

# Integrating International Human Rights Norms with Indian Criminal Law: Challenges in Enforcement and Judicial Interpretation

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## Abstract

This article analyzes the role of international human rights standards in shaping the interpretation and evolution of Indian criminal law, also noting the longstanding gap between the doctrinal recognition of human rights and the institutional implementation of the rights. This study also discusses the importation of international criminal law principles into India's criminal law via judicial interpretation of the Indian Constitution—most notably, the provisions of Articles 14, 20, 21, 22, 32, 39A, 51(c), and 253. The article discusses the following landmark decisions of the Indian Supreme Court: *Vishaka vs. State of Rajasthan*, *D.K. Basu vs. State of West Bengal*, *Nandini Satpathy vs. P. L. Dandwaj*, *State of Karnataka v. Selvi*, *Sunil Batra vs. Delhi Administration*, *Hussainara Khatoon*, *Nilabati Behera v. State of Orissa*, etc. This article illustrates how India's apex court, over the decades, has relied upon international law in articulating arrest, interrogation, fair trial, prison law, legal aid, gender justice, and State compensation abuse. This article analyzes, and comments upon, the extent to which the *Bharatiya Nyaya Sanhita*, *Bharatiya Nagarik Suraksha Sanhita*, and *Bharatiya Sakshya Adhiniyam, 2023* comply with international human rights standards. The ultimate finding of the article is that judicial activism has humanized Indian criminal law, however, the incompleteness of legislation, custodial violence, weak enforcement at trial, over-incarceration, and institutional variations have all served to limit the operationalization of international standards. The article proposes that 'doctrine,' 'legislation,' and 'practice' need to be fused and harmoniously brought together at all levels.

**Keywords:** international, human, rights, constitution, section, article, CEDAW.

## Introduction

The relationship between international human rights law and Indian criminal law is one of the most important sites of constitutional transformation in modern India. Criminal law authorises arrest, detention, interrogation, prosecution, punishment, and in exceptional cases even the deprivation of life through capital sentencing. For that reason, the integration of international human rights norms into criminal justice is central to the legitimacy of public power. International human rights law insists that even the person accused of crime remains a bearer of dignity. That idea is reflected in the UDHR, ICCPR, CEDAW, etc. These instruments emphasise liberty, equality, humane treatment in custody, fair trial, protection against torture, gender-sensitive justice, child-sensitive procedure, and effective remedies against abuse. Indian criminal law, however, has historically evolved through colonial statutes, police-centred investigation,

prison overuse, and procedural delay. The result is a continuing tension between a rights-based constitutional order and an enforcement system shaped by control, suspicion, and institutional opacity.<sup>1</sup> The Indian Constitution creates the normative basis for addressing this tension. The criminal justice system's constitutional syntax is established in Arts 14, 20, 21, and 22; Art 32 grants judicial enforcement of rights; Art 51(c) calls for adherence to international law and treaty responsibilities; Art 39A connects fair process with legal aid; and Art 253 gives Parliament the authority to enact laws to carry out treaties. However, India generally adheres to a dualist viewpoint. Unless they are incorporated by legislation, international treaties do not automatically become effective municipal law. As a result, courts have created a unique interpretation method: international human rights standards may be applied to expand the scope of constitutional safeguards in cases where domestic legislation is silent or unclear and the international norm is consistent with basic rights. That doctrinal move has enabled Indian courts to humanise arrest procedure, evidentiary rules, prison rights, compensation jurisprudence, and gender justice. At the same time, the actual criminal process continues to reveal custodial violence, over-incarceration, weak legal aid, and uneven judicial sensitivity.<sup>2</sup>

The issue has acquired renewed significance after the coming into force of the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023 on 1 July 2024. These enactments preserve several classical fair-trial protections while claiming to modernise the criminal process. Whether they deepen the integration of international human rights norms or merely restate older protections in new language remains a pressing legal question. This paper argues that Indian constitutional jurisprudence has substantially absorbed international human rights principles, but that legislative incompleteness and weak institutional enforcement continue to prevent their full realisation in practice.<sup>3</sup>

### Research Problem

The research problem addressed in this paper is the persistent gap between the normative incorporation of international human rights standards into Indian criminal law and their weak, selective, or inconsistent enforcement within everyday criminal justice institutions. Although the Supreme Court and High Courts have repeatedly invoked international norms to strengthen safeguards relating to arrest, interrogation, detention, evidence, sexual violence, prison administration, and compensation for State abuse, these advances have not produced a correspondingly rights-compliant criminal justice culture. The legal order therefore appears progressive at the level of doctrine but fragile at the level of administration. This problem is especially visible in matters concerning custodial torture, arbitrary arrest, prolonged undertrial detention, evidentiary coercion, victim dignity, and the treatment of women, children, and prisoners. The central question is not whether international human rights law matters to Indian criminal law; it clearly does. The deeper question is why the integrative project remains incomplete despite strong constitutional text, rich judicial innovation, and repeated public commitments to dignity and due process.

### Research Hypothesis

International human rights norms have substantially influenced the interpretation of Indian criminal law,

<sup>1</sup> Antwi, N. (2024). Human Rights and Constitutional Law: Balancing Security and Freedom. *DME Journal of Law*, 5(02), 108-119.

<sup>2</sup> Jain, E. (2017). Capitalizing on criminal justice. *Duke LJ*, 67, 1381.

<sup>3</sup> Perrin, B. (2023). *Indictment: The criminal justice system on trial*. University of Toronto Press.

but their transformative potential remains structurally limited because judicial incorporation has advanced faster than legislative domestication and institutional enforcement.

### **Constitutional Foundation and the Use of International Law**

Art 14 forbids arbitrariness; Art 20(3) shields against coerced self-incrimination; Art 21 ensures that deprivation of life or personal liberty must adhere to a just, fair, and reasonable process; and Art 22 governs arrest and detention by communicating the grounds, appearing before a magistrate, and providing access to legal counsel. Following *Maneka Gandhi v. Union of India*, Art 21 became a need for a fair, just, and reasonable process rather than any expressly authorized method. The Supreme Court also connected Art 21 with dignity in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, establishing a constitutional connection to global human rights debate.

The formal constitutional opening to international law comes from Arts 51(c) and 253. Although these provisions do not establish automatic incorporation, they make clear that the Constitution is not isolationist. In *Jolly George Varghese v. Bank of Cochin*<sup>4</sup>, the Supreme Court observed that covenant norms may inform interpretation, but where municipal law occupies the field the court remains bound by domestic law until Parliament changes it. In *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey*<sup>5</sup>, the Court stated that international law may be read into municipal law so long as there is no inconsistency with statutory enactment. This is the doctrinal platform on which later human-rights-sensitive criminal law cases were built.

The most celebrated formulation came in *Vishaka v. State of Rajasthan*<sup>6</sup>. While the case concerned sexual harassment at the workplace, its broader constitutional method is crucial for criminal law as well. The Court held that international conventions and norms consistent with fundamental rights may be relied upon to interpret constitutional guarantees where domestic law is silent. This principle was reaffirmed in *Apparel Export Promotion Council v. A.K. Chopra*<sup>7</sup>. The significance of *Vishaka* lies in its constitutional philosophy: international human rights law can function as an interpretive resource that enriches domestic rights without displacing legislative supremacy. In criminal law, that approach has enabled courts to draw upon the ICCPR and CEDAW while construing Arts 14, 20, 21 and 22.

### **Human Rights Norms and Criminal Procedure**

International criminal justice norms are most visible in the domains of arrest, interrogation, trial fairness, and detention. The ICCPR prohibits torture and cruel, inhuman or degrading treatment under Art 7, protects liberty and security under Art 9, requires humane treatment of persons deprived of liberty under Art 10, and guarantees fair trial under Art 14. These principles find a strong resonance in Indian constitutionalism. In *Nandini Satpathy v. P.L. Dani*<sup>8</sup>, the Supreme Court interpreted Art 20(3) expansively and held that the right against self-incrimination is available not merely in the courtroom but also during police interrogation. The judgment rejected a narrow reading of criminal process and recognised that coercion often begins long before trial.

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<sup>4</sup> 1980 SCR (2) 913.

<sup>5</sup> 1984 SCR (2) 664.

<sup>6</sup> AIR 1997 SUPREME COURT 3011.

<sup>7</sup> 1997(42)DRJ526.

<sup>8</sup> AIR 1978 SC 1025.

The same rights-based logic appears in *Selvi v. State of Karnataka*<sup>9</sup>, where the Court held that involuntary narco-analysis, polygraph examination, and brain-mapping violate Art 20(3) and implicate personal liberty under Art 21. The judgment is significant because it treats the mind and body of the accused as constitutionally protected zones that cannot be penetrated by the State through coercive forensic shortcuts. It reflects the broader international principle that criminal investigation cannot be legitimised by methods destructive of dignity and autonomy.

The law governing arrest has likewise been constitutionalised through judicial engagement with human rights standards. In *Joginder Kumar v. State of Uttar Pradesh*<sup>10</sup>, the Supreme Court declared that the existence of legal power to arrest does not justify routine arrest. In *D.K. Basu v. State of West Bengal*<sup>11</sup>, the Court addressed custodial violence in explicit human rights terms and laid down detailed arrest and detention guidelines including preparation of arrest memo, intimation to relatives, medical examination, and record maintenance. These directions effectively constitutionalised minimum safeguards against torture and disappearance. Their continuing relevance under the new criminal procedure regime is obvious. The *Bharatiya Nagarik Suraksha Sanhita* preserves several analogous protections: Sec 38 gives the arrested person the right to meet an advocate of choice during interrogation, Sec 47 requires communication of grounds of arrest and of the right to bail, Sec 48 mandates intimation of arrest to a relative or friend, Sec 56 protects health and safety of the arrested person, Secs 340 and 341 recognise the right to defence and legal aid, and Sec 479 addresses excessive undertrial detention by linking release to the period already undergone in custody. These provisions reflect the gradual internalisation of dignity-oriented criminal procedure, even though practice often lags behind text.

Evidentiary law provides another crucial area of integration. The *Bharatiya Sakshya Adhiniyam, 2023* retains the classic exclusionary structure associated with fair criminal process. Sec 22 renders confessions caused by inducement, threat, coercion or promise irrelevant in criminal proceedings, while Sec 23 bars proof of confessions made to police officers and restricts the evidentiary use of statements made in police custody except to the extent of discovery. These provisions are central to the protection of voluntariness and are compatible with the prohibition of coercive extraction under both constitutional law and international human rights law.<sup>12</sup>

### **Substantive Criminal Law, Vulnerability, and Human Dignity**

The integration of human rights norms also shapes the substantive criminal law response to exploitation and bodily integrity. The *Bharatiya Nyaya Sanhita, 2023* contains offences that reflect international concern with coercion, sexual autonomy, trafficking, and forced labour. Sec 75 criminalises sexual harassment; Secs 77 and 78 address voyeurism and stalking; Sec 120 punishes voluntarily causing hurt or grievous hurt to extort confession; Sec 143 criminalises trafficking of persons; and Sec 146 punishes unlawful compulsory labour. These provisions resonate with CEDAW, anti-trafficking standards, and the human rights ban on forced labour and custodial abuse. However, the existence of offences does not by itself secure rights-compatible enforcement. Much depends on the quality of investigation, victim protection, and the willingness of courts to interpret these provisions in light of dignity and equality.

<sup>9</sup> AIR 2010 SUPREME COURT 1974.

<sup>10</sup> 1994 SCC (4) 260.

<sup>11</sup> AIR 1997 SUPREME COURT 610.

<sup>12</sup> Gardbaum, S. (2008). Human rights as international constitutional rights. *European Journal of International Law*, 19(4), 749-768.

Gender justice demonstrates both the strengths and limits of judicial incorporation. Vishaka and A.K. Chopra established that constitutional adjudication may rely on CEDAW to combat violence and discrimination against women. In *State of Punjab v. Gurmit Singh*<sup>13</sup>, the Supreme Court emphasised the need for sensitivity in rape trials and rejected stereotyped distrust of survivors. In *Nipun Saxena v. Union of India*<sup>14</sup>, the Court reinforced the privacy and anonymity of rape survivors as an aspect of dignity. The criminal law amendments introduced after 2012 expanded substantive and procedural protections, many of which continue in the new codes. Yet investigative practices, evidentiary stereotyping, and delayed trials still dilute the promise of human-rights-consistent adjudication.

Prison jurisprudence has been among the strongest vehicles for integrating international human rights norms. In *Sunil Batra v. Delhi Administration*<sup>15</sup>, the Supreme Court held that prisoners are not denuded of fundamental rights by incarceration and condemned barbaric prison practices. In *Prem Shankar Shukla v. Delhi Administration*<sup>16</sup>, routine handcuffing was treated as inconsistent with dignity and liberty. In *Sheela Barse v. State of Maharashtra*, the Court emphasised the rights of women prisoners and the importance of legal assistance and custodial safeguards. *Hussainara Khatoon v. State of Bihar*<sup>17</sup> constitutionalised the right to speedy trial for undertrials, while *Nilabati Behera v. State of Orissa*<sup>18</sup> recognised compensation as a public law remedy for custodial death. *Shatrughan Chauhan v. Union of India*<sup>19</sup> humanised death penalty jurisprudence by recognising the relevance of delay, mental illness, and prison conditions. Collectively, these decisions show that Indian courts have treated criminal justice as a domain bounded by dignity, proportionality, and accountability.

Compensation jurisprudence further reveals the interaction between international norms and domestic criminal law. In *Nilabati Behera* the Court held that public law compensation may be awarded for custodial death as a remedy distinct from private law damages and criminal prosecution. This remedial approach is important because it recognises that unlawful custody is not merely an individual wrong but a constitutional failure attributable to the State. It also aligns with the broader human rights principle that rights must be backed by effective remedies. Similarly, legal aid jurisprudence rooted in *Hussainara Khatoon* and Art 39A demonstrates that access to counsel is not a charity measure but an essential condition of fair criminal process.

### **Challenges in Enforcement and Judicial Interpretation**

Despite this jurisprudence, the integration project remains incomplete. The first challenge is legislative incompleteness. India has signed but not ratified the Convention against Torture and still lacks a comprehensive anti-torture statute. Although constitutional remedies exist and Sec 120 of the *Bharatiya Nyaya Sanhita* penalises hurt to extort confession, there is no dedicated domestic framework defining torture in treaty-consistent terms, establishing command responsibility, ensuring independent investigation, or creating a coherent reparative regime for victims.

The second challenge is institutional. Much of criminal justice is produced outside constitutional courts: in police stations, lock-ups, prisons, forensic laboratories, and magistrates' courts. It is here that rights are

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<sup>13</sup> (1996) 2 SCC 384

<sup>14</sup> (2019) 2 SCC 703.

<sup>15</sup> AIR 1980 SUPREME COURT 1579.

<sup>16</sup> 1980 SCR (3) 855

<sup>17</sup> 1979 SCR (3) 532.

<sup>18</sup> AIR 1993 SC 1960.

<sup>19</sup> 2014 (3) SCC 1.

most vulnerable. Arrest memos may be fabricated, medical examinations may be perfunctory, legal aid may begin too late, and remand hearings may become routine formalities. Undertrial incarceration remains extensive because bail adjudication is inconsistent and delay is endemic. A rights-affirming statute cannot by itself overcome organisational culture, resource constraints, or the structural incentives of confession-oriented policing.

The third challenge lies in interpretive unevenness. Courts are often bold when invoking international norms in areas of evident vulnerability, yet more cautious when questions of public order or prosecutorial power dominate the discourse. Some judgments cite international norms rhetorically without converting them into operational standards. The result is a jurisprudence that is morally persuasive but sometimes administratively under-specified. The legitimacy of punishment in a constitutional democracy ultimately depends on these ordinary procedural guarantees.

### **Suggestions**

India should enact a comprehensive anti-torture statute aligned with constitutional guarantees and international standards. Such a law should define physical and psychological torture, criminalise command responsibility and custodial concealment, mandate independent investigation of custodial abuse, provide witness and complainant protection, and create a structured compensation and rehabilitation mechanism for victims.

Secondly, treaty-conform interpretation should be institutionalised at the trial level. Judicial academies, police training institutions, prison administration schools, and prosecution departments should train personnel in the constitutional relevance of the ICCPR, CEDAW, CRC, and related norms. Human-rights-compatible criminal justice cannot depend solely on constitutional appellate courts; it must shape first-instance decision making.

Thirdly, arrest and custody safeguards must become verifiable rather than merely formal. Audio-video recording of interrogation, effective CCTV monitoring, rigorous magistrate scrutiny of remand, prompt legal aid upon arrest, and automatic review of prolonged undertrial detention would make constitutional guarantees more real. The implementation of BNSS Secs 38, 47, 48, 56, 341 and 479 should be treated as a constitutional priority rather than a procedural formality.

Fourthly, substantive criminal law should be interpreted through a vulnerability-sensitive lens. Offences relating to trafficking, sexual violence, custodial abuse, forced labour, and crimes against children should be enforced with attention to consent, coercion, structural inequality, and victim dignity. Courts must resist stereotypes and ensure that evidentiary rules do not reproduce social prejudice.

### **Conclusion**

The integration of international human rights norms with Indian criminal law is one of the clearest examples of transformative constitutionalism in action. Indian courts have not treated international law as an ornamental source; they have used it to reshape the meaning of liberty, fairness, dignity, privacy, legal aid, prisoner rights, compensation, and gender-sensitive justice. Through decisions such as *Maneka Gandhi*, *Vishaka*, *Nandini Satpathy*, *D.K. Basu*, *Joginder Kumar*, *Sunil Batra*, *Hussainara Khatoon*, *Nilabati Behera*, *Selvi*, *Sheela Barse*, *Prem Shankar Shukla*, *Shatrughan Chauhan*, and *Nipun Saxena*, the judiciary has drawn the criminal process away from colonial authoritarianism and closer to a rights-based model. The new criminal law codes preserve several elements of that evolution through provisions relating

to arrest safeguards, legal aid, evidentiary voluntariness, undertrial detention, trafficking, sexual harassment, and custodial coercion.

Yet the project remains unfinished. India's criminal justice system still reflects a sharp disjunction between constitutional promise and administrative reality. The absence of a full anti-torture framework, the persistence of custodial violence, the overuse of detention, weak legal aid, and inconsistent lower-level enforcement demonstrate that doctrinal incorporation has outpaced institutional transformation. The unfinished task is to translate human rights norms into everyday criminal justice practice.

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