of the boundaries of privacy in the online sphere. Courts are confronted with defining the extent to which individuals can reasonably expect privacy in their digital interactions. Challenges arise in balancing privacy and security, particularly in the context of data collection. The vast amounts of data generated by individuals in their daily lives pose challenges for law enforcement seeking to extract relevant information.

Striking the right balance involves navigating issues of consent, data ownership, and the potential for abuse, highlighting the need for legal frameworks that keep pace with technological advancements.

The intricate relationship between privacy rights and law enforcement practices unfolds across various dimensions, from traditional search and seizure to contemporary challenges posed by electronic surveillance and digital privacy concerns. The legal landscape is tasked with continuously evolving to address the nuances of each practice, ensuring that the delicate balance between effective law enforcement and the protection of individual privacy is maintained.

Right to Privacy in Criminal Justice System:

Human Rights are those rights which every human being possesses by virtue of his birth. They are inherent and inalienable. In a country like India, we come across various instances in which the individual is threatened with the possibility of violation of his human rights in every walk of life. They are based on mankind's demand for a life in which the inherent dignity of human being will receive respect and consideration. The Universal Declaration of Human Rights clearly states that respect to human rights and human dignity is "the foundation of freedom, peace, and justice in the world". After the two world wars, the UN concern for Human Rights has also become a major issue of international agenda. This evoked response for international law and the concept of "International Human Rights Law" has also developed. Human rights not only stand for individuals' rights rather they are a backbone for providing social justice in a country. India is a signatory to the Universal Declaration of Human Rights and thus, has adopted similar provisions and framework to protect human rights. The extent to which the human rights are respected and protected within the context of its criminal proceedings is an important measure of society's civilization.

Criminal Justice System of any country is the basis of establishing peace and tranquillity. It includes not only the judicial system but the investigating machinery as well. Criminal Justice is one of the critical areas of human rights where the legal system is tested on a continuous basis for preservation of peace and security in society on the one hand, and prevention of human dignity of both victims of crime and person accused of it, on the other. Rule of law is the bedrock of democracy, which is acknowledged as the best system of governance to ensure respect for human rights. The dignity and worth of the individual are at the core of a democracy, constitutional governance in a democratic set up is the safest guarantee for the protection of human rights and assurance of human resource development. Equal respect for the rights of all sections of the society is necessary to obtain full human resource development respecting the basic human right of non-discrimination. The concept of inclusive democracy recognizes this aspect. The Criminal Justice System consisting of Police, Judiciary and Correctional Institutions play a major role in implementing human rights and thereby protect and safeguard the human rights of the citizens of a country. The Criminal Justice System has the power to control crime, prevent crime and punish the criminals. The pre-trial procedure involves arrest and Investigation under the Criminal Procedure Code 1973. Criminal Justice System has composed mainly three vital organs, namely (i) Police, (ii) Judiciary and (iii) Prison. In India, the human rights have been characterised as fundamental rights and are given a special status. Fundamental Rights are important for the fact that they are considered inherent for every citizen and thus, their violation gives the citizens, the right to move to the Supreme Court and the High Courts under Article 32 and Article 226 of the Indian Constitution respectively.

Of the three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions

of the Constitution. Although the importance of human rights is universally accepted and highly recognised, implementation levels vary from jurisdiction to jurisdiction. In India, in spite of vast expansions across the spectrum of human rights, implementation has not been that satisfactory. Recently, the International Commission of Jurists, Geneva had warned that in India these very human rights stand threatened. In addition, global human rights abuse watchers argue that if such fundamental principles of a fair trial are disregarded by the various agencies of the state. As a measure of the advances achieved in the protection of human rights, one may also turn the pages of the landmark judgement in Rudul Shah v. State of Bihar, where the Supreme Court ruled that the victims of unlawful or illegal arrest were entitled to compensation for violation of their fundamental rights under Part III of the Indian Constitution. It must be borne in mind that ensuring human rights within the framework of the criminal justice delivery system cannot be narrowly construed to mean merely the protection of the rights of the under-trials, or detainees, or convicts. The Supreme Court of India has recognized the Fundamental Rights as Natural Rights in Moti Lal v. State of UP. In fact, it can rightly be contended that the most essential of all human rights in a criminal justice delivery system, is the right of access to courts of law.

It is based on Article 10 of Universal Declaration (UDHR) which provides that:

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, and the determination of his rights and obligations and of any criminal charge against him.”

The importance of the right of access to justice for those interacting with the criminal justice system as complainants, suspects, status offenders or prisoners cannot be over-emphasised. As already stated, it is perhaps the most essential of all human rights in the criminal justice system. The extent to which human rights are respected and protected within the context of its criminal proceedings is an important measure of society's civilization. By and large, the Supreme Court has, through progressive and humanistic interpretation, enlarged the rights of the suspect and the accused with a view to protecting the interest of the innocent and preventing abused or misuse of police powers. Of course, the development of law by the Supreme Court in this direction has evoked criticism from certain quarters but this criticism is not based on any empirical research. It proceeds on a pre-conceived notion that any protection given to a suspect or accused is bound to injure the interest of the society by encouraging crime and making its detection difficult, if not possible. Unfortunately, in our country, there is not much of socio-legal or empirical research particularly in the field of criminology, with the result that our criticism of the law as interpreted and evolved by the courts is often not founded on factual or sociological data but is based only on certain ingrained attitudes and misconceptions. It is necessary that there should be socio-legal research in various areas of criminal law so as to afford guidance to the courts in their not-too easy task of laying down the law which best would serve the interest of the society, without sacrificing the interest of the innocent. Indian Constitution as illustrated by a number of decisions of the Supreme Court provides for the protection of human rights in conformity with the international standards. The Human Rights Commission Act, 1993 provides for constitution of National and State Human Rights Commissions to enquire into complaints of violations of human rights and inefficiency on the part of the Government machinery in preventing such violations and to suggest measures for effective implementation of guarantees provided by the Constitution and various laws of the country. The Supreme Court of India has in the case *Ajay Hasia v. Khalid Mujib* declared that it has a special responsibility, "to enlarge the range and meaning of the Fundamental rights and to advance the human rights jurisprudence."

There are umpteen numbers of reports on chilling human rights abuses of the pre-emergency era and emergency era, which have emanated from indigenous sources. Why then blame international sources like

London based Amnesty International and Washington based World Watch Institute in particular? The successive inflow of these reports describes continuing patterns of abuse in the administration of criminal justice in the country. The reports mainly focus on torture, including rape and deaths in custody. The reports criticize practices that are blatantly unconstitutional. The country confronts an embarrassing situation, both within and outside because human rights abuses have become commonplace and a sense of hopelessness marks our thought and reaction. Justice Krishna Iyer describes our human rights record as "testing illusion and promise of unreality". The Supreme Court, the sentinel of human rights, has been able to bring out only cosmetic changes since its directives to police, prisons and other institutions and more honoured in the breach than in the observance. For indigent and illiterate victims of human rights abuses, the Writ Courts are too remote and too expensive to be of any avail. The rights now granted by the courts are of illusory in absence of implementation and enforcement. Justice Krishna Iyer wrote more an anger than in anguish:

"Rights, however, solemnly proclaimed and entrenched in great instruments are but printed futility unless a puissant judiciary armed with legal authority. Remedial process and jurisdiction, operational and pragmatic, transforms the jurisprudence of human rights into public law of enforceable justice. Human rights regime leaves a wide gap between normative claims and implementation capabilities. The result is that large-scale breaches of civil and political rights, as well as economic, social and cultural rights, mark the scenario".

Controversies and Challenges

Controversies and challenges abound in the intersection of privacy rights and criminal investigations, reflecting the complex dynamics inherent in balancing individual freedoms with societal security.

The paramount clash between national security imperatives and individual privacy rights has intensified in the context of terrorism investigations.

1. Terrorism investigations demand robust intelligence gathering, often involving extensive surveillance measures to identify and thwart potential threats. However, the expansive nature of such surveillance has raised significant privacy concerns. Striking a balance between preventing acts of terrorism and safeguarding individual privacy rights remains a contentious challenge.
2. The USA PATRIOT Act, enacted in the aftermath of the 9/11 attacks, exemplifies the confluence of national security and privacy considerations. While the Act provides law enforcement with enhanced tools for combating terrorism, its broad powers have raised concerns about potential abuses and the erosion of constitutional safeguards. The tension between the imperative to protect the nation and the need to preserve civil liberties continues to shape debates on the boundaries of government surveillance.

The application of law enforcement practices often mirrors and exacerbates existing societal disparities, leading to profound challenges in safeguarding privacy rights.

1. Profiling, a controversial practice, involves targeting individuals based on perceived characteristics rather than evidence of criminal activity. This can lead to privacy violations, with certain communities disproportionately subjected to intrusive investigations. The challenge lies in curbing profiling practices while ensuring effective law enforcement.
2. The impact of privacy violations on minority communities is a critical dimension of this challenge. Inequitable targeting and surveillance practices can erode trust in law enforcement, further marginalizing already vulnerable communities. Striving for fairness in investigative practices is

essential to mitigate the perpetuation of racial and socioeconomic disparities in the criminal justice system.

In summary, controversies and challenges surrounding privacy rights in criminal investigations are multifaceted. The clash between national security imperatives and individual privacy rights, especially in the context of terrorism investigations and the implications of legislation such as the USA PATRIOT Act, underscores the ongoing struggle to find a harmonious balance. Simultaneously, the persistent issue of racial and socioeconomic disparities in law enforcement practices highlights the critical need for reforms to ensure that privacy rights are protected equitably across all segments of society. Navigating these complexities is essential for fostering a criminal justice system that upholds both security and individual liberties.

Balancing Privacy Rights and Effective Criminal Investigations

Effectively navigating the delicate balance between privacy rights and the imperatives of criminal investigations necessitates a multifaceted approach involving the judiciary, legislative measures, and technological safeguards.

The judiciary plays a pivotal role in shaping the contours of privacy rights within criminal investigations. Supreme Court decisions have provided landmark interpretations of the Constitution, particularly the Fourth Amendment, influencing the boundaries of government intrusion. Decisions like *Terry v. Ohio* (1968) and *United States v. Jones* (2012) have sculpted the legal landscape, defining the limits of stop-and-frisk practices and GPS tracking, respectively. These decisions serve as guideposts, offering nuanced insights into how privacy rights can be preserved while accommodating the needs of law enforcement.

The establishment of precedents through lower court decisions and legal interpretations further refines the nuanced interplay between privacy rights and criminal investigations. Courts must continually grapple with emerging technologies and novel legal challenges. The development of clear legal standards for novel investigative techniques, such as the use of drones or facial recognition technology, becomes crucial in providing law enforcement with effective tools while safeguarding individual privacy rights. The evolution of legal interpretations ensures that the criminal justice system remains adaptive and responsive to the dynamic landscape of privacy concerns.

The legislative branch contributes significantly to the protection of privacy rights by enacting laws and regulations that set the framework for law enforcement practices. Legislation such as the Electronic Communications Privacy Act (ECPA) and the Communications Assistance for Law Enforcement Act (CALEA) delineate the permissible scope of electronic surveillance, balancing the needs of investigators with individual privacy rights. These legal frameworks serve as guardrails, ensuring that law enforcement operates within defined boundaries, preventing overreach and arbitrary intrusions.

The legislative landscape is dynamic, with ongoing debates and reforms reflecting evolving societal norms and technological advancements. Conversations surrounding comprehensive privacy legislation, updating outdated statutes, and addressing gaps in current laws are critical for maintaining the delicate equilibrium. Balancing the scales involves considering public input, expert opinions, and a nuanced understanding of the challenges posed by contemporary investigative practices. Striking the right balance requires an ongoing dialogue between lawmakers, legal experts, and advocacy groups to craft legislation that safeguards privacy while enabling effective law enforcement. In the digital age, technological safeguards are paramount for preserving privacy rights. Encryption technologies, for example, provide a layer of protection for sensitive information, ensuring that data remains confidential. Balancing the needs of

investigators and the privacy of individuals involves navigating the complexities of encryption, fostering a discourse on responsible and ethical use that respects both privacy rights and the imperatives of criminal investigations.

Technological safeguards also extend to the ethical use of surveillance technologies. Implementing strict guidelines on the deployment of facial recognition, biometric data collection, and other advanced tools helps prevent abuse and misuse. Ethical considerations must be integrated into the development and application of surveillance technologies to avoid unwarranted intrusions into personal privacy.

Achieving a harmonious balance between privacy rights and effective criminal investigations requires a comprehensive approach. The judiciary's role in interpreting and shaping legal precedents, legislative measures establishing clear frameworks, and technological safeguards ensuring responsible use collectively contribute to a justice system that respects individual liberties while fulfilling its investigative responsibilities. The ongoing dialogue and collaboration between these components are essential for adapting to the evolving landscape of privacy challenges in the modern era.

THE PRINCIPAL SECTORS OF HUMAN RIGHTS ABUSES IN THE CRIMINAL JUSTICE SYSTEM:

- Crime
- Police
- Courts
- Prisons
- State
- Others

Crimes have increased day-by-day because of the combined contribution of socio-politico-economic factors. Some reasons, which can be said, increase in population, increase in the unemployment and denial of opportunities to a certain section of people. Organized crimes have increased. Organized gangs have such control on finances, weapons, and communication; such crimes have emerged as a serious challenge not only to the police but also to the existence of civilized society itself. In general, organized crime corrodes the social, economic and political fabric of the society. The extent of terror, which the organized gangs inflict on the society, is alarming. These gangs are also responsible for large-scale corruption in social and economic institutions.

Policing in a democratic society is seen as upholding the dignity of the individual by safeguarding the constitutional and legal rights. Democracy gets threatened when the police cease to respect the legal and constitutional rights of the citizens and persistently disregard the due process of law. Allegations of the police violence and brutality are being constantly received from different parts of the country. It is a known fact that a common complainant of crime is rudely received in the police stations and is treated with discourtesy, indifference, and indignity. The victims of police perversions are almost always the disadvantaged sections of society who are incapable of legitimate self-defence. In the garb of combating criminality, the police take the law into their hands and trample upon the basic human rights of the crime-suspects. The abominable records of police deviance are reflected in the encounter deaths and the rapes and deaths in the police custody. These no doubt, are the cruellest forms of human rights violations.

The Criminal Judicial System in the common law tradition is based on the twin principals of penal policy, the presumption of innocence and the requirement that the criminal charge needs to be proved beyond reasonable doubt. There is need to improve the quality of forensic expertise and make it truly a system for

promotion of justice. Another weakness is the prosecution. The Prosecutor should be appointed on merit; which often does not happen. Competent prosecutors who are again politically neutral should be appointed. The prosecution has the obligation of fair disclosure which means the prosecution should place before the court all factors even including that which is in favour of the accused. As Justice Arthus. V and erbilt would say, "If they (the common citizens) have respect for the work of the courts, their respect for law will survive the shortcomings of every other branch of Government; but if they lose their respect for the work of the courts, their respect for law and order will vanish with it to the great detriment of society." Prisons, like police, are no less any less guilty of human rights violations. The reality can be gauged only by visiting prisons. Instances of prison injustice abound and the penal regime has not changed much despite two-dozen reports on prison reform, such as the Mulla Committee report. Also, in the Hussainara Khatoon's case, the Supreme Court observed: "It is a crying shame on the judicial system which permits incarceration of men and women for long period of time. We are shouting from housetops about the protection and enforcement of human rights. We are talking passionately and eloquently about the maintenance and preservation of basic freedoms. But are we not denying the right to these nameless persons who are languishing in jails for years for offences which perhaps they might ultimately be found not to have committed? Are we not withholding basic freedom from these neglected and helpless human for years? Are expeditions trail and freedom from detention not part of the human right and basic freedoms".

State, the so-called protector of human rights in the country appears to be the biggest violator. The coercive processes of the State machinery corrode the foundations of human rights. Increasing concentration of power in the hands of the executive has become alarming. We are witnessing the might and the dominance of the State in its myriad forms. Many human rights activists and civil liberty organizations have condemned the Central and State Government for their deplorable disregard of fundamental freedoms and human dignity. The despotic proclivity of the authorities has rendered the State as an oppressor of the poor. The worst part is that State terrorism is taken as an answer for private terrorism.

Research Finding:

The Criminal Procedure (Identification) Bill, 2022

The **Criminal Procedure (Identification) Bill, 2022** has been passed by the Indian Parliament on April 6, 2022. It is the replacement of Colonial Law, i.e., the **Identification of Prisoners Act, 1920**. The newly introduced Bill asks for collection of biometric data from convicted prisoners.

It allows police officers and prison officials to collect biometric data from prisoners. This will include fingerprint and footprint impressions, photographs, iris and retinal scans and other physical and biological samples. The Bill is more obtrusive in the personal life of the prisoners. Collection of personal data is in violation of Article 21 of the **Indian Constitution**. The bench of Justice A Bhushan, A Khanwilkar, A Sikri and D Misra decided in the case of *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors. (2017)* that the right to privacy and personal dignity is considered as an intrinsic part of the right to life and as a part of freedom guaranteed under Part III of the Indian Constitution. The said Bill is not in consonance with the aforementioned judgment of the Supreme Court.

The Bill substantively permits authorities to collect signatures and handwriting, or any other examination as given under Section 53 or 53A of the Code of Criminal Procedure, 1973. This may result in power-centric rule of the sovereign. The plight of citizens in India is that it leaves no personal space for the

people. Providing biometric data to public servant officials is violative of their privacy rights. Exercise of absolute power by the government can result in corrupt social and political systems

To elaborate further, the term “shall” in Section 3 of the Bill sheds light on the compulsion of convicted person to provide officials with their data. There is no option for voluntary consent to the prisoners. The absence of strict laws on data protection is the major problem for our society. This may even lead to loss of collected data and the repercussions of the same will cause several misuses of information. Society is the concoction of criminals, offenders and innocents. And all the people should have access to basic humanitarian law. This Bill is violative of fundamentals of life, including security and safeguards from executive operation. The legal system of a country must be for the people, of the people and by the people. The recently passed Bill neither aims to secure people nor does it help to provide them a basic dignity. Any legislation passed by the Parliament is for “all,” including the convicted offenders in criminal law. Even prisoners have the right to lead their lives. Constitutional values of liberty, equality, fraternity and justice are not exclusive of prisoners’ rights.

The insecurity of personal data loss may cause these people to suffer mental trauma and other disorders. As per the rule of law, it is the duty of the sovereign to protect each and every citizen from suffering any kind of human rights violation. People who are surviving in a democratic country elect their representatives with the mindset that they will be benefitted. This Bill may help the authorities in record-keeping or in making a history sheet of the chronic offenders. But the same may infringe upon the rights of prisoners who are accused under the criminal system and are not proved guilty under any law. The legislative body of the Republic of India must keep in mind that India is a signatory to the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, 1966 and is obliged under Article 2(2) to guarantee economic, social and cultural rights to every citizen irrespective of any basis for discrimination. Thereby, prisoners too must be given all the rights.

The amendment Bill of 2022 endangers the citizens by making the authoritarian power arbitrary. The case of *E.P. Royappa v. State of Tamil Nadu AIR 1974 SC 555*, held the concept of equality as dynamic and ruled that it cannot be confined, cabined and cribbed. The convicted persons must also be given rights by judicial pronouncements as precedence in the framework of legislation. This will let freedom come out of the traditional and doctrinaire limits.

Further, the Bill needs proper scrutiny by legislators, law academicians and jurists. The study of jurisprudential values and the teachings of John Austin, English Legal Theorist, must be given to all the law and policymakers. The concept of natural law and philosophy behind its origin is that law and morality are two different aspects. Legal positivism talks of analytical and reasonable approach to the science of legal origin. All the above-mentioned issues including privacy, personal dignity of individuals and the risk of rise in autocratic totalitarianism to the prisoners can be sorted if the origin behind nature and theory of law is taken care of.

Privacy rights, as discussed in the case of *Maneka Gandhi v. Union of India AIR 1978 SC 597* are deliberately widened by the Court. The opinion was to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content by a process of judicial construction. Law and policymakers should undergo empirical and extensive research of the judgments passed by the various High Courts and Supreme Courts. The CrPC Amendment Bill of 2022 must be drafted in accordance with the judgments, constitutional values and human rights. This will provide fundamental freedom to all the citizens, including convicted or the arrested prisoners. For the same, effective and efficient review of the Bill must be done for setting the ideals of liberty, equality and freedom.

SUGGESTIONS FOR IMPROVING THE SYSTEM OF CRIMINAL JUSTICE

A. Scientific Investigation:

Crimes are often committed secretly in a well-planned manner so that there may not be any direct evidence against the offender. Under these circumstances, it is imperative to have strong and intelligent investigating agency capable of using modern tools. Various techniques, such as physical examination of the accused, medical examination of the victim, and comparison of finger prints, foot prints, photographs and writing, use of tape records, forensic ballistics, wiretapping and other means of electronic surveillance, lie detectors, and truth serums are used. The investigator must be equipped with the necessary apparatus and technical knowledge to use these means.

B. Responsible Police:

The police, the Government and the society each have a role to play in improving the law enforcement situation and in developing pro-citizens police in the country. Organizational behaviour is largely the outcome of training and continuing education. Police training is archaic in content and methods. All sections of society, and more particularly the media, can help improve the status and efficiency of the police force. At least, they can afford not to disparage the police without rhyme or reason. If they can extend co-operation in law enforcement, there is bound to be a welcome response from the other side, which eventually will result in greater social defence and better law and order situation.

C. Speedy Process:

Though speedy trial has been recognized as a fundamental right because it is a requirement of a fair procedure under Article 21, yet the delay in administration of criminal justice is a common affair. Delay is both at the stage of investigation and prosecution as well as in the trial. There is the necessity of prescribing some time limit for each process as Supreme Court has done in *Sheela Barse V. Union of India*. Of course, the time limit should not be unreasonable or rigid because justice delayed is justice denied so also justice buried is justice hurried. A balance between the two extremes is advisable.

D. Uniform Policy by the Government:

To prevent human rights violations, it is suggested that an official declaration of uniform policy by the governments that violations of Human Rights of accused by law enforcement be formulated. Governments should also enact a strict law to punish the perpetrators of human rights violations. Governments should also take prompt corrective action in case of human rights violations.

E. Protection Mechanism:

The mechanism for protecting human right of accused at the International, national and regional levels must be strengthened, States should not shield themselves from International Scrutiny on the issue of human rights. The State should provide an effective framework of remedies for the redressal of human rights violations. Investigating agencies, prosecuting agencies, judiciary and legal profession should make efforts to prevent the human rights violations of accused by giving him proper and appropriate legal aid. The challenge before India is to develop human rights in its domestic criminal administration by upgrading its law-enforcement machinery, and on the other hand not to be swayed away at the cost of social development and nation's unity. A reconciliation lies in improving the domestic culture of human rights which in turn will replenish our image in the international platform also.

Conclusion:

In summary, this exploration of privacy rights in the context of criminal investigations has illuminated the intricate interplay between individual freedoms and law enforcement imperatives. From the historical

development of privacy rights, enshrined in the Fourth Amendment and shaped by landmark decisions like *Katz v. United States*, to the contemporary challenges posed by evolving surveillance technologies and digital privacy concerns, the multifaceted nature of this relationship has been scrutinized.

The controversies surrounding national security, exemplified by terrorism investigations and legislation like the USA PATRIOT Act, and the persisting issues of racial and socioeconomic disparities in law enforcement practices underscore the complex landscape that demands careful consideration. Looking ahead, the future holds profound implications and emerging trends for privacy rights in criminal investigations. The continuous evolution of technology, legislative reforms, and societal attitudes will reshape the landscape, presenting both opportunities and challenges. The intersection of artificial intelligence, big data, and law enforcement practices will demand a reevaluation of existing frameworks to ensure that privacy rights remain robustly protected in the face of technological advancements. As we navigate the complexities of privacy rights, a call to action is imperative. Balancing the scales between effective criminal investigations and individual privacy requires collaborative efforts from the judiciary, legislative bodies, technology developers, and the public.

The Criminal Justice System (CJS) includes the institutions/agencies and processes established by a government to control crime in the country. This includes components like police and courts. The aim of the Criminal Justice System (CJS) is to protect the rights and personal liberty of individuals and the society against its invasion by others. The Criminal law in India is contained in a number of sources – The Indian Penal Code of 1860, the Protection of Civil Rights Act, 1955, Dowry Prohibition Act, 1961 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. CJS can impose penalties on those who violate the established laws. The criminal law and criminal procedure are in the concurrent list of the seventh schedule of the constitution.

The ongoing dialogue surrounding legislative reforms, ethical use of surveillance technologies, and a commitment to upholding constitutional principles is paramount. Citizens, advocacy groups, and policymakers alike must actively engage in shaping a justice system that not only ensures public safety but also safeguards the inherent rights and dignities of individuals. In this dynamic environment, a collective commitment to protecting privacy rights will fortify the foundations of a just and equitable criminal justice system.

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